

THE SHEEPOLL SHOW

APPLICATION END USER LICENCE AGREEMENT – TERMS AND CONDITIONS

1. Application

1.1 The relationship between the Application Provider ("we", "us" or "our") and you in connection with the Application and any related services is governed by:

- (a) these Terms & Conditions; and
- (b) where the Application is provided to you via another platform (such as Apple's App Store, or Google's Play Store), that platform provider's Application End User Licence Agreement (**General Conditions**),

(collectively, this **Agreement**).

1.2 To the extent that any of these Terms & Conditions are inconsistent with the General Conditions, these Terms & Conditions prevail.

1.3 Your use of the Application will constitute and evidence your unqualified acceptance of this Agreement.

2. Grant of licence

2.1 Subject to this Agreement, by registering to use the Application as a user, the Application Provider grants you a revocable, personal, non-exclusive and non-transferable licence and right to use the Application solely for your personal, non-commercial use.

2.2 Once you have downloaded the Application, you will be required to register your personal details with the Application Provider. You must provide accurate, complete and up-to-date information as requested. It is your responsibility to inform the Application Provider of any changes to your registration information.

3. Term

This Agreement commences on the date that you register to use the Application and will remain in force until terminated by either party.

4. The Sheepoll Show

4.1 The Application Provider provides, or may provide, various games and related services, for example to determine the "black sheep" and "white sheep" of any given audience, through an interactive, real-time, data collection platform (**Intended Purpose**).

4.2 In providing the Application to you, the Application Provider may allow you to enter User Content for the purpose of:

- (a) creating and updating your information on the Application;
- (b) answering questions; and
- (c) posting materials (including comments and links).

5. Conditions of use of the Application

5.1 Unless otherwise stated in writing by the Application Provider, you must only use the Application for purposes that are consistent with the Intended Purpose or as otherwise permitted in writing by the Application Provider.

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- 5.2** You must at all times comply with the terms and conditions of this Agreement.
- 5.3** You acknowledge and agree that:
- (a) you are responsible for ensuring that no unauthorised persons access your User Account;
 - (b) it will be necessary for the Application Provider to record in a database all data received by it via your use of the Application and such database (including any copyright in the data) will at all times be the property of the Application Provider; and
 - (c) the Application Provider may send you emails, text messages, notifications and any other alerts in connection with your use of the Application.
- 5.4** You must not directly or indirectly:
- (a) copy, alter, modify, reverse engineer, translate, disassemble or de-compile any part of the Application;
 - (b) grant any party a sub-licence to access or use the Application for any purpose;
 - (c) distribute or resell access to the Application to any person;
 - (d) adapt, create derivative works from, or otherwise modify any part of the Application;
 - (e) circumvent the operation of any part of the Application in any way;
 - (f) use the Application in any way that:
 - (i) is inconsistent with clause 10 (Privacy) or is a misuse of any person's confidential information;
 - (ii) represents that the Application Provider endorses, has reviewed or in any way agrees with the material communicated by you;
 - (iii) is misleading or deceptive;
 - (iv) infringes any third party's rights, e.g. intellectual property rights;
 - (v) breaches any law;
 - (vi) may affect the availability of the Application or causes interference to the normal operation of the Application;
 - (vii) is obscene, offensive, amounts to harassment or exploits another person;
 - (viii) is defamatory or may be defamatory;
 - (ix) is otherwise reasonably considered inappropriate by the Application Provider;
or
 - (g) encourage, assist, or grant the right or ability to any other party to engage in conduct similar to that in this clause 5.4.
- 5.5** From time to time, the Application Provider may alter or vary the Application. These alterations may, among other things, have the effect of:

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- (a) providing a means of using enhanced or added functionality; or
- (b) removing access to functionality that had previously been available.

5.6 If you are under the age of 18, you must obtain the consent of your parent or legal guardian prior to using the Application.

5.7 This clause 5 survives termination of this Agreement for any reason.

6. User Accounts

6.1 Upon registering for the Application, you will be provided with a User Account. Your User Account will consist of User Content uploaded by yourself and the Application Provider.

6.2 You must keep confidential and safeguard from unauthorised use any user names and passwords required to access any facility forming part of, or made available while using, the Application.

7. Links

7.1 The Application may contain links to third party websites (linked websites). Those links are provided for convenience only and may not remain current or be maintained.

