

TERMS AND CONDITIONS

Welcome to Alpen Analytics Pty Ltd, an Australian business with ACN 668 196 469 (**'we', 'our' or 'us'**) and we are a data analytics and software company offering various services as described on our Website (**Software**).

These terms and conditions (**Terms**) govern your access to the Software and us providing you any other goods and services as set out in these Terms (**Subscription**). You can view the most updated version of our Terms at <https://alpenanalytics.com/terms-condition> (**Website**). Please read these terms and conditions carefully before agreeing to proceed with your Subscription.

Please note that your Subscription will continue to renew indefinitely, and you will continue to incur Subscription Fees, unless you notify us that you want to cancel your Subscription in accordance with clause 14. Please ensure you contact us if you want to cancel your Subscription.

1 READING AND ACCEPTING THESE TERMS

- (a) In these Terms, capitalised words and phrases have the meanings given to them where they are followed by bolded brackets, or as set out in the Definitions table at the end of these Terms.
- (b) By clicking the tick box below or clicking the "I accept these Terms" button on our Website, paying for your Subscription or otherwise accepting the benefit of any part of your Subscription, you agree to be bound by these Terms which form a binding contractual agreement between you the person acquiring a Subscription or the company you represent and are acquiring the Subscription on behalf of (**'you'** or **'your'**) and us.
- (c) We may change these Terms at any time by notifying you, and your continued use of the Solution following such an update will represent an agreement by you to be bound by the Terms as amended.

2 TERM

These Terms commence on the date you agree to be bound by these Terms (as set out 1(b) and continues for the Trial Period, Subscription Period and any Renewal Periods applicable, unless terminated earlier in accordance with clause 14.

3 ELIGIBILITY

- (a) By accepting these Terms, you represent and warrant that:
 - (i) you have the legal capacity and authority to enter into a binding contract with us; and
 - (ii) you are authorised to use the payment you provided when purchasing a Subscription.
- (b) The Software is not intended for unsupervised use by any person under the age of 18 years old or any person who has previously been suspended or prohibited from using the Software. By using the Software, you represent and warrant that you are either:
 - (i) over the age of 18 years and accessing the Software for personal and commercial use; or
 - (ii) accessing the Software on behalf of someone under the age of 18 years old and consent to that person's use of the Software.
- (c) Please do not access the Software if you are under the age of 18 years old and do not have your parent or guardian's consent, if you are under 16 or if you have previously been suspended or prohibited from using the Software.

- (d) If you are signing up not as an individual but on behalf of your company, your employer, an organisation, government or other legal entity (**Represented Entity**), then “you” or “your” means the Represented Entity and you are binding the Represented Entity to this agreement. If you are accepting this agreement and using our Solution on behalf of a Represented Entity, you represent and warrant that you are authorised to do so.

4 DURATION OF YOUR SUBSCRIPTION

- (a) Subject to clause 4(b), upon expiration of the Subscription Period, this agreement will automatically and indefinitely renew on an ongoing basis for a period equal to the Subscription Period (**Renewal Period**).
- (b) This agreement will not automatically renew on expiry of the Subscription or Renewal Period (**Renewal Date**), if either party provides a written cancellation notice at least 7 days prior to the Renewal Date.
- (c) At least 7 days prior to the expiry of the Renewal Date, we will provide you with advanced written notice of the agreement renewing and any applicable changes to the Subscription Fees or these Terms (**Renewal Notice**).

5 THE SOLUTION

5.1 SCOPE OF YOUR SUBSCRIPTION AND THE SOLUTION

- (a) We will provide you, to the extent described in your Subscription, the Software and the Documentation (**Solution**).
- (b) Your Subscription includes the benefits and limitations of your Subscription as set out on our Website, or as otherwise communicated to you when you subscribe for your Subscription (and as amended from time to time by notice to you).

5.2 ACCOUNTS

- (a) (**Accounts**) To use the Solution, you may be required to sign-up, register and receive an account through the Website (an **Account**).
- (b) (**Provide Information**) As part of the Account registration process and as part of your continued use of the Website, you may be required to provide personal information and details, such as your email address, first and last name, preferred username, a secure password, billing, postal and physical addresses, mobile phone number, , , and other information as determined by us from time to time.
- (c) (**Warranty**) You warrant that any information you give to us in the course of completing the Account registration process is accurate, honest, correct and up-to-date.
- (d) (**Acceptance**) Once you complete the Account registration process, we may, in our absolute discretion, choose to accept you as a registered user within the Website and provide you with an Account.

