

# TERMS AND CONDITIONS

Welcome to Argent Cashflow!

We are Argent Cashflow Pty Ltd, an Australian business with ABN 46 673 602 410 ('**we**', '**our**' or '**us**') and we provide transparency to your personal finances, as described on our Website (**Software**).

These terms and conditions (**Terms**) govern your access to the Software and us providing you any other goods and services as set out in these Terms (**Subscription**). You can view the most updated version of our Terms [www.argentcashflow.com](http://www.argentcashflow.com) (**Website**). Please read these terms and conditions carefully before agreeing to proceed with your Subscription.

Your Subscription is for the tiered package as selected by you and agreed between us by means of the Website (**Subscription Tier**).

**Please note that your Subscription will continue to renew indefinitely, and you will continue to incur Subscription Fees, unless you notify us that you want to cancel your Subscription in accordance with clause 14. Please ensure you contact us if you want to cancel your Subscription.**

## 1 READING AND ACCEPTING THESE TERMS

- (a) In these Terms, capitalised words and phrases have the meanings given to them where they are followed by bolded brackets, or as set out in the Definitions table at the end of these Terms.
- (b) By clicking the tick box below or clicking the "I accept these Terms" button on our Website, paying for your Subscription or otherwise accepting the benefit of any part of your Subscription, you agree to be bound by these Terms which form a binding contractual agreement between you the person acquiring a Subscription or the company you represent and are acquiring the Subscription on behalf of ('**you**' or '**your**') and us.
- (c) We may change these Terms at any time by notifying you, and your continued use of the Solution following such an update will represent an agreement by you to be bound by the Terms as amended.

## 2 ELIGIBILITY

- (a) By accepting these Terms, you represent and warrant that:
  - (i) you have the legal capacity and authority to enter into a binding contract with us; and
  - (ii) you are authorised to use the payment you provided when purchasing a Subscription.
- (b) The Software is not intended for unsupervised use by any person under the age of 18 years old or any person who has previously been suspended or prohibited from using the Software. By using the Software, you represent and warrant that you are either:
  - (i) over the age of 18 years and accessing the Software for personal and commercial use; or
  - (ii) accessing the Software on behalf of someone under the age of 18 years old and consent to that person's use of the Software.
- (c) Please do not access the Software if you are under the age of 18 years old and do not have your parent or guardian's consent, if you are under 16 or if you have previously been suspended or prohibited from using the Software.

## 3 DURATION OF YOUR SUBSCRIPTION

- (a) Your Subscription and these Terms commence on the date you agree to be bound by these Terms (as set out at the beginning of these Terms) and continues for the Subscription Period and any Renewal Periods applicable, unless terminated earlier in

accordance with clause 14. **For the avoidance of doubt, you are not entitled to terminate for convenience within the first Subscription Period.**

- (b) **The Subscription Period may vary (e.g monthly and annually) depending on the Subscription Tier selected by you. For example, at the time of this agreement, the Full Service Subscription is billed monthly, over a minimum 12 month Subscription Period.**
- (c) Subject to clause 3(c), upon expiration of the Subscription Period, this agreement will automatically and indefinitely renew on an ongoing basis for a period equal to the Subscription Period (**Renewal Period**).
- (d) This agreement will not automatically renew on expiry of the Subscription or Renewal Period (**Renewal Date**), if either party provides a written cancellation notice at least 48 hours prior to the Renewal Date.
- (e) At least 5 days prior to the expiry of the Renewal Date, we will provide you with advanced written notice of the agreement renewing and any applicable changes to the Subscription Fees or these Terms (**Renewal Notice**).

