



## Platform Partner Terms

### BACKGROUND

1. The Provider wishes to provide to the Partner, access and usage of the Platform under the terms of this Agreement
2. The Partner wishes to access and use the Platform in accordance with the terms of this Agreement.
3. The Partner carries on the business of a licensed education services provider.
4. The Provider is in the business of, among other things, providing IT platforms and other services in the education technology industry.
5. The parties have agreed that the Provider would provide certain services (usage of and access to certain features of the Platform) to the Partner and by extension to the End Users and wish to record their agreement.
6. The Provider and the Partner therefore wish to enter into a contract in accordance with the provisions of this Agreement.

### AGREEMENT

#### 1 Definitions

In this Agreement:

**Access Credentials** means the usernames, passwords and other credentials enabling access to the Hosted Services, including both access credentials for the User Interface and access credentials for the API;

**Additional Order Form** means an additional order form issued in accordance with clause 11 and in the form specified in the Platform Service Levels (Additional Order Form);

**Affiliate** means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

**Agreement** means this agreement including any schedules attached to this agreement, any amendments to this Agreement from time to time, the Documentation and the Related Platform Terms;

**AOF Consideration Period** means the period of 10 Business Days following the receipt by a party of the relevant Additional Order Form from the other party;

**API** means the application programming interface for the Hosted Services defined by the Provider and made available by the Provider to the Partner;

**Business Day** means any weekday other than a bank or public holiday in the Partner's relevant jurisdiction or as indicated otherwise in the Order Form;

**Business Hours** means the hours of 9.00am to 5.30pm (GMT+10) on a Business Day or as indicated otherwise in the Order Form;

**Change** means any change to the scope of the Services;

**Charges** means the following amounts:

- (a) the amounts specified in Section 4 of the Order Form;
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to the Partner before the date of this Agreement) by the time spent by the Provider's personnel performing the Support Services;

**Confidential Information** means all information relating to a party, any partner, clients, suppliers, distributors or joint venture partners, of the party and/or any of the business or financial affairs of any of them which, by its nature, may reasonably be regarded as confidential, including:

- (a) for the Provider, non-public information regarding the features, functionality and performance of the Services; and
- (b) for the Partner, the Partner Data, non-public data provided by the Partner to the Provider to enable the provision of the Services and any and all student, alumni or employee related information;

**Control** means the legal power to control (directly or indirectly) the management of an entity (and **Controlled** should be construed accordingly);

**Data Protection Laws** means applicable Privacy and Data Protection laws in relevant jurisdictions; in the United States this includes, to the extent applicable, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; the Children's Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501 et seq.; and relevant US state privacy and student data protection laws;

**DPA** means the Data Processing Agreement executed by the parties, which sets forth the terms governing Provider's processing of Partner Personal Data, available at [vygoapp.com/legal](http://vygoapp.com/legal);

**Documentation** means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Partner;

**Education Records** means, with respect to Partners based in the United States, records as defined under FERPA that contain personally identifiable information directly related to a student and are maintained by Partner;

**End User** means the intended end user of the Platform such as the Partner's administrators, students, mentors or other relevant users;

**Force Majeure Event** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

**Hosted Services** means the hosted services as specified in the Order Form, which will be made available by the Provider to the Partner as a service via the internet in accordance with this Agreement;

**Order Form** means the specification for the Platform and Hosted Services set out in Section 2 of the Order Form and in the Documentation;

**Intellectual Property Rights** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, Confidential Information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**Partner** means the entity set forth in the relevant Order Form.

**Partner Data** means all data, works and materials: uploaded to or stored on the Platform by the Partner; transmitted by the Platform at the instigation of the Partner; supplied by the Partner to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Partner (but excluding analytics data relating to the "Set-use" of the Platform and server log files);

**Partner Personal Data** means any Personal Data that is processed by the Provider on behalf of the Partner in relation to this Agreement;



**Partner Representative** means the person/s identified as such in the Order Form, and any additional or replacement persons that may be appointed by the Partner giving to the Provider written notice of the appointment;

**Personal Data** means personal data under any of the Data Protection Laws;

**Platform** means the Vygo Platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

**Platform Service Levels** means the document of the same name that governs the levels of maintenance, service and support services provided to the Partner;

**Provider** means Vygo Pty Ltd ACN 609 658 531;

**Provider Indemnity Event** has the meaning given to it in Clause 19.1;

**Provider Privacy Policy** means the related policies and procedures covering data protection and privacy to ensure compliance with any relevant Data Protection Laws;

