

OCCAMISE TERMS OF USE AGREEMENT

1. Application of Terms

1.1. Agreement Formation

- (a) These Terms of Use and any other terms and policies referred to in these Terms of Use, (**Agreement**) form the Agreement for the provision of the Services between Occamise Pty Ltd (ACN 670 808 278) (**Provider**) and the user (**Client**), collectively referred to as the parties or each a party.
- (b) The Agreement will become legally binding on the parties from the earlier of:
 - (i) the date the Client acknowledges acceptance of the Agreement electronically via an Occamise user interface, or such other method agreed by the Provider; and
 - (ii) the date the Provider begins to provide the Services,
(Commencement Date).

1.2. Term of the Agreement

- (a) The Provider will provide the Services to the Client from the Commencement Date subject to this Agreement for an initial term specified at the time of the Order (the **Initial Term**).
- (b) After the Initial Term, this Agreement automatically renews for further Renewal Term/s equal to the Initial Term, unless terminated in accordance with this Agreement, or Client or Provider provides written notice of termination of the Agreement to the other party no less than 5 Business Days before the end of the Initial Term or any Renewal Term. Termination will take effect at the end of the Initial Term or then current Renewal Term, as applicable.

1.3. Variation

Either party may propose a variation to the Agreement, including Fees, by providing notice at least 30 days prior to the end of the current term. The parties agree to negotiate such proposed variations in good faith. In the event that the parties are unable to agree at least 5 Business Days prior to the end of the current Term, then either party may terminate per clause 1.2(b).

2. Services

2.1. Licence to Access

The Provider grants to the Client a non-transferrable, non-exclusive and revocable licence to access and use the Services for the Term, subject to the terms of the Agreement.

2.2. Setup and Installation

The Client will be responsible for all aspects of setting up the Services except for any inclusions outlined in an Order, as applicable, such as:

- (a) Provision of training services to the Client and its Representatives; and
- (b) any professional services as agreed between the Client and the Provider for inclusion as part of an Order.

2.3. Client to Provide Information and Access

- (a) The Client must promptly provide any information and instructions the Provider reasonably requests for the purpose of performing the Services for Client. The Client warrants that:
 - (i) all of the information that it provides to Provider is accurate and complete in all respects; and
 - (ii) it will inform Provider whenever any such information changes.

- (b) If reasonably required for providing support in relation to the Services, the Client must provide the Provider and its Representatives access to the Client's computer systems and devices.
- (c) The Provider shall not be liable for any delay in providing Services that results from the Client failing to comply with this clause 2.3.

2.4. Training Services

If the Client requires training services (in addition to those agreed and included in the Order), the Client may be charged for those training services under a separate Order.

2.5. Exclusions

Unless explicitly stated in the Order, the Client is responsible for, and agrees that the Provider is not responsible for:

- (a) Any performance outcomes from the Client's uses of the Services; and
- (b) Any issues or defects arising due to the Client's particular business processes, software, configuration, equipment or network.

2.6. Services Not Locally Available

The Client agrees and accepts that the Software is hosted by the Provider and will only be accessible using the Internet (or other connection to Provider's servers) and an instance of the Software will not be provided or be available "locally" from Client's own servers.

2.7. Services May Arrive in Parts

The Provider may at its sole and absolute discretion provide and charge for the Software in various modules, packages and combinations from which Client may choose as specified in an Order.

2.8. Provider Can Change Services

The Provider may, acting reasonably, upgrade, maintain, tune, backup, amend, add to or remove features from, redesign, improve or otherwise alter the Services. Where practicable, the Provider agrees to provide the Client with reasonable notice of proposed changes to the Services.

2.9. Client Has No Back-End Access

The Client agrees that the Services are managed and supported exclusively by the Provider and that no "back-end" access to the Software is available to the Client unless expressly agreed in writing between the parties.

2.10. Unintentional Inaccessibility

From time to time, without notice, access to all or part of the Services may be disrupted or limited. During such an interruption, the Provider will use its reasonable endeavours to restore access to the Services as soon as practicable.

2.11. Intentional Inaccessibility

The Provider may, after giving the Client at least 2 Business Days' notice, make some or all of the Services inaccessible from time to time as is reasonably required for upgrades, maintenance and updates. In the event of unforeseen circumstances, urgent system remediation may require an interruption to services where this notice period cannot be honoured.

2.12. Parts of the Services Controlled by Third Parties

- (a) The Client agrees and accepts that the Services are operated from servers owned and controlled by a third party. As such, Client acknowledges that certain functions are out of the control of the Provider, including:
 - (i) web servers, storage and email delivery, which is hosted by Amazon Web Services (**AWS**);

- (ii) voice and SMS services, which are provided by Twilio;
- (iii) voice recording transcription which is provided by Google Cloud Speech API;
- (iv) OpenAI's Chat Completions API; and
- (v) any software the Client chooses to integrate our Services with,

and the Provider will not be liable for any loss or damage or loss of functionality caused by any failure of such third parties.

