

Ardent Roleplay EULA

Ardacious Pty Ltd ACN 633 520 975

(Ardacious)

The User

(User)

This Agreement is made on today's date.

Parties

Ardacious Pty Ltd ACN 633 520 975

(Ardacious, "us", "we")

The User

(User, "You", "Your")

Background

- A. Ardacious has developed Augmented-Reality Software which they use to provide a Service for End Users.
- B. The User wished to create an Account to use the Service.
- C. The User agrees to be bound by the Terms and Conditions within this Agreement, and any other documents under reference.

Operative provisions

1. Interpretation

1.1 Definitions

Unless the terms and conditions of the Agreement explicitly state otherwise, expressions used in the Agreement have the following meanings:

Account means the End User's account to use the Software, including your account.

Account Sign-Up means the process through which a user creates an account on the Software by entering the information requested by us and agrees to all terms, including (but not limited to) this Agreement, the Terms of Use and the Privacy Policy.

Agreement means the legally binding contract arising between the parties under this document.

Commencement Date means the date that the parties execute this Agreement.

Confidential Information means information that is by its nature confidential, including but not limited to information relating to the:

- (a) personnel, policies, practices, clientele or business strategies of the parties;
- (b) Intellectual Property Rights of either party;
- (c) the terms of the Agreement;

but does not include information:

- (d) already rightfully known to the receiving party at the time of disclosure by the other party; or

- (e) in the public domain (including information made publicly available via a mechanism in the Software by you) other than as a result of disclosure by a party in breach of its obligations of confidentiality under the Agreement.

Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, loss in relation to taxation or other punitive actions by a regulator, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

Content means the software, technology, text, forum posts, chat posts, profiles, widgets, messages, links, emails, music, sound, graphics, pictures, video, code, and all audio visual or other material appearing on or emanating to or from the Services, as well as the design and appearance of our websites. Content also includes user-generated Content (UGC). All Content is either owned by us or our licensors, or is licensed to us and our licensors pursuant to this Agreement or any other agreements in writing as may be applicable from time to time.

Cost means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.

End User means an individual who completes the Account Sign-Up process and accesses the Software in any capacity or on any device.

Fee means any amount payable by you to us in connection with this Agreement as stipulated by us from time to time and as initially set out in **Error! Reference source not found..**

Individual means an End User who has registered for a standard, 'individual' account within the Software.

Insolvency Event means in respect of a party:

- (a) the appointment of an administrator, a receiver or receiver and manager in respect of that party;
- (b) an application to a court or an order for the winding up of the party; or
- (c) the occurrence of anything analogous or having a substantially similar effect to any of the preceding events.

Intellectual Property Right means all present and future rights conferred by statute, common law or equity in or in relation to business names, circuit layouts, computer software, confidential information, copyright, designs, domain names, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Malicious Code means any code, program, script, software, file, thing or device which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including viruses, exploits, malware, logic bombs, denial of service attacks, flood or mail bombs, back-doors and other similar things or devices.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Privacy Law means:

- (a) the *Privacy Act 1988* (Cth); and

(b) any code registered under the *Privacy Act 1988* (Cth) or Australian Privacy Principles.

Privacy Policy means our privacy policy which is available on our Website at (<https://www.ardentroleplay.com/privacy>) or as amended by us from time to time.

Representative includes an employee, agent, officer, director, auditor, advisor, researcher, partner, consultant, contractor, sub-contractor or related entity of that person or of a related body corporate of that person.

Service means any service we provide by way of the Software, the Website and in connection with the Ardent Roleplay application.

Software means the application Ardent Roleplay owned and designed by us, hosted and detailed at the domain (<http://www.ardentroleplay.com/>) and offered as an application via the iOS and Android app stores.

Submitted Materials means any material including documents, information or data provided by you to us in connection with the Software and Service.

Term means the period of time as set out in clause 2.1.

Terms of Use means the agreement between us and the End User which sets out the terms of use which is available on our website at <http://ardentroleplay.com/EULA/>.

UGC means User Generated Content, and includes Account personas, forum posts, profile content, Submitted Materials and other Content contributed by End Users to the Services.

Unforeseen Event means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

Website Terms of Use means the terms of use found at (<https://www.ardentroleplay.com/website-terms/>) as amended from time to time.

1.2 Interpretation

In this Agreement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;

(c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

(e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;

(f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;

- (g) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) references to payments to any party to this Agreement include payments to another person upon the direction of such party;
- (j) all payments to be made under this Agreement will be made by unendorsed bank cheque, through a third-party payment provider (such as Stripe) or by other immediately available funds;
- (k) the word "includes" in any form is not a word of limitation;

2. Agreement length

2.1 Term

This Agreement will commence on the Commencement Date and will continue:

- (a) for as long as you hold an account with us;
- (b) at any time which you have the Software installed on a device owned or controlled by you; or
- (c) until the date of termination of this Agreement in accordance with clause 20.

3. Licence

3.1 Licence

We grant to you a limited, non-transferrable, non-exclusive and revocable licence to access, use and upload data to the Services, subject to the terms and conditions of this Agreement.

3.2 Licence Conditions

The grant of the licence in clause 3.1 is subject to and conditional upon:

- (a) successfully completing the Account Sign-On;
- (b) complying at all times with the requirements of this Agreement, the Terms of Use and Privacy Policy;
- (c) your continued acceptance of these Terms as amended and updated from time to time; and
- (d) you complying with our reasonable directions at all time.

