

1. About the Application

- 1.1. Welcome to Elements School Portal (the '**Application**'). The School Portal Application (the '**Services**').
- 1.2. The Application is provided by Elcom Technology Pty Ltd. ('**Elcom**') (ABN 43076042316). Please read these terms and conditions (the '**Terms**') carefully. By using, browsing and/or reading the Application, this signifies that you have read, understood and agree to be bound by the Terms and Conditions (this '**Agreement**') including any update or amendment made to these in accordance with this Agreement. If you do not agree with the Terms, you must cease usage of the Application, or any of its Services, immediately.
- 1.3. Elcom reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Elcom updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

2. Acceptance of the Terms

- 2.1. You accept the Terms by using or browsing the Application. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by Elcom in the user interface.

3. Use of the Services

- 3.1. In order to access the Services, you must be a registered user of the School Portal.
- 3.2. In utilising the Services, you acknowledge and agree that it is your responsibility to ensure that the Services is suitable for your use.
- 3.3. Once you have installed the Application, you will then be required to either select your school and sign in using your username and password as provided by your School or sign in with your username and password for your branded School Portal before you can access the Services.
- 3.4. 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:
 - (a) Email address
 - (b) Preferred username
 - (c) Mailing address
 - (d) Telephone number
 - (e) Password
- 3.5. You warrant that any information you give to Elcom in the course of completing the registration process will always be accurate, correct and up to date.
- 3.6. Once you have signed in, you will be a registered member of the Application ('**Member**') and agree to be bound by the Terms. As a Member you will be granted immediate access to the Services as long as your child's school subscription is active.

- 3.7. You may not use the Services and may not accept the Terms if:
- (a) you are not of legal age to form a binding contract with Elcom, or do not have your parents' consent; or
 - (b) 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

- 4.1. 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 Elcom 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 Application is limited, non-transferable and allows for the sole use of the Application by you for the purposes of Elcom providing the Services;
 - (e) you will not use the Services or the Application in connection with any commercial endeavours except those that are specifically endorsed or approved by the management of Elcom;
 - (f) you will not use the Services or Application 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 Application;
 - (g) you must not use the Application to abuse, bully, defame, harass, impersonate, intimidate, stalk or threaten, people or organisations.
 - (h) you agree that if you place commercial advertisements, affiliate links, and other forms of solicitation, they may be removed from the Application without notice and may result in termination of your access to the Services. Appropriate legal action will be taken by Elcom for any illegal or unauthorised use of the Application; and
 - (i) you shall ensure that the device on which the Application is to be installed is in up to date working order and operating condition, and Elcom takes no responsibility for your device's inability to access the Services or issues to other systems caused by your device.
 - (j) you acknowledge and agree that:

- any automated use of the Application or its Services is prohibited, and
- Elcom is not liable for any Content, including, but not limited to, any promises, errors or omissions, or any loss or damage incurred as a result of use of or reliance on any Content that Elcom has not directly included on the Application; and
- Elcom may update, alter or change the Application at any time; and
- Elcom may assign or sell its rights to the Application without notice to you; and
- Elcom cannot guarantee availability of the Application at all times. Events such as maintenance, capacity restraints, security requirements and disruptions beyond the control of Elcom, such as power failures, and network disruptions may result in disruptions or malfunctions.
- the Application relies for part of its operation on push notification services including as provided by third parties. As such, delivery of Content is not guaranteed and is subject to the data delivery policies of these third parties.

5. Copyright and Intellectual Property

5.1. The Application, the Services and all of the related products of Elcom are subject to copyright. The material on the Application is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Services and compilation of the Application (including but not limited to text, graphics, logos, button icons, video images, audio clips, Application, code, scripts, design elements and interactive features) or the Services are owned or controlled for these purposes, and are reserved by Elcom or its contributors.

5.2. All trademarks, service marks and trade names are owned, registered and/or licensed by Elcom, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a Member to:

- (a) use the Application pursuant to the Terms;
- (b) copy and store the Application and the material contained in the Application in your device's cache memory; and
- (c) print pages from the Application for your own personal and non-commercial use.

Elcom does not grant you any other rights whatsoever in relation to the Application or the Services. All other rights are expressly reserved by Elcom.

5.3. Elcom retains all rights, title and interest in and to the Application and all related Services. Nothing you do on or in relation to the Application will transfer any:

- (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
- (b) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
- (c) 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),

to you.

- 5.4. You may not, without the prior written permission of Elcom and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Application, which are freely available for re-use or are in the public domain.

6. Privacy

Elcom takes your privacy seriously and any information provided through your use of the Application and/or Services are subject to Elcom's Elements Mobile Application Privacy Policy, which is available at www.elcom.com.au/products/school-portal-solutions/legal.

