

TERMS AND CONDITIONS

The BrightSport mobile application (**App**) is owned by eSwitch Pty Ltd (ACN 614 566 568) (referred to as **we, us or our**). The App connects an owner (**Venue Owner**) of a sports venue (**Venue**) that uses eSwitch to control the lighting for their Venue (**eSwitch Lighting Control**) with people who want to hire a Venue (**Hirer**) by facilitating introductions between Venue Owners and Hirers (together the App and the platform and our associated services are the **Services**).

1. Agreement

- (a) These Terms and Conditions (**Terms**) form a binding legal agreement between us and each person, organisation or entity accessing, viewing or using the App or Services as a Hirer (**you or your**). By downloading or using the App or Services, you agree to comply with, and be legally bound by these Terms. You will also be asked to click "I Agree" when downloading the App and registering for an account with us. Please read these Terms carefully. If there are any questions, please contact us using the contact details at the end of these Terms.
- (b) Your access and use of the App and Services indicates that you:
 - (i) have had sufficient opportunity to access these Terms;
 - (ii) have read, accepted and will comply with these Terms;
 - (iii) have legal capacity to be bound by these Terms; and
 - (iv) are 18 years or older.

If this is not correct, or if you do not agree to these Terms, you are not permitted to use any of the Services.

- (c) We may amend these Terms from time to time with immediate effect upon giving You notice of the varied Terms via the App. Use of the App or Services following any such amendments will be deemed to be confirmation that you accept those amendments. If you have reasonable grounds to believe that the varied Terms will be detrimental to your rights, you may terminate your account without penalty upon receiving the notice of varied Terms. We recommend that you check the current Terms before continuing to use the App or Services.
- (d) These Terms supplement and incorporate our policies and terms and conditions including our Privacy Policy posted on the App. By accepting these Terms, you accept our Privacy Policy.

2. App Summary - Introductory Service Only

- (a) The App and Services provide an introductory service for Hirers looking to hire a Venue. Venue Owners are able to list their Venues that currently use eSwitch Lighting Control as well as the associated times for when they can be hired on the App. Hirers are able to browse Venues and the available times for a Venue on the App without needing to create an account but will need to create an account if they wish to hire a Venue. When hiring a Venue (making a **Booking**), a Hirer will need to select the Venue, when and for how long they would like to hire the Venue and then make payment.
- (b) The App is an online introductory platform only, and our responsibilities are limited to facilitating the availability of the App and Services. We are not a venue hiring business. By accessing or using the App, You acknowledge that Venue Owners are not our employee, contractor, partner or agent.
- (c) We are not a party to any agreement entered into between you and a Venue Owner. We are not a referrer or booking agent, and provide no such related services. We have no control over the conduct of Venue Owners, other Hirers or any other users of the App and the Services. We disclaim all liability in this regard.
- (d) Any arrangement between you and a Venue Owner is solely between you and the Venue Owner. It is strictly and expressly not part of your agreement with us.

- (e) To the maximum extent permitted by law, we accept no liability for any aspect of the Venue Owner's interaction with you, including, but not limited to, your use of the Venue. We will not, and are not obliged to, assist or involve ourselves in any way in any dispute between you and a Venue Owner.
- (f) All information related to any Venue Owner and a Venue is supplied by the Venue Owner. We have no responsibility and make no warranty as to the truth or accuracy of any aspect of any information provided by a Venue Owner nor do we have any ability or responsibility to review, approve or verify any information provided by a Venue Owner.

3. Online Registration

- (a) You may only have one account on the App.
- (b) Basic information is required when creating an account on the App including your mobile phone number, first and last name, email address and postcode.
- (c) You agree to provide accurate, current and complete information when creating an account and to update such information to keep it accurate, current and complete. We reserve the right to suspend or terminate your account and access to the App and Services if any information provided to us proves to be inaccurate, not current, incomplete or otherwise does not comply with these Terms.
- (d) It is your responsibility to keep your account details confidential. You are liable for all activity on your account, including any Booking made using your account details. You agree that you will not disclose your account login information, including password, to any third party and that you will take sole responsibility for any activities or actions under your account, whether or not you have authorised such activities or actions.
- (e) You will immediately notify us of any unauthorised use of your account.
- (f) At our absolute discretion, we may refuse to allow you to create an account.

