

# Mobile App Terms and Conditions of Use and Privacy Policy

## 1. About the Application

1.1. Welcome to PokerWhispr (the 'Application'). The Application  
GPS

Location

Services database subscription, (the 'Services').

1.2. The Application is operated by Es Em Gee PTY. LTD.  
(ABN 57092429564).

Access to and use of the Application, or any of its associated  
Products or

Services, is provided by Es Em Gee. Please read these terms  
and conditions

(the 'Terms') carefully. By using, browsing and/or reading the  
Application, this

signifies that you have read, understood and agree to be bound by the  
Terms. If

you do not agree with the Terms, you must cease usage of the  
Application, or any of its Services, immediately.

1.3. Es Em Gee reserves the right to review and change any of the Terms by  
updating this page at its sole discretion. When Es Em Gee updates the  
Terms, it

will use reasonable endeavours to provide you with notice of  
updates to the

Terms. Any changes to the Terms take immediate effect from the  
date of their

publication. Before you continue, we recommend you keep a copy of  
the Terms for your records.

## 2. Acceptance of the Terms

You accept the Terms by using or browsing the Application. You may also accept  
the

Terms by clicking to accept or agree to the Terms where this option is  
made available to you by Es Em Gee in the user interface.

## 3. Copyright and Intellectual Property

3.1. The Application, the content and all of the related products of Es Em  
Gee are

subject to copyright. The material on the Application is protected  
by copyright

under the laws of Australia and through international treaties. Unless  
otherwise

indicated, all rights (including copyright) in the content and compilation of the Application (including but not limited to text, graphics, logos, button icons, video images, audio clips, Application, code, scripts, design elements and interactive features) or the content are owned or controlled for these purposes, and are reserved by Es Em Gee or its contributors.

3.2. All trademarks, service marks and trade names are owned, registered and/or licensed by Es Em Gee, who grants to you a worldwide, non exclusive, royalty - free, revocable license whilst you are a Member to:

- (a) use the Application pursuant to the Terms;
- (b) copy and store the Application and the material contained in the Application in your device's cache memory; and
- (c) print pages from the Application for your own personal and non commercial use.

Es Em Gee does not grant you any other rights whatsoever in relation to the

Application or the content. All other rights are expressly reserved by Es Em Gee. 1

3.3. Es Em Gee retains all rights, title and interest in and to the Application and all related content. Nothing you do on or in relation to the Application will transfer any:

- (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
- (b) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
- (c) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process), to you.

3.4. You may not, without the prior written permission of Es Em Gee and the permission of any other relevant rights owners: broadcast, republish, up-load to a

third party, transmit, post, distribute, show or play in public, adapt or change in

any way the content or third party content for any purpose, unless otherwise

provided by these Terms. This prohibition does not extend to materials on the

Application which are freely available for re-use or are in the public domain.

#### 4. Privacy

Es Em Gee takes your privacy seriously and any information provided through your use of the Application and/or Services are subject to Es Em Gee's Privacy Policy, which is available at [https://www.pokerwhispr.com/assets/images/RR\\_Privacy\\_Policy\\_2024-08-08.txt](https://www.pokerwhispr.com/assets/images/RR_Privacy_Policy_2024-08-08.txt)

#### 5. General Disclaimer

5.1. Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian

Consumer Law (or any liability under them) which by law may not be limited or excluded.

