

The Megalong Valley Community and Landowners – Bush Telegraph Terms and Conditions of Use

1. Preamble

These terms and conditions of use (**Terms**) apply to your use of the The Megalong Valley Community and Landowners ABN 39 425 588 904 (**MVCLA, we, us, our**) Bush Telegraph app which can be found via the Apple App Store, Google Play Store or at <https://www.bushtelegraph.org> (**App**).

By accessing or using the App, you acknowledge that you have read, understood and agree to be bound by these Terms. If you do not agree to be bound by these Terms, you must not use the App.

We may amend these Terms from time to time by posting an updated version of these Terms on the App. Any amendments will be effective immediately upon being posted. If these key terms are amended and such amendment(s) should reasonably be brought to your attention, we will send an email to your registered email address (or where push notifications are enabled by you, we will send you a push notification) informing you of, and directing you to, the updated Terms. If these Terms are amended, you must follow the updated Terms. By continuing to use the App, you agree to be bound by the updated Terms. If you do not agree to be bound by the updated Terms, you must stop using the App.

YOU SHOULD BE AWARE OF SEVERAL KEY TERMS

In this summary we outline some of the key terms that apply to you. This summary is designed to assist you by disclosing certain terms that affect you. However it is not a substitute for reading and understanding these Terms, and it is not intended to substitute, expand or amend these Terms. Please contact us if you have any questions.

Limitations of our liability

Our liability to you and certain third parties is limited under these Terms (to the extent permitted by law and subject to the Australian Consumer Law) and our liability for certain types of Loss is excluded. These limitations and exclusions of liability generally apply to any Loss suffered by you in connection with your use of the App, except where the Australian Consumer Law prohibits us from limiting or excluding our liability.

Your liability and warranties

Your access to, and use of, the App is at your own risk. Among your other obligations under these Terms, you will be responsible and liable for: (a) use of the App by any person who has access to your login details and password; (b) internet access, data download and other network charges arising from your use of the App; and (c) the operation, maintenance and security of your Device.

Terminated or blocked access to the App

We may decide to block your access to the App (which we may do, for example, for security reasons). We may request that you cease any conduct which is contrary to these Terms and it is your obligation to comply immediately with these requests.

Suspended access and modifications to the App

We reserve the right to: (a) suspend your use of, or withdraw, the App and/or any of its features or components; and (b) add to, amend, remove, or disable access to, any part of the App and/or any of its features or components, in each case at any time and for any reason, without notice to you.

Personal information

We may disclose your personal information to a third party for the purpose of making the App and the services provided by the App available to you and improving the user experience in relation to the App.

2. Definitions

In these Terms, unless the context otherwise requires:

- (a) **Australian Consumer Law** has the meaning given in the *Competition and Consumer Act 2010* (Cth), as amended, replaced or superseded from time to time;
- (b) **Consequential Loss** means means any Loss suffered by a party as a result of a breach of these Terms which cannot reasonably be considered to arise naturally from that breach, including loss of revenue, loss of goodwill or business, loss of customers, loss of capital, downtime costs, loss of actual or anticipated profit, loss of or damage to reputation, loss under or in relation to any other contract, loss of data, loss of use of data, loss of anticipated savings or benefits, or any indirect, exemplary or special loss, damage, cost or expense or other claims for consequential compensation.
- (c) **Consumer** has the meaning given in the Australian Consumer Law;
- (d) **Device** means your own internet-enabled device that is compatible with the App and has a current and working internet connection;
- (e) **Loss** means all liabilities, losses, damages, costs and expenses (including legal costs and expenses, regardless of whether incurred or awarded) arising in contract, tort (including negligence) or otherwise; and
- (f) **Terms** has the meaning given in the 'Preamble' section above.

3. Licence

All copyright and other intellectual property rights in the App (including all trade marks appearing on the App) are owned by us and/or our licensors, or our licensor's licensors.

