

## Terms and Conditions

These Terms govern the use of the IDCARE Breach Response Portal for Individuals.

The User must read this document carefully.

The IDCARE Breach Response Portal (“the Portal”) for Individuals is owned and operated by Identity Care Australia & New Zealand Ltd (IDCARE) Group of entities, PO Box 412 Caloundra, QLD, 4551. For any questions or concerns about these Terms & Conditions, please contact IDCARE via email: [privacy@idcare.org](mailto:privacy@idcare.org) or by calling +61 7 3555 5900.

### What the User should know at a glance:

- IDCARE is a registered Australian and New Zealand charity and not-for-profit.
- The advice we provide is contemporary and its accuracy is based on the information communicated to IDCARE by the breached organisation and our assessment of the risks.
- Response actions may need to change over time as the threat environment changes. Users are encouraged to subscribe to our free community newsletter and/or other Government alerting services to receive the latest advice on response measures and threats.
- IDCARE provides response advice relevant to the exposed attributes we are informed about by the breached entity. If you have specific questions about the nature of the exposed attributes or the incident itself that led to the exposure, users are encouraged to speak with the breached entity (notifying organisation) directly.
- IDCARE does not need your personal information to provide our advice, but we may need your personal information if you would like IDCARE to take response actions on your behalf.
- If any response actions have been taken prior to notification by the breach entity (notifying organisation) and these have been communicated to IDCARE, details of these will be provided in the Portal.

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### Terms of use

Unless otherwise specified, the terms of use detailed in this section apply generally when using the Portal and the information and response Services extended (the Service).

By using the Portal, Users confirm to meet the following requirements:

- The Portal advice is provided to individuals and not business or government users;
- To use the Service, Users must acknowledge they have read, understood and will comply with these Terms and Conditions;
- Where the Portal includes Response Actions that affords Users the opportunity for IDCARE to “act on your behalf” to put in place certain response measures, such as inform financial institutions or government agencies to allow for additional security measures, the User may need to provide IDCARE with personal information, such as email address, phone number, date of birth, and government credential information, and participate in an identity verification process. Such actions may not be taken by IDCARE if the information requested is inaccurate or incomplete;
- Any collection of personal information will be in accordance with IDCARE’s [Privacy Policy](#);

- Advice provided by IDCARE to Users is not contingent on Users agreeing for IDCARE to act on their behalf. This is offered where relevant, and not for every Response Action recommended, and may be rejected by the User;
- A User data or information collected must be complete and truthful where it is mandatory to provide in order to receive Services;
- Users may also use the Service without registering or creating a User account, however, this may cause limited availability of certain features or functions;
- If log in credentials are required, Users are responsible for keeping their login credentials confidential and safe. For this reason, Users are also required to choose passwords that meet the highest standards of strength permitted by IDCARE;
- Advice provided by IDCARE in the Portal, including Response Actions, do not constitute legal advice. IDCARE recommends that you consult a solicitor in relation to your legal rights and obligations, including but not limited to your legal rights or obligations under Australian and international privacy and data protection laws;
- While every effort has been made to ensure the accuracy of the Response Action information provided, to the maximum extent permitted by law all conditions, terms, representations, and warranties (in each case, whether express or implied) in connection with the provision of the Portal which might otherwise be binding upon IDCARE are excluded.

### **Account termination**

Users can terminate their account and stop using the Service at any time. They can elect to do this by clicking the “Delete Account” button on their Portal homepage.

By default, all Users will have their accounts disconnected and deleted after 120 days. If an extension of time is required for the User account to continue, Users are to click the “Continuation” button and a further 120 days will be extended to the account.

All user information collected by IDCARE at the time of the account cessation will be deleted by IDCARE and destroyed.

If Users permit IDCARE to share their information, the treatment of such information will be in accordance with that third party’s policies, terms and conditions, which are to be referenced / linked to the User for their consideration and permission.

### **Account suspension and deletion**

IDCARE reserves the right, at its sole discretion, to suspend or delete at any time and without notice, User accounts which it deems inappropriate, offensive or in violation of these Terms. The suspension or deletion of User accounts shall not entitle Users to any claims for compensation, damages or reimbursement.

The suspension or deletion of accounts due to causes attributable to the User does not exempt the User from paying any applicable fees or prices.

### **Portal content**

Unless where otherwise specified or clearly recognisable, all content available on the Portal is owned or provided by the Owner or its licensors.

