

## OPTIMAZE TERMS AND CONDITIONS

These Terms are between Optimaze Services Pty Ltd (ABN 85 681 426 871), (**we, us or our**) and you, the person or entity who has signed up for our services on the AWS Marketplace (**you or your**), together the **Parties** and each a **Party**. These Terms form the terms under which we will provide Services to you, as set out by us on the AWS Marketplace.

### 1. Acceptance and Term

These Terms apply from the time you agree to these Terms, until the date these Terms are terminated in accordance with their Terms (**Term**).

### 2. Services

- 2.1. In consideration of your payment of the Fees, we will provide the Services in accordance with these Terms, whether ourselves or through our Personnel.
- 2.2. You agree to:
  - (a) provide us with all information, access, and cooperation reasonably necessary for us to perform the Services;
  - (b) ensure your Systems and data are appropriately backed up and up to date before we perform any Services that may affect them; and
  - (c) notify relevant parties of any planned outages or downtime necessary for the performance of the Services.
- 2.3. You acknowledge that failure to comply with clause 2.2 may impact the performance or results of the Services, and we will not be liable for any issues arising from such non-compliance.
- 2.4. Where the Services include the provision of an application programming interface (**API**), you agree to only use the API in accordance with the documentation that we provide to you.

### 3. Third Party Services

- 3.1. Where you engage third parties to operate alongside our Services (for example, any third-party software systems or hardware), those third parties are independent of us and you are responsible for (meaning we will not be liable for) the goods or services that they provide, unless we expressly agree otherwise in writing.
- 3.2. To the extent that the Services involve the provision of access to or use of third party services or products (**Third Party Services**), you acknowledge and agree that:
  - (a) the Third Party Services may be subject to additional terms and conditions (**Third Party Services Terms**);
  - (a) you may be required to accept end user licence agreement terms before using the Third Party Services;
  - (b) the Third Party Services may be operated and controlled by parties unrelated to and completely independent from us;

- (c) the Third Party Services Terms may be amended by the Third Party Services provider from time to time; and
- (d) in connection with the Services, you will comply with the Third Party Services Terms at all times.

### 4. Account

- 4.1. You must create an Account in order to access and use the Services.
- 4.2. You may invite Authorised Users to access and use the Services under your Account. You are responsible for ensuring that your Authorised Users comply with these Terms. You may change who your Authorised Users are at any time through your Account, and what access rights or permissions they have when using the Services.
- 4.3. While you have an Account with us, you agree to (and to ensure your Authorised Users agree to):
  - (a) keep your information up-to-date (and ensure it remains true, accurate and complete);
  - (b) keep usernames and passwords secure and confidential, not share them with any third party or other Authorised User, and protect them from misuse or being stolen; and
  - (c) notify us if you become aware of, or have reason to suspect, any unauthorised access to your Account or any logins linked to your Account.

### 5. Software Licence

- 5.1. During the Term, subject to your compliance with these Terms, we grant you a non-exclusive, non-transferable, non-sublicensable and revocable licence to access and use the Services solely for your business purposes and as contemplated by these Terms (**Software Licence**).
- 5.2. You agree that the Software Licence permits you to access and use the Services in accordance with these Terms and any limitations set out by us on AWS Marketplace.
- 5.3. You must not:
  - (a) access or use the Services except as permitted by the Software Licence, or through an interface provided by us;
  - (b) use the Services in any way that is improper or breaches any Laws, infringes any person's rights (including Intellectual Property Rights and privacy rights), or gives rise to any civil or criminal liability;
  - (c) interfere with the Services, our System, or others' use of the Services;
  - (d) share account access or authentication details;
  - (e) introduce any viruses or any other malicious code into the Services;
  - (f) use the Services to carry out security breaches or disruptions of a network;
  - (g) attempt to access any data or log into any server or account that you are not expressly authorised to access;

- (h) circumvent or attempt to circumvent security measures of any of network, account or host or those of any third party; or
- (i) use the Services to transmit, publish or communicate material that is, defamatory, offensive, abusive, indecent, menacing, harassing or unwanted.

