

# End User Licence Agreement

Last updated 25<sup>th</sup> January 2024

Please read this End-User License Agreement carefully before clicking the "I Agree" button, downloading or using FumConX.

By clicking the "I Agree" button, downloading or using the Application, You are agreeing to be bound by the Terms of this Agreement. If You do not agree to the Terms of this Agreement, do not click on the "I Agree" button, do not download or do not use the Application.

## 1. Interpretation and Definitions

### *Interpretation*

1.1. In this Agreement unless the context otherwise requires:

- 1.1.1. headings are for convenience only and do not affect its interpretation and construction;
- 1.1.2. the singular includes the plural and vice versa;
- 1.1.3. words importing a gender include other genders;
- 1.1.4. where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- 1.1.5. a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- 1.1.6. "includes" is not a word of limitation;
- 1.1.7. a reference to anything is a reference to the whole and each part of it;
- 1.1.8. a reference to a group of persons is a reference to all of them collectively and to each of them individually; and
- 1.1.9. a reference to a document includes all amendments or supplements to, or replacements or novation of, that document.

### *Definitions*

1.2. The words of which the initial letter is capitalized have meanings defined under the following conditions. The following definitions shall have the same meaning regardless of whether they appear in singular or in plural.

1.3. For the purposes of this End-User License Agreement:

- 1.3.1. **Account Information** means Your related account details, including email address, Devices registered, account status, physical address, phone number, or other contact information;

- 1.3.2. **Agreement** means this End-User License Agreement that forms the entire agreement between You and the Licensor regarding the use of the Application;
- 1.3.3. **Application** means the software program provided by the Licensor downloaded by You through an Application Store's account to a Device, named FumConX;
- 1.3.4. **Application Data** means the Application technical data, downloaded related information about the Device it is installed on, the, software, and peripherals, Account Information and Device Information;
- 1.3.5. **Application Store** means the digital distribution service operated and developed by Apple Inc. (Apple App Store) or Google Inc. (Google Play Store) by which the Application has been downloaded to your Device;
- 1.3.6. **Device** means any iOS and Android device that can access the Application such as a computer, a cellphone or a digital tablet;
- 1.3.7. **Device Information** means data from which Your Device could be identified, such as device serial number, or about your device, such as browser type and Device system information;
- 1.3.8. **Intellectual Property** means all present and future rights, title and interests in and to inventions, innovations, know-how, patents, patent applications, registered and unregistered trademarks, service marks, registered and unregistered designs, copyrights, circuit layouts, domain names, internet addresses, computer programs or software or brand names;
- 1.3.9. **Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere in Australia, whether made by a State, Territory, the Commonwealth, or a local government and includes the general law and equity as applicable from time to time in the relevant geographical location;
- 1.3.10. **Licensor** (referred to as either "Licensor", "the Company", "We", "Us" or "Our" in this Agreement) refers to ComConX Pty Ltd (A.C.N. 668 115 197), 6 Hamilton Street, Wyreema, Queensland 4352, Australia;
- 1.3.11. **Loss** means any loss of any kind whatsoever, whether actual, contingent or prospective, including any liability, cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage;
- 1.3.12. **Privacy Act** means *Privacy Act 1988 (Cth)* and **Privacy Law** means the Privacy Act and any other Law or enforceable codes and guidelines regulating the collection, use and/or disclosure of personal information;
- 1.3.13. **Terms** means the terms and conditions of this Agreement;
- 1.3.14. **Third-Party Services** means any services or content (including data, information, applications and other products services) provided by a third-party that may be displayed, included or made available by the Application; and
- 1.3.15. **You** means the individual accessing or using the Application or the company, or other legal entity on behalf of which such individual is accessing or using the Application, as applicable.

## **2. The Application**

- 2.1. The Application (FumConX) is a software application designed to create efficient communication between fumigators and their respective clients whilst maintaining electronic records which has been customised for iOS and Android Devices. It is used to create fumigation legislative record keeping and client-specific documents required for the grain export industry.

