

SMILEYSCOPE VR: STANDARD TERMS AND CONDITIONS

In these Terms and Conditions, the term "Purchaser" means the legal entity purchasing the Smileyscope Products and Services as set out under the "Purchaser's Details" in the Order Form. The "Service Provider" means Smileyscope Pty Ltd ACN 617 126 708.

1. Products and Services

- 1.1 The Service Provider agrees to supply the Products and Services, and the Purchaser agrees to acquire such Products and Services, as set out in these Terms and Conditions.
- 1.2 At any time, the Purchaser may request additional units of Products. In consideration for receiving these additional units, the Purchaser will pay the Service Provider the greater of (a) the Purchase Price set out in the Order Form or (b) the Service Provider's then current standard purchase price, for each such additional unit.
- 1.3 Risk in the Products passes to the Purchaser upon delivery.
- 1.4 Title to any goods remains with the Service Provider and will not pass to the Purchaser until such time when the Purchaser pays all monies owing to the Service Provider, on all accounts (which payments are not to any extent subsequently claimed or clawed back by any person standing in the place of or representing the Purchaser).

2. Purchaser's obligations

- 2.1 The Purchaser will, for the purposes of the provision of the Products and Services:
 - (a) co-operate with the Service Provider;
 - (b) provide information and documentation relevant to the Products and Services that the Service Provider reasonably requires;
 - (c) ensure that the Products are used strictly according to these Terms and Conditions, in accordance with any applicable Documentation, manuals and instructions, and not for any other purpose, unless agreed in writing by the Service Provider. The Purchaser agrees that the Service Provider will have no liability to the Purchaser in respect of any and all Loss suffered or incurred by the Purchaser directly or indirectly arising from or in connection with failure to strictly comply with the foregoing; and
 - (d) be responsible to take reasonable care in the use and secure storage of the Products. This includes, but is not limited to, keeping all Products in appropriate storage conditions, in an appropriately secure area accessible only to authorised personnel.
- 2.2 Unless otherwise expressly permitted in writing by the Service Provider, the Purchaser must not, and must not encourage or assist a third party to:
 - (a) use the Products for any purpose other than permitted under these Terms and Conditions;
 - (b) copy, modify or adapt the Products; or

- (c) reverse-engineer, decompile or disassemble any of the Products.

- 2.3 In addition to any other remedies available to the Service Provider under these Terms and Conditions or at law, the Purchaser acknowledges that in the event of any breach or threatened breach by the Purchaser of the provisions of clause 2.2:

- (a) damages alone are an inadequate remedy for the Service Provider; and
- (b) the Service Provider shall be entitled to an interim, interlocutory or permanent injunction or such other equitable remedy restraining the Purchaser without showing or proving any actual damages sustained by the Service Provider.

3. New Releases and Updates

- 3.1 Subject to clause 4, the Service Provider shall provide to the Purchaser New Releases and Updates to the Smileyscope VR Software as ordered in the Order Form, and subject to payment of the Fees specified in the Order Form.
- 3.2 The Purchaser must take delivery of, and install, any New Release or Update which the Service Provider directs the Purchaser to take delivery of, and install, and, notwithstanding any other provision of these Terms and Conditions, if the Purchaser fails to comply with the foregoing, the Service Provider shall have no liability to the Purchaser in respect of any and all Loss suffered or incurred by the Purchaser directly or indirectly arising from or in connection with such failure.
- 3.3 For each New Release or Update provided by the Service Provider, the Service Provider will provide, at no charge, updated Documentation and these Terms and Conditions will continue to apply in all respects to the New Release or Update.

4. Supported Devices

- 4.1 The Service Provider's obligations to provide New Releases and Updates to the Smileyscope VR Software under these Terms and Conditions shall only apply in relation to the current generation of Smileyscope VR Hardware offered by Smileyscope and any earlier generation of Smileyscope VR Hardware sold by the Service Provider to customers in the previous two (2) years (**Support Window**).
- 4.2 The Service Provider may notify the Purchaser in writing that it no longer supports any Smileyscope VR Hardware that is no longer within the Support Window (**End of Support Notice**). From the date as set out in the End of Support Notice, being a date on or after the end of the Support Window, the Service Provider will not provide the Purchaser any further New Releases and Updates to the Smileyscope VR Software.
- 4.3 Upon the giving of an End of Support Notice, the Service Provider may offer the Purchaser the option to trade in Smileyscope VR Hardware outside of the Support Window for current Smileyscope VR Hardware by paying an additional fee

to the Service Provider, as notified by the Service Provider from time to time.

- 4.4 Without limiting any other provision of these Terms and Conditions, the Service Provider shall have no liability to the Purchaser in respect of any and all Loss suffered or incurred by the Purchaser directly or indirectly arising from or in connection with use of Smileyscope VR Hardware outside the Support Window.