If you have your own validly issued (or validly registered) login details and password which may be used to access the App, we grant you a revocable, non-transferable, non-exclusive, royalty-free, personal licence to use the App on your Device for your own purposes, and to download and print out a copy of the information available from the App for your own personal use.

You must not (and must not attempt to):

- (a) except as expressly permitted by the above licence, use or copy any part of the App without our prior written consent;
- (b) distribute, translate, modify or tamper with, any part of the App;
- (c) create derivative works of, or from any part of, the App;
- (d) sell, rent, lease, sub-licence, assign, exchange or otherwise transfer your rights under these Terms; or
- (e) permit or assist any person to engage in any act described in paragraphs (a) to (d) above.

4. User Account

You must create an account with us in order to access and use the App (**User Account**). In order to create a User Account, you must be at least 18 years old or, if under the age of 18 years old, you must be under the supervision of a parent or legal guardian who is at least 18 years old.

If you create a User Account, you must:

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- (a) provide us with accurate and current personal information, including your name, mobile number, address and a valid email address or any other information we may reasonably require from time to time;
- (b) obtain or register login details and password as required by us, and use them in the manner we direct from time to time in order to access and use the App;
- (c) keep your login details and password for the App confidential, and not share them with any person, or allow any other person to use the App using your login details or password; and
- (d) if you have reasons to believe that another person is aware of your password for the App, immediately take steps to re-secure your User Account (including by changing your password).
- (vii) contains links to other sites that contain or promote the material identified in paragraphs (i) to (vi) above;
- (c) to obtain unauthorised access to (or damage, disrupt or interfere with the operation of) any computer, system, application, network or service;
- (d) in any way that may bring negative exposure or harm to us, our suppliers or other users of the App (including by linking the App or any part of it in a way that damages or takes advantage of any person's reputation such as: (i) by implying or suggesting that you have any kind of association or affiliation with that person, or approval and endorsement from that person when there is none; or (ii) in a way that is illegal or unfair); or
- (e) in any way that may cause us, our suppliers or other users of the App to incur liability to a third party.

We may decline to provide you login details or a password, or to permit you to register login details or a password, for the App in our sole discretion.

If another person uses your login details or password for the App, you are responsible and liable for the use that person makes of the App with your login details or password, as if that use of the App was by you.

5. Use of the App

You must procure your own internet access and Device in order to access and use the App. You are responsible for all internet access, data downloads and other network charges arising from your use of the App and you agree that we have no responsibility or liability for those charges.

You are responsible for the operation and maintenance of your Device and for ensuring that the App is accessible from your Device. This includes installing a compatible operating system (if applicable) for accessing and using the App on your Device.

You must not use (or attempt to use) the App:

- (a) for any unlawful or dishonest activity, or any activity prohibited by these Terms;
- (b) to access, transmit, publish or communicate material which:
 - (i) is false, inaccurate, defamatory, offensive, inflammatory, obscene, unsuitable for minors, abusive, indecent, threatening, or otherwise unlawful;
 - (ii) is xenophobic, racist, abusive, harassing or hateful;
 - (iii) is invasive of a person's privacy or constitutes personal abuse directed at other users;
 - (iv) is unsolicited or constitutes spam, commercial advertising, the promotion of gambling or the promotion of your own site, business or organisation;
 - (v) contains a virus or other harmful code;
 - (vi) infringes a person's copyright or other rights (including any other intellectual property rights); or

In addition, you must not do (or attempt to do) any of the following:

- (f) use data mining, robots, screen scraping or similar data gathering and/or extraction tools on the App; or
- (g) interfere with the security-related features of the App.

We are under no obligation to monitor any transmissions made or content submitted or (where applicable) published using the App. However, we have the right to monitor, edit, disclose, delete and (where applicable) refuse to transmit or post any such transmission and content, including to address security risks or other circumstances which may result in liability for us or other users of the App.

We may ask you to cease any conduct which we believe is contrary to these Terms, and you must immediately comply with any such request. We may at any time terminate and block your access to the App or the services provided by the App for any reason, in our reasonable discretion. In addition, we may refer fraudulent, abusive or illegal activity to the relevant authorities.