7. Collection, Use & Disclosure of your Personal Information

- 7.1. Elcom will, from time to time, receive and store personal information you enter onto our software application Elements, provide to us directly or give to us in other forms.
- 7.2. You may provide basic information such as your name, phone number, address and email address to enable us to send information, provide updates and process your product or service order. We may collect additional information at other times, including but not limited to, when you provide feedback, when you provide information about your personal or business affairs, change your content or email preference, respond to surveys and/or promotions, provide financial or credit card information, or communicate with our customer support.
- 7.3. Additionally, we may also collect any other information you provide while interacting with us.
- 7.4. Elcom collects personal information from you in a variety of ways, including when you interact with us electronically or in person, when you access our software application and when we provide our services to you. We may receive personal information from third parties. If we do, we will protect it as set out in this Privacy Policy.
- 7.5. Elcom may use personal information collected from you to provide you with information, updates and our services. We may also make you aware of new and additional products, services and opportunities available to you. We may use your personal information to improve our products and services and better understand your needs.
- 7.6. The Application may make third party social media features available to its users. We cannot ensure the security of any information you choose to make public in a social media feature. Also, we cannot ensure that parties who have access to such publicly available information will respect your privacy.
- 7.7. Elcom may contact you by a variety of measures including, but not limited to telephone, email, SMS or mail.
- 7.8. We may disclose your personal information to any of our employees, officers, insurers, professional advisers, agents, suppliers or subcontractors insofar as reasonably necessary for the purposes set out in this Policy. Personal information is only supplied to a third party when it is required for the delivery of our services.

- 7.9. We may from time to time need to disclose personal information to comply with a legal requirement, such as a law, regulation, court order, subpoena, warrant, in the course of a legal proceeding or in response to a law enforcement agency request.
- 7.10. We may also use your personal information to protect the copyright, trademarks, legal rights, property or safety of Elcom, its application, website and customers or third parties.
- 7.11. Information that we collect may from time to time be stored, processed in or transferred between parties located in countries outside of Australia.
- 7.12. If there is a change of control in our business or a sale or transfer of business assets, we reserve the right to transfer to the extent permissible at law our user databases, together with any personal information and non-personal information contained in those databases. This information may be disclosed to a potential purchaser under an agreement to maintain confidentiality. We would seek to only disclose information in good faith and where required by any of the above circumstances.
- 7.13. By providing us with personal information, you consent to the terms of this Privacy Policy and the types of disclosure covered by this Policy. Where we disclose your personal information to third parties, we will request that the third party follow this Policy regarding handling your personal information.
- 7.14. We may disclose your personal information or other information provided by you where we are permitted to disclose the information under the Privacy Act 1988 (Cth).

8. General Disclaimer

- 8.1. Nothing in the 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 by law may not be limited or excluded.
- 8.2. Subject to this clause, and to the extent permitted by law:
 - (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
 - (b) Elcom will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- 8.3. Use of the Application and the Services is at your own risk. Everything on the Application and the Services is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Elcom make any express or implied representation or warranty about the Services or any products or Services (including the products or Services of Elcom) referred to on the Application. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
 - (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other

harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;

- (b) the accuracy, suitability or currency of any information on the Application, the Services, or any of its Services related products (including third party material and advertisements on the Application);
- (c) costs incurred as a result of you using the Application, the Services or any of the products of Elcom; and
- (d) the Services or operation in respect to links which are provided for your convenience.

9. Competitors

- 9.1. If you are in the business of providing similar Services for the purpose of providing them to users for a commercial gain, whether business users or domestic users, then you are a competitor of Elcom. Competitors are not permitted to use or access any information or content on our Application. If you breach this provision, Elcom will hold you fully responsible for any loss that we may sustain and hold you accountable for all profits that you might make from such a breach.

10. Limitation of liability

- 10.1. Elcom's 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.
- 10.2. You expressly understand and agree that Elcom, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

11. Termination of Contract

- 11.1. The Terms will continue to apply until terminated by either you or by Elcom as set out below.
- 11.2. If you want to terminate the Terms, you may do so by: removing the Application from your mobile device.
- 11.3. Elcom may at any time, terminate the Terms with you if:
- (a) you have breached any provision of the Terms or intend to breach any provision;
 - (b) Elcom is required to do so by law;
 - (c) the provision of the Services to you by Elcom is, in the opinion of Elcom, no longer commercially viable.
- 11.4. Subject to local applicable laws, Elcom reserves the right to discontinue or cancel your membership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Application or the Services without notice if you

breach any provision of the Terms or any applicable law or if your conduct impacts Elcom's or the School's name or reputation or violates the rights of those of another party.

- 11.5. Notwithstanding any other terms of this Agreement, the clauses 4,5,7,10,11, will survive termination of this Agreement.

12. Indemnity

12.1. You agree to indemnify Elcom, its 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 Application or attempts to do so; and/or
- (c) any breach of the Terms.

13. Dispute Resolution

13.1. 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).

13.2. 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.

13.3. Resolution:

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

- (a) Within 28 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 for any reason whatsoever, 14 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Australian Mediation Association 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 Elcom, Level 10 100 William street, Sydney, New South Wales, 2011, Australia.

13.4. 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.

13.5. Termination of Mediation:

If 1 month 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.

14. Venue and Jurisdiction

14.1. The Services offered by Elcom is intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Application, you agree that the exclusive venue for resolving any dispute shall be in the courts of New South Wales, Australia.

15. Governing Law

15.1. The Terms are governed by the laws of New South Wales, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of New South Wales, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

16. Independent Legal Advice

16.1. Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both 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.

17. Severance

17.1. 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.

18. Copy of these Terms and Conditions

18.1. A copy of the Elcom Elements Mobile Application Terms and Conditions, is available at www.elcom.com.au/products/school-portal-solutions/legal.