7.2 We are not responsible for the content or privacy practices associated with linked third party websites.

7.3 Our links with linked third party websites should not be construed as an endorsement, approval or recommendation by us of the owners or operators of those linked websites, or of any information, graphics, materials, products or services referred to or contained on those linked websites, unless and to the extent stipulated to the contrary.

8. Intellectual property

8.1 You acknowledge that the Application and content posted on it by us is the subject of copyright and other intellectual property rights owned by us or our licensors.

8.2 You must not at any time do or permit any act to be done that infringes those intellectual property rights.

8.3 This clause 8 survives termination of this Agreement for any reason.

9. Support

9.1 During the term of this Agreement, the Application Provider will take reasonable steps to ensure the availability of the Application.

9.2 The Application Provider is not required to provide support in relation to the Application, however, it may do so at its absolute discretion.

9.3 When reporting a problem or issue to the Application Provider, you must use reasonable endeavours and do all things reasonably necessary (as requested by the Application Provider) to assist the Application Provider in resolving that problem or issue, including executing all necessary documents and updating any electronic systems.

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10. Privacy

10.1 We may collect information about people, including you, using the Application including contact information, personal information, profile images (including your Baabaatar image), preferences, posts, comments, and links. This information may be used:

- (a) to improve and maintain the useability and your experience of the Application;
- (b) to provide assistance to you;
- (c) to monitor who is accessing the Application or using services offered on the Application to assist us with the security of the Application, addressing inappropriate conduct and enforcing these terms and conditions;
- (d) to send you (including by electronic communications or other means) news, information about our activities and general promotional material which we believe may be useful to you;
- (e) to understand the demographic of people accessing the Application, including their location;
- (f) to provide advertisements, content and features that match your profile or interests; and
- (g) to monitor and analyse trends, usage, and activities in connection with the Application.

10.2 We may preserve the content of any information or other electronic communication you send us if we believe we have the legal requirement or right to do so.

10.3 We consider it is the responsibility of parents and guardians to monitor their children's use of the Application.

10.4 If you wish to comment on or query our approach to privacy, or if you wish to make an inquiry regarding any personal information relating to you which may be in our possession, contact us on hello@sheepollshow.com.

11. Confidentiality

11.1 You acknowledge the confidentiality and the proprietary nature of the Application Provider's and other users' Confidential Information and that no right, entitlement or interest in that Confidential Information is extended to or conveyed to you other than for the purposes contemplated by this Agreement. You undertake and agree that you will:

- (a) keep all such Confidential Information confidential; and
- (b) only use such Confidential Information for purposes consistent with the Intended Purpose.

11.2 You acknowledge that a breach of this clause 11 may cause the Application Provider or other users irreparable damage for which monetary damages would not be an adequate remedy.

11.3 You acknowledge that this clause 11 may be relied upon and enforced by other users in accordance with its terms, even though those persons are not party to it.

11.4 The obligations under this clause 11 survive termination of this Agreement for any reason.

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12. Liability

12.1 You acknowledge that:

- (a) access to the Application may not be uninterrupted and the Application may not be error-free;
- (b) the performance of the Application (including response times) will depend on factors outside the parties' control including the design and performance of your information technology systems or device, and the state of the relevant telecommunications networks and their interconnections and network status;
- (c) although the Application Provider will implement reasonable security procedures, it cannot warrant that unauthorised access to information and data will not occur;
- (d) you have relied on your own independent assessment and judgment in determining whether the Application meets your needs and requirements; and
- (e) you are solely responsible for the accuracy, quality, integrity and legality of, and the method of collection of, any data submitted via the Application by you or your agents.

12.2 Nothing in this Agreement restricts, excludes or modifies any consumer rights under any statute including the *Competition and Consumer Act 2010* (Cth).

12.3 Unless this Agreement provides otherwise, to the extent permitted by law, the Application Provider expressly excludes all guarantees, conditions and warranties whether express or implied, statutory or otherwise.

12.4 To the extent permitted by law, in no event will the Application Provider be liable to you or any other party for any indirect, punitive, special, incidental or consequential loss or damage in connection with or arising out of this Agreement or your access to or use of the Application (including for damage to reputation or loss of profits, use, data, or other economic advantage), regardless of how it arises (including if it arises due to the Application Provider's negligence), whether for breach of this Agreement or on any other basis (including in negligence), and even if it has been previously advised of the possibility of such damage.

