

HONE CREATE TERMS OF BUSINESS

These terms and conditions ("Terms") set out your rights and obligations as a customer of Rapid Phenotyping Pty Ltd ("us", "our", "we" or "Hone") and our rights and obligations as a supplier and service provider to you.

These Terms apply to (a) our provision of hardware and software including the suite of HoneLab Devices, associated proprietary software and any applicable third party software we may supply as part of a Hone Create subscription based service, as well as any updates or patches to any software provided (together the "**Products**"); (b) your use of the website <https://www.honeag.com/> and its derivative sites ("**Sites**"); (c) the provision and use of the Sites, the Hone Platform including but not limited to Hone Create and the use of algorithms for batch testing (together the "**Platform Services**"); and (d) any related implementation, training, consulting, support and managed services as made available to you ("**Professional Services**") (together, the Platform Services and Professional Services comprise the "**Services**"). Further Services may be described in an order confirmation ("**Order Confirmation**") which you accept when ordering Products or Services from us. These Terms are deemed to include any additional terms contained in a document comprising or referred to in the Sites or an Order Confirmation, any annexure to an Order Confirmation ("**Annexure**"), user guides, instructions and other documentation that we produce in respect of our products and services ("**Documentation**") and our privacy policy available at www.honeag.com/documents.

These Terms do not apply to software that is not provided by Hone that is pre-loaded or pre-installed your Product, or software that is developed by or for Hone in conjunction with a third party (in each case, "Third Party Software"). Your use of Third Party Software is subject to and governed by separate terms that are included with that Product of software. The licence terms applicable to the Third Party Software are set out at www.honeag.com/documents. Hone is not responsible or liable for Third Party Software.

These Terms apply from the earlier of (a) acceptance of an Order Confirmation by us; (b) acceptance by you of these Terms through our website or Platform Services, or (c) the time that we commence delivery of, or otherwise provide you with access to, the Products and Services.

By registering to use or by using the Products and Services, or by submitting an Order, you acknowledge that you have read and understood these Terms, your Order Confirmation (if any) and each Annexure referred to in an Order Confirmation and you further acknowledge and represent that you have the authority to act on behalf of any person for whom you are acting. If you are agreeing to these terms as an individual "you" refers to you individually. If you are agreeing to these terms as a representative of an entity, you represent that you have the authority to bind that entity and "you" refers to that entity. If you do not agree with all of these terms, do not access or otherwise use the Products or Services.

These terms will change over time. We reserve the right to change these terms at any time in our sole discretion with the changes to become effective thirty (30) days after notice. We will give you notice of the changes by posting an updated version of these terms online or by emailing you at an email address you have provided. If you do not agree to any of the notified changes, you may notify us of this, in which case the changes shall not impact on you. However, if you do not so notify us, your continued conduct of business after changes take effect will constitute your acceptance of the changes. These Terms were last updated on **August 18th, 2021**.

If you do not agree to these Terms then do not install, download or use the Products, Sites or Services.

1. USE, ORDERING AND TITLE

- (a) **Ordering Direct.** You can order Products and Services online or in person from a Hone representative, selecting from the alternative ways in which Products and Services can be provided ("**Order**"). We may send you an Order Confirmation to indicate our acceptance of your Order depending on the Products and Services you have ordered. The Order Confirmation incorporates these Terms and any Annexures to the Order Confirmation. The Products and Services that you order and which we accept are as specified in an Order Confirmation (if any).
- (b) **Licence.** Where your Order is in respect of hardware and software supplied by us, subject to the provisions of these Terms, we grant

you a non-exclusive non-transferable, revocable licence to use the hardware and software for the Term of your order. In respect of the hardware and software:

- (i) You acknowledge and agree that we may make changes to the hardware and software from time to time, such as changing, adding and removing functions.
 - (ii) You acknowledge and agree that the hardware and software may be unavailable from time to time due to maintenance activities or due to technical problems.
 - (iii) You acknowledge and agree that you are responsible for taking steps to ensure that the means by which you access and use the hardware and software do not expose your computer systems and other devices to viruses, worms and other malicious code.
- (i) You must ensure that any end user of the hardware and/or software complies with these Terms when using the hardware and/or software.
 - (ii) You must only operate software in accordance with any specifications or in the specified operating environments set out in the documentation accompanying the software.
- (c) **Title and Risk.** Title to Product(s) supplied by us (but not including any IP Rights) will pass to you on payment of the Product Fee in full, and prior to that title will remain with us. Risk of loss of and damage to the Product(s) will pass to you upon delivery of the Product(s) at the place where supply is provided or otherwise at your delivery address. If, notwithstanding this you sell or otherwise dispose of Product(s) before payment in full of the price for the Product(s), you do so as our fiduciary agent and the proceeds of such sale or other disposal are also property of Hone and are held by you on trust for us.
- (d) **Hosted Services.** Where your Order is in respect of Services hosted by us ("**Hosted Services**"), subject to the provisions of these Terms, we grant you a non-exclusive and non-transferable right to access and use the Hosted Services for the Term. In respect of such Hosted Services:
- (i) You acknowledge and agree that we may make changes to the Hosted Services from time to time, such as changing, adding and removing functions.
 - (ii) You acknowledge and agree that the Hosted Services may be unavailable from time to time due to maintenance activities, technical problems, or other circumstances beyond our reasonable control.
 - (iii) You acknowledge and agree that you are responsible for taking steps to ensure that the means by which you access and use the Hosted Services do not expose your computer systems and other devices to viruses, worms and other malicious code.
- (e) **Professional Services.** Subject to the provisions of these Terms, we will provide you with the Professional Services set out in an Order accepted by us. We may subcontract the performance of any Professional Services but we will remain responsible to you for the delivery of those services. Unless stated otherwise in an Order, we will retain all rights, title and interest in and to any materials (including software, variable test results, algorithmic models, documentation, deliverables, modifications, enhancements and derivative works) ("**Service Materials**") that are created by us or by a third party on our behalf in connection with any Professional Service or other products or services that we provide to you. Any Service Materials that we provide to you must only be used by you in relation to the Services that we supply, and your use of Service Materials is subject to the same terms that apply to the applicable Service.
- ### 2. YOUR ACCOUNT
- (a) Subject to these Terms you may open an account with us by completing an online account registration form. Once your registration has been accepted (and until your account is terminated) you will be able to access parts of your account using the Services and (subject to agreeing any additional terms which are applicable) request Products and Services to be supplied by us. You agree to:

- (i) provide true, accurate, current and complete information about yourself (the "**Registration Data**") as prompted by the relevant registration form; and
 - (ii) maintain and promptly update the Registration Data through your account to keep it true, accurate, current and complete.
- (b) During the registration process you will be asked to supply your email address. This will help us to verify your identity on future visits. Should you register using an invalid email address or an email address that belongs to someone else, we may terminate your account at any time without notice.
- (c) You will receive confirmation emails, updates and marketing emails after you create an account, at the email address you register with. You can opt out of updates and marketing emails at any time.
- (d) You will also need to provide a password in order to access your account which you must keep secure at all times. Note that we are entitled to treat anything done through your account as having been done by you; it is up to you to maintain the security of your account and you will be responsible for any damage or losses caused by unauthorised access resulting from your failure to keep your password secure. We strongly recommend that you choose a unique password and we accept no liability whatsoever where a third party accesses your account using your password. You agree to immediately notify us if you become aware of any unauthorised use of your password or account or any other breach of security by contacting us via email at info@honeag.com or post at PO Box 538, Newcastle 2300, NSW, Australia.
- (e) We have the right to disable your password at any time if in our reasonable opinion you have failed to comply with any of the provisions of these Terms.
- (f) There is no charge for opening an account with us although you may wish to order certain Products and Services which are only available for a fee (see below).

3. YOUR OBLIGATIONS

(a) **Permitted Purpose and Intended Use.** You must only use (and must ensure that your personnel and end users only use) the Products and Services:

- (i) for your internal business purposes (including research for or with a third party), unless otherwise authorised by us in your Order, and the only people who are permitted to use the Products and Services are your staff and your contractors as authorised by you;
- (ii) in accordance with any directions given in writing to you from Hone from time to time, including instructions on any use warning notes and in any manual or instructions supplied with the Products and Services ("**Instructions**") and you must be aware that if the Products and Services are not used carefully as per the Instructions, it can cause significant harm; and
- (iii) in accordance with any applicable laws (together the "**Permitted Purpose**").