## **4 THE SOLUTION**

### **4.1 SCOPE OF YOUR SUBSCRIPTION AND THE SOLUTION**

- (a) We will provide you, to the extent described in your Subscription Tier, the Software and the Documentation (**Solution**).
- (b) Your Subscription includes the benefits and limitations of your Subscription Tier as set out on our Website, or as otherwise communicated to you when you subscribe for your Subscription (and as amended from time to time by notice to you).
- (c) At the time of this agreement, the available Subscription Tiers are:
  - (i) Full Service Subscription for \$100 per month (plus GST), which includes:
    - (A) one complimentary onboarding meeting;
    - (B) set-up and coding of your cashflow;
    - (C) delivery of monthly reports;
    - (D) optional "Check In" calls (charged separately on a per-use basis).
  - (ii) DIY Subscription for \$50 per month (plus GST), which includes:
    - (A) self-managed cashflow coding (we will not provide ongoing coding support);
    - (B) access to platform resources, including video guides and troubleshooting materials made available through the Software from time to time;
    - (C) optional onboarding meeting (charged separately if requested);
    - (D) optional "Check In" calls (charged separately on a per-use basis).

### **4.2 ACCOUNTS**

- (a) (**Accounts**) To use the Solution, you may be required to sign-up, register and receive an account through the Website (an **Account**).
- (b) (**Provide Information**) As part of the Account registration process and as part of your continued use of the Website, you may be required to provide information and details, such as your email address, preferred username, a secure password, billing, payment details, ratings and reviews, verified identifications, verified certifications and authentication, and other information required to set up the bank feeds to consolidate your financials, or as determined by us from time to time.
- (c) (**Warranty**) You warrant that any information you give to us in the course of completing the Account registration process is accurate, honest, correct and up-to-date.

- (d) **(Acceptance)** Once you complete the Account registration process, we may, in our absolute discretion, choose to accept you as a registered user within the Website and provide you with an Account.

#### 4.3 DISCLAIMER

You acknowledge and agree that:

- (a) any information provided to you as part of or in connection with the Solution or the Services is general in nature, may not be suitable for your circumstances and does not constitute financial, legal or any other kind of professional advice;
- (b) it is your responsibility to comply with applicable Laws relevant to your business, including industrial relations Laws and privacy Laws;
- (c) Argent Cashflow is not a financial service provider, a financial advisor or a financial planner. Argent Cashflow provides a collation service tool via the Solution that provides transparency to your personal finances (**Financial Tool**);
- (d) the Financial Tool is provided for informational purposes only. It is designed to assist Users in understanding their financial net position based on the information entered into the Financial Tool;
- (e) you are solely responsible for the accuracy of the data input into the Financial Tool, including but not limited to, financial accounts, information, addresses, and other relevant details. Argent Cashflow is not liable for the shortcomings, incompleteness or inaccuracy of the Financial Tool in the event that you fail to provide accurate, complete and up-to-date information;
- (f) the Financial Tool's output is based on the information provided by you and does not guarantee a particular result;
- (g) the results generated by the Financial Tool should not be considered as financial advice or recommendations. You are advised to consult with a qualified financial advisor or investment professional before making any financial decisions based on the Financial Tool's output; and
- (h) Argent Cashflow accepts no liability or responsibility for any decisions of you in reliance of the Financial Tool.

#### 4.4 SOFTWARE

- (a) While your Subscription is maintained, we grant to you a non-exclusive, non-transferable licence to use the Software and Documentation for the Number of Solution Users under your Subscription Tier. If you are signing up for a Subscription on behalf of your household (e.g you and a partner), the Number of Solution Users will be two. Alternatively, if you are signing up for a Subscription on behalf of yourself, the Number of Solution Users will be one.
- (b) We may from time to time, in our absolute discretion, release enhancements to the Software, meaning an upgraded, improved, modified or new versions of the Software (**Enhancements**). Any Enhancements to the Software will not limit or otherwise affect these Terms. Enhancements may cause downtime or delays from time to time, and credits will not be provided for such downtime.
- (c) We may change any features of the Solution at any time on notice to you.