3.3 Licence Restrictions

The grant of the licence in clause 3.1 is subject to the following restrictions:

- (a) You must comply with the obligations set out in Clause 7 (Your Obligations);
- (b) You must comply with all requirements listed in this Agreement, other referenced documents, relevant legislation and any lawful directions we give you;
- (c) You must agree (and continue to agree) to our Website Terms of Use and Privacy Policy as amended from time to time.

3.4 **Our right to suspend**

We reserve the right to limit or suspend your license to use the Services or Software if you breach any of your obligations in this Agreement.

4. **Relationship**

4.1 **Sub-contractors**

You acknowledge and agree that we may subcontract any of our obligations of this Agreement to a third party (or multiple third parties) without notification to or consent from you.

4.2 **Relationship**

You have no authority to act for or bind us except as specifically provided in this Agreement or with our express written consent.

5. **Submitted Material**

5.1 **Submitted Material**

- (a) You must not submit or cause to be submitted to the Software or Services any of the following:
- (i) any material that you do not own or have the right to use;
 - (ii) any confidential information of any third party which you have not obtained the express consent of the third party for;
 - (iii) any material that is illegal, unlawful, improper, harmful, threatening, unlawful, defamatory, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, hateful, or otherwise objectionable;
 - (iv) any material that infringes the Intellectual Property Right of a third party;
 - (v) would breach any privacy, security or anti-money laundering obligations, such as duties under the Privacy Act;
 - (vi) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
 - (vii) causes damage or injury to any person or property;

and we reserve the right, without incurring any liability to you, to disable your access to any material that we consider, in our sole discretion, breaches the provisions of this clause (or, if we deem it necessary, the Services).

- (b) You grant us a non-exclusive, royalty free license to use any material supplied by you in connection with this clause 5.1 for our commercial and business purposes, including the commercial and business purposes of any of our associated bodies corporate.

6. **Payment**

6.1 **Fees**

- (a) You will pay us any Fees which are required for the Services, including for the purchase of any Product Licenses, as we require from time to time.
- (b) All amounts and fees stated or referred to in this agreement are:

- (i) non-cancellable and non-refundable (subject to clause 18.1(d)); and
 - (ii) inclusive of GST, which shall be shown on our invoice(s) at the applicable rate.
- (c) You must register a valid payment method on the Software to gain access to any Product Licenses or Content which requires the payment of a Fee.

6.2 **Our right to change Fees**

We may amend the Fees at any time.

6.3 **GST Wording**

Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

7. **Your Obligations**

7.1 **Positive Obligations**

During the term of the Agreement, you must:

- (a) not to do anything which will have an adverse effect on us, the Services or Software;
- (b) comply with any and all terms and requirements of the Services outlined in this Agreement and the Schedules;
- (c) ensure that you use the Services in accordance with the terms of this agreement and any other terms (such as our general Terms and Conditions);
- (d) ensure that you, do not (in use of the Services) breach any laws, regulations, policies or other legal instruments;
- (e) do all acts and things necessary to ensure that you do not breach the terms of this Agreement; and
- (f) not publish or otherwise communicate any review of, or information about, the Services (which is not publicly available) to any third party without the prior written consent of us, except as specifically provided for in an agreement with us, including this Agreement.

You will be responsible for the breach of any obligation in this clause except to the extent the breach is caused by our negligent act. The above obligations apply to any use of your Account, including use by any third party. You agree to be responsible for any breach of this Agreement, including this clause 7.1, where that breach occurs through use of your Account, regardless of whether you actually committed the breach or not.

7.2 **Restrictions**

Except as we expressly permit under this Agreement, you shall not:

- (a) access all or any part of the Services in order to build a product or service which competes with the Services;
- (b) use the Services to provide services to third parties;
- (c) license, sell, rent, lease, transfer, assign, distribute, display, disclose, commercially exploit or otherwise make the Services available to any third party;
- (d) take any action which imposes or may impose (in our judgement) an unreasonable or disproportionately large load on our, or our third-party providers', infrastructure;

- (e) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services;
- (f) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and Software (as applicable) in any form or media or by any means; or
- (g) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (h) bypass, circumvent or attempt to bypass or circumvent any measures we may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services);
- (i) attempt to obtain, or assist third parties in obtaining, access to the Services other than as provided under this agreement; or
- (j) otherwise take any action in violation of any guidelines, policies or supplemental documentation which shall be applicable to the Services from time to time.

and shall not permit any other person to do the above acts, howsoever related to you.

7.3 **Fair Use**

You shall not use, or permit any other person to use:

- (a) any method to circumvent the provisions of this agreement or to obtain Services in excess for those in which you have purchased; and
- (b) any mechanism to exceed the amount of resources assigned to you (or conceal any such activities).

7.4 **Our right to suspend**

We reserve the right to limit or suspend the access of any individual or association to the Services if any individual or association is in breach of clause 7.

7.5 **Audit**

If required by us, you will provide us reasonable access to your records, systems or hardware for the purposes of ensuring compliance with this Agreement.

8. **Privacy**

8.1 **Privacy Policy**

- (a) You agree and consent to our handling of Personal Information in accordance with our Privacy Policy (<http://ardentroleplay.com/privacy>).
- (b) We reserve the right to amend the Privacy Policy at any time.
- (c) We reserve the right to immediately terminate this Agreement if you are in breach of clause 8.

8.2 **Privacy Obligations - Ardacious**

If Personal Information is disclosed to us in the course of this Agreement, we agree that we will not:

- (a) sell the Personal Information to any third party in a form which has not been sufficiently de-identified so that it no longer represents information by which the End User could be personally identified by the third party; or
 - (b) distribute or disclose identifiable Personal Information to any third party other than:
 - (i) to our personnel and/or related bodies corporate;
 - (ii) service providers who require the information in the provision of providing those services to the party;
- who will only use the Personal Information for the purposes contemplated by this Agreement.