5.2. Subject to this clause 5, and to the extent permitted by law: (a) all terms, guarantees, warranties, representations or conditions which are

not expressly stated in the Terms are excluded; and (b)

Es Em Gee will not be liable for any special, indirect or consequential loss

or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss

of profit or opportunity, or damage to goodwill arising out of or in connection

with the content or these Terms (including as a result of not being able to

use the content or the late supply of the content), whether at common law,

under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

5.3. Use of the Application and the content is at your own risk.

Everything on the

Application and the content is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers,

employees, agents, contributors and licensors of Es Em Gee make any express

or implied representation or warranty about the content or any products or

content (including the products or content of Es Em Gee)  
referred to on the

Application. This includes (but is not restricted to) loss or  
damage you might suffer as a result  
of any of the following:

(a) failure of performance, error, omission, interruption, deletion,  
defect, failure

to correct defects, delay in operation or transmission, computer  
virus or

other harmful component, loss of data, communication line failure,  
unlawful

third party conduct, or theft, destruction, alteration or

unauthorised access to  
records;

(b) the accuracy, suitability or currency of any information on the  
Application,

the content, or any of its content related products

(including third party

material and advertisements on the Application);

(c) costs incurred as a result of you using the Application, the  
content or any of

the products of Es Em Gee; and

(d) the content or operation in respect to links which are  
provided for your convenience.

## 6. Limitation of liability

6.1. Es Em Gee's total liability arising out of or in  
connection with the content or these

Terms, however arising, including under contract, tort (including  
negligence), in

equity, under statute or otherwise, will not exceed the resupply of the  
content to you.

6.2. You expressly understand and agree that Es Em Gee,  
its affiliates, employees,

agents, contributors and licensors shall not be liable to you for any  
direct,

indirect, incidental, special consequential or exemplary damages  
which may be

incurred by you, however caused and under any theory of  
liability. This shall

include, but is not limited to, any loss of profit (whether incurred  
directly or

indirectly), any loss of goodwill or business reputation and any  
other intangible loss.

6.3. You acknowledge and agree that Es Em Gee holds no liability for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you as a result of providing Your Content to the Application.

## 7. Termination of Contract

7.1. If you want to terminate the Terms, you may do so by providing Es Em Gee with 14 days' notice of your intention to terminate by sending notice of your intention to terminate to Es Em Gee via the 'Contact Us' link on our homepage.

7.2. Es Em Gee may at any time, terminate the Terms with you if: (a) you have breached any provision of the Terms or intend to breach any provision;

(b) Es Em Gee is required to do so by law;

(c) Es Em Gee is transitioning to no longer providing the Services to Members

in the country in which you are resident or from which you use the service; or 3

(d) the provision of the Services to you by Es Em Gee, is in the opinion of Es

Em Gee, no longer commercially viable.

7.3. Subject to local applicable laws, Es Em Gee reserves the right to discontinue or cancel your membership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Application or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts Es Em Gee's name or reputation or violates the rights of those of another party.

7.4. When the Terms come to an end, all of the legal rights, obligations and liabilities that you and Es Em Gee have benefitted from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions

of this clause shall continue to apply to such rights, obligations and liabilities indefinitely.

## 8. Indemnity

8.1. You agree to indemnify Es Em Gee, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:

- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with Your Content;
- (b) any direct or indirect consequences of you accessing, using or transacting on the Application or attempts to do so; and/or
- (c) any breach of the Terms.

## 9. Dispute Resolution

### 9.1. Compulsory:

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

### 9.2. Notice:

A party to the Terms claiming a dispute ('Dispute') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

### 9.3. Resolution:

On receipt of that notice ('Notice') by that other party, the parties to the Terms ('Parties') must:

- (a) Within 14 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (b) If for any reason whatsoever, 14 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon

selection of a mediator or request that an appropriate mediator be appointed by the President of the Apple iTunes or his or her nominee;

(c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;

(d) The mediation will be held in South Australia, Australia.

#### 9.4. Confidential

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

#### 9.5. Termination of Mediation :

If 4 weeks have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

#### 10. Venue and Jurisdiction

The Services offered by Es Em Gee is intended to be viewed by residents of Australia.

In the event of any dispute arising out of or in relation to the Application, you agree that the exclusive venue for resolving any dispute shall be in the courts of South Australia, Australia.

#### 11. Governing Law

The Terms are governed by the laws of South Australia, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of South Australia, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

#### 12. Independent Legal Advice

Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

#### 13. Severance

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.