

Terms of Service Australia

1. INTERPRETATION and status of agreement

1.1 Definitions: In this Agreement, the following terms have the following meanings, unless the context otherwise requires:

“Agreement” means these Terms together with the Policies (which are incorporated by reference into these Terms) and the Key Details.

“Application Terms” has the meaning given in clause 2.4.

“Australian Consumer Law” means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

“Business Day” means any day other than a Saturday, Sunday or public holiday in Victoria, Australia.

“Business Hours” means 9am to 5pm on Business Days.

“Client” means the entity named as such in the Key Details.

“Confidential Information” means the Key Details and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, this Agreement. The “Supplier’s Confidential Information” includes Intellectual Property owned by the Supplier (or its licensors), including the Conqa Software. The “Client’s Confidential Information” includes the Data.

“Conqa Software” means the software owned by the Supplier (and its licensors) that is used to provide the SaaS Service, including the Mobile App.

“Data” means all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of the Client, whether before or after the date of this Agreement, that is or has been stored using, or inputted into, the SaaS Service.

“Feedback” has the meaning given in clause 6.3

“Fees” means the fees for set up, access and use of the SaaS Service as set out in the Key Details, as updated from time to time in accordance with clause 5.4.

“Force Majeure” means an event that is beyond the reasonable control of a party, excluding:
(a) an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
(b) a lack of funds for any reason.

“GST” has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Intellectual Property Rights” includes copyright and all rights anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity, and “Intellectual Property” has a corresponding meaning.

“Key Details” means the details for this Agreement that are specific to a Client as set out in a Proposal Document or, where clause 1.3(c) applies, in the electronic agreement document provided by the Supplier for electronic signature by the Client.

“Mobile App” means a native application for accessing and using the SaaS Service that is designed to operate on a mobile device operating system and made available by the Supplier on the associated third party app store.

“Objectionable” includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

“Permitted Users” means those personnel of the Client who are authorised to access and use the SaaS Service on the Client’s behalf in accordance with clause 3.3.

“Personal Information” has the meaning given in the Privacy Act 1988 (Cth).

“Policies” means the Privacy Policy and any other policy notified by the Supplier to the Client from time to time.

“Privacy Laws” means the Privacy Act 1988 (Cth), the Spam Act 2003 (Cth), any registered APP Code, and any other laws relating to the handling of Personal Information.

“Privacy Policy” means the ‘Privacy Policy for Australia’ made available on the Website, as updated or replaced by the Supplier from time to time.

“Proposal Document” means an email or other written proposal issued by the Supplier to the Client outlining the start date, fees for the SaaS Service and other Key Details.

“SaaS Service” means the proprietary software-as-a-service solution branded ‘Conqa’ accessible via the internet (at <https://app.con.qa/> or such other location notified to the Client by the Supplier from time to time) and via the Mobile App, having the core functionality described on the Website.

“Start Date” means the start date set out in the Key Details.

“Supplier” means Conqa Pty Ltd (ACN 619 956 964).

“Terms” means the provisions in these ‘Terms of Service for Australia’ that are made available on the Website, as updated or replaced by the Supplier from time to time.

“Underlying Systems” means the Conqa Software, IT solutions, systems and networks (including software and hardware) used to provide the SaaS Service, including any third party solutions, systems and networks used to provide the SaaS Service.

“Website” means the Supplier’s website at <https://www.conqa.hq.com/>, or such other site notified to the Client by the Supplier.

“Year” means a 12 month period starting on the Start Date or the anniversary of that date.

1.2 Interpretation: In this Agreement:

(a) clause and other headings are for ease of reference only and do not affect the interpretation of this Agreement;

(b) words in the singular include the plural and vice versa;

(c) a reference to:

(i) a party to this Agreement includes that party’s permitted assigns;

(ii) personnel includes officers, employees, contractors and agents, but a reference to the Client’s personnel does not include the Supplier;

(iii) a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;

(iv) including and similar words do not imply any limit; and

(v) a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;

(d) no term of this Agreement is to be read against a party because the term was first proposed or drafted by that party; and

(e) if there is any conflict or inconsistency between these Terms and either a Policy or a Proposal Document, then to the maximum extent permitted by law, the provisions in these Terms will prevail to the extent of the conflict or inconsistency.