The Owner undertakes its utmost effort to ensure that the content provided on the Portal infringes

no applicable legal provisions or third-party rights. However, it may not always be possible to achieve such a result.

In such cases, without prejudice to any legal prerogatives of Users to enforce their rights, Users are kindly asked to preferably report related complaints using [privacy@idcare.org](mailto:privacy@idcare.org) or via published telephone numbers or online forms.

### **Rights regarding content on the Portal - All rights reserved**

The Owner holds and reserves all intellectual property rights for any such content. Users may not therefore use such content in any way that is not necessary or implicit in the proper use of the Service. Business and government users of the Service are prohibited from using content, including replicating or publishing on their own sites or providing advice derived from this content, without first requesting and receiving permission by the Owner.

Users may not copy, download, share (beyond the limits set forth below), modify, translate, transform, publish, transmit, sell, sublicense, edit, transfer/assign to third parties or create derivative works from the content available on the Portal (and any other IDCARE owned sites, including idcare.org), nor allow any third party to do so through the User or their device, even without the User's knowledge.

Where explicitly stated on the Portal, the User may download, copy and/or share some content available for its sole personal and non-commercial use, namely to build resilience and response efforts in responding to breach events and the exposure of personal information.

Any applicable statutory limitation or exception to copyright shall stay unaffected.

### **Access to external resources**

Through the Portal (as well as other IDCARE sites), Users may have access to external resources provided by third parties. Users acknowledge and accept that the Owner has no control over such resources and is therefore not responsible for their content and availability.

Conditions applicable to any resources provided by third parties, including those applicable to any possible grant of rights in content, result from each such third parties' terms and conditions or, in the absence of those, applicable statutory law.

### **Acceptable use**

The Service may only be used within the scope of what they are provided for, under these Terms and applicable law. Users are solely responsible for making sure that their use of the Portal and/or the Service violates no applicable law, regulations or third-party rights.

Therefore, the Owner reserves the right to take any appropriate measure to protect its legitimate interests including by denying Users access to the Portal and any related IDCARE sites or the Service, terminating contracts, reporting any misconduct performed through to IDCARE or the Service to the competent authorities, such as judicial or administrative authorities, such as law enforcement, whenever Users engage or are suspected to engage in any of the following activities:

- violate laws, regulations and/or these Terms;
- infringe any third-party rights;
- considerably impair the Owner's legitimate interests;

- offend the Owner or any third party in a manner that may be defamatory, factually incorrect and reputationally damaging, racist, sexist, or discriminatory in any way.

### **API usage terms**

Users that provide permission for the disclosure of their information via API may provide access to their data relating to the Portal via the Application Program Interface (API) to third parties if such APIs are made available for a specific incident. Any use of the API, including use of the API through a third-party product/service that accesses the Portal or any of IDCARE's sites, is bound by these Terms and, in addition, by the following specific terms:

- the User expressly understands and agrees that the Owner bears no responsibility and shall not be held liable for any damages or losses resulting from the User's use of the API;
- the User may be exposed to the offering of third-party products/services that access data through the API; and
- the User will be subject to the Privacy Policies and any terms of usage of third-party APIs as disclosed or referenced to the User.

### **Liability and indemnification**

#### **Australian Users - Limitation of liability**

Nothing in these Terms excludes, restricts or modifies any guarantee, condition, warranty, right or remedy which the User may have under the Competition and Consumer Act 2010 (Cth) or any similar State and Territory legislation and which cannot be excluded, restricted or modified (non-excludable right). To the fullest extent permitted by law, our liability to the User, including liability for a breach of a non-excludable right and liability which is not otherwise excluded under these Terms of Use, is limited, at the Owner's sole discretion, to the re-performance of the services or the payment of the cost of having the services supplied again.

#### **New Zealand and Other Country Users – Limitation of Liability**

Despite anything else contained in these Terms, any liability to the Users by the Owner in respect of anything arising from or concerning these Terms, the Website or any of the Products or Services, whether arising in tort (including negligence), contract, breach of statutory duty, equity or otherwise arising from any relationship with Users ("Our liability") is excluded to the fullest extent permitted by law. To the extent that the Owner's liability cannot be excluded by law, or to the extent that the exclusion of Our liability would render these Terms unenforceable, Users agree that the maximum amount that Users are entitled to claim against the Owner (in total) and the maximum amount that the Owner (in total) are liable to a User for is one Australian dollar or the next largest amount that would be needed to render these Terms (including these exclusion and limitation provisions) enforceable. Despite anything else contained in these Terms, Users agree that the Owner is not liable to the User (or to anyone else) for any failure or delay in the performance of the Owner's Services and obligations under these Terms to the extent that the failure or delay is caused, directly or indirectly, by an event outside the Owner's reasonable control.