5.3 ACCURACY DISCLAIMER

- (a) The Software performs calculations based on our best interpretation of theory, standards and best practices to provide the Solution and any associated Software Content. We have taken all reasonable steps to validate the Solution and provide transparency by providing calculations and assumptions where possible. While we strive to ensure the highest level of accuracy, errors may occur in the calculation itself or due to variations in the quality of user input to the Solution. Therefore, we do not warrant or guarantee the accuracy, completeness, or reliability of the Software or its associated Software Content. You acknowledge and agree that any reliance on content is at your own risk.
- (b) You are encouraged to review and verify the accuracy of any Software Content developed using the Solution independently. We will not be held liable for any errors, omissions, or damages arising from the use of the Solution or reliance on the Software Content, including but not limited to financial losses, loss of business opportunities, or reputational damage.

- (c) By using our Solution, you acknowledge that errors may occur and accept the risk associated with potential inaccuracies. You agree to hold us harmless and indemnify us from any claims, liabilities, losses, or expenses arising out of or related to the use of our Software or reliance on its associated Software Content.

5.4 GENERAL DISCLAIMER

You acknowledge and agree that:

- (a) any information provided to you as part of or in connection with the Solution is general in nature, may not be suitable for your circumstances and does not constitute financial, legal or any other kind of professional advice;
- (b) it is your responsibility to comply with applicable Laws relevant to your business, including industrial relations Laws and privacy Laws;
- (c) that we merely act as a passive conduit for the online distribution of the Solution and the associated Software Content and we have no obligation to screen the data and information that you input into the Solution;
- (d) the information on the Solution is not to be construed as an endorsement, warranty, or representation of a particular business, its products, services, or business activities;
- (e) the information presented on the Website or the Solution may not always reflect the most current state of affairs and you are encouraged to verify critical information independently;
- (f) information given to you through the Solution is general in nature and we take no responsibility for anything caused by any actions you take in reliance on that information;
- (g) you are solely responsible for all acts and omissions related to your use of the Solution and associated Software Content;
- (h) we have no liability in respect of any damage, loss or expense which arises in connection with the Software and Software Content and you release and hold us harmless from damage, loss or expense which arises from the Software or Software Content;
- (i) we do not accept responsibility for any unauthorised use, destruction, loss, damage or alteration to the Software or Software Content or any other information, your computer systems, mobile phones or other electronic devices arising in connection with use of the Solution; and
- (j) you must take your own precautions to ensure that the process which you employ for accessing the Software or Software Content does not expose you to the risk of hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.

5.5 SOFTWARE

- (a) While your Subscription is maintained, we grant to you a non-exclusive, non-transferable licence to use the Software and Documentation for the Number of Solution Users. If your Subscription on the Website does not specify a Number of Solution Users, your licence to use the Solution under this clause will be limited to one User (i.e., the Number of Solution Users will be one). You are expressly prohibited from sharing your Subscription with any other third party.
- (b) We may from time to time, in our absolute discretion, release enhancements to the Software, meaning an upgraded, improved, modified or new versions of the Software (**Enhancements**). Any Enhancements to the Software will not limit or otherwise affect these Terms. Enhancements may cause downtime or delays from time to time, and credits will not be provided for such downtime.
- (c) We may change any features of the Solution at any time on notice to you.

5.6 SUPPORT SERVICES

We will provide general support where reasonably necessary to resolve technical issues with the Software (**Support Services**). Unless otherwise agreed in writing:

- (a) we will take reasonable steps to provide Support Services where necessary (you must first endeavour to resolve any issues with the Software internally and we will not assist with issues that are beyond our reasonable control);
- (b) we will use our best endeavours to respond to requests for Support Services and you acknowledge that we may not be available 24/7 or respond within a particular time frame;
- (c) you are responsible for all internal administration and managing access, including storing back-up passwords and assisting your Users to access and use the Software; and
- (d) you will not have any claim for delay to your access to the Software due to any failure or delay in Support Services.