#### 4.5 SUPPORT SERVICES

- (a) We will provide general support where reasonably necessary to resolve technical issues with the Software (**Support Services**). Unless otherwise agreed in writing:
  - (i) we will take reasonable steps to provide Support Services where necessary (you must first endeavour to resolve any issues with the Software internally and we will not assist with issues that are beyond our reasonable control);
  - (ii) we will use our best endeavours to respond to requests for Support Services, which may be made using our helpdesk or live chat function, and you

- acknowledge that we may not be available 24/7 or respond within a particular time frame;
  - (iii) you are responsible for all internal administration and managing access, including storing back-up passwords and assisting your Users to access and use the Software; and
  - (iv) you will not have any claim for delay to your access to the Software due to any failure or delay in Support Services.
- (b) **(Check Ins)** You may, from time to time, request a short “Check In” call with us personnel to assist you in using the Software and understanding the information it produces. Check Ins are optional and charged separately on a per-use basis, in addition to your Subscription Fee.

## 5 DATA HOSTING

We will store User Data you upload to the Software using a third party hosting service selected by us (**Hosting Services**), subject to the following terms:

- (a) **(hosting location)** You acknowledge and agree that we may use storage servers to host the Software through cloud-based services, and potentially other locations outside Australia.
- (b) **(service quality)** While we will use our best efforts to select an appropriate hosting provider, we do not guarantee that the Hosting Services will be free from errors or defects or that User Data will be accessible or available at all times.
- (c) **(security)** We will use our best efforts to ensure that User Data is stored securely. However, we do not accept responsibility or liability for any unauthorised use, destruction, loss, damage or alteration to User Data, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.
- (d) **(backups & disaster recovery)** In the event that User Data is lost due to a system failure (e.g. a database or webserver crash), we cannot guarantee that any backup will be available, or if available that such a backup will be free from errors or defects.

## 6 CLIENT OBLIGATIONS

You agree to:

- (a) provide us with all documentation, information and assistance reasonably required by us to perform the Services; and
- (b) provide us with access to any third party or other accounts used by you (including log-in details and passwords), as is reasonably required by us to perform the Services.

### 6.2 CLIENT MATERIAL

- (a) You warrant that all information, documentation and other Material you provide to us for the purpose of receiving the Solution is complete, accurate and up-to-date.
- (b) You release us from all liability in relation to any loss or damage arising out of or in connection with the Solution, to the extent such loss or damage is caused or contributed to by information, documentation or any other Material provided by you being incomplete, inaccurate or out-of-date.

### 6.3 YOUR OBLIGATIONS

- (a) **You must, and must ensure that all Users, comply with these Terms at all times.** You acknowledge and agree that we will have no liability in respect of any damage, loss or expense which arises in connection with your, your Personnel's, or any User's, breach of these Terms, and you indemnify us in respect of any such damage, loss or expense.
- (b) You must not, and must not encourage or permit any User, Personnel or any third party to, without our prior written approval:

