

# **CLOUD SERVICES TERMS**

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MICROMINE AUSTRALIA PTY LTD ACN 630 329 118



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## OPERATIVE PROVISIONS

IT IS AGREED as follows:

### 1 DEFINITIONS AND INTERPRETATIONS

1.1 **(Definitions):** In this Agreement, unless the context otherwise requires:

**Analytical Data** has the meaning given in clause 7.5.

**Business** means all activities carried on by one or more of the parties from time to time.

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in Western Australia.

**Commencement Date** means the date on which the Licensor provides the Licensee with access to the Services, as specified in the Proposal.

**Confidential Information** in relation to any person means any and all confidential and/or proprietary knowledge, data or information which is in the knowledge, possession or control of that person (or any employee or agent of that person), including:

- (a) the terms of this Agreement;
- (b) all and every part of the information regarding that party's business affairs obtained or disclosed during the course of negotiation and implementation of this Agreement;
- (c) Intellectual Property Rights, trade secrets, inventions, mask works, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements (including without limitation improvements in process), discoveries, developments, drawings, designs and techniques; and
- (d) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licences, prices and costs, suppliers and customers.

**End User** means a user nominated by the Licensee to use the Services in accordance with this Agreement.

**Force Majeure Event** means any catastrophic event, and includes fire, flood, earthquake, hurricane or other natural disaster, war, terrorism, blockade or embargo, act of civil or military authority, global pandemic declared as such by the World Health Organisation or interruption or failure of utility services including electric power, air, telecommunications or water.

**Intellectual Property Rights** or **Intellectual Property** means all intellectual property rights and interests throughout the world whether registered or unregistered, including trade



marks, designs, patents, inventions, copyrights and analogous rights, trade secrets, know how processes, concepts, Confidential Information and all other intellectual property.

**Licensee** means any person, organisation or company who uses the Services with the Licensor's authorisation.

**Licensee Data** means all data, content and information (including Personal Information generally and Personal Information of any relevant third party) owned, held, used or created by or on behalf of the Licensee that is stored using, or inputted into, the Services.

**Licensor** means Micromine Australia Pty Ltd ACN 630 329 118.

**Licensor's Privacy Policy** means the privacy policy of the Licensor as accessible on <https://www.micromine.com/privacy-policy/> and as amended from time to time.

**Log-in Platform** means the application program interface used by the Licensee to access the platform necessary to receive the Services, including, but not limited to a website or token.

**Objectionable** includes being objectionable, defamatory, obscene, harassing, threatening, harmful, racially or ethnically offensive or unlawful in any way, depicting sexually explicit materials, facilitating illegal activity, promoting unlawful violence or discriminating based on race, gender, colour, religious belief, sexual orientation or disability.

**Personal Information** has the meaning given to it in section 6 of the *Privacy Act 1988 (Cth)*, and its amendments from time to time.

**Privacy Act or Privacy Law** means the *Privacy Act 1988 (Cth)* and its amendments from time to time.

**Proposal** means a proposal document issued by the Licensor for the purposes of the Licensee receiving the Services.

**Renewal Term** has the meaning given to it in the Proposal.

**Service Fee** means, in respect of the Services, the fee set out in the Proposal.

**Services** means the cloud services as outlined in the Proposal.

**Software** means the software provided in the form of the Services.

**Support Services** means the support services provided by the Licensor as set out in clause 2.2.

**Term** means the term of this Agreement as determined pursuant to clause 10.

**Underlying Systems** means the Software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks.



**1.2 (Interpretation):** In this Agreement unless the contrary intention appears:

- (a) A reference to any legislation includes regulations and other instruments under it and any variation or replacement of any of them.
- (b) The singular includes the plural and vice versa, and words importing any gender include the other genders.
- (c) A reference to a “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any authority.
- (d) References to dollars or \$ is a reference to Australian dollars.