## **3. Acceptance**

- 3.1. This Agreement is between You and the Licensor, and governs the Application made available to You.

- 3.2. Upon:

- 3.2.1. selecting the 'Accept' option;
- 3.2.2. payment of the license fee for the Application at the point of purchasing the licence for the Application; or
- 3.2.3. upon downloading from the Application Store or otherwise, installing or using the Application (whichever comes first),

You are granted a revocable, non-transferable, non-exclusive and limited licence ("**Licence**") strictly in accordance with the Terms of this Agreement.

- 3.3. If You do not agree to the Terms of this Agreement, You must not install, use, or copy the Application. The Application is licensed, not sold, to You by the Licensor for use strictly in accordance with the Terms of this Agreement.
- 3.4. This Licence will also govern any updates of the Application provided by the Licensor that replaces, repairs, and/or supplements the first licensed Application unless a separate licence is provided for such update, in which case the terms of that new licence will govern.

## **4. License Grant**

- 4.1. This Agreement entitles You to:

- 4.1.1. install and use the Application on any Devices that You own or control;
- 4.1.2. install and use the Application as permitted by the Application Store's terms and conditions; or
- 4.1.3. install and make an archival copy of the Application on a storage medium other than a hard drive, and may only be used for the reinstallation of the Application.

## **5. Limitations**

- 5.1. Nothing in this Agreement or Licence should be interpreted to restrict the Application Store's terms and conditions or any other third-party terms. When using the Application, You must ensure that You comply with applicable third-party terms and conditions.

*Limitations on transfer*

- 5.2. You must not assign your rights and obligations under this Agreement, or redistribute, encumber, sell, rent, lease, sublicense, or otherwise transfer your rights to the Application.

*Limitations on use*

- 5.3. You must not:

- 5.3.1. share the Licence, or contents of the Application, with others; or
- 5.3.2. permit the use, copying or installation of the Application by more than one user or on more than one Device.
- unless You hold multiple, validly, licensed copies.

- 5.4. You must not:

- 5.4.1. reverse engineer, translate, disassemble, integrate, decompile, remove, modify, combine, create derivative works or updates of, adapt, or attempt to derive the source code of the Application, or any part thereof;
- 5.4.2. broadcast, transmit or otherwise display in a public forum or any venue not restricted to You, the Application or any part of the product; or
- 5.4.3. post the Application or part of the Application on any website.

- 5.5. You must not:

- 5.5.1. use the Application for any purpose other than what it was designed and intended for; or
- 5.5.2. use the Application in any way that would result in incorrect, inaccurate or fraudulent results or reports.

*Limitations on derived works*

- 5.6. You must not modify the Application, create derivative works based upon the Application, or use the Application to develop any product having the same primary function as the Application.

*Limitations on alteration*

- 5.7. You must not:

- 5.7.1. modify the Application or create any derivative work of the Application or its accompanying documentation. Derivative works include but are not limited to translations; or
- 5.7.2. alter any files or libraries in any portion of the Application.

*Limitations on copying*

- 5.8. You must not copy any part of the product except to the extent that the licensed use inherently demands the creation of a temporary copy stored in the Device memory and

not permanently affixed on a storage medium.

- 5.9. You may create and store copies only on Devices that You own or control for backup keeping under the terms of this Licence, and any other terms and conditions that apply to the Device or software used. You may not remove any intellectual property notices. You acknowledge that no unauthorised third parties may gain access to these copies at any time. If You sell your Devices to a third party, You must remove the Licensed Application from the Devices before doing so.

## **6. Technical Requirements**

- 6.1. The Licensed Application requires a firmware version 1.0.0 or higher. The Licensor recommends using the latest version of the firmware at all times.
- 6.2. You acknowledge that it is Your responsibility to confirm and determine that the Device on which You intend to use the Application satisfies the technical specifications mentioned above.
- 6.3. The Licensor reserves the right to modify the technical specifications of the Application as required at any time.

