

END USER LICENCE AGREEMENT:

- A. This end user licence agreement (**EULA**) is a binding agreement between you, the authorised user (**you**) and Nexon Asia Pacific Pty Ltd (ABN 70 095 335 023) and its Related Bodies Corporate (as that term is defined in the Corporations Act 2001 (Cth)) (**Nexon, we, our or us**), being for access to and use of our developed software code (**Product**).
- B. To access and use the Product you warrant and represent that you are either:
- an employee or other authorised user of the organisation that has directed or otherwise facilitated your access to and use of the Software (such organisation being Our **Customer**); or
 - an individual who requires access to and use of the Product for your own internal business or compliance purposes,
- (each an **Authorised User**)
- C. By accessing or using the Product, you agree that you have read, understood and agree to be bound by the terms of this EULA.
- D. This EULA governs your access to and use of the Product. This EULA gives you specific legal rights, and you may also have additional legal rights, which vary from jurisdiction to jurisdiction.
- E. The disclaimers, exclusions, and limitations of liability under this EULA will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so those provisions of this EULA may not apply to you.
- F. Nothing in this EULA shall in any way impact on or affect your concurrent legal obligations to Microsoft® under any agreement you or the Customer may have with Microsoft®.
- G. If you do not agree with any of the terms of this EULA, you should immediately cease accessing or using the Product and, if appropriate, contact us or the Customer.

ADDITIONAL EULA TERMS:

1 License

- 1.1 Subject to payment of licence fees by the Customer, which is managed via a monthly subscription payment under a separate agreement with the Customer (**Subscription Agreement**), Nexon grants to you a limited, non-exclusive (without the right to sublicense), non-transferable, revokable license to use the Product solely for legitimate internal business purposes and consistent with the terms of the Subscription Agreement.

2 Restrictions on Licence

- 2.1 You agree not to, and you will not permit others to:
- (a) license, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose or otherwise commercially exploit the Product or make the Product available to any third party;
 - (b) copy or use the Product for any purpose other than as permitted in **clause 1** above;
 - (c) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Product; or
 - (d) modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Product (except to the extent applicable laws specifically prohibit such restriction for interoperability purposes, in which case you agree to first contact Nexon and provide Nexon an opportunity to create such changes as are needed for interoperability purposes). You may not release the results of any performance or functional evaluation of any of the Product to any third party without prior written approval of us for each such release.

3 Use of Product

- 3.1 You must:
- (a) comply with all applicable laws of your jurisdiction in connection with your access and use of the Product;
 - (b) keep your username and password in connection with accessing the Product confidential, and not disclose your username and password to any third party without our prior written consent;
 - (c) ensure your device complies with our minimum hardware and operating requirements as notified by us from time to time;
 - (d) be, and agree that you are, solely responsible for all Your data and information used in connection with or inputted into the Product (**Relevant Data**), including in respect of accuracy, completeness, integrity and your right to use the Relevant Data, including rights pertaining to any intellectual property rights of any third party or any personal information or sensitive information of any third party (as those terms are defined by the Privacy Act 1988 (Cth)); and
 - (e) ensure you have all the necessary rights, approvals and consents required for us to collect, use, store, copy, transfer and modify the Relevant Data as required by the Product to be used for you for the purpose specified in clause 2.1 and otherwise in accordance with this EULA (and You indemnify us for any loss that we may suffer in connection with such activities directly relating to our use of the Relevant Data for these purposes to the maximum extent permitted by law).

4 Consent to use of data

- 4.1 You acknowledge and agree that in connection with the licence granted to you under the EULA, Nexon and its affiliates or suppliers may collect, use, monitor or sell to third parties, energy use data and other statistics on Your use of the Product and the information and data collected. We agree not to use this data and information in a form that personally identifies you except to the extent necessary to provide such services. Our privacy policy sets out our terms of collection, use and disclosure practices in relation to personal information and can be accessed at: <https://nexon.com.au/privacy-statement/>.