**Provider Representative** means the person or persons identified as such in the Order Form, and any additional or replacement persons that may be appointed by the Provider giving to the Partner written notice of the appointment;

**Platform Terms & Conditions** means the document of the same name that covers the overarching conditions of usage for the Platform;

**Related Platform Terms** means any relevant agreements, terms or policies (viewable [here](#)) that support the provision of services through the Platform to the Partner and the End User. This includes but is not limited to the: Acceptable Usage Policy; Platform Service Levels; Platform Terms & Conditions; Provider Privacy Policy; Data Processing Agreement and the Additional Order Form;

**Services** means any services that the Provider provides to the Partner, or has an obligation to provide to the Partner, under this Agreement;

**Set Up Services** means the configuration, implementation and integration of the Hosted Services in accordance with Section 1 of the Order Form;

**Tax Acts** means any relevant applicable legislation in the Partner's jurisdiction;

**Tax or Taxation** means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax); and/or
- (b) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above;

**Term** means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2 and as set out in the Order Form; and

**Third Party Services** means any hosted, cloud or software-based services provided by any third party that are or may be integrated with the Hosted Services by the Provider, from time to time, where the Partner must, in order to activate the integration, have an account with the relevant services provider or obtain activation or access credentials from the relevant services provider;

**User Interface** means the Partner interface and the End User interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

## 2 Term & Acceptance of related agreements

2.1 This Agreement shall come into force upon the date of execution of this Agreement as determined by the date of execution of the Order Form.

2.2 This Agreement shall continue in force for the minimum term as set out in the Order Form.

2.3 The parties agree that the provisions of the Related Platform Terms are incorporated by reference into this Agreement and are hereby binding and enforceable on all parties to this Agreement.

## 3 Set Up Services

3.1 The Provider shall assist the Partner with the Set Up Services as set out in the Order Form.

3.2 Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.

## 4 Hosted Services

4.1 The Provider shall provide, or shall ensure that the Platform will provide, to the Partner upon completion of the Set Up Services, the Access Credentials necessary to enable the Partner to access and use the Hosted Services.

4.2 The Provider hereby grants to the Partner a world-wide, non-exclusive licence to use the Hosted Services by means of the User Interface and the API for the internal business purposes of the Partner in accordance with the Documentation during the Term. This licence is subject to the following limitations:

- a) the User Interface may only be used by the End User (End User Interface) or the officers, employees, agents and subcontractors of either the Partner or an Affiliate of the Partner (Partner Interface);
- b) the Partner Interface may only be used by the named users identified in the Order Form (Hosted Services particulars) solely through the designated user accounts linked to each named user identified in the Order Form, providing that the Partner may change, add or remove a designated named user in accordance with the user change procedure defined by the Hosted Services. For clarity, access by each named user shall only be provided through their designated user account to ensure that the Provider can maintain audit trail consistency. The Partner warrants that it (or any of its staff or representatives) shall only access the Partner Interface through the designated user accounts and no account sharing shall be permitted; and
- c) the Partner Interface must not be made available at any point in time by more than the number of users specified in the Order Form (Hosted Services particulars), provided that the Partner may add or remove user licences in accordance with the licence change procedure defined by the Hosted Services.

4.3 As regards the licence granted under Clause 4.1, the Partner must not:

- a) sub-license its rights to the Hosted Services;
- b) permit any unauthorised person or application to access or use the Hosted Services;
- c) use the Hosted Services to provide services to third parties;
- d) republish or redistribute any content or material from the Hosted Services;



- e) make any alteration to the Platform, except as permitted by the Documentation; and
- f) conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

- 4.4 The Partner shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Hosted Services by means of the Access Credentials.
- 4.5 The parties acknowledge and agree that Platform Service Levels (Availability SLA) shall govern the availability of the Hosted Services.
- 4.6 The Partner must comply with the Acceptable Usage Policy, and must ensure that all persons using the Hosted Services with the authority of the Partner or by means of the Access Credentials comply with Acceptable Usage Policy.
- 4.7 For the avoidance of doubt, the Partner has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 4.8 The Provider may, from time to time, suspend the Hosted Services for the purposes of reasonable scheduled maintenance to the Platform, with prior notice to Partner where possible.

## 5 Partner obligations

- 5.1 Save to the extent that the parties have agreed otherwise in writing, the Partner must provide to the Provider, or procure for the Provider, such co-operation, support and advice; information and documentation; and governmental, legal and regulatory licences, consents and permits, as are reasonably necessary to enable the Provider to perform its obligations under this Agreement.
- 5.2 The Partner must provide to the Provider, or procure for the Provider, such access to the Partner's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under this Agreement.

