

**YourKind**

YOURKIND PTY LTD ABN 31 663 959 448

**TERMS OF SERVICE**

July 2024 Update

## INTRODUCTION

The Company provides the “YourKind” online social platform to facilitate meaningful connections between users, and the discovery, growth and prosperity of communities. Use of the platform is subject to these Terms of Service.

## DEFINITIONS

The following terms are used regularly throughout these Terms of Service and have a particular meaning:

- (a) **ABN** means Australia Business Number.
- (b) **Account** means a registered account within the Platform.
- (c) **Admin** means an authorised representative of the Creator, whom has been given administrative permissions over the Creator’s Community.
- (d) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.
- (e) **Chat** means the feature of the Platform that enables Users who are connected to communicate via Messages.
- (f) **Community** means a dedicated group within the Platform for Users to interact in relation to a certain activity or interest. References to a ‘Brand’ or ‘Organisation’ across the platform have the same meaning as a Community.
- (g) **Company** means YourKind Pty Ltd ABN 31 663 959 448.
- (h) **Confidential Information** means any written or verbal information that:
  - i Is information deemed as confidential under these Terms of Service;
  - ii A party informs the other party that it considers it confidential and/or proprietary;
  - iii A party would reasonably consider to be confidential in the circumstances; and
  - iv Is personal information within the meaning of the Privacy Act and GDPR.but does not include information that a party can establish:
  - v Was in the public domain at the time it was given to that party;
  - vi Became part of the public domain, without that party’s involvement in any way, after being given to the party;
  - vii Was in party's possession when it was given to the party, without having been acquired (directly or indirectly) from the disclosing party; or
  - viii Was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.

- (i) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (j) **Enterprise Agreement** means the separate written agreement entered between an Enterprise Customer and the Company governing the Enterprise Customer's licence terms and conditions to the Platform.
- (k) **Enterprise Community** means a Community with added features that is created and managed by an Enterprise Customer.
- (l) **Enterprise Customer** means a registered customer that enters into an Enterprise Agreement.
- (m) **Enterprise Fees** means the Fees payable by an Enterprise Customer, as agreed in the Enterprise Agreement.
- (n) **Event** means event ticketed through Platform created by a Seller or one of their Admins.
- (o) **Fee** means a fee charged by the Company for use of the Platform and includes both the Subscription Fee and Launch Fee.
- (p) **GDPR** means the EU General Data Protection Regulation 2016/679.
- (q) **GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (r) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property.
- (s) **Launch** means the feature of the Platform to launch a particular Post, Profile or comment of another User to send a specific request to connect with that User.
- (t) **Launch Fee** means the Fee paid by a User to unlock a certain number of Launches.
- (u) **Marketplace** means the "YourKind Marketplace" online platform for the direct selling of digital products and services, developed by the Company and advertised on <https://www.yko.link>.
- (v) **Marketplace Terms** means the terms and conditions of using the Marketplace, as updated from time-to-time, which can be found at <https://www.yourkind.io/terms>.
- (w) **Match** means the feature of the Platform to connect Users and facilitate the Chat function.
- (x) **Message** means a written communication sent between Users via the Platform.
- (y) **Mobile Application Marketplace** means an online marketplace for access to the Platform and other applications for mobile devices, including (without limitation) the App Store and Google Play.
- (z) **Payment Gateway** means Stripe or such other payment system the Company may adopt within the Platform from time-to-time.
- (aa) **Personal Information** has the same meaning as in the Privacy Act.