6 DATA HOSTING

We will store User Data you upload to the Software using a third party hosting service selected by us (**Hosting Services**), subject to the following terms:

- (a) (**hosting location**) You acknowledge and agree that we may use storage servers to host the Software through cloud-based services, and potentially other locations outside Australia.
- (b) (**service quality**) While we will use our best efforts to select an appropriate hosting provider, we do not guarantee that the Hosting Services will be free from errors or defects or that User Data will be accessible or available at all times.
- (c) (**security**) We will use our best efforts to ensure that User Data is stored securely. However, we do not accept responsibility or liability for any unauthorised use, destruction, loss, damage or alteration to User Data, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.
- (d) (**backups & disaster recovery**) In the event that User Data is lost due to a system failure (e.g. a database or webserver crash), we cannot guarantee that any backup will be available, or if available that such a backup will be free from errors or defects.

7 CLIENT OBLIGATIONS

7.1 INFORMATION LIASION

You agree to:

- (a) provide us with all documentation, information and assistance reasonably required by us to provide the Solution; and
- (b) provide us with access to any third party or other accounts used by you (including log-in details and passwords), as is reasonably required by us to provide the Solution.

7.2 CLIENT MATERIAL

- (a) You warrant that all information, documentation, User Data and other Material you provide to us for the purpose of receiving the Solution is complete, accurate, up-to-date and that you have complied with any required authorisations to provide such information (including but not limited to compliance with privacy obligations, Intellectual Property Rights, copyrights, trademarks, and patents).
- (b) You release us from all liability in relation to any loss or damage arising out of or in connection with the Solution, to the extent such loss or damage is caused or contributed to by information, documentation, User Data or any other Material provided by you being incomplete, inaccurate or out-of-date.

7.3 YOUR OBLIGATIONS

- (a) **You must, and must ensure that all Users, comply with these Terms at all times.** You acknowledge and agree that we will have no liability in respect of any damage, loss or expense which arises in connection with your, your Personnel's, or any User's, breach of these Terms, and you indemnify us in respect of any such damage, loss or expense.

- (b) You must not, and must not encourage or permit any User, Personnel or any third party to, without our prior written approval:
- (i) upload sensitive information or commercial secrets using the Software;
 - (ii) upload any inappropriate, offensive, illicit, illegal, pornographic, sexist, homophobic or racist material using the Software;
 - (iii) use the Software for any purpose other than for the purpose for which it was designed, including you must not use the Solution in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity (including requesting or accepting a job which includes illegal activities or purposes);
 - (iv) upload any material that is owned or copyrighted by a third party;
 - (v) make copies of the Documentation or the Software;
 - (vi) adapt, modify or tamper in any way with the Software;
 - (vii) remove or alter any copyright, trade mark or other notice on or forming part of the Software or Documentation;
 - (viii) act in any way that may harm our reputation or that of associated or interested parties or do anything at all contrary to the interests of us or the Software;
 - (ix) use the Software in a way which infringes the Intellectual Property Rights of any third party;
 - (x) create derivative works from or translate the Software or Documentation;
 - (xi) publish or otherwise communicate the Software or Documentation to the public, including by making it available online or sharing it with third parties;
 - (xii) integrate the Software with third party data or Software, or make additions or changes to the Software, (including by incorporating APIs into the Software) other than integrating in accordance with any Documentation or instructions provided by us in writing;
 - (xiii) intimidate, harass, impersonate, stalk, threaten, bully or endanger any other User or distribute unsolicited commercial content, junk mail, spam, bulk content or harassment in connection with the Software;
 - (xiv) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Software or Documentation to any third party, other than granting a User access as permitted under these Terms;
 - (xv) decompile or reverse engineer the Software or any part of it, or otherwise attempt to derive its source code;
 - (xvi) share your Account or Account information, including log in details or passwords, with any other person and that any use of your Account by any person who is not the account holder is strictly prohibited. You must immediately notify us of any unauthorised use of your Account, password or email, or any other breach or potential breach of the Solution's security;
 - (xvii) use the Solution for any purpose other than for the purpose for which it was designed, including you must not use the Solution in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity (including requesting or accepting a job which includes illegal activities or purposes);
 - (xviii) make any automated use of the Solution and you must not copy, reproduce, translate, adapt, vary or modify the Solution without our express written consent;
 - (xix) attempt to circumvent any technological protection mechanism or other security feature of the Software; or
 - (xx) permit any use of the Solution in addition to the Number of Solution Users.