- (b) The Client must comply with, and ensure that all Authorised Users comply with, any applicable terms for use of any third-party services.
- (c) The Client acknowledges that Data submitted through the Services may be shared with OpenAI and AWS.

2.13. Phone Number Regulatory Requirements

- (a) Local country regulations must be adhered to when using telephone numbers. This requirement means in some cases the Client will need to provide adequate identity documentation to the carriers or local regulator. Failure to provide that information creates a risk of disruption of service. For more detailed information about phone number regulatory requirements, please refer to <https://www.twilio.com/docs/phone-numbers/regulatory/phone-numbers-regulatory-requirements-customers>.
- (b) This information will have to be provided to the Provider and the Provider will handle it on the Client's behalf.
- (c) You can learn more about phone number regulations by visiting <https://www.twilio.com/docs/phone-numbers/regulatory/faq> and be kept up-to-date on changes to local requirements via phone number regulatory changelog - <https://www.twilio.com/docs/phone-numbers/regulatory/changelog>.

2.14. Delivery of Support and Maintenance

- (a) The Provider will provide support in respect of the Services via email, telephone and/or remote software control (Zoom for example) only, as determined at the sole and absolute discretion of the Provider.
- (b) All support requests must accurately outline the question or problem, and advise if the issue is urgent.
- (c) Unless otherwise specified in an Order or agreed between the parties in writing, support will only be provided between 9am and 5pm (in the time zone of the Client) on Business Days. The Provider may at its discretion provide support outside these hours, but this may attract an additional Fee.

2.15. Timeframes

The Provider will use its best efforts to provide the Services within any timeframes or service level agreements set out in the relevant Order, or as otherwise agreed between the parties in writing. However, any timeframes are targets only, and not guarantees.

2.16. Out of Scope Services

- (a) If the Client requires additional Services outside the scope of the Agreement, then depending on the scope of the additional Services, the Provider or a Partner may charge the Client for it under a separate Order.
- (b) If the Provider determines, acting reasonably, that the requirement for any work outside the scope of the Services is caused by the fault or error of the Provider, the Client shall not pay for that additional work.

3. Fees and Payments

3.1. Fees and Invoices

- (a) The Provider will invoice the Client, and the Client must pay the Provider directly or indirectly (through a Partner or Marketplace Partner) the Fees for the Services in accordance with the applicable Order.
- (b) Fees are payable in accordance with the payment terms contained within the Order. If no payment terms are set out in the applicable Order, then:
 - (i) direct subscriptions will be charged in advance, to the credit card authorised by the Client; and
 - (ii) the Provider will issue invoices for enterprise and partner subscriptions monthly, which must be paid within 14 days.

3.2. Payment

- (a) Payment must be made by the methods specified in the applicable Order, or such other means as the Provider agrees in writing.
- (b) All Fees and other amounts must be paid in full, without set-off or deduction.
- (c) The Client is solely responsible for and must reimburse the Provider for any transaction, processing, dishonour or charge-back fees issued by a financial institution or payment gateway in the course of making payment.

3.3. GST and Duties

- (a) In this Agreement, **adjustment note**, **GST**, **tax invoice** and **taxable supply** have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (a) For each taxable supply under or in connection with this Agreement:
 - (i) the Provider will be entitled to charge the Client for any GST payable by the Provider in respect of the taxable supply;
 - (ii) the Client must pay the Provider the amount of the GST at the same time as the relevant charge applicable to the supply becomes payable under this Agreement; and
 - (iii) the Provider must provide a valid tax invoice or adjustment note to the Client in respect of the taxable supply.
- (b) All fees quoted for the Services by Provider are exclusive of GST unless expressly stated otherwise in the Order.
- (c) Client will be responsible for paying any taxes or duties, including GST where applicable, that apply to the provision of the Services.

3.4. Failure to Pay

If the Client fails to pay the Provider or Partner or Marketplace Partner any amount under the Agreement on the due date for payment, the Provider or Partner or Marketplace Partner may immediately do any or all of the following, without any liability, until all overdue fees are paid:

- (a) charge the Client interest on the overdue amount at 5% above the Reserve Bank of Australia cash rate per annum, calculated daily and compounding monthly;
- (b) suspend the Client's use of any or all of the Services;
- (c) terminate the Agreement without any obligation to refund the Client any money in respect of the cancellation, even if the Term has not expired;

- (d) initiate proceedings against the Client to recover the overdue amount (despite any dispute resolution clause in the Agreement); and
- (e) recover all costs in relation to any action taken against Client to recover overdue amounts, including but not limited to legal costs and outlays on a full indemnity basis.