4. Using and Accessing the Venue

- (a) You may only use the Venue for the Venue's intended sporting activity. It is your responsibility to ensure any members of your party who are also using the Venue only use the Venue for its intended sporting activity. You must not create or contribute to any nuisance while using the Venue.
- (b) All equipment at the Venue and or within the complex that contains the Venue (**Complex**) is owned by the Venue Owner and must only be used for its intended use, for example, rubbish bins are to be used only for disposing of rubbish and not as a cricket wicket or goal posts. You must not damage or remove any equipment from the Venue or Complex. If any equipment is damaged, you must notify the Venue Owner as soon as possible.
- (c) You may not consume or sell alcohol or smoke at the Venue or Complex.
- (d) You must dispose of any rubbish in the bins provided at the Venue or Complex. Do not leave any rubbish at the Venue or Complex. It is your responsibility to ensure that you leave the Venue and Complex in the same conditions as when your Booking commenced. You will be liable for the cost of cleaning up any rubbish.
- (e) Lighting for the Venue will only be provided during the time for which the Booking is made. Lighting may be turned off once your Booking is finished. It is your responsibility to monitor the time for your Booking and to exit the Venue while there is sufficient lighting. In the rare case where lighting cannot be provided as a result of an electrical fault or lack of access to electricity, then lighting for the Venue may not be provided and you must notify the Venue Owner as soon as possible.
- (f) You must only access the Venue and Complex through the roads, pathways and corridors provided on the Complex. You must not drive, park, walk, run or otherwise access the Venue or Complex except by the appropriate methods provided on the Complex. You will be liable for any damage or fines incurred as a result of your inappropriate access to the Venue or Complex.

- (g) You must not disturb, damage or remove any plants or animals from the Venue or Complex. If there are any injured animals please contact the Venue Owner.

5. Fees and Payments

- (a) There is no charge for you to browse Venues and the available times for a Venue on the App. Creating an account on the App is free.
- (b) Making a Booking requires payment of a fee to the Venue Owner (**Booking Fee**). You may pay the Booking Fee using the third party payment gateway provider on the App.
- (c) The Booking Fee will be set out once you have selected a Venue and when and for how long you would like to hire the Venue. Unless indicated otherwise, all amounts on the App will be in Australian Dollars and inclusive of GST.
- (d) The Booking Fee must be paid at the time you make the Booking including for any recurring Booking.
- (e) We will retain Booking Fees until payment to Venue Owners as set out in our terms and conditions with the Venue Owners.
- (f) The Booking Fee is set by the Venue Owner and may change from time to time. Any change to the Booking Fee is immediately effective upon the Venue Owner updating the Booking Fee on the App but will only apply to new Bookings not ones for which Booking Fees have already been paid.
- (g) By making a Booking through the App, you consent and authorise us and our third party payment gateway provider to share any information and payment instructions you provide and to the extent required to complete your transaction, with any other third party service provider(s).
- (h) Each Venue Owner has appointed us as their limited payment collection agent solely for the purpose of accepting Booking Fees from the Hirers.
- (i) You agree that payment of Booking Fees by you to us, as that Venue Owner's limited payment collection agent, shall be considered the same as a payment made directly by you to the relevant Venue Owner.
- (j) We agree, as limited payment collection agent for the Venue Owner, to facilitate the payment of any Booking Fees as agreed between the Venue Owner and us. In the event that we does not remit such amounts, the Venue Owner will have recourse only against us.
- (k) Notwithstanding our appointment as limited payment collection agent of each Venue Owner, we explicitly disclaim all liability for any acts or omissions of the Venue Owner or any other third parties.

6. Booking Cancellations and Refunds

- (a) You may cancel a Booking through the App and you will be refunded the Booking Fee if the cancellation is not within 24 hours of the start time of the Booking. If you cancel a Booking within 24 hours of the start time of the Booking then you will not be refunded the Booking Fee.
- (b) You may only be refunded the Booking Fee if you cancel a Booking through the App. Unused Bookings that are not cancelled through the App will not be refunded the Booking Fee.
- (c) Bookings may be cancelled at any time by a Venue Owner including for circumstances where a Venue is closed as a result of bad weather or for maintenance. For regular maintenance, the Venue Owner will notify you of the cancellation at least four weeks prior to your Booking. In the case of emergency maintenance, the Venue Owner will notify you of the cancellation as soon as possible.
- (d) If the Venue Owner cancels a Booking you will be notified via SMS or email by the Venue Owner and you will be refunded the Booking Fee.
- (e) You will be refunded the Booking Fee if there is no lighting at the Venue.

