

TERMS AND CONDITIONS

Effective date: 1st July 2021

Welcome to TeamForm

Thanks for choosing TeamForm! TeamForm is a SaaS application allowing (i) management, management consultancies and HR professionals in organisations to analyse a variety of people and organisational related data to enable the efficient planning for workforce resource management and (ii) employees in organisations to discover information related to people and organisational data. TeamForm can be integrated with your business' tools, such as your HR software, financial software and/or support desk management software.

The terms and conditions below describe your rights and responsibilities as a TeamForm client. Please let us know if you have any questions by contacting us [here](#) or sending us an [email](#).

Where you are an enterprise client, special terms and conditions may apply to you. Please contact us if you are an enterprise client seeking an alternative arrangement.

1 About these Terms

- 1.1 **We, us and our:** TeamForm Pty Ltd ABN 98 650 292 943 (“we”, “us” or “our”), provide the Services which are accessible at <https://teamform.co> and may also be available through other addresses and channels (together, the Site).
- 1.2 **Key terms:** These terms and conditions (including Annexure 1) (“Terms”): (a) are between us and you, together the “Parties” and each a “Party”; (b) set out the terms and conditions upon which we agree to grant you a right to use the Services; and (c) are binding on you on and from the date on which you accept these Terms in accordance with clause 2.1 (“Effective Date”) until the date on which your Account and these Terms are terminated in accordance with clause 19 (“Term”).

2 Accepting these Terms

- 2.1 **Your acceptance:** These Terms do not have to be signed. You accept these Terms by clicking ‘I agree’ (or a similar button or checkbox) indicating your acceptance of these Terms.
- 2.2 **Your authorisation:** If you are agreeing to these Terms on behalf of a company, your employer, an organisation, government or other legal entity (Entity), then “you” means that Entity and you are binding that Entity to these Terms. If you are accepting these Terms on behalf of an Entity, you as an individual represent and warrant that you are authorised by the Entity to do so.

3 The Services

- 3.1 **Key terms:** Key terms used in this clause 3, include: (a) “Go-Live Date” means the date, following completion of the Set-up Process, on which the SaaS Services are ready to be accessed by you; (b) “SaaS Services” means our SaaS as further described on our Site; (c) “Services” means the: (1) Set-up Process; (2) SaaS Services; (3) any support services (as described in clause 7); (4) any additional services added by us throughout the Term; and (5) any Additional Services requested by you throughout the Term and agreed to by us (as described in clause 8); and (d) “Set-up Process” means, prior to the Go-Live Date, if applicable, (1) the set-up of the SaaS Services’ integration with Third Party Products; (2) the provision of our standard templates; and (3) consulting services to assist you design your organisation within the SaaS Services.
- 3.2 **Our service promise:** In consideration of payment of the Fees, we: (a) will provide the Services in accordance with these Terms, whether ourselves or through our Personnel; and (b) agree to use reasonable commercial efforts to supply the SaaS Services free from defects and viruses. We further agree to, where this is commercially feasible, use reasonable commercial endeavours to remediate any defects or viruses within a reasonable time of becoming aware of them. The remediation in this clause 3.2 will not apply to Third Party Inputs (for example, to issues in relation to our data hosting provider) or Third Party Products (for example, to issues in relation to your HR software or integrations with your internal systems). If you become aware of any issues during the Term, please notify us by contacting us [here](#) or sending us an [email](#).
- 3.3 **Set-up Process:** Where you specify Third Party Products for integration during your Account and/or Plan set up, as part of the Set-up Process, we will support your connection with what we consider to be standard integrations via existing application programming interfaces. Please note that if you wish to integrate with Third Party Products we do not have an existing integration process for, such integration is likely to be considered custom assistance and we may not be able to offer such assistance under these Terms. If this is the case, we can discuss with you the option of moving to our enterprise agreement. You acknowledge and agree that: (a) by asking us to connect with a Third Party Product you provide your consent for us to establish such connection and extract the relevant data; (b) you are responsible for ensuring you have appropriate permissions from the Third Party Product to authorise such connection and extraction of data; and (c) the scope of any integration (i.e. what data can be imported and exported) will be subject to the terms of your agreement with the applicable Third Party Product. Please also see clause 9.4.
- 3.4 **Additional set-up assistance:** If we identify that you require set-up assistance beyond the integration of the SaaS Services with the Third Party Products specified during your Account and/or Plan set up, we will tell you and ask you to submit an Additional Services Request in accordance with clause 8. Where we agree to an Additional Services Request we will provide these services to you. However, until we accept an Additional Services Request we are not obliged to provide additional set-up assistance.

