

CRICKET FANCAM APPLICATION – TERMS OF USE



These terms apply to your use of the Cricket FanCam Application (Application) (Terms of Use). By downloading the Application, you agree to be bound by these Terms of Use.

LICENCE

1. Licence

- 1.1 Subject to, and in accordance with the following terms and conditions Cricket Australia (ACN 006 089 130) (**Cricket Australia**) grants you a personal, non-exclusive, non-transferrable, revocable licence (**Licence**) to use the Application.
- 1.2 You agree to these Terms of Use and the Cricket Australia Privacy Policy (**Privacy Policy**) located at <http://www.cricket.com.au/privacy> each of which may be amended from time to time. To the extent of any conflict between these Terms of Use and/or Privacy Policy, these Terms of Use will apply.
- 1.3 If you download the Application through the Apple App Store and/or the Google Play Market, in addition to the terms set out here, your use of the Application and Subscription Service is also subject to Apple's EULA (End User Licence Agreement) <http://www.apple.com/legal/itunes/appstore/dev/stdeula/> or Google Play's Terms of Service http://play.google.com/intl/en_us/about/play-terms.html depending on your compatible device.
- 1.4 Cricket Australia reserves the right to suspend, terminate or otherwise deal with your Licence in relation to the Application and its content at any time.
- 1.5 Cricket Australia reserves the right to vary these Terms of Use from time to time. You agree to be bound by varied Terms of Use by continuing to use the Application.

Access

- 1.6 The Application is only accessible via the following platforms or devices owned and controlled by you:
 - (a) supported Android devices; and
 - (b) supported iOS devices.

Restrictions

- 1.7 You must not:
 - (a) reverse engineer, decompile, or disassemble the Application;
 - (b) reproduce, modify, enhance, translate, alter, tamper with, upgrade or create derivative works of the whole or any part of the Application or combine, integrate or incorporate the whole or any part of the Application in any other software or system;
 - (c) remove, alter, obscure or deface any:
 - (i) patent, copyright, trademark, or proprietary rights notices of Cricket Australia or its licensors;

- (ii) trade mark, service mark, get up, livery, logo or branding, proprietary or restricted use legend; or
 - (iii) disclaimer, warning, instruction or advisory notice,which are contained in or affixed to the Application or Subscription Service; or
 - (d) do anything that would prejudice Cricket Australia's right, title or interest in the Application.
- 1.8 You must not:
- (a) do anything with the Application that is not expressly authorised under these Terms of Use (including copying, retransmitting, relaying, selling the Application to anyone else); or
 - (b) attempt to circumvent or modify any technological measure used to apply the terms set out in these Terms of Use.
- 1.9 You must not directly or indirectly charge others for accessing, viewing or listening to any Cricket Australia Content, including any third party software applications.
- 1.10 You must not disrupt or try to disrupt the Application or use the Application to distribute software viruses or other harmful programs.
- 1.11 You must not infringe any applicable laws when accessing the Application

Acknowledgments

- 1.12 You acknowledge that these Terms of Use are concluded between you and Cricket Australia only, and not with Apple Inc (**Apple**) and that Cricket Australia and not Apple, is solely responsible for the Application and its content.
- 1.13 You acknowledge that Cricket Australia has absolute editorial control over all Cricket Australia content at all times. Cricket Australia reserves its right to modify, suspend or discontinue all or any part of the Application without giving you any notice.

2. Using the Application

Network Connectivity

- 2.1 The Application requires network connectivity and location services to function properly. Please note that poor signal quality (dependent on your location and service provider) may slow down or prevent the Application from working at optimum speed. If you have concerns regarding the quality of your signal strength, please contact your mobile network service provider directly.

Data usage charges and other costs

- 2.2 You are solely responsible for paying all expenses you may incur when you access or use the Application, your internet or data service provider charges and any excess charges to that provider if you have a limit on the amount of data you can download together with all costs of the equipment and software you need to connect to and use the Application, any other services included in the Application.
- 2.3 Cricket Australia is not responsible if your equipment or software is not compatible with the Application.