If you use the Products and Services for any purpose other than the Permitted Purpose, or use the Products and Services other than in accordance with the Instructions or any applicable laws, you will be responsible for any loss or damage arising out of that use and to the extent permitted by law, Hone excludes all liability for any loss or damage suffered or incurred by you or any other party due to or arising from use of the Products and Services other than in accordance with these Terms.

(b) **General Customer Obligations.** You must:

- (i) promptly tell us if you become aware of any problem or defect in a Product, provide us with all assistance and cooperation as reasonably requested by us for any Platform Services and Sites, provide us with all assistance and cooperation as reasonably requested by us in the performance of the Professional Services and respond in a timely manner to our reasonable queries;
- (ii) ensure that materials supplied to us are complete, accurate and in a format agreed by the parties (if any); and

- (iii) comply with your obligations under the Order Confirmation and documentation referred to in it and these Terms, and under any other documents agreed between the parties.
- (c) **Restrictions.** Unless expressly stated otherwise in your Order as accepted by us:

- (i) you must not license, sub-license, reproduce, copy, modify, create derivative works of, sell, exploit, rent, lease, transfer, assign, distribute or disclose the Products and Services or any part of them;
- (ii) you must not modify, reverse engineer, disassemble, decompile, reverse compile or otherwise try to access or reproduce the operation of the Products and Services;
- (iii) you must not modify, attack, disrupt or circumvent any software, technology or other material used by us to provide or control access to the Products and Services;
- (iv) you must maintain and not alter or remove any copyright, trade mark or other protective notice in the Products and Services and related documentation or in any copy of or any component of either of them; and
- (v) you must not directly or indirectly assist or permit any other person to do any of these things.

For the avoidance of doubt, the abovementioned restrictions do not apply to any output created by you using the Products or Services, including without limitation, any data collected by you or algorithm or model developed by you using any Product or Service.

(d) **Use of Sites.**

- (i) The Sites are only intended for individuals who can form legally binding contracts. By using the Sites you are representing and warranting that you are able to enter into contracts.
- (ii) You are responsible for (a) obtaining, deploying and maintaining your internal website(s), servers and other equipment and software used in the conduct of your business, and all computer hardware, software, modems, routers and other communications equipment necessary for you and your users to access and use the Sites; (b) contracting with third party ISP, telecommunications and other service providers to access and use the Sites via the internet; and (c) paying all third party fees and access charges incurred in connection with the foregoing. Except as specifically set forth in these Terms, we shall not be responsible for supplying any hardware, software or other equipment to you under these Terms.
- (iii) Our Sites may display some content that is not ours. That content is the sole responsibility of the entity that makes it available. We may review content to determine whether it is illegal or violates our policies, and we may remove or refuse to display content that we reasonably believe violates our policies or the law. But that does not necessarily mean that we review all content, so please keep that in mind.
- (iv) Although we use backup procedures in relation to our Sites and Services, we do not make any representation or warranty that these measures will be effective at all times. We recommend that you keep backups of any material that you upload. You acknowledge and agree that we have no obligation to retain Your Data.

4. OUR OBLIGATIONS

(a) **Support.** We will provide support services in relation to the Products and Services during the Term as described in these Terms or in an applicable Order Confirmation. Any additional software or documentation that we provide to you in connection with our support services for the Products and Services (including minor and major releases or updates, patches, fixes, modifications, etc.) ("**Updates**") will be deemed to be Products and Services for the purposes of these Terms.

(b) **Availability.** We will use commercially reasonable endeavours to make the Products and Services available 24 hours a day, seven days a week, except for planned maintenance carried out during our maintenance window, unscheduled maintenance that we

determine is required urgently or for circumstances beyond our reasonable control. To the extent permitted by law, we do not make any representation or warranty as to the availability of the Products and Services or that the Products and Services will be error-free or uninterrupted, and we make no representation or warranty in relation to the suitability of the Products and Services for use by you.