1.3 Acceptance of these Terms: These Terms do not have to be signed in order to be binding on the Client. The Client indicates its acceptance of these Terms along with all other components of this Agreement applicable to the Client by:

- (a) indicating its acceptance of a Proposal Document that makes reference to these Terms;
- (b) accessing the SaaS Service or using the Mobile App; or
- (c) where the Supplier elects to have the Client sign the Agreement using an electronic contract management system or other electronic means, the Client's electronic signature on the document provided by the Supplier that makes reference to these Terms, whichever occurs earlier.

2. SaaS Service

2.1 General: Subject to payment of the Fees by the Client the Supplier must use reasonable efforts to provide the SaaS Service:

- (a) in accordance with this Agreement and applicable law;
- (b) exercising reasonable care, skill and diligence; and
- (c) using suitably skilled, experienced and qualified personnel.

2.2 Non-exclusive: The Supplier's provision of the SaaS Service to the Client is non-exclusive. Nothing in this Agreement prevents the Supplier from providing the SaaS Service to any other person.

2.3 Availability:

- (a) Subject to clauses 2.3(b) and (c), the Supplier will use reasonable efforts to ensure the SaaS Service is available on a 24/7 basis however the Supplier cannot guarantee this availability. If the SaaS Service becomes unavailable the Supplier will work as quickly as reasonably possible to restore availability.
- (b) On occasion the SaaS Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. The Supplier will use reasonable efforts to publish on the Website and/or notify the Client by email advance details of any unavailability.
- (c) Through the use of web services and APIs, the SaaS Service interoperates with a range of third party service features. The Client's use of any third party service features is subject to the terms and conditions imposed by the applicable third party provider. The Supplier does not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, the Supplier may cease to make available that feature to the Client. If the Supplier ceases the availability of a feature that is a material feature of the SaaS Service then the Client may terminate the Agreement by notice to the Supplier and receive a pro-rata refund for the remaining unused portion of any pre-paid monthly subscription fees. To exercise this right, the Client must give the Supplier notice of its termination within 30 days of the Supplier ceasing the availability of the material feature.

If the Client does not terminate this Agreement in accordance with this clause, it is deemed to have accepted the SaaS Service without the material feature. To avoid doubt, if the Supplier exercises its right to cease the availability of a third party feature, the Client is not entitled to any refund, discount or other compensation other than where it is entitled to terminate the Agreement pursuant to this paragraph and exercises that right in accordance with this paragraph.

2.4 Mobile App:

The Supplier may make one or more Mobile Apps available for use by the Client from time to time. As at the date of publishing these Terms the Supplier has published the 'Conqa Site' application on 'Google Play' for the 'Android' operating system and the 'Apple App Store' for the 'Apple iOS' operating system. Use of a Mobile App is subject to the terms of this Agreement together with any end user licence terms and usage rules for the Mobile App published on the applicable app store by the Supplier or by the third party provider of the app store (to the extent that any such third party provider's terms and rules do not conflict with the terms of this Agreement) (Application Terms). A reference to accessing or using the SaaS Service in this Agreement includes using a Mobile App and accessing or using the SaaS Service via a Mobile App.

2.5 Changes to the SaaS Service and Mobile App:

The Client acknowledges that as a hosted software-as-a-service solution, the Supplier may make improvements or other changes to the scope and functionality of the SaaS Service or a Mobile App from time to time and update the associated documentation. While the Supplier would not typically make changes that would intentionally cause the Client to lose access to material Data or fundamentally decrease the utility of the SaaS Service or Mobile App to the Client ("Detrimental Change"), if a Detrimental Change is made during the term of the Client's Agreement then the Client may terminate the Agreement by notice to the Supplier. To exercise this right, the Client must give the Supplier notice of its termination within 30 days of the Supplier making the Detrimental Change. If the Client does not terminate this Agreement in accordance with this clause, it is deemed to have accepted the Detrimental Change. For all other changes, the Client is deemed to have accepted the change by continuing to access and use the SaaS Service or Mobile App (as applicable) from the date it is changed.

