

**R. B. FLINDERS**

## **Mobile Application User Agreement**

**BAI GAMES PTY LTD (T/A “WENHU”)**

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# WENHU USER TERMS AND CONDITIONS (USER AGREEMENT)

**Last modified: 14 December 2016**

**Thank you for visiting WenHu! We are excited to have you start playing our game, but there are some limits on the use of our Application as set out below.**

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING OUR APPLICATION AND/OR USING OUR SERVICE.

The following definitions apply to this User Agreement:

**“Application”** means the downloadable mobile (smartphone device) software application owned and operated by BAI Games Pty Ltd trading as WenHu and our related bodies corporate, the subject of this User Agreement;

**“Services”** means the Application, products, games, services, content, [www.wenhu.com.au](http://www.wenhu.com.au) or other domains and online communication methods provided by BAI Games Pty Ltd trading as WenHu. This includes updates and upgrades as well as accompanying manual(s), packaging and other written, electronic or on line materials or documentation, and any copies of such software and its materials.

**“Terms of Use”** means the terms and conditions contained in this User Agreement and the Privacy Policy;

**“User”** means customers who register to download and use the WenHu Application and Services;

## 1. INTRODUCTION TO OUR SERVICES

For the purpose of this User Agreement, this Application is owned and operated by BAI Games Pty Ltd (ACN 613 858 629) trading as “WenHu” and our related bodies corporate (referred to as ‘we, our’ and us’ in this User Agreement).

This Application and all its pages are owned and operated by BAI Games Pty Ltd. BAI Games Pty Ltd is registered under the *Corporations Act 2001* (Cth) and our business address is at: **17/31 Queen Street Melbourne AUSTRALIA 3000**

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By accessing and/or using this Application and related Services, you agree to comply with all applicable laws, and the terms and conditions set out in this User Agreement, which includes our Privacy Policy (available at [www.wenhu.com.au]) ("**Terms of Use**").

Further, by accessing and using this Application, you acknowledge your acceptance of the Terms of Use in entirety. If you do not agree with these Terms of Use, you should discontinue use of this Application and related Services immediately, and you should not proceed any further with any attempt to access or use the Application covered by this User Agreement.

## **2. USING OUR SERVICES**

WenHu is a downloadable mobile software application, as governed by this User Agreement. WenHu is a Chinese character word game, which utilises word lists generated by WenHu. It also allows third parties to submit content and material (word lists) which may be published or distributed electronically.

To use our Services, you need compatible hardware, software (latest version recommended and sometimes required) and Internet access (fees may apply). Our Services' performance may be affected by these factors. It is your responsibility not to lose, destroy, or damage the Application once downloaded. We encourage you to back up your mobile (smartphone device) content regularly.

You may use our Services only for personal non-commercial purposes. You may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, commercially exploit, create derivative works from, transfer, or sell any content, software, products or services containing within this Application or related Services.

We reserve the right to immediately restrict, suspend or terminate without notice your access to the Application and related Services in case we discover any interference between your use of the Application and our operations.

## **3. REGISTRATION**

In order to access the WenHu Application, Users are required to download the WenHu Application. In order to download and use the App, you must have a mobile

communication subscription with a participating wireless service provider or otherwise have access to a (mobile) communications network. Users will need to pay fees to wireless service providers for such access and/or use. Further, Users need to have a registered mobile application software store account allowing Users to download and use mobile software applications. For instructions, please check your wireless service provider's website, your mobile phone manufacturer's website and/or your internet service providers' website.

A free trial game is provided without registration. Thereafter, you are required to register and activate your account to enable access to WenHu. When you register and activate your account, you will provide us with your personal information such as your name, email address or other social media address, photographs, Internet Protocol (IP) and other personal information that may be required in order to facilitate your dealings with us. We will handle all personal information collected by us in accordance with our Privacy Policy [[wenhu.com.au](http://wenhu.com.au)]. You have the option to deal with WenHu through anonymity, or through the use of pseudonym. However, if you do not provide us with certain personal information, you may be unable to enjoy the full functionality of the WenHu Application. For example, to access statistics, Users are required to connect with their Facebook account.

When you register and activate your account, we will provide you with a username and password. You are responsible for keeping this user name and password secure and are responsible for all use and activity carried out under this username.

If you are under the age of 13 years, you may not create an account or register as a member. If you are 13 or older but under the age of 18, you represent that you have reviewed these Terms of Use with your parent or legal guardian to make sure that you and your parent or legal guardian understand these Terms of Use.

#### **4. IN-APP PURCHASES AND REFUNDS**

There is currently no fee for the download of the WenHu Application.

WenHu will offer In-App Purchases (IAP) of additional word packs. IAPs will be available through the Apple App Store. The terms and conditions of your internet service provider and your respective mobile application software store will apply to the provision of the

IAPs.