5. IP RIGHTS

- (a) **Ownership of IP Rights.** Except as otherwise expressly specified in these Terms or an Order Confirmation, as between us and you, we have and retain all right, title and interest in and to any and all IP Rights subsisting in the Products and Services and any and all modifications, revisions, changes, or improvements in or to the Products and Services, from time to time, and without limiting the above, we own any and all new IP Rights developed or used by us in the course of performing our obligations under these Terms including any algorithmic models and predictions developed using Your Data (as defined below). "IP Rights", an abbreviation of intellectual property rights, means all registered and unregistered rights throughout the world whenever subsisting (now or in the future) in respect of copyright, trade or service marks, designs, patents, the protection of databases, inventions, innovations, discoveries, processes, methods, scientific, technical and product information, algorithmic and other models, semiconductors or circuit layouts, trade, business or company names, indications of source or appellations of origin, trade secrets, know-how and confidential information, including the right to apply for the registration or grant of any such rights.
- (b) **Acknowledgement.** Without limiting the above clause, you acknowledge and agree that all IP Rights in the Products and Services (including all components) are owned by us and this agreement does nothing to alter such ownership, notwithstanding the use of the terms "purchase," "sale", or any similar terminology in connection with this agreement or any Order Confirmation, any and all IP Rights in or to the Products and Services are licensed, not sold, you have and acquire no right, title or interest in or to any IP Rights in the Products or Services other than the rights expressly granted by this agreement, and all rights not expressly granted under this agreement are reserved to us and our suppliers.
- (c) **Service Materials.** Unless stated otherwise in an Order Confirmation, we will retain all rights, title and interest in and to any Service Materials that are created by us or on our behalf by a third party in connection with any Professional Service or other Products or Services that we provide to you. To the extent that the ownership of any contribution by you or your employees or contractors to the creation of the Service Materials is not, by operation of law or otherwise, vested in Hone you hereby assign and agree to assign to us all right, title and interest in and to such Service Materials, including without limitation all the IP Rights, without the necessity of any further consideration, and you will cause your employees and contractors to do the same and waive all their moral rights in such Service Materials upon our request. Any Service Materials that we provide to you must only be used by you in relation to the applicable Products and Services, and your use of Service Materials is subject to the same terms and conditions that apply to the applicable Products and Services.
- (d) **No misuse of IP Rights.** You will not (and must ensure that your personnel, contractors, subcontractors, officers, agents, and related entities do not) do any act which may infringe any of our IP Rights in (or in any way related to) the Products or Services, challenge or in any manner impugn the validity of any of our IP Rights in or to the Products or Services, or our ownership of (or other rights in or to) any IP Rights in the Products or Services or in any way encourage, assist or procure a third party to take any of the actions referred to in this clause.
- (e) **Confidentiality.** Except to the extent permitted or required by these Terms, each party must not use or disclose any of the other party's Confidential Information. We may use your Confidential Information for the purpose of performing our obligations to you under these Terms or as otherwise permitted by these Terms. Each party may also disclose Confidential Information when required to do so by law or any regulatory authority, and to its representatives whose duties reasonably require such disclosure, provided the disclosure is made on a confidential basis to the extent possible. Confidential Information of a party ("**Discloser**") means information treated by

the Discloser as confidential or which the other party ("**Recipient**") knows (or ought to know) is confidential, and which is disclosed by the Discloser to the Recipient, whether before or after the acceptance of these Terms, as well as all notes and other records prepared by the Recipient based on or incorporating that information; but excludes information that; is in or subsequently enters the public domain other than as a result of a breach of confidentiality by the Recipient or any of its permitted disclosees; is lawfully obtained by the Recipient from another person entitled to disclose such information; is necessary for the Products and Services to function including for us to build algorithmic models or other Services for the purpose of the Products and Services or is independently developed by the Recipient. You understand and agree that we develop our own products and services and work with many other vendors and developers, and either us or these third parties could in the future develop (or already have developed) products and services similar to yours. You also should not provide to us any information that you consider confidential and you agree that we are not subject to any confidentiality obligations or use restrictions related to information that you may provide to us. You expressly agree that neither these terms nor your participation in the program limits our right to develop or have developed for it products, services, concepts, systems or techniques that are similar to or compete with any other products, services, concepts, systems or techniques contemplated by or embodied in information you disclose to us.