- (bb) **Platform** means the “YourKind” digital platform developed by the Company and accessible from Mobile Application marketplaces and YourKind’s Site, from time-to-time.
- (cc) **Post** means an individual post on the Platform by a User that includes text and/or multimedia content.
- (dd) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (ee) **Privacy Policy** means the Company’s privacy policy as updated from time-to-time, which can be found at the Site.
- (ff) **Profile** means a User’s personal profile linked to their Account, as updated from time-to-time.
- (gg) **Profile Link** means a User’s unique link or code to share their Account.
- (hh) **Promotion** means any promotional discount or benefit made available to Users by the Company from time-to-time.
- (ii) **Site** means [yourkind.io](https://yourkind.io), [yourkindofapp.com](https://yourkindofapp.com), [yko.events](https://yko.events), [yko.link](https://yko.link), and any other URL where the Company advertises the Platform from time-to-time.
- (jj) **Subscription** means an active subscription for the Platform pursuant to payment of the Subscription Fee.
- (kk) **Subscription Fee** means a Fee charged by the Company for use of the Platform on a periodical basis, as notified to the User from time-to-time.
- (ll) **Stripe** means the cloud payments platform accessible at <https://www.stripe.com/>.
- (mm) **Tax Invoice** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (nn) **Terms of Service** means these terms and conditions of using the Platform, as updated from time-to-time, which can be found at the Site.
- (oo) **Tickets** means a ticket to an Event.
- (pp) **Ticket Seller** means the Creator of a Community where Events are created to sell Tickets.
- (qq) **User** means any registered user of the Platform.
- (rr) **User Content** means all information, data, documents, hyperlinks, and other such materials entered or uploaded into the Platform by a User but does not include derivative data or analytics.

## 1 USING THE PLATFORM

### 1.1 General

- (a) To use the Platform, the User must accept these Terms of Service.
- (b) The licence granted under these Terms of Service shall be ongoing until terminated in accordance with the terms of these Terms of Service.

- (c) The User agrees that all use of the Platform is subject to these Terms of Service and must immediately cease to use the Platform if the User can no longer agree or adhere to these Terms of Service.
- (d) The Company may suspend an Account or restrict the access of any User that breaches these Terms of Service.
- (e) Persons under 13 years of age must not use the Platform under any circumstances. By accepting these Terms of Service, the User represents to the Company that they are 13 years of age and above

## **1.2 Disclaimer**

- (a) The Platform provides an online social platform to facilitate Users connecting with each other and especially Users with similar lifestyles and interests.
- (b) The Company makes no representation or guarantee that the User will successfully connect with other Users, nor that the User will be satisfied with any Users they do connect with.
- (c) The Company is in no way responsible for the conduct and actions of any User including any interaction between Users the result of using the Platform (whether this interaction occurs within or outside the Platform), especially the content of any Messages.
- (d) The Company does not run background checks on Users, nor does it seek to verify that the information presented in a Profile is in fact true and accurate. The Company makes no representation that the statements and information provided by Users are true and accurate.

## **1.3 Marketplace**

- (a) The User may also use the Marketplace in addition to the Platform.
- (b) The User acknowledges that they must take additional steps to successfully get set up to promote and sell digital products and services via the Marketplace.
- (c) The User accepts that their access to and use of the Marketplace will be governed by the Marketplace Terms which they must agree to as a condition to using the Marketplace.

## **1.4 Events & Tickets**

- (a) The User may create Events subject to the Ticket Sale Terms of Service.
- (b) Each User agrees that:
  - i The Company is merely the agent for each User who sells and/or buys Tickets;
  - ii All concerns, issues, disputes and refunds are the responsibility of the Ticket Seller;
  - iii All booking fees paid by Users when purchasing Tickets are non-refundable by the Company unless otherwise agreed in writing by the Company; and

- iv The Company is not responsible or liable for any Tickets of Events or the conduct of any person (including any Users) in respect to any Events.