## **7. Updates to the Application**

- 7.1. The Licensor will attempt to keep the Application updated so that it complies with modified/new versions of the firmware and new hardware. As a result, the Licensor may from time to time provide enhancements or improvements to the features/functionality of the Application, which may include patches, bug fixes, updates, upgrades and other modifications. Updates may modify or delete certain features and/or functionalities of the Application.
- 7.2. You agree that the Licensor has no obligation to:
  - 7.2.1. provide any Updates, or
  - 7.2.2. continue to provide or enable any particular features and/or functionalities of the Application to You.
- 7.3. You further agree that all updates or any other modifications will be:
  - 7.3.1. deemed to constitute an integral part of the Application; and
  - 7.3.2. subject to the Terms of this Agreement.

## **8. Maintenance And Support**

- 8.1. You acknowledge that the Licensor has no obligation whatsoever to provide You with any maintenance and support services with respect to the Application.
- 8.2. Notwithstanding clause 8.1, any maintenance and support services enquiries and requests must only be directed to the Licensor who can be contacted at the email address listed at the Application Store.

## **9. Use of Data**

- 9.1. You agree and acknowledge that the Licensor may access the Application Data and You

grant to the Licensor a perpetual, irrevocable and royalty-free license to use and modify the Application Data for the purpose of quality improvement, statistical reporting (including benchmark reports), service planning, practice support and research.

- 9.2. You and the Licensor will both comply with the Privacy Act and all other applicable Privacy Laws with respect to the use, possession, storage, disclosure and processing of Application Data.

## **10. Third-Party Services**

- 10.1. The Application may display, include or make available third-party content (including data, information, applications and other products and services) or provide links to third-party websites or services (Third-Party Services).
- 10.2. You acknowledge and agree that the Licensor shall not be responsible for any Third-Party Services, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. The Licensor does not assume and shall not have any liability or responsibility to You or any other person or entity for any Third-Party Services.
- 10.3. You must comply with applicable Third Parties' terms and conditions when using the Application. Third-Party Services and links thereto are provided solely as a convenience to You and You access and use them entirely at your own risk and are subject to such third-party terms and conditions.

## **11. User-Generated Contributions**

- 11.1. The Application does not offer You the ability to submit or post content. However, the Licensor may (in its sole discretion) provide You with the opportunity to create, submit, post, display, transmit, perform, publish, distribute, or broadcast content and materials to the Licensor or in the Application, including but not limited to text, writings, video, audio, photographs, graphics, comments, suggestions, or personal information or other material (collectively, '**Contributions**').
- 11.2. The Contributions may be viewable by other users of the Application and through third-party websites or other applications. As such, any Contributions You transmit will be treated in accordance with the Application's Privacy Policy. When you create or make available any Contributions, You agree and acknowledge that:
  - 11.2.1. The creation, distribution, transmission, public display, or performance, and the accessing, downloading, or copying of your Contributions do not and will not infringe the proprietary rights, including but not limited to the copyright, patent, trademark, trade secret, or moral rights of any third party;
  - 11.2.2. You are the creator and owner of or have the necessary licences, rights, consents, releases, and permissions to use and to authorise us, the Application, and other users of the Application to use your Contributions in any manner contemplated by the Application and this Agreement; and
  - 11.2.3. You have complied with the Privacy Law and have the necessary written consent, release, and/or permission for every identifiable individual person in your Contributions to use the name or likeness of every such identifiable individual person to enable inclusion and use of your Contributions in any manner contemplated by the Application and this Agreement.

#### 11.2.4. Your Contributions:

- 11.2.4.1. are not false, inaccurate, or misleading;
- 11.2.4.2. are not unsolicited or unauthorised advertising, promotional materials, pyramid schemes, chain letters, spam, mass mailings, or other forms of solicitation;
- 11.2.4.3. are not obscene, lewd, lascivious, filthy, violent, harassing, libellous, slanderous, or otherwise objectionable (as determined by us);
- 11.2.4.4. do not ridicule, mock, disparage, intimidate, or abuse anyone;
- 11.2.4.5. are not used to harass or threaten (in the legal sense of those terms) any other person and to promote violence against a specific person or class of people;
- 11.2.4.6. do not violate any Law, regulation, or rule;
- 11.2.4.7. do not violate the privacy or publicity rights of any third party;
- 11.2.4.8. do not violate any applicable Law concerning child pornography, or otherwise intended to protect the health or well-being of minors;
- 11.2.4.9. do not include any offensive comments that are connected to race, national origin, gender, sexual preference, or physical handicap; and
- 11.2.4.10. do not otherwise violate, or link to material that violates any provision of this Agreement, or any applicable Law or regulation.