3.5. Set-Off Rights

The Provider, Partner or Marketplace Provider may, after demanding payment of any overdue amount in accordance with clause 3.4, apply any payment the Client makes against the Provider, Partner or Marketplace Provider's costs and disbursements in recovering the amount due, any interest accrued, or the amount overdue.

4. Authorised Users

- (a) The Client may designate Authorised Users in accordance with the mechanism within the user interface such as at <https://occamise.com> or any relevant application sub-domain, or by such other method agreed between the parties.
- (b) The Client warrants that all of the information provided to create an Authorised Account (whether that information is provided by an Authorised User or Client) is accurate and complete in all respects, and will update Provider whenever any of this information changes.
- (c) The Client is responsible for ensuring that Authorised Users comply with the Agreement to the fullest extent the Agreement applies to the use of Authorised Accounts.
- (d) Each Authorised User will be asked to agree to this Agreement and the Privacy Policy on the first access to the Services and each time changes require an additional acknowledgement. However, clauses in respect to the payment of Fees (including clause 3) will not be applicable to Authorised Users.

5. Use of Services

5.1. Client's Undertakings in Relation to Services

- (a) The Client undertakes, and must ensure that each Authorised User undertakes:
 - (i) to use the Services only as they are designed to be used;
 - (ii) not to use the Services in any way which could interfere with or damage Provider's network, any other operator's network, or another client's enjoyment of the Services;
 - (iii) not to use the Services for unsolicited or unreasonably frequent or voluminous communications;
 - (iv) not to publish or otherwise communicate any review of, or information about, the Services to any third party without the prior written consent of Provider, except as specifically provided for in an agreement with Provider;
 - (v) not to disable or circumvent any protection or disabling mechanism related to the Services;
 - (vi) not to install or store any software applications, code or scripts on or through the Services unless it first obtains the written permission of Provider;
 - (vii) not to use the Services to bully, harass, degrade, insult or otherwise demean any person (as determined by Provider) or to partake in offensive or indecent conduct; and
- (b) The Client must not, and must ensure that each Authorised User does not knowingly or negligently store, access or operate any Data, code or software on, or in connection with, the Services that could be categorised or identified as:
 - (i) a computer virus or malicious code;
 - (ii) pornographic material;

- (iii) discriminatory based on race, gender, ethnicity, religious belief, sexual orientation, age, or disability;
 - (iv) confidential information of any third party who has not consented to the disclosure;
 - (v) illegal, harmful, defamatory, fraudulent, hateful or is otherwise objectionable;
 - (vi) causing or likely to cause damage or injury to any person; or
 - (vii) "warez" or associated with "warez".
- (c) The Client will be responsible for the breach of any undertaking or warranty in this clause 5.1 regardless of whether that breach is caused by a security breach of any kind.

5.2. The Client Will Use Services in Accordance with the Law

The Client undertakes, and must ensure that each Authorised User undertakes:

- (a) to ensure that all electronic communications sent through or in connection with the Services feature an unsubscribe facility, and that they comply with the requirements of the *SPAM Act 2003* (Cth) (or other such applicable foreign law) when sending electronic communications through the Services;
- (b) not to store or access any Data on the Services if such access or storage would:
 - (i) breach any Intellectual Property Rights of any party;
 - (ii) breach the *Privacy Act 1988* (Cth), or if the Client processes data about EU residents, the General Data Protection Regulation (GDPR), or if the Client processes data on UK residents, the *Data Protection Act*; or
 - (iii) breach any security or anti-money laundering obligations; or
 - (iv) breach any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory);
- (c) to obtain prior consent from any individual whose Personal Information may be submitted to the Services;
- (d) to obtain prior consent from any individual whom it collects Personal Information from through the Services; and
- (e) to notify the Provider if an individual requests Client to remove that individual's Personal Information from the Services or Software.

5.3. Provider's Right to Suspend or remove Data

- (a) The Provider reserves the right to, without any liability to the Client:
 - (i) limit or suspend the Client's or any Authorised User's access to the Services; and/or
 - (ii) remove Data or content uploaded to the Services by Client or any Authorised User, if Client or any of their Authorised Users breaches any of their obligations or undertakings in the Agreement.
- (b) The Provider may, without any liability to the Client, remove Personal Information from the Services or Software about an individual if requested by that individual.

6. Technical Information

- (a) All Technical Information is for informational purposes only, and is to be used or relied on at the Client's own risk.
- (b) The Provider makes no warranty or representations as to the accuracy of the Technical Information.

- (c) There may be technical or administrative errors in the Technical Information.
- (d) The Provider reserves the right to correct any errors in the Technical Information and on the Services interface without any notice to the Client.