## **1.5 Account & Profile**

- (a) To access the Platform, the User must have set up an Account.
- (b) To create an Account, the User must verify their mobile number or email, by entering the verification code sent to their mobile device or inbox.
- (c) The User will be required to create a Profile as part of Account sign up, whereby the User will be asked to enter their initial location, purpose, interest, and communities, and/or join select Communities.
- (d) The User may also create a new Community, which they may set as private with invite only or public for any User to join.
- (e) The User accepts that if they are a member of a Community, then their full name, as well as their purpose, interests, and communities, will be visible to the owner of the Community. The User expressly consents to their Personal Information being shared in this manner.
- (f) The User should complete their Profile accurately and truthfully, and not on the behalf or upon the instruction of any third party.
- (g) The User acknowledges that the effectiveness of some features of the Platform is directly linked to the information provided in the Profile due to algorithms and artificial intelligence adopted by the Company, especially the Match feature.
- (h) The User may update their Profile and/or Account settings at any time via their Account, which may include (without limitation):
  - i Filtering search results and feed content;
  - ii Joining or leaving from select Communities;
  - iii Hiding their Profile completely, or specifically their location; and/or
  - iv Updating their in-app push notification preferences.
- (i) The User acknowledges that changes to a User's Profile or Account may have an immediate impact to the operation of the Platform, and especially the content shown on their personal feed.
- (j) Once created, the User may share their Profile Link with other Users and non-User third parties at their discretion.
- (k) The Company may permit or deny the User an Account in its absolute discretion (although the User may generally obtain an Account by completing registration and accepting these Terms of Service).

## **1.6 Enterprise Customer Accounts**

- (a) An Enterprise Customer will be required to set up its own Account and appoint an administrator to manage the Account.

- (b) An Enterprise Customer may create an Enterprise Community under its Account and invite select Users to join the Enterprise Community.
- (c) All Users must individually create an Account and set up a Profile even if they are invited to join the Platform via an Enterprise Customer, however no Subscription Fees will be payable by Users in respect of their access to an Enterprise Community.
- (d) Despite clause 1.6(c) above, Users may pay Subscription Fees to enjoy certain benefits of the Platform that are only available with a Subscription, separate and distinct to their access to an Enterprise Community.
- (e) For clarity, all Fees that apply to an Enterprise Community shall be payable exclusively by the relevant Enterprise Customer as part of the Enterprise Fees, which shall be paid to the Company in accordance with the terms of the Enterprise Agreement.
- (f) An Enterprise Community will provide the Enterprise Customer with certain added features and benefits that are not otherwise available with a standard Community, as made available by the Company from time-to-time.
- (g) Where a User is a member of an Enterprise Community, they acknowledge and accept that:
  - i They may lose access to the Enterprise Community at any time as determined by the relevant Enterprise Customer (outside of the control of the Company);
  - ii They may receive push notifications directly from the relevant Enterprise Customer (outside of the control of the Company); and
  - iii Their full name, as well as their purpose, interests, and communities, will be visible to the relevant Enterprise Customer.
- (h) Where an Enterprise Customer does not pay the required Enterprise Fees to maintain an Enterprise Community, then, unless it is removed completely as per clause 1.6(i), the Enterprise Community shall automatically revert to a standard Community and immediately lose those added features only available for an Enterprise Community as per clause 1.6(f)
- (i) An Enterprise Customer may decide to delete an Enterprise Community under its control at any time by written notice to the Company, which once deleted shall have the effect of removing all User access to the Enterprise Community.
- (j) The legal relationship with each Enterprise Customer shall be governed under their respective Enterprise Agreement separate to these Terms of Service.

## **1.7 Features**

The Company shall provide the User with access to, and use of the features as provided within the Platform from time-to-time.

## **1.8 Posts & Launches**

- (a) The User may make a Post within the Platform, which may be limited to a certain Community and for a particular purpose or interest, at the User's discretion.

- (b) The User may add multimedia content to a Post, subject to allowing necessary permissions on their mobile device where required.
- (c) The User may hide or delete their Post at any time within their Account.
- (d) Other Users may interact with the User's Posts including the ability to Launch the Post (subject to any Account limitations, as per clause 3.2).
- (e) The User accepts that the Company does not represent or guarantee that a Launch request will be accepted by the recipient User, who has absolute discretion on whether to connect with other Users.
- (f) The Company does not assess, review, or approve Posts before publication and the User is encouraged to report inappropriate and offensive Posts pursuant to clause 1.10.