**2 PROVISION OF SERVICES**

**2.1 (Provision of Services):** The Licensor agrees to provide the Services to Licensee on and subject to the terms of this Agreement for the duration of the Term.

**2.2 (Support Services):** The Licensor will provide the Support Services to the Licensee during the Term. In providing the Support Services, the Licensor will:

- (a) make available to the Licensee a helpdesk in accordance with the provisions of this Agreement;
- (b) provide the Support Services in accordance with the standards of skill and care reasonably expected in the industry;
- (c) allow the Licensee to use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services but for no other purpose;
- (d) respond as soon as reasonably practicable to all reasonable requests for Support Services made by the Licensee through the helpdesk; and
- (e) in its sole discretion, suspend the provision of the Support Services if any amount due to be paid by the Licensee to the Licensor under this Agreement is overdue and the Licensor has provided the Licensee with 30 days’ notice of its intention to suspend the Support Services on this basis.

**2.3 (Licensor’s use of Contractors):** The Licensor may, subject to complying with this Agreement, provide the Services from any location and/or through the use of contractors.

**2.4 (Updates):** The Licensee agrees to comply with all updates to the Services that are made by the Licensor.

**2.5 (Non-exclusive):** The Licensor’s provision of the Services is non-exclusive and nothing in this Agreement prevents the Licensor from providing the Services to any other person in any



other location.

### 3 SERVICES FEE AND EXPENSES

In consideration of the provision of the Services, the Licensee agrees to pay the Service Fee to the Licensor.

### 4 SERVICE STANDARDS

**4.1 (Standards):** The Licensor must use reasonable efforts to provide the Services and the Support Services to the Licensee:

- (a) exercising reasonable care and skill and diligence; and
- (b) using appropriately trained and skilled personnel

**4.2 (Availability):** Notwithstanding any other disclaimers or warranties under this Agreement, the Licensor will use reasonable efforts to ensure that the Services are available 24 hours a day, 7 days a week. However, the Services may be unavailable to permit maintenance or other development activity. Availability of Support Services are subject to the terms outlined at clause 2 of this Agreement.

### 5 LICENSEE OBLIGATIONS

**5.1 (Use of Services):** The Licensee, inclusive of its End Users, must:

- (a) use the Services exclusively for its own internal business purposes;
- (b) use the Services in accordance with all applicable laws;
- (c) not access, use, or (directly or indirectly) allow use, of the Services, Support Services, Software or goods in or for the benefit of any party in Russia, the Democratic People's Republic of Korea, Iran, Syria or Libya. The Licensor has the right to unilaterally amend this list of countries in line with its policies at any time by providing written notice to the Licensee; and
- (d) not sell or make the Services available to any third party other than the Licensee's contractors, consultants and outsourced service providers who are accessing the Services for the sole purpose of providing services to Licensee, or otherwise commercially exploit the Services in any way whatsoever unless otherwise agreed with the Licensor in writing.

**5.2 (Access Conditions):** When accessing the Services, the Licensee, inclusive of its End Users, must not:

- (a) attempt to undermine the security or integrity of the Underlying Systems;



- (b) use, or misuse, the Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user of the Services;
- (c) attempt to view, access or copy any material or data other than:
  - (i) that which the Licensee is authorised to access; and
  - (ii) to the extent necessary for the Licensee and its End Users to use the Services in accordance with this Agreement;
- (d) use the Service in a manner, nor transmit, input or store any virus or any data that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and
- (e) comply with any terms, inclusive of privacy and general use terms, on the Log-in Platform, as updated from time to time by the Licensor.

**5.3 (Authorisations):** The Licensee is solely responsible for procuring all licenses, authorisations and consents required for it and its End Users to use the Services, including to use, store and input Licensee Data into, and process and distribute Licensee Data through, the Services, inclusive of consents relating to the collection, use, disclosure and storage of Personal Information of any individual whose Personal Information may be included in the Licensee Data.

