

## TERMS AND CONDITIONS OF SERVICE - RINNAI TOUCH APP

Please read these Terms and Conditions of Service (the “**Agreement**”) carefully. By clicking or tapping “Accept,” “OK” or “Agree” (or a similar term) in connection with this Agreement, or by using the Service (as defined below), you agree to be bound by this Agreement. We recommend that you retain a copy of this Agreement for your reference. If unable to do so, you may request a copy from us by emailing [Technical@rinnai.com.au](mailto:Technical@rinnai.com.au)

This Agreement is between you and Rinnai Australia Pty Ltd (ABN 74 005 138 769) (the “**Company**”) concerning your use of (including any access to) the Rinnai Touch Application (together with any materials, information and services available in connection with such application, and any successor application(s) (the “**App**”). The App, together with the embedded software installed in selected Company products for the purpose of remotely controlling and monitoring such products using the App (the “**Product Software**”), are referred to collectively in this Agreement as the “**Service**.” This Agreement incorporates any additional terms and conditions with respect to the Service that are made available by the Company through the Service, or otherwise made available to you by the Company, in accordance with the terms of this Agreement.

By clicking or tapping “Accept,” “OK” or “Agree” (or a similar term) in connection with this agreement, or by using the service, you affirm that you are over the age of 18 and have the capacity to enter into this agreement.

If you are an individual accessing or using the service on behalf of, or for the benefit of, any corporation, partnership or other entity with which you are associated (an “organisation”), then you are agreeing to this agreement on behalf of yourself and such organisation, and you confirm that you have the legal authority to bind such organisation to this agreement. References to “you” and “your” in this Agreement will refer to both the individual using the Service and to any such organisation.

**1. Our Right to Make Changes.** The Company may change this Agreement from time to time, such as to reflect changes in the Services, relevant laws and regulatory requirements, by notifying you of such changes by any reasonable means and by making available a revised Agreement through the Service. Any such changes will not apply to any dispute between you and the Company arising prior to the date on which we make available the revised Agreement incorporating such changes, or otherwise notified you of such changes.

Your clicking or tapping “Accept,” “OK” or “Agree” (or a similar term) in connection with this Agreement, or your use of the Service following any changes to this Agreement will constitute your acceptance of such changes. The “*Last Updated*” below indicates when this Agreement was last changed. We may, at any time and without liability, (a) modify or discontinue all or part of the Service (including access to the Service via any third-party links) for valid reasons (e.g., to reflect changes in relevant laws and regulatory requirements, to protect security or to implement reasonable technical adjustments and improvements); (b) charge, modify or waive any fees required to use the Service where reasonably necessary; or (c) offer opportunities to some or all Service users. We will seek to notify you by any reasonable means of (i) any modifications to the Service that will have a material adverse effect on the use of the Service, taken as a whole; and (ii) any material increase in the fees charged by us to use the Service. We reserve the right to introduce new features or functionality for which the payment of fees may be required and shall notify you of such fees by reasonable means. Such fees will not apply to you unless you accept such new features or functionality.

**2. Information Submitted Through the Service.** Your submission of information through the Service is governed by the Service’s Privacy Policy, (the “**Privacy Policy**”). You confirm that any information you provide in connection with the Service is accurate and complete, and

that you will maintain and update such information as needed. You also acknowledge and agree that we will have no liability associated with or arising from your failure to provide accurate registration information.

**3. Jurisdictional Issues.** The Service is controlled and or operated by the Company as set out in Section 17, below, and is not intended to subject the Company to any jurisdiction or law except as set out in Section 17 below. The Service may not be appropriate or available for use in some jurisdictions. You must comply with all applicable laws, rules and regulations in connection with your use of the Service. We may limit the Service's availability at any time, in whole or in part, to any person, geographic area or jurisdiction that we choose, for valid reasons (e.g., to comply with relevant laws and regulatory requirements, to protect security or to implement reasonable technical adjustments and improvements).

**4. Rules of Conduct.** In connection with the Service, you must not:

(1) Post, transmit or otherwise make available through or in connection with the Service any materials that are or may be: (a) threatening, harassing, degrading, hateful or intimidating, or otherwise fail to respect the rights and dignity of others; (b) defamatory, libelous or fraudulent; (c) obscene, indecent, pornographic or otherwise objectionable; or (d) protected by copyright, trade mark, trade secret, right of publicity or privacy or any other proprietary right, without the express prior written consent of the applicable owner.