- (c) If you become aware of misuse of your Subscription by any person, any errors in the material on your Subscription or any difficulty in accessing or using your Subscription, please contact us immediately using the contact details or form provided on our Website.
- (d) You agree, and you must ensure that all Users agree:
 - (i) to comply with each of your obligations in these Terms;
 - (ii) to sign up for an Account in order to use the Solution;
 - (iii) that information given to you through the Software, by us or another User, is general in nature and we take no responsibility for anything caused by any actions you take in reliance on that information; and
 - (iv) that we may cancel your, or any User's, Account at any time if we consider, in our absolute discretion, that you or they are in breach of, or are likely to breach, this clause 7.

8 FEES AND PAYMENT

8.1 TRIAL PERIOD

We may from time to time offer a free trial period of the Solution (**Free Trial Period**). No payments will be due during any Free Trial Period and your first payment will be due immediately after the expiry of the Free Trial Period.

8.2 SUBSCRIPTION FEES

- (a) You must pay subscription fees to us in the amounts specified on the Website for your Subscription, or as otherwise agreed in writing (**Subscription Fees**).
- (b) All Subscription Fees must be paid in advance and are non-refundable for change of mind.
- (c) Unless otherwise agreed in writing, the Subscription Fees are due and payable on a recurring basis for the duration of your Subscription, with the first payment being due on the first day of the Subscription Period (or immediately after the expiry of any applicable Free Trial Period) and at the beginning of every Renewal Period thereafter.
- (d) Unless otherwise agreed in writing, the Subscription Fees are due and payable at the times specified in the Website (**Billing Cycle**) on a recurring basis for the duration of your Subscription, with the first payment being due on the first day of the Subscription Period (or immediately after the expiry of any applicable Free Trial Period) and at the beginning of every Billing Cycle thereafter.

8.3 AUTOMATIC RECURRING BILLING

Subject to clauses 8.4 and 8.5:

- (a) Your Subscription will continue to renew on an automatic indefinite basis unless you notify us that you wish to cancel in accordance with this clause 8.
- (b) While your Subscription is maintained, your Subscription Fees will continue to be debited at the beginning of each Renewal Period from the payment method you nominated when you registered for an Account.
- (c) By signing up for a recurring Subscription, you acknowledge and agree that your Subscription has an initial and recurring payment feature, and you accept responsibility for all recurring charges prior to your cancellation of your Subscription.

8.4 GRACE PERIOD

If you fail to cancel your Subscription prior to a Renewal Period and you are charged recurring charges, you have up to 10 Business Days from the date of that renewal to cancel your Subscription by contacting us through our Website (**Grace Period**). If you cancel your Subscription within the Grace Period, please contact us via our Website to request a refund for any recurring fees charged to you during the Grace Period.

8.5 CHANGES TO SUBSCRIPTION FEES

We may, from time to time, change our Subscription Fees and provide you with 10 Business Days' notice prior to the changes. During this time, you have the opportunity to cancel your Subscription with us. If you do not cancel your Subscription before the new Subscription Fees take effect, the Grace Period in clause 8.4 will apply.

8.6 LATE PAYMENTS

We reserve the right to suspend all or part of the Solution indefinitely if you fail to pay any Fees in accordance with this clause 8.

8.7 GST

Unless otherwise indicated, the Fees do not include GST. In relation to any GST payable for a taxable supply by us, you must pay the GST subject to us providing a tax invoice.

8.8 CARD SURCHARGES

We reserve the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

8.9 ONLINE PAYMENT PARTNER

- (a) We may use third-party online payment partner(**Online Payment Partner**) to collect Subscription Fees.
- (b) Provided that the Service Provider has notified the Client of such Third Party Terms and provided the Client with a copy of those terms, you acknowledge agree that:
 - (i) the processing of payments by the Online Payment Partner will be, in addition to this agreement, subject to the terms, conditions and privacy policies of the Online Payment Partner.
 - (ii) you release us and our Personnel in respect of all liability for loss, damage or injury which may be suffered by any person arising from any act or omission of the Online Payment Partner, including any issue with security or performance of the Online Payment Partner's platform or any error or mistake in processing your payment; and
 - (iii) We reserve the right to correct, or to instruct our Online Payment Partner to correct, any errors or mistakes in collecting your payment.
- (b) You have the right to reject any terms and conditions of the Online Payment Partner. If you reject those terms, we cannot provide you with the Subscription and clause 14 will apply.