5 Ownership

- 5.1 You do not acquire ownership of copyright, trade secrets or other intellectual property rights in any part of the Product or any documentation supplied by Nexon to you by the operation of this EULA.
- 5.2 The Product, the documentation supplied with the Product and all worldwide copyright, trade secrets, and other intellectual property rights are the exclusive property of Nexon. Nexon and its licensors reserve all rights in and to the Product not expressly granted to you in this EULA. You shall not engage in any action that may threaten the validity of Nexon's intellectual property rights attaching to the Product, or any documentation supplied with the Product.
- 5.3 The Product is licensed to You, not sold, under this EULA or the Subscription Agreement. There are no implied licenses in this EULA or the Subscription Agreement. All suggestions, feedback and/or submissions provided by You to Us with respect to the Product shall be our property. We may use, copy, modify, publish, or redistribute the feedback and/or suggestions and its contents for any purpose and in any way without any compensation to you. You also agree that we do not waive any rights to use similar or related ideas previously known to us, developed by its employees, or obtained from other sources.

6 Installation and services

- 6.1 Unless we agree otherwise in writing, you will be responsible for installing the Product on your Device from the Microsoft® platform and otherwise integrating the Product with your devices software and systems and we have no installation or integration obligations to you in relation to the Product.
- 6.2 You acknowledge and agree that we may provide online support services to you in our sole discretion as we may notify you from time to time.

7 Software Updates

- 7.1 We may from time-to-time automatically deploy patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Product and related services (**Updates**).
- 7.2 Updates will be provided for any original Product for which you hold a valid license and for which the Customer has paid the applicable subscription fees under the Subscription Agreement.
- 7.3 Business Central version Updates are managed by Microsoft® and deployed according to Customer sites' maintenance configuration.
- 7.4 For the purpose of this EULA, our product-specific updates will form part of the Product and the terms and conditions of this EULA shall apply to the Updates.
- 7.5 You acknowledge that you may be required to install Updates to use the Product and you agree to install any Updates Nexon provides. Your continued use of the Product confirms your continued agreement to the provision of the Updates. If You do not want the Updates, Your remedy is to stop using the Product.

8 Third Party Software

- 8.1 You acknowledge and agree that:
 - (a) for certain functions of the Product to properly operate, third party software may need to be integrated or installed on your device as may be notified by us to you and/or our Customer from time to time (**Third Party Software**);
 - (b) you and/or our Customer is responsible for obtaining any necessary licences for any Third Party Software at your and/or our Customer's cost; and
 - (c) we are not responsible for procuring or otherwise providing any Third Party Software to or for you and the contractual relationship in respect of the relevant Third Party Software provider is between you and/or our Customer.

9 Term and Termination

- 9.1 This EULA and the license granted to you is effective on the date you first use the Product and shall continue for as long as the Customer has a current subscription to use the Product under the Subscription Agreement, unless this EULA is terminated under clause 9.2.
- 9.2 We may terminate this EULA at any time, without notice, if you breach any term of this EULA or alternatively, if the Subscription agreement between Us and the Customer expires or is terminated.
- 9.3 Upon termination of this EULA, the license granted to you will terminate and you must stop all use of the Product and do all things reasonably required by us in connection with termination of this EULA. Any termination of this EULA is without prejudice to any right, action, remedy which has accrued, or which may accrue in favour of us.
- 9.4 Termination of this EULA by Nexon will not release you from:
 - (a) any residual obligations which by their very nature survive termination under this EULA and in particular clause 11 (liability) clause 12 (indemnity); or
 - (b) liability in respect of any prior breach of, or non-performance of, any obligation under this EULA.

10 Warranty

- 10.1 Notwithstanding anything to the contrary and to the maximum extent permitted by law, Nexon provides the Product "as-is" and excludes all conditions, warranties, guarantees and terms which may be implied into this EULA by statute, custom, or general law and are capable of being excluded, provided however that this exclusion will not apply to the extent that:
 - (a) you acquire goods or services from us under this EULA as a consumer for the purposes of the Australian Consumer Law (**ACL**); and
 - (b) the consumer guarantees under the ACL apply in respect of those goods or services.

10.2 You agree to use the Product at your own discretion and sole risk.

10.3 We do not guarantee any specific results from the use of the Product.

11 Liability

11.1 To the extent that:

- (a) you suffer any loss or have any claim against us for breach by us of any condition, warranty or guarantee in relation to any goods or services provided by us under this EULA which condition, warranty or guarantee is imposed under the ACL or any other comparable legislation and cannot be excluded (including, without limitation, any applicable consumer guarantees); and
- (b) you suffer any other loss or have any other claim against us in connection with any goods or services provided by us under this EULA or the performance of our obligations under this EULA including (without limitation) any claim for breach of contract or negligence, our liability for such loss or in respect of such claim will be limited, to the extent permitted by law, at our election and discretion, as may be applicable to:
- (c) if the breach relates to goods:
 - (i) the replacement of the goods or supply of equivalent goods; or
 - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods.
- (d) if the breach relates to services:
 - (i) the re-supply of the services; or
 - (ii) the payment of the cost of having the services supplied again.