8.3 Privacy Obligations – End User

If Personal Information is disclosed to you in the course of this Agreement, you agree that you will not:

- (a) sell the Personal Information to any third party in any form; or
- (b) distribute or disclose Personal Information to any third party other than:
 - (i) to your personnel and/or related bodies corporate; or
 - (ii) service providers who require the information in the provision of providing services to you;

who will only use the Personal Information for the purposes contemplated by this Agreement.

8.4 No Warranty

- (a) We make no warranties or guarantees that the manner in which we manage Personal Information is compliant with any foreign privacy laws and it is your sole and absolute responsibility to ensure you are compliant with any foreign privacy laws in your use of the Software.
- (b) In the event that you request changes to the Services in order to achieve compliance, you acknowledge and agree that you will be liable for all work performed by us.

8.5 The Privacy Act

For the purposes of clause 8 the term *disclose* is to have the same meaning as defined in the *Privacy Act 1988* (Cth).

9. Intellectual Property

9.1 Our Intellectual Property Rights

- (a) All title, ownership rights and Intellectual Property Rights, including copyright in relation to the Service and the Software is owned or used under licence by us.
- (b) Without our express prior written consent, you undertake that you will not and will not permit any person to:
 - (i) interact with our trade mark (whether registered or not) that could cause any adverse effect to our ownership and/or rights to the intellectual property; or

- (ii) copy or reproduce, or create an adaptation or translation of, all or part of the Software in any way, except to the extent that reproduction occurs automatically through the ordinary use of the Software in accordance with this Agreement;
- (iii) incorporate all or part of the Software in any other webpage, site, application or other digital or non-digital format. For the avoidance of doubt, you may incorporate images of the Software into hard or soft copy documents for training or communication purposes;
- (iv) (subject to other rights explicitly granted under this Agreement) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of the Software on any medium;
- (v) do anything that will infringe the Intellectual Property Rights of any third party; or
- (vi) attempt to do any of the above.

9.2 Your Intellectual Property

Nothing in this Agreement will transfer ownership of the Submitted Material to us.

9.3 Threats and action

If you become aware of any infringement or threatened infringement of any Intellectual Property Rights, you must give us notice pursuant to clause 25.1, including full particulars of the infringement. We may, in our absolute discretion, institute and prosecute an action against the infringer.

9.4 Provide all assistance

You must execute all documents and do all things reasonably necessary to aid and co-operate in the prosecution of any actions brought by us under this clause.

9.5 Survival of Obligation

The operation of this clause survives the termination of this Agreement.

10. Software

10.1 Hosting the Software

- (a) You acknowledge and agree that:
 - (i) parts of the Software and Services are accessible online and are built as '*cloud-based*' applications;
 - (ii) we require elements of the Software to be hosted by a third-party provider; and
 - (iii) this is reasonable considering the nature of the Software and Services, and that we would not be able to deliver the Services in their current or future form and to the standard necessary if we did not utilise the hosting services of third-party providers.
- (b) We use Firebase (<https://firebase.google.com/>) as a third-party provider for elements of the Software and delivery of the Services. Servers are:
 - (i) Managed and maintained by Google;
 - (ii) Where possible, located in Australian data centres; and
 - (iii) Secured by Google LLC.

- (c) You release and indemnify us fully for any damages you incur as a result of the mismanagement, negligence or any other acts or omissions by Google in their provision of servers, hosting and cloud technology to us.
- (d) You acknowledge that as Google is a reputable and '*enterprise-grade*' vendor, our use of their services and reliance on their technology is reasonable in the circumstances. If you do not agree with this assertion at any time, your sole and exclusive remedy is to terminate your use of the Software and Services. Your continued use of the Services and storing of your data (including Personal Information and Submitted Material) is taken as a current and continuing agreement to the acknowledgements in this clause 10.1.
- (e) We reserve the right to nominate a different server, third-party provider or cloud-based architecture at any time in our sole discretion.

10.2 **Parts of Software not locally available**

You acknowledge and agree that parts of the Software will only be accessible using the Internet (or other connection to third party servers) and will not be available "locally" from your own servers or within your own local operating system environments.

10.3 **Parts of the services controlled by third parties**

You acknowledge and agree that the Software is operated from servers owned and controlled by a third party. As such, you acknowledge that certain functions are out of our control, including (but not limited to):

- (a) cloud services for servers;
- (b) proprietary and internal code, which may include bugs, errors and exploits;
- (c) actions by malicious, state-sponsored and hostile actors;
- (d) hardware and connection failure; and
- (e) data storage and backup.

10.4 **Change of Services**

We reserve the right to upgrade, maintain, tune, backup, amend, add to or remove items from, redesign, improve or otherwise alter the Services (including offering new Services) at our sole and absolute discretion.

10.5 **Unintentional inaccessibility**

- (a) From time to time, without notice, access to all or part of the Services may be disrupted or limited. During such an interruption, we will use reasonable endeavours to restore access to the Services as soon as practicable. Nothing in this agreement gives us any obligation or liability to you in any way whatsoever for unintentional inaccessibility.
- (b) We make no guarantees as to the uptime or availability of the Services or Software. You acknowledge that you will always ensure that you have means through which to access any material you have submitted to the Services

10.6 **Intentional inaccessibility**

We reserve the right to make some or all of the Services inaccessible from time to time as is required for upgrades, maintenance and updates. We will use reasonable endeavours to provide you with advance notice of any inaccessible period but you accept that this may not always be possible and we are not liable for any harm or damage you may suffer during an interruption.

