

# PRIVACY POLICY

## END USER LICENCE AGREEMENT

### 1. Introduction

Please read this EULA carefully, as it sets out the basis upon which [XportMyData Limited] (referred to in this EULA as 'we', 'us' and 'our') licenses use of the Software for use by you.

Before you can access the Software we will ask you to give your express agreement to the provisions of this EULA and to our Privacy Policy, which governs our collection and use of personal information in connection with the Software.

By agreeing to be bound by this EULA, you further agree that any person you authorise to use the Software will comply with the provisions of this EULA.

### 2. Definitions

#### 2.1. In this EULA:

**"Application"** means the software application known as XportMyData;

**"Effective Date"** means the date upon which you give your express consent to this EULA;

**"EULA"** means this end user licence agreement;

**"Loss"** means liability, loss, damage, cost or expense;

**"Software"** means the software platform known as XportMyData which is a web and application based tool used by members to back up their Xero Financial data & files;

**"Term"** means the term of this EULA, commencing in accordance with Clause 8.1 and ending in accordance with Clause 8.2; and

**"Website"** means [www.xportmydata.co.nz](http://www.xportmydata.co.nz).

### 3. Licence

3.1. We grant to you from the Effective Date until the end of the Term a worldwide, non-exclusive licence to use the Software for its intended purpose on any compatible device you own or control.

3.2. You may not sub-license and must not purport to sub-license any part of the licence granted to you under Clause 3.1.

3.3. Other than as expressly allowed under this EULA, you must not:

(a) sell, resell, rent, lease, loan, supply, publish, distribute or redistribute;

(b) alter, edit or adapt; and

(c) copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of, the Software.

#### **4. Consent to Use of Data**

4.1. You agree that we may collect and use technical data and related information, including but not limited to technical information about your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Software. We may use this information, as long as it is in a form that does not personally identify you, to improve the Software and any other products, services or technologies provided or made available to you.

#### **5. Ownership of Intellectual Property**

5.1. All title and worldwide intellectual and industrial property rights (including but not limited to copyright) in and to the Software, and any copies of the Software, are owned by us. All rights not expressly granted are reserved by us. In particular, this EULA does not grant you any rights in connection with any of our trademarks or service marks. Use of the Software for any purpose other than expressly permitted in this EULA is prohibited, and may result in civil and criminal penalties.

#### **6. Use of the Software and No Warranties**

6.1. The Software has been developed as a backup tool for Xero. The Software is commercial use.

6.2. Notwithstanding clause 6.1 and subject to clause 6.3, we make no representations about the suitability of the Software for any purpose. The Software is provided "as is" and any express or implied warranties, including, but not limited to, implied warranties or merchantability and fitness for a particular purpose, are disclaimed to the extent permitted by law.

6.3. The Consumer Guarantees Act 1993 implies terms, conditions and warranties into some contracts for the supply of goods and services and prohibits the exclusion, restriction and modification of such terms ("Prescribed Terms"). Nothing in this EULA shall operate so as to exclude, limit, restrict or modify:

- (a) the application of the Prescribed Terms;
- (b) the exercise of a right conferred by any of the Prescribed Terms;
- (c) our liability for breach of a Prescribed Term (except to the extent that liability may be restricted in accordance with Clauses 7.2 and 7.3 below); or
- (d) any other liability that may not be excluded, limited, restricted or modified under any applicable laws.

6.4. You agree that you will:

- (a) not use the Software in any way for illegal activity and you will comply with all applicable laws in your use of the Software;
- (b) not post, publish or otherwise disseminate offensive or illegal material through the Software; and

(c) comply with any policies we release and notify to you in respect of use of the Software from time to time.

We are entitled to determine whether you have complied with this clause 6.4 in our absolute discretion.

## **7. Limitation of Liability**

7.1. Nothing in this EULA will:

(a) limit or exclude any liability for fraud or fraudulent misrepresentation;

(b) limit any liabilities in any way that is not permitted under applicable law; or

(c) exclude any liabilities that may not be excluded under applicable law, and, if a party is a consumer, that party's statutory rights will not be excluded or limited by this EULA, except to the extent permitted by law.

7.2. Subject to clauses 6.3 and 7.1, we will not be liable (whether in contract, tort, equity or otherwise) for any indirect or consequential Loss of any kind arising out of or in connection with use of the Software, regardless of the cause of such Loss or whether the other party has been advised of the possibility of such Loss.

7.3. Subject to clauses 6.3, 7.1 and 7.2, in no event shall our total liability to you for all Loss arising out of or in connection with this EULA exceed the amount paid by you for the Software.

## **8. Term & Termination**

8.1. This EULA shall come into force upon the Effective Date and shall continue indefinitely subject to termination in accordance with Clause 8.2.

8.2. Your rights under this license will terminate automatically without notice from us if you fail to comply with any term(s) of this license. Upon termination of the license, you shall cease all use of the Software, and delete or otherwise destroy all copies, full or partial, of the Software.

## **9. General**

9.1. We may amend or modify this EULA at any time.

9.2. Any change or variation to these EULA shall be notified to you the next time you use the Software and shall become effective on the date so notified.

9.3. We will not be deemed to have waived any provision of this EULA unless that waiver is in writing and signed by us. Any such waiver will not be, or deemed to be, a waiver of any other right under this EULA. Any failure or delay by us to enforce any provision of this EULA will not be considered to be a waiver of that provision.

9.4. We may assign, novate or otherwise transfer any of our rights or obligations under this EULA to any other person. You agree to execute any documentation that we may reasonably require to give effect to this clause including a form of novation.

9.5. If any provision of this EULA is held to be illegal, invalid or unenforceable, then (to the maximum extent permitted by law), that provision will be severed from this EULA and this will not affect the validity or enforceability of the other provisions of this EULA.

9.6. If any provision of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this EULA will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

9.7. This EULA shall be governed by and construed in accordance with the laws of New Zealand. Your use of the Software may also be subject to other local, state, national, or international laws.