2.6 New Features:

The Supplier may introduce new features or functionality within the SaaS Service or a Mobile App with corresponding additional fees ("Optional New Features") by giving the Client written notice of their availability and applicability. Use of any such Optional New Feature by the Client will be optional and subject to payment of the corresponding additional fee as notified by the Supplier to the Client. The Client acknowledges that the Supplier provides no commitment to introduce Optional New Features or any other features or functionality not already included within the SaaS Service or Mobile App as at the Start Date, and the Client agrees that its acceptance of this Agreement, and obligation to pay the Fees, is not contingent on any future features or functionality or any oral or written comments in public promotional material in relation to future features or functionality.

2.7 Support:

The Client may access the support articles published on the Help Centre pages of the Website for information on how to set up and use the SaaS Service and troubleshoot any issues the Client experiences in using the SaaS Service or a Mobile App. Where the Client requires technical support for the SaaS Service for issues that are not covered by the Help Centre the Client may contact the Supplier by the support email address or phone number listed on the Website. The Supplier will endeavour to respond to any requests for technical support as soon as reasonably practicable during Business Hours. The Client may also provide the Supplier with Feedback, such as feature requests or suggestions for enhancements or improvements to the SaaS Service, in the same manner as it requests support, however the Supplier may not respond to the Client in relation to this Feedback or act upon all such requests or suggestions.

2.8 Additional services:

The Supplier may, from time to time, make available to the Client additional services to supplement the SaaS Service upon the Client's request, on terms to be agreed between the Supplier and the Client.

3. CLIENT OBLIGATIONS**3.1 General use: The Client and its personnel must:**

- a) use the SaaS Service and Mobile App in accordance with this Agreement solely for the Client's own internal business purposes; and
- (b) not resell or make available the SaaS Service or Mobile App to any third party, or otherwise commercially exploit the SaaS Service or Mobile App.

3.2 Access conditions: When accessing the SaaS Service, the Client and its personnel must:

- (a) not impersonate another person or misrepresent authorisation to act on behalf of others or the Supplier;
- (b) correctly identify the sender of all electronic transmissions;
- (c) not attempt to undermine the security or integrity of the Underlying Systems;
- (d) not use, or misuse, the SaaS Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the SaaS Service;
- (e) not attempt to view, access or copy any material or data other than:
 - (i) that which the Client is authorised to access; and
 - (ii) to the extent necessary for the Client and its personnel to use the SaaS Service in accordance with this Agreement;
- (f) neither use the SaaS Service in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and
- (g) comply with these Terms, the Policies and any additional terms of use or policies on the Website, as updated from time to time by the Supplier.

3.3 Personnel:

- (a) Without limiting clause 3.2, no individual other than a Permitted User may access or use the SaaS Service.
- (b) The Client may authorise any member of its personnel to be a Permitted User, in which case the Client will provide the Supplier with the Permitted User's name and other information that the Supplier reasonably requires in relation to the Permitted User.
- (c) The Client must procure each Permitted User's compliance with clauses 3.1 and 3.2 and any other reasonable condition notified by the Supplier to the Client.
- (d) A breach of any term of this Agreement by the Client's personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of this Agreement by the Client.

3.4 Authorisations:

The Client is responsible for procuring all licences, authorisations and consents required for it and its personnel to use the SaaS Service, including to use, store and input Data into, and process and distribute Data through, the SaaS Service.

4. DATA**4.1 Supplier access to Data:**

- (a) The Client acknowledges that:
 - (i) the Supplier may require access to the Data to exercise its rights and perform its obligations under this Agreement; and
 - (ii) to the extent that this is necessary but subject to clause 7, the Supplier may authorise a member or members of its personnel or its trusted third party service providers to access the Data for the purposes set out in clause 4.1(a)(i).
- (b) The Client must arrange all consents and approvals that are necessary for the Supplier to access the Data as described in clause 4.1(a).