## 6 Partner Systems

The Partner shall ensure that its hardware and software systems which interact with, or may reasonably be expected to interact with, the Hosted Services comply, and continue to comply during the Term, with the requirements of the Order Form, subject to any changes agreed in writing by the Provider.

## 7 Partner Data

- 7.1 The Partner hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Partner Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement.
- 7.2 The Partner warrants to the Provider, to the maximum extent of their knowledge and based on reasonable enquiries undertaken that the Partner Data when used by the Provider in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 7.3 The Provider shall create a back-up copy of the Partner Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 90 days.
- 7.4 Within the period of 2 Business Days following receipt of a written request from the Partner, the Provider shall use all reasonable endeavours to restore to the Platform the Partner Data stored in any

back-up copy created and stored by the Provider in accordance with Clause 7.3. The Partner acknowledges that this process will overwrite the Partner Data stored on the Platform prior to the restoration.

## 8 Integrations with Third Party Services

- 8.1 The Partner acknowledges and agrees that:
  - a) the activation of Third Party Services with respect to the Hosted Services account of the Partner may result in the transfer of Partner Data and/or Partner Personal Data from the Hosted Services to the relevant Third Party Services and vice versa;
  - b) the Provider has no control over, or responsibility for, any disclosure, modification, deletion or other use of Partner Data and/or Partner Personal Data by any provider of Third Party Services;
  - c) the Provider gives no guarantees, warranties or representations in respect of any Third Party Services; and, except as required by applicable law,
  - d) the Provider shall not be liable to the Partner in respect of any loss or damage that may be caused by Third Party Services or Third Party Services provider.
- 8.2 Before enabling any Third Party Service integration that would result in the transfer of Education Records or Partner Personal Data to a third party, Provider shall: (a) provide Partner with written notice identifying the third party and describing the data to be shared; (b) ensure the third party agrees to terms no less protective than those in the DPA; and (c) obtain Partner's prior written consent if the integration would transfer Education Records subject to FERPA.

## 9 No assignment of Intellectual Property Rights

Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from one party to the other.

## 10 Representatives

- 10.1 The Provider shall give all instructions relating to matters contemplated in this Agreement through a Provider Representative to a Partner Representative. The Partner may treat all such instructions as the fully authorised instructions of the Provider and must not comply with any other instructions in relation to that subject matter.
- 10.2 The Partner shall give all instructions relating to matters contemplated in this Agreement through a Partner Representative to a Provider Representative. The Provider may treat all such instructions as the fully authorised instructions of the Partner and must not comply with any other instructions in relation to that subject matter.

## 11 Change control

- 11.1 Subject to the provisions of this Clause 11, a party may request a Change at any time by providing to the other party a completed Additional Order Form.
- 11.2 A party receiving an Additional Order Form may:
  - a) accept the Additional Order Form, by countersigning it and returning it to the other party before the end of the AOF Consideration Period;
  - b) reject the Additional Order Form, by informing the other party of this rejection before the end of the AOF Consideration Period; or
  - c) issue an amended Additional Order Form to the other party before the end of the AOF Consideration Period, in which case this Clause 11 will apply to the amended Additional Order Form.
- 11.3 A proposed Change will not take effect until such time as an Additional Order Form recording the Change has been signed by both parties.



## 12 Charges

- 12.1 The Partner shall pay the Charges to the Provider in accordance with this Agreement.
- 12.2 The Provider must obtain the Partner's written consent before performing Services that may result in any estimate of time-based Charges given to the Partner being exceeded or any budget for time-based Charges being exceeded.
- 12.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable taxes, which will be added to those amounts and payable by the Partner to the Provider.
- 12.4 The Provider may vary any element of the Charges by giving to the Partner not less than 30 days' written notice of the variation expiring on any anniversary of the date of execution of this Agreement, provided that no such variation shall constitute a percentage increase in the relevant element of the Charges that exceeds 10% over the percentage increase, since the date of the most recent variation of the relevant element of the Charges under this Clause 12.4. Any new features or offerings that are not specified in the Order Form are not subject to this clause.
- 12.5 Any breach of this Clause 12 shall be deemed to constitute a material breach of this Agreement, other than failure to give notice of any increase as per clause 12.4.
- 12.6 All amounts payable under or in connection with this Agreement must be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this Agreement (unless otherwise required by law).
- 12.7 If a party is required by law to make a deduction or withholding in respect of any sum payable under or in connection with this Agreement to another party, it must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the other party of such additional amount as is required to ensure that the net amount received by the other party will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.