7. Third Party Content

The inclusion of any third party link in the Services of the Provider's website does not imply any endorsement or recommendation of a linked website by the Provider. The Provider will not be responsible for any third-party advertising content displayed on the interface of the Services. Clicking any link on the Services or the Provider's website to a third-party website, or decision to accept any third party offer, is entirely at Client's own risk.

8. Security

8.1. Provider Security Responsibilities

The Provider will take reasonable steps to ensure that the Data in the Services is secure from unauthorised access consistent with generally accepted standards in the Provider's industry.

8.2. Client's Security Responsibilities

- (b) The Client must take reasonable measures to protect their software, equipment, data and network from cyber threats and unauthorised access, including:
 - (i) the Australian Cyber Security Centre's *Strategies to Mitigate Cyber Security Incidents* ("Essential Eight"), details of which may be found at <https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/essential-eight>;
 - (ii) ensuring that the Client's systems and equipment have industry-standard anti-virus protection and back-up software at all times; and
 - (iii) industry best practice.
- (c) To the extent permitted by law, the Provider does not warrant or guarantee that the Client's compliance with any of the Provider's guidelines or suggestions and/or installation of any software or equipment recommended by the Provider will prevent or reduce the risk of any cyber threat or unauthorised access to the Client's software, equipment, data or network.
- (d) The Client is solely responsible for any Costs caused or incurred due to its failure to comply with this clause 8.2.

8.3. Passwords

The Client is solely responsible for:

- (a) keeping any usernames and passwords associated with its account for the Services secure; and
- (b) the use of its account, irrespective of who is using it, even if it is used without Client's permission.

9. Data Storage and Management

9.1. Data Storage with Third Party

- (a) The Provider may subcontract the storage of the Data (except Personal Information) to a third party (or multiple third parties) without notification to or consent from the Client.
- (b) When Data is Personal Information, the Provider may subcontract the storage of that Data to a third party (or multiple third parties) without consent from the Client but will notify the Client of such subcontracting arrangement where required by law.

9.2. Backup

- (a) The Provider makes no warranties or guarantees, implied or express, in respect of the retention of or continued accessibility of any backups in connection with the Services.
- (b) The Client acknowledges that the Provider has recommended the Client take reasonable steps to back up its Data separately from the Services.
- (c) The Provider will put in place and manage backup procedures to backup the Data including backing up all client data twice daily during the Term. Backups are retained on a 2-week rolling period.

9.3. Data Management After Termination

- (a) The Provider will delete all of the Client's Data 3 months after the Agreement is terminated (**Retention Period**).
- (b) The Client may obtain the Data within the Retention Period if it bears the costs of the hardware and incidental costs reasonably required by the Provider to effect a transfer of the Data to the Client (**Return Costs**).
- (c) The Provider will not be obliged to return Data to the Client until the Client has paid the Return Costs in advance to the Provider, as well as any outstanding payments owed to the Provider.

10. Confidentiality

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party will not be in breach of this confidentiality clause in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Notwithstanding any other provision of this clause, a party may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to its Representatives, solicitors, auditors, insurers and accountants who have a need to know such information, provided that such recipients agree to be bound by an obligation of confidentiality which is no less strict than this clause 10.
- (d) Each party will take all reasonable steps to ensure that its Representatives, and any sub-contractors engaged for the purposes of the Agreement, do not make public or disclose the other party's Confidential Information.
- (e) At the reasonable request of a party, the other party must either return or destroy all Confidential Information received from that party, except for such copies that must be required to be retained by law.

11. Privacy

11.1. Privacy Policy

The Client agrees and consents to Provider's use of Personal Information in accordance with the Provider's Privacy Policy, available at <https://occamise.com/privacy>.

11.2. Data Disclosure

The Provider may access, review or copy on its own account, or disclose and transfer to any third party, any Data or Personal Information, to the extent reasonably required:

- (a) to permit third party service providers to perform their services in connection with Provider's business;
- (b) to interact with Provider's related bodies corporate;
- (c) to effect a sale (or proposed sale) of all or part of Provider's business;

- (d) to satisfy any contractual obligation that Provider has to any third party;
- (e) where Client has overdue fees, to debt collection agencies, credit reporting agencies, or the Provider's legal advisers to recover the amount due;
- (f) to a credit reporting agency, for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on your credit file. This information may be given before, during or after the provision of credit to you, and will be held in accordance with all privacy laws;
- (g) for Provider to ensure that Client is not in breach of the Agreement; and
- (h) as required or permitted by any law that Provider and its related bodies corporate may be subject to.

11.3. No Privacy Warranty

The Provider makes no warranty as to whether the Client's use of the Services will comply with the Client's obligations under any applicable privacy or data protection law. It is the Client's responsibility to determine whether the Services are appropriate for the Client's circumstances.