5. Service Provider's obligations

- 5.1 The Service Provider will provide the Products and otherwise perform its obligations under these Terms and Conditions using all due care, skill and diligence.
- 5.2 The Service Provider warrants that it has obtained all necessary and required licences, consents and permits to provide the Products and perform the Services.
- 5.3 The Service Provider will observe and comply with all directions of the Purchaser when attending the Purchaser's premises, including but not limited to security, access and operational regulations or directions given by the Purchaser.

6. Fees

- 6.1 The Purchaser will pay the Service Provider all the Fees set out in the Order Form in accordance with these Terms and Conditions.
- 6.2 The Service Provider will invoice the Purchaser for all Fees in advance.
- 6.3 The Service Provider shall provide the Purchaser with a tax invoice in accordance with GST Law in relation to the Fees payable and include details of Products and Services provided to which the tax invoice relates.
- 6.4 The Purchaser shall pay the Service Provider's tax invoice within 15 days (15) days of the giving of the tax invoice.
- 6.5 The Service Provider reserves the right to charge the Purchaser interest at the Interest Rate on all overdue payments, calculated daily, from the due date for payment until paid in full.

7. GST

- 7.1 To the extent that a party makes a taxable supply in connection with these Terms and Conditions, the consideration payable by a party under these Terms and Conditions represents the value of the taxable supply for which payment is to be made.
- 7.2 Subject to clause 6.3, if a party makes a taxable supply in connection with these Terms and Conditions for a consideration which, under clause 7.1, represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- 7.3 Whenever an adjustment event occurs in relation to any taxable supply to which clause 7.2 applies:
- (a) the Service Provider must determine the amount of the GST component of any consideration payable; and

- (b) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the Purchaser for that supply.

- 7.4 If either Party is entitled under these Terms and Conditions to be reimbursed or indemnified by the other Party for a cost or expense incurred in connection with these Terms and Conditions, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Party being reimbursed or indemnified, or by its representative member.
- 7.5 Unless the context otherwise requires, words used in this clause 7 which are defined in the GST Law have the same defined meaning.

8. Intellectual property

- 8.1 The Service Provider exclusively owns all existing Intellectual Property rights in the Products, including all Documentation and any improvements or modifications created or developed by the Service Provider or, unless agreed to the contrary in any separate agreement between the parties including any research and development agreement, the Purchaser.
- 8.2 The Purchaser acknowledges that the Service Provider (or its associated entities or persons) owns all Intellectual Property created by the Service Provider in connection with the Services.
- 8.3 The Service Provider grants the Purchaser a non-exclusive, non-transferable licence to use the software components developed by the Service Provider and comprised in the Products, solely for use with the hardware components of the Product, in accordance with any the Documentation, manuals and instructions for the duration of the Term.
- 8.4 The Service Provider grants the Purchaser a non-exclusive, non-transferable licence to reproduce, copy and use the Documentation solely in connection with the use of Products in accordance with these Terms and Conditions.
- 8.5 The Service Provider grants the Purchaser a non-exclusive, non-transferable licence to reproduce, copy and use the reports created by the Service Provider for the Purchaser in connection with the Services.
- 8.6 The obligations accepted by both parties under this clause 8 survive termination or expiry of these Terms and Conditions.

9. Termination

- 9.1 Either Party may terminate these Terms and Conditions immediately by notice to the other party if:
- (a) the other Party commits a material breach of any of its obligations under these Terms and Conditions and does not remedy that breach within 14 days of receipt of a notice from the non-defaulting Party specifying the breach and requiring the breach to be remedied; or
- (b) an Insolvency Event occurs in relation to the other Party;
- 9.2 Upon termination of these Terms and Conditions, the Service Provider will be entitled to payment of all outstanding Fees for

Products provided and Services completed and not already paid by the Purchaser.

- 9.3 Termination of these Terms and Conditions will be without prejudice to the rights of the Parties in respect of any previous breach of any of the provisions of these Terms and Conditions.

10. Notices

- 10.1 Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a Party under these Terms and Conditions:

- (a) must be in legible writing and in English addressed as shown below:
 - (1) if to the Service Provider:
Address: Level 1, 333 Exhibition Street,
Melbourne, VIC 3004
Attention: Dr Evelyn Chan
Email: evelyn@smileyscope.com;
 - (2) if to the Purchaser, to the address set out in the details in the Order Form; or
 - (3) to the address last notified to the sender by any Party by notice.

11. General

11.1 Relationship between the Parties

Nothing in these Terms and Conditions:

- (a) may be deemed to constitute an employment relationship, a partnership, joint venture, agency or other legal relationship between the Purchaser and the Service Provider other than that of supplier and purchaser or Service Provider and recipient; or
- (b) authorises either Party to waive any obligation for which the other Party may be responsible or to incur any liability on behalf of the other Party.

11.2 Confidential Information

- (a) A party ("the recipient") must not, without the prior written approval of the other party ("the discloser"), make public or divulge either directly or indirectly to any person any Confidential Information which it or they may acquire or come into possession of or become aware of as a result of these Terms and Conditions.
- (b) The recipient may disclose Confidential Information to its directors, officers, employees and advisers who have a need to know the Confidential Information for the purpose of the recipient exercising its rights under and performing these Terms and Conditions.
- (c) The recipient must use its best endeavours to ensure that any person to whom it discloses Confidential Information under these Terms and Conditions does not disclose the discloser's Confidential Information.
- (d) This clause 11.2 does not apply where Confidential Information:
 - (1) is or becomes public knowledge (other than as a result of a breach of these Terms and Conditions); or

- (2) is required to be disclosed to a person or a court as required by law.