- (a) **Data.** We will treat any material that is uploaded by you in the course of your use of the Services ("Your Data") as your property. The term "Your Data" includes Reference Data (such as laboratory chemistry data) and Multivariate Data (such as spectral data) uploaded by you to the Products or Services and all other text, data, photos, video, audio and anything else that you upload or transmit using the Products or Services. You agree (a) that we may continue to store Your Data for as long as we deem appropriate to enable the Products and Services to function; and (b) that we may use, disclose and/or transmit Your Data only in specific cases where you have provided written consent for us to do so.
- (b) **Use of third parties.** We may use third parties to host or provide the Products and Services and to transmit and store the data (including Your Data) used to provide the Products and Services. You acknowledge that the Products and Services may incorporate components licensed to us by third parties, which may be subject to their own end user licence agreements ("Third Party Licences") and that your use of the Products and Services, in addition to these Terms and the applicable order, will be governed by any terms and conditions specified by any Third Party Licence that applies to the Products and Services. Although we use protective security measures in relation to the Products and Services and work with third parties to develop optimal outcomes, we do not make any representation or warranty as to third party services and you agree that your use of the Products and Services may involve use of systems, networks and facilities that are not owned, controlled, managed or operated by us, and that we are not responsible for them.
- (c) **Compliance with laws.** We agree to comply with our Privacy Policy which forms part of these Terms. You agree that you must comply with all applicable laws (including data protection laws) in connection with your use of the Products and Services. You agree that you are solely responsible for considering and complying with your obligations to third parties and your obligations under all applicable laws, including notifying and obtaining the consent of third parties (where applicable), in relation to your use of the Products and Services, and the use, transfer and disclosure of Your Data as contemplated by these Terms. By uploading Your Data, you represent and warrant to us that Your Data and its transmission and use by us and our service providers as contemplated by these Terms will not contravene any laws and that you have the necessary rights, consents and licences to make Your Data available to us to deal with as contemplated by these Terms. Nothing in these Terms restricts us from disclosing Your Data if we are legally required or compelled to do so by a court, a government authority or some other body with the legal authority to compel disclosure.