## 13 Payments

- 13.1 The Provider shall issue invoices for the Charges to the Partner.
- 13.2 The Partner must pay the Charges to the Provider within 30 days after the date of issue of an invoice by using such payment details as are notified by the Provider to the Partner, from time to time.
- 13.3 If the Partner does not pay any amount due to the Provider under this Agreement, the Provider may charge the Partner interest on the overdue amount at the rate of the lower of (a) 1.5% per month or (b) the maximum rate permitted by applicable law, which interest will accrue daily from the due date until the date of actual payment and be compounded at the end of each calendar month.
- 13.4 Any breach of this Clause 13 shall be deemed to constitute a material breach of this Agreement.

## 14 Confidentiality Obligations

- 14.1 The parties understand that either party has disclosed or may disclose Confidential Information to the other.
- 14.2 The recipient of such Confidential Information agrees:
- to take reasonable precautions to protect such Confidential Information from disclosure contrary to this Agreement, and
  - not to use (except in performance of the Services or as otherwise permitted in this Agreement) or divulge to any third person any such Confidential Information.

14.3 The party disclosing such Confidential Information agrees that Clause 14.2 shall not apply to any information that the recipient can show:

- is or becomes generally available to the public;
- was in its possession or known by it prior to receipt from the disclosing party;
- was rightfully disclosed to it without restriction by a third party,
- was independently developed without use of any Confidential Information of the disclosing party; or
- is required to be disclosed by law.

14.4 Notwithstanding Clause 14.3, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who require access to that Confidential Information to carry out their work regarding this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of such Confidential Information.

14.5 After termination of this Agreement, each party must delete or return to the other party of all the other party's Confidential Information, subject to the data retention requirements in accordance with the DPA.

14.6 The provisions of this Clause 14 shall continue in force indefinitely following the termination of this Agreement and any breach of this Clause 14 shall be deemed to constitute a material breach of this Agreement.

## 15 Data Protection and Ownership

15.1 Each party shall comply with the applicable Privacy and Data Protection laws and the DPA with respect to the processing of the End User Personal Data and Partner Personal Data. To the extent applicable, Provider agrees to comply with FERPA and be considered a "school official" under FERPA with respect to Partner Personal Data and End User Personal Data, as applicable.

15.2 The Partner shall own all right, title and interest in and to the Partner Data, as well as any data that is based on or derived from the Partner Data and provided to Partner as part of the Services.

15.3 The Provider shall own and retain all right, title and interest in and to:

- the Services and Platform, and all improvements, enhancements or modifications thereto;
- any software, applications, inventions or other technology developed in connection with the Services or support; and
- all intellectual property rights related to any of the foregoing.

15.4 Despite anything to the contrary, the Provider may collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Partner Data and data derived therefrom), and the Provider will be free (during and after the Term hereof) to:

- use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Provider offerings (i.e. reviewing Partner Data in aggregate for product research, responding to support requests, or debugging or improving product features); and
- disclose such data solely in aggregate or other de-identified form, consistent with the DPA, in connection with its business (i.e.



reporting total number of students using Provider software, aggregated insights and analytics of user usage of Provider software).

15.5 Where the Partner has opted into receiving our marketing materials, the Partner agrees that, to the extent compliant with applicable Data Privacy Laws, the Provider may email End Users of the Platform directly in order to drive product adoption and engagement, including activities such as surveying users on product improvements, sending new feature updates/drip engagement campaigns, and marketing educational resources such as webinars and articles. The Partner and End Users may opt out of marketing materials at any time by using the unsubscribe function in the Provider's electronic communications.

15.6 The Provider will never market directly to End Users for any paid services or share this information with third parties for marketing purposes. No rights or licenses are granted except as expressly set forth in this Agreement. The Provider will never sell or lease Partner Data to any third parties for any reason.

## 16 Data Sharing

16.1 The Provider shall make available to the Partner selected Personal Data and End User personal data generated by the Platform as necessary for the internal business purposes of the Partner, via the User Interface or API using the provided Access Credentials. For US-based Partners, this sharing shall be conducted in accordance with the "school official" exception under FERPA.

16.2 The Partner acknowledges and agrees that access to or the sharing of specific non-standard data types—including but not limited to sensitive personal information or detailed behavioral data—may be conditioned upon the Parties entering into a separate Data Access and Use Addendum. Such a request shall only be granted if the Partner demonstrates a lawful basis for processing under applicable Data Protection Laws (e.g., UK GDPR/GDPR Article 6 and, where applicable, Article 9).