9 INTELLECTUAL PROPERTY AND DATA

9.1 SOFTWARE CONTENT INTELLECTUAL PROPERTY

- (a) (**Our ownership**) We retain ownership of all Software Content and reserve all rights in any Intellectual Property Rights owned or licensed by us in the Software Content not expressly granted to you.
- (b) (**Licence to you**) You are granted a licence to the Software Content and you may make a temporary electronic copy of all or part of any materials provided to you for the sole purpose of viewing them and using them in relation to the Software. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish those materials or any Software Content without prior written consent from us or as otherwise permitted by law.

1.2 INFRINGEMENT ACKNOWLEDGEMENT

- (a) By using the Solution or uploading or creating any User Data, you acknowledge, agree, and warrant that you are not infringing on any privacy obligations or Intellectual Property Rights, including but not limited to copyrights, trademarks, and patents.

- (b) You agree to use and upload content entirely at your own risk and acknowledge that we play no part in verifying the lawfulness of uploads and ensuring Intellectual Property Rights are not being breached.
- (c) You agree that we shall not be liable for any infringement of Intellectual Property Rights resulting from your use of the Solution or your uploaded or created content.
- (d) Any additional Users or Personnel who are not a party to these Terms acknowledge, agree and warrant that they are not infringing on any Intellectual Property Rights by using the Solution or uploading or creating any content, and that if they are, they are solely responsible for any legal consequences arising from such infringement.
- (e) Your additional Users or Personnel acknowledge that they use the Solution entirely at their own risk and that we are not liable for any infringement of Intellectual Property Rights resulting from their use of the Solution or their uploaded or created content.
- (f) For the avoidance of doubt, by uploading User Data to our Website or otherwise using the Solution, you confirm that:
 - (i) you are the creator and owner of the User Data, or you have the necessary licenses, rights, consents, releases, and permissions to use and to authorise us to use your uploaded User Data in any manner contemplated by our Solution;
 - (ii) you have the written consent, release, and/or permission of each and every identifiable individual person in your uploaded User Data to use the name or likeness of each and every such identifiable individual person to enable inclusion and use of your uploaded content in any manner contemplated by our Solution; and
 - (iii) you are solely responsible for any content generated using uploaded content you do not own or do not have permission to use.

10 THIRD PARTY SOFTWARE & TERMS

10.1 THIRD PARTY SOFTWARE INTEGRATIONS

- (a) You acknowledge and agree that issues can arise when data is uploaded to software, when data is transferred between different software programs, and when different software programs are integrated together. We cannot guarantee that integration processes between the Software and other software programs will be free from errors, defects or delay.
- (b) You agree that we will not be liable for the functionality of any third party goods or services, including any third party software, or for the functionality of the Software if you integrate it with third party software, or change or augment the Software, including by making additions or changes to the Software code, and including by incorporating APIs into the Software.
- (c) If you add third party software or software code to the Software, integrate the Software with third party software, or make any other changes to the Software, including the Software code (**User Software Changes**), then:
 - (i) you acknowledge and agree that User Software Changes can have adverse effects on the Solution, including the Software;
 - (ii) you will indemnify us in relation to any loss or damage that arises in connection with the User Software Changes;
 - (iii) we will not be liable for any failure in the Solution, to the extent such failure is caused or contributed to by a User Software Change;
 - (iv) we may require you to change or remove User Software Changes, at our discretion, and if we do so, you must act promptly;
 - (v) we may suspend your access to the Solution until you have changed or removed User Software Change; and/or

- (vi) we may change or remove any User Software Change, in our absolute discretion. We will not be liable for loss of data or any other loss or damage you may suffer in relation to our amendment to, or removal of, any User Software Change.

11 CONFIDENTIALITY

- (a) Except as contemplated by these Terms, a party must not, and must not permit any of its Personnel, use or disclose to any person any Confidential Information disclosed to it by the other party without the disclosing party's prior written consent.
- (b) Each party must promptly notify the other party if it learns of any potential, actual or suspected loss, misappropriation or unauthorised access to, or disclosure or use of Confidential Information or other compromise of the security, confidentiality, or integrity of Confidential Information.
- (c) The notifying party will investigate each potential, actual or suspected breach of confidentiality and assist the other party in connection with any related investigation.

