

Console Owner Portal – Terms and Conditions

1 Scope and application

- 1.1 These terms and conditions (“**Terms**”) set out the terms on which Console Australia Pty Ltd ACN 011 056 796 (“**we**”, “**us**” or “**our**”) allow you to access and use the Console Owner Portal (“**Owner Portal**”).
- 1.2 By clicking “Create my account”, you agree to comply with, and to be bound by, these Terms.
- 1.3 You acknowledge and agree that you must not use the Owner Portal unless you have read and accepted these Terms.

2 Terms and conditions

- 2.1 **Licence.** Subject to your accepting and complying with these Terms, we grant you for the Licence Term a non-exclusive, revocable, limited licence to access and use the Owner Portal for:
 - (a) your internal business purposes; or
 - (b) your own private personal use.
- 2.2 **User Credentials.** You will be entitled to have a single login and password (which may change from time to time) to access and use the Owner Portal (“**User Credentials**”).
- 2.3 **General Obligations.** You must:
 - (a) act reasonably, follow our directions, cooperate with us and provide any assistance reasonably necessary in connection with your use of the Owner Portal;
 - (b) provide us with information or data that we request from you through the Owner Portal from time to time;
 - (c) use the Owner Portal in accordance with all applicable laws, including the *Privacy Act 1988* (Cth) and the Australian Privacy Principles; and
 - (d) not access or use the Owner Portal or the Content other than in accordance with these Terms.
- 2.4 **User Credentials.** You must:
 - (a) not allow your User Credentials to be used by any third party;
 - (b) ensure that your User Credentials are kept secure and confidential, and take all steps necessary to ensure that User Credentials are not disclosed, provided or made available to, or otherwise accessed by, any third party; and
 - (c) notify us immediately after you become aware that your User Credentials have been disclosed, provided or made available to, or otherwise accessed by, any third party.
- 2.5 **Restrictions.** You must not:
 - (a) resupply, resell, sublicense, make available or otherwise allow any other person to access or use the Owner Portal or the Content;
 - (b) copy, reproduce, download or otherwise extract any Content from the Owner Portal;
 - (c) decompile, disassemble, reverse compile or otherwise reverse engineer all or any portion of the Owner Portal, including any source code, object code, algorithms, methods or techniques used or embodied therein;
 - (d) use the Owner Portal:
 - (i) to engage in any misleading, fraudulent or unlawful behaviour, or to defame, menace or harass any third party;
 - (ii) to gain unauthorised access to or interfere with any online resources or systems of any third party, including by any form of hacking;
 - (iii) to distribute unsolicited emails to third parties, including bulk unsolicited emails;

- (iv) in any manner that is likely to result in our systems, or that of any other person, being affected by any virus, worm, Trojan or similar computer program;
- (v) in a way that infringes the Intellectual Property Rights or any other rights of any person;
- (vi) in a way that disrupts, misuses or excessively uses our hardware, bandwidth access, storage space or other resources, or that of our other customers;
- (vii) use any data mine, scrape, crawl, email harvest or any other process that sends automated queries;
- (viii) for the purposes of accessing, storing, distributing, providing (including to us) or otherwise transmitting any information, data, material or content that promotes unlawful violence, depicts sexually explicit images, or is discriminatory or promotes discrimination based on race, gender, colour, religious belief, sexual orientation or disability; or
- (ix) in any other manner that is otherwise unacceptable to us.

2.6 **Our right to remove materials or content.** We reserve the right to remove from the Owner Portal any of your materials or content that we consider to be inappropriate or otherwise in breach of clause 2.5.

2.7 **Acknowledgements.** You acknowledge and agree that, to the extent permitted by applicable law and subject to clause 2.12:

- (a) we make no warranty that the Owner Portal or content will be accurate, free from defects, errors or faults, or that it is fit for any particular purpose;
- (b) your use of any third party product, content or service as part of or in connection with the Owner Portal may be subject to separate terms and conditions, whether imposed by us or by the relevant third party (and you must comply with such third party terms and conditions);
- (c) you are responsible for any data, information or other content that you upload or input into or through the Owner Portal ("**Data**");
- (d) the Owner Portal or any part of its Content may not be available from time to time, and we make no representation or warranty in relation to the availability of the Owner Portal or the Content; and
- (e) the Owner Portal may not be fully compatible with your device or your operating system.