3. Privacy

- 3.1 As an Application user, you will periodically receive e-mails. In addition, you may periodically receive information by e-mail regarding updates and new offerings regarding the Application and other products and services of Cricket Australia and its partners. If you wish to change your email preferences at any time you can contact Cricket Australia as set out in the Privacy Policy.
- 3.2 The personal information which Cricket Australia and the State or Territory cricket associations, including the Big Bash League teams (together, Australian Cricket) collects, is used for the purposes set out in these Terms of Use (including if applicable, clause 5), as well as to otherwise communicate with you in relation to information and offers from Australian Cricket, to provide Australian Cricket's products and services, and for any of the purposes set out in the Privacy Policy.
- 3.3 By agreeing to these Terms of Use, you agree your personal information will be disclosed to, and used by, Australian Cricket under these Terms of Use and the Privacy Policy, which contains information about how we access and seek to collect your personal information or complain about a breach of your privacy, and how Australian Cricket will deal with that complaint. Australian Cricket may disclose your personal information to other parties, including Australian Cricket's third party service providers, who may be located (and so your personal information may be disclosed) in India, the USA and the UK and other countries from time to time. Australian Cricket may use and disclose your personal information for direct marketing purposes unless you opt out (which you can do at any time in accordance with the Privacy Policy). You are request to access, update or correct any personal information Australian Cricket holds about you by writing to Cricket Australia's Privacy Officer at 60 Jolimont Street, Jolimont, VIC 3002 or sending an email to privacy@cricket.com.au.

Sharing Information

- 3.4 Cricket Australia may use third parties to provide parts of our services as well as to provide analytical data about your use of the Application. Cricket Australia may deploy devices such as cookies that enable those third parties to anonymously collect and aggregate usage data and report it back to us. Subject to clause 3.1, third parties that Cricket Australia contracts with to help provide our services cannot use your personal information for their own purposes without your express consent.

4. Access to the Application

- 4.1 To obtain access to the Application, you will be required to register, either by connecting your email address or Facebook account and whether you currently play cricket in accordance with clause 5 or creating an account using an email address (collectively, the **Password**). You agree to:
- (a) provide current, complete, true and accurate information;
 - (b) maintain and update your information as required to keep it current, complete and accurate; and
 - (c) provide additional information about yourself as may be requested by Cricket Australia from time to time.

Please note that Cricket Australia may use such information in accordance with the Privacy Policy. Cricket Australia reserves the right to require you to periodically change your Password.

4.2 You agree:

- (a) that you are and shall be responsible for maintaining the confidentiality and security of your Password, and for restricting access to your computer and your Password;
- (b) not to share, transfer, lease, assign or sublicense any Password without Cricket Australia's prior written consent;
- (c) not to circumvent the password restrictions on the Site, nor allow others to do so on your behalf;
- (d) not to use anyone else's Password; and
- (e) to notify Cricket Australia immediately upon discovery or suspicion of compromise of the confidentiality of any Password.

4.3 You acknowledge and agree that:

- (a) that you shall be solely liable and responsible for all activities that occur under your Password; and
- (b) that Cricket Australia shall not be responsible for your failure to comply with this clause or any loss or damage arising out of, or related to, the use of your Password by you or anyone other than Cricket Australia.

4.4 You may not use the Application for any unlawful purpose or for any purpose other than as expressly authorised by these Terms of Use. Cricket Australia has the right, in its sole discretion, to refuse or restrict anyone from access to any or all of the Application at any time for any reason or to refuse to permit you to use a Password for any reason, including but not limited to, that your Password impersonates someone else, is protected by trademark or other Intellectual Property Rights, or is vulgar or otherwise offensive, as determined solely by Cricket Australia in its sole discretion.

4.5 In addition to any other remedies available to Cricket Australia, whether at law or otherwise, in relation to your failure to comply with any of the terms or conditions in these Terms of Use, Cricket Australia has the right to terminate your access to the Application immediately.

5. Connecting with Cricket Australia via email or Facebook

5.1 If you connect to the Application using your email address or Facebook credentials these Connection Terms apply.

5.2 If you connect using Facebook, you authorise Cricket Australia to collect your authentication information, such as your username, encrypted access credentials, and other information that may be available on or through your Facebook account, including your name, profile picture, country, hometown, e-mail address, date of birth, gender, friends' names and profile pictures and networks. Cricket Australia may store this information so that it can be used for the purposes set out in the Cricket Australia Privacy Policy located at <http://www.cricket.com.au/privacy> (as amended from time to time) and clause 5.3 below.

- 5.3 Australian Cricket may use the information Australian Cricket collects, including your personal information, to:
- (a) provide, personalise, and improve your experience with the Application and products and services made available through the Application, for example by providing customised or localised content and advertising;
 - (b) ensure technical functioning of the Application and products and services made available through the Application, develop new products and services, and analyse your use of the Application, including your interaction with applications, advertising, products and services that are made available, linked to or offered in the Application;
 - (c) communicate with you for Application-related purposes, including promotional e-mails or messages;
 - (d) enable and promote the Application, including features and content of the Application and products and services made available through the Application.