## **1.9 Matching & Messaging**

- (a) If the User wishes to Chat with a specific User, then they must Match the relevant Profile.
- (b) Only where Users independently and mutually Match each other's Profiles will Chat become available.
- (c) The User must ensure any Messages sent via the Chat are respectful and appropriate, and in no way offensive, abusive, discriminatory, defamatory, rude, indecent, objectionable, or unwanted.
- (d) The type and amount of information shared by the User with other Users via Chat, especially any sensitive and/or personal information, is within the complete control and at the own risk of the User.
- (e) Chat history will be stored and accessible within the User's Account indefinitely or until the User or Company chooses to remove them.
- (f) A User may block another User from sending them Messages, and/or report another User in accordance with clause 1.10.

## **1.10 Lodging a Complaint**

- (a) The User may lodge a complaint to the Company with respect to another User's conduct within the Platform, whether from Posts or Messages, or fake Profiles.
- (b) Where a complaint is lodged, the Company may, where it deems appropriate, notify the User the subject of the complaint and provide them with an opportunity to explain their case, however the Company is under no obligation to identify a complainant.
- (c) The Company may otherwise take immediate action to suspend or delete the Account of any User that the Company determines is in breach of these Terms of Service without notice or prior opportunity to explain their case.
- (d) The Company's decision to suspend or delete an Account is at its absolute discretion. The Company's decision shall be final and not subject to review.

## **2 USER CONDUCT**

- 2.1** The User agrees that it shall only use the Platform for legal purposes and shall not use it to engage in any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.
- 2.2** In particular, the User agrees not to:
- (a) Use the Platform to prey on, harass, stalk, threaten, abuse or otherwise unduly interfere with Users;
  - (b) Misrepresent their identity, gender, age or name when creating a Profile;
  - (c) Impersonate any other person or create fake Profiles;
  - (d) Use the Platform for illegal purposes or criminal activity, or to encourage any illegal activity;
  - (e) Create, enter or upload User Content that is pornographic, violent, offensive, rude, false or otherwise immoral; and
  - (f) Allow any third party to access the Platform who has not agreed to these Terms of Service.

## **3 FEES, PAYMENTS AND REFUNDS**

### **3.1 Subscription Fee**

- (a) The primary Fee shall be the Subscription Fee, which is payable in advance for the subscription period elected by the User.
- (b) The User agrees to make payment in advance for the Subscription Fee due at such frequency, or on such dates, as the User has subscribed for.
- (c) The User can manage and update their Subscription preferences at any time via the Mobile Application Marketplace.
- (d) Subscription Fees will automatically renew on an ongoing basis and be charged to the User at the end of the User's current subscription period for an additional period equal in length on the same terms, unless and until cancelled by the User via the relevant Mobile Application Marketplace.
- (e) Where a Subscription is validly cancelled by the User, those specific features and benefits associated with the Subscription shall cease at the end of the current billing cycle.
- (f) Where applicable, Promotions may affect the applicable Subscription Fee to be paid by the User which may include free periods.

### **3.2 Launch Fee**

- (a) As an alternative to a Subscription, the User may choose to pay the Launch Fee to purchase and unlock a fixed number of Launches.
- (b) The User will have the discretion on how and when they choose to use available Launches linked to their Account.

- (c) Launches are not transferable between different Accounts and have no expiry date.
- (d) Where the User has exhausted their available number of Launches, they must pay the Launch Fee again to unlock additional Launches.
- (e) Where the User does not hold a Subscription, the features available from within their Account will be substantially limited as notified by the Company.
- (f) For clarity, an active Subscription provides the User with an unlimited number of Launches (unless otherwise notified by the Company as per the terms of the Subscription).