- (i) upload any inappropriate, offensive, illicit, illegal, sexist, homophobic or racist material using the Software;
  - (ii) use the Software for any purpose other than for the purpose for which it was designed, including you must not use the Solution in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity (including requesting or accepting a job which includes illegal activities or purposes);
  - (iii) make copies of the Documentation or the Software;
  - (iv) adapt, modify or tamper in any way with the Software;
  - (v) remove or alter any copyright, trade mark or other notice on or forming part of the Software or Documentation;
  - (vi) act in any way that may harm our reputation or that of associated or interested parties or do anything at all contrary to the interests of us or the Software;
  - (vii) use the Software in a way which infringes the Intellectual Property Rights of any third party;
  - (viii) create derivative works from or translate the Software or Documentation;
  - (ix) integrate the Software with third party data or Software, or make additions or changes to the Software, (including by incorporating APIs into the Software) other than integrating in accordance with any Documentation or instructions provided by us in writing;
  - (x) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Software or Documentation to any third party, other than granting a User access as permitted under these Terms;
  - (xi) decompile or reverse engineer the Software or any part of it, or otherwise attempt to derive its source code;
  - (xii) share your Account or Account information, including log in details or passwords, with any other person and that any use of your Account by any person who is not the account holder is strictly prohibited. You must immediately notify us of any unauthorised use of your Account, password or email, or any other breach or potential breach of the Solution's security;
  - (xiii) make any automated use of the Solution and you must not copy, reproduce, translate, adapt, vary or modify the Solution without our express written consent;
  - (xiv) attempt to circumvent any technological protection mechanism or other security feature of the Software; or
  - (xv) permit any use of the Solution in addition to the Number of Solution Users.
- (c) If you become aware of misuse of your Subscription by any person, any errors in the material on your Subscription or any difficulty in accessing or using your Subscription, please contact us immediately using the contact details or form provided on our Web site.
- (d) You agree, and you must ensure that all Users agree:
- (i) to comply with each of your obligations in these Terms;
  - (ii) to sign up for an Account in order to use the Solution;
  - (iii) that information given to you through the Software, by us or another User, is general in nature and we take no responsibility for anything caused by any actions you take in reliance on that information; and
  - (iv) that we may cancel your, or any User's, Account at any time if we consider, in our absolute discretion, that you or they are in breach of, or are likely to breach, this clause 6.

## 7 FEES AND PAYMENT

### 7.1 SUBSCRIPTION FEES

- (a) You must pay subscription fees to us in the amounts specified on the Website for your Subscription, or as otherwise agreed in writing (**Subscription Fees**).
- (b) All Subscription Fees must be paid in advance and are non-refundable for change of mind.
- (c) Unless otherwise agreed in writing, the Subscription Fees are due and payable on a recurring basis for the duration of your Subscription, with the first payment being due on the first day of the Subscription Period (or immediately after the expiry of any applicable Free Trial Period) and at the beginning of every Renewal Period thereafter.

### 7.2 AUTOMATIC RECURRING BILLING

Subject to clauses 7.3 and 7.4:

- (a) Your Subscription will continue to renew on an automatic indefinite basis unless you notify us that you wish to cancel in accordance with this clause 7.
- (b) While your Subscription is maintained, your Subscription Fees will continue to be debited at the beginning of each Renewal Period from the payment method you nominated when you registered for an Account.
- (c) By signing up for a recurring Subscription, you acknowledge and agree that your Subscription has an initial and recurring payment feature, and you accept responsibility for all recurring charges prior to your cancellation of your Subscription.

### 7.3 GRACE PERIOD

If you fail to cancel your Subscription prior to a Renewal Period and you are charged recurring charges, you have up to 5 Business Days from the date of that renewal to cancel your Subscription by contacting us through our Website (**Grace Period**). If you cancel your Subscription within the Grace Period, please contact us via our Website to request a refund for any recurring fees charged to you during the Grace Period.

### 7.4 CHANGES TO SUBSCRIPTION FEES

We may, from time to time, change our Subscription Fees and provide you with 5 Business Days' notice prior to the changes. During this time, you have the opportunity to cancel your Subscription with us. If you do not cancel your Subscription before the new Subscription Fees take effect, the Grace Period in clause 7.3 will apply.

### 7.5 LATE PAYMENTS

We reserve the right to suspend all or part of the Solution indefinitely if you fail to pay any Fees in accordance with this clause 7.

### 7.6 GST

Unless otherwise indicated, the Fees do not include GST. In relation to any GST payable for a taxable supply by us, you must pay the GST subject to us providing a tax invoice.