7. Cancelling Your Account

- (a) You may cancel your account at any time via the App. All Bookings including reoccurring Bookings will be automatically cancelled.
- (b) You must request a refund of any Bookings prior to cancelling your account. Refunds will only be made in accordance with our refund policy above.

8. Dispute Resolution

- (a) By using the App and Services, you agree that any legal remedy or liability that you may seek to obtain for acts or omissions of a Venue Owner or other third party (including other Hirers) will be limited to a claim against the relevant Venue Owner or other third party that caused or contributed to the events or circumstances giving rise to the claim. We encourage you to communicate directly with the relevant Venue Owner or third party to resolve any disputes.
- (b) If there are any complaints from you against us, we will aim to respond and provide a suitable solution within 45 days. If you are not satisfied with our response, the following dispute resolution procedure will apply:
 - (i) The complainant must tell the other party to the dispute in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The parties agree to meet in good faith to seek to resolve the dispute by agreement (**Initial Meeting**).
 - (ii) If a resolution cannot be agreed upon at the Initial Meeting, the parties may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Queensland to appoint a mediator. The mediator will decide the time and place for mediation. Each party to the dispute must attend the mediation in good faith, to seek to resolve the dispute.
- (c) Any attempts made by a party to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of either party under these Terms, by law or in equity.

9. Intellectual Property

- (a) **Intellectual Property** means all logos, slogans, content, designs, diagrams, drawings, graphics, images, layouts, appearance, videos, ideas, methods, databases, codes, algorithms, software, fees, pricing, notes, documents, domain names, confidential information, copyright, rights in circuit layouts (or similar rights), registered or unregistered trade marks, trade names, patent, know-how, trade secrets and any other intellectual or industrial property whether such rights are capable of being registered or not, including but not limited to copyright which subsists in all creative and literary works displayed on the App and Services, the layout, appearance and look of the App, together with any applications for registration and any rights to registration or renewal of such rights anywhere in the world, whether created before or after the date of these Terms and whether used or contained in the App is owned, controlled or licensed to us (or our affiliates and/or third party licensors as applicable).
- (b) You agree that, as between you and us, we own or hold the relevant licence to all Intellectual Property rights in the App and Services, and that nothing in these Terms constitutes a transfer of any Intellectual Property. The Intellectual Property, the App and Services are protected by copyright, trademark, patent, trade secret, international treaties, laws and other proprietary or industrial rights whether such rights are capable of being registered or not, and also may have security components that protect digital information only as authorised by us or the owner of the content.
- (c) Some Intellectual Property used in connection with the App and Services are the trademarks of their respective owners (collectively **Third Party Marks**).
- (d) Our Intellectual Property and Third Party Marks may not be copied, imitated or used, in whole or in part, without the prior written permission of us or the applicable trademark holder or Intellectual Property owner.
- (e) You do not obtain any interest or licence in the Intellectual Property or Third Party Marks. You may not do anything which interferes with or breaches the Intellectual Property rights.