- 3.5 **SLAs:** If you are signed-up for a Plan tier which includes support and/or availability services levels, the SaaS Services are subject to the response, availability and service credit terms set out in Annexure 1 or Annexure 2 to these Terms (the “**Service Level Agreements**”), as applicable. If a Service Level Agreement is applicable, it will apply from the Go-Live Date until the termination of these Terms. The Parties agree that the service credits in the relevant Service Level Agreement, if any, are your sole and exclusive remedy for any failure to meet the support and/or availability service levels.
- 3.6 **Changes to the Services:** You agree that we may amend the Services (including any features) at any time, by providing notice to you, provided those changes do not substantially and adversely affect your use and enjoyment of the Services. By way of example, a change that would substantially or adversely affect your use and enjoyment of the Services: (a) would include a fundamental change to the Services; and (b) would not include changing minor features or the look or feel of the SaaS Services. In relation to changes to the Services that would substantially and adversely affect your (or an Authorised User's) use and enjoyment of the Services, we agree to provide you with notice of any such change at least 30 days prior to the change taking place. On receiving such notice, you may choose to terminate this Agreement by providing us notice of termination within 30 days of the date of our notice, in accordance with clause 19.4(b).

4 Your Account

- 4.1 **Account creation:** After you accept these Terms, the Site will create an Account for you, in order for you and your Authorised Users to access and use the Services.
- 4.2 **Your Account obligations:** When an Account is created: (a) you must enter details about yourself, if you elect to connect with a Third Party Product, your Third Party Products and basic Personal Information about the Authorised Users (i.e. name and email) you wish to set up under your Account, as well as any other information reasonably requested by us; (b) you must ensure that any information you provide to us or we request from you for your Account (including Personal Information), is complete and accurate and you are authorised to provide this information to us; and (c) it is your responsibility to keep your Account details confidential. You are responsible for all activity on your Account, including activity by Authorised Users and for ensuring that any activities on your Account comply with these Terms.
- 4.3 **Account ownership:** You are the Account owner and regardless of any change in any contact details, you will remain responsible for your Account, as set out in these Terms. If you wish to change the Account owner, you must provide us with a written request by contacting us [here](#) or sending us an [email](#), to transfer the ownership of the Account to the incoming party, which must also include the incoming party's written consent to take over full responsibility for the Account, in a form acceptable to us.
- 4.4 **Our role:** You acknowledge and agree that we are a SaaS Services provider and accordingly we are not responsible for the management or administration of your Account or your Teams or Authorised Users. If applicable, you must ensure that if an Authorised User ends their relationship with you, you remove their access to the Account.