For the avoidance of doubt, this **clause 11.1** does not apply to any claim you may have against us for breaching the consumer guarantee provisions of the ACL where the goods or services the subject of the claim are goods or services which are of a kind ordinary acquired for personal, domestic or household use or consumption (for the purposes of the ACL).

11.2 Subject to the obligations of Nexon under the non-excludable terms of this EULA and to the fullest extent permissible by law, neither party will be liable to the other party for any Consequential Loss. For the purposes of this EULA, Consequential Loss means any indirect, consequential, exemplary, punitive, special, or incidental damages, including any damages (whether direct or indirect) for lost data or lost revenue or profits, arising from or relating to the Product (even if we knew or should have known of the possibility of such damages).

11.3 Subject to the obligations of Nexon under the non-excludable terms and to the fullest extent permissible by law, in no event will Nexon's liability for loss or damage arising under or in connection with this EULA, exceed in the aggregate, the total amount paid or payable by Customer to us in subscription fees pertaining to the relevant EULA under the Subscription Agreement.

12 Indemnity

12.1 You shall indemnify, defend and hold harmless Nexon, its associated and Related Entities, agents, employees, officeholders (**Indemnified Parties**) in respect of all actions, claims, proceedings, demands, liabilities, losses (excluding Consequential Loss), damages, expenses and costs including legal fees on a full indemnity basis (**Loss**), in connection with any of the following:

- (a) any breach of this EULA by you;
- (b) any negligent, or wilful act or omission, misconduct, dishonesty or fraud committed by you, your agents, representatives, delegates or contractors; or
- (c) your use of the Product, including any third-party claims made in connection with, or arising out of, your use of the Product, except to the extent that such Loss was directly caused or contributed to by us.

13 Dispute Resolution

- 13.1 All disputes in relation to the operation of this EULA and the rights and obligations of the parties to it must be resolved in accordance with this **clause 13**.
- 13.2 Until there is compliance with this **clause 10**, a Party must not commence any action, bring any proceedings or seek any relief in a court, except seeking interlocutory or equitable relief.
- 13.3 Where a dispute arises, a Party must give written notice of the dispute to the other Parties setting out the material particulars in dispute (Dispute Notice).
- 13.4 The Dispute Notice must:
- (a) set out the legal basis for the dispute;
 - (b) set out the facts upon which the claim is based;
 - (c) attach copies of correspondence and any relevant background material; and
 - (d) contain full particulars of the proposed remedy sought.
- 13.5 Within ten (10) Business Days of receipt of the Dispute Notice, the parties must meet in person, by telephone, via videoconference or some other agreed means to discuss the dispute and determine any potential resolution.
- 13.6 If within a further period of ten (10) Business Days of, the dispute is not resolved, then the parties shall refer the dispute to the Resolution Institute (ACN 008 651 232) facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.
- 13.7 The Parties shall endeavour in good faith to resolve the dispute at mediation and co-operate with Resolution Institute as facilitator.
- 13.8 Nothing in this clause 13 shall prevent any party from seeking urgent interlocutory or equitable relief in connection with this EULA.

14 Entire Agreement

- 14.1 This EULA constitutes the entire agreement between you and Nexon with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

15 Assignment

- 15.1 You may not assign or otherwise deal with any of your rights or obligations under this EULA without our prior written consent. We may assign, novate or otherwise deal with our rights under this EULA at any time effective immediately upon us notifying you of the assignment or novation.

16 Relationship between the parties

- 16.1 This EULA does not create a relationship of employment, agency, partnership or joint venture between the parties.

17 Variation

- 17.1 This EULA may only be amended or varied by a document in writing signed by each party.

18 Waiver

- 18.1 No failure to exercise or delay in exercising any right given by or under this EULA to a party constitutes a waiver and the party may still exercise that right in the future.

19 Severability

19.1 In the event that a term or provision of the EULA is declared or found to be illegal by any court, such term shall be read down, and should the term not be able to be read down, it shall be rendered void with respect to the jurisdiction of that court or tribunal. In such circumstances, all the remaining terms of the EULA shall remain in force and correct.

20 Governing law

20.1 This Agreement is governed by and construed in accordance with the laws of the State of New South Wales, Australia. In the event that a dispute arises from this EULA, You agree to submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.