

Site Terms and Conditions of Use

1. About the Site

- (a) Welcome to the www.mylifecapsule.com.au and app.mylifecapsule.com.au sites and app (**Site**). The Site provides for the online recording of an individual's life story, memories and thoughts (the **Services**).
- (b) The Site is operated by Embark360 Pty Ltd (ACN 618 704 037) (**we, us** or **our**). Access to and use of the Site, or any of its associated Services, is provided by Embark360 Pty Ltd.
- (c) Please read these terms and conditions and any documents referred to within it (collectively, **Terms**) carefully before browsing or using the Site or our services.
- (d) If you do not agree with the Terms, you must cease usage of the Site, or any of Services, immediately.

2. Acceptance of the Terms

You accept the Terms by:

- (a) using, browsing or accessing the Site; or
- (b) clicking to accept or agree to the Terms where we make this option available to you in the user interface.

3. Subscription to use the Services

- (a) In order to access the Services, you must first purchase a subscription through the Site (the **Subscription**) and pay the applicable fee for the selected Subscription (the **Subscription Fee**). No Subscription Fee is payable during Beta Testing. Refer to clause 22 for detail of Beta Testing Phase.
- (b) In purchasing the Subscription, you acknowledge and agree that it is your responsibility to ensure that the Subscription you elect to purchase is suitable for your use. No Subscription Fee is payable during Beta Testing. Refer to clause 22 for detail of Beta Testing Phase.
- (c) Once you have purchased the Subscription, you will then be required to register for an account through the Site before you can access the Services (the 'Account'). No Subscription Fee is payable during Beta Testing. Refer to clause 22 for detail of Beta Testing Phase.
- (d) As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including:
 - (i) Email address
 - (ii) Preferred username
 - (iii) Mailing address
 - (iv) Telephone number
 - (v) Password
 - (vi) Name/s of Next-of-kin

- (e) You warrant that any information you give to Embark360 Pty Ltd in the course of completing the registration process will always be accurate, correct and up to date.
- (f) Once you have completed the registration process, you will be a registered member of the Site (**Member**) and agree to be bound by the Terms. As a Member, you will be granted immediate access to the Services from the time you have completed the registration process until the subscription period expires (the **Subscription Period**).
- (g) You may not use the Services and may not accept the Terms if:
 - (i) you are not of legal age to form a binding contract with Embark360 Pty Ltd; or
 - (ii) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.

4. Your obligations as a Member

As a Member, you agree to comply with the following:

- (a) you will use the Services only for purposes that are permitted by:
 - (i) the Terms; and
 - (ii) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;
- (b) you have the sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate cancellation of the Services;
- (c) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify Embark360 Pty Ltd of any unauthorised use of your password or email address or any breach of security of which you have become aware;
- (d) access and use of the Site is limited, non-transferable and allows for the sole use of the Site by you for the purposes of Embark360 Pty Ltd providing the Services;
- (e) you will not use the Services or the Site in connection with any commercial endeavours except those that are specifically endorsed or approved by the management of Embark360 Pty Ltd;
- (f) you will not use the Services or Site for any illegal and/or unauthorised use which includes collecting email addresses of Members by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Site;
- (g) you agree that commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Site without notice and may result in termination of the Services. Appropriate legal action will be taken by Embark360 Pty Ltd for any illegal or unauthorised use of the Site; and
- (h) you acknowledge and agree that any automated use of the Site or its Services is prohibited.

5. Payment

- (a) No Subscription Fee is payable during Beta Testing.
- (b) Where the option is given to you, you may make payment of the Subscription Fee by way of PayPal (**PayPal**).
- (c) In paying your Subscription Fee via PayPal, you warrant that you have read, understood and agree to be bound by the [PayPal terms and conditions which are available on their website](#).
- (d) All payments made in the course of your use of the Services are made using Stripe (**Stripe**).
- (e) In using the Site, the Services or when making any payment in relation to your use of the Services, you warrant that you have read, understood and agree to be bound by the [Stripe terms and conditions which are available on their website](#).
- (f) You acknowledge and agree that where a request for the payment of the Subscription Fee is:
 - (i) returned or denied for whatever reason by your financial institution; or
 - (ii) otherwise unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the Subscription Fee.

6. Refund policy

- (a) We will only provide you with a refund of the Subscription Fee in the event that:
 - (i) we are unable to continue to provide the Services; or
 - (ii) we make a decision, at our absolute discretion, that it is reasonable to do so under the circumstances.
- (b) Where this occurs, the refund will be in the proportional amount of the Subscription Fee that remains unused by the Member (**Refund**).