4.2 Analytical Data: The Client acknowledges and agrees that:

- (a) the Supplier may:
 - (i) use Data and information about the Client's and the Client's end users' (if any) use of the SaaS Service to generate anonymised and aggregated statistical and analytical data ("Analytical Data");
 - (ii) use Analytical Data for the Supplier's internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
 - (iii) supply Analytical Data to third parties;
- (b) the Supplier's rights under clause 4.2(a) above will survive termination or expiry of this Agreement; and
- (c) title to, and all Intellectual Property Rights in, Analytical Data is and remains the Supplier's property.

4.3 Personal Information:

- (a) The Client must comply with the Privacy Laws in relation to its collection, use and disclosure of Personal Information in connection with this Agreement and the SaaS Service as if it was an entity regulated by the Privacy Laws.
- (b) Without limiting clause 4.3(a), the Client must obtain all necessary consents from the relevant individual to enable the Supplier to collect, use, hold and process information,

including any Personal Information, in accordance with this Agreement.

4.4 Backups of Data:

While the Supplier will take standard industry measures to back up all Data stored using the SaaS Service, the Client agrees to keep a separate backup copy of all Data uploaded by it onto the SaaS Service.

4.5 International storage of Data:

The Client agrees that the Supplier may store Data (including any Personal Information) in secure servers in various overseas territories and may access that Data (including any Personal Information) in New Zealand, Australia and various overseas territories from time to time.

4.6 Indemnity:

The Client indemnifies the Supplier against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by the Supplier's solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

5. FEES**5.1 Fees:**

The Client must pay to the Supplier the Fees in accordance with clause 5.2. The Fees exclude GST, and the Client is solely responsible for the payment of any taxable supplies under this Agreement.

5.2 Invoicing and payment:

(a) The Supplier will issue a valid tax invoice to the Client for any component of the Fees that are quoted on a one-time basis (such as set up fees) on or about the first Business Day of the calendar month immediately after the Start Date, or any alternative date or dates specified in the Key Details.

(a) All subscription Fees (such as monthly per user or per project fees) are payable monthly in advance. The Supplier will issue a valid tax invoice to the Client:

(i) on or about the first Business Day of the calendar month immediately after the Start Date for the subscription Fees relating to the SaaS Services provided in the calendar month (or any part thereof) from the Start Date to the date of the invoice and to be provided in the then current calendar month; and thereafter

(ii) on or about the first Business Day of each calendar month for the subscription Fees relating to the SaaS Services to be provided in that calendar month.

(b) The Client must pay the Fees and each invoice:

(i) on or before the 20th day of each month in which an invoice for the Fees is provided; and

(ii) electronically in cleared funds without any set off or deduction.

5.3 Overdue amounts:

The Supplier may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by the Supplier's primary trading bank as at the due date (or, if the Supplier's primary trading bank ceases to quote that rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.

5.4 Increases:

(a) By giving at least 20 Business Days' notice, the Supplier may increase the Fees, which will be deemed to be the Fees listed in the Key Details once updated under this clause, as follows:

(i) once each Year (but not the first Year) by the percentage change in the Consumer Price Index (all groups, weighted average of eight capital cities, or similar or equivalent index if that index ceases to be published) over the 12 months preceding the last quarterly publication of that index issued by the Australian Bureau of Statistics prior to the date of the notice; and/or

(ii) from time to time for any other reason.

(b) If the Client does not wish to pay the increased Fees, it may terminate this Agreement on no less than 20 Business Days' notice, provided the notice is received by the Supplier before the effective date of the Fee increase. If the Client does not terminate this Agreement in accordance with this clause, it is deemed to have accepted the increased Fees.