11.4. Changes in Response to Privacy Law

The Provider may make any changes to the Services that it considers, acting reasonably, to be beneficial for compliance with:

- (a) any applicable privacy legislation or code; or
 - (b) any guidance issued by the Office of the Australian Information Commissioner,
- and will immediately notify Client of any such change.

11.5. Client's Notification Obligations

Client undertakes that when it stores any Personal Information on the Services, it will notify the relevant individuals that such information may be accessible by the Provider and is handled in accordance with the Provider's privacy policy.

12. Intellectual Property

12.1. Pre-existing IP

Unless otherwise agreed, each party retains ownership of all Intellectual Property Rights in material owned or created by that party independently of this Agreement, and no such Intellectual Property Rights are assigned or transferred by way of this Agreement.

12.2. Customer IP

- (a) The Client (or where applicable, any third-party owner) shall at all times during the course of the Agreement be the exclusive owner of the Data.
- (b) The Client grants to the Provider a limited, royalty-free licence during the Term to copy, transmit, store and back-up or otherwise access, use or make reference to any Intellectual Property Rights in the Data:
 - (i) to supply the Services including to enable the Client and any Authorised Users to access and use the Services;
 - (ii) for diagnostic purposes;
 - (iii) to test, enhance and otherwise modify the Services whether requested by the Client or not;
 - (iv) to develop other Services; and
 - (v) as reasonably required for the performance of the Provider's obligations under this Agreement.

- (c) Notwithstanding the above, when Data is Personal Information, the rights associated with that Data can be terminated at the request of the individual.

12.3. Product IP

- (a) The Provider owns the Product IP, and in any circumstances where it does not automatically have such ownership, the Client must transfer it (or procure it is transferred) to Provider and will do all things necessary to ensure that full legal ownership of the Product IP passes to Provider.
- (b) Subject to the Client complying in full with the terms of this Agreement, the Provider grants the Client a limited, non-exclusive, revocable, royalty-free licence to use the Product IP strictly to the extent required to use the Services.

12.4. Undertakings Regarding Product IP

The Client warrants that it and its Authorised Users will not do any of the following, or permit any person over whom it has effective control to do so:

- (a) copy or reproduce, or create an adaptation or translation of, all or part of the Product IP in any way, except to the extent that reproduction occurs automatically through the ordinary use of the Services in accordance with the Agreement;
- (b) incorporate all or part of the Product IP in any other webpage, site, application or other digital or non-digital format;
- (c) (subject to other rights explicitly granted under the Agreement) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of the Services on any medium; or
- (d) directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, or algorithms contained in the Services or any documentation associated with them.

12.5. Publicity Rights

During the Term of this Agreement, the Client grants the Provider and its Representatives a non-exclusive, royalty-free licence to:

- (e) use the Client's logo, trade marks and other branding rights to advertise or promote the Services;
- (f) publish case studies describing the Client's use of the Services in general terms for promotional purposes; and
- (g) display, link to, or promote the Client's business as part of the Provider's portfolio.

13. Liability

13.1. Exclusion of Express Warranties

The Provider will use reasonable efforts in providing the Services. However, other than as set out in this Agreement or any Order:

- (a) the Provider makes no warranties or guarantees:
 - (i) that the Services will be accessible at all times, uninterrupted or error free;
 - (ii) that any of the Software is without bugs, viruses or malware;
 - (iii) that any of the Technical Information is without error or inaccuracy;
 - (iv) that the Services are immune to unauthorised access or security breach;
 - (v) that the Services will be fit for any purpose, performance or compatibility;

- (vi) that use of the Services will bring the Client into compliance with any law or standard; and
 - (vii) in respect of the retention of, or continued accessibility of, any Data.
- (b) the Provider does not take any responsibility for faults, delays or interruptions to the Services caused by:
- (i) misuse or user error;
 - (ii) the Client's software or equipment, including any faults or incorrect configuration;
 - (iii) the delays, actions, operation, inaction or failure of any third party; or
 - (iv) any Unforeseen Event.

13.2. Non-Excludable Conditions

- (a) The Provider's services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, the Client is entitled:
- (i) to cancel the Agreement; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- (b) You are also entitled to be compensated for any other reasonably foreseeable loss or damage.
- (c) If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.
- (d) All limitations, exclusions and indemnities in the Agreement are subject to Non-Excludable Conditions to the extent of any inconsistency, and apply to the fullest extent permissible by the law.