### 7.7 CARD SURCHARGES

We reserve the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

### 7.8 ONLINE PAYMENT PARTNER

- (a) We may use third-party online payment partner, currently Stripe (**Online Payment Partner**) to collect Subscription Fees.
- (b) Provided that we have notified you of such Third Party Terms and provided you with a copy of those terms, you acknowledge and agree that:

- (i) the processing of payments by the Online Payment Partner will be, in addition to this agreement, subject to the terms, conditions and privacy policies of the Online Payment Partner, which can be found [here](#);
  - (ii) you release us and our Personnel in respect of all liability for loss, damage or injury which may be suffered by any person arising from any act or omission of the Online Payment Partner, including any issue with security or performance of the Online Payment Partner's platform or any error or mistake in processing your payment; and
  - (iii) We reserve the right to correct, or to instruct our Online Payment Partner to correct, any errors or mistakes in collecting your payment.
- (b) You have the right to reject any terms and conditions of the Online Payment Partner. If you reject those terms, we cannot provide you with the Subscription and clause 14 will apply.

## 8 INTELLECTUAL PROPERTY AND DATA

### 8.1 SOFTWARE CONTENT INTELLECTUAL PROPERTY

- (a) **(Our ownership)** We retain ownership of all Materials provided to you throughout the course of your Subscription in connection with the Software (including text, graphics, logos, design, icons, images, sound and video recordings, pricing, downloads and software) **(Software Content)** and reserve all rights in any Intellectual Property Rights owned or licensed by us in the Software Content not expressly granted to you.
- (b) **(Licence to you)** You are granted a licence to the Software Content, for the Number of Solution Uses, and you may make a temporary electronic copy of all or part of any materials provided to you for the sole purpose of viewing them and using them for the purposes of the Software. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish those materials or any Software Content without prior written consent from us or as otherwise permitted by law.

### 8.2 USER DATA

#### **Our Rights and Obligations**

- (a) You grant to us (and our Personnel) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use User Data to the extent reasonably required to provide the Solution, and for our internal business purposes, including to improve the Solution and our other products and services, and including to apply machine learning and other analytics processes to the User Data, to gain commercial insights and other associated learnings, and to improve the Solution, our business and our other products and services.
- (b) We reserve the right to remove any User Data at any time, for any reason, including where we deem User Data to be inappropriate, offensive, illicit, illegal, sexist, homophobic or racist.

#### **Your Obligations and Grant of Licence to Us**

- (c) You are responsible for ensuring that:
  - (i) you share User Data only with intended recipients; and
  - (ii) all User Data is appropriate and not in contravention of these Terms.
- (d) You:
  - (i) warrant that our use of User Data will not infringe any third-party Intellectual Property Rights; and
  - (ii) indemnify us from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement.

## 9 THIRD PARTY SOFTWARE & TERMS

### 9.1 THIRD PARTY TERMS

- (a) You acknowledge and agree that third party services and software may be integrated into or allow your use of the Software, such as myprosperity Aust Pty Ltd ACN 155 242 185 (**MyProsperity**) who we are a referring provider with and whose terms are available [here](#) (**Third Party Systems**), and such Third Party System's terms & conditions (**Third Party Terms**) may apply to your use of the Software.
- (b) You acknowledge and agree that if your Subscription includes the provision of your own unique branding, we will create an account with myprosperity Aust Pty Ltd on your behalf and you will be required to expressly agree to their Third Party Terms. The cost of this account will be included in your Subscription with us.
- (c) Payment These terms and conditions (**Terms**) govern your access to the Software and us providing you any other goods and services as set out in these Terms (**Subscription**). You can view the most updated version of our Terms [www.argentcashflow.com](http://www.argentcashflow.com) (**Website**).
- (d) Provided that we have notified you of such Third Party Terms and provided you with a copy of those terms, you agree to any Third Party Terms applicable to any goods or services supplied by a third party that we acquire as part of providing the Solution to you and we will not be liable for any loss or damage suffered by you in connection with such Third Party Terms.
- (e) You acknowledge and agree that we may allow Third Party Systems to access your User Data as required for the interoperation of such Third Party Systems with the Software. We shall not be responsible for any disclosure, modification or deletion of your User Data resulting from any such access by Third Party Systems.
- (f) You have the right to reject any Third Party Terms. If you reject the Third Party Terms, we cannot provide the Solution to you and clause 14 will apply.