6. INTELLECTUAL PROPERTY**6.1 Ownership:**

(a) Subject to clause 6.1(b), title to, and all Intellectual Property Rights in, the SaaS Service, the Website, the Mobile App and all Underlying Systems is and remains the property of the Supplier (and its licensors). The Client must not contest or dispute that ownership, or the validity of those Intellectual Property Rights. The Supplier grants the Client a worldwide, non-exclusive, non-transferable, non-sublicensable, revocable licence for the Client and its Permitted Users to use the SaaS Service (excluding the Mobile App) during the period of this Agreement subject to payment of the Fees. The Supplier grants the Client a worldwide, non-exclusive, non-transferable, non-sublicensable, revocable licence for the Client and its personnel to use the Mobile App on the mobile products and operating systems that the Mobile App is intended to operate on (as specified on the applicable app store), solely in connection with the Client's use of the SaaS Service in accordance with this Agreement, and subject to compliance with the Application Terms.

(b) Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the Client. The Client grants the Supplier a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of its rights and performance of its obligations in accordance with this Agreement.

6.2 Know-how:

To the extent not owned by the Supplier, the Client grants the Supplier a royalty-free, transferable, irrevocable and perpetual licence to use for the Supplier's own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by the Supplier in the provision of the SaaS Service.

6.3 Feedback:

If the Client provides the Supplier with ideas, comments or suggestions relating to the SaaS Service or Underlying Systems (together, "Feedback"):

- (a) all Intellectual Property Rights in that Feedback, and anything created as a result of that Feedback (including new material, enhancements, modifications or derivative works), are owned solely by the Supplier; and
- (b) the Supplier may use or disclose the Feedback for any purpose.

6.4 Third party sites and material:

The Client acknowledges that the SaaS Service may link to third party websites or feeds that are connected or relevant to the SaaS Service. Any link from the SaaS Service does not imply any Supplier endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators, or any grant of licence by the Supplier to the Client in relation to that content. To the maximum extent permitted by law, the Supplier excludes all responsibility or liability for those websites or feeds.

6.5 Client logo:

During the term of this Agreement, the Client shall permit the Supplier to use the Client's logo and name on the Website and the Supplier's promotional material for marketing purposes upon the Supplier's request and approval from the Client (which shall not be unreasonably withheld or delayed).

7. CONFIDENTIALITY**7.1 Security: Each party must, unless it has the prior written consent of the other party:**

- (a) keep confidential at all times the Confidential Information of the other party;
- (b) effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- (c) disclose the other party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 7.1(a) and 7.1(b).

7.2 Permitted disclosure: The obligation of confidentiality in clause 7.1 does not apply to any disclosure or use of Confidential Information:

- (a) for the purposes of performing this Agreement or exercising a party's rights under this Agreement;
- (b) required by law (including under the rules of any stock exchange);
- (c) which is publicly available through no fault of the recipient of the Confidential Information or its personnel;

(d) which was rightfully received by a party to this Agreement from a third party without restriction and without breach of any obligation of confidentiality; or
(e) by the Supplier if required as part of a bona fide sale of its business (assets or shares, whether in whole or in part) to a third party, merger, or corporate restructure.

8. WARRANTIES

8.1 Mutual warranties:

Each party warrants that it has full power and authority to enter into and perform its obligations under this Agreement which will constitute binding obligations on the warranting party.

8.2. Australian Consumer Law:

The SaaS Service comes with guarantees that cannot be excluded under the Australian Consumer Law. If the Client constitutes a consumer under the Australian Consumer Law in accessing the SaaS Service and these guarantees are not met, the Client is entitled to a replacement or refund for a major problem with a product, compensation for the drop in value below the price paid or a refund for a major problem with a service, and compensation for any other reasonably foreseeable loss or damage. The Client is also entitled to have a product repaired or replaced if the product fails to be of acceptable quality and the problem does not amount to a major problem. Nothing in these Terms is intended to remove the Client's rights under the Australian Consumer Law. If the Supplier is entitled to limit the remedies available to the Client for breach of such guarantees, the Supplier expressly limits its liability to either supplying the affected services again or paying the cost of supplying the services again.

8.3 No implied warranties:

To the maximum extent permitted by law, and subject always to clause 8.2 and the operation of the Australian Consumer Law:

- (a) the Supplier's warranties are limited to those set out in this Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded; and
- (b) the Supplier makes no representation concerning the quality of the SaaS Service or Mobile App and does not promise that the SaaS Service or Mobile App will:
 - (i) meet the Client's requirements or be suitable for a particular purpose; or
 - (ii) be secure, free of viruses or other harmful code, uninterrupted or error free.