16.3 Where such an Addendum is executed, the sharing of data may be subject to the following additional conditions:

- a) the data must be used strictly for the specific, documented purpose identified in the Addendum (Purpose Limitation);
- b) access may be provided through a specific method of access agreed upon (such as a secure encrypted file transfer) rather than the standard User Interface to ensure data integrity and confidentiality;
- c) the Partner must warrant that its receipt and use of such information complies with all applicable Privacy Legislation, including ensuring that data subjects have been provided with adequate privacy notices; and
- d) the Partner must implement technical and organizational measures to ensure that the data shared is limited to the minimum amount necessary to achieve the identified purpose (Data Minimization).

## 17 Warranties

17.1 Subject to any prior disclosure, the maximum extent of the Provider's knowledge and provided reasonable enquiries are made, the Provider warrants to the Partner that:

- a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and

the fulfilment of the Provider's obligations under this Agreement; and

- c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

17.2 The Provider warrants to the Partner that:

- a) the Platform and Hosted Services will conform in all material respects with the Order Form;
- b) the Hosted Services will be free from defect, error or bug in the Platform having a material adverse effect on the operation or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of any act or omission of the Partner or any person authorised by the Partner to use the Platform or Hosted Services; any use of the Platform or Hosted Services contrary to this Agreement or the Documentation, whether by the Partner or by any person authorised by the Partner; and/or a failure of the Partner to perform or observe any of its obligations in this Agreement;
- c) the Platform will incorporate security features reflecting industry standard practice;
- d) the Hosted Services, when used by the Partner in accordance with this Agreement, will not breach any applicable law, including Data Protection Laws, or infringe the Intellectual Property Rights of any person under the applicable law.

17.3 If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Partner in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

- e) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- f) procure for the Partner the right to use the Hosted Services in accordance with this Agreement.

17.4 The Partner warrants to the Provider that (a) it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement, (2) its use of the Hosted Services in accordance with this Agreement will not breach applicable law, including Data Protection Laws.

17.5 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

17.6 Any breach of this Clause 17 shall be deemed to constitute a material breach of this Agreement.

## 18 Acknowledgements and warranty limitations

18.1 The Partner acknowledges that complex software is never wholly free from defects, errors and bugs; the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

18.2 While the Provider will undertake commercially reasonable efforts to ensure that the Platform is secured to maximum extent possible, the Partner acknowledges that complex software that is delivered as a software-as-a-service offering, is never entirely free from security vulnerabilities and is provided on an "as is" basis.

## 19 Indemnities



19.1 The Provider shall hold the Partner harmless from liability to third parties resulting from infringement by the Hosted Services of any applicable patent or any copyright or misappropriation of any trade secret, provided that the Provider is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defence and settlement. The Provider will not be responsible for any settlement which it does not approve in writing.

19.2 The foregoing obligations do not apply with respect to portions or components of the Hosted Services:

- a) not supplied by the Provider;
- b) made in whole or in part in accordance with the Partner's specifications;
- c) that are modified after delivery by the Provider;
- d) combined with other products, processes or materials where the alleged infringement relates to such combination;
- e) where the Partner continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or
- f) where the Partner's use of the Hosted Services is not strictly in accordance with this Agreement.

19.3 If, due to a claim of infringement, the Hosted Services are held by a court of competent jurisdiction to be or are believed by the Provider to be infringing, the Provider may, at its option and expense:

- a) replace or modify the Hosted Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality;
- b) obtain for the Partner a license to continue using the Hosted Services; or
- c) if neither of the foregoing is commercially practicable, terminate this Agreement and the Partner's rights hereunder and provide the Partner a refund of any prepaid, unused fees for the Hosted Services.

## 20 Force Majeure Event

20.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement, that obligation will be suspended for the duration of the Force Majeure Event.

20.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

- a) promptly notify the other; and
- b) inform the other of the period for which it is estimated that such failure or delay will continue.