### **3.3 Booking Fee**

- (a) The Company shall charge each buyer of Tickets a Booking Fee which shall be additional to the price of any Tickets.

### **3.4 Variations**

- (a) The Company reserves the right to introduce or change any Fees from time-to-time by giving the User written notice. Any new or changed Fees will apply at the next billing period after the User has been given such notice.
- (b) If a User does not accept a change to any Fees, then they can simply terminate their Account and stop using the Platform.

### **3.5 Payment**

All Fees shall be paid via the payment gateway within the Platform and/or Mobile Application Marketplace, or in such other manner as the Company may direct from time-to-time.

### **3.6 Currency**

All Fees are payable in Australian dollars, however transactions may be processed in an equivalent foreign currency (such as US dollars).

### **3.7 GST**

For Users in Australia, GST is applicable to any Fees charged by the Company to the User. Unless expressed otherwise, all Fees shall be deemed inclusive of GST. The Company will provide the User with a Tax Invoice for any payments.

### **3.8 Refunds**

- (a) No refunds of Fees are offered other than as required by law.
- (b) A User who is banned, blocked or suspended from using the Platform by the Company will not receive a refund for any payments made to the Company. It is the responsibility of the banned User to cancel any ongoing Subscription via the relevant Mobile Application Marketplace.

## **4 USER CONTENT**

### **4.1 The User acknowledges and agrees that:**

- (a) User Content is the sole responsibility of the User that uploaded the User Content to the Platform;
- (b) By uploading User Content to the Platform the User warrants to the Company that it is true and accurate;
- (c) By uploading the personal information of a third party to the Platform, the User warrants to the Company that they have this third party's consent to do so;
- (d) By sharing hyperlinks, the User warrants that the linked content is safe and legitimate and does not pose any security risks on the User who opens it (such as harmful third-party websites or viruses) and indemnifies the Company for any damage, loss or harm caused from those hyperlinks the User makes available on the Platform;
- (e) The User indemnifies the Company for any User Content that is fake, illegal, pornographic, offensive, discriminatory, defamatory, rude, indecent or objectionable that the User makes available using the Platform;
- (f) Without limiting the Company's rights, the Company may remove or suspend accessibility to User Content via the Platform that the Company determines is fake, illegal, pornographic, offensive, discriminatory, rude, indecent or objectionable in its sole discretion;
- (g) To the extent permitted by law, under no circumstances will the Company be liable in any way for User Content and the User is responsible for the accuracy, quality and legality of any data uploaded to the Platform;
- (h) The Platform may enable the User to create User Content, but by doing so the User shall not acquire an interest to any Intellectual Property owned by the Company which may exist in the Platform; and
- (i) The User warrants that it has all necessary Intellectual Property rights to use User Content and shall indemnify the Company for any infringement the User commits of third-party Intellectual Property rights by using User Content on the Platform.

## **5 GENERAL CONDITIONS**

### **5.1 Licence**

- (a) By accepting the terms and conditions of these Terms of Service, the User is granted a limited, non-exclusive and revocable licence to access and use the Platform for the duration of these Terms of Service, in accordance with these Terms of Service.
- (b) The Company may issue the licence to the User on the further terms or limitations as it sees fit.
- (c) The Company may revoke or suspend the User's licence(s) in its absolute discretion for any reason that it sees fit, including for breach of these Terms of Service by the User.

### **5.2 Modification of Terms**

- (a) The Company may, in its sole discretion, modify or update these Terms of Service from time-to-time.
- (b) Where changes are made to these Terms of Service, the Company will insert a 'last modified' date at the top of these Terms of Service to indicate the effective date of the updates.
- (c) The User should review this page periodically for notice of any changes to these Terms of Service.
- (d) The Company may notify the User of a change to these Terms of Service, such as material changes that affect the User's rights.
- (e) When the Company changes these Terms of Service in a material manner, it will update the 'last modified' date at the top of these Terms of Service and notify the User that material changes have been made to these Terms
- (f) The modified terms shall come into effect the next time the User accesses the Platform following the update to the Terms of Service.
- (g) If the User does not accept any changes to the terms of these Terms of Service, the User may terminate these Terms of Service and must immediately cease using the Platform.