6. Performance of the App

We will use reasonable endeavours to make the App available to you on an ongoing basis. However, the availability of the App depends on various third party suppliers, and accordingly, we do not warrant or guarantee that:

- (a) you will be able to use the App at any time;
- (b) your use of the App will be continuous, uninterrupted, secure or error-free;
- (c) any defect will be corrected.

You agree that the App may not be available for use from time to time, and that you may be disconnected from your use of the App at any time for any reason, including if:

- (a) any network connection difficulties occur;
- (b) the systems providing those services are unavailable for any reason (including so that maintenance can be performed);
- (c) you breach any of these Terms; or
- (d) we decide to terminate your access to the App in accordance with these Terms.

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We make no guarantee as to the reliability or performance of the App. The performance of the App depends on various factors, including the functions, capacity and configuration of your Device, the speed of your internet connection, and the number of users accessing the App and the systems that support it.

The information available through the App is subject to updates from time to time (including because some of that information is based on material provided by third parties, including users of the App) and, while we aim to ensure that it is up-to-date, there may be delays, errors or omissions that could affect its currency or accuracy. Unless stated otherwise, any post or statement available on the App which has been published or authored by a member of any emergency service is made by that person in their individual capacity and is not a post or statement made by us. Accordingly, to the maximum extent permitted by law, we cannot and do not warrant or guarantee that the information you obtain through the App whether from us or information made available by any user of the App is or will be current, complete or accurate at all times. You agree that you will make your own enquiries to determine whether the information you obtain through the App is current, complete and accurate before using or otherwise relying on it. Subject to the 'Consumer Guarantees' section below, we are not responsible for any Loss you suffer or incur as a result of your failure to comply with this paragraph.

Additionally, by using the App you agree that the information available through the App is general in nature and is intended only to provide a generic and localised guide of road closures and similar incidents. It is not intended to be used as, and must not be used as or relied upon for your or any other persons' safety or security, and you agree that accessing or using that information does not create a duty of care relationship, or other similar relationship with us. You must not rely on the information available through the App and should instead contact Triple Zero (000) or seek and obtain your own medical or other advice as appropriate to your circumstances.

7. Security

In order to access and use the App and its features as intended, you must:

- (a) when using the App through a web browser, enable the App to use cookies; and
- (b) grant the App any other permissions and access to your Device that it requires from time to time.

If you do not grant these permissions and this access, you may be unable to use the App or some of its features.

The App uses the internet to provide services and information. By using the App, you agree to accept all risks associated with using the internet, including the potential exposure to viruses and harmful code which may affect your Device.

We do not warrant or guarantee the security of the App. You are solely responsible for the security of your Device (including any data stored on that Device) and for using appropriate and up-to-date software on your Device to detect and manage the threat posed by viruses and other harmful code.

8. Consumer Guarantees

Under the Australian Consumer Law (and other similar legislation of Australian states and territories), certain statutory guarantees are conferred in relation to the supply of goods or services to a Consumer (**Consumer Guarantees**).

Where you, as a Consumer, acquire goods or services through your use of the App and those goods or services:

- (a) are of a kind ordinarily acquired for personal, domestic or household use or consumption (**PDH Goods or Services**), the operation of the Consumer Guarantees cannot be, and are not in these Terms, excluded, restricted or modified; or

- (b) are not PDH Goods or Services, we limit our liability for a failure to comply with any Consumer Guarantee (other than where to do so would otherwise cause all or part of this clause to be void) to, at our option:

- (i) in the case of goods, repairing or replacing the goods or paying the cost of having those goods repaired or replaced; and
- (ii) in the case of services, re-supplying the services or paying the cost of having the services re-supplied,

and we do not exclude or limit the operation of the Consumer Guarantees under any other provision of these Terms or in any other manner and you agree it is fair and reasonable in all the circumstances for our liability to be so limited.

9. Liability

Your access to, and use of, the App is at your own risk.