6. PAYMENTS

- (a) **Product and other Services Charges.** Your use of the Products and Services may result in charges to you for the Products and Services you receive, whether those Products and Services are provided by us or a third party provider. Any fees which will be charged to you will be set out in an Order Confirmation (if any) or displayed to you at the time of ordering the Product or Service. Users must pay us any fees applicable to their use of the Products and Services at the time those amounts are due and payable, which may be described in an applicable Order Confirmation or invoice and otherwise will be payable at the time of placing an Order which is accepted by us. After your payment has been processed, we will send you a receipt by email to the email address provided to us by you. For certain Products and Services, we will invoice you for the price of each Product and any additional options you order (together the "**Product Fee**"), the price for the Platform Services ("**Platform Services Fee**"), the price for the Professional Services ("**Professional Services Fee**") and any GST or any other taxes or duties (applicable to supplies made under this agreement (if not expressly included in the specified prices) in accordance with this agreement and any applicable Order Confirmation.
- (b) **Payment System.** Our payment system requires you to pay with credit or debit card or other approved payment systems from time to time (**Payment System**). If applicable, we will collect your credit or debit card details and other required information and will use it to charge you any fees. You authorise us to take all steps reasonably necessary for us to do so, including the use and disclosure of such credit or debit card number and information to third parties. You must use the payment service provided through the Payment System to make all payments due to us. Credit and debit card transactions will be processed using such secure payment technology or service provider as we deem appropriate in the circumstances. Refunds will only be available in the event of an erroneous double charge or as otherwise required by law or under these Terms. You warrant that all details provided to us for the purpose of your order and its delivery will be correct and that the chosen method of payment is your property and that sufficient funds or credit facilities are available to cover the full cost of the Products and Services ordered.
- (c) **Payment Due Date.** We will invoice you immediately, as specified in an Order Confirmation or otherwise monthly in advance, as applicable depending on the Service. You must pay our invoices immediately or within 14 days after the date of each invoice in accordance with the payment method in an Order Confirmation, as specified in any invoice.
- (d) **Usage limits.** An order may specify certain limits ("**Usage Limits**") in relation to your use of the Products and Services (such as the maximum number of users or maximum number of Tests to be undertaken). You must purchase Additional Test Credits or Platform Services in advance in order to exceed Usage Limits.
- (e) **Disputes.** If you dispute an invoice, you must pay the invoice in full by the date for payment of the invoice and then notify us of the nature of and reasons for the dispute. The parties must thereafter promptly attempt to resolve invoice disputes in accordance with these Terms.
- (f) **Interest on Overdue Amounts.** We may charge interest on overdue payments (including on disputed amounts which are later agreed or found to have been properly invoiced), calculated at our then-current bank overdraft rate plus 4%.
- (g) **Set off.** We may set off any debt or sum owing to us by you against any amount payable by us under this agreement.
- (h) **Other Rates.** Any services, materials or equipment that do not form part of the Products and Services will be subject to additional fees and charges as notified by us to you from time to time.
- (i) **Tax.** You must pay or cause to be paid when due and payable all tax applicable to supplies made under this agreement including tax on or in respect of the export, import, delivery and shipment of the Product(s) ("**Indemnified Taxes**"). We confirm that unless expressly specified otherwise in an Order Confirmation, your pricing is exclusive of all applicable taxes and duties. We are not liable to pay or reimburse you in relation to the Indemnified Taxes and you indemnify us from any liability arising out of or in relation to the Indemnified Taxes.
- (j) **Withholding.** All amounts payable by you to us under this agreement must be made in full and without any deduction or withholding on account of any tax except as required by law or otherwise by a Government Agency. If you are required by law or otherwise by a government agency to deduct an amount in respect of tax from any amount payable to you by us, you must: deduct the amount of tax and remit the amount of tax to the relevant Government Agency in accordance with the applicable law, promptly provide us with an original receipt for the amount of tax deducted and remitted to the relevant Government Agency and pay an additional amount to us so that, after making the deduction, we receive (at the time payment of the amount otherwise due) the amount we would have received if no deduction was required. In the event you withhold tax pursuant to these Terms, then we will reimburse you the amount withheld by you, provided that you have paid us the grossed up amount and we receive a tax credit from the applicable tax regulator for the amount of the withholding tax paid by you. "**Government Agency**" means any government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
- (k) **Audit and Inspection.** During and for a period of 3 years after this agreement, you must maintain complete and accurate records and accounts in respect of the Products and Services supplied by us to enable us to verify compliance with this agreement, and including that the correct Fees have been paid to us by you in respect of the Products and Services. You must provide us access to all such records and account upon request from us. You must promptly pay to us any Fees shown by any such audit to be owing, plus the applicable late fees and interest.

7. LIABILITY

- (d) **Warranties.** We warrant that the Products and Services shall perform materially in accordance with the requirements and specifications agreed in these Terms and any Order. For any breach of such warranty, your exclusive remedy shall be the re-supply of the Products and Services, or a refund of a reasonable amount of Fees to compensate for the decreased functionality, at our option. In Australia, Hone Products and Services may come with certain guarantees that cannot be excluded under the Australian Consumer Law as set out in Schedule 1 of the *Competition and Consumer Act 2010* (Cth). You may be entitled to a replacement or refund for major failure and compensation for any other reasonably foreseeable loss or damage. You may also be entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. For full details on any Limited Warranty applicable to Hone Lab Products please go to [Hone Consumer Hardware Limited Warranty – Australia].
- (e) **Limitation of Liability.** We provide the Sites and our Services using reasonable commercial judgement. But there are certain things that we cannot promise about our Sites or Services:
- (i) the Sites and software provided by Hone are provided by Hone on an "as is" and "as available" basis without any express or implied warranty of any kind;
 - (ii) Hone will use reasonable endeavours to ensure that its Sites and Services are safe and secure to use but is unable to warrant that at all times access to or use of this Sites or our Services will be uninterrupted or error free or free from errors or viruses, worms, trojan horses, time bomb, cancelbot or other harmful components;
 - (iii) To the extent permitted by law, Hone does not warrant the reliability, accuracy, completeness, timeliness, suitability, quality, physical state or fitness for purpose of: our Services; any material on or accessible through the Sites; or the content, software, text, graphics, links, or communications provided on or through the use of the Sites or our Services;
 - (iv) Hone may change any of the material on the Sites at any time without notice;
 - (v) Hone makes no commitment to update any material on the Sites and you are responsible for assessing the accuracy, reliability, suitability and accuracy of the material on or accessible through the Sites; and