5 Plans + Payment

- 5.1 **Account options:** When you create an Account you can choose a free Account or a paid Account. At any time you can choose to upgrade a free Account to a paid Account. Free Accounts operate on a monthly renewal cycle starting from the date you sign up (“**Monthly Date**”) and have limited Service features. Paid Accounts may also have limited Service features depending on the Plan you choose.
- 5.2 **Plans:** When you sign up for a paid Account you will be asked to choose a plan from a selection of plans, including Fees, billing cycle, and included features, as well as any Add-Ons (“**Plan**”). The Plans are set out on our Site and post purchase, are set out within your Account. It is your responsibility to review any Plan limitations, such as Teams or Authorised User limitations. If you choose: (a) a monthly billing cycle, the Fees will be invoiced and payable monthly in arrears, starting from the date you sign up; or (b) an annual billing cycle, the Fees will be invoiced and payable annually in advance starting on the date you sign up (each a “**Payment Date**”).
- 5.3 **Upgrades and downgrades:** You can upgrade or downgrade your Plan at any time or submit a request for an Add-On [here](#) or by sending us an [email](#). An upgrade request or Add-On request will be effective as soon as approved by us and you will be charged the Fees for the upgraded Plan or Add-On on a pro-rata basis for the remaining period before your next Payment Date for an Annual Plan and in arrears on your next Payment Date for a Monthly Plan. On your next and future Payment Dates you will be charged the Fees for the upgraded Plan and/or Add-On in full. A downgrade will be effective on and from your next Payment Date and on your next and future Payment Dates you will be charged the Fees for the downgraded Plan.
- 5.4 **Your Plan obligations:** When you sign-up for a Plan: (a) you agree to pay us the Fees as set out in your Plan, and any other amounts payable to us under these Terms, without set-off or delay, via the payment method set out on our website, in our invoice or agreed with you in writing; (b) the Fees exclude any applicable taxes, such as GST (unless expressly stated otherwise) and are payable in Australian dollars on the Payment Date for your Plan, in addition to any additional charges incurred (unless otherwise set out in these Terms or agreed between the Parties); (c) you are responsible for reviewing the pricing schedule, features and limits associated with your Plan, which are available on our Site; (d) you must ensure your chosen payment method has sufficient funds to pay the Fees on your Payment Date; (e) if any payment has not been made or is not successful in accordance with these Terms, we may (at our absolute discretion) provide you with notice of the overdue amount and 14 days after the date of such notice, if any amount remains overdue, we may immediately cease or suspend the provision of the Services, and recover as a debt due and immediately payable from you, our additional costs of doing so. If you rectify such non-payment within a reasonable time after the Services have been suspended, then we may, at our discretion, recommence the provision of the Services as soon as reasonably practicable; and (f) the Fees are non-refundable. Subject to your Statutory Rights and to the maximum extent permitted by law, there will be no refunds or credits for any unused Licence (or part thereof).

6 Licence + Acceptable Use

- 6.1 **The Licence:** From the Go-Live Date, subject to your and your Authorised Users' compliance with these Terms, we grant you a non-exclusive, non-transferable, non-sublicensable (except as otherwise permitted under these Terms), personal and revocable licence to access and use the SaaS Services during the Term solely for your internal business purposes, in accordance with any limits, such as Teams or Authorised User limitations, and as contemplated by these Terms ("**Licence**").
- 6.2 **Acceptable Use:** You must not and must ensure your Authorised Users do not access or use the SaaS Services except as permitted by the Licence and you must not (and must not permit any other person to) use the Services in any way which is in breach of any applicable Laws, which infringes any person's rights, including Intellectual Property Rights, or interferes with any person's privacy, including to: (a) use the Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; (b) use the Services in any way that damages, interferes with or interrupts the supply of the Services; (c) introduce malicious programs into our hardware and software or Systems, including viruses, ransomware, malware, trojan horses and e-mail bombs; (d) reveal or allow others access to your Account's password or authentication details or allow others to use your Account or authentication details (other than Authorised Users); (e) carry out security breaches or disruptions of a network, including accessing data where you are not the intended recipient or logging into a tenant or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes); (f) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the Services; (g) if applicable, send any form of spam or harassment via email, or any other form of messaging, whether through language, frequency, or size of messages, or use the Services in breach of any person's privacy; (h) circumvent user authentication or security of any of our Services, networks, accounts or hosts or those of our other users; (i) copy, modify, adapt, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble or decompile the SaaS Services (or any part of the Services) or otherwise attempt to discover any part of the source code of the SaaS Services; (j) use any unauthorised, modified version of the Services, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the SaaS Services; (k) publish, post, upload or otherwise transmit data that contains any viruses, trojan horses, worms, time bombs, malware, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with information or property of any person; (l) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Services; (m) unless authorised under these Terms, use the Services in a web-enabled form for the purposes of third-party analysis or view via the internet or other external network access method; (n) make any representations or warranties to any third parties that could be construed as being representations or warranties from us in relation to the Services or any other matter; (o) use the Services in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing; or (p) do any other thing in relation to the Services which is specifically prohibited by us, whether by verbal instruction or direction, or in writing.