12.5 To the extent permitted by law, the Application Provider will have no liability in respect of any claim, loss or damage arising from:

- (a) an unauthorised party's access or use of your User Account (unless that party's access is attributable to the negligence or wilful misconduct of the Application Provider);
- (b) any addition to or modifications to the Application made or procured by you which are not created or supplied by or on behalf of the Application Provider; or
- (c) your use of the Application in any way other than in accordance with this Agreement or as otherwise specified by the Application Provider.

12.6 The Application Provider's liability arising out of or in connection with this Agreement or your access to or use of the Application (whether in contract, equity, negligence, tort or for breach of statute or otherwise) will be reduced by the extent, if any, to which you or any other party contributed to the loss.

12.7 To the extent permitted by law, the cumulative liability of the Application Provider for any breach of any condition or warranty in this Agreement, or any breach of a consumer guarantee by the Application Provider, and your sole and exclusive remedy in relation to such breaches will be limited to, in the case of the Application, at the Application Provider's option:

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- (a) supplying the Application again; or
- (b) paying the cost of having the Application supplied again.

12.8 To the extent permitted by law, you will indemnify the Application Provider and its employees, agents and contractors (each an **Indemnified Party**) against any loss, damage or liability which any of them suffers or incurs as a result of a breach by you of this Agreement.

12.9 This clause 12 survives termination of this Agreement for any reason.

13. Suspension

The Application Provider may suspend the Application or your access to the Application at any time, by providing you notice if:

- (a) the Application Provider reasonably believes that you or your agents are in breach of this Agreement;
- (b) any action taken or required to be taken in accordance with this Agreement contravenes or may contravene any law or code of conduct;
- (c) you use the Application in a manner which is illegal, fraudulent or anti-social, as deemed by the Application Provider; or
- (d) such suspension would assist in achieving the Intended Purpose.

14. Termination

14.1 This Agreement and your User Account may be terminated by the Application Provider at its sole discretion by providing notice to you.

14.2 Without limiting clause 14.1, the Application Provider may terminate if your User Account has not been used for a period of 9 months or more.

14.3 You may terminate this Agreement by uninstalling and deleting all copies of the Application provided to you pursuant to this Agreement.

14.4 On termination of this Agreement for any reason:

- (a) you will cease to have any rights to access or use the Application through your User Account or otherwise;
- (b) the Application Provider may, at its discretion and subject to applicable laws, either delete or retain copies of any or all data (including any personal information) that you have provided to the Application Provider in connection with your User Account. Where the Application Provider retains copies of such data, the data (including any copyright in it) will be the property of the Application Provider; and
- (c) you forfeit any Sheepoints in your User Account.

14.5 Termination of this Agreement is without prejudice to any other rights or remedies that a party may have under this Agreement or at law, and will not affect any accrued rights or liabilities of either party.

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15. Electronic transactions and verification

15.1 You acknowledge and agree that:

- (a) any consent, agreement or authority that you provide via the Application may be made as an electronic transaction and, in those circumstances, such transaction will be binding on you; and
- (b) the Application Provider may send you communications through the Application and any such communication will be taken to be received by you 1 hour after it is sent.

16. Sheepoints, competitions and prizes

16.1 The Application Provider may issue Sheepoints, run competitions and give away prizes from time to time.

16.2 Users may have the ability to earn Sheepoints by playing games and participating in competitions through the Application. Once obtained, Sheepoints will be credited to your User Account. Sheepoints do not act as a substitute for real currency. To the extent permitted by law, you acknowledge and agree that the Application Provider may revise or take action that impacts the perceived value of Sheepoints at any time.

16.3 You can access and view your available Sheepoints in your User Account when logged into your User Account. The Application Provider reserves the right, in its sole discretion, to make all calculations regarding the available Sheepoints in your User Account. The Application Provider also reserves the right, in its sole discretion, to determine the amount and manner in which Sheepoints are credited or debited from your User Account.

16.4 Sheepoints can be redeemed for prizes offered by the Application Provider, in accordance with information that will be published by the Application Provider from time to time (through the Application or otherwise).

16.5 Sheepoints and prizes are specified by the Application Provider or prize suppliers and are subject to any conditions imposed by the Application Provider or prize supplier, including any validity period.