## 6 END USERS

**6.1 (End Users):** Subject to clause 5.1, no individual other than an End User may access or use the Service.

**6.2 (Licensee Authorisation):** The Licensee may, at its own discretion, authorise any member of its personnel to be an End User, in which case the Licensee will provide the Licensor with the End User's name and other information that the Licensor reasonably requires in relation to the End User's use of the Services.

**6.3 (End User Compliance):** The Licensee must procure each End User's compliance with clause 5 and any other reasonable condition as notified by the Licensor to the Licensee.

## 7 DATA

**7.1 (Confidential Information):** The Licensor acknowledges that the Licensee Data is the Licensee's Confidential Information.

**7.2 (Licensee has sole responsibility for Licensee Data):** The Licensee agrees that it has sole responsibility for the accuracy, integrity, legal compliance, reliability, appropriateness, and rights ownership in all the Licensee Data.



- 7.3 (Licensor's access to Data):** The Licensee acknowledges that:
- (a) the Licensor may require access to the Licensee Data to exercise its rights and perform its obligations under this Agreement; and
  - (b) to the extent necessary, the Licensor may authorise a member or members of its personnel to access the Licensee Data for any purpose in relation to the Services.
- 7.4 (Consents and Approvals):** The Licensee must arrange all necessary consents and approvals required for the Licensor to access the Licensee Data as described in clause 7.2.
- 7.5 (Analytical Data):** The Licensee acknowledges and agrees that the Licensor may create analytical data through performance of the Services (**Analytical Data**), and:
- (a) the Licensor may:
    - (i) use Analytical Data for the Licensor's internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
    - (ii) supply Analytical Data to third parties; and the Licensor's rights under clause 7.3 survive termination of this Agreement; and
  - (b) title to, and all Intellectual Property Rights in, Analytical Data is and remains the property of the Licensor.
- 7.6 (No On-selling or Marketing of Data):** The Licensor may not use the Licensee Data or Analytical Data for marketing or on-selling purposes. Any use of Analytical Data is exclusively limited to Services and product improvement.
- 7.7 (Personal Information):** The Licensee must:
- (a) obtain all necessary consents from any relevant third party to enable the Licensee to collect, use, hold and process Personal Information in accordance with the Privacy Act, any other applicable Privacy Laws of any jurisdiction including the Licensor's Privacy Policy as amended from time to time, and this Agreement;
  - (b) obtain all necessary consents from any relevant third party to enable the Licensor to collect, use, hold and process Personal Information in accordance with the Privacy Act, any other applicable Privacy Laws of any jurisdiction including the Licensor's Privacy Policy as amended from time to time, and this Agreement; and
  - (c) keep or maintain a copy (physical or electronic) of the relevant consents under this clause 7.4 including the Licensor's Privacy Policy to which the relevant third party has consented. Where the requested consent relates to the Licensor, the Licensee agrees to provide a copy of the requested consent to the Licensor immediately on request of the Licensor. For the avoidance of doubt, the Licensor's Privacy Policy to





which the relevant Customer has consented to is a consent that relates to the Licensor for the purpose of this clause 7.

**7.8 (Backups of Data):** Licensor will use reasonable efforts to back up Licensee Data and will implement commercially reasonable, industry standard disaster recovery procedures.

## **8 SECURITY**

**8.1 (Licensor security warranties):** The Licensor warrants and must ensure that the Services meet the security standards that are reasonably appropriate for use and will make reasonable efforts to ensure the systems remain free from any circumstances (including viruses) which may adversely affect the Licensee. The security of the Log-in System and the Licensee's use of the Services generally will be in accordance with industry data storage standards.

## **9 INTELLECTUAL PROPERTY**

### **9.1 (Ownership):**

- (a) Subject to clause 9.1(b), title to, and all Intellectual Property Rights in, the Services, any website, and all Underlying Systems is and remains the property of the Licensor (and its licensors).
- (b) Title to, and all Intellectual Property Rights in, the Licensee Data remains the property of the Licensee.

