

TERMS OF USE AGREEMENT

This Terms of Use Agreement constitutes a legally binding agreement made between you, whether personally or on behalf of an entity and Down4 and its affiliated companies concerning your access to and use of the Down4 app on iPhone and Android platforms, the www.down4app.com website as well as any other media form, media channel, mobile website or mobile application related or connected thereto. The Website provides the following service: Mobile app for iPhone and Android. Supplemental terms and conditions or documents that may be posted on the mobile app and website from time to time, are hereby expressly incorporated into this Agreement by reference. Company makes no representation that the mobile app and website is appropriate or available in other locations other than where it is operated by Down4. The information provided on the mobile app and website is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject Down4 to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the mobile app and website from other locations do so on their own initiative and are solely responsible for compliance with local laws, if and to the extent local laws are applicable. All users who are minors in the jurisdiction in which they reside (generally under the age of 18) must have the permission of, and be directly supervised by, their parent or guardian to use the mobile app and website. If you are a minor, you must have your parent or guardian read and agree to this Agreement prior to you using the mobile app and website. Persons under the age of 13 are not permitted to register for the mobile app, the website or the use of Down4 services.

YOU ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT BY ACKNOWLEDGING SUCH ACCEPTANCE DURING THE REGISTRATION PROCESS (IF APPLICABLE) AND ALSO BY CONTINUING TO USE THE MOBILE APP AND WEBSITE. IF YOU DO NOT AGREE TO ABIDE BY THIS AGREEMENT, OR TO MODIFICATIONS THAT COMPANY MAY MAKE TO THIS AGREEMENT IN THE FUTURE, DO NOT USE OR ACCESS OR CONTINUE TO USE OR ACCESS DOWN4 SERVICES.

USER REPRESENTATIONS

Regarding Content You Provide

By using the Down4 App and affiliate platforms, you represent and warrant that:

1. All registration information you submit is truthful and accurate
2. You will maintain the accuracy of such information
3. You will keep your password confidential and will be responsible for all use of your password and account
4. You are not a minor in the jurisdiction in which you reside, or if a minor, you have received parental permission to use this Website
5. Your use of Down4 does not violate any applicable law or regulation.

You also agree to:

- a) Provide true, accurate, current and complete information about yourself as prompted by the Down4's registration forms and

- b) Maintain and promptly update registration data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Down4 has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Down4 has the right to suspend or terminate your account and refuse any and all current or future use of the Down4's services (or any portion thereof).

We reserve the right to remove or reclaim or change a user name you select if we determine appropriate in our discretion, such as when the user name is obscene or otherwise objectionable or when a trademark owner complains about a username that does not closely relate to a user's actual name.

Regarding Content You Provide

Down4 may invite you to chat or participate in blogs, message boards, online forums and other functionality and may provide you with the opportunity to create, submit, post, display, transmit, perform, publish, distribute or broadcast content and materials to Down4 and/or to or via the app/website, including, without limitation, text, writings, video, audio, photographs, graphics, comments, suggestions or personally identifiable information or other material (collectively "Contributions"). Any Contributions you transmit to Down4 will be treated as non-confidential and non-proprietary. When you create or make available a contribution, you thereby represent and warrant that:

- A. The creation, distribution, transmission, public display and performance, accessing, downloading and copying of your Contribution does not and will not infringe the proprietary rights, including but not limited to the copyright, patent, trademark, trade secret or moral rights of any third party
- B. You are the creator and owner of or have the necessary licenses, rights, consents, releases and permissions to use and to authorize Down4 users to use your Contributions as necessary to exercise the licenses granted by you under this Agreement
- C. You have the written consent, release, and/or permission of each and every identifiable individual person in the Contribution to use the name or likeness of each and every such identifiable individual person to enable inclusion and use of the Contribution in the manner contemplated by the app
- D. Your Contribution is not obscene, lewd, lascivious, filthy, violent, harassing or otherwise objectionable (as determined by Company), libelous or slanderous, does not ridicule, mock, disparage, intimidate or abuse anyone, does not advocate the violent overthrow of any government, does not incite, encourage or threaten physical harm against another, does not violate any applicable law, regulation, or rule, and does not violate the privacy or publicity rights of any third party
- E. Your Contribution does not contain material that solicits personal information from anyone under 18 or exploit people under the age of 18 in a sexual or violent manner, and does not violate any federal or state law concerning child pornography or otherwise intended to protect the health or well-being of minors
- F. Your Contribution does not include any offensive comments that are connected to race, national origin, gender, sexual preference or physical handicap
- G. Your Contribution does not otherwise violate, or link to material that violates, any provision of this agreement or any applicable law or regulation.