## 10 NOTICE REGARDING APPLE

If you are accessing the Solution from the Apple, Inc. (**Apple**) iOS Store, you acknowledge and agree:

- (a) these Terms are between you and Argent Cashflow and not with Apple. Apple is not responsible for the services or any content available on the services;
- (b) Apple has no obligation whatsoever to furnish any maintenance and support services for the services;
- (c) in the event of any failure of Argent Cashflow to conform to any applicable warranty, you may notify Apple, and Apple will refund the price paid for the services, if any, through the Apple iOS Store. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the services, and any other claims, losses, liabilities, damages, costs of expenses attributable to any failure to conform to any warranty will be Scale Group Holdings' responsibility;
- (d) Apple is not responsible for addressing any claims by you or any third party relating to the services, including, but not limited to:
  - (i) product liability claims;
  - (ii) any claim that the Solution fails to conform to any applicable legal or regulatory requirement; and
  - (iii) claims arising under consumer protection, privacy, or similar legislation;
- (e) in the event of any third party claim that the Solution or your use of the Solution infringes any third party's intellectual property rights, Apple will not be responsible for the investigation, defence, settlement and discharge of any such claim;
- (f) that you represent and warrant that:

- (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and
- (ii) you are not listed on any U.S. Government list of prohibited or restricted parties;
- (g) you must comply with applicable third party terms of agreement when using the App; and
- (h) Apple, and Apple’s subsidiaries, are third party beneficiaries of these Terms, and that, upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary.

## 11 CONFIDENTIALITY

- (a) Except as contemplated by these Terms, a party must not, and must not permit any of its Personnel, use or disclose to any person any Confidential Information disclosed to it by the other party without the disclosing party’s prior written consent.
- (b) Each party must promptly notify the other party if it learns of any potential, actual or suspected loss, misappropriation or unauthorised access to, or disclosure or use of Confidential Information or other compromise of the security, confidentiality, or integrity of Confidential Information.
- (c) The notifying party will investigate each potential, actual or suspected breach of confidentiality and assist the other party in connection with any related investigation.

## 12 PRIVACY

- (a) We collect personal information about you in the course of providing you with the Solution, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our Privacy Policy which can be found [here](#).
- (b) Our Privacy Policy contains more information about how we use, disclose and store your personal information and details how you can access and correct your personal information.
- (c) By agreeing to these Terms, you agree to our handling of personal information in accordance with our Privacy Policy.
- (d) We use a third-party provider (MyProsperity) for secure document storage. While documents are stored securely, our team may be able to see document titles and we may technically manage access permissions. We will not access or use your documents except with your consent, where reasonably necessary to provide the services to you, or as otherwise required by law. Once documents are stored within MyProsperity, their retention and security are governed by MyProsperity’s own terms and privacy policy.

## 13 LIABILITY

### 13.1 WARRANTIES AND LIMITATIONS

- (a) **(Warranties)** We warrant that:
  - (i) during the Subscription Period, the Software will perform substantially in accordance with the Documentation;
  - (ii) during the Subscription Period, the Solution will be provided as described to you in, and subject to, these Terms; and
  - (iii) to our knowledge, the use of the Software in accordance with these Terms will not infringe the Intellectual Property Rights of any third party.
- (b) **(Errors)** We will correct any errors, bugs or defects in the Software which arise during your Subscription and which are notified to us by you, unless the errors, bugs or defects:
  - (i) result from the interaction of the Software with any other solution or computer hardware, software or services not approved in writing by us;
  - (ii) result from any misuse of the Software; or