**9.2 (Licensor development rights):** The Licensor owns all rights, including Intellectual Property Rights, in anything developed or delivered under this Agreement. For the avoidance of doubt, the Licensee retains title to, and all Intellectual Property Rights in, the Licensee Data.

## **10 TERM, TERMINATION AND SUSPENSION**

**10.1 (Duration):** Unless terminated in accordance with this clause 10, this Agreement:

- (a) starts on the Commencement Date; and
- (b) continues for successive Renewal Terms, unless otherwise agreed in writing between the parties.

**10.2 (No-fault termination):** Either party may terminate this Agreement by providing written notice to the other party at least 60 days prior to the next Renewal Term.

**10.3 (Continuation of Service):** Where a party terminates this Agreement, the Licensee will have access to the Services that have been paid for as at the date of the previous Renewal Term, but will not be subject to Service Fees on the date of the next Renewal Term, upon which date the Licensee will lose access to the Services.



**10.4 (Licensor termination for cause):** The Licensor may terminate this agreement immediately if the Licensee:

- (a) is in breach of any term of this Agreement;
- (b) becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (c) being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
- (d) ceases or threatens to cease conducting its business.

**10.5 (Consequences of Termination):**

- (a) Termination of this Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
- (b) On termination or expiry of this Agreement, the Licensee must pay all Service Fees for Services provided prior to that termination or expiry.
- (c) The Licensee agrees and acknowledges that the Licensor has no obligation to retain any information relating to the Licensee (including Licensee Data) and that all such information may be irretrievably deleted by the Licensor after one month from the date of any suspension, termination or expiry of this Agreement.

**10.6 (Obligations Continuing):** Clauses which, by their nature, are intended to survive termination or expiry of this Agreement, including clause 5 (Licensee Obligations), clause 7 (Data), clause 9 (Intellectual Property), clause 10 (Term, Termination and Suspension), clause 11 (Warranties), clause 12 (Liability), clause 13 (Force Majeure), clause 14 (Amendment), clause 15 (Subcontracting and Assignment) and clause 16 (General Provisions), continue in force.

**10.7 (Rights to Restrict):** Without limiting any other right or remedy available to the Licensor, the Licensor may restrict or suspend the Licensee's access to the Service and/or delete, edit or remove the relevant Licensee Data if the Licensor considers that the Licensee (including any of its personnel) has breached the Licensee's obligations under clauses 5.1 or 5.2.

## **11 WARRANTIES**

**11.1 (General Warranties):** Each party (each a **Warranting Party**) warrants to the other party:

- (a) The execution and delivery of this Agreement has been properly authorised by all necessary action of the Warranting Party.
- (b) The Warranting Party has full power and authority to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement.



**11.2 (Licensee Warranties):** The Licensee represents to the Licensor that all material submitted by the Licensee to the Licensor:

- (a) complies with the terms of this Agreement;
- (b) does not contain data that may be reasonably regarded by Licensor as inappropriate, inaccurate, defamatory or otherwise offensive;
- (c) does not infringe any law, regulation, standard or relevant industry code; and
- (d) does not infringe and Intellectual Property Rights of any person.

**11.3 (No implied warranties):** To the maximum extent permitted by law the Licensor's warranties are limited to those expressly stated in this Agreement and the Licensor otherwise makes no representation concerning the quality of the Services and does not promise that the Services will:

- (a) meet the Licensee's requirements or be suitable for a particular purpose, including that the use of the Service will fulfil or meet any statutory role or responsibility of the Licensor; or
- (b) be secure, free of viruses or other harmful code, uninterrupted or error free.