(2) Post, transmit or otherwise make available through or in connection with the Service any virus, worm, Trojan horse, Easter egg, time bomb, spyware or other computer code, file or program that is or is potentially harmful or invasive or intended to damage or hijack the operation of, or to monitor the use of, any hardware, software or equipment (each, a "**Virus**").

(3) Use the Service for any commercial purpose, or for any purpose that is fraudulent or otherwise unlawful.

(4) Harvest or collect information about users of the Service.

(5) Interfere with or disrupt the operation of the Service or the servers or networks used to make the Service available, including by hacking or defacing any portion of the Service; or violate any requirement, procedure or policy of such servers or networks.

(6) Restrict or inhibit any other person from using the Service.

(7) Reproduce, modify, adapt, translate, create derivative works of, sell, rent, lease, loan, timeshare, distribute or otherwise exploit any portion of (or any use of) the Service except as expressly authorised under this Agreement, without Company's express prior written consent.

(8) Reverse engineer, decompile or disassemble any portion of the Service, except where such restriction is expressly prohibited by applicable law.

(9) Remove any copyright, trade mark or other proprietary rights notice from the Service.

(10) Incorporate any portion of the Service into any product or service, without the Company's express prior written consent.

(11) Systematically download and store Service content.

(12) Use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, "scrape," "data mine" or otherwise gather Service content, or

reproduce or circumvent the navigational structure or presentation of the Service, without the Company's express prior written consent.

You are responsible for obtaining, maintaining and paying for all hardware and all telecommunications and other services needed for you to use the Service.

**5. Registration, User Names and Passwords.** You may need to register to use all or part of the Service. We may reject, or require that you change, any user name, password or other information that you provide to us in registering, in each case for any valid reason. Your user name and password are for your personal use only and you should keep your user name and password confidential. The Company is not responsible for any use or misuse of your user name or password caused by your failure to keep your user name or password confidential. In each case, you must promptly notify us of any confidentiality breach or unauthorised use of your user name or password, or your Service account of which you become aware.

**6. Submissions.** Certain Service functionality may provide users with the ability to make available certain data, information or materials (each, a "**Submission**") through or in connection with the Service, including in connection with use of the App, the Product Software and/or the Company's products. Except as set forth in the Privacy Policy, the Company has no control over and is not responsible for Submissions, any use or misuse (including any distribution) by any third party of Submissions or for any of your interactions with any other Service users. If you choose to make any of your personally identifiable or other information publicly available through the service, except as set forth in the Privacy Policy, you do so at your own risk.

**7. Our Right to Use Submissions.** For purposes of clarity, you retain all rights and ownership of your Submissions. The Company does not claim any ownership rights in your content.

For each Submission that you make available through or in connection with the Service (each, "**Your Submission**"), you grant to us a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable, transferable and fully sublicensable (through multiple tiers) licence, without additional consideration to you or any third party, to reproduce, distribute, perform and display (publicly or otherwise), create derivative works of, adapt, modify, store and otherwise use, analyse and exploit Your Submission, in any format or media now known or hereafter developed, and for any purpose (including promotional purposes, such as testimonials).

In addition, if you provide to us any ideas, proposals, suggestions or other materials ("**Feedback**"), whether related to the Service or otherwise, such Feedback will be deemed Your Submission. You agree that such Feedback is not confidential, and that your provision of such Feedback is gratuitous, unsolicited and without restriction, and does not place the Company under any obligation in respect of such Feedback.

You confirm that (a) you have all rights necessary to grant the licences granted in this section; (b) Your Submissions are complete and accurate; and (c) Your Submissions and your provision thereof to us (whether through and in connection with the Service or otherwise) and are not fraudulent or otherwise in breach of any applicable law or any right of any third party. You further irrevocably waive (and consent to us performing any acts or omissions in relation to Your Submissions and associated materials that may be inconsistent with) any "moral rights" or other rights with respect to attribution of authorship or integrity of materials regarding Your Submissions that you may have under any applicable law.

**8. Monitoring of Submissions and Use of the Service.** The Company may (but have no obligation to) monitor, evaluate, alter or remove Submissions before or after they appear on the Service, or analyse your access to or use of the Service. The Company may disclose information regarding your access to and use of the Service, and the circumstances

surrounding the transmission of Submissions, and personal information regarding any users who made Submissions available, in each case in accordance with any requirement under applicable law, or any request by any law enforcement authority, court or other governmental authority, or otherwise in accordance with the Privacy Policy.

