

TERMS OF USE

Purpose of Terms of Use

These Terms of Use are intended to explain our obligations as a service provider, and your obligations as a paying customer.

Please note:

If you are on a free trial, or otherwise not paying for the service, then the only parts of these Terms of Use that apply to you are included in the “Addendum for Free Trial and Non-Paying Users”. Please read them carefully. These Terms are binding on any use of the Service and apply to You from the time that Funeral Stream provides You with access to the Service. The Funeral Stream Service will evolve over time based on user feedback. These Terms are not intended to answer every question or address every issue raised by the use of the Funeral Stream Service.

Funeral Stream reserves the right to change these terms at any time, effective upon the posting of modified terms and Funeral Stream will communicate these changes to You via email or notification via the Website. It is likely the Terms of Use will change over time. It is Your obligation to ensure that You have read, understood and agree to the most recent terms available on the Website. By registering to use the Service you acknowledge that You have read and understood these Terms and have the authority to act on behalf of any person for whom You are using the Service. You are deemed to have agreed to these Terms on behalf of any entity for whom you use the Service.

1. DEFINITIONS

“**Agreement**” means these Terms of Use.

“**Access Fee**” means the fee (excluding any taxes and duties) payable by You for each Subscription Licence in accordance with the fee schedule set out on the Website (which Funeral Stream may change from time to time on notice to You).

“**Funeral Stream**” means the company which grants You the right to use the Service and to which you pay the Access Fee.

“**Confidential Information**” includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

“**Data**” means any data inputted or uploaded by You or with Your authority into the Website.

“Intellectual Property Right” means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

“Service” means the web streaming and tribute platform services made available (as may be changed or updated from time to time by Funeral Stream) via the Website.

“Subscriber” means the person who registers to use the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

“Subscription Licence” means a licence required by each User to access the Service.

“Subscription Period” means the period of time wherein the Subscription Licences are in effect.

“User” means any person or entity, including the Subscriber, that uses the Service with the authorisation of the Subscriber from time to time.

“Website” means the Internet sites at the domain, or subdomains, at Funeral Stream.com or any other site operated by Funeral Stream.

“You” means the Subscriber, and where the context permits, a User. **“Your”** has a corresponding meaning.

2. USE OF THE SERVICE

Funeral Stream grants You the right to access and use the Service via the Website with the particular user roles available to You according to Your subscription type. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement.

You acknowledge and agree that, subject to any applicable written agreement between the Subscriber and the Users, or any other applicable laws:

- the Subscriber determines who is a User and what level of user role access to the relevant organisation and Service that User has;
- the Subscriber is responsible for all Users’ use of the Service;
- the Subscriber controls each User’s level of access to the relevant organisation and Service at all times and can revoke or change a User’s access, or level of access, at any time and for any reason, in which case that person or entity will cease to be a User or shall have that different level of access, as the case may be;
- if there is any dispute between a Subscriber and a User regarding access to any organisation or Service, the Subscriber shall decide what access or level of access to the relevant Data or Service that User shall have, if any.

3. YOUR OBLIGATIONS

3.1 Payment obligations Unless you are accessing a free trial then you will be billed for all Subscription Licences at the beginning of each Subscription Period. Subscription Periods will automatically renew until this Agreement is terminated in accordance with clause 8.

Any Subscription Licences added during a Subscription Period will be billed when added at a pro-rata rate for the remainder of the Subscription period. You can reassign Users between available Subscription Licences within a Subscription Period.

It is your responsibility to remove unwanted Subscription Licences prior to the renewal of each Subscription Period. No credit will be provided for inactive, unassigned, or unused Subscription Licences.

All Funeral Stream invoices will be available to You by email or download from the Website. You must pay or arrange payment of all amounts specified in any invoice by the due date on the invoice. If you have setup auto-billing arrangements with Funeral Stream then Funeral Stream will deduct the payment automatically under the terms of those arrangements.

You are responsible for payment of all taxes and duties in addition to the Access Fee. Depending on Your jurisdiction and circumstances You may be required to pay federal, state, provincial and/or local sales, use, excise, value-added, or other similar taxes, levies or duties due on the transactions and Funeral Stream will include these on Your invoice these as applicable.

3.2 General obligations You must only use the Service and Website for Your own lawful internal business purposes, in accordance with these Terms and any notice sent by Funeral Stream or condition posted on the Website. You may not use the Service to gain competitive information about Funeral Stream or the Service.

3.3 Access conditions You must ensure that all usernames and passwords required to access the Service is kept secure and confidential. You must immediately notify Funeral Stream of any unauthorised use of Your passwords or any other breach of security and You must take all other actions that Funeral Stream reasonably deems necessary to maintain or enhance the security of Funeral Stream's computing systems and networks and Your access to the Service.

As a condition of these Terms, when accessing and using the Service, You must:

- not attempt to undermine the security or integrity of Funeral Stream's computing systems or networks or, where the Service is hosted by a third party, that third party's computing systems and networks;
- not use, or misuse, the Service in any way which may impair the functionality of the Service or Website, or other systems used to deliver the Service or impair the ability of any other user to use the Service or Website;
- not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Service is hosted;

- not transmit, or input into the Website, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
- not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programmes used to deliver the Service or to operate the Website except as is strictly necessary to use either of them for normal operation.