11.3 Limitation of liability

Except as otherwise permitted by law, the Service Provider's maximum total liability to the Purchaser in respect of any and all Loss suffered or incurred by the Purchaser from or in connection with these Terms and Conditions is limited to the total Fees paid under these Terms and Conditions.

11.4 Indemnity

- (a) The Purchaser agrees to indemnify and hold harmless the Service Provider for any Loss suffered or incurred by the Purchaser in connection with the use of the Products under these Terms and Conditions.
- (b) Clause 11.4(a) does not apply to the extent that the Loss arises out of the Service Provider's gross negligence or unlawful conduct.

11.5 Severance

If the whole or any part of a provision of these Terms and Conditions is void, unenforceable or illegal it is severed. The remainder of these Terms and Conditions continue to have full force and effect.

11.6 Governing law and jurisdiction

These Terms and Conditions are governed by the laws of the State of Victoria in the Commonwealth of Australia. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and the courts of appeal from them.

11.7 Waivers

- (a) Waiver of any right, power, authority, discretion or remedy arising on a breach of these Terms and Conditions must be in writing and signed by the Party granting the waiver.
- (b) A Party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other Party.
- (c) This clause 11.7 may not itself be waived except in writing.

11.8 Assignment and subcontracting

- (a) The Service Provider may assign their rights under these Terms and Conditions to a third party as part of the sale of the whole or a substantial part of Service Provider's business. The Purchaser must not assign its rights under these Terms and Conditions without the prior written consent of the Service Provider.
- (b) The Service Provider may sub-contract for the performance of any part of its obligations under these Terms and Conditions.

11.9 Entire agreement

These Terms and Conditions supersede all previous agreements in respect of its subject matter and contains the entire agreement between the Parties.

12. Definitions

Commencement Date means the date so specified in the Order Form.

Confidential Information means, in relation to a party, all information of a confidential nature relating to that party or its business which by its nature is confidential, whether verbal, written or recorded by electronic means, including these Terms and Conditions, and specifically includes technical information (including, in the case of the Service Provider, all technical information about the Products), financial information, marketing plans, business plans, trade secrets or information about suppliers or customers of a party.

Documentation means technical and operational documentation (if any) supplied by the Service Provider to the Purchaser in respect of the Products, as amended by the Service Provider from time to time.

Fees means the fees payable by the Purchaser to the Service Provider for the Services as detailed in the Order Form to these Terms and Conditions.

GST means any goods and services tax, value added tax, retail turnover tax, consumption tax, or any similar tax, impost or duty introduced or charged by the Commonwealth of Australia or any state or territory of Australia whether before, on or after the Commencement Date, which is or may be levied or becomes payable in connection with the supply of the Services or any goods, services or other things provided by a party under these Terms and Conditions.

GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event occurs where either party:

- (a) ceases or takes steps to cease to conduct its business in the normal manner;
- (b) enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (c) is unable to pay its debts when they are due or is deemed under the *Corporations Act 2001* (Cth) to be insolvent;
- (d) has a liquidator or provisional liquidator appointed to the insolvent party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party, except as part of a reconstruction whilst solvent; or
- (e) has an order made or a resolution passed for its winding up.

Intellectual Property means all copyrights, designs (whether or not registrable), rights in respect of inventions (whether or not patentable), trade marks (whether or not registrable) and confidential information, together with the right to apply for registration of any of the foregoing.

Interest Rate means the interest rate being 2% higher than the penalty interest rate under section 2 of the *Penalty Interest Rates Act 1982* (Vic).

Loss means loss or damage of any kind (including liability to a third party).

New Release means a new release or version of the Smileyscope VR Software produced to extend, alter or improve the Smileyscope VR Software by incorporating functionality or performance enhancements.

Parties mean the parties these Terms and Conditions, their respective successors and permitted assigns and Party means either one of them.

Products means the Smileyscope VR Hardware and Smileyscope VR Software.

Services means the provision of the summary reports and onsite presentations, training and demonstrations.

Smileyscope VR Hardware means the Google Pixel Daydream VR Headsets and Pixel XL Phones, as updated or replaced from time to time.

Smileyscope VR Software means the customised Android user interface, the Smileyscope Virtual Reality applications and includes the animated Virtual Reality Content for the Smileyscope Virtual Reality applications and includes any New Release or Update provided under these Terms and Conditions.

Update means any maintenance releases, services releases, bug fixes, patches and other software produced to correct any defects in, or to improve existing functionality of, the Smileyscope VR Software.

Virtual Reality Content means animated virtual reality content as developed and updated by the Service Provider from time to time used in conjunction with the Smileyscope VR Software.