A User can buy products (word packs) via IAP within the Application dashboard. The User will be prompted to input their Apple ID and Password prior to the payment being confirmed. The timing of the prompt is as per the account settings. The User is then prompted to confirm the transaction. The User can also use finger ID to confirm. Payments are made through the User's Apple ID and accepted through the User's selected preferred method.

In the event that you upgrade to a new phone, Users can restore any IAPs on any device as long as the User is logged into their Apple iTunes account which they used to make the original IAP.

You agree to pay the fees for any IAPs processed by you, by any other person who is authorised (either explicitly or implicitly) by you to use your payment device, and by any other person who is not authorised by you to use your payment device – except if said person used your payment device without your culpability. The current fee for the IAPs depends on your country of residence. You may review this fee within your respective mobile application software store before downloading. Those fee(s) and currencies may change from time to time. Discounts and promotional codes may be provided and applied to the IAP.

In no event will you be entitled to any refunds of payments for our Services. Once a IAP purchase is confirmed, the User is required to deal directly with Apple for any refunds.

## **5. PROMOTIONS AND OFFERS**

From time to time, WenHu may offer limited time promotions and offers. Please review the official rules (if any) associated with the promotions and offers. They will apply in addition to these Terms of Use. Any promotions and offers are not transferable, redeemable or exchangeable for other things of value, except at our sole discretion. If you accept a promotion or offer, you assume all liability associated with the offer.

## **6. TERM AND TERMINATION OF THE CONTRACT**

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This User Agreement between WenHu and Users is concluded for an indefinite period. We do not guarantee that we will continue to supply the Application indefinitely.

If you fail, or WenHu suspects on reasonable grounds that you have failed, to comply with any of the provisions of this User Agreement, WenHu, at its sole discretion, without notice to you may permanently or temporarily block your access to all or part of the Service; and you will remain liable for all amounts due and in no event will you be entitled to any refunds of payments for the Services.

WenHu reserves the right to modify, suspend, or discontinue the Services at any time without notice to you, and to the fullest extent permitted by law, WenHu will not be liable to you or any third party should it exercise such rights. Termination will not affect the Services already acquired.

## **7. PRIVACY AND PERSONAL INFORMATION**

Your privacy is important to us. If you provide any kind of personal information to us, you consent to the collection, use, disclosure and transfer of said information subject to our Privacy Policy [[wenhu.com.au](http://wenhu.com.au)].

## **8. WARRANTIES AND DISCLAIMERS**

You may have rights under statute; the following disclaimer of warranties and liability limitations apply subject to any rights you may have under such laws.

WenHu does not guarantee, represent or warrant that your use of its Service will be uninterrupted or error-free, and you agree that from time to time WenHu may remove the Service for unknown periods of time or cancel its Service at any time without notice to you, where reasonably necessary to protect its interests.

You expressly agree that your use of, or inability to use, the WenHu Application is at your sole risk. WenHu and all products and services delivered through the WenHu Application are provided 'as is' and 'as available' for your use, without warranties of any kind, either express or implied, including all implied warranties.

In no case shall WenHu, its directors, officers, employees, affiliates, agents, contractors, or licensors be liable for any direct, indirect, incidental, punitive, special, or consequential damages arising from your use of the WenHu Application or for any other claim related in

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any way to your use of the WenHu Service, including, but not limited to, any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of any content posted, transmitted or otherwise made available via the WenHu Application, even if advised of their possibility.

### **Data Network**

You are responsible for obtaining the data network access necessary to use the Services. Your mobile network's data and messaging rates and fees may apply if you access or use the Services from a wireless-enabled device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Service and any updates thereto. WenHu does not guarantee that the Service, or any portion thereof, will function on any particular hardware or devices. In addition, the Services may be subject to malfunctions and delays inherent in the use of the internet and electronic communications.

### **External Websites**

We may provide organic or advertiser's links to content of external web sites that are not controlled or influenced by WenHu. We cannot be held responsible for any of the content or information contained on these external sites, and we do not necessarily endorse these sites or the views they present.

## **9. INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND COPYRIGHT**

You agree that the WenHu Application, including but not limited to products, graphics, User interface, audio clips, video clips, editorial content, and the scripts and software used to implement the WenHu Application, contain proprietary information and material that is owned by WenHu and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright. You agree that you will not use such proprietary information or materials in any way whatsoever except for use of the WenHu Application in compliance with this User Agreement. No portion of the WenHu Application may be reproduced in any form or by any means, except as expressly permitted in these terms. Except to the extent that applicable laws prevent WenHu restraining you from doing so, you agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the WenHu Application in any manner,

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and you shall not exploit the WenHu Application in any unauthorised way whatsoever, including, but not limited to, by trespass or burdening network capacity.