11.3. By submitting Your Contributions, You agree that the Licensor can use and share such feedback for any purpose without compensation to You.

11.4. You acknowledge and agree that the Licensor will not be liable for any statements or representations made in your Contributions and You expressly agree to indemnify the Licensor from any Loss incurred by the Licensor as a result of your Contributions.

11.5. Any use of the Application in violation of the foregoing violates this Agreement and may result in, among other things, termination or suspension of your rights to use the Application.

## **12. Ownership and Intellectual Property**

12.1. The Licensor retains all rights, title and interest, including all copyrights, patents, trademarks, trade secrets and Intellectual Property rights, in and to, the Application and all copies thereof.

12.2. The Licensor shall not be obligated to indemnify or defend You with respect to any third-party claim arising out of or relating to the Application. To the extent the Licensor is required to provide indemnification by applicable Law, the Licensor, not the Application Store, shall be solely responsible for the investigation, defence, settlement and discharge

of any claim that the Application or your use of it infringes any third party intellectual property rights.

### **13. Warranties and Exclusions**

- 13.1. The Application is provided to You "AS IS" and "AS AVAILABLE" and with all faults and defects without warranty of any kind. To the maximum extent permitted under applicable Law, the Licensor, on its own behalf and on behalf of its affiliates and its and their respective licensors and service providers, expressly disclaims all warranties, whether express, implied, statutory or otherwise, with respect to the Application, including all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and warranties that may arise out of course of dealing, course of performance, usage or trade practice. Without limitation to the foregoing, the Licensor provides no warranty or undertaking, and makes no representation of any kind that the Application will meet your requirements, achieve any intended results, be compatible or work with any other software, applications, systems or services, operate without interruption, meet any performance or reliability standards or be error-free or that any errors or defects can or will be corrected.
- 13.2. Without limiting the foregoing, neither the Licensor nor the Application Store makes any representation or warranty of any kind, express or implied:
  - 13.2.1. as to the operation or availability of the Application, or the information, content, and materials or products included thereon;
  - 13.2.2. that the Application will be uninterrupted or error-free;
  - 13.2.3. as to the accuracy, reliability, or currency of any information or content provided through the Application; or
  - 13.2.4. that the Application, its servers, the content, or e-mails sent from or on behalf of the Licensor are free of viruses, scripts, trojan horses, worms, malware, timebombs or other harmful components.
- 13.3. Provisions of the *Competition and Consumer Act 2010* (Cth) and other Laws in force from time to time in Australia may imply guarantees, warranties, conditions, and impose obligations on the Licensor and its subsidiaries, affiliates, and suppliers ("**Implied Terms**"). If these Implied Terms apply, the Licensor's liability will be limited to its option to resupply, repair replace the Application or the cost of such resupply, repair or replacement, to the extent permitted by Law.
- 13.4. Unless otherwise explicitly agreed to in writing by the Licensor, subject to the Implied Terms, all representations, guarantees, conditions and warranties of any nature are expressly excluded.
- 13.5. Nothing in this clause excludes, restricts or modifies your rights under an Implied Term.

### **14. Exclusion of Damages**

- 14.1. Subject to any Implied Term, to the maximum extent permitted by applicable Law, the Licensor, its directors, officers, employees, or agents will not be liable to You or any other party for any special, incidental, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits, loss of data or other information, for business interruption, for personal injury, loss of privacy arising out of or in any way related to the use of or inability to use the Application, third-party software and/or third-

party hardware used with the Application, or otherwise in connection with any provision of this Agreement) whether based on contract, tort, statute, or any other legal theory, even if the Licensor or any supplier has been advised of the possibility of such damages and even if the remedy fails of its essential purpose.