13.3. Limitation of Liability

Despite anything to the contrary, to the maximum extent permitted by law:

- (a) the Provider excludes all implied guarantees, conditions and warranties from the Agreement and the Services, except any Non-Excludable Condition;
- (b) the Provider's maximum aggregate liability arising from or in connection with this Agreement (including the Services or the subject matter of this Agreement) arising in contract, tort, in equity or under statute will be limited to, and must not exceed in any Contract Year, the lesser of:
- (i) the total amount of fees paid by Client to Provider in the current Contract Year; and
 - (ii) the cost of or Provider resupplying the Service;
- (c) Neither party is liable to the other party for any Consequential Loss suffered or incurred by that party in connection with this Agreement or the Services;
- (d) the Provider excludes all liability to Client for any Costs, including Consequential Loss, suffered or incurred directly or indirectly by Client in connection with:
- (i) the Services being inaccessible to Client for any reason;
 - (ii) the content of any Data submitted to the Services;
 - (iii) incorrect or corrupt data, lost data, or any data inputs or outputs of the Services;
 - (iv) computer virus, trojan and other malware in connection with the Services;

- (v) any breach of security that results in unauthorised access to or corruption of data;
- (vi) any unauthorised activity by any third party in relation to the Services;
- (vii) failure of any third party component including, without limitation, hardware failure, network failure, or power failure;
- (viii) failure of any third party software including, without limitation, the operating system and any other software;
- (ix) the Client's use of or reliance on the Services for a purpose other than the business purposes of the Client or the reasonably expected purpose of the Services;
- (x) the use of or reliance on the Services by persons other than the Client or Authorised Users of the Services;
- (xi) the Client or any Authorised User's infringement of any third-party Intellectual Property Rights by use of the Services;
- (xii) the Client's use of or reliance on the Services where the Services have not been updated to the most recent version of the Services with all updates, upgrades, fixes and other improvements as released by Client as of that date;
- (xiii) failure of Client to maintain hardware sufficient to meet minimum hardware requirements for the Services;
- (xiv) any loss or damage to property arising directly or indirectly from the Client's use of the Services; or
- (xv) failure by the Client to comply with any privacy laws,

except to the extent that the Cost arose due to the negligence or default of the Provider or its Representatives.

14. Indemnity

14.1. General Indemnity

Client indemnifies the Indemnified against all Costs suffered or incurred by the Indemnified, however caused, arising wholly or partially, directly or indirectly, in connection with the Client's use of the Services, except to the extent that such Costs arise due to the negligence or default of the Provider or its Representatives.

14.2. Specific Indemnities

Without limiting the generality of the "General indemnity" in the Agreement, the Client indemnifies the Indemnified against any Costs arising directly or indirectly from:

- (a) the Client's breach of the Agreement;
- (b) the Client or any Authorised User's infringement of any third-party Intellectual Property Rights while using the Services;
- (c) the Client breaching any law;
- (d) any harm to or claim by a third party arising directly or indirectly from Client's use of the Services;
- (e) any negligent or unlawful act or omission by Client in connection with the Services;
- (f) the Provider's or a third party's reliance on a misleading representation made by a Client;
- (g) a contract in force between Client and a third party connected with the Services;
- (h) the Provider's enforcement of its rights in connection with the Agreement, including legal costs on a full indemnity basis; and

- (i) the Client or any Authorised User storing Data on the Service,

except to the extent that the Cost arose due to the negligence or default of the Provider or its Representatives.

14.3. Conditions Of Indemnity

- (a) The Indemnified may make a claim under indemnities in the Agreement in relation to a Cost before having incurred the Cost, or before making a payment in relation to the Cost.
- (b) The indemnities in the Agreement shall be in addition to any damages for breach of contract to which the Provider may be entitled. Nothing in the indemnities in the Agreement will be construed so as to prevent the Provider from claiming damages in relation to the Client's breach of any term of the Agreement.
- (c) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement for whatever reason.

15. Termination

15.1. Provider Termination for Convenience

- (a) The Provider reserves the right to withdraw from or cancel the Agreement at any time without giving reasons, by providing Client notice in writing no less than 10 Business Days before the cancellation is to take effect.
- (b) If the Provider exercises its right to terminate without giving reasons in accordance with the Agreement, Client will receive a pro-rated refund of any money paid for Services yet to be performed for the remainder of the Term.

15.2. Termination on Insolvency

Either party may immediately terminate the Agreement by notice to the other party if the other party is insolvent under the definition in the *Corporations Act 2001* (Cth), in liquidation or provisional liquidation, under administration or external control, becomes bankrupt, fails to comply with a statutory demand, ceases or suspends a material part of its business, is affected by any analogous event, or undergoes a change of control.

15.3. Termination for Breach

- (a) If a party breaches any provision of the Agreement (**Breaching Party**), the other party may give written notice requiring the Breaching Party to remedy the breach. If the Breaching Party does not remedy the breach within 10 Business Days of receiving such a notice, the other party may terminate the Agreement.
- (b) If the Provider exercises its right to terminate for unremedied breach by the Client in accordance with the Agreement, Provider will not be obliged to refund any money to the Client.