10.7 Errors

- (a) You acknowledge and agree that there may be technical or administrative errors in the information on the Software, including but not limited to errors with respect to product description, Content, UGC, Products, Product Licenses and availability.
- (b) We reserve the right to do any of the following, at our absolute discretion, without notice:
 - (i) correct any errors in the Software;
 - (ii) make the Software or Services inaccessible to work on errors;
 - (iii) update the Software;
 - (iv) remove and/or replace parts of the Software;
 - (v) move or re-organise data from one part of the Software to another; or
 - (vi) any other act or thing reasonably necessary to ensure that errors are corrected, and the Software continues to operate as intended.

10.8 Security Responsibilities

We will take reasonable steps to ensure that the Software is secure from unauthorised access consistent with generally accepted industry standards in our industry. For clarity, these obligations shall only include taking reasonable measures to:

- (a) Secure our physical premises from unauthorised access;
- (b) Restricting access to critical parts of Service infrastructure to employees, contractors and third parties who are required to have access; and
- (c) Implement recommendations from advisors provided to us from time to time in relation to securing the Software and Services.

10.9 Publishing of Content & Service Data

Except as expressly permitted through this Agreement, you must not publish, share or otherwise disseminate any content, data, graphs, visualisations or information provided to you through the Services outside the confines of the Software without our written permission.

10.10 Delivery of Support and Maintenance

We will provide support and maintenance services in respect of the Services via email only, and will endeavour to respond within 24 hours (if that time period falls on a Business Day) or otherwise as soon as possible thereafter.

11. Data

11.1 Terms of Use to Apply

Where not specifically dealt with in this Agreement, we will collect, store and use your data in accordance with our Privacy Policy (<http://ardentroleplay.com> see Footer) and Website Terms of Use (<http://ardentroleplay.com> see Footer) as amended from time to time.

11.2 Required Information

- (a) In your use of the Services, we may require Personal Information to:
 - (i) ensure we can appropriately interact with third-party applications;

- (ii) comply with any applicable laws and regulations, including any anti-money laundering, counter-terrorism or know-your-customer (KYC) requirements.
- (b) The Personal Information you may be required to provide for the continued use of the Software and Services may include (but is not limited to):
 - (i) Full name;
 - (ii) Email address;
 - (iii) Postal and/or residential address;
 - (iv) Date of birth; and
 - (v) Payment details.

11.3 Storage of Data

- (a) All Service and Software data is backed up regularly using Amazon's backup procedures. While we make all efforts to ensure that backups occur regularly, we make no guarantees that data provided to the Services will be backed up at any particular interval of time, nor that the backups are safe from hostile, malicious or state-sponsored cyber-attacks.

11.4 Use of Data

- (a) By using the Software and providing Submitted Material, UGC and End User data in your interaction with the Services, you understand, acknowledge and agree that we:
 - (i) May use that data in any way necessary to ensure you have the appropriate access and use of the Services;
 - (ii) May aggregate, distribute, prepare derivative works of, display, perform or otherwise use the data in connection with the Services, Software or our business;
 - (iii) May share data with any third parties to whom we rely upon in providing the Services or running the Software;
 - (iv) May share data with any third parties to whom you allow within your account as an Integration;
 - (v) May use your data to provide better recommendations and targeted advertising within the Services;
 - (vi) May share data with any of our related bodies corporate for the purposes of furthering our commercial and business interests; and
 - (vii) May share data with our partners, affiliates and other associated third-parties in a manner consistent with our Privacy Policy and Terms of Use.
- (b) You grant us an irrevocable, perpetual, non-restrictive, royalty free, transferable, assignable worldwide, fully paid, sublicensable license to use any data you provide to us in your use of the Services for the purposes listed in 11.4(a) and any other purposes listed in this Agreement. This license shall survive the termination of this Agreement.
- (c) For clarity, the above license in clause 11.4(c) does not affect your other ownership or license rights in the Submitted Materials, including the right to grant additional licenses in writing, unless otherwise agreed. You represent and warrant that you have, and will continue to have, all necessary rights to grant the licenses in this clause 11 without infringing or violating any other rights (including Intellectual Property rights), assignments, licenses or agreements which may apply to the Submitted Materials.

- (d) We reserve the right to access, read, preserve and disclose any information we believe is reasonably necessary to:
 - (i) satisfy any applicable law, regulation, legal process or governmental request;
 - (ii) enforce these terms, including investigation of potential violations;
 - (iii) detect, prevent, or otherwise address fraud, security or technical issues;
 - (iv) respond to user support requests; or
 - (v) protect the rights, property or safety of us, our users and the public.

11.5 Data Exporting

- (a) While the Services and Software may allow users to export certain aspects of the Submitted Material, nothing in this Agreement should be construed as an entitlement to export Submitted Material from the Services at will.
- (b) The ability to remove any Submitted Material or other content on the Services which relate to an End User in a downloadable and/or human readable format is wholly dependent on:
 - (i) the current functionality of the Software;
 - (ii) the status of any servers, infrastructure or other storage medium used to deliver the Services;
 - (iii) our absolute discretion to enable export functionality from time to time.