7. Copyright and intellectual property

- (a) The following aspects of the Site and our Services are protected by copyright, trademark and other intellectual property laws: information, text, materials, graphics, logos, button icons, images, video and audio clips, trademarks (whether registered or not), advertisements, layout, arrangement, graphical user interface, look and feel, databases and control features (collectively, **IP Content**).
- (b) All IP Content is owned, registered and/or licensed by us. We grant you a worldwide, non-exclusive, royalty-free, revocable licence whilst you are a Member to:
 - (i) use the Site pursuant to the Terms;
 - (ii) copy and store the Site and the material contained in the Site in your device's cache memory; and
 - (iii) print pages from the Site for your own personal and non-commercial use.
- (c) You may not, without our prior written permission and the permission of any other relevant rights owners, broadcast, reproduce, distribute or adapt or change in any way the IP Content, Services or third party Services for any purpose unless

otherwise provided by these Terms. This prohibition does not extend to materials on the Site which are in the public domain.

- (d) We do not grant you any other rights whatsoever in relation to the Site or the Services. We reserve all other rights.
- (e) We retain all rights, title and interest in and to the Site and all related Services. Nothing you do on or in relation to the Site will transfer to you any:
 - (i) business name, trading name, domain name, trademark, industrial design, patent, registered design or copyright, or
 - (ii) a right to use or exploit a business name, trading name, domain name, trademark or industrial design, or
 - (iii) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process).

8. Privacy

We take your privacy seriously and any information provided through your use of the Site and/or Services are subject to our Privacy Policy (mylifecapsule.com.au/privacy-policy).

9. General Disclaimer

- (a) Use of the Site and the Services is at your own risk. Everything on the Site and the Services is provided to you "as is" and "as available" without warranty or condition of any kind. We do not, nor do any of our affiliates, directors, officers, employees, agents, contributors and licensors, make any express or implied representation or warranty about the Services or any services referred to on the Site, including (but not limited to) warranties in relation to:
 - (i) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful components, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
 - (ii) the accuracy, suitability or currency of any information on the Site (including third party material and advertisements on the Site);
 - (iii) costs incurred as a result of you using the Site or the Services; and
 - (iv) the Services or operation in respect to links which are provided for your convenience.
- (b) Our Site is designed as a place for you to leave mementoes and other important information to pass on to your loved ones after your death. Therefore, the information stored on this Site may relate to:
 - (i) your personal will and other information relating to your estate;
 - (ii) personal financial information; and
 - (iii) other legal or sensitive documents which you may want to disclose to selected people after your death.
- (c) In relation to information referred to in paragraph 5(b) or any other information you provide us, we are not liable for any legal effect of any documents stored with us using our Service.

- (d) We do not purport to give legal advice in relation to your estate, finances or any other legal matters. Our Service is a storage and disclosure service only, and should not be used for any other purpose.

10. Limitation of liability

- (a) Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which may not be limited or excluded by law.
- (a) To the extent permitted by law, all other terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded.
- (b) To the extent permitted by law, we, our directors, officers, affiliates, employees, partners and representatives, and third parties connected to us, hereby expressly exclude:
 - (i) any conditions, warranties and terms which might be implied by statute, common law or the law of equity;
 - (ii) any liability to you or any third person however arising (and whether arising under statute, in tort (for negligence or otherwise), breach of contract or otherwise, even if foreseeable) for:
 - (A) any loss of or damage to any property belonging to you or any third person, or personal injury or death to you or any third person;
 - (B) special, indirect or consequential loss or damage; or
 - (C) loss of income, revenue or profits, loss or interruption of business, loss of contracts, loss of anticipated savings, loss or corruption of data, loss of use, loss or privacy, loss of goodwill, wasted management or office time, loss of opportunity or expectation loss, loss of production and for any other loss or damage of any kind,

in any way connected with the Site, the Services, or in connection with the use, inability to use, or results of the use of the Site, any social media pages and websites linked to it and any IP Content, user generated content and this party content posted on, or via, the Site (or on, or via, our social media pages or any websites linked to the profiles of third party providers).

- (c) Our total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.

11. Access to Site and Services

- (a) The Terms will continue to apply until terminated as set out below.
- (b) If you want to terminate the Terms, you may do so by:
 - (i) providing us with 7 days' notice of your intention to terminate by using the 'Contact Us' link on the homepage of the Site; and
 - (ii) closing your accounts for all of the services which you use, where we have made this option available to you.
- (c) We may at any time, terminate the Terms with you if:

- (i) you have breached any provision of the Terms or intend to breach any provision;
- (ii) we are required to do so by law; or
- (iii) our provision of the Services to you is, in our opinion, no longer commercially viable.

