

Skymorials' Terms & Conditions

In these terms and conditions ("**Terms**"):

"Account Details" means a username, password and any other details provided by Skymorials to a Memorial Administrator for the purpose of accessing or administering a Memorial.

"Content" means any content or materials including (but not limited to) still or moving images, videos, sound recordings or other audiovisual materials, artistic works, written works and personal information posted to a Memorial by a User.

"Fee" means a one-off fee charged by Skymorials to create a Memorial.

"Guest User" means a User other than Memorial Administrators.

"Guestbook" means the online registration system provided on the Website for Guest Users.

"Intellectual Property Rights" means copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks, registered and unregistered designs, look and feel, trade secrets, circuit layouts and all other rights resulting from intellectual activity in, but not limited to, the industrial, scientific, literary or artistic fields and includes moral rights.

"Memorial" means an account created on the Website by a User, enabling the User to commemorate the life of a Subject.

"Memorial Administrator" means a User that is granted the rights to administer a Memorial by Skymorials.

"Purpose" means the creation of a Memorial to commemorate the life of a Subject.

"Skymorials", "us", or "we" means Skymorials Pty Ltd ACN 168 078 055.

"Service" means the service provided by us allowing you to post Content on the Website about a Subject by creating a Memorial.

"Subject" means a person for whom a Memorial is created.

"User" means a user of the Service.

"Website" means www.skymorials.com and includes any version of the Service (including any "app" or similar version) that is able to be viewed or accessed on any type of device, including but not limited to tablet devices, and unless the context requires otherwise, includes all related services.

"You" means the person reading these Terms.

These Terms apply to the use of the Website.

In using and visiting the Website you agree to be bound by these Terms. If you do not accept these Terms, you must refrain from using and visiting the Website.

We reserve the right to revise these Terms at any time. You should visit the Website periodically to review these Terms. Amendments will be effective immediately upon notification on the Website. Your continued use of the Website following such notification will represent an agreement by you to be bound by these Terms as amended.

1. Creating a Memorial

A User can create a Memorial using the Website.

Unless the Memorial relates to you, you must only establish a Memorial in respect of a Subject that is deceased.

In order to create a Memorial, you must provide your:

- (a) full name;
- (b) address;
- (c) bank account details for the purpose of paying the Fee; and
- (d) email address.

You acknowledge that creating a Memorial will incur the Fee.

Once you have provided the above details, you authorise Skymorials to deduct the Fee from your nominated bank account.

Once you have paid the Fee and created a Memorial, Skymorials will assign you as Memorial Administrator for that Memorial and will give you the Account Details for that Memorial.

You may choose to remove the Memorial at any time. You are entitled to a refund of the Fee if you remove the Memorial within 30 days of creating that Memorial. You are not entitled to a refund of the Fee if you remove a Memorial after 30 days of that Memorial being created because you have changed your mind. To receive your refund, please contact us at:

[help \(at\) skymorials.com](mailto:help@skymorials.com)

Skymorials may permit two or more individuals to act as Memorial Administrator on each Memorial, with each having equivalent rights in respect of approval and removal of Content. You can apply to appoint other Memorial Administrators by following the prompts on the Website.

A Memorial Administrator cannot be transferred to another person other than in accordance with these Terms.

A Memorial Administrator must:

- (e) be at least 18 years of age; and
- (f) not be a person that Skymorials has prohibited from using the Service.

If you are the Subject of a Memorial, you must nominate another Memorial Administrator. Once you have nominated another Memorial Administrator, we will notify them of the nomination and request their consent to become a Memorial Administrator. Upon obtaining their consent, they will be given the Account Details for the relevant Memorial and will have all of the rights of access and use to the relevant Memorial as the Memorial Administrator.

2. Application of third party Standard End User Licence Agreements

In addition to these Terms where you have obtained a version of the Website through the Apple AppStore or other similar application platform, you acknowledge that your use of the Website is governed by these Terms and the platform's standard end user licence agreement if and to the extent applicable. To the extent permissible at law, in the event of any inconsistency between these Terms and such standard end user licence agreement, these Terms shall take precedence over any standard end user licence agreement.

3. Adding Content to a Memorial

Content can be added to a Memorial by Users that are not Memorial Administrators.

Guests Users that are not Memorial Administrators can only add Content to a Memorial by signing the Guestbook.

Memorial Administrators are entitled to accept, reject or exclude Guest Users from posting content on a Memorial.