10. Permitted and Prohibited Conduct for App

- (a) You must not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the App, the Services, or Intellectual Property.
- (b) You are solely responsible for compliance with any and all laws, rules, regulations, including but not limited to tax obligations that may apply to the use of the App and Services.
- (c) You must not post, upload, publish, submit or transmit any content that:
 - (i) impersonates or poses as another person;
 - (ii) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other Intellectual Property rights, or rights of publicity or privacy.
 - (iii) is fraudulent, false, misleading or deceptive;
 - (iv) denigrates us, the App, the Services, a Venue Owner, a Venue, other Hirers or any user of the App;
 - (v) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability;
 - (vi) is defamatory, promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group;
 - (vii) is violent or threatening or promotes violence or actions that are threatening to any other person; or
 - (viii) promotes illegal or harmful activities or substances.
- (d) In connection with your use of the App and Services, you may not and agree that you will not:
 - (i) use the App or Services for any commercial or other purposes that are not expressly permitted by these Terms;
 - (ii) use the Services to find a Venue and then complete, or assist another individual to complete, a booking or transaction independent of the Services in order to circumvent the obligation to pay any fees related to our provision of the Services;
 - (iii) create more than one account or create an account on behalf of another individual and/or entity;
 - (iv) make a Booking you do not intend to honour;
 - (v) violate any local, state, national, or other law or regulation, or any order of a court;
 - (vi) copy, store or otherwise access any information contained on the App and Services or content for purposes not expressly permitted by these Terms;
 - (vii) infringe the rights of any person or entity, including without limitation, their intellectual property, privacy or contractual rights;
 - (viii) use the App or Services to transmit, distribute, post or submit any information concerning any other person or entity;
 - (ix) use the App or Services in connection with the distribution of unsolicited commercial email (including, for example, spam);
 - (x) stalk or harass a Venue Owner, other Hirers or any other user of the App or Services or collect or store any personally identifiable information about any other user (other than for the purposes of transacting on the App as contemplated by these Terms);
 - (xi) use, display, mirror or frame the App, or any individual element within the App, the Services, our name, our trademark, our logo or other Intellectual Property without our express written consent; or
 - (xii) advocate, encourage, or assist any third party in doing any of the foregoing.

11. Disclaimers

- (a) We do not guarantee that you will be able to find a desirable Venue for hire.
- (b) We do not endorse any Venue Owner, Venue or other Hirers.
- (c) We cannot and do not control the content contained in any Venue listing or the condition or suitability of a Venue. Hirer are responsible for determining the suitability of any Venue. Use of a Venue and Complex is at your own risk.

- (d) We accept no responsibility for and make no representations or warranties to you or any other person or entity as to the reliability, accuracy or completeness of the information contained on the App. To the extent permitted by law, we disclaim any and all liability related to any and all Venue Owners, Venues or other Hirers.
- (e) We will not be liable for any content that is, or could be, unlawful, defamatory, obscene, vulgar, offensive, or promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group.
- (f) For the avoidance of doubt, we are not responsible for any duties, fees or taxation matters associated under these Terms. We advise that you should seek advice in relation to these matters before using the App.
- (g) You use the App and Services at your own risk.
- (h) It is your responsibility to ensure that there is first aid available as a result of any injury that may occurring during your use of the Venue. We do not accept any liability or responsibility for any injury that may occurring to you or any member of your party who are also using the Venue.
- (i) To the maximum extent permitted by law, we exclude all conditions, warranties, guarantees or representations, whether implied by custom, law, statute or on any other basis, and all material, work and services is provided to you without warranties of any kind, either express or implied, and we expressly disclaim all warranties of any kind including but not limited to:
 - (i) implied warranties of merchantability and fitness for a particular purpose;
 - (ii) we do not warrant that the App, Services, content on the App (including for any listings for a Venue) or your access to the App or Services will be error free, that any defects will be corrected or that the App or Services, or the server which stores and transmits material to you, is or will be free of viruses or any other harmful components;
 - (iii) we take no responsibility for, and will not be liable for, the App, Services, or a Venue being unavailable, not of a particular standard or quality, failing to meet the advertised description, failing to meet your needs, or being of less than merchantable quality; and
 - (iv) to the extent permitted by law, we will not be liable for any loss, damage, costs or expense whether direct, indirect, incidental, special, consequential and/or incidental, including lost profits, loss of data or loss of goodwill, service interruption, computer damage or system failure or the cost of substitute services, or for any damages for personal, bodily injury, illness or disease, death or emotional distress, loss of revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, loss of programs or other data on your information systems or costs of replacement goods, or otherwise, suffered by you or claims made against you, arising out of or in connection with the App, Services, content on the App or Services or your inability to access or use the App or Services, even if we were expressly advised of the likelihood of such loss or damage.
- (j) You agree not to attempt to impose liability on, or seek any legal remedy from us, with respect to such actions or omissions.

12. Consumer Guarantees

- (a) Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of the Services which cannot be excluded, restricted or modified (**Statutory Rights**).
- (b) Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for Services provided to those of you who are defined as consumers is governed solely by the ACL and these Terms.
- (c) We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights. Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied, and we expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.