11.6 End User Acknowledgements

You acknowledge and agree that:

- (a) The Services may be subject to limitations, delays and other problems inherent in the use of communications facilities (such as network outages, congestion and hardware failures);
- (b) We may perform periodic penetration testing on the Services to satisfy our internal security standards;
- (c) Information you request from us may not be available or may not be provided at the time of request, and we don't guarantee that any information provided will be comprehensive or complete;
- (d) Unless otherwise agreed to in writing, you shall be responsible for the preservation of your data, including any Submitted Material. Even where we do provide backup services, you must also take measures to safeguard and secure your data. Unless agreed in writing, you acknowledge and agree that we shall have no responsibility to preserve any data and no liability for any data, including Submitted Material, which may be lost or unrecoverable;
- (e) Subject to our Website Terms of Use and Privacy Policy as published from time to time, and clause 8.3(b) we may include your name and trademarks in a list of subscribers, online content or promotional materials. You also agree that we may verbally communicate your status as a User of ours from time to time; and
- (f) We will not be responsible for any End User having appropriate devices and internet connections to access the Services. We will not be responsible for any physical devices, internet connections, communications or anything else used to connect or access the Services.

12. Security

12.1 Sufficient Security

You shall use proper security measures in connection with your use of the Services. This shall include (but not be limited to) the following:

- (a) Setting strong passwords and access control mechanisms;
- (b) Safeguarding access to all logins and passwords (preferably with an industry-grade two-factor or hardware authentication system);
- (c) Verifying the trustworthiness of persons with account access information; and
- (d) Implementing any relevant procedures recommended by the Department of Industry, Innovation and Science (see - <https://www.business.gov.au/Risk-management/Cyber-Security>) and the Australian Cyber Security Centre (see - <https://www.acsc.gov.au/> and <https://cyber.gov.au>) from time to time.

12.2 Notifiable Data Breaches

You shall notify in the manner specified in clause 25.1 within 48 hours if you learn of any security breaches relating to the Services. If the breach(es) could constitute a Notifiable Data Breach under Part III C of the Privacy Act, you shall notify us within 3 hours of the breach (suspected or confirmed) coming to your attention. You shall aid us fully in any subsequent investigation or legal action taken as a result of the breach.

12.3 Malicious Code

It is your responsibility to protect your systems and the areas of the Services which are under your control from Malicious Code.

12.4 Internet Services

You are responsible for the security of any and all internet connections used to access the Services, and the security of any device on which the Services are accessed.

12.5 Cyber Attacks

While we may take reasonable measures to secure the Software and the infrastructure on which the Services run from cyber-attacks and Malicious Code, new attack vectors and exploits are created or used by malicious actors every day. By using the Services, you acknowledge that we cannot be expected to anticipate these new vectors but can only employ industry-standard measures to mitigate the risks. Where we are actively employing measures to combat cyber-crime and an exploit or data loss occurs, you agree to hold us completely harmless for any consequences of same.

12.6 Indemnity

You release and indemnify us for any claim, action or liability resulting from your failure to comply with this clause 11.6(f). You acknowledge that while we may secure the Software as part of the Services, we are unable to protect you from a failure to properly secure your systems and practice good digital hygiene.

13. Third Party Content and Services

13.1 Accessing Linked Content and Services

- (a) The Services may permit you to link to or access other websites, services or resources on the Internet. When you access third party resources, you do so at your own risk. These other resources are not under our control, and you acknowledge that we're not responsible or

liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any link or integration to third party services does not imply our endorsement or any association between us and their operators.

- (b) You further acknowledge and agree that we will not be responsible or liable, directly or indirectly, for any damage or loss caused (or alleged to be caused) by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource.
- (c) We will not be responsible for any third-party advertising content displayed on the interface of the Software. Any link on the Software to a third-party website, or decision to accept any third party offer, is entirely at your own risk.

13.2 Third Party Integrations

- (a) In delivering the Services, we may offer augmented functionality through interfacing, providing or obtaining data, or otherwise co-operating with a third party and their software and/or services (**Integration**).
- (b) Several of the Integrations may have access to some Submitted Material, UGC, Private Information and End User data. By using the Services, you expressly authorise us to provide any Submitted Material, Private Information and End User data to Integrations for the purpose of providing the Services.
- (c) You acknowledge that the third parties who control the Integrations may:
 - (i) Use Submitted Material, Private Information and End User data to improve their services;
 - (ii) To the extent permitted by law, use, sell, license, distribute and disclose de-identified and/or aggregated Submitted Material, Private Information and End User data; and
 - (iii) Perform fraud screening, verify identities and verify Submitted Material, Private Information and End User data for use across their network;and agree to the Integrations performing all of the above functions.
- (d) While we offer the Integrations and may have agreements with the third parties to whom they relate, we only have control over the Integrations to the extent permitted by our Software.

14. Products

14.1 Products Licensed Through Services

- (a) Products are rights that we license to you to access or use the online or offline elements of the Services. Examples of Products include (but are not limited to) the following:
 - (i) Digital or unlockable Content;
 - (ii) Additional or enhanced functionality (including the ability to share Content with other End Users of the Software);
 - (iii) Subscriptions;
 - (iv) Virtual assets;

- (v) Unlock keys or codes;
 - (vi) Serial codes or online authentication;
 - (vii) In-game achievements; or
 - (viii) Virtual points, coins or currencies which are issued and programmed by us.
- (b) Any rights licensed to you in accordance with clause 14.1(a) are considered Product Licenses for the purposes of this Agreement.
- (c) You acknowledge and agree that:
- (i) any purchase of a Product License through the Services is only the purchase of a license for that particular product for use within the Services, and does not constitute a permanent entitlement to that Product independent of the Services;
 - (ii) Products may be updated, changed, enhanced or otherwise altered at our completed discretion (or in the case of UGC, at the discretion of us or the creator);
 - (iii) a Product License only entitles you to the use of the Product within the Services, and does not entitle you to alter, reverse-engineer, copy, update or assert any other rights over the Product at any time; and
 - (iv) upon termination of this Agreement (for example, by suspending or deleting your Account), any and all rights to a Product License also terminate, except and until you agree to be bound by the terms of this Agreement again (for example, where you re-activate your Account).