12 PRIVACY

- (a) We collect personal information about you in the course of providing you with the Solution, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our Privacy Policy which can be found at <https://alpenanalytics.com/privacy>
- (b) Our Privacy Policy contains more information about how we use, disclose and store your personal information and details how you can access and correct your personal information.
- (c) By agreeing to these Terms, you agree to our handling of personal information in accordance with our Privacy Policy.

13 LIABILITY

13.1 WARRANTIES AND LIMITATIONS

- (a) **(Warranties)** We warrant that:
 - (i) during the Subscription Period, the Solution will be provided as described to you in, and subject to, these Terms; and
 - (ii) to our knowledge, the use of the Software in accordance with these Terms will not infringe the Intellectual Property Rights of any third party.
- (b) **(Errors)** We will correct any errors, bugs or defects in the Software which arise during your Subscription and which are notified to us by you, unless the errors, bugs or defects:
 - (i) result from the interaction of the Software with any other solution or computer hardware, software or services not approved in writing by us;
 - (ii) result from any misuse of the Software; or
 - (iii) result from the use of the Software by you other than in accordance with these Terms or the Software Content.
- (c) **(Service Limitations)** While we will use our best endeavours to ensure the Solution is working for its intended purpose, you acknowledge and agree that from time to time, you may encounter the following issues:
 - (i) the Solution may have errors or defects;
 - (ii) the Solution may not be accessible at times;
 - (iii) messages sent through the Solution may not be delivered promptly, or delivered at all;

- (iv) information you receive or supply through the Solution may not be secure or confidential; or
- (v) any information provided through the Solution may not be accurate or true.
- (d) **(Exclusion)** To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in these Terms are excluded.
- (e) **(Consumer law)** Nothing in these Terms is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

13.2 LIABILITY

To the maximum extent permitted by law the total liability of each party in respect of loss or damage sustained by the other party in connection with these Terms or the Solution is limited to the total Fees paid to us by you in the 6 months preceding the date of the event giving rise to the relevant liability.

13.3 CONSEQUENTIAL LOSS

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with these Terms or any goods or services provided by us, except:

- (a) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
- (b) to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth).

14 CANCELLATION

14.1 CANCELLATION BY US

- (a) We may terminate these Terms or any Subscription in whole or in part immediately by written notice to you, at any time for any reason, including if:
 - (i) you, a member of your Personnel, or a User, are in breach of any term of these Terms; or
 - (ii) you become subject to any form of insolvency or bankruptcy administration.
- (b) If we terminate these Terms under this clause 14.1 in circumstances where you have not breached any of these Terms, we will issue you with a refund of a pro-rata amount of the remainder of the current Subscription or Renewal Period's Subscription Fee in which you will not have access to your Subscription.

14.2 CANCELLING YOUR SUBSCRIPTION

- (a) You may cancel your Subscription for convenience by following the prompts on the Website, or by contacting us in writing. The termination of your Subscription will take effect at the end of the then current Subscription Period or Renewal Period (**Cancellation Period**).
- (b) Any Subscription Fees that would otherwise have been payable during the Cancellation Period will remain payable and, to the maximum extent permitted by law, no Subscription Fees already paid for the Cancellation Period will be refundable.
- (c) We will continue to provide you the Solution during the Cancellation Period (including your licence to the Software) and you may retrieve any necessary data during this time.

14.3 TERMINATION FOR CAUSE

- (a) If a party (the **Notifying Party**) considers that the other party is in breach of this agreement (the **Breach**), the Notifying Party may provide a notice to the other party the nature and details of the Breach.
- (b) The other party will have 10 Business Days (or longer, in the Notifying Party's discretion) to rectify the Breach (the **Rectification Period**).
- (c) After the Rectification Period, the Notifying Party will notify the other party that:
 - (i) where the Breach has been successfully rectified, that the agreement will continue; or
 - (ii) where the Breach has not been successfully rectified, that this agreement is terminated (**Termination for Breach Notice**).
- (d) Following a Termination for Breach Notice:
 - (i) your Subscription will immediately terminate and you and your Users will no longer have access to the Solution, User Data or your Account; and
 - (ii) if you are the Notifying Party, no further fees will be payable by you (unless later found that such termination was invalid); or
 - (iii) if we are the Notifying Party, you must pay any outstanding Fees for the Subscription provided (or that would have been provided but for the termination notice) up to the date of termination.