## 6. Availability

- 6.1. Once you have been provided access to the Services, we will use our best endeavours to make the Services available at all times during the Term and where applicable, as set out in our Service Level Agreement.
- 6.2. From time to time, we may perform such reasonable scheduled and emergency maintenance and updates in relation to the Services in order to continue to supply the Services to you and our other customers (**Scheduled or Emergency Maintenance**). You agree that access to, or the functionality of all or part of the Services, may need to be suspended for a time in order for us to perform Scheduled or Emergency Maintenance, and to the maximum extent permitted by law, we will not be liable to you for any interruptions or downtime to the Services as a result of any Scheduled or Emergency Maintenance.
- 6.3. The Services may interact with, or be reliant on, products or services provided by third parties, such as cloud hosting service providers. To the maximum extent permitted by law, we are not liable for disruptions or downtime caused or contributed to by these third parties.
- 6.4. We will endeavour to provide you with reasonable notice, where possible, of any interruptions to access and availability of the Services.

## 7. Beta Services

- 7.1. For the purposes of this clause "**Beta Services**" means any services, software or functionality provided by us that are not generally available to customers and which are designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.
- 7.2. From time to time, we may invite you to try Beta Services at no additional cost. You may accept or decline any such trial at your sole discretion.
- 7.3. You acknowledge and agree that:
  - (a) any Beta Services are for evaluation purposes only and not for production use;
  - (b) any Beta Services are not subject to the service levels (including the Service Level Agreement);
  - (c) the Beta Services may be subject to additional terms and conditions (which if applicable, will be provided to you and that you must accept before you are provided with access to the Beta Services);
  - (d) we have no obligation to maintain, support, update, or provide error corrections for the Beta Services; and
  - (e) we may discontinue Beta Services at any time and are not obligated to make them generally available.
- 7.4. To the maximum extent permitted by law:

- (a) we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with any Beta Services; and
- (b) the Beta Services are provided "as is" without any warranty, and we expressly disclaim any warranties of merchantability or fitness for a particular purpose.

## 8. Payment

- 8.1. In consideration for us providing the Services, you agree to pay all amounts due under these Terms in accordance with the Payment Terms.
- 8.2. If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under these Terms or at Law):
  - (a) after a period of 5 Business Days from the relevant due date, cease providing the Services, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs); and/or
  - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms.
- 8.3. If we refer you to a third-party provider, we may receive a financial incentive (such as a referral fee) from that provider.

## 9. Your Obligations and Representations

- 9.1. You agree that you are:
  - (a) responsible for ensuring that your Personnel comply with these Terms (including any of your Personnel whom you grant access to the Services); and
  - (b) liable for all acts and omissions of your Personnel in connection with these Terms.
- 9.2. You agree to:
  - (a) comply with these Terms, all applicable Laws, and our reasonable requests;
  - (b) provide all assistance, information, documentation, access (including to your Systems and premises if applicable), facilities and other things reasonably necessary to enable us to comply with our obligations under these Terms or at Law, free from harm or risk to health or safety at the times and on the dates reasonably requested by us or as agreed between the Parties;
  - (d) provide us with all information, access, and cooperation reasonably necessary for us to perform the Services and ensure all information provided to us is kept current and accurate;
  - (c) to make any changes to your Systems, such as System upgrades, that may be required to support the delivery and operation of any Services;

- (d) ensure your Systems and data are appropriately backed up and up to date before we perform any Services that may affect them;
- (e) notify relevant parties of any planned outages or downtime necessary for the performance of the Services;
- (f) not (or not attempt to) disclose, or provide access to, the Services to third parties without our prior written consent; and
- (g) notify us of any breach or suspected breach of these Terms by you, within 48 hours of becoming aware of any such breach or suspected breach.