15.4. Termination does not affect obligation to pay

Termination of this Agreement does not affect the Client's obligation to pay any outstanding Fees or other amounts in relation to the Services.

15.5. Effects of Termination

On termination of this Agreement, the Client must immediately:

- (a) pay all outstanding invoices whether or not due;
- (b) cease all activities related to the Services;
- (c) upon request, destroy all documents and other materials (including all copies) in the Client's possession relating to the Services;

- (d) do any further things as the Provider may reasonably require to protect the Provider's right, title and interest in the Services.

16. Disputes

16.1. Initiation of Dispute

If there is a Dispute, then either party may give the other party a notice, which:

- (a) includes, or is accompanied by, full and detailed particulars of the Dispute; and
- (b) is delivered within 14 days of the circumstances giving rise to the Dispute first occurring.

(Dispute Notice)

16.2. Meeting to resolve Dispute

Within 14 days after a Resolution Notice is given, a Representative (with the authority to resolve the dispute) of the Client and the Provider must meet and seek to resolve the Dispute.

16.3. Binding arbitration

- (a) If the Dispute is not settled within 30 days of the parties first meeting to resolve the Dispute, it will be submitted to final and binding arbitration in accordance with, and subject to, *The Australian Centre for International Commercial Arbitration (ACICA) Expedited Arbitration Rules*.
- (b) The seat of arbitration shall be Brisbane, Australia. The language of the arbitration shall be English.
- (c) When the Dispute is submitted to arbitration, each party will pay its own Costs for the proceedings. The parties will share equally the Costs payable to *ACICA*.

16.4. Court proceedings not to be brought before process

Subject to this clause 16, 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. However, nothing in the Agreement prevents:

- (a) either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute; or
- (b) the Provider commencing court proceedings to recover any outstanding Fees or other amounts from the Client.

16.5. Obligations and rights remain current during dispute

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under the Agreement and any other agreement between the parties.

16.6. Dispute resolution provisions subject to non-excludable conditions

The obligations set out in the Agreement in relation to dispute resolution are available to the fullest extent available under the law, and subject to the Non-Excludable Conditions to the extent of any inconsistency.

17. Unforeseen Events

- (a) The obligations of a party under the Agreement are suspended to the extent that an Unforeseen Event prevents it from performing its obligations under this Agreement for so long as the Unforeseen Event continues. The occurrence of an Unforeseen Event does not suspend the obligation of Client to pay any money under the Agreement.
- (b) A party claiming an Unforeseen Event must use their best endeavours to remove, overcome or minimise the effects of that Unforeseen Event as quickly as possible.

- (c) If an Unforeseen Event continues for more than 60 days, either party may terminate this Agreement by notice in writing to the other party of not less than 10 Business Days.

18. General

18.1. Communications

- (a) Communications must be in writing.
- (b) Either party may serve any Communication on the other party by sending it to that party's email address. A Communication by email will be taken to have been received by the addressee 24 hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email was not delivered to the addressee's domain specified in the email address or receives an undelivered notice.

18.2. Entire Agreement

The Agreement represents the entire agreement between the Provider and the Client in relation to the Services and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

18.3. Reliance

Neither party has entered into the Agreement in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other unless it is set out in the Agreement.

18.4. Duties AND Taxes

Client will pay all stamp duties and any related taxes, fines and penalties in respect of the Agreement and the Services.

18.5. Assignment and Novation

Neither party may assign, novate or otherwise transfer any of its rights or obligations under the Agreement without the prior written consent of the other party (which shall not be unreasonably withheld or delayed).

18.6. Electronic Execution

The parties agree that acknowledgement by the Client through the web interface, when prompted, means that both parties have entered into this Agreement.

18.7. Counterparts

The Agreement may be executed with any number of counterparts and by the parties on separate counterparts.

18.8. Governing Law

The laws of the state of Queensland, Australia govern the Agreement. Each party submits to the non-exclusive jurisdiction of the courts in that jurisdiction and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

18.9. Waiver

No right of the Provider will be deemed waived, and no breach excused, unless such waiver or consent is provided in writing.

18.10. Severance

If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

18.11. Relationship of Parties

The relationship between the Provider and the Client under any Agreement does not form a joint venture, partnership, agency or create any employment relationship.

18.12. Inconsistency

If there is any inconsistency between the terms of an agreed Order and these terms, the terms of the Order shall prevail. Otherwise, the terms of this Agreement shall prevail over any other agreement between the parties.

18.13. Subcontractors

The Provider may engage subcontractors to deliver the Services.

18.14. Enduring Clauses

The parties' rights and obligations under clauses 8.2, 10, 12, 14 and 16 will survive the termination of this Agreement for whatever reason.