**9. Your Rights to Use the App and Product Software.** The App and the Product Software are licenced (not sold) to end users. Subject to your compliance with this Agreement and for the duration of this Agreement, we permit you, on a limited, non-exclusive, revocable, non-transferable, non-sublicensable basis, to install and use the App on a device that you own or control, and to use the Product Software in connection with the Company product that you own or control, in each case for your personal, non-commercial use. If you fail to comply with any of the terms or conditions of this Agreement relating to your use of the App or the Product Software, you must immediately cease using the App and the Product Software and delete the App from your device.

**10. The Company's Intellectual Property (IP) Rights.** We and our suppliers own the Service, which is protected by proprietary rights and laws. Our trade names, trademarks and service marks include Rinnai, Rinnai Touch, and the associated logos. You agree that the Service contains proprietary information and material that is owned by the Company and or its suppliers, and is protected by applicable intellectual property and other laws, including but not limited to copyright. You agree that you will not use such proprietary information or material in any way whatsoever except for use of the Service in compliance with this Agreement. No portion of the Service may be reproduced in any form or by any means, except as expressly permitted in these terms. You agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Service in any manner, and you shall not exploit the Service in any unauthorised way whatsoever, including but not limited to, by trespass or burdening network capacity.

All trade names, trademarks, service marks and logos on the Service not owned by us are the property of their respective owners. You may not use our trade names, trademarks, service marks or logos in connection with any product or service that is not ours, or in any manner that is likely to cause confusion. Nothing contained on the Service should be construed as granting any right to use any trade names, trademarks, service marks or logos without the express prior written consent of the owner.

**11. Third Party Materials and Links.** Certain Service functionality may make available access to information, products, services and other materials made available by third parties, including Submissions ("**Third Party Materials**"), or allow for the routing or transmission of such Third Party Materials, including via links. By using such functionality, you are directing us to access, route and transmit to you the applicable Third Party Materials.

We neither control nor endorse, nor are we responsible for, any Third Party Materials, including the accuracy, validity, timeliness, completeness, reliability, integrity, quality, legality, usefulness or safety of Third Party Materials, or any intellectual property rights in such Third Party Materials. Certain Third Party Materials may, among other things, be inaccurate, misleading or deceptive. Nothing in this Agreement shall be deemed to be a representation or warranty by the Company with respect to any Third Party Materials. We have no obligation to monitor Third Party Materials, and we may block or disable access to any Third Party Materials (in whole or part) through the Service at any time. In addition, the availability of any Third Party Materials through the Service does not imply our endorsement of, or our affiliation with, any provider of such Third Party Materials, nor does such availability create any legal relationship between you and any such provider.

Your use of third party materials is at your own risk and is subject to any additional terms, conditions and policies applicable to such third party materials (such as terms of service or privacy policies of the providers of such third party materials).

**12. Promotions.** Any sweepstakes, contests, raffles, surveys, games or similar promotions (collectively, the “**Promotions**”) made available through the Service may be governed by rules that are separate from these Terms of Service. If you participate in any Promotions, please review the applicable rules as well as our Privacy Policy. If the rules for a Promotion conflict with these Terms and Conditions, the Promotion rules will take precedence.

**13. Disclaimer of warranties.** To the fullest extent permissible under applicable law, the service is made available to you on an “as is,” “where is” and “where available” basis, without any warranties or conditions of any kind, whether express or implied.

The Company disclaims all warranties with respect to the service to the fullest extent permissible under applicable law, including the warranties of merchantability, fit for a purpose, non-infringement and title.

To the fullest extent permissible under applicable law, and subject to any applicable terms and conditions or policies applicable to the use of Third Party Materials as set out in section 11, third party materials are made available to you on an “as is,” “where is” and “where available” basis, without any warranties of any kind, whether express or implied. The Company disclaims all warranties with respect to the Third Party Materials.

Without limiting the generality of the foregoing, to the fullest extent permissible under applicable law, the Company makes no representation or warranty that the service will be secure, that any user name, password or other security measure that you may use or allow others to use in connection with the service will prevent unauthorised access to your service account or related information, or that your service account or related information will not be accessed or misused by any third party.

All disclaimers of any kind in this agreement (including in this section and elsewhere in this agreement) are made for the benefit of both the Company and its affiliates and their respective shareholders, directors, officers, employees, affiliates, agents, representatives, licensors, suppliers and service providers, and their respective successors and assigns (collectively, the “**Related Parties**”).