MOBILE APPLICATION LICENSE

Use License

In reference to the mobile app, Down4 grants you a revocable, non-exclusive, non-transferable, limited right to install and use the application on wireless handsets owned and controlled by you, and to access and use the application on such devices strictly in accordance with the terms and conditions of this license. You shall use the application strictly in accordance with the terms of this license and shall not:

- a. decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt the application
- b. make any modification, adaptation, improvement, enhancement, translation or derivative work from the application
- c. violate any applicable laws, rules or regulations in connection with your access or use of the application
- d. remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of Down4 or its affiliates, partners, suppliers or the licensors of the application
- e. use the application for any revenue generating endeavor, commercial enterprise, or other purpose for which it is not designed or intended
- f. make the application available over a network or other environment permitting access or use by multiple devices or users at the same time
- g. use the application for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for the application
- h. use the application to send automated queries to any website or to send any unsolicited commercial e-mail
- i. use any proprietary information or interfaces of Down4 or other intellectual property of Down4 in the design, development, manufacture, licensing or distribution of any applications, accessories or devices for use with the application.

Terms Applicable to Apple and Android Devices

The following terms apply when you use a mobile application obtained from either the Apple Store or Google Play to access the Down4 Services. You acknowledge that this Agreement is concluded Terms of Use (Rev. 133A18A) 5 / 13 between you and Down4 only, and not with Apple Inc. or Google, Inc. (each an "App Distributor"), and Down4, not an App Distributor, is solely responsible for the Down4 application and the content thereof.

1. **SCOPE OF LICENSE:** The license granted to you for the Down4 application is limited to a non-transferable license to use the Down4 application on a device that utilizes the Apple iOS or Android operating system, as applicable, and in accordance with the usage rules set forth in the applicable App Distributor terms of service.
2. **MAINTENANCE AND SUPPORT:** Down4 is solely responsible for providing any maintenance and support services with respect to the company's application, as specified in this Agreement, or as required under applicable law. You acknowledge that each App Distributor has no obligation

whatsoever to furnish any maintenance and support services with respect to the Down4 application.

3. **WARRANTY:** Down4 is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the Down4 application to conform to any applicable warranty, you may notify an App Distributor, and the App Distributor, in accordance with its terms and policies, may refund the purchase price, if any, paid for the Down4 application, and to the maximum extent permitted by applicable law, an App Distributor will have no other warranty obligation whatsoever with respect to the Down4 application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Down4 sole responsibility.
4. **PRODUCT CLAIMS:** You acknowledge that Down4, not an App Distributor, is responsible for addressing any claims of yours or any third party relating to the Down4 application or your possession and/or use of the Down4 Company application, including, but not limited to: (i) product liability claims; (ii) any claim that the Down4 application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
5. **INTELLECTUAL PROPERTY RIGHTS:** You acknowledge that, in the event of any third party claim that the Down4 application or your possession and use of the Down4 application infringes a third party's intellectual property rights, the App Distributor will not be responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
6. **LEGAL COMPLIANCE:** You represent and warrant that (i) you are not located in a country that is subject to a U.S. government embargo, or that has been designated by the U.S. government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. government list of prohibited or restricted parties.
7. **THIRD PARTY TERMS OF AGREEMENT:** You must comply with applicable third party terms of agreement when using the Down4 application, e.g., if you have a VoIP application, then you must not be in violation of their wireless data service agreement when using the Down4 application.
8. **THIRD PARTY BENEFICIARY:** Down4 and you acknowledge and agree that the App Distributors, and their subsidiaries, are third party beneficiaries of this Agreement, and that, upon your acceptance of the terms and conditions of this Agreement, each App Distributor will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof.

PROHIBITED ACTIVITIES

You may not access or use the Down4 app or website for any other purpose other than that for which Down4 makes it available. The app and website may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by Down4. Prohibited activity includes, but is not limited to:

- A. attempting to bypass any measures of the app/website designed to prevent or restrict access to the app/website, or any portion of the app/website
- B. attempting to impersonate another user or person or using the username of another user
- C. criminal or tortious activity

- D. deciphering, decompiling, disassembling or reverse engineering any of the software comprising or in any way making up a part of the app/website
- E. deleting the copyright or other proprietary rights notice from any app/website content
- F. engaging in any automated use of the system, such as using any data mining, robots or similar data gathering and extraction tools
- G. harassing, annoying, intimidating or threatening any Down4 employees or agents engaged in providing any portion of the Down4 to you
- H. interfering with, disrupting, or creating an undue burden on the app/website or the networks or services connected to the app/website
- I. making any unauthorized use of the Down4 services, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretenses
- J. tricking, defrauding or misleading Down4 and other users, especially in any attempt to learn sensitive account information such as passwords
- K. using any information obtained from the app/website in order to harass, abuse, or harm another person
- L. using the Down4 services as part of any effort to compete with Down4 or to provide services as a service bureau
- M. using the app/website in a manner inconsistent with any and all applicable laws and regulations

INTELLECTUAL PROPERTY RIGHTS

The content on the Down4 app and website regarding the trademarks, service marks and logos contained therein are owned by or licensed to Down4, and are subject to copyright and other intellectual property rights under United States and foreign laws and international conventions. Down4 content, includes, without limitation, all source code, databases, functionality, software, app and website designs, audio, video, text, photographs and graphics. All Down4 graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, common law trademarks or trade dress of Down4 in the United States and/or other countries. Down4 trademarks and trade dress may not be used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of Down4. Down4 content on the app and website is provided to you for your information and personal use only and may not be used, copied, reproduced, aggregated, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners.