14.2 Digital Products Only Accessible Through Software

- (a) For any Product License purchased through the Services for digital goods, such as those for items and elements displayed using the Software, you acknowledge and agree that:
- (i) those Products will only be available for use through the Software;
 - (ii) those Products will not be transferable to any other type of software, application or augmented reality program unless expressly stated by us; and
 - (iii) where you cease using the Services, you must also cease using any Products.

15. User Generated Content

15.1 Your UGC

- (a) You are responsible for your UGC. You may not upload UGC that infringes a third party's intellectual property rights or that violates the law, this Agreement or a third party's right of privacy or right of publicity.
- (b) We may, in our sole discretion, remove, edit or disable UGC for any reason, including if we reasonably determine that UGC violates this Agreement.

15.2 No Liability or Pre-Screening

We do not assume any responsibility or liability for UGC, for removing it, or not removing it or other Content. We do not pre-screen all UGC and do not endorse or approve any UGC available on the Services.

15.3 Our License

- (a) When you contribute UGC, you grant to us, our licensors and licensees a non-exclusive, perpetual, transferable, worldwide, sublicensable license to use, host, store, reproduce, modify, create derivative works, publicly perform, publicly display or otherwise transmit and communicate the UGC, or any portion thereof, in any manner or form and in any medium or forum, whether now known or hereafter devised, without notice, payment or attribution of any kind to you or any third party.
- (b) You also grant all other users who can access and use your UGC on the Services (or any other services or software developed by us or a related entity) the right to use, copy, modify, display, perform, create derivative works from, and otherwise communicate and distribute your UGC on or through the relevant Service without further notice, attribution or compensation to you.

16. Warranty

16.1 Exclusion of express warranties

Subject to our obligations in respect of the provision of the Software and Services under this Agreement, we make no warranties or guarantees:

- (a) the Software and/or Services will be accessible at all times, uninterrupted or error free;
- (b) any of the Software is without bugs or viruses;
- (c) any of the technical information is without error or inaccuracy;
- (d) the Software is immune to unauthorised access or security breach; and
- (e) in respect of the retention of, or continued accessibility of, any data.

16.2 Warranties as to capacity

Each party represents and warrants to the other that:

- (a) it has full power and authority to execute this Agreement and observe and perform all of its obligations;
- (b) it is not aware of any thing, matter or circumstance which may prevent it from fulfilling its obligations under this Agreement; and
- (c) it is not insolvent and no receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to all or any of its affairs or material assets.

17. Apple Store

17.1 Apple Specific Terms

If you are accessing the Service and Software through an Apple device, the following terms shall apply:

- (a) This agreement is between Ardacious and the End User only.
- (b) We and not Apple are responsible for the Service, and we are solely responsible for:
 - (i) support and maintenance;

- (ii) the investigation, defence, settlement and discharge of any claim that the authorised use of the Service infringes third party intellectual property rights; and
 - (iii) any claim that the Service fails to conform to any applicable legal or regulatory requirement, including product liability claims and claims arising under consumer protection laws.
- (c) Apple's liability to you is limited to the refund of the purchase price of the Service paid by you. We will have no other liability to you in relation to any other claims or liabilities with respect to the Service.
 - (d) Apple is entitled to enforce the terms of the agreement against you and you agree to submit to Apple's legitimate enforcement.
 - (e) Your rights to use the Service is non-transferable and non-sublicensable, except to the extent that Apple permits family sharing or like sharing arrangements.
 - (f) If there is any inconsistency between the agreement and the application use rules set out in Apple's terms of service, Apple's terms of service will prevail to the extent of the inconsistency.
 - (g) If you purchased the Service from the Apple Store, you may only use the Service on Apple branded products in accordance with the usage rules of Apple.
 - (h) Apple may monitor your use of the Service.
 - (i) If you use any third-party service in the course of accessing or using the Service, you must comply with applicable third-party terms and conditions.

The above terms shall not apply to your use of the Software or Services on any device which is not an Apple device.

18. Limitation of liability

18.1 Consumer Law

- (a) You acknowledge and agree that we are not responsible for the conduct or activities of any other user of the Services
- (b) If you are a consumer within the meaning of the Consumer Law, there are certain rights (such as the consumer guarantees implied by the Consumer Law, which cannot by law be excluded (**Non-Excludable Conditions**)). This clause is subject to those Non-Excludable Conditions.
- (c) Subject to the application of any applicable Non-Excludable Condition and to the maximum extent permitted by law, we:
 - (i) exclude from this Agreement all guarantees, conditions and warranties that might but for this clause be implied into this Agreement;
 - (ii) excludes all liability to you for any Costs, expenses, losses and damages suffered or incurred directly or indirectly by you in connection with this Agreement, including using the Services, whether that liability arises in contract, tort or under statute; and
 - (iii) will not, under any circumstances, be liable to you for any Consequential Loss.
- (d) If our liability under this Agreement cannot be lawfully excluded, to the maximum extent permitted by law, our liability for breach of any Non-Excludable Condition is limited:

- (i) in the case of goods, to (at our option) the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired;
- (ii) in the case of services, to (at our option) the supplying of the services again; or the payment of the cost of having the services supplied again.