- (iii) result from the use of the Software by you other than in accordance with these Terms or the Documentation.
- (c) **(Service Limitations)** While we will use our best endeavours to ensure the Solution is working for its intended purpose, you acknowledge and agree that from time to time, you may encounter the following issues:
  - (i) the Solution may have errors or defects;
  - (ii) the Solution may not be accessible at times;
  - (iii) messages sent through the Solution may not be delivered promptly, or delivered at all;
  - (iv) information you receive or supply through the Solution may not be secure or confidential; or
  - (v) any information provided through the Solution may not be accurate or true.
- (d) **(Exclusion)** To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in these Terms are excluded.
- (e) **(Consumer law)** Nothing in these Terms is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

## 13.2 LIABILITY

- (a) To the maximum extent permitted by law and subject to clause 13.2(b), the total liability of each party in respect of loss or damage sustained by the other party in connection with these Terms or the Solution is limited to the total Fees paid to us by you in the 6 months preceding the date of the event giving rise to the relevant liability.
- (b) Clause 13.2(a) does not apply to your liability in respect of loss or damage sustained by us arising from your breach of third party intellectual property rights.

## 13.3 CONSEQUENTIAL LOSS

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with these Terms or any goods or services provided by us, except:

- (a) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
- (b) to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth).

## 14 UPGRADE AND DOWNGRADES

- (a) You may notify us that you would like to upgrade or downgrade your Subscription Tier at any time. If you do, we will:
  - (i) take reasonable steps to promptly provide you with access to the new Subscription Tier; and
  - (ii) upon providing such access, apply the new, relevant Subscription Fees, to the Renewal Period immediately following the period in which your access to the new Subscription Tier was provided, and you will be charged at the new Subscription Fee in every subsequent Renewal Period.
- (b) If you choose to downgrade your Subscription, access to the new Subscription Tier and the new Subscription Fees will kick in at the start of the next Renewal Period, unless we notify you otherwise. We generally do not pro-rate downgrades in between Renewal Periods, however we reserve the right to from time to time.

- (c) If you choose to downgrade your Subscription, you acknowledge and agree we are not liable, and you release us from all claims in relation to, any loss of content, features, or capacity, including any User Data.

## 15 CANCELLATION

### 15.1 CANCELLATION AT ANY TIME

Either party may cancel or terminate your Subscription for convenience after the Subscription Period and during a Renewal Period by providing 2 Business Days' notice to the other party.

### 15.2 CANCELLATION FOR BREACH

- (a) Either party may cancel your Subscription immediately by written notice if there has been a Breach of these Terms.
- (b) A "**Breach**" of these Terms means:
  - (i) a party (**Notifying Party**) considers the other party (or any of its Personnel or Users) is in breach of these Terms and notifies the other party;
  - (ii) the other party is given 10 Business Days to rectify the breach; and
  - (iii) the breach has not been rectified within 10 Business Days or another period agreed between the parties in writing.

### 15.3 EFFECT OF TERMINATION

Upon termination of this agreement:

- (a) you will no longer have access to the Software, your Account or your User Data and we will have no responsibility to store or otherwise retain any User Data (and you release us in respect of any loss or damage which may arise out of us not retaining any User Data beyond that point);
- (b) unless agreed in writing, any Subscription Fees that would otherwise have been payable after termination for the remainder of the relevant Renewal Period will remain payable and, to the maximum extent permitted by law, no Subscription Fees already paid will be refundable; and
- (c) each party must comply with all obligations that are by their nature intended to survive the end of this agreement.

## 16 DATA RETENTION

- (a) Upon termination or expiry of this agreement, you will have 30 days from the effective date of termination to delete your Account and export any User Data.
- (b) If you do not do so within that period, we may delete your User Data or transfer it to a holding portal operated by our third-party provider (MyProsperity). Once transferred, we will have no further access to your User Data, and its retention will be governed by MyProsperity's terms and privacy policy.
- (c) We recommend that you back up any User Data prior to termination or expiry, as we may not be able to recover it once deleted or transferred.
- (d) To the maximum extent permitted by law, we are not liable to you or any User for any loss of data or content, or any associated cost, loss, damages or expenses, arising out of the cancellation, termination or expiry of this agreement.
- (e) You may request a full export of your User Data upon termination of this agreement. We will provide such export in a standard format within a reasonable timeframe, subject to your compliance with these Terms and payment of any applicable fees.