All copyrights in and the WenHu Application (including the compilation of content, postings, links to other internet resources, and descriptions of those resources) and related software are owned by WenHu and/or its licensors, who reserve all their rights in law and equity. The use of the software or any part of the WenHu Application, except for use as permitted in, under and in accordance with this User Agreement, is strictly prohibited and infringes on the intellectual property rights of others and may subject you to civil and criminal penalties, including possible monetary damages, for copyright infringement.

WenHu, the WenHu logo, and other WenHu trademarks, service marks, graphics, and logos used in connection with the Service are trademarks or registered trademarks of WenHu. Other trademarks, service marks, graphics and logos used in connection with the WenHu Application may be the trademarks of their respective owners. You are granted no right or licence with respect to any of the aforesaid trademarks and any use of such trademarks.

## **10. LIMITATION OF LIABILITY AND INDEMNIFICATION**

### **Limitation of Liability**

Notwithstanding any other provision of this User Agreement, WenHu and its licensors reserve the right to change, suspend, remove, or disable access to any services, content, or other materials comprising a part of the WenHu Application at any time without notice. In no event will WenHu be liable for making these changes. WenHu may also impose limits on the use of or access to certain features or portions of the WenHu Service, in any case and without notice or liability.

WenHu will not be liable to you in respect of any acts or omissions of its employees, agents or sub-contractors, whether such liability arises in contract (by way of indemnity or otherwise), tort (including negligence), misrepresentation, breach of statutory duty, restitution or otherwise, provided that nothing in this User Agreement will limit or exclude

WenHu liability to you for personal injury or death caused directly by WenHu negligence.  
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## **Indemnification**

By accepting this User Agreement and using the Service, you agree that you shall defend, indemnify and hold WenHu, its affiliates, its licensors, and each of their officers, directors, other Users, employees, lawyers and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable legal fees and costs) arising out of or in connection with:

- a) your violation or breach of any term of this User Agreement or any applicable law or regulation, whether or not referenced herein; and
- b) your use or misuse of the Service.

The information, recommendations and/or services provided to you is for general information purposes only and does not constitute advice. WenHu will use reasonable endeavours to keep the WenHu Application and its contents correct and up to date but does not guarantee that the contents of the WenHu Application are free of errors, defects, corruption, hacking, malware and viruses or that the WenHu Application is correct, up to date and accurate.

WenHu shall not be liable for any damages resulting from the use of (or inability to use) the WenHu Application (but to the exclusion of death or personal injury), including damages caused by malware, corruption, interference, hacking, viruses or any incorrectness or incompleteness of information or the WenHu Application, unless such damage is the result of any willful misconduct or gross negligence on the part of WenHu. WenHu shall further not be liable for any loss or damage resulting from the use of (or the inability to use) electronic means of communication with the WenHu Application, including – but not limited to – loss or damage resulting from failure or delay in delivery of electronic communications, interception or manipulation of electronic communications by third parties or by computer programs used for electronic communications and transmission of viruses.

## **11. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by and must be construed in accordance with the laws of Victoria and the Commonwealth of Australia.

You and WenHu submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to this User Agreement, its performance or subject matter.

## **12. DISPUTE RESOLUTION AND APPLICABLE LAW**

You and WenHu agree that any claim or dispute at law or equity that has arisen or may arise relating in any way to or arising out of this or previous versions of the User Agreement your use of or access to the services, or any products or services sold or purchased through the Service will be resolved in accordance with the provisions set forth in this legal disputes section.

You and WenHu agree that any and all disputes or claims that have arisen or may arise between you and WenHu relating in any way to this User Agreement or your use of the Application shall be resolved through informal mediation in accordance with the laws of Victoria before entering into formal court proceedings.

Any further dispute, claim or matter of difference arising out of or relating to the Service or User Agreement is subject to the exclusive jurisdiction of the Victorian courts.

## **13. GENERAL TERMS**

### **Entire Understanding**

This User Agreement constitutes the entire agreement between you and WenHu and governs your use of the Application and Service, superseding any prior agreements between you and WenHu. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, or third-party software.

### **Variation of Agreement**

WenHu reserves the right at any time to modify the Terms of Use and to impose new or additional terms or conditions on your use of the WenHu Application. Such modifications and additional terms and conditions will be effective immediately upon notice to you and incorporated into this User Agreement and the Terms of Use. Your continued use of the Application will be deemed acceptance of the modified Terms of Use.

## **Severability**

If an arbitrator or court decides that any part of this User Agreement is invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining parts shall remain in full force and effect.

## **Notice**

This User Agreement and any other agreements, notices or other communications regarding your account and/or use of the Application may be provided to you electronically. You agree to receive all communications from WenHu in electronic form. Communications will be posted on our Application and/or sent to your primary email address.

## **14. CONTACT US**

If you have any questions, concerns or complaints, please contact us:  
[info@baigames.xyz](mailto:info@baigames.xyz)