### **5.3 Software-as-a-Service**

- (a) The User agrees and accepts that the Platform is:
  - i Hosted on servers managed by the Company, or by third-party service providers and systems approved by the Company, and shall only be accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and
  - ii Managed and supported by the Company and other third-party service providers engaged by the Company from time-to-time from the servers, and that no 'back-end' access to the Platform is available to the User unless expressly agreed in writing.
- (b) As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter the Platform.

### **5.4 Support**

- (a) The Company provides user support for the Platform via the email address support@yourkind.io.
- (b) The Company reserves the right to require the payment of reasonable fees for non-standard support requests prior to the provision of such support.

### **5.5 Use & Availability**

- (a) The User agrees that it shall only use the Platform for legal purposes and shall not use it to engage in any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.

- (b) The User is solely responsible for the security of their mobile device for obtaining access to their Account. The User shall notify the Company as soon as they become aware of any unauthorised access of their Account and the Company cannot be held liable for such in any way.
- (c) The User agrees that the Company shall provide access to the Platform to the best of its abilities, however:
  - i Access to the Platform may be prevented by issues outside of its control; and
  - ii It accepts no responsibility for ongoing access to the Platform.

## **5.6 Privacy & Personal Information**

- (a) The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for Personal Information that it collects about the User.
- (b) The Privacy Policy does not apply to how the User handles Personal Information. If necessary under the Privacy Act, it is the User's responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.
- (c) The Platform may use cookies (a small electronic tracking code) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.
- (d) The User acknowledges and accepts:
  - i The Company collects Personal Information of Users as part of creating an Account and/or Profile;
  - ii The full name of a User, as entered in their Account, may be shown to other Users once they have connected and Chat is enabled;
  - iii Under no circumstances will the Company be responsible to the User for another User's use of Personal Information; and
  - iv All Personal Information input into the Platform by a User is provided with that User's consent.

## **5.7 Analytics**

The Company may use information and data collected via the Platform, which may include User Content, for promotional, research, developmental, statistical and analytical purposes, subject to and in accordance with the Privacy Policy.

## **5.8 Security**

The Company takes the security of the Platform and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.

## **5.9 Intellectual Property**

- (a) **Trade marks.** The Company has moral and registered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- (b) **Proprietary Information.** The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of the Platform.
- (c) **The Platform.** The User agrees and accepts that the Platform is the Intellectual Property of the Company and the User further warrants that by using the Platform the User will not:
  - i Copy the Platform or the services that it provides for the User's own commercial purposes; and
  - ii Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in the Platform or any documentation associated with it.
- (d) **Content.** All content (excluding User Content) submitted to the Company, whether via the Platform or directly by other means, becomes and remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to the Platform.

#### 5.10 Third Party Dependencies

The User agrees and acknowledges that the Platform has third party dependencies which may affect its availability, including (without limitation) internet service providers and hosting services, and that the Company has no means of controlling the availability of such dependencies and shall not be liable for any interruptions to such.

#### 5.11 Confidentiality

- (a) Each party acknowledges and agrees that:
  - i the Confidential Information is secret, confidential and valuable to the disclosing party (**Discloser**);
  - ii it owes an obligation of confidence to the Discloser concerning the Confidential Information;
  - iii it must not disclose the Confidential Information to a third party except as permitted in these Terms of Service;
  - iv all Intellectual Property rights remain vested in the Discloser, but disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the receiving party; and
  - v any breach or threatened breach by the receiving party of an obligation under these Terms of Service may cause the Discloser immediate and

irreparable harm for which damages alone may not be an adequate remedy. Consequently, the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.