9.3. You acknowledge that failure to comply with clauses 9.2(a)-(e) may impact the performance or results of the Services, and we will not be liable for any issues arising from such non-compliance.

9.4. You acknowledge and agree that:

- (a) we assume no responsibility or Liability for Your Data. You are solely responsible for Your Data and the consequences of using, disclosing, storing or transmitting it. It is your responsibility to back up Your Data; and
- (b) you will be responsible for the use of any part of the Services by any person you provide with access to the Services, and you must ensure that no person uses any part of the Services:
  - (1) to break any Law or infringe any person's rights (including Intellectual Property Rights);
  - (2) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
  - (3) in any way that damages, interferes with or interrupts the supply of the Services.

## 10. Warranties and Representations

10.1. Each Party represents and warrants that:

- (a) it has full legal capacity, right, authority and power to enter into these Terms, to perform its obligations under these Terms, and to carry on its business; and
- (b) these Terms constitute a legal, valid and binding agreement, enforceable in accordance with its terms.

10.2. You represent and warrant that:

- (a) all information and documentation that you provide to us in connection with these Terms are true, correct and complete;
- (b) no insolvency events (including but not limited to bankruptcy, receivership, voluntary administration, liquidation or creditors' schemes of arrangement) affecting you or your property are occurring or are likely to occur; and
- (c) if you enter into these Terms as a trustee of a trust, then:
  - (1) you are the sole trustee of the relevant trust and have been validly appointed;

- (2) you have full and valid power, authority, consents and approvals under the relevant trust to execute these Terms and carry out the transactions contemplated by these Terms; and
- (3) you have the right to be indemnified out of the assets of the relevant trust for all liabilities incurred by you under these Terms.

10.3. We agree:

- (a) to use reasonable efforts to ensure all of our obligations under these Terms will be carried out by suitably competent and trained Personnel and in an efficient and professional manner; and
- (b) that we own or have the right to all Intellectual Property in the Services (excluding Third-Party Services) necessary to grant you the Software Licence without infringing any third party's Intellectual Property Rights.

## 11. Intellectual Property

### Our Intellectual Property Rights

- 11.1. As between the Parties, you acknowledge and agree that we own all Intellectual Property Rights in the Services, including the software, any feedback, and all Intellectual Property which is created, owned by or licensed to us and any improvements, modifications or enhancements of such Intellectual Property and the Services (other than Your Data).
- 11.2. You agree that we may use feedback in any manner which we see fit (including to develop new features) and no benefit will be due to you as a result of any use by us of any feedback.

### Your Data

- 11.3. As between the Parties, you own all Intellectual Property Rights in:
  - (a) all Intellectual Property created, owned or licensed by you or your Personnel and any improvements, modifications or enhancements of such Intellectual Property; and
  - (b) the information, materials, logos, documents, qualifications and other Intellectual Property or data inputted by you or your Personnel into the Services or stored by or generated by your use of the Services, including any Personal Information collected, used, disclosed, stored or otherwise handled in connection with these Terms,

### (Your Data).

Your Data does not include the Analytics, or any data or information that is generated as a result of your usage of the Services that is a back-end or internal output or an output otherwise generally not available to users of the Services.

- 11.4. You grant us a non-exclusive, revocable, worldwide, non-sublicensable (other than to our related bodies corporate, as that term is defined in the *Corporations Act 2001* (Cth)) and non-transferable right and licence to use, copy, transmit, store, backup, and access Your Data solely for the purposes of:
  - (a) providing and improving the Services;

- (b) performing our obligations under these Terms;
  - (c) enabling you and your Personnel to access and use the Services;
  - (d) diagnosing problems with the Services; and
  - (e) developing other services, provided we de-identify Your Data.
- 11.5. You represent, warrant, acknowledge and agree that you have all necessary rights to provide Your Data to us, and that our use of it as contemplated by these Terms will not violate any Laws or third-party rights, including Intellectual Property, privacy, or publicity rights.
- 11.6. If you (if you are an individual) or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with these Terms, you agree to (and will procure that your Personnel) consent to our use or infringement of those Moral Rights.