7 Support Services

- 7.1 **Our support offering:** During the Term, we will provide ad-hoc technical support (the "**Support Services**") in response to enquiries concerning the SaaS Services ("**Support Requests**") and errors or issues concerning the SaaS Services ("**Incidents**"). All Support Requests and all Incidents identified by you or your Authorised Users must be submitted via the dedicated support channels, including a dedicated support [email](#), the in-SaaS support widget, our website and/or via phone (the "**Help Desk**"). In some circumstances, we may identify and notify you of an Incident. Our supply of the Support Services is subject to you, or your Authorised Users, supplying to us any information we require about what you have done in response to any issue and any consents, licences, authorisations, permissions or similar which we reasonably require to respond to the Support Request. It is agreed that, by submitting a Support Request or Incident, or where we notify you of an Incident, you authorise us to, and agree that we do not need to seek further separate authorisation, to access and gather required information from your tenant, your Computing Environment and your Third Party Products as reasonably necessary for us to provide the Support Services.
- 7.2 **Support times:** We agree to respond to Support Requests and Incidents on a timely basis and to use commercially reasonable endeavours to respond in accordance with any time commitments you are entitled to, if any, as set out in the Service Level Agreements in Annexure 1 and 2, noting that we use a severity rating system to prioritise requests and incidents and having regard to factors including availability of our resources (including our Personnel), the importance of the enquiry, the severity of the fault, your availability and time zones.

8 Additional Services

- 8.1 **Additional Services request and acceptance process:** You may request Additional Services by submitting a request [here](#) or by sending us an [email](#) ("**Additional Services Request**"). We may, at our discretion, provide you with written notice in the form of a scope of services, a proposal or a statement of work (as applicable) covering the Additional Services requested and any further fee required for us to undertake the Additional Services. If you agree to the scope of services, proposal or statement of work (as applicable) for the Additional Services, then this will form part of these Terms and we will provide the Additional Services to you in consideration for payment of the additional fee, which will form part of the Fees.

9 Third Parties

- 9.1 **Third Party Inputs:** You agree that the Services may include Third Party Inputs selected by us that interface, or interoperate, with the Services, including third party software or services and that the provision of the Services may be contingent on, limited to, or impacted by, Third Party Inputs (i.e. our third party data hosting provider).

- 9.2 **Your use of Third Party Inputs:** You must comply with our instructions and directions, whether written or verbal, in relation to use of any Third Party Inputs (e.g. where your use of a Third Party Input may degrade availability or response times). Where we provide you with any terms and conditions for use of these Third Party Inputs, you agree that you will comply with these and are liable for any Liability that we incur as a result of any non-compliance by you.
- 9.3 **Third Party Products:** You agree that we may facilitate, on your instructions, the interface, or interoperation of, the Services with your Third Party Products, including third party software, services or equipment and that the provision of the Services may be contingent on, limited to, or impacted by (e.g. we can connect to any data source, such as your HR systems, financial systems and/or support management systems).
- 9.4 **Your use of Third Party Products:** To the extent that you choose to use any Third Party Products in conjunction with the Services, you are solely responsible for: (a) the purchase of; (b) the requirements (including any consents or permissions); and (c) the licensing obligations (and compliance with those obligations), related to the applicable Third Party Product; and (d) for ensuring the interface of, or interoperation of, the SaaS Services with your Third Party Product and the extraction and receipt of any of Your Data is legally and contractually permitted (including with respect to Privacy Laws). You agree that the benefit of any Third Party Product's interface, or interoperation with, the Services, is subject to your compliance with this clause 9.4 and that we have no Liability to you (including for any loss of access to data or corruption of data) if any Third Party Product withdraws your access to their services or withdraws their services from integration with our Services.