Subject to local applicable laws, we reserve the right to discontinue or cancel your membership at any time and may suspend, revoke or deny, in our sole discretion, your access to all or any portion of the Site or the Services without notice, if you:

- (d) breach any provision of the Terms or any applicable law;
- (e) engage in conduct that impacts our name, goodwill or reputation; or
- (f) engage in conduct that violates the rights of a third party.

12. Indemnity

You agree to indemnify us, and our affiliates, employees, agents, contributors, third party content providers and licensors from and against:

- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with your content;
- (b) any direct or indirect consequences of you accessing, using or transacting on the Site or attempt to do so; and/or
- (c) any breach of the Terms.

13. Viruses and hacking

- (a) You must not misuse the Site by knowingly introducing viruses, trojans or other material, which is malicious or technologically harmful.
- (b) You must not attempt to gain unauthorised access to the Site, the server on which the Site is stored or any server, computer or database connected to the Site.
- (c) We will not be liable for any loss or damage caused by a virus, system failures or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material, due to:
 - (i) your use of the Site or Services;
 - (ii) your downloading of any material or content posted on it, on any website linked to it, or otherwise downloaded in relation to the provision of Services on the Site.
- (d) We recommend that all Internet users always ensure they have up to date virus checking software installed.

14. Force majeure

We are not responsible for any delay, suspension or failure to provide the Site (or any websites linked to the Site) arising out of any acts, events, omissions, accidents or circumstances outside of our reasonable control, including:

- (a) strikes, lock-outs or other industrial disputes;

- (b) failure or breakdown of plant, machinery, software, hardware or communication network;
- (c) acts of God and natural disasters;
- (d) sabotage, war or national emergency;
- (e) riots and civil commotions;
- (f) computer hacking, internet interruptions, viruses or malicious damage;
- (g) compliance with any law or governmental order, rule, regulation or direction;
- (h) accidents, fires, explosions, floods, storms;
- (i) default of hosting or data centre providers or other suppliers or subcontractors;
- (j) an act or omission of a third party; or
- (k) shortage of suppliers, equipment and materials.

15. Dispute resolution

15.1 Compulsory

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

15.2 Notice

A party to the Terms claiming a dispute (**Dispute**) has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

15.3 Resolution

On receipt of that notice (**Notice**) by that other party, the parties to the Terms (**Parties**) must:

- (a) Within 14 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (b) If the Dispute has not been resolved 14 days after the date of the Notice, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Conflict Resolution Service or his or her nominee;
- (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (d) The mediation will be held in Melbourne, Australia.

15.4 Confidential

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

15.5 Termination of mediation

If 2 weeks have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

16. Jurisdiction

The Services offered by Embark360 Pty Ltd is intended to be primarily viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Site, you agree that the exclusive venue for resolving any dispute shall be in the courts of Victoria, Australia.

17. No waiver

A waiver of our right, power or remedy must be signed by us and communicated to you in writing.

18. Variations

- (a) We reserve the right to vary these Terms, in whole or in part, at any time.
- (b) The changes will be effective immediately upon posting the varied Terms to the Site, unless expressed otherwise.
- (c) It is your sole responsibility to regularly check these Terms for any changes.
- (d) If you do not agree with any of the changes to these Terms, you may unsubscribe from the Site and any of its Services by following the process described in clause 11.
- (e) We may also notify you of any material changes to these Terms via email or by notice posted on the homepage of the Site.
- (f) Your continued use of the Site after the posting of the varied Terms will be deemed as your acceptance of the amended terms.

19. Governing law

These Terms are governed by the laws of the State of Victoria, Australia and each party submits to the exclusive jurisdiction of the courts of the State of Victoria, Australia.

20. Independent legal advice

The parties confirm and declare that the provisions of the Terms are fair and reasonable and the parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

21. Severance

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.

22. Beta Testing

- a) Although utilisable My Life Capsule Software is still being developed, tested and evaluated. My Life Capsule has not been released for sale or distribution as yet.

- b) Subscribers will be provided with 14 days written notice, by email, to notify of the impending activation of the full My Life Capsule service, marking the end of the Beta testing phase.
- c) Subscribers involved in the Beta testing phase will be given the opportunity to upgrade to a premium subscription, with fees payable, or alternatively may keep the portal services that are free of charge.
- d) Subscribers may download the content of their capsule at any time.