#### Intellectual Property Breaches

- 11.7. In the use of any Intellectual Property Rights in connection with these Terms, each Party agrees that it must not (and must ensure that its Personnel do not) commit any Intellectual Property Breach. Where a Party reasonably suspect that such a breach may have occurred, it must notify the other Party immediately.
- 11.8. You agree not to, whether directly or indirectly, without our prior written consent:
- (a) copy, modify, adapt, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble or decompile any part of the Services or otherwise attempt to discover any part of the source code of the Services;
  - (b) use any unauthorised, modified version of the Services, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the Services;
  - (c) unless authorised under these Terms, use the Services in a web-enabled form for the purposes of third-party analysis or view via the internet or other external network access method;
  - (d) rent or sublicense the use of the Services to any third parties, without our prior written consent or as otherwise permitted under these Terms;
  - (e) take any action that may compromise or jeopardise our Intellectual Property Rights in the Services or otherwise;
  - (f) remove or deface any confidentiality, copyright or other proprietary notice placed on the Services; or
  - (g) use the Services in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing.
- 11.9. This clause 11 will survive termination or expiry of these Terms.

#### 12. Analytics

- 12.1. You acknowledge and agree that we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymised format (**Analytics**). You agree that we may make such Analytics publicly available, provided that it:
- (a) does not contain any identifying information; and
  - (b) is not compiled using a sample size small enough to make underlying portions of Your Data identifiable.
- 12.2. We, and our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content used or provided in connection with the Analytics, including all Intellectual Property Rights in the foregoing.
- 12.3. We may use and disclose to our service providers anonymous data about your access and use of the Services for the purpose of helping us improve the Services. Any such disclosure will not include details of your identity or Personal Information.

#### 13. Confidential Information

- 13.1. Each Receiving Party agrees:
- (a) not to disclose the Confidential Information of the Disclosing Party to any third party (subject to clause 13.1(c));
  - (b) to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure;
  - (c) to only disclose the Confidential Information to those of its Personnel who need to know the Confidential Information in connection with these Terms, provided that those persons keep the Confidential Information confidential in accordance with this clause 13.1; and
  - (d) to only use the Confidential Information of the Disclosing Party for the purpose of performing obligations, or exercising rights or remedies, under these Terms.
- 13.2. The obligations in clause 13.1 do not apply to Confidential Information that:
- (a) is required to be disclosed in order for the Parties to comply with their obligations under these Terms;
  - (b) is authorised to be disclosed by the Disclosing Party;
  - (c) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms or other duty of confidence; or
  - (d) must be disclosed by Law or by a regulatory authority, including under subpoena, provided that (to the extent permitted by Law) the Receiving Party has given the Disclosing Party notice prior to disclosure.
- 13.3. Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 13. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 13.
- 13.4. This clause 13 will survive the termination of these Terms.

## 14. Privacy

- 14.1. You agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable Privacy Laws that may apply to you or the supply of the Services (**Privacy Laws**). You must not do anything which may cause us to be in breach of any Privacy Laws.
- 14.2. We agree to handle any Personal Information you provide to us, solely for the purpose of performing our obligations under these Terms, and in accordance with any applicable Laws.

## 15. Australian Consumer Law

- 15.1. Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the supply of the Services by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at Law, nothing in these Terms excludes those Consumer Law Rights.
- 15.2. Subject to your Consumer Law Rights, we provide all material, work and services (including the Services) to you without conditions or warranties of any kind, implied or otherwise, whether in statute, at Law or on any other basis, except where expressly set out in these Terms.
- 15.3. This clause 15 will survive the termination or expiry of these Terms.

