

Richie's Plank Experience

Licence Agreement

1. Background

- (a) Toast VR Pty Ltd ACN 613 776 551 (**Toast**) provide the interactive virtual reality plank walk known as Richie's Plank Experience™ (**Software**).
 - (b) Toast has agreed to grant you a license to use the Software, in accordance with the terms of this commercial licence agreement (**Agreement**).
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2. Agreement

- (a) You must carefully read this Agreement and should contact us with any questions or issues you have with it before your acceptance of it.
- (b) You accept this Agreement if you:
 - (i) gain Access to the Software after being given a copy of this Agreement; or
 - (ii) otherwise indicate to us, whether directly or indirectly, that you accept this Agreement.
- (c) By accepting this Agreement, you acknowledge and agree that:
 - (i) you have had a sufficient opportunity to read and understand it; and
 - (ii) you agree to be bound by it.
- (d) If you do not agree to this Agreement, do not accept it and do not proceed to Use the Software or offer the Software to End Users commercially.
- (e) Any person that accepts this Agreement on your behalf represents and warrants to Toast that:
 - (i) they are duly authorised to accept the Agreement and to bind you to it; and
 - (ii) to the extent they purport to accept this Agreement on behalf of you and are not duly authorised to do so, that person will be liable in their personal capacity and will indemnify Toast against any Loss suffered as a result of such purported acceptance.
- (f) This Agreement commences on the earlier of:
 - (i) the date you first Accessed or Used the Software; and
 - (ii) the Acceptance Date,and continues until terminated under clause 11.

3. Access and use

1.1. Access

- (a) Subject to the stipulations of this Agreement, on and from the Acceptance Date:
 - (i) Toast grants you a non-exclusive, non-transferrable, revocable licence to Use, and to allow End Users to Use the Software in accordance with this Agreement (**Licence**); and
 - (ii) either:
 - (A) the Distributor will, subject to the Distribution Agreement, provide you with Access to the Software; or
 - (B) Toast will, provide you with Access to the Software.
- (b) Toast reserves the right to terminate the Licence and to stop allowing Access by itself or by the Distributor where Toast considers it necessary:
 - (i) to protect its rights under this Agreement;
 - (ii) to protect the Software or Toast's commercial advantage; or
 - (iii) to prevent the infringement of any third-party rights or any Laws.

1.2. General usage conditions

- (a) In Accessing and allowing End Users to Use the Software, you must:
 - (i) procure that all the End Users comply with the terms of this Agreement;
 - (ii) only allow the Software to be Used in the manner and for the purposes it was expressly intended, as set out in this Agreement and the User Documentation;
 - (iii) co-operate with Toast in the remediation of unauthorised Use or ill Use of the Software and promptly report to Toast all such matters of which you become aware;
 - (iv) comply with all reasonable and lawful directions that Toast may give from time to time with respect to your Use and the End User's Use of the Software; and
 - (v) make payment of all Fees and other amounts rightfully due and owing to:
 - (A) Toast under this Agreement; and
 - (B) to the Distributor under the Distribution Agreement.
- (b) You acknowledge and agree that you are responsible for any breach of this Agreement by the End Users.
- (c) In Accessing and allowing End Users to Use the Software, you must not:

- (i) enable or engage any third party to work on the Software without first obtaining Toast's written consent, which Toast may withhold in its sole discretion;
- (ii) interfere or disrupt the operation of the Software, nor attempt to;
- (iii) grant access to the Software to anyone other than yourself and the End Users, unless Toast has provided express written consent; and
- (iv) subject to any right under sections 47B(3), 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth), either directly or indirectly, modify, attempt to decompile, cross compile, disassemble, reverse engineer, or use any other means to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Software.

4. Updates

- (a) From time to time Toast may (but is not obligated to) update the Software.
- (b) Any variations to the Software will form a part of the Licence after the varied Software is Accessible by you and the provision of the varied Software by Toast or the Distributor to you will be governed in accordance with the terms of this Agreement and the Distribution Agreement (if any).

5. Support

We will use our best endeavours to provide software support to you within 3 Business Days of a written request being made to our Website. Support provided by us under this Agreement does not encompass providing you with assistance in relation to your Systems or connectivity.

6. Your responsibilities

1.3. Systems

You acknowledge and agree that you are responsible for obtaining and maintaining all Systems required to use the Software.

1.4. Your warranties

You represent and warrant that:

- (a) you have the capacity and authority to enter into and to perform your obligations under this Agreement;
- (b) the terms of this Agreement have been accepted by you or an authorised representative of yours and accordingly the terms of this Agreement legally bind you;
- (c) you have read and understood the User Documentation; and
- (d) you will comply with all directions and guidance provided in the User Documentation.