13. Limitation of Liability

- (a) To the maximum extent permitted by law, our total liability arising out of or in connection with the App, Services or these Terms, however arising, including under contract, tort, negligence, in equity, under statute or otherwise, is limited to us re-supplying the Services to you, or, at our option, refunding to you the Booking Fee for the Booking to which your claim relates. Our total liability to you for all damages in connection with the Services will not exceed the price you paid under these Terms for the 12 months period prior to the act which gave rise to the liability or one hundred dollars (AUD\$100) if no such payments have been made.
- (b) This clause will survive these Terms and your use of the App or Services.

14. Indemnity

- (a) You agree to defend and indemnify and hold us (and our parent, related bodies corporate, officers, directors, contractors, employees and agents) harmless from and against any claims, actions, suits, demands, damages, liabilities, costs or expenses (including legal costs and expenses on a full indemnity basis), including in tort, contract or negligence, arising out of or connected to your use of or access to the App or the Services; any breach by you of these Terms; any wilful, unlawful or negligent act or omission by you; and any violation by you of any applicable laws or the rights of any third party.
- (b) Where you have made a Booking, you agree, to the maximum extent permitted by law, to indemnify and hold the Venue Owner (and their parent, related bodies corporate, officers, directors, contractors, employees and agents) harmless from and against any claims, actions, suits, demands, damages, liabilities, costs or expenses (including legal costs and expenses on a full indemnity basis), including in tort, contract or negligence, arising out of or connected to:
 - (i) any loss or damage to any property (including any equipment) within the Venue or Complex caused or contributed to by your neglect or default or by your use of the Venue or Complex;
 - (ii) your negligent use or misuse of any water, gas or electricity or other services available at the Venue or Complex; or
 - (iii) any personal injury sustained by any person in or about the Venue or Complex caused other than through the wilful or negligent act of the Venue Owner.
- (c) We reserve the right to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, in which event you will cooperate in asserting any available defences.
- (d) This clause will survive these Terms and your use of the App or Services.

15. General

- (a) **Accuracy:** While we will endeavour to keep the information up to date and correct, we make no representations, warranties or guarantee, express or implied, about the completeness, accuracy, reliability, suitability or availability of any information, images, products, services, or related graphics contained on the App for any particular purpose. You acknowledge that such information and materials may contain mistakes, inaccuracies or errors and we expressly exclude any liability for such to the fullest extent permissible by law.
- (b) **Termination:** We reserve the right to refuse to make available the App or Services required by you, terminate your account, and remove or edit content on the App if you commit a breach of these Terms. If we decide to terminate your account, with or without notice to you, your account will be deactivated, your password will be disabled and you will not be able to access the App or Services.
- (c) **Fraudulent Activities:** You acknowledge and agree that, in the event that we reasonably suspect that there are fraudulent activities occurring within the App, we reserve the right to immediately terminate any accounts involved in such activities, contact the relevant authorities and provide all necessary information to assist in proceedings and investigations.
- (d) **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control.
- (e) **Notice:** Any notice in connection with these Terms will be deemed to have been duly given when made in writing and delivered or sent by email or post to the party to whom such notice is intended to be given or to such other address or email address as may from time to time be notified in writing to the other party.
- (f) **Waiver:** Any failure by a party to insist upon strict performance by the other of any provision in these Terms will not be taken to be a waiver of any existing or future rights in relation to the provision. No waiver by us of any of these Terms shall be effective unless we expressly state that it is a waiver and we communicate it to you in writing.
- (g) **Assignment:** You must not assign any rights and obligations under these Terms whether in whole or in part without our prior written consent. These Terms, and any rights and licences granted hereunder, may be assigned by us without restriction.
- (h) **Severability:** If any of these Terms are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.
- (i) **Jurisdiction and Applicable Law:** These Terms, use of this App, Services and any dispute arising out of your use of the App or Services is subject to the laws of Queensland and the Commonwealth of Australia, and subject to the exclusive jurisdiction of the courts of Queensland. The App may be accessed throughout Australia and overseas. We make no representation that the content of the App complies with the laws (including intellectual property laws) of any country outside Australia. If you access the App from outside Australia, You do so at your own risk and you are responsible for complying with the laws in the place where you accesses the App.
- (j) **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us, and supersedes any prior agreement, understanding or arrangement, whether oral or in writing.

For questions and notices, please contact:

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