2.8 **Our IP.** We (or our licensors, as applicable) own all Intellectual Property Rights in the Owner Portal and any material, data or content that you access or use through the Owner Portal (other than Your IP and Data) ("**Background IP**"). All modifications and enhancements to the Background IP are also to be treated as Background IP. If you modify or enhance the Background IP in any way, you assign to us (or our licensors, as applicable) such Background IP all Intellectual Property Rights in those modifications or enhancements immediately from creation.

2.9 **Your IP.** You grant us a non-exclusive, irrevocable, sub-licensable global licence to store, reproduce, use, modify, disclose and otherwise exploit the Data. You retain all Intellectual Property Rights in your Data and any material you provide to us through or in connection with the Owner Portal ("**Your IP**").

2.10 **Changes to these Terms.** We may change the terms and conditions of these Terms at any time. We will notify you of any material changes to these Terms via your mobile device or the Owner Portal itself. In the event that we make any changes to these Terms, you are not required to accept them if you do not agree with them, but you will not be able to and must not use the Owner Portal unless you have accepted the amended Terms.

2.11 **Changes to the Owner Portal.** We may but are not obliged to make changes to the Owner Portal. We will notify you of any material changes to the Owner Portal via the Owner Portal itself or by electronic communication. In the event that we make any changes to the Owner Portal, you may not be able to use the Owner Portal unless you accept such changes.

2.12 **Liability cap.** If we are liable to you in any way in relation to these Terms or the Owner Portal (including for any claim that we have failed to comply with any guarantee for which liability cannot be excluded but may be limited under the *Competition and Consumer Act 2010* (Cth) or any other legislation), our liability to you is limited to:

- (a) resupplying the Owner Portal to you or paying the cost of having the Owner Portal resupplied to you (at our election); or
- (b) resupplying the relevant service within the Owner Portal to you or paying the cost of having that service supplied to you again (at our election),

as applicable.

- 2.13 **Consequential Loss exclusion.** Subject to clause 2.12, we are not liable for any Consequential Loss however caused (including by our negligence), that you suffer or incur in connection with these Terms or the Owner Portal.
- 2.14 **General suspension and termination rights.** We may suspend or terminate the licence and rights granted to you under clause 2.1 at any time without notice to you.
- 2.15 **Automatic termination.** If:
- (a) you do not accept any amended or new version of these Terms as contemplated in clause 2.10; or
 - (b) you do not accept any changes or modifications we have made to the Owner Portal as contemplated in clause 2.11,
- then the licence and rights granted to you under clause 2.1 will be immediately terminated.
- 2.16 **Governing law.** If you are located:
- (a) in Australia, the laws of Queensland Australia govern these Terms; or
 - (b) in New Zealand, the laws of New Zealand govern These Terms,
- and each party irrevocably submits to the jurisdiction of the courts of that place and courts competent to hear appeals from those courts.
- 2.17 **No waiver.** A right under these Terms may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- 2.18 **Subcontracting.** You acknowledge and agree that we may use subcontractors to provide the Owner Portal and Content to you.
- 2.19 **Severability.** Each provision of these Terms will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.

3 Definitions

- 3.1 **Definitions.** In these Terms, the terms set out below have the following meaning:

Owner Portal has the meaning given to it in clause 1.

Content means any information, data or other materials that we make available to you through the Owner Portal.

Consequential Loss means any indirect, special or consequential loss (being a loss that does not arise naturally, that is, according to the ordinary course of things, whether or not the parties were aware of the possibility of such loss), or any loss of revenues, loss of reputation, consequential loss, loss of profits, loss of bargain, loss of actual or anticipated savings, loss or corruption of data or lost opportunities (including opportunities to enter into arrangements with third parties).

Data has the meaning given to it in clause 2.7(c).

Intellectual Property Rights means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow, trade or business or company name, or right of registration of such rights.

Licence Term means the period commencing on the date on which you accept these Terms until the date on which the licence granted to you under clause 2.1 is terminated.

Terms has the meaning given to it in clause 1.1.

User Credentials has the meaning given to it in clause 2.2.

Your IP has the meaning given to it in clause 2.9.