10 Intellectual Property Rights + Data

- 10.1 **Key terms:** Key terms used in this clause 10, include: (a) **"Intellectual Property Rights"** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property; (b) **"Improvements"** means any development, modification, adaptation or improvement of Our Materials or any New Materials made by or on behalf of either Party (or any of their respective Personnel), or in respect of which Intellectual Property Rights are acquired by, either Party (or any of their respective Personnel) during the Term; (c) **"New Materials"** means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with these Terms and the Services (including any machine learning algorithms output from the Services and information and data generated by the SaaS Services as a result of your use of the SaaS Services (i.e. data about how often you log in to the SaaS Services and how you use the SaaS Services), whether before or after the date of these Terms and all Results; (d) **"Our Materials"** means all work, models, processes, technologies, strategies, materials, information, documentation and services (including the Intellectual Property and Services) that we may provide to you under these Terms, and which may contain material which is owned by or licensed to us, and is protected by Australian and international laws. For the avoidance of doubt Our Materials includes any information and content made available to you as part of the Services, including in any forms or pre-populated fields, and any and all resources (including templates) made available to you by us; (e) **"Results"** means any information, report, graph, table, material and any other representations of the results of Your Data when processed using our SaaS Services; (f) **"Your Data"** means the information and data inputted, transmitted or exported by you, your Personnel, Authorised Users or Third Party Products into the Services (i.e. data transmitted from your HR software on your instructions into our SaaS Services via an application programming interface); and (g) **"Your Materials"** means all work, designs and logos, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned, licensed or developed by or on behalf of you or your Personnel before the Effective Date and/or developed by or on behalf of you or your Personnel independently of these Terms.
- 10.2 **No transfer or assignment:** The Parties agree that nothing in these Terms constitutes a transfer or assignment of any Intellectual Property Rights.
- 10.3 **Our Intellectual Property Rights:** You agree that we (or the relevant third party) own all Intellectual Property Rights in: (a) Our Materials; (b) New Materials or Improvements; (c) Analytics; and (d) any Feedback, (collectively, **"Our Intellectual Property Rights"**) and Our Intellectual Property Rights will at all times vest, or remain vested, in us (or, if applicable, our third-party service providers). To the extent that ownership of Our Intellectual Property Rights does not automatically vest in us, you agree to do all acts necessary or desirable to assure our title to such rights. In the use of any of Our Intellectual Property Rights in connection with these Terms, you agree that you must not (and you must ensure that your Personnel do not) commit any Intellectual Property Breach. You also agree that we may use Feedback in any manner which we see fit (including to develop new features) and no benefit will be due to you as a result of any use of any Feedback by us.
- 10.4 **Licence to use Our Intellectual Property Rights:** Subject to payment of the Fees, we grant you: (a) a non-exclusive, worldwide, revocable, non-sublicensable and non-transferable right and licence, during the Term, to use of Our Intellectual Property Rights that we provide to you, solely for the purposes for which they were provided to you and as otherwise contemplated by this Agreement; and (b) notwithstanding clause 10.4(a), a non-exclusive, worldwide, revocable, non-sublicensable and non-transferable and perpetual right and licence to use the Results solely for your internal business use. Nothing in this clause grants you any rights to: (a) sell or make publicly available Our Intellectual Property Rights (including the Results); or (b) provide Our Intellectual Property Rights (including the Results) to any other person, including, without limitation, any of our competitors.
- 10.5 **Your Materials:** We agree that you own all Intellectual Property Rights in Your Materials. You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Your Materials, solely for the purposes for which they were developed and for the performance of our obligations under these Terms, and as otherwise contemplated by these Terms. If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with these Terms, you agree to (and agree to ensure that your Personnel) consent to our use or infringement of those Moral Rights.