## 17 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this agreement must not commence court proceedings arising from or relating to the dispute, other than a

claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.

- (b) A party that requires resolution of a dispute which arises under or in connection with this agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

## 18 FORCE MAJEURE

- (a) We will not be liable for any delay or failure to perform its obligations under this agreement if such delay or failure arises out of a Force Majeure Event.
- (b) If a Force Majeure Event occurs, we must use reasonable endeavours to notify you of:
  - (i) reasonable details of the Force Majeure Event; and
  - (ii) so far as is known, the probable extent to which We will be unable to perform or be delayed in performing its obligations under this agreement.
- (c) Subject to compliance with clause 18(b), our relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (d) For the purposes of this agreement, a 'Force Majeure Event' means any:
  - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
  - (ii) strikes or other industrial action outside of the control of us;
  - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
  - (iv) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of us, to the extent it affects our ability to perform our obligations.

## 19 NOTICES

- (a) A notice or other communication to a party under these Terms must be:
  - (i) in writing and in English; and
  - (ii) delivered via email to the other party, to the email address specified in the Order, or if no email address is specified in the Order, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
  - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or
  - (ii) when replied to by the other party,whichever is earlier.

## 20 GENERAL

### 20.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

### 20.2 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

### 20.3 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

### 20.4 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

### 20.5 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

### 20.6 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

### 20.7 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(currency)** a reference to \$; or "dollar" is to Australian currency;
- (c) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (d) **(defined terms)** 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;
- (e) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (f) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;

- (j) **(includes)** the word “includes” and similar words in any form is not a word of limitation;  
and
- (k) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.

## DEFINITIONS

Term	Definition
<b>Confidential Information</b>	means information of or provided by a party that is by its nature is confidential information, is designated by that party as confidential, or that the other party knows or ought to know is confidential, but does not include information, which is or becomes, without a breach of confidentiality, public knowledge.
<b>Documentation</b>	means all manuals, help files and other documents supplied by us to you from time to time relating to the Software, whether in electronic or hardcopy form.
<b>Hosting Services</b>	has the meaning given in clause 5.
<b>Intellectual Property Rights</b>	means any and all present and future intellectual and industrial property rights throughout the world (whether registered or unregistered), including copyright, trade marks, designs, patents, moral rights, semiconductor and circuit layout rights, trade, business, company and domain names, and other proprietary rights, trade secrets, know-how, technical data, confidential information and the right to have information kept confidential, or any rights to registration of such rights (including renewal), whether created before or after the date of this agreement.
<b>Material</b>	means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever.
<b>Number of Solution Users</b>	means the number of Users that you may make the Solution available to, in accordance with your Subscription.
<b>Personnel</b>	means, in respect of a party, its officers, employees, contractors (including subcontractors) and agents.
<b>Software</b>	has the meaning given in the first paragraph of these Terms.
<b>Software Content</b>	has the meaning set out in clause 8.1(a).
<b>Solution</b>	has the meaning set out in clause 4.1.
<b>Subscription</b>	has meaning given in the first paragraph of these Terms.
<b>Subscription Fees</b>	has the meaning set out in clause 7 of these Terms.
<b>Subscription Period</b>	means the period of your Subscription to the Solution as agreed on the Website.
<b>Support Services</b>	has the meaning given in clause 4.5.
<b>User</b>	means you and any third party end user of the Software who you make the Software available to.
<b>User Data</b>	means any files, data, document, information or any other Materials, which is uploaded to the Software by you or any other User or which you, your Personnel or Users otherwise provide to us under or in connection with these Terms, including any Intellectual Property Rights attaching to those materials.
<b>Website</b>	means the website at the URL set out in the first paragraph of these Terms, and any other website operated by us in connection with the Solution.