18.2 **Costs**

We exclude all other liability to you for any Costs, including Consequential Loss, suffered or incurred directly or indirectly by you in connection with the Agreement, the Software and/or the Services, in connection with:

- (a) the occurrence of an Unforeseen Event;
- (b) reliance on technical advice, modelling or calculations provided by us;
- (c) the infringement or claimed infringement by any person other than us or our Representatives of the Intellectual Property Rights or moral rights of any person in connection with the Agreement;
- (d) any loss or damage to property, personal injury or death arising directly or indirectly in connection with the Agreement;
- (e) any unauthorised activity in relation to the Software or Services by any user or third party;
- (f) Your use of or reliance on the Software and/or Services for a purpose other than the business purposes of you or the reasonably expected purpose of the Software and/or Services; or
- (g) Your failure to fulfil your obligations under the Agreement.

The foregoing limitation applies however the Costs are caused whether they arise in contract, tort (including by our negligence), or under statute.

18.3 **Third Party Integrations**

- (a) We make no guarantee as to the safety, security, merchantability, fitness, reliability or usability of any third party Integrations on the Services.
- (b) Where you suffer any damages, loss or injury due to the acts or omissions of an Integration, your sole and exclusive remedy is to pursue the owner of that Integration for those damages. You release and discharge us for all liability relating to any Integration, except to the extent where we have contributed to any damage, loss or injury.

18.4 **Not liable for Consequential Loss**

We are not liable under this Agreement for any Consequential Loss arising out of a breach by it of this Agreement, including (without limitation) any liability under the indemnity in clause 18.1(b).

19. **Indemnity**

19.1 **Indemnity**

You indemnify and will keep us and our Representatives indemnified against all liability arising from claims for:

- (a) libel, slander, defamation, product disparagement or indecent, false, misleading or deceptive conduct;

- (b) any breach of clause 5 (Submitted Material);
- (c) any breach of clause 7 (Your Obligations);
- (d) any breach of clause 8 (Privacy), 10 (Software), 11 (Data) and 11.6(f) (Security);
- (e) any breach of the provisions of this clause 19.1;
- (f) infringement of Intellectual Property Rights;
- (g) piracy, counterfeiting, plagiarism, or unfair competition;
- (h) invasion of the right of Privacy; and
- (i) any incorrect, fraudulent or false information provided by you.

19.2 The obligations in this clause 19 survive termination of this Agreement.

20. Termination

20.1 Termination by Notice

Either party may terminate this Agreement by providing the other party 30 days notice.

20.2 Termination by Account Management

You may terminate this Agreement by selecting the "Cancel" option in Account Management in the Services after suspending your Account. Termination will take effect within 30 days after you have selected the "Cancel" option, unless you choose to reinstate your account within that period.

20.3 Immediate Termination by us for Default

We may terminate this Agreement immediately by notice to you if:

- (a) an Insolvency Event occurs in relation to you;
- (b) you commit any breach of any of your obligations under this Agreement and:
 - (i) the breach is incapable of being remedied;
 - (ii) if you fail to pay the Fees, including if your chosen payment method is unable to make payment, when we are unable to bill your account after repeated attempts to redraw that amount; ;
 - (iii) if the breach is capable of being remedied, you have failed to remedy the breach after the receipt of the notice; or
 - (iv) You have been issued a notice of default more than three times during a 12 month period.

21. End Users

21.1 Software Limitations

The Software is:

- (a) Provided on an 'as is' basis; and

- (b) Not designed to perform any functions outside those expressly advertised.

22. Effects of Termination

22.1 When Termination Occurs with Notice

If this Agreement is terminated in accordance with clause 20.1, this Agreement will terminate at the expiry of the notice period.

22.2 When Termination Occurs without Notice

If this Agreement is terminated in accordance with clause 20.1, this Agreement will terminate immediately.

22.3 Effects of Termination

On termination of this Agreement, any licences will terminate and:

- (a) You must immediately;
 - (i) cease all activities related to the Services; and
 - (ii) do any further things as may be reasonably required us to protect our right, title and interest in the Services.

23. Dispute Resolution

- (a) Any dispute between End Users must be resolved on the basis of any agreements between those parties, or failing that, in good faith. We take no responsibility for, and will not take part in, any dispute involving End Users except where that dispute relates directly to an issue with the Software or us.
- (b) In the event of any issue which relates directly to us or the Software, your sole and exclusive remedy is the following procedure:
 - (i) Within seven (7) days of the issue, you must send a message to the support address listed in Schedule 2 or, where the functionality exists, open a support ticket within the Software;
 - (ii) You must detail your issue in writing in as much detail as possible;
 - (iii) We will then review your issue and seek your further input if needed; and
 - (iv) We will make a decision in relation to the dispute at our discretion and provide you that decision in writing.
- (c) You agree that any decision we make is final and you will be bound by it. You indemnify us fully for any and all expenses we incur as a result of you failing to abide by our decision and continuing the dispute (including any subsequent legal proceedings).
- (d) You agree that, where you breach the above clause 23(c) and continue the dispute after a decision has been made, you will first contact us and seek in good faith to arrange a mediation for the relevant issue.

24. Confidentiality

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.

- (b) A party will not be in breach of this confidentiality clause in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Notwithstanding any other provision of this clause, a party may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- (d) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Agreement, do not make public or disclose the other party's Confidential Information.