- (vi) you accept risks and responsibility for all loss, damage, costs and other consequences resulting from using the Sites and our Services or the material on or accessible through the Sites or through our Services.
- (f) **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- (g) **LIABILITY CAP.** EXCEPT AS OTHERWISE PROVIDED IN THESE TERMS OR AN APPLICABLE ORDER, TO THE EXTENT PERMITTED BY LAW, OUR CUMULATIVE LIABILITY TO YOU IN RESPECT OF ALL CLAIMS MADE BY YOU UNDER OR IN CONNECTION WITH THESE TERMS, WHETHER ARISING OUT OF BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER TORT, MISREPRESENTATION, UNDER STATUTE OR OTHERWISE, WILL NOT EXCEED IN THE AGGREGATE THE FEES PAID BY YOU TO US FOR SERVICES IN THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM.
- (h) **NO CONSEQUENTIAL LOSS LIABILITY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES, LOSS OF OR DAMAGE TO DATA, LOSS ARISING FROM INTERRUPTION TO BUSINESS, LOSS OF GOODWILL OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT, MISREPRESENTATION OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (i) **Definition of Claim.** In these Terms, "**Claim**" means claim, cause of action, suit, proceedings, judgment, debt, fine, penalty, damage, loss, cost, expense or liability of any kind.

8. TERMINATION

- (a) **Term.** The term of the agreement under these Terms (the "**Term**") will begin on the date these terms become effective and will continue until you or us terminate them in accordance with the rights set out herein.
- (b) **Termination for material breach.** Either party may terminate their obligations pursuant to these Terms at any time immediately, or at such later date as that party chooses, by written notice to the other party if (a) the other party materially breaches these Terms and fails to remedy such breach within 14 days after receipt of notice from the first party specifying the breach and requiring it to be remedied; or if (b) the other party materially breaches these Terms and the breach is incapable of remedy; or if (c) you infringe our IP Rights; or if (d) the other party is subject to an Insolvency Event; or if (e) the other party is you and you are in breach of a Third Party Licence. In these Terms, Insolvency Event means in relation to a party, where that party becomes subject to any form of insolvency administration; ceases to carry on business; ceases to be able to pay its debts as they become due; any step is taken by a mortgagee or chargee to take possession or dispose of the whole or part of the that party's assets, operations or business; any step is taken to enter into any arrangement between that party and its creditors; or where any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person in respect of the whole or part of that party's assets, operations or business.
- (c) **Termination.** We reserve the right at our sole discretion to withdraw or vary the Products and Services and/or to suspend or terminate your access to the Products and Services at any time on 30 days' notice and we shall not be liable to you if the Products and Services are unavailable, either in whole or part, at any time for any reason whatsoever.
- (d) **Cease use.** Upon termination or expiration of the Term for any reason, you must cease all use of the Products, Services and the Service Materials and ensure each person that you authorise or

enable to operate your user account, or to use the Products and Services ceases all use of the Products, Services and the Service Materials. On termination or expiration of the Term, you must, at our election, either destroy or return to us all copies of any software, Service Materials and our Confidential Information then in your possession, custody or control, subject to any copies you are required to retain under law.

- (e) **Suspension for breach.** We may suspend your access to the Products and Services if we reasonably believe that you have breached these Terms. Any suspension pursuant to this clause will not entitle you to any refund or credit.