SITE MANAGEMENT

Down4 reserves the right but does not have the obligation to:

- a. monitor the app and website for violations of this Agreement
- b. take appropriate legal action against anyone who, in Down4's sole discretion, violates this agreement, including without limitation, reporting such user to law enforcement authorities
- c. in Down4's sole discretion and without limitation, refuse, restrict access to or availability of, or disable (to the extent technologically feasible) any user's contribution or any portion thereof that may violate this Agreement or any Down4 policy

- d. in Down4's sole discretion and without limitation, notice or liability to remove from the app or website or otherwise disable all files and content that are excessive in size or are in any way burdensome to Down4's systems
- e. otherwise manage the app/website in a manner designed to protect the rights and property of Down4 and others and to facilitate the proper functioning of the app and website.

THIRD PARTY APP AND WEBSITES REGARDING CONTENT

Down4 contains (or you may be sent through the app, website or company services) links to other apps/websites ("Third Party Apps/Websites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Content"). Such Third Party Apps/Websites and Third Party Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Apps/Websites accessed through Down4 or any Third Party Content posted on, available through or installed from Down4, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Websites or the Third Party Content. Inclusion of, linking to or permitting the use or installation of any Third Party Website or any Third Party Content does not imply approval or endorsement thereof by us. If you decide to leave the Down4 app or website and access the Third Party Websites or to use or install any Third Party Terms of Use, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any app or website to which you navigate from Down4 or relating to any applications you use or install from the Down4 app/website. Any purchases you make through Third Party Websites will be through other websites and from other companies, and Down4 takes no responsibility whatsoever in relation to such purchases which are exclusively between you and the applicable third party

TERM AND TERMINATION

This Agreement shall remain in full force and effect while you use Down4 or are otherwise a user or member of Down4, as applicable. You may terminate your use or participation at any time, for any reason, by following the instructions for terminating user accounts in your account settings, if available, or by contacting us using the contact information below.

WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, DOWN4 RESERVES THE RIGHT TO, IN DOWN4'S SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY ACCESS TO AND USE OF THE DOWN4 APP, WEBSITE AND SERVICES, TO ANY PERSON FOR ANY REASON OR FOR NO REASON AT ALL, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN THIS AGREEMENT, OR OF ANY APPLICABLE LAW OR REGULATION, AND DOWN4 MAY TERMINATE YOUR USE OR PARTICIPATION IN THE APP, WEBSITE AND SERVICES, DELETE YOUR PROFILE AND ANY CONTENT OR INFORMATION THAT YOU HAVE POSTED AT ANY TIME, WITHOUT WARNING, IN DOWN4'S SOLE DISCRETION.

In order to protect the integrity of the app/website, Down4 reserves the right at any time in its sole discretion to block certain IP addresses from accessing the app/website. Any provisions of this Agreement that, in order to fulfill the purposes of such provisions, need to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purposes.

If Down4 terminates or suspends your account for any reason, you are prohibited from registering and creating a new account under your name, a fake or borrowed name, or the name of any third party, even if you may be acting on behalf of the third party. In addition to terminating or suspending your account, Down4 reserves the right to take appropriate legal action, including without limitation pursuing civil, criminal, and injunctive redress.

MODIFICATIONS

To Agreement

Down4 may modify this Agreement from time to time. Any and all changes to this Agreement will be posted on the app and website, and revisions will be indicated by date. You agree to be bound to any changes to this Agreement when you use the Down4 Services after any such modification becomes effective. Down4 may also, in its discretion, choose to alert all users with whom it maintains email information of such modifications by means of an email to their most recently provided email address. It is therefore important that you regularly review this Agreement and keep your contact information current in your account settings to ensure you are informed of changes. You agree that you will periodically check the app and website for updates to this Agreement and you will read the messages we send you to inform you of any changes. Modifications to this Agreement shall be effective after posting.

To Services

Down4 reserves the right at any time to modify or discontinue, temporarily or permanently, the Down4 Services (or any part thereof) with or without notice. You agree that Down4 shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Down4 Services.