4. Rules for posting Content

You must abide by the following rules when posting any content onto a Memorial or otherwise posting any content or interacting with the Website and other Users:

- (a) You must be over 13 years of age to be a User.
- (b) You agree to only use the Website for the Purpose and for no other purpose.
- (c) You agree not to use the Website for any unlawful purpose and not to violate any applicable local, state, national or international law.
- (d) You agree not to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights of others.
- (e) You agree to be respectful of each Subject and their friends and family.
- (f) You agree not to establish a Memorial for a person who is not deceased (unless the Memorial relates to you only).
- (g) You agree not to post any Content about any living person by which they may be personally identified without their prior written consent (which you must provide to us within 5 days of a request for same by us) or which in any way compromises another living person's privacy or breaches confidentiality. When obtaining such consent you must also obtain their consent for us to collect their information in accordance with our Privacy Policy.
- (h) You agree not to post any personal information or images identifying a minor without the prior written consent of that individual's parent or guardian.
- (i) You agree not to impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity.
- (j) You agree not to submit Content that contains material that is untrue, inappropriate, tasteless, likely to cause distress, harmful or inappropriate for minors to view, culturally insensitive, unlawful, threatening, abusive, hateful,

profane, defamatory, obscene, pornographic, racially vilifying, deliberately provocative or indecent.

- (k) You agree not to submit Content that is of nuisance value, off topic or vexatious.
- (l) You agree not to infringe the Intellectual Property Rights of others. Without limiting any other provision of these Terms, you agree not to post any Content that is the work of a third party without their prior written permission (which you must provide to us within 5 days of a request for same by us).
- (m) You agree not to reproduce any memorial-related content, such as death notices, that have appeared in any other publication.
- (n) You agree not to upload files, or cause users to upload files, that contain viruses, worms, "Trojan horses", corrupted files, or any similar software or programs that may adversely affect, overburden or disable the operation of the Website or the operation of another's computer or other device.
- (o) You agree not to advertise any goods or services (except where paid advertising is permitted). Sending "junk mail", "spam", "chain letters", "pyramid schemes" and similar activities are strictly prohibited.
- (p) You agree not to solicit anyone to buy or sell products or services, or to make donations of any kind on the Website, without our express written approval.
- (q) You agree not to use a Memorial for the primary purpose of promoting a cause or movement, whether political, religious or otherwise, nor for the purpose of commemorating or glorifying an individual that is generally considered to be of ill repute or unscrupulous.
- (r) You must not insert any links to third party websites without the prior written approval of Skymorials.

You acknowledge that, without limiting any other remedy we may have, we may remove any Content that breaches these Terms.

5. Intellectual Property Rights

We make no claim to ownership of the Intellectual Property Rights in the Content posted by Users in a Memorial, but if you post any Content you:

- (a) grant us a non-exclusive, payment free, perpetual, irrevocable licence to reproduce, modify, delete, adapt and publish any Content you post or upload and to sub-licence the same for such purposes as Skymorials determines from time to time in its sole discretion (subject to the Skymorials' Privacy Policy). You agree that we may do so without attribution of authorship, with or without any other materials.
- (b) grant us the right to use your name and other information that you provide in connection with that Content (subject to our Privacy Policy) and you warrant that you have all necessary rights and consents in the Content that you contribute, the Content does not in any way breach these Terms.

6. Use of Website Material

The contents of the Website (other than Content), including all other text, graphics, images, logos, icons, photographs, audiovisual material and other content ("Website

Material”) are or may be protected by Intellectual Property Rights. Intellectual Property Rights in that material is either owned by or licensed to us.

You may access and view the Website Material for the purpose of your personal use of the Website. Other than for the purpose of your personal use of the Website and except if and as expressly authorised by these Terms, you may not, without our prior written permission, in any form or by any means:

- (a) adapt, reproduce, store, distribute, print, display, perform, publish or create derivative works from any Website Material;
- (b) commercialise or on-sell any information, content, products or services obtained from any part of the Website;
- (c) mirror or frame the Website or any part or page of the Website; or
- (d) use any automated process of any sort to query, access, retrieve, scrape, data-mine or copy any Website Material or generate or compile any document, index or database based on the Website Material;

If you are a recognized media outlet or a commercial online publication, you may use the Website Material subject to you acknowledging Skymorials as the source of the relevant material re-published by you.

You agree not to disclose to any person or entity, personally identifiable information about other Users that you learn using the Website (whether posted in a Memorial or e-mailed to you by a User) without the express written consent of such User.

7. Links

The Website may contain links to other websites. Those links are provided for convenience only and may not remain current or be maintained. We are not responsible for the content or privacy practices associated with linked websites.

Our inclusion of linked websites should not be construed as an endorsement, approval or recommendation by us of the owners or operators of those linked websites, or of any materials, products or services referred to or contained on those linked websites, unless and to the extent stipulated to the contrary.

8. Reviewing and removing content

Skymorials does not pre-screen postings and to the extent permissible at law we shall not be responsible or liable in respect of any Content.

We reserve the right (but disclaim the obligation or responsibility) to monitor Content.