- 14.2. You expressly understand and agree that the Application Store, its subsidiaries and affiliates, and its licensors shall not be liable to You under any theory of liability for any direct, indirect, incidental, special consequential or exemplary damages that may be incurred by You, including any loss of data, whether or not the Application Store or its representatives have been advised of or should have been aware of the possibility of any such losses arising.

## **15. Limitation of Liability and Remedies**

- 15.1. To the extent that the applicable jurisdiction limits the Licensor's ability to disclaim any implied warranties, this disclaimer shall be effective to the maximum extent permitted

## **16. Licensee Indemnity**

- 16.1. You will indemnify the Licensor, its directors, officers, employees, agents and contractors in full against any liability, Loss, damages, costs and expenses as a result of or in connection with your use of the Application, including but not limited to, any modification by You of the Application which causes the Application to infringe the intellectual property rights of a third party.
- 16.2. You agree to indemnify and hold the Licensor and its directors, officers, employees, agents and contractors (if any) harmless from any Loss, claim or demand, including reasonable legal fees, due to or arising out of Your:
- 16.2.1. use of the Application;
  - 16.2.2. breach of this Agreement or any Law; or
  - 16.2.3. infringement of any right of a third party.
- 16.3. Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of this Agreement.

## **17. Variation of Terms**

- 17.1. The Licensor reserves the right to amend these Terms from time to time without notice to You and You will be subject to the Terms in force at the time You purchase the Licence for the Application or download the Application whichever is applicable.

## **18. Termination**

- 18.1. This Agreement shall remain in effect until terminated by You or the Licensor. The Licensor may, in its sole discretion, at any time and for any or no reason, suspend or terminate this Agreement with or without prior notice.
- 18.2. This Agreement will terminate immediately, without prior notice from the Licensor, in the event that you fail to comply with any provision of this Agreement. You may also terminate this Agreement by deleting the Application and all copies thereof from your Device or from your Device.

- 18.3. Upon termination of this Agreement, You shall cease all use of the Application and delete all copies of the Application from your Device and any other storage locations.
- 18.4. Termination of this Agreement will not limit any of the Licensor's rights or remedies at Law or in equity in case of breach by You (during the term of this Agreement) of any of your obligations under the present Agreement.

## **19. General Provisions**

- 19.1. Any provision of, or the application of any provision of this Agreement, which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 19.2. This Agreement is not to be construed against a party merely because that party was responsible for preparing it.
- 19.3. Any provision of, or the application of any provision of this Agreement that is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 19.4. The failure, delay, relaxation or indulgence on the part of a party in exercising, in part or whole, any power, right or remedy conferred upon that party by these Terms shall not operate as a waiver of that power, right, or remedy. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 19.5. This Agreement contains the entire Agreement between the Parties and supersedes any previous understandings, commitments or agreements, oral or written. written or oral agreements between You and the Licensor. You may be subject to additional terms and conditions that apply when You use or purchase any other of the Licensor's services, which the Licensor will provide to You at the time of such use or purchase.
- 19.6. Each provision of this Agreement is individually severable. If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.
- 19.7. This Agreement is governed by the law of the State of Queensland, Australia. The parties submit to the non-exclusive jurisdiction of its courts and all courts which have jurisdiction to hear appeals from those courts. The parties will not object to the exercise of jurisdiction by those courts, either for forum non-conveniens or on any other basis.

## **20. Contact Information**

- 20.1. Any general inquiries, complaints, questions or claims concerning the Application must be directed to the Licensor and not the Application Store or any other third party.
- 20.2. For general inquiries, complaints, questions or claims concerning the Application, please

contact:

ComConX Pty Ltd  
PO Box 18128  
Clifford Gardens Queensland 4350  
Australia  
[info@comconx.au](mailto:info@comconx.au)