1.5. Your acknowledgements

You acknowledge and agree that:

- (a) computer and telecommunications services are not fault free and occasional periods of downtime may occur; and
- (b) Toast has not made any representations or warranties that the Software will at all times be error free or free from Harmful Code.

7. Toast's Responsibilities

Toast will:

- (a) ensure that the Software and each update to the Software is carefully screened in accordance with industry best practice for Harmful Code before it is Accessible by you,
- (b) provide User Documentation that contains sufficient information to enable you and the End Users to make full and effective use of the Software;
- (c) ensure that the Software will be provided:
 - (i) in accordance with the provisions of this Agreement;
 - (ii) in accordance with all applicable Laws;
 - (iii) in accordance with the User Documentation; and
 - (iv) substantially in accordance with Toast's marketing material.

8. Intellectual Property Rights

1.6. Copyright

- (a) The content and material contained within or forming a part of the Software, User Documentation and our marketing material (including coding, imagery, wording, design, graphics, logos and music) are owned by Toast or are granted to Toast under license and are protected by copyright laws.
- (b) Nothing in this Agreement affects a party's Moral Rights in the Software, User Documentation or marketing material.

1.7. Trade marks

Richie's Plank Experience™ and the Richie's Plank Experience logo are our trade marks, as are all other related signs distinguishing our goods and/or services from others that are used by us in the Software, User Documentation and marketing material. You acknowledge and agree that you are not granted any right or license to our trade marks.

1.8. Improvements

- (a) You acknowledge and agree that all intellectual property rights in the variations, additions and alterations to the Software (**Improvements**) are owned by us, even where suggested or created by you (or under your direction).
- (b) You must procure that the original Intellectual Property Right owner, if not us, executes our reasonable assignment documentation for the purposes of transferring title in and to any Intellectual Property Rights they own in the Improvements.

9. Fees, Charges and Payments

1.9. Fees

- (a) In consideration of Toast:
 - (i) granting you a licence for you and the End Users to Use the Software; and
 - (ii) providing Access to the Software by itself or via the Distributor, you must either pay Toast or the Distributor (as the case may be) the Fee.
- (b) Where Toast receives a payment from you, it will issue a Tax Invoice to you.
- (c) You acknowledge and agree that Toast may reasonably increase the Fees from time to time. Where Toast is increasing the Fees, either it or the Distributor will provide you with Notice of the increase.

1.10. GST

Unless otherwise expressly stated, all amounts under this Agreement are exclusive of all taxes, duties and customs. If any taxes, duties or customs are imposed on any supply made under or in accordance with this engagement and such taxes, duties or customs have not been accounted for in determining the consideration payable for the supply, then Toast may recover from you an amount on account of those taxes, duties or customs.

10. Variations

- (a) We reserve the right to modify, permanently or temporarily disable or discontinue any part of the Software and to alter, amend or withdraw any part of this Agreement or any information or material appearing within the Software or User Documentation at any time, without liability upon providing Notice to you that we in our sole discretion deem as reasonable.
- (b) Each version of this Agreement is published and available on the Website. Where changes made to the terms of this Agreement impact your rights or obligations, you will be provided with Notice that we in our sole discretion deem to be reasonable before the changes take effect.
- (c) Please be aware that, your continued use of the Software following any change under this clause 10 will constitute your automatic acceptance of the change.

11. Termination

1.11. Termination by notice

Either party may terminate this Agreement immediately by providing Notice to the other.

1.12. Effect of termination

Upon termination or expiry of this Agreement:

- (a) you must pay all outstanding Fees and any other payments due to Toast under this Agreement or the Distributor under the Distribution Agreement; and

- (b) any accrued rights or liabilities of either party or any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination will not be affected.

12. Indemnity

1.13. Your indemnity

- (a) You agree to indemnify Toast and keep Toast indemnified against any Loss that may be incurred by Toast arising from or in connection with:
 - (i) any breach or default by you of this Agreement (including any breach of warranty);
 - (ii) a negligent act or omission by you or by a party you are responsible for (including all End Users);
 - (iii) your failure or an End User's failure to comply with any Law or the direction of any Government Authority;
 - (iv) your failure to comply with your contractual obligations to any third party insofar as such obligations arise or relate to the Use by you or the End Users of the Software; or
 - (v) any Claim made against Toast by any third party as a result of an act or omission by you.
- (b) The indemnity provided to Toast by you in accordance with clause 12.1 will be reduced proportionately to the extent that any Loss incurred by Toast is contributed to by the negligent acts or omissions of Toast.