8.4 Limitation of remedies:

Where legislation or rule of law, other than the Australian Consumer Law, implies into this Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in this Agreement. However, the liability of the Supplier for any breach of that condition or warranty is limited, at the Supplier's option, to:

- (a) supplying the SaaS Service again; and/or
- (b) paying the costs of having the SaaS Service supplied again.

9. LIABILITY

9.1 Maximum liability:

Subject to clause 9.3, the maximum aggregate liability of the Supplier under or in connection with this Agreement or relating to the SaaS Service, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed an amount equal to the Fees paid by the Client under this Agreement in the previous six months (which in the first six months is deemed to be the total Fees paid by the Client from the Start Date to the date of the first event giving rise to liability).

9.2 Unrecoverable loss:

Subject to clause 9.3, neither party is liable to the other under or in connection with this Agreement or the SaaS Service for any:

- (a) loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
- (b) consequential, indirect, incidental or special damage or loss of any kind.

9.3 Unlimited liability:

(a) Clauses 9.1 and 9.2 do not apply to limit the Supplier's liability under the Australian Consumer Law or under or in connection with this Agreement for:

- (i) fraud or wilful misconduct; or
- (ii) a breach of clause 7.

(b) Clause 9.2 does not apply to limit the Client's liability:

- (i) to pay the Fees;
- (ii) under the indemnity in clause 4.6; or
- (iii) for a breach of clause 7.

9.4 No liability for other's failure:

Neither party will be responsible, liable, or held to be in breach of this Agreement for any failure to perform its obligations under this Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under this Agreement, or by the negligence or misconduct of the other party or its personnel.

9.5 Mitigation:

Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with this Agreement.

10. TERM, TERMINATION AND SUSPENSION

10.1 Duration:

Unless terminated under clause 2.4, 5.4(b), this clause 10 or clause 11.8(a), this Agreement starts on the Start Date and continues for successive terms of one Year from the Start Date.

10.2 No fault termination:

Either party may terminate this Agreement without cause on at least 20 Business Days' prior written notice to the other party.

10.3 Other termination rights: Either party may, by notice to the other party, immediately terminate this Agreement if the other party:

- (a) breaches any material provision of this Agreement and the breach is not:
 - (i) remedied within 10 Business Days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - (ii) capable of being remedied;
- (b) becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
- (c) is unable to perform a material obligation under this Agreement for 20 Business Days or more due to Force Majeure.

10.4 Consequences of termination or expiry:

- (a) Termination or expiry of this Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
 - (b) On termination or expiry of this Agreement, the Client must pay:
 - (i) all Fees for the SaaS Service provided; and
 - (ii) for the avoidance of doubt, any amount outstanding pursuant to any invoice provided to the Client by the Supplier in accordance with clause 5, prior to that termination or expiry.
 - (c) Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination or expiry of this Agreement and subject to clause 10.4(d), a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.
 - (d) At any time prior to one month after the date of termination or expiry, the Client may request:
 - (i) a copy of any Data stored using the SaaS Service, provided that the Client pays the Supplier's reasonable costs of providing that copy. On receipt of that request, the Supplier must provide a copy of the Data in a common electronic form. The Supplier does not warrant that the format of the Data will be compatible with any software; and/or
 - (ii) deletion of the Data stored using the SaaS Service, in which case the Supplier must use reasonable efforts to promptly delete that Data.
- To avoid doubt, the Supplier is not required to comply with clause 10.4(d)(i) to the extent that the Client previously requested deletion of the Data, and the Supplier may delete the Data stored using the SaaS Service (whether deletion is requested by the Client or not) at any time after the one month period elapses.

10.5 Obligations continuing:

Clauses which, by their nature, are intended to survive termination or expiry of this Agreement, including clauses 4.6, 6, 7, 9, 10.4 and 10.5, continue in force.