6. Updates and New Releases

- 6.1 Cricket Australia may make available Updates for the Application that may incorporate:
- (a) corrections of any substantial defects;
 - (b) fixes of any minor bugs; and
 - (c) at the sole discretion of Cricket Australia, enhancements to the Application or Subscription Service.
- 6.2 You may accept and use any Update that Cricket Australia makes available by downloading or accessing the Updates.
- 6.3 Cricket Australia is responsible for maintenance and support but only to the extent required by any applicable laws. Apple is not responsible for any maintenance and support in connection with the Application or Subscription Service.

7. Intellectual Property

Ownership

- 7.1 You acknowledge that the Application is licensed to you and that no ownership rights in the Application pass to you and that you must use the Application only in accordance with these Terms of Use.
- 7.2 All Intellectual Property Rights, including adaptations, translations and derivative works in the Application are the exclusive property of Cricket Australia (or its licensors, if applicable), and vest in or are transferred to Cricket Australia immediately upon creation, as the case may be.
- 7.3 All Intellectual Property Rights in the content, software and systems owned by or licensed to Cricket Australia in respect of the Application, including video, audio, images, text, logos, names, designs, trademarks and copyright are reserved to Cricket Australia and any of its third party licensors permitting Cricket Australia to make Cricket FanCam accessible via the Application.

7.4 “Cricket Australia”, “Ashes”, “Big Bash League” and each of their associated logos are trademarks of Cricket Australia and all rights are reserved.

8. Product Claims

8.1 Cricket Australia, and not Apple, is responsible for addressing any of your claims or any third party relating to the Application including, but not limited to:

- (a) product liability claims;
- (b) any claim that the Application fails to conform to any applicable legal or regulatory requirement; and
- (c) claims arising under the Australian Consumer Law or similar legislation.

8.2 All complaints and claims should be directed to Cricket Australia.

9. Liability

Limitation on Liability

9.1 Subject to clause 9.2, any representation, warranty, condition, guarantee or undertaking that would be implied in these Terms of Use by legislation, common law, equity, trade, customer or usage are excluded to the maximum extent permitted by law.

9.2 Nothing in these Terms of Use excludes, restricts or modifies any consumer guarantee, right or remedy conferred on you by the *Australian Consumer Law* being Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* (ACL) or any other applicable law that cannot be excluded, restricted or modified by agreement.

9.3 Where Cricket Australia’s liability cannot be lawfully excluded, it is limited at the option of Cricket Australia, to:

- (a) the resupplying of access to and use of the Application or Subscription Service; or
- (b) the payment of the cost of having access to and use of the Application or Subscription Service supplied again.

9.4 Subject to this clause 9, the maximum aggregate liability of Cricket Australia for all proven losses, damages and claims arising out of or in connection with these Terms of Use, including liability for breach, in negligence or in tort or for any other common law or statutory action is limited to the sum of \$100.

9.5 To the maximum extent permitted by law, Cricket Australia and any of its Personnel, licensors and/or suppliers will not have any liability for any indirect or Consequential Losses whatsoever for any reason arising in connection with these Terms of Use and/or the use of the Application.

10. Indemnity

10.1 You agree that your access to and use of the Application will be at your sole risk.

10.2 You will at all times indemnify Cricket Australia and will continue to indemnify, hold harmless and defend Cricket Australia and its principals, agents, servants and employees (in this clause referred to as **'those indemnified'**) from and against all liabilities, costs and expenses suffered or incurred by any of those indemnified including, without limitation, all reasonable legal fees

incurred by those indemnified, arising out of or in connection with any of the following, except to the extent that any liability, loss or damage is solely and directly caused by the wilful misconduct or negligence of those indemnified:

- (a) any unauthorised use or disclosure of the Application by you;
- (b) any loss or damage arising out of, or in connection with, any personal injury, death or damage to tangible property arising out of the performance of these Terms of Use by the you;
- (c) any breach of these Terms of Use by you; and
- (d) any negligence, illegal or unlawful or wilful act or omission by you in connection with these Terms of Use;
- (e) any claim by a third party as a result or arising out of:
 - (i) the use of the Application by any means and in any form that was not specifically approved by Cricket Australia;
 - (ii) the use of the Application in a manner or for a purpose not reasonably contemplated or not authorised by Cricket Australia;
 - (iii) the modification, adaptation, merger or alteration of the Application without Cricket Australia's prior written consent; or
 - (iv) any wilful, unlawful or negligent act or omission by you.