1.14. Toast indemnity

- (a) Subject to clause 12.2(b), Toast will indemnify you with respect to any Loss suffered as a result of any Claim made against you by a third party alleging that the Software infringes the Intellectual Property Rights of that third party.
- (b) Toast will not be liable to you under sub clause 12.2(a) if:
 - (i) you do not provide Notice to Toast of the other person's Claim within 10 Business Days after becoming aware of it;
 - (ii) Toast's ability to defend the claim has been prejudiced by your non-compliance with any of your obligations under this Agreement;
 - (iii) you do not give Toast reasonable assistance in the circumstances in defending the Claim; and
 - (iv) you have attempted or offered to settle any Claim with a third party; or
 - (v) you do not permit Toast to have control of the defence of the Claim and all related settlement negotiations.

13. Liability

1.15. Exclusion of Consequential Loss

To the maximum extent permitted by Law, Toast will not be liable for any Consequential Loss arising in connection with this Agreement, the provision of the services or the Use of the Software, even if Toast was appraised of the likelihood of such loss or damage occurring.

1.16. Limit of liability

- (a) Except as expressly provided by this Agreement, the Software is provided on an "as is" basis without any representation, warranty or guarantee as to quality, condition or fitness for purpose and Toast does not warrant that the Software will be free of Harmful Code, defect, uninterrupted, accurate, complete, current, stable, bug free, error free or available at any time in respect of its operation.
- (b) Except in relation to liability for an infringement of confidentiality or Intellectual Property Rights, Toast's liability in damages in respect of any act or omission of Toast's in connection with Toast's obligations under this Agreement will not exceed the net payment received by Toast from you in the immediately preceding 6 months from when the cause of action arose.
- (c) Toast's liability for any Loss caused by its negligence will be reduced proportionately to the extent that your acts or omissions have contributed to such Loss or damage.
- (d) Toast has no responsibility or liability whatsoever as a consequence of any Loss suffered by you as result of:
 - (i) any issues with the Systems, the Distributor or with a third-party provider of storage / hosting to you;
 - (ii) any third party software malfunctions; or
 - (iii) malfunctions in the Software caused as a result of interactions or integrations with third party software.

1.17. Exclusion of other Terms

- (a) Subject to clause 13.3(b), any condition, guarantee or warranty which would otherwise be implied in this Agreement is hereby excluded.
- (b) Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss 51 to 53 of the Australian Consumer Law) is limited (at Toast's election) to Toast providing the Software again or the payment of the cost of having the Software supplied again.

14. Notices

Any notices given under or in connection with this Agreement:

- (a) must be in legible writing and in English;
- (b) sent to the contact address specified in the Proposal, or as otherwise updated from time to time;

- (c) must be:
 - (i) delivered to the party's address;
 - (ii) sent by email to that party's email address;
- (d) will be deemed to be received by the addressee:
 - (i) if delivered by hand, at the time of delivery;
 - (ii) if sent by post, on the third Business Day after the day on which it is posted, the first Business Day being the day of posting; or
 - (iii) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).

15. Disputes

- (a) If a dispute arises out of or relates to this Agreement (**Dispute**) a party to the Agreement may not commence arbitration proceedings relating to the Dispute under clause 17 unless it has complied with this clause, except where the party seeks urgent interlocutory relief.
- (b) A party claiming that a Dispute has arisen must give a Notice (**Dispute Notice**) to the other party or parties to this Agreement specifying the nature of the Dispute. The parties must then negotiate in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed to by them.
- (c) If the Parties do not resolve the Dispute within fourteen days of receipt of the Dispute Notice (or such further period as agreed in writing by them) any party to the Dispute may refer the Dispute to mediation by a mediator nominated by the President or the nominee of the President for the time being of the Queensland Law Society Incorporated.
- (d) Each party must bear its own costs in connection with resolving the Dispute and the Parties must bear equally the costs of any mediator engaged.
- (e) Any information or documents disclosed by a party under this clause must be kept confidential and may not be used except to attempt to resolve the dispute.

16. Arbitration

- (a) Any dispute, controversy or claim that is unresolved under clause 16, that arises out of or in connection with this Agreement, including any question regarding its existence, validity or termination, will be referred to and finally resolved by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force, which are deemed to be incorporated by reference in this clause. The number of arbitrators will be one. The language to be used in the arbitral proceedings will be English.
- (b) If you are located in Australia or New Zealand, the arbitration will be administered by the Australian Centre for International Commercial Arbitration (**ACICA**). The appointing authority will be ACICA. The place of arbitration will be Brisbane, Australia.