14.4 OTHER CONSEQUENCES FOR TERMINATION

- (a) Upon termination of these Terms you will no longer have access to the Software, your Account or your User Data and we will have no responsibility to store or otherwise retain any User Data. You release us in respect of any loss or damage which may arise out of us not retaining any User Data beyond that point.
- (b) Notwithstanding termination of these Terms, any clause contained in these Terms that by its nature would reasonably be expected to be performed after the termination or expiry of these Terms will survive and be enforceable after such termination or expiry, including but not limited to clauses 5.3, 5.4, 7.3, 9, 11, 13, 15, 18

15 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

16 FORCE MAJEURE

- (a) We will not be liable for any delay or failure to perform its obligations under this agreement if such delay or failure arises out of a Force Majeure Event.
- (b) If a Force Majeure Event occurs, we must use reasonable endeavours to notify you of:
 - (i) reasonable details of the Force Majeure Event; and
 - (ii) so far as is known, the probable extent to which We will be unable to perform or be delayed in performing its obligations under this agreement.

- (c) Subject to compliance with clause 16(b), our relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (d) For the purposes of this agreement, a 'Force Majeure Event' means any:
 - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strikes or other industrial action outside of the control of us;
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
 - (iv) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of us, to the extent it affects our ability to perform our obligations.

17 NOTICES

- (a) A notice or other communication to a party under these Terms must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in the Order, or if no email address is specified in the Order, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or
 - (ii) when replied to by the other party,whichever is earlier.

18 GENERAL

18.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in Queensland, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

18.2 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

18.3 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

18.4 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

18.5 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

18.6 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

18.7 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(currency)** a reference to \$; or “dollar” is to Australian currency;
- (c) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (d) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (f) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word “includes” and similar words in any form is not a word of limitation; and
- (k) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.

DEFINITIONS

| Term | Definition |
|-------------------------------------|--|
| Confidential Information | means information of or provided by a party that is by its nature is confidential information, is designated by that party as confidential, or that the other party knows or ought to know is confidential, but does not include information, which is or becomes, without a breach of confidentiality, public knowledge. |
| Documentation | means all manuals, help files and other documents supplied by us to you relating to the Software, whether in electronic or hardcopy form. |
| Hosting Services | has the meaning given in clause 6. |
| Intellectual Property Rights | means any and all present and future intellectual and industrial property rights throughout the world (whether registered or unregistered), including copyright, trade marks, designs, patents, moral rights, semiconductor and circuit layout rights, trade, business, company and domain names, and other proprietary rights, trade secrets, know-how, technical data, confidential information and the right to have information kept confidential, or any rights to registration of such rights (including renewal), whether created before or after the date of this agreement. |
| Material | means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever. |
| Number of Solution Users | means the number of Users that you may make the Solution available to, in accordance with your Subscription Tier. |
| Personnel | means, in respect of a party, its officers, employees, contractors (including subcontractors) and agents. |
| Software | has the meaning given in the first paragraph of these Terms. |
| Software Content | means Material provided to you throughout the course of your Subscription in connection with the Software (including text, graphics, logos, design, icons, images, sound and video recordings, pricing, downloads and software), whether in electronic or hardcopy form, including any User Data integrated documents supplied through the Solution. |
| Solution | has the meaning set out in clause 5.1. |
| Subscription | means the goods and services (including access to the Solution) to be provided by us to you as agreed between the parties in writing. |
| Subscription Fees | has the meaning set out in clause 8 of these Terms. |
| Subscription Period | means the period of your Subscription to the Solution as agreed on the Website or in writing. |
| Support Services | has the meaning given in clause 5.6. |
| User | means you and any third party end user of the Software who you make the Software available to. |
| User Data | means any files, data, document, information or any other Materials, which is uploaded to the Software by you or any other User or which you, your Personnel or Users otherwise provide to us under or in connection with these Terms, including any Intellectual Property Rights attaching to those materials. |
| Website | means the website at the URL set out in the first paragraph of these Terms, and any other website operated by us in connection with the Solution. |