DISPUTES

Between Users

If there is a dispute between users of the app or website, or between users and any third party, you understand and agree that Down4 is under no obligation to become involved. In the event that you have a dispute with one or more other users, you hereby release Down4, its officers, employees, agents and successors in rights from claims, demands and damages (actual and consequential) of every kind or nature, known or unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to such disputes and/or the Down4 Services.

CORRECTIONS

Occasionally there may be information on the app or website that contains typographical errors, inaccuracies or omissions that may relate to service descriptions, pricing, availability, and various other information. Down4 reserves the right to correct any errors, inaccuracies or omissions and to change or update the information at any time, without prior notice.

Limitation of Liability; Waiver

THE DOWN4 APP, WEBSITE AND AFFILIATE PLATFORMS ARE ONES IN WHICH USERS, WHETHER PERSONAL OR IN REPRESENTATION OF A BUSINESS, MAY POST EVENTS FOR OTHER USERS TO FIND AND ATTEND. YOU UNDERSTAND AND AGREE THAT DOWN4 IS NOT A PARTY TO ANY POSTED EVENT. DOWN4 HAS NO CONTROL OVER THE CONDUCT OF EVENT POSTING USERS, EVENT ATTENDEE USERS AND OTHER USERS OF THE SITE, APPLICATION AND SERVICES OR ANY ACCOMMODATIONS, AND DISCLAIMS ALL LIABILITY IN THIS REGARD TO THE MAXIMUM EXTENT PERMITTED BY LAW.

UNDER NO CIRCUMSTANCES WILL DOWN4 BE LIABLE TO YOU FOR ANY LOSS OR DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, FOR ANY DIRECT, INDIRECT, ECONOMIC, EXEMPLARY, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES) THAT ARE DIRECTLY OR INDIRECTLY RELATED TO: (1) THE SERVICE; (2) DOWN4 CONTENT; (3) USER CONTENT; (4) YOUR USE OF, INABILITY TO USE, OR THE PERFORMANCE OF THE SERVICE; (5) ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY THE DOWN4 OR LAW ENFORCEMENT AUTHORITIES REGARDING YOUR OR ANY OTHER PARTY'S USE OF THE SERVICE; (6) ANY ACTION TAKEN IN CONNECTION WITH COPYRIGHT OR OTHER INTELLECTUAL PROPERTY OWNERS; (7) ANY ERRORS OR OMISSIONS IN THE SERVICE'S OPERATION; OR (8) ANY DAMAGE TO ANY USER'S COMPUTER, MOBILE DEVICE, OR OTHER EQUIPMENT OR TECHNOLOGY INCLUDING, WITHOUT LIMITATION, DAMAGE FROM ANY SECURITY BREACH OR FROM ANY VIRUS, BUGS, TAMPERING, FRAUD, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER LINE OR NETWORK FAILURE OR ANY OTHER TECHNICAL OR OTHER MALFUNCTION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF FORESEEABLE OR EVEN IF DOWN4 HAVE BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR TORT (INCLUDING, WITHOUT LIMITATION, WHETHER CAUSED IN WHOLE OR IN PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OR DESTRUCTION OF THE SERVICE). IN NO EVENT WILL DOWN4 BE LIABLE TO YOU OR ANYONE ELSE FOR LOSS, DAMAGE OR INJURY, INCLUDING, WITHOUT LIMITATION, DEATH OR PERSONAL INJURY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT WILL DOWN4 TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OR ACTION EXCEED ONE HUNDRED UNITED STATES DOLLARS (\$100.00).

INDEMNITY

You agree to defend, indemnify and hold Down4, its subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from and against, any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of your contributed content, use of the Down4 Services, and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above. Notwithstanding the foregoing, Down4 reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Company, and you agree to cooperate, at your expense, Down4's defense of such claims. Down4 will use reasonable efforts to notify you of any such claim, action, or proceeding which is subject to this indemnification upon becoming aware of it.

MISCELLANEOUS

This Agreement constitutes the entire agreement between you and Down4 regarding the use of the Down4 Services. The failure of Down4 to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. This Agreement operates to the fullest extent permissible by law. This Agreement and your account may not be assigned by you without our express written consent. Down4 may assign any or all of its rights and obligations to others at any time. Down4 shall not be responsible or liable for any loss, damage, delay or failure to act caused by any cause beyond Down4's reasonable control. If any provision or part of a provision of this Agreement is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions. There is no joint venture, partnership, employment or agency relationship created between you and Down4 as a result of this Agreement or use of the Down4 app/website. Upon Down4's request, you will furnish Down4 any documentation, substantiation or releases necessary to verify your compliance with this Agreement. You agree that this Agreement will not be construed against Down4 by virtue of having drafted them. You hereby waive any and all defenses you may have based on the electronic form of this Agreement and the lack of signing by the parties hereto to execute this Agreement.