- (c) If you are not located in Australia or New Zealand, the arbitration will be administered by the Singapore International Arbitration Centre (**SIAC**). The appointing authority will be SIAC. The place of the arbitration will be Singapore.
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17. General matters

1.18. Essential terms

Clauses 4, 7, 9 and 10 are essential terms of this Agreement.

1.19. Force majeure

Neither party will be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure. If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended. If a delay or failure by a party to perform its obligations due to Force Majeure exceeds thirty (30) days, either party may immediately terminate this Agreement on providing Notice to the other party.

1.20. Assignment

- (a) Toast may, upon Notice in writing to you, assign, novate or otherwise transfer the benefit of all or any part of this Agreement to any other person or entity.
- (b) Neither any rights, benefits or liabilities relating to this Agreement may be assigned, novated or otherwise transferred by you without Toast's prior consent, which will not be unreasonably withheld.

1.21. Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he is not aware of any fact or circumstance that might affect his authority to do so under that power of attorney.

1.22. Consents

Unless this Agreement expressly states otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under this Agreement. To be effective any consent under this Agreement must be in writing.

1.23. Entire Agreement

This Agreement 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 Agreement and has no further effect. You warrant that it has not relied on any representation made by Toast which has not been stated expressly in this Agreement.

1.24. Further acts

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this Agreement.

1.25. Jurisdiction

This Agreement is governed by the law in force in the State of Queensland and each party submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine

appeals from those courts, in relation to any proceedings that may be brought at any time relating to this Agreement.

1.26. No Merger

No right or obligation of any party will merge on the termination or expiration of this Agreement.

1.27. Severability

Any provision of this Agreement that is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of this Agreement which shall remain in force.

1.28. Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Agreement.
- (b) Any waiver or consent given by any party under this Agreement will only be effective and binding on that party if it is given or confirmed in writing by that party and no waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

18. Definitions and Interpretation

1.29. Definitions

In this Agreement:

Access means to provide you with a fully functioning version of the Software available to Use on your Systems.

Acceptance Date means the date the agreement is accepted by you.

Agreement has the meaning given in clause 1.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means a day that is not a Saturday, Sunday or any other day that is a public holiday or bank holiday in the place where an act is to be performed or a payment is to be made.

Claim includes a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Consequential Loss means indirect economic loss, loss of income or profit, loss or damages resulting from wasted management time, damage to goodwill or business reputation, loss of contract, loss of data, liability under other agreements or to third parties, loss of opportunity or any other special, indirect, remote or punitive loss or damage.

Corporations Act means the *Corporations Act 2001* (Cth).

Dispute has the meaning given in sub clause 15(a).

Dispute Notice has the meaning given in sub clause 15(b).

Distributor means a third party authorised by us to provide you with Access to the Software.

Distribution Agreement means the arrangement you enter with the Distributor.

End User means a person that you have authorised to Use the Software on your Systems.

Fees mean the fees payable to Toast under this Agreement or to the Distributor under the Distribution Agreement which will be notified to you for the provision of Access to the Software which may be charged as Toast or the Distributor reasonably determine including on a per play, per minute or per month basis.

Force Majeure means any cause beyond the reasonable control of a party and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost, including an act of God, fire, earthquake, storm or flood, and the failure of third-party equipment, software, technology or other services necessary for the performance of a party's obligations under this Agreement.

Government Authority means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

GST means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Development Services Tax) Act 1999* (Cth).

Harmful Code means computer program virus, drop dead device, trojan horse, time bomb, back door device or other code that is harmful, destructive or disabling or which assists in or enables unauthorised access to, or use or modification of any of your Systems.

Insolvent means if a person is insolvent or an insolvent under administration, or has a controller appointed (each as defined in the Corporations Act), are in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction whilst solvent) or otherwise unable to pay debts when they fall due.

Intellectual Property Rights means all intellectual property rights, including the following rights:

- (a) copyright, patents, rights in circuit layouts, trademarks, designs, trade secrets, know how, and any right to have confidential information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist,

whether or not such rights are registered or capable of being registered.

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

Licence has the meaning given in sub clause 3.1.

Loss includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.

Moral Right means moral rights as defined in the *Copyright Act 1968 (Cth)*.

Notice means a notice given under or in connection with this Agreement that adheres to the requirements in clause 14.

Software has the meaning given in clause 1.

System means all computer firmware, middleware, protocols and other computer programs and all computer hardware, peripheral equipment, networks, communications systems and other equipment of whatever nature, used in your receipt of the Software.

Tax Invoice means an invoice issued by Toast for payments received under this Agreement.

Use means to load, execute, display and perform.

User Documentation means any documentation or material provided or made available to you by Toast containing technical and/or practical information regarding the End Users Use of the Software.