While we will seek to undertake reasonable steps to maintain the timeliness, integrity and security of the Service, we cannot guarantee that the Service is or will remain updated, complete, correct or secure, or that access to the Service will be uninterrupted. The Service may include inaccuracies, errors and materials that violate or conflict with this Agreement. Additionally, third parties may make unauthorised alterations to the Service. If you become aware of any such alteration, please contact us at [Technical@rinnai.com.au](mailto:Technical@rinnai.com.au) with a description of such alteration and its location on the Service.

**14. Limitation of liability.** Nothing in this agreement restricts, excludes or modifies or purports to restrict, exclude or modify any mandatory statutory consumer rights under applicable law.

In respect of any conditions, warranties or guarantees that cannot be excluded under applicable laws, to the extent permitted by applicable law, our liability is limited (at our option) to the resupply or refund of the cost of the relevant portion of the Service.

The Company will not be liable for any indirect, incidental, special, exemplary or punitive damages of any kind, or losses that were not foreseeable to you or the Company at the time

you agreed to this agreement, in each case arising out of or in connection with the Service or this Agreement, and under any contract, tort (including negligence), strict liability or other theory (collectively, “**Indirect Losses**”). Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both the Company and you knew it might happen.

Without limiting the foregoing, the Company will not be liable for Indirect Losses of any kind resulting from your use of or inability to use the Service or from any Third Party Materials or products, including from any Virus that may be transmitted via the Service or any products or Third Party Materials.

The Related Parties do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by the Company’s negligence or the negligence of its employees, agents or subcontractors, or for fraud or fraudulent misrepresentation.

The aggregate liability of the Company for all damages, losses and causes of action arising out of or in connection with the Service or this Agreement, whether in contract, tort (including negligence) or otherwise, will not exceed the greater of (a) the total amount, if any, paid by you to the Company to use the Service; and (b) ten Australian dollars (\$10).

All limitations of liability of any kind in this Agreement (including in this section and elsewhere in this Agreement) are made for the benefit of both the Company and the other Related Parties.

In respect of any conditions, warranties or guarantees that cannot be excluded under statute, to the extent permitted under applicable law, our liability is limited, at our discretion, to the resupply or refund of the cost of relevant Services.

**15. Third Party Claims.** In the event of any legal proceedings being brought against the Company and or its Related Parties by a third party as a result of your breach of this Agreement or your infringement of any third-party right (including any intellectual property or data privacy right), you will indemnify and keep indemnified the Company and or its Related Parties against all liabilities, damages, judgments, awards, losses, costs, expenses and fees (including reasonable solicitor fees) incurred by the Company and or its Related Parties.

**16. Termination.** This Agreement is effective until terminated. The Company may terminate or suspend your right to use the Service and/or terminate this Agreement if you do not comply with the terms contained in this Agreement. Where reasonable under the circumstances, the Company will provide you with at least twenty-four (24) hours’ prior notice of any suspension or termination of your right to use the Service, provided that if we reasonably believe that you have materially breached this Agreement, we can immediately suspend or terminate your right to use the Service. You can stop using the Service at any time.

Following the effective time of any such termination or suspension, your right to use the Service will immediately cease, and the Company may, without liability to you or any third party, immediately deactivate or delete your user name, password and account, and all associated materials, without any obligation to provide any further access to such materials. The Preamble and Sections 2–8 and 10–23 shall survive any expiration or termination of this Agreement.

**17. The Governing Law and Jurisdiction.** The applicable law with respect to which this Agreement will be governed by and construed (without regard to such laws’ principles of conflicts of law) whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory and including non-contractual disputes or claims is the laws of Victoria, Australia.

The courts which have exclusive jurisdiction over disputes between you and the Company arising out of or in relation to the Service or this Agreement is the Federal and State Courts of Australia.

**18. Filtering.** We notify you that parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections is available from [https://en.wikipedia.org/wiki/Comparison\\_of\\_content-control\\_software\\_and\\_providers](https://en.wikipedia.org/wiki/Comparison_of_content-control_software_and_providers). Please note that the Company does not endorse any of the products or services listed on such site.