## 16. Limitations on liability

- 16.1. Despite anything to the contrary but subject to your Consumer Law Rights, to the maximum extent permitted by law:
- (a) neither Party will be liable for Consequential Loss;
  - (b) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by the other Party to mitigate its loss;
  - (c) (where our Services are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again; and
  - (d) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to the amount of any fees paid by you to us during the 12 months immediately preceding the event giving rise to the Liability.
- 16.2. This clause 16 will survive the termination or expiry of these Terms.

## 17. Termination

- 17.1. Either Party may terminate these Terms at any time by giving 30 days' notice in writing to the other Party.

- 17.2. These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party goes bankrupt, insolvent or is otherwise unable to pay its debts as they fall due.

- 17.3. Upon expiry or termination of these Terms:

- (a) we will immediately cease providing the Services;
- (b) we will retain Your Data for 30 days (**Retention Period**). During this period, you may request a copy of Your Data. After the Retention Period, we may securely delete all of Your Data, except as required by law or regulatory requirements;
- (c) without limiting your Consumer Law Rights, other than where these Terms are terminated by you in accordance with clause 17.2, there will be no refunds or credits for any unused Services (or part thereof);
- (d) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms;
- (e) by us pursuant to clause 17.2, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees); and
- (f) we may retain your documents and information (including copies) to the extent required by Law or pursuant to any information technology back-up procedure, provided that we handle your information in accordance with clause 13.

- 17.4. Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

- 17.5. This clause 17 will survive the termination or expiry of these Terms.

## 18. GST

- 18.1. If GST is payable on any supply made under these Terms, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under these Terms and must be paid in addition to the consideration expressed elsewhere in these Terms, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.
- 18.2. If an adjustment event arises in respect of any supply made under these Terms, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made.
- 18.3. If the recipient is required under these Terms to pay for or reimburse an expense or outgoing of the supplier, or is

required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

- 18.4. The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 18.5. Where a value-added tax in your own country is applicable, the Fees will be exclusive of such value-added tax. You are responsible for all taxes, levies or duties imposed by taxing authorities in your own country, and you shall be responsible for the payment of them. We have no responsibility to them on your behalf.
- 18.6. Notwithstanding the GST provisions above, for customers located outside of Australia, if any withholding or deduction is required by law from any payment under these Terms, you agree to increase the payment amount to ensure we receive the full sum due as if no such withholding or deduction had been made. You will provide evidence of any withholding tax paid. If we later obtain a related tax credit or refund, we will reimburse you the amount actually received.

## 19. General

- 19.1. **Amendment:** We may amend these Terms, the Services or the Fees at any time, by providing written notice to you. By clicking "I accept" or continuing to use the Services after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment, you should cease using the Services. If you have paid upfront for recurring access to any of the Services (excluding one-time purchases) and you would like to cancel them due to a change in the Terms, please contact us in writing within 30 days of receiving notice to cancel that recurring access and we will issue you a pro-rata refund for such Services.
- 19.2. **Assignment:** Subject to clause 19.3 a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 19.3. **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.
- 19.4. **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first complying with this clause 19.4. A Party claiming that a Dispute has arisen must give written notice to the other Party specifying the nature of the Dispute (**Dispute Notice**). The Parties must meet (whether in person, by telephone or video conference) within 10 Business Days of service of the Dispute Notice to seek (in good faith) to resolve the Dispute.

If the Parties do not resolve the Dispute within 20 Business Days of the date the Dispute Notice was served (or such

further period as agreed in writing by the Parties), either Party may:

- (a) where you are resident or incorporated in Australia, refer the matter to mediation, administered by the Australian Disputes Centre, to be conducted in Sydney, New South Wales, in accordance with the Australian Disputes Centre Guidelines for Commercial Mediation.
- (b) where you are not resident or incorporated in Australia, refer the matter to arbitration administered by the Australian Centre for International Commercial Arbitration, with such arbitration to be conducted in Sydney, New South Wales, before one arbitrator, in English and in accordance with the ACICA Arbitration Rules.

Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

- 19.5. **Entire agreement:** Subject to your Consumer Law Rights, these Terms contain the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 19.6. **Force Majeure:** Neither Party will be liable for any delay or failure in performance of its obligations under these Terms resulting from a Force Majeure Event. The affected Party must promptly notify the other Party of the Force Majeure Event and use reasonable efforts to mitigate its effects. If a Force Majeure Event prevents performance of a material obligation for more than 60 days, the unaffected Party may terminate these Terms upon notice. This clause does not apply to payment obligations. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under these Terms.
- 19.7. **Governing law:** These Terms are governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 19.8. **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 19.9. **Professional Services Disclaimer:** You acknowledge and agree that any information, advice, material or work provided by us as part of the Services does not constitute legal, financial, medical, due diligence or risk management advice.
- 19.10. **Publicity:** You agree that we may advertise or publicise the broad nature of our provision of the Services to you and use your logo and trademarks for this purpose, including on our website or in our promotional material.

- 19.11. **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 19.12. **Waiver:** Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to these Terms do not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A waiver must be in writing and will be effective only to the extent specifically stated.
- 19.13. **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

## 20. Definitions

In these Terms, unless the context otherwise requires:

**ACL or Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

**Account** means an account accessible to the entity who signed up to our Services, under which Authorised Users may be granted with access.

**Analytics** has the meaning given in clause 12.

**Authorised User** means a user within your organisation that you have invited to use the Services through your Account.

**AWS Marketplace** means the marketplace operated by Amazon Web Services, Inc., which is currently located at <https://aws.amazon.com/marketplace/>, as it may be updated or relocated from time to time.

**Business Day** means a day on which banks are open for general banking business in New South Wales, excluding Saturdays, Sundays and public holidays.

**Confidential Information** means information which:

- (a) is disclosed to the Receiving Party in connection with these Terms at any time;
- (b) relates to the Disclosing Party's business, assets or affairs; or
- (c) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

**Consequential Loss** includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us the Fees and any other amounts payable under these Terms will not constitute "Consequential Loss".

**Consumer Law Rights** has the meaning given in clause 15.1.

**Fees** means the price set out by us on our listing or offer to you on AWS Marketplace, as adjusted in accordance with these Terms.

**Force Majeure Event** means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

**Intellectual Property Rights or Intellectual Property** means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable .

**Laws or Law** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with these Terms or the provision of the Services.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise.

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth) and includes any similar rights in any jurisdiction in the world.

**Payment Terms** means the payment terms for the Fees set out in our listing or offer to you on AWS Marketplace.

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party.

**Service Level Agreement** means our service level agreement available on our website or upon request, as updated from time to time.

**Services** means the services that we agree to perform under these Terms, as further particularised in our listing or offer to you on AWS Marketplace.

**System** means all hardware, software, networks, telecommunications and other IT systems used by a Party from time to time, including a network.

**Terms** means these terms and conditions and any documents attached to, or referred to in, each of them.

**Your Data** means the information, materials, logos, documents, qualifications and other Intellectual Property or data inputted by you, your Personnel into the Services or stored by or generated by your use of the Services, including any Personal Information collected, used, disclosed, stored or otherwise handled in connection with these Terms. Your Data does not include the Analytics, or any data or information that is generated as a result of your usage of the Services that is a back-end or internal output or an output otherwise generally not available to users of the Services.

## 21. Interpretation

In these Terms, unless the context otherwise requires:

- (a) a reference to these Terms or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) a reference to a person includes a natural person, body corporate, partnership, joint venture, association, government or statutory body;
- (d) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, and permitted assigns;
- (e) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (f) a reference to time is to local time in New South Wales; and
- (g) a reference to \$ or dollars refers to the currency of Australia from time to time.