## 12 LIABILITY

**12.1 (No indirect loss):** To the extent that the Licensor is liable for breach of contract in connection with the supply of the Services, the Licensor excludes liability for loss of profit, revenue, business, savings, data (including Licensee Data) or product, increased cost of production, loss of customer goodwill, or other special punitive, indirect or consequential loss or damage of any kind howsoever arising and whether or not arising from one or more event and whether or not such loss or liability was foreseeable and whether or not beyond the ordinary measure of loss.

**12.2 (Maximum liability):** The maximum aggregate liability of the Licensor under or in connection with this Agreement or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty under any indemnity, by cross-claim or otherwise, must not in any year exceed an amount equal to the Service Fees paid by the Licensee under this Agreement in the previous year (which in the first year is deemed to be the total Service



Fees paid by the Licensee from the Commencement Date to the date of the first event giving rise to liability).

**12.3 (Mitigation):** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of any act or omission by the other party under or in connection with the Agreement.

**12.4 (Compliance with Law):** The Licensor is not liable to the Licensee under this Agreement or otherwise if and to the extent the Licensee's access to or use of Services is contrary to obligations, including those owed under any contracts or any laws.

### **13 FORCE MAJEURE**

**13.1 (Force Majeure Event):** The Licensor will not be liable for any failure to perform or delay in performing an obligation under this Agreement if the failure or delay arose from a Force Majeure Event.

**13.2 (Notice):** The Licensor must give the Licensee written notice of the nature and extent of the Force Majeure Event as soon as practicable after becoming aware of it and must take all reasonable steps to mitigate the consequences of the failure or the duration of the delay.

### **14 AMENDMENT**

**14.1 (Amendment):** This Agreement may only be varied by written agreement between the parties from time to time. Any amendment of this Agreement in accordance with this clause 14 will have full force and effect as if it were contained in the Agreement on the date that it is signed by all parties.

### **15 SUBCONTRACTING AND ASSIGNMENT**

**15.1 (No Licensee assignment without consent):** The Licensee must not assign, novate, subcontract or transfer any right or obligation under this Agreement without the prior written consent of the Licensor (not to be unreasonably withheld). The Licensee remains liable for its obligations under this Agreement despite any approved subcontracting. Any assignment, novation, subcontracting or transfer must be in writing.

**15.2 (Licensor Assignment):** The Licensor may, at any time, assign, novate, subcontract or transfer any right or obligation under this Agreement without the prior written consent of the Licensee. The Licensor remains liable for its obligations under this Agreement despite any assignment, subcontracting or transfer.



**16 GENERAL PROVISIONS**

- 16.1 (Proposal):** The parties agree that a Proposal, when signed by the Licensee, is deemed to be incorporated into this Agreement and functions under its terms.
- 16.2 (Entire Agreement):** This Agreement comprises the parties' entire understanding in relation to the subject matter of this Agreement and supersedes any prior Agreement or arrangement.
- 16.3 (Cumulative):** The rights, remedies and powers of the parties under this Agreement are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.
- 16.4 (Consent):** Unless this Agreement expressly provides otherwise, any approval or consent required to be obtained under this Agreement may be withheld, given conditionally, or given unconditionally, in each case in the relevant party's absolute discretion.
- 16.5 (Waiver):** A right granted to one party under this Agreement may only be waived by that party giving notice in writing to the other parties. A party does not waive any right granted under this Agreement merely by not exercising that right immediately.
- 16.6 (Severance):** Any provision of this Agreement which is invalid or unenforceable in a particular jurisdiction, may be read down or severed to the extent of the invalidity or unenforceability in that jurisdiction only. The invalidity or unenforceability of a provision of this Agreement in one jurisdiction does not affect the:
- (a) application of that provision in any other jurisdiction in which it is valid and enforceable; or
  - (b) remaining provisions of this Agreement.
- 16.7 (Governing law and jurisdiction):** This Agreement is governed by the laws in force in Western Australia and the parties submit to the exclusive jurisdiction of the Supreme Court of Western Australia to decide any dispute between them in relation to this Agreement.