- (b) A party must notify the Discloser in writing, giving full details known to it immediately, when it becomes aware of:
  - i any actual, suspected, likely or threatened breach by it of any obligations it has in relation to the Confidential Information.
  - ii any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or
  - iii any actual, suspected, likely or threatened theft, loss, damage, or unauthorized access, use or disclosure of or to any Confidential Information.
- (c) The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:
  - i any actual, suspected, likely or threatened breach of a term of these Terms of Service; or
  - ii any theft, loss, damage or unauthorized access, use or disclosure of or to any Confidential Information that is or was in its possession or control.

## 5.12 Liability & Indemnity

- (a) The User agrees that it uses the Platform at its own risk.
- (b) The Company makes no representation or guarantee that the User will gain a particular benefit from using the Platform.
- (c) The User acknowledges that the Company is not responsible for the conduct or activities of any User and that the Company is not liable for such under any circumstances.
- (d) The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with the Platform, including any breach by the User of these Terms of Service.
- (e) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, damage to property, injury, illness, loss of property, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use the Platform, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, injury, illness or business interruption of any type, whether in tort, contract or otherwise.
- (f) Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and

may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:

- i The re-supply of services or payment of the cost of re-supply of services;  
or
- ii The replacement or repair of goods or payment of the cost of replacement or repair.

### 5.13 Termination

- (a) Either party may terminate these Terms of Service by giving the other party written notice or simply by cancelling an Account, and access to the Platform shall terminate immediately, or at the end of the User's subscription period if at the time of terminating these Terms of Service the User holds an active Subscription.
- (b) Termination of these Terms of Service is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of these Terms of Service up to the date of expiry or termination.

### 5.14 Dispute Resolution

- (a) If any dispute arises between the parties in connection with these Terms of Service (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:
  - i Includes or is accompanied by full and detailed particulars of the Dispute;  
and
  - ii Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.
- (b) Within 10 Business Days after a Dispute Notice is given, a representative of each party with the authority to resolve the dispute, must meet (virtually or otherwise) and seek to resolve the Dispute.
- (c) Subject to clause (d), a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- (d) Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- (e) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

### 5.15 Electronic Communication, Amendment & Assignment

- (a) The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.

- (b) A consent, notice or communication under these Terms of Service is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- (c) Notices must be sent to the parties' most recent known contact details.
- (d) The User may not assign or otherwise create an interest in these Terms of Service.
- (e) The Company may assign or otherwise create an interest in its rights under these Terms of Service by giving written notice to the User.

#### 5.16 General

- (a) **Special Conditions.** The parties may agree to any Special Conditions to these Terms of Service in writing.
- (b) **Prevalence.** To the extent these Terms of Service are in conflict with, or inconsistent with any Special Conditions made under these Terms of Service, the terms of those Special Conditions shall prevail.
- (c) **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in these Terms of Service.
- (d) **Relationship.** The relationship of the parties to these Terms of Service does not form a joint venture, agency or partnership.
- (e) **Waiver.** No clause of these Terms of Service will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- (f) **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to these Terms of Service and the transaction facilitated by it.
- (g) **Governing Law.** These Terms of Service are governed by the laws of New South Wales, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- (h) **Severability.** Any clause of these Terms of Service, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of these Terms of Service.
- (i) **Interpretation.** The following rules apply unless the context requires otherwise:
  - i Headings are only for convenience and do not affect interpretation.
  - ii The singular includes the plural and the opposite also applies.
  - iii If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - iv A reference to a clause refers to clauses in these Terms of Service.
  - v A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

- vi Mentioning anything after *includes, including,* or similar expressions, does not limit anything else that might be included.
- vii A reference to a *party* to these Terms of Service or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- viii A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
- ix A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

**END TERMS OF SERVICE**