#### **US Users - Disclaimer of Warranties**

The Portal is provided strictly on an "as is" and "as available" basis. Use of the Service is at Users' own risk. To the maximum extent permitted by applicable law, the Owner expressly disclaims all conditions, representations, and warranties — whether express, implied, statutory or otherwise, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third-party rights. No advice or information, whether oral or

written, obtained by user from owner or through the Service will create any warranty not expressly stated herein.

Without limiting the foregoing, the Owner, its subsidiaries, affiliates, licensors, officers, directors, agents, co-branders, partners, suppliers and employees do not warrant that the content is accurate, reliable or correct; that the Service will meet Users' requirements; that the Service will be available at any particular time or location, uninterrupted or secure; that any defects or errors will be corrected; or that the Service is free of viruses or other harmful components. Any content downloaded or otherwise obtained through the use of the Service is downloaded at users own risk and users shall be solely responsible for any damage to Users' computer system or mobile device or loss of data that results from such download or Users' use of the Service.

The Owner does not warrant, endorse, guarantee, or assume responsibility for any product or service advertised or offered by a third party through the Service or any hyperlinked website or service, and the Owner shall not be a party to or in any way monitor any transaction between Users and third-party providers of products or services.

The Service may become inaccessible or it may not function properly with Users' web browser, mobile device, and/or operating system. The Owner cannot be held liable for any perceived or actual damages arising from Service content, operation, or use of this Service.

Federal law, some states, and other jurisdictions, do not allow the exclusion and limitations of certain implied warranties. The above exclusions may not apply to Users. This Agreement gives Users specific legal rights, and Users may also have other rights which vary from state to state. The disclaimers and exclusions under this agreement shall not apply to the extent prohibited by applicable law.

## **Common provisions**

### No waiver

The Owner's failure to assert any right or provision under these Terms shall not constitute a waiver of any such right or provision. No waiver shall be considered a further or continuing waiver of such term or any other term.

### Service interruption

To ensure the best possible service level, the Owner reserves the right to interrupt the Service for maintenance, system updates or any other changes, informing the Users appropriately.

Within the limits of law, the Owner may also decide to suspend or terminate the Service altogether. If the Service is terminated, the Owner will delete any records of personal information shared by the User.

Additionally, the Service might not be available due to reasons outside the Owner's reasonable control, such as "force majeure" (eg. labor actions, infrastructural breakdowns or blackouts etc).

### Service reselling

Users may not reproduce, duplicate, copy, sell, resell or exploit any portion of the portal or any of the Owner's sites (such as idcare.org and mydata.care) or any of its Service without the Owner's express prior written permission, granted either directly or through a legitimate reselling program.

### Intellectual property rights

Without prejudice to any more specific provision of these Terms, any intellectual property rights, such as copyrights, trademark rights, patent rights and design rights related to the Portal or any of

the Owner's sites are the exclusive property of the Owner or its licensors and are subject to the protection granted by applicable laws or international treaties relating to intellectual property.

All trademarks — nominal or figurative — and all other marks, trade names, service marks, word marks, illustrations, images, or logos appearing in connection with idcare.org and MyData.Care (including their sub-domains) are, and remain, the exclusive property of the Owner or its licensors and are subject to the protection granted by applicable laws or international treaties related to intellectual property.

#### Changes to these terms

The Owner reserves the right to amend or otherwise modify these Terms at any time. In such cases, the Owner will appropriately inform the User of these changes. Such changes will only affect the relationship with the User for the future. The continued use of the Service will signify the User's acceptance of the revised Terms. If Users do not wish to be bound by the changes, they must stop using the Service. Failure to accept the revised Terms, may entitle either party to terminate the Agreement. The applicable previous version will govern the relationship prior to the User's acceptance. The User can obtain any previous version from the Owner. If required by applicable law, the Owner will specify the date by which the modified Terms will enter into force.

#### Assignment of contract

The Owner reserves the right to transfer, assign, dispose of by novation, or subcontract any or all rights or obligations under these Terms, taking the User's legitimate interests into account. Provisions regarding changes of these Terms will apply accordingly. Users may not assign or transfer their rights or obligations under these Terms in any way, without the written permission of the Owner.

Latest update: 1 February 2022