- 10.6 **Your Data:** As between you and us: (a) all Your Data is and remains your property; and (b) you retain any and all rights, title and interest in and to Your Data, including all copies, modifications, extensions and derivative works. You are in control of Your Data, including the provision of Your Data to us.
- 10.7 **Your Data Licence:** You grant us a limited licence to copy, transmit, disclose, modify, reproduce, upload, communicate, distribute, store and back-up or otherwise access and make available Your Data to: (a) supply the Services to you (including to enable you and your Personnel and Authorised Users to access and use the Services); (b) diagnose problems with the Services; (c) enhance and otherwise modify the Services, including to improve functionality and algorithms; (d) perform Analytics; and (f) as otherwise reasonably required to perform our obligations under these Terms.
- 10.8 **Your Data obligations and warranties:** You acknowledge and agree that you must, at all times, (a) ensure the integrity of Your Data and that the collection and use of Your Data is compliant with all Laws; (b) ensure the ongoing secure storage of all Your Data, free from unauthorised access or disclosure (including by regularly backing up Your Data via a means separate to its storage on the SaaS Services); and (c) ensure that you are legally permitted to disclose any of Your Data (including any Personal Information), and including from any Third Party Product, to us and you consent to us retrieving Your Data from any Third Party Product nominated by you for use by us in accordance with these Terms. You represent and warrant that: (a) you have obtained all necessary rights, releases and permissions to provide all of Your Data to us and to grant the rights granted to us in these Terms; and (b) Your Data (and its transfer to and use by us) as authorised by you, under these Terms does not violate any Laws (including those relating to export control and electronic communications), any contractual obligations, or rights of any third party, including any Intellectual Property Rights, rights of privacy, or rights of publicity.
- 10.9 **Retention of Your Data:** During the Term, and subject to other provisions in these Terms, we use commercially reasonable endeavours to retain Your Data and Results for the standard retention period specified for your Plan (usually 6 months from the date it is input) ("**Retention Period**"). If you wish to receive an extended Retention Period you may purchase a longer Retention Period from us. At the end of the Retention Period, you acknowledge and agree that we may delete, destroy or de-identify the relevant part of Your Data and Results.
- 10.10 **Analytics:** Despite anything to the contrary, we may monitor, analyse and compile statistical and performance information based on and/or related to New Materials, Your Data and your use of the Services for our own business purposes (being any purpose we see fit), in an aggregated and anonymised format, such that it is no longer about an identifiable individual and there is no reasonable likelihood of re-identification of an individual or of your business ("**Analytics**"). We will own all Intellectual Property Rights in Analytics and you agree we may use Analytics to enhance and otherwise modify the Services, including to improve functionality and algorithms and create new products and services.

11 Confidential Information

- 11.1 **Key Terms:** Key Terms used in this clause 11, include: (a) "**Confidential Information**" includes information which: (1) is disclosed to the Receiving Party in connection with these Terms at any time; (2) is prepared or produced under or in connection with these Terms at any time; (3) relates to the Disclosing Party's business, assets or affairs; or (4) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms, whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information; (b) "**Disclosing Party**" means the Party disclosing the Confidential Information; and (c) "**Receiving Party**" means the Party receiving the Confidential Information.
- 11.2 **Confidentiality obligations:** Each Receiving Party agrees: (a) not to disclose the Confidential Information of the Disclosing Party to any third party; (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.
- 11.3 **Limitations:** The obligations in clause 11.2 do not apply to Confidential Information that: (a) is required to be disclosed in order for the Parties to comply with their obligations under these Terms; (b) is authorised to be disclosed by the Disclosing Party; (c) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms; or (d) must be disclosed by Law or by a regulatory authority, including under subpoena.
- 11.4 **Remedies:** Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 11. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 11.

12 Privacy and Security

- 12.1 **Our privacy and data storage obligations:** We agree to: (a) handle any Personal Information you provide to us, solely for the purposes set out in these Terms and in accordance with Privacy Laws and our Privacy Policy; (b) use reasonable commercial endeavours to implement and maintain industry standard physical, technical and organisational security measures designed to protect Personal Information from unauthorised access, destruction, use, modification, or disclosure; and (c) where available, provide you with access to Your Data and Results in accordance with the relevant Retention Period. Despite clause 10.9 and 12.1(c), you acknowledge and agree that we do not provide a data storage service and we cannot guarantee that your Your Data will be available at all times or that any Third Party Input which we use for back-up purposes will not fail. Any back-up or storage services are provided solely for your convenience and it is your responsibility to ensure the ongoing secure storage of Your Data, as set out in clause 12.2. If you are subject to the territorial scope of Regulation (EU) 2016/679 (General Data Protection Regulation), you can request and enter into a Data Processing Addendum with us, we

will handle any Personal Information in accordance with the obligations in the Data Processing Addendum. If you would like to upgrade the security measures which apply to your Account, you can choose a security Add-On for which additional fees will apply.