16.6 While the Application Provider strives to make all calculations of Sheepoints and the value of prizes reasonably and consistently, you agree that the Application Provider's decision in connection with all aspects of any Sheepoints, competitions or prizes awarded is final.

16.7 Sheepoints and prizes cannot be transferred or exchanged nor (except where cash is specified) be redeemed for cash. Without limiting any other term of these terms and conditions, all prizes (and elements of prizes) must be taken as and when specified, or will be forfeited with no replacement. You agree that if a prize (or element of a prize) is unavailable for any reason, the Application Provider may provide another item of equal or higher value.

16.8 If any competition cannot run as planned for any reason beyond the Application Provider's control, for example, due to software, hardware or communications issues, unauthorised intervention, tampering, fraud or technical failure, the Application Provider may end, change, suspend or cancel the competition or disqualify affected entries/entrants, subject to any necessary approval by the State/Territory gaming authorities.

16.9 The Application Provider and the agencies and companies associated with any competition are not liable for any loss of, damage to or delay in delivery of prizes. Prizes will only be delivered to addresses in Australia.

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16.10 On termination of this Agreement under clause 14, any Sheepoints not used during the term of this Agreement will be forfeited.

17. Beta testing

17.1 This clause 17 is only applicable to users who sign up as beta testers of the Application.

17.2 In consideration for receiving a copy of the Application for testing, you agree to serve as a beta tester for the Application and will notify the Application Provider of all problems and ideas for enhancements which come to your attention during the beta testing period and you assign to the Application Provider all right, title and interest to such enhancements and all intellectual property rights therein.

17.3 The Application is pre-release code and is not at the level of performance or compatibility of a final, generally available product offering. The Application may not operate correctly and may be substantially modified prior to general release or withdrawn. Subject to clause 12.2, the Application is provided "as is", without warranty of any kind. In no event will the Application Provider be liable for any damage whatsoever arising out of the use of or any inability to use the Application during the beta testing period.

18. General provisions

18.1 Amendments

The Application Provider reserves the right to amend the terms and conditions of this Agreement from time to time. Amendments will be effective immediately upon notification on the Website. Your continued use of the Application following such notification will represent an agreement by you to be bound by the terms and conditions as amended.

18.2 Assignment & subcontracting

You must not transfer any right or liability under this Agreement without the Application Provider's prior written consent, except where this Agreement provides otherwise. The Application Provider may subcontract, novate or assign any of its rights or obligations under this Agreement and you must provide all reasonable co-operation requested by the Application Provider.

18.3 Waiver

Failure, delay or neglect by a party to enforce a term of this Agreement is not to be construed as a waiver of that term or the party's rights, or a consent to, waiver of, or excuse for any other, continuing, or subsequent breach.

18.4 Governing law

This Agreement and the licence granted under it, will be governed and construed in accordance with the laws of Victoria, Australia, regardless of the principles of conflict of laws, and the parties irrevocably submit to the jurisdiction of the Victorian courts over all disputes arising in connection with this Agreement.

18.5 Severability

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

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18.6 Entire agreement

This Agreement sets out the entire agreement between you and the Application Provider in relation to the Application.

18.7 Survival

Any provision of this Agreement that is expressed to survive, or by its nature survives, termination of this Agreement will continue in effect beyond termination.

19. Definitions and Interpretation

In this Agreement, unless the context otherwise requires:

Application means software and services provided by the Application Provider in connection with the delivery of the Sheepoll Show mobile application accessible from mobile application marketplaces;

Application Provider means Sheepoll Australia Pty Ltd ABN 27 617 855 839;

Baabartar image means an online sheep avatar that represents a user and changes its appearance according to how that user answers questions;

Confidential Information means all information of or relating to the Application Provider, any Related Corporation or any other user of the Application and includes the source and object code for the Application, except to the extent that such information:

- (a) is in, or comes into, the public domain other than as a result of your default;
- (b) is already known to you at the date this Agreement is formed and you can prove that it was already known to you at that time; or
- (c) is independently developed by you and you can prove that it was independently developed by you;

Intended Purpose has the meaning given to that term in clause 4.1;

Related Corporation means a “related body corporate” as defined in the *Corporations Act 2001* (Cth);

Sheepoints means virtual points issued by the Application Provider to users for use exclusively within the Application;

User Account means the account referred to in clause 6 of this Agreement;

User Content means data uploaded onto a User Account; and

Website means the Application Provider's website at **sheepoll.com**