3.4 Usage Limitations Depending on which instance of the Service You are accessing Your use of the Service may be subject to limitations, including but not limited to monthly transaction volumes, data storage, and the number of calls You are permitted to make against Funeral Stream's application programming interface.

3.5 Communication Conditions As a condition of these Terms, if You use any communication tools available through the Website (such as email, chat, file notes, text messages, forums), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Service, including (but not limited to): offers of goods or services for sale, unsolicited commercial email, files that may damage any other person's computing devices or software, content that may be offensive, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use). When You make any communication on the Website, You represent that You are permitted to make such communication. Funeral Stream is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Service. As with any other web-based service, You must exercise caution when using the communication tools available on the Website. However, Funeral Stream does reserve the right to remove any communication at any time in its sole discretion.

3.6 Indemnity You indemnify the Funeral Stream against: all claims, costs, damage and loss arising from Your breach of any of these Terms or obligations, including (but not limited to) any costs relating to the recovery of any Access Fees that are due but have not been paid by You.

4. CONFIDENTIALITY AND PRIVACY

4.1 Confidentiality Unless the relevant party has the prior written consent of the other or unless required to do so by law:

- Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
- Each party's obligations under this clause will survive termination of these Terms.
- The provisions of the confidentiality clauses above shall not apply to any information which:
- is or becomes public knowledge other than by a breach of this clause; is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- is independently developed without access to the Confidential Information.

4.2 Privacy Funeral Stream maintains a privacy policy on the Website that sets out the parties' obligations in respect of personal information. You should read that policy and You will be taken to have accepted that policy when You accept these Terms.

5. INTELLECTUAL PROPERTY

5.1 General Title to, and all Intellectual Property Rights in the Service, the Website and any documentation relating to the Service remain the property of Funeral Stream (or its licensors).

5.2 Ownership of Data Title to, and all Intellectual Property Rights in, the Data remain Your property. However, Your access to the Data is contingent on full payment of the Funeral Stream Access Fee when due. You grant Funeral Stream a licence to use, copy, transmit, store, and backup Your information and Data for the purposes of enabling You to access and use the Service and for any other purpose related to provision of services to You.

5.3 Backup of Data While Funeral Stream will take standard industry measures to back up all Data stored using the Services, the Subscriber agrees to keep a separate back-up copy of all Data uploaded by it onto the Service.

5.4 Third-party Applications and your Data If You enable third-party applications for use in conjunction with the Service, You acknowledge that Funeral Stream may allow the providers of those third-party applications to access Your Data as required for the interoperation of such third-party applications with the Service. Funeral Stream shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.

5.5 Ownership and Protection of Proprietary Rights You acknowledge that the Intellectual Proprietary Rights in the Platform belong exclusively to Funeral Stream and that You will not dispute such ownership. In the event that Funeral Stream provides new features or services based on requests or suggestions made by You, You acknowledge that any such new features or services belong exclusively to Funeral Stream, and that You will not be compensated for the request or suggestion.

6. WARRANTIES AND ACKNOWLEDGMENTS

6.1 Authority You warrant that where You have registered to use the Service on behalf of another person, You have the authority to agree to these Terms on behalf of that person and agree that by registering to use the Service You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.

6.2 Acknowledgment You acknowledge that:

- You are authorised to use the Service and that You are authorised to access the processed information and Data that is made available to You through Your use of the Service (whether that information and Data is Your own or that of anyone else).
- The provision of, access to, and use of, the Service is on an “as is” basis and at Your own risk.
- Funeral Stream does not warrant that the use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Service. Funeral Stream is not in any way responsible for any such interference or prevention of Your access or use of the Service.

6.3 No Warranties Funeral Stream gives no warranty about the Service. Without limiting the foregoing, Funeral Stream does not warrant that the Service will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

6.4 Consumer Guarantees You warrant and represent that You are acquiring the right to access and use the Service for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Service, the Website or these Terms.

7. LIMITATION OF LIABILITY

To the maximum extent permitted by law, Funeral Stream excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website. If You suffer loss or damage as a result of Funeral Stream’s negligence or failure to comply with these Terms, any claim by You against Funeral Stream arising from Funeral Stream’s negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Access Fees paid by You in the previous 12 months. If You are not satisfied with the Service, Your sole and exclusive remedy is to terminate these Terms in accordance with Clause 8.

8. TERMINATION

8.1 Prepaid Subscriptions Funeral Stream will not provide any refund for any remaining prepaid period for a prepaid Access Fee subscription.

8.2 No-fault Termination: These Terms will continue for the period covered by the Access Fee paid or payable. At the end of each billing period these Terms will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Access Fee when due, unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant payment period. If You terminate these Terms You shall be liable to pay all relevant Access Fees on a pro-rata basis

for each day of the then current period up to and including the day of termination of these Terms.