20.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## 21 Limitation of Liability

21.1 Despite anything to the contrary, except for bodily injury of a person, gross negligence, or willful misconduct, the Provider and its suppliers, officers, affiliates, representatives, contractors and employees shall not be responsible or liable under this Agreement or any terms and conditions related thereto under any contract, negligence, strict liability or other theory, for:

- a) any error or interruption of use or for loss or inaccuracy or corruption of data or cost of procurement of substitute goods, services or technology or loss of business;
- b) any indirect, exemplary, incidental, special or consequential damages;
- c) any matter beyond the Provider's reasonable control; or
- d) any amounts that, to the extent permitted under law, together with amounts associated with all other claims, exceed the amounts paid by the Partner to the Provider for the Hosted Services in the 12 months prior to the act that gave rise to such liability, in each case, whether or not the Provider has been advised of the possibility of such damages.

## 22 Termination

22.1 This Agreement sets the conditions for any Order Form used to place an order for the Hosted Services.

22.2 Each Order Form will specify the Term.

22.3 In addition to any other remedies it may have, either party may terminate this Agreement upon 30 days' notice (or without notice in the case of non-payment), if the other party materially breaches any of the terms or conditions of this Agreement. The Partner may also terminate this Agreement for any reason upon 30 days' written notice to the Provider; however, if the Partner terminates this Agreement without cause and any outstanding Term remains on any executed Order Form, all future payments under all outstanding Order Forms will become due. No pro-rated refunds will be given if Partner cancels this Agreement or any Order Form without cause.

22.4 Within 30 days after the termination of this Agreement for any reason the Partner will pay in full for the Hosted Services up to and including the last day on which the Hosted Services are provided.

22.5 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

22.6 The rights of termination set out in this Agreement shall not exclude any rights of termination available at law and except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.

## 23 Notices

23.1 All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

## 24 Subcontracting

24.1 Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement, providing that the Provider must give to the Partner if requested by the Partner in writing, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying subcontractor in question.

24.2 The Provider shall remain responsible to the Partner for the performance of any subcontracted obligations, including relevant provisions of the DPA.

24.3 Notwithstanding the provisions of this Clause 24 but subject to any other provision of this Agreement, the Partner agrees that the Provider may subcontract to any reputable third-party hosting business the



hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

## 25 Assignment

25.1 Subject to applicable law, the Provider must not assign, transfer or otherwise deal with the Provider's contractual rights and/or obligations under this Agreement without the prior written consent of the Partner, such consent not to be unreasonably withheld or delayed, provided that the Provider may assign the entirety of its rights and obligations under this Agreement to any Affiliate of the Provider or to any successor to all or a substantial part of the business of the Provider from time to time.

25.2 Subject to any applicable law, the Partner must not assign, transfer or otherwise deal with the Partner's contractual rights and/or obligations under this Agreement without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed, provided that the Partner may assign the entirety of its rights and obligations under this Agreement to any Affiliate of the Partner or to any successor to all or a substantial part of the business of the Partner from time to time.

## 26 No waivers

26.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

26.2 No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

## 27 Severability

27.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

27.2 If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

## 28 Third party rights

28.1 This Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party. The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.

## 29 Variation

29.1 This Agreement may not be varied except by means of a written document signed by or on behalf of each party, without prejudice to the requirements of Clause 11.

## 30 Entire agreement

30.1 The main body of this Agreement and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

30.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.

## 31 Law and jurisdiction

31.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of the state of New York in the United States.

31.2 The parties irrevocably agree that the courts of New York, New York have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## 32 Interpretation

32.1 In this Agreement, a reference to a statute or statutory provision includes a reference to that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and any subordinate legislation made under that statute or statutory provision.

32.2 The Clause headings do not affect the interpretation of this Agreement.

32.3 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## 33 Insurance

33.1 In this clause 33, Insurance Policies means, collectively: workers compensation coverage (to the extent required by applicable law); professional liability / errors and omissions insurance coverage of AUD 5,000,000 per claim and AUD 10,000,000 in the aggregate; commercial general liability insurance coverage of AUD 10,000,000 per claim; and network security and privacy liability insurance coverage of AUD 5,000,000 per claim and AUD 10,000,000 in the aggregate.

33.2 The Provider must ensure that the Insurance Policies are taken out with reputable insurers reasonably acceptable to the Partner and that the level of cover and other terms of insurance are reasonably acceptable to the Partner.

33.3 The Provider must, on request by the Partner, supply to the Partner copies of the Insurance Policies and evidence that all relevant premiums have been paid.

33.4 The Provider must notify the insurers of the Partner's interests and shall cause those interests to be noted on the Insurance Policies and comply with all terms and conditions of the Insurance Policies at all times.

33.5 If any coverage under the Insurance Policies lapses or is not be renewed or is changed in any material way, or if the Provider is aware of any reason why the coverage under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Provider must promptly notify the Partner.