9. GENERAL

- (a) **Dispute resolution.** If a dispute between the parties arises relating to this agreement, then the party claiming the dispute may give the other party a written notice of the Dispute identifying and providing details of the Dispute ("**Notice of Dispute**"). Within 10 business days after receiving a Notice of Dispute, a senior representative (or his or her nominee) of each party must meet and attempt to resolve the dispute within 10 business days of receipt of the Notice of Dispute. All aspects of every such conference, except the fact of its occurrence, will be privileged. If the dispute is not resolved within the following 10 business days (or such other period as agreed), the parties will endeavour in good faith to settle the dispute by mediation, which will be conducted in accordance with Australian Commercial Disputes Centre Mediation Guidelines, before having recourse to arbitration or litigation. The mediation will be carried out in the most convenient manner and forum as agreed by the parties (for example, via telephone or video conference). A party must not start court proceedings unless they have first complied with this clause, however, nothing in this clause prejudices the right of a party to institute proceedings to seek injunctive or urgent declaratory relief.
- (b) **Force Majeure** If a party is unable to carry out its obligations under this agreement by reason of Force Majeure, that party must give the other party prompt written notice and details of the Force Majeure. The obligations of a party, so far as they are affected by the Force Majeure event, are suspended during the continuance of the Force Majeure. An affected party must use its best efforts to remove the Force Majeure as quickly as possible. The obligation by a party to pay monies due to the other party is not subject to the provisions of this clause. "**Force Majeure**" means any act of god, strike, lockout, or other industrial disturbance, act of public enemy, war, blockade, public riot, lightning, fire, storm, flood, earthquake, explosion, governmental restraint, or any other event which is not reasonably within the control of a party relying on it.
- (c) **Notices:** The particulars for delivery of notices are set out in the Order Confirmation. Each party may change its particulars for delivery of notices by written notice to the other party.
- (d) **Amendment:** This agreement may only be varied or replaced by a document executed by the parties.
- (e) **Waiver:** No waiver of a right or remedy under this agreement is effective unless it is in writing and signed by the party granting it.
- (f) **Rights cumulative:** Except as expressly stated otherwise in this agreement, the rights of a party under this agreement are cumulative and are in addition to any other rights of that party.
- (g) **Consents:** Except as expressly stated otherwise in this agreement, a party may conditionally or unconditionally give or withhold any consent to be given under this agreement and is not obliged to give its reasons for doing so.
- (h) **Further steps:** Each party must promptly do whatever the other party reasonably requires of it to give effect to this agreement and to perform its obligations under it.
- (i) **Governing law and jurisdiction:** These Terms are governed by and must be construed in accordance with the laws applicable in New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

- (j) **Assignment by the Customer:** you may only assign or deal with any right under these Terms or an Order Confirmation if you first obtain the prior written consent of us to the assignment. Any purported dealing in breach of this clause is of no effect. We may assign or deal with any right under these Terms or an Order Confirmation where such assignment or dealing is to or with a related entity of us, in the context of a bona fide sale or transfer of our business or to or with any company that has the financial and technical capacity to support the Products and Services supply in accordance with terms agreed with you. We will ensure that any assignee assumes the applicable rights, duties and obligations being assigned or otherwise dealt with by us under this agreement.
- (k) **Counterparts:** This agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (l) **Entire understanding:** This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.
- (m) **Relationship of parties:** This agreement is not intended to create a partnership, joint venture or agency relationship between the parties.
- (n) **Business day:** A business day means a day which is not a Saturday, Sunday or bank or public holiday in each of Sydney, Australia and the State and Country in which your head office is located.
- (o) **Other interpretation provisions:** If there is any inconsistency between these Terms and our Standard Terms of Business, these Terms take precedence. As between the Terms, an Order Confirmation or Annexures to an Order Confirmation, an Order Confirmation takes precedence, these Terms take second precedence and the Annexures take third precedence to determine the inconsistency. Any reference to taxes in these Terms or an Order Confirmation includes to tax includes any tax, levy, impost, goods and services tax, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called and whether Australian, foreign, state, municipal or local; and any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.