8.3 Breach If You:

- breach any of these Terms (including, without limitation, by non-payment of any Access Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
- breach any of these Terms and the breach is not capable of being remedied; or
- You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction, Then Funeral Stream may take any or all of the following actions, at its sole discretion:
 - Terminate this Agreement and Your use of the Service and the Website;
 - Suspend for any definite or indefinite period of time, Your use of the Service and the Website;
 - Suspend or terminate access to all or any Data.
 - Take either of the actions above in respect of any or all other persons whom You have authorised to have access to Your information or Data.

For the avoidance of doubt, if payment of any invoice for Access Fees due in relation to any of Your Billing Contacts, Billing Plans or any of Your Organisations (as defined in clause 3) is not made in full by the relevant due date, Funeral Stream may: suspend or terminate Your use of the Service, the authority for all or any of Your Organisations to use the Service, or Your rights of access to all or any Data.

8.4 Accrued Rights Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

- remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- immediately cease to use the Service and the Website.

8.5 Deletion of Data Funeral Stream is entitled to delete all copies of your Data after 45 days following termination of this agreement. You are entitled to receive a backup of your Data provided the request is made within 20 days following termination of this agreement.

8.6 Expiry or Termination Clauses 3.1, 3.6, 4, 5, 6, 7, 8 and 10 survive the expiry or termination of these Terms.

9. TECHNICAL SUPPORT AND HOSTING

9.1 Help Desk support will be provided by Funeral Stream to paying Users of the Service subject to the following conditions:

- all Access Fees due under this Agreement are fully paid at the time of the support request; and
- the person making the request has a valid Funeral Stream login; and
- the support request is not covered in the user guide, Website or other available information about the Service; and
- the support request would not be expected to be known by a fully trained end user of the Service; and
- the nature of the support request is minor and can reasonably be expected to be answered by the Help Desk without a significant investment in time, effort, or expense; and
- the support request is solely related to the Service as delivered from the hosting location, and not related to ancillary hardware, software or systems such as computers or networks used by You to access the Service. The limited support provided under this Agreement is not intended to be a replacement for end-user training, system configuration, or consulting. If, in the sole opinion of Funeral Stream, the support request does not meet the criteria for limited support under this Agreement then Funeral Stream may decline to respond to the support request and may suggest alternative means of satisfying the support request such as via professional services for additional training or consulting, or by entering into a more comprehensive support agreement that better meets Your requirements. Details on how to contact the Help Desk can be found on the Website.

9.2 Hosting Funeral Stream hosts the Service on Amazon Web Services (AWS) global regions determined by your data sovereignty requirements.

9.3 Service Availability The Service will be available to the Recipient for 99.5% of all scheduled available time as it relates solely to the Funeral Stream's network and server Internet access. Scheduled available time shall be defined as 24 hours-a-day, seven days-a-week, excluding:

- routine system maintenance downtime of up to six hours per week, which shall be scheduled outside of normal business hours if practical;
- downtime to address specific critical Software issues; and
- any downtime caused by circumstances beyond the immediate control of the Provider.

9.4 Data Sovereignty You can elect to have your Data hosted in any AWS region supported by Funeral Stream. Funeral Stream will keep your Data on servers located within the elected region but Users will be able to connect to the Service from anywhere on the Internet and thus some of your Data may be transmitted outside the elected region in response to User queries.

10. GENERAL

10.1 Entire Agreement These Terms, together with the Funeral Stream [Privacy Policy](#) and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Funeral Stream relating to the Service and the other matters dealt with in these Terms.

10.2 Waiver If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

10.3 Delays Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

10.4 No Assignment You may not assign or transfer any rights to any other person without Funeral Stream's prior written consent.

10.5 Governing law and Jurisdiction This Agreement is governed by the laws of New Zealand and You hereby submit to the exclusive jurisdiction of the courts of New Zealand for all disputes arising out of or in connection with this Agreement.

10.6 Severability If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

10.7 Notices Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Funeral Stream must be sent to help@funeral.stream or to any other email address notified by email to You by Funeral Stream. Notices to You will be sent to the email address which You provided when setting up Your access to the Service.

11. Addendum for Free Trial and Non-Paying Users

The only terms of use that apply to free trial and non-paying users are listed in this addendum, and, unless specifically referenced in this addendum, none of the other terms apply. The following sections of the preceding Terms of Use apply to free trial and non-paying users:

- DEFINITIONS
- USE OF SERVICE
- YOUR OBLIGATIONS except for "Payment Obligations"
- CONFIDENTIALITY AND PRIVACY except for "Backup of Data" • WARRANTIES AND ACKNOWLEDGEMENTS
- LIMITATION OF LIABILITY
- GENERAL

The following additional terms apply to free trial and non-paying users and if any conflict or doubt arises these additional terms will prevail:

- Funeral Stream may terminate your use of the Service at any time and for any reason, and
- you agree that your Data have no commercial value and that Funeral Stream may delete your Data upon termination of the Service, and
- you will not be entitled to technical support, although Funeral Stream may elect to provide this at its sole discretion.