10.6 Rights to restrict:

Without limiting any other right or remedy available to the Supplier, the Supplier may restrict or suspend the Client's access to the SaaS Service and/or delete, edit or remove the relevant Data if the Supplier considers that the Client (including any of its personnel) has:

- (a) undermined, or attempted to undermine, the security or integrity of the SaaS Service or any Underlying Systems;
- (b) used, or attempted to use, the SaaS Service:
 - (i) for improper purposes; or
 - (ii) in a manner, other than for normal operational purposes, that materially reduces the operational performance of the SaaS Service;
- (c) transmitted, inputted or stored any Data that breaches or may breach this Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
- (d) otherwise materially breached this Agreement.

10.7 Process:

- (a) The Supplier must notify the Client as soon as reasonably possible where it restricts or suspends the Client's access, or deletes, edits or removes Data, under clause 10.6.
- (b) Clause 10.4(d)(i) will not apply to the extent that it relates to Data deleted or removed under clause 10.6.

11. GENERAL**11.1 Force Majeure:**

Subject to clause 11.2, neither party is liable to the other for any failure to perform its obligations under this Agreement to the extent caused by Force Majeure, provided that the affected party:

- (a) immediately notifies the other party and provides full information about the Force Majeure;
- (b) uses its best efforts to overcome the Force Majeure; and
- (c) continues to perform its obligations to the extent practicable.

11.2 Exception to Force Majeure:

Clause 11.1 does not excuse a party from any obligation to make a payment when due under this Agreement.

11.3 Rights of third parties:

No person other than the Supplier and the Client has any right to a benefit under, or to enforce, this Agreement.

11.4 Waiver:

To waive a right under this Agreement, that waiver must be in writing and signed by the waiving party.

11.5 Independent contractor:

Subject to clause 4.3, the Supplier is an independent contractor of the Client, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under this Agreement.

11.6 Notices:

A notice given by a party under this Agreement must be delivered to the other party via email using the email address set out in the Key Details or otherwise notified by the other party for this purpose. If the notice is a notice of termination, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive or equivalent officer of the other party at the other party's last known physical address.

11.7 Severability:

(a) If any provision of this Agreement is, or becomes, illegal, unenforceable or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity.

(b) If modification under clause 11.7(a) is not possible, the provision must be treated for all purposes as severed from this Agreement without affecting the legality, enforceability or validity of the remaining provisions of this Agreement.

11.8 Variation:

(a) The Supplier may vary any provision of these Terms including the Policies (for example to respond to changes to law, the SaaS Service or the Supplier's business) from time to time by notice to the Client and publishing the varied Terms and Policies on the Website. Unless otherwise stated in a notice associated with the variation, all variations to the Terms and Policies will take effect for the Client the next time one of the Client's users access the SaaS Service or fourteen days after the Client is first notified of the variation (whichever occurs earlier). If the Client objects to the variation (acting reasonably) then the Client must discontinue its use of the SaaS Service and, as its sole and exclusive remedy, the Client may terminate this Agreement by notice to the Supplier. To exercise this termination right, the Client must give the Supplier notice of the objection and termination within 30 days of the Supplier providing notice of the variation.

(b) Subject to clauses 2.5, 5.4 and 11.8(a), any variation to this Agreement must be in writing and signed by both parties.

11.9 Entire agreement:

This Agreement sets out everything agreed by the parties relating to the SaaS Service, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of this Agreement that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect from the Start Date.

11.10 Assignment and subcontracting:

(a) The Client may not assign, subcontract or transfer any right or obligation under this Agreement without the prior written consent of the Supplier. Any change of control of the Client is deemed to be an assignment for which the Supplier's prior written consent is required under this clause. In this clause, "change of control" means any transfer of shares or other arrangement affecting the Client or any member of its group which results in a change in the effective control of the Client.

(b) The Supplier may at any time directly or indirectly assign, transfer or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under, or in connection with, this Agreement.



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11.11 Law:

This Agreement is governed by, and must be interpreted in accordance with, the laws of the State of Victoria, Australia. Each party submits to the non-exclusive jurisdiction of the Courts of Victoria, Australia in relation to any dispute connected with this Agreement.

Last update: 14/10/2020