To the extent permitted by law and subject to the 'Consumer Guarantees' section above:

- (a) we exclude from these Terms all representations, guarantees, conditions, warranties, rights, remedies, liabilities and other terms that may be conferred or implied by statute, general law or custom (except any guarantee or right conferred under any legislation (including the Australian Consumer Law), the exclusion of which would contravene legislation or cause part or all of this clause to be void); and
- (b) we disclaim all responsibility and liability (whether arising in contract, tort (including negligence), under statute or otherwise and including for any Consequential Loss) suffered or incurred by you or any third party, whether directly or indirectly, by reason of any use of the App.

You indemnify us and our employees, officers, contractors and agents (together the **Indemnified Parties**), against any Loss suffered or incurred by the Indemnified Parties in connection with any claim made by a third party due to or arising out of your breach of:

- (a) these Terms;
- (b) any applicable law; or
- (c) the rights (including intellectual property rights) of any person.

10. Privacy

We may collect, use, store, disclose and otherwise handle your personal information in accordance with these Terms and applicable legislation.

If you use the App, the information that we may collect includes:

- (a) the type of operating system and/or other software or firmware used by your Device;
- (b) the data you send and receive using the App, and the type and quantity of that data;
- (c) the dates and times at which you use the App; and
- (d) the IP and MAC address of your Device.

If you create a User Account, the information we may collect includes your:

- (a) name;
- (b) mobile number; and

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(c) email address.

You represent and warrant to us that the personal information you provide to us is complete and accurate.

We may use and disclose your personal information to third parties for the purposes of:

- (a) making the App and the services provided by the App available to you; and
- (b) improving the user experience in relation to the App.

11. Third party links

The App may contain links to other websites or applications over which we have no control. Those links are provided for your convenience only, and we are not responsible for their use, effect or content. We make no representations or warranties as to, and accept no responsibility for, the accuracy of information on those websites, nor do we endorse any information, opinions, goods or services referred to on them.

12. Suspension, withdrawal of or changes to the App

To the extent of any breach by you of these Terms, we reserve the right to:

- (a) suspend your use of, or withdraw, the App and/or any of its features or components; and
- (b) add to, amend, remove, or disable access to, any part of the App and/or any of its features or components,

in each case at any time, without notice to you.

If requested by us, you must immediately:

- (a) stop using or accessing the App; and
- (b) destroy, expunge, disable or restrict access to any information from the App that you have printed or downloaded, and any information derived or generated from that information.

13. Miscellaneous

- (a) **No waiver** – We do not waive a right, power or remedy in connection with these Terms if we fail to exercise or delay in exercising the right, power or remedy. A right, power or remedy is only waived by us if it is in writing and signed by us.
- (b) **Governing law** – These Terms are governed by the laws of New South Wales, Australia. You submit to the exclusive jurisdiction of the courts of New South Wales, Australia and the courts having appeal from them.
- (c) **Severability** – If any part of these Terms is found to be void, invalid, unlawful or unenforceable, that provision is deemed to be ineffective only to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions. The remaining terms remain in force and constitute a binding agreement between you and us.
- (d) **Relationship between the parties** – Nothing in these Terms constitutes the parties as partners or joint venturers or agents for the other party or give rise to any other form of fiduciary relationship between the parties.
- (e) **Entire agreement** – These Terms, including any other additional terms which may be applicable at different stages of usage of the App, contains the entire

agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is deemed superseded by these Terms and has no further effect.

- (f) **Force majeure** – To the extent permitted by law, we will not be liable to you for any failure to fulfil, or delay in fulfilling, our obligations caused by circumstances outside of our reasonable control.
- (g) **Dispute resolution** – If you have any issue arising out of these Terms or in relation to the App, you must notify us in writing and use reasonable endeavours to resolve the matter through discussions or correspondence with us before commencing any court or tribunal proceedings.
- (h) **Notices** – Notices to be given to either party must be in writing, and in our case must be delivered to us by email or at our registered office.

Last updated: 1 March 2023