24.2 Breach notifications

A party must notify the disclosing party in writing, giving full details known to it immediately, when it becomes aware of any actual, suspected, likely or threatened:

- (a) breach by any person of any obligation in relation to the Confidential Information; or
- (b) theft, loss, damage, or unauthorised access, use or disclosure of or to any Confidential Information.

24.3 Exclusion

For the purposes of this Agreement, Confidential Information does not include any User Generated Content.

24.4 Survival

The obligations under this clause 24 survive termination of the Agreement.

25. General

25.1 Notices

Any communication under or in connection with this Agreement:

- (a) must be to the addressee as set out in Schedule 2 from time to time or where the functionality exists, sent via a message or support ticket within the Services and/or Software;
- (b) must be in writing;
- (c) where it is delivered or sent by email to the addressee, must be sent in accordance with clause 25.1(d); and
- (d) If a notice is sent or delivered in the manner provided in 25.1(c) it must be treated as given to or received by the addressee in the case of:
 - (1) delivery by email, when the message has been delivered to the email address of the addressee,
 - (2) delivery by message, when the message is marked as read within the Services;

but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

- (e) Any and all correspondence, including notices, delivered under this agreement shall, in the absence of any provisions to the contrary (or unless otherwise agreed) be governed by the *Electronic Transactions (Queensland) Act 2001* (Qld).
- (f) In relation to any unforeseen event or downtime notices, it is sufficient for the purposes of this Agreement that we provide information about such occurrences on our Website.

25.2 **Unforeseen Event**

A party is not responsible for any loss arising out of any occurrences or condition beyond its control, including but not limited to acts of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware or other malicious code.

25.3 **Assignment**

- (a) You may only assign, encumber, declare a trust over or otherwise create an interest in your rights under this document with our consent.
- (b) We may assign, encumber, declare a trust over or otherwise create an interest in its rights under this document without your consent, and may disclose to any potential holder of the right or interest any information relating to this document or any party to it.

25.4 **Amendment**

We may amend this Agreement by providing you 14 days written notice.

25.5 **Liability for expenses**

Each party must pay its own expenses incurred in negotiating, executing and registering this document.

25.6 **Giving effect to this document**

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

25.7 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

25.8 **Relationship**

Nothing in this Agreement is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties. Unless expressly stated in this Agreement, no party may act as agent of or in any way bind another party to any obligation.

25.9 **Warranties as to capacity**

Each party represents and warrants to the other that:

- (a) it has full power and authority to execute this Agreement and observe and perform all of its obligations herein;
- (b) it is not aware of any thing, matter or circumstance which may prevent it from fulfilling its obligations under this Agreement; and

- (c) it is not insolvent and no receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to all or any of its affairs or material assets.

25.10 **Operation of this document**

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

25.11 **Inconsistency with other documents**

If this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

25.12 **Reliance**

Neither party has entered into any contract under this Agreement in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in this Agreement.

25.13 **Counterparts**

This Agreement may be agreed to in any number of counterparts including where they are exchanged by email containing this Agreement as an unalterable attachment. All counterparts together will be taken to constitute one instrument.

25.14 **Consents**

Where this Agreement states that our consent or approval is required, we may:

- (a) give or withhold that consent or approval in our absolute discretion; and
- (b) give that consent or approval subject to conditions, unless this Agreement expressly states otherwise.

25.15 **Liability of Parties**

If a party consists of more than one person:

- (a) an obligation of that party is a joint obligation of all of those persons and a several obligation of each of them;
- (b) a right given to that party is a right given jointly and severally to each of those persons, and if exercised by one of them, is deemed to be exercised jointly; and
- (c) a representation, warranty or undertaking made by that party is made by each of those persons.

25.16 User Safety

You acknowledge and agree that you will comply with the User Safety guidelines set out in Schedule 1.

25.17 Survival

The obligations set out under clauses 5, 7, 8, 9, 11, 11.6(f), 14, 17, and 24 survive termination of this Agreement.

25.18 Execution

This Agreement may be accepted by you checking an acceptance box or making any other affirmative action such that we may reasonably conclude that you have understood and accepted this Agreement. Upon your acceptance, we warrant to agree to the terms of this Agreement and you may consider your acceptance execution by us for same.

25.19 Governing law

The laws of Queensland, Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Schedule 1 – User Safety

Epilepsy Warning – Please read before using the Software or allowing your children to use it.

Some people are susceptible to epileptic seizures or loss of consciousness when exposed to certain flashing lights or light patterns in everyday life. Such people may have a seizure while watching television images or playing certain video games. This may happen even if the person has no medical history of epilepsy or has never had any epileptic seizures. If you or anyone in your family has ever had symptoms related to epilepsy (seizures or loss of consciousness) when exposed to flashing lights, consult your doctor prior to playing.

We advise that parents should monitor the use of video games by their children. If you or your child experience any of the following symptoms: dizziness, blurred vision, eye or muscle twitches, loss of consciousness, disorientation, any involuntary movement or convulsion, while playing a video game, discontinue use IMMEDIATELY and consult your doctor.

Precautions to Take During Use

- Do not watch too close to the screen. Sit a good distance away from the screen, as far away as you reasonably can.
- Preferably use the Software on a small screen.
- Avoid playing if you are tired or have not had much sleep.
- Make sure that the room in which you are playing is well lit.
- Rest for at least 10 to 15 minutes per hour while using the Software.

Schedule 2 Notices

Initial details

The addresses and numbers for service are initially:

Ardacious

Email: support@ardentroleplay.com

Attention: Ardent Roleplay Support

User

Email: As provided by user to Ardacious

Attention: As provided by user to Ardacious