We encourage you to notify us of inappropriate or illegal Content and we reserve the right to remove postings for any reason.

If you believe yours or another person or entity’s Intellectual Property Rights have been infringed by our activity, or the activity of a User on the Website, please contacts us at:

Email: [help \(at\) skymorials.com](mailto:help@skymorials.com)

You may “flag” Content for inappropriateness. We will endeavour to remove as soon as possible, any Content that has been flagged by two or more Users.

We do not guarantee that we will display or continue to display all Content that you or any other users post on a Memorial. Also, we reserve the right to edit or abridge Content for any reason and to disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in our sole discretion.

Subject to our right to modify, suspend or discontinue any Memorial or the Website, any Memorial created on the Website, and its associated content, will remain available online so long as Skymorials continues to conduct its business and operates the Website.

9. Disputes about Memorials or their Content

We will endeavour to take into account the wishes of immediate family of a deceased in relation to the establishment of or the Content appearing on a Memorial, however we reserve the right to remove any Content or Memorial in its entirety and the right to merge the Content of any two or more Memorials relating to the same Subject, at our discretion, including in the event of a dispute over the administration of or Content appearing in a Memorial.

10. Privacy, Security of Information and data and system integrity

Skymorials will take all reasonable steps to ensure the security of the Website. Please see our Privacy Policy for more information about how we treat personal information.

If you are a Memorial Administrator, you must keep your Account Details secure and confidential and not provide those details to any third party under any circumstance unless required by law. You may not transfer your rights as Memorial Administrator to another person without our prior written consent.

Skymorials will treat personal information as confidential and comply with the *Privacy Act 1988* (Cth), and our Privacy Policy. Nevertheless, no data transmission over the internet can be guaranteed as totally secure. While we strive to protect such information, we do not warrant and cannot ensure the security of any information which you transmit to us. Accordingly, any information which you transmit is at your own risk. Nevertheless, once we receive your transmission we will take reasonable steps to preserve the security of such information.

We do not represent or warrant that the Website or any Content will be available uninterrupted or error free or that any defects in the Website will be corrected in a timely manner or otherwise.

11. Indemnity

You agree to indemnify, and keep indemnified, Skymorials, its affiliated companies and its respective directors, officers, employees, agents, representatives, contractors, licensees and successors against any and all liabilities, costs (including legal charges), claims, demands or damages incurred or suffered from the use of the Website, including (without limitation) as a result of any:

- (a) breach of these Terms;

- (b) your access to or use of the Website; or
- (c) loss or damage caused by you or any person using a Memorial or Account Details (whether with or without your permission).

12. Limitation of liability

To the maximum extent permitted at law Skymorials shall not be liable to any person, whether under contract, tort, strict liability, negligence or otherwise at law for any special, indirect, incidental, punitive, or consequential damages of any kind whatsoever, or for any loss of profit, use, content, data, opportunity, revenue or business, whether caused by any User, Skymorials, its employees, agents or any other persons acting on its behalf.

Nothing in these Terms purports to limit Skymorials' liability under the *Australian Consumer Law* or otherwise required at law.

In the event of a breach by Skymorials of a condition, warranty or obligation under these Terms, to the maximum extent permitted by law, Skymorials' liability for such breach shall be limited to:

- (a) the replacement of the goods or the supply of equivalent goods or services;
- (b) payment of the cost of replacing the goods or acquiring equivalent goods or services;
- (c) reimbursement of any charges deducted in error; or
- (d) refund of charges paid for the Website,

as determined by Skymorials in its discretion.

13. Warnings

You must ensure that your access to the Website is not illegal or prohibited by laws or policies (such as employers' usage policies) that apply to you.

You must take your own precautions to ensure that the process that you employ for accessing the Website does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your computer system. We accept no responsibility or liability for any interference or damage to your own computer which arises in connection with your use of the Website or any linked website or service.

14. Termination and prohibition of access

If we form the view, acting reasonably, there is a breach or threatened breach of these Terms by you, we reserve the right to terminate your access to the Website without notice. To the extent possible these Terms survive such termination.

Skymorials reserves the right to ban any person from using the Service on the basis of past or threatened breaches of these Terms.

15. Severability

If any portion of the Terms is found to be void, invalid or otherwise unenforceable, then that portion shall be severed and the remainder shall continue in full force and effect.

16. Waiver

Our failure to enforce or exercise any right or provisions of these Terms shall not constitute a waiver of those rights or provisions.

All rights not expressly granted are reserved.

17. Governing law

These Terms are governed by the law in force in the State of Victoria, Australia. The Courts in that State shall have the exclusive jurisdiction to determine disputes in relation to these Terms or any other matter concerning the operation of the Website.

These Terms are effective as at 22/05/18