19. Definitions & Interpretation

19.1. Interpretation

In this document, headings are for convenience only and do not affect the interpretation. Unless the context indicates a contrary intention:

- (a) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (b) an obligation or liability assumed by, or a right conferred on two or more parties binds or benefits all of them jointly and each of them severally;
- (c) a reference to a statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (d) a reference to any document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
- (e) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender and no gender;
- (f) a reference to a "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (h) no doctrine or rule of construction of documents will apply to the disadvantage of a party, on the basis that party put forward that document;
- (i) if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day;
- (j) a reference to "\$" or "dollars" means Australian dollars; and
- (k) the word "includes" in any form is not a word of limitation.

19.2. Definitions

In this Agreement:

- (a) **Agreement** means the legally binding contract arising between the parties under this document, including any Order under the definition of subclause 19.2(r)(i) and any side letter agreement varying this document.
- (b) **Authorised Account** means a sub-account, under the auspices of Client's overall account with Provider, which is operable by a Representative of the Client.
- (c) **Authorised User** means a Representative of the Client, or any other third party authorised by Client to use an Authorised Account.
- (d) **Business Day** means a day which is not a Saturday, Sunday or public holiday in Brisbane, Queensland, Australia.
- (e) **Communication** means any written communication including each notice, consent, approval, request and demand under or in connection with the Agreement.
- (f) **Confidential Information** means information that is by its nature confidential, including but not limited to information relating to the:
 - (i) personnel, policies, practices, clientele or business strategies of the parties;
 - (ii) Intellectual Property Rights of either party; and
 - (iii) the terms of the Agreement,
 but does not include information:
 - (iv) already rightfully known to the receiving party at the time of disclosure by the other party; or
 - (v) in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under the Agreement.
- (g) **Consequential Loss** means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.
- (h) **Contract Year** means a 12-month period commencing on:
 - (i) the commencement date of this Agreement in accordance with clause 1.1(b); and
 - (ii) each subsequent anniversary of the commencement Date, during the Term.
- (i) **Cost** means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.
- (j) **Data** means any data uploaded by an Authorised User to the Services or any other electronic servers and infrastructure used to provide the Services.
- (k) **Dispute** means any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any questions regarding its existence, validity or termination.
- (l) **Fees** means the fees for the provision of Services, as stated in an Order, or as otherwise agreed between the parties.
- (m) **Indemnified** means the Provider and its Representatives.
- (n) **Initial Term** means the initial term of this Agreement as specified in clause 1.2.
- (o) **Intellectual Property Right** means all present and future rights conferred by statute, common law or equity in or in relation to business names, circuit layouts, computer software, confidential information, copyright, designs, domain names, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

- (p) **Marketplace Partner** means a marketplace partner of a Partner of the Provider.
- (q) **Non- Excludable Condition** means any guarantee, condition or warranty (such as the consumer guarantees implied by the Australian *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.
- (r) **Order** means any order or agreed quote for the provision of the Services between:
 - (i) the Provider and the Client where the Client has directly purchased the Services from the Provider; or
 - (ii) the Provider's Partner and the Client where the Client has purchased the Services from that Partner; or
 - (iii) a Marketplace Partner and the Client where the Client has purchased the Services from that Marketplace Partner.
- (s) **Partner** means a partner or reseller of Provider which has entered into a reseller agreement for the resale of the Services to Client.
- (t) **Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth), or where the GDPR applies to Provider the meaning given to personal data in the GDPR, or where the UK *Data Protection Act* applies to Provider, the meaning given to personal data in the *Data Protection Act*.
- (u) **Product IP** means all Intellectual Property Rights subsisting in:
 - (i) the Software or any part of it; or
 - (ii) any additions or alterations made to the Software, including those made with the input of Client, or at the Client's request.
- (v) **Representative** includes an employee, agent, officer, director, auditor, advisor, researcher, partner, consultant, contractor, sub-contractor, related body corporate or related entity (as defined in the *Corporations Act 2001* (Cth)) of a person.
- (w) **Renewal Term** means any renewal term.
- (x) **Services** means:
 - (i) the Software;
 - (ii) any support in respect of the Software;
 - (iii) any installation services provided; and
 - (iv) any other service rendered or goods supplied by Provider to Client within the scope of the Agreement.
- (y) **Software** means:
 - (i) the software application found at the URL <https://occamise.com> and all of its subdomains, derived URLs and associated URLs; and
 - (ii) electronic infrastructure and configuration used to provide the Services.
- (z) **Technical Information** means information used, provided and created by the Services, including performance analytics and comparative analytics.
- (aa) **Term** means the Initial Term and any Renewal Term
- (bb) **Unforeseen Event** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government provider, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code, or government imposed pandemic or epidemic restrictions, or other event beyond the reasonable control of a party.