**19. Information or Complaints.** If you have a question or complaint regarding the Service, please send an e-mail to [Technical@rinnai.com.au](mailto:Technical@rinnai.com.au). You may also contact us by writing to Rinnai Australia, 100 Atlantic Drive, Keysborough, Victoria 3173, Australia, or by calling us at 1300 555 545. Please note that e-mail communications will not necessarily be secure; accordingly, you should not include credit card information or other sensitive information in your e-mail correspondence with us.

The Service is operated by:

RINNAI AUSTRALIA PTY LIMITED

Registered Address: 100 Atlantic Drive, Keysborough, VIC 3173, Australia

Place of Business: 100 Atlantic Drive, Keysborough, VIC 3173, Australia

Email Address: [Technical@rinnai.com.au](mailto:Technical@rinnai.com.au)

**20. Copyright Infringement Claims.** If you believe in good faith that materials available from the Service infringe your copyright, you may send to the Company a written notice by mail to 100 Atlantic Drive, Keysborough, VIC 3173, Australia, by e-mail to [Technical@rinnai.com.au](mailto:Technical@rinnai.com.au), requesting that the Company remove such material or block access to it. If you believe in good faith that someone has wrongly submitted to us a notice of copyright infringement involving content that you made available through the Service, you may send to the Company a counter-notice.

**21. Export Controls.** The Service is subject to the law relating to export controls in Australia including any embargoes or other Federal rules and regulations restricting exports. We will not knowingly make the Service available to you if you are, and you do not confirm that you are not, (a) located in, or a resident or a national of, any country subject to a government embargo or trade sanction; or (b) on any government lists of restricted end users.

**22. Other Important Terms.** This Agreement does not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between you and the Company. Except as set forth in Sections 13, 14 and 23, no one else has any rights under this Agreement (unless guaranteed by you). This Agreement is between you and the Company. Except as set out in Sections 13, 14 and 23, no other person shall have any rights to enforce any of the terms of this Agreement. If any provision of this Agreement is found to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provision. You may not assign, transfer or sublicense any or all of your rights or obligations under this Agreement without our express prior written consent. The Company may assign, transfer or sublicense any or all of our rights or obligations under this Agreement without restriction. No waiver by either party of any breach or default under this Agreement will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained in this Agreement is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular shall have the same meanings when used in the plural, where appropriate and unless otherwise specified. Any use of the term "including" or variations of such terms in this Agreement shall be construed

as if followed by the phrase “without limitation.” This Agreement, including any terms and conditions incorporated in this Agreement, is the entire agreement between you and the Company relating to the subject matter of this Agreement, and in the absence of fraud, and supersedes any and all prior or contemporaneous written or verbal agreements or understandings between you and the Company relating to such subject matter. Notices to you (including notices of changes to this Agreement) may be made through the Service or by e-mail (including in each case via links), or by regular mail. Without limitation, a printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Neither party will be responsible for any failure to fulfill any obligation due to any cause beyond its control.

**23. Terms Required by Apple.** In addition to Sections 1 to 22 above, and notwithstanding anything to the contrary in this Agreement, the following provisions in this Section 23 apply with respect to your use of any version of the App compatible with the iOS operating system of Apple Inc. (“**Apple**”). Apple is not a party to this Agreement and does not own and is not responsible for the App. Apple is not providing any warranty for the App except, if applicable, to refund the purchase price for it. Apple is not responsible for maintenance or other support services for the App and shall not be responsible for any other claims, losses, liabilities, damages, costs or expenses with respect to the App, including any third-party product liability claims, claims that the App fails to conform to any applicable legal or regulatory requirement, claims arising under consumer protection or similar legislation, and claims with respect to intellectual property infringement. Any inquiries or complaints relating to the use of the App, including those pertaining to intellectual property rights, must be directed to the Company in accordance with the “*Information or Complaints*” section above. The license you have been granted in this Agreement is limited to a non-transferable license to use the App on an Apple-branded product that runs Apple’s iOS operating system and is owned or controlled by you, or as otherwise permitted by the Usage Rules set out in Apple’s App Store Terms of Service. In addition, you must comply with the terms of any third-party agreement applicable to you when using the App, such as your wireless data service agreement. Apple and Apple’s subsidiaries are third-party beneficiaries of this Agreement and, upon your acceptance of the terms and conditions of this Agreement, will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary of this Agreement. Notwithstanding these rights of Apple and Apple’s subsidiaries, the Company’s right to enter into, rescind or terminate any variation, waiver or settlement under this Agreement is not subject to the consent of any third party.

**Last updated:** August 16, 2018