10.3 Nothing in this agreement authorises you to defend, compromise or settle any claim or proceedings on Cricket Australia's behalf.

11. Advertising and Links to Websites

11.1 The Application may contain links to third party sites (**Linked Sites**). Linked Sites are not under Cricket Australia's control and Cricket Australia is not responsible for the content of any Linked Site or any hyperlink contained in a Linked Site (**Subsequent Site**). Cricket Australia provides these hyperlinks to you as convenience only, and the inclusion of any link does not imply any endorsement of the Linked Site by Cricket Australia or by its Personnel. You link to any Linked Site or Subsequent Site entirely at your own risk.

11.2 Neither Cricket Australia nor its Personnel give any representation or warranty as to the reliability, accuracy or completeness of any Linked Sites or Subsequent Sites, nor does Cricket Australia or accept any responsibility arising in any way (including negligence) for errors in, or omissions from any Linked Sites or Subsequent Sites.

12. Disclaimers

12.1 Cricket Australia is not liable for any breach of these Terms of Use (including any warranty contained in them) which arises as the result of:

- (a) modifications to the Application that were effected or attempted by a person other than Cricket Australia or its authorised representatives;
- (b) access and use of the Application;
- (c) any act, error, fault, neglect, misuse or omission of you; or

- (d) the operation of the Application other than in accordance with these Terms of Use, or otherwise than in accordance with the directions or recommendations of Cricket Australia.

12.2 Cricket Australia does not promise you any of the following with respect to your use of the Application:

- (a) that you will have uninterrupted or error-free access to and use of the Application;
- (b) that the content of the Application is accurate, complete, or suitable for a particular purpose. You must rely on your own judgment in relation to any matter of that type;
- (c) that your internet or mobile service provider will allow you access to the Application. You are responsible for ensuring your service provider will allow you access to the Application and its content and for any costs and service fees associated with the access; or
- (d) that your computer, mobile or other hardware devices will allow you access to the Application. You are responsible for ensuring your devices will allow you access to the Application and its content and for any costs and service fees associated with the access.

Disclaimer

12.3 Cricket Australia gives no warranty that the Application or Subscription Service does not infringe the Intellectual Property Rights of any person.

12.4 If there are any third party claims relating to Intellectual Property Rights regarding the Application or Subscription Service, Cricket Australia will be responsible, and not Apple, for any investigation, defence, settlement and discharge of any such claim.

13. Termination

13.1 This Licence is effective until terminated by you or Cricket Australia. Your rights under this Licence will terminate automatically without notice from Cricket Australia if you fail to comply with these Terms of Use. Upon termination you shall cease all use of the Application and destroy all copies, full or partial of the Application.

14. General

Governing Law

14.1 These Terms of Use will be governed by and construed in accordance with the laws of the Victoria which shall have exclusive jurisdiction over any disputes.

Unenforceability

14.2 If for any reason a court of competent jurisdiction finds any provision or portion of these Terms of Use to be unenforceable, the remainder of these Terms of Use will continue in full force and effect.

Waiver

- 14.3 If Cricket Australia elects not to exercise or enforce any right that it has against you at a particular time, this does not prevent Cricket Australia from later seeking to exercise or enforce that right.

Assignment

- 14.4 You must not assign, sub-license or otherwise transfer any of your rights and obligations in these Terms of Use to any other person.

Entire agreement

- 14.5 These Terms of Use and any documents incorporated by reference, constitute the entire agreement between the parties regarding the matters set out above and supersede any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

Enforcement

- 14.6 You acknowledge that Apple and its subsidiaries are beneficiaries of this Licence and that your acceptance of these Terms of Use gives Apple the right (and you will be deemed to have accepted that right) to enforce these Terms of Use.

Contacting Cricket Australia

- 14.7 If you need to contact Cricket Australia please do so by emailing appsupport@cricket.com.au.

15. Definitions

- 15.1 **Connection Terms** means the additional terms that apply if you connect to the Application using Facebook as set out in clause 5.
- 15.2 **Consequential Loss** means indirect, economic, special or consequential loss or damage, including loss of revenue, time, goodwill, data, anticipated savings, opportunity, loss of production, and loss of profit.
- 15.3 **Intellectual Property Rights** includes all intellectual property rights whether registered or unregistered including:
- (a) copyright, patent, trademark, design, registered design, trademarks, trade or other protected rights, or related rights, existing worldwide; and
 - (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a).
- whenever created.
- 15.4 **Personnel** means directors, officers, employees, agents and contractors.
- 15.5 **Updates** means modifications, enhancements and new versions of the Application.