- 12.2 **Your privacy obligations:** You must: (a) ensure that you, your Personnel and your Authorised Users comply with all Privacy Laws applicable to all Personal Information collected, used, stored or otherwise dealt with under or in connection with these Terms and, if you enter into a Data Processing Addendum with us, any obligations in the Data Processing Addendum; (b) only disclose Personal Information in your possession or control to us (including of Authorised Users) and direct us to perform any Services in relation to such Personal Information, if: (1) it is reasonably necessary for one or more of your activities or functions; (2) you are authorised by Privacy Laws to collect the Personal Information and to use or disclose it in the manner required by these Terms; and (c) you have informed the individual to whom the Personal Information relates, that you will disclose the Personal Information and to the extent possible, you have made the individual aware of our collection of their Personal Information. If requested by us, you agree to promptly provide us with sufficient evidence for us to confirm your compliance with this clause 12.2.
- 12.3 **Data Processing Addendum Priority:** If you enter into a Data Processing Addendum with us, the Data Processing Addendum will take precedence over this clause 12 and any other privacy or security clause in these Terms to the extent of any conflict or inconsistency.

13 Our Obligations

- 13.1 **Our general warranties:** We represent, warrant and agree: (a) that we are properly constituted and have the right and authority to enter into these Terms; (b) that we will provide the Services in accordance with all applicable Laws; (c) that the Services will operate and be provided in accordance with these Terms; (d) that we will use reasonable efforts to ensure all of our obligations under these Terms will be carried out: (1) by suitably competent and trained Personnel; and (2) in an efficient and professional manner; (e) that we have legal authority to grant you the Licence; and (f) the provision of the Services does not and will not infringe any other person's Intellectual Property Rights.

14 Your Obligations

- 14.1 **Your general obligations:** You agree: (a) to comply with these Terms, our reasonable requests or requirements, and all applicable Laws; (b) to provide all assistance, information, documentation, access, facilities, authorities, consents, licences and permissions reasonably necessary to enable us to comply with our obligations under these Terms or at Law, in a timely manner; (c) to promptly notify us of any breach or suspected breach of these Terms by you (or an Authorised User); (d) you are responsible for all users using the Services, including your Personnel and any Authorised Users; (e) we do not make any warranty or representation in respect of Third Party Inputs or Third Party Products; (f) any representation, warranty or thing made or done by us (unless expressly stipulated in these Terms) is not to be inferred, incorporated or implied into these Terms; (g) the provision of the Services may be contingent on, or impacted by, Third Party Inputs and/or Third Party Products; (h) we are not responsible for the integrity or existence of any data on the Computing Environment, network or any device controlled by you, your Authorised Users, your Personnel or any Third Party Product; and (i) any Results, suggestion, content or feature provided for your use is provided solely for your convenience and you rely on any such Results, suggestion, content or use any such feature at your own risk.
- 14.2 **Your general warranties:** You represent, warrant and agree that: (a) you have the legal capacity to enter into a legally binding agreement; (b) there are no legal restrictions preventing you from entering into these Terms; (c) you will not do anything which will cause us to violate or infringe any applicable Privacy Laws; (d) all information and documentation that you provide to us in connection with these Terms is true, correct and complete and that we will rely on such information and documentation in order to provide the Services; (e) you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless such purposes are expressly stipulated in these Terms; (f) you will cooperate with us and provide us with all assistance, resources, data, people, information, facilities, access and documentation that is reasonably necessary to enable us to perform the Services and as otherwise requested by us, from time to time, and in a timely manner; (g) the Services are provided to you solely for your benefit and you will not (or you will not attempt to) disclose, or provide access to, our Services to third parties without our prior written consent; (h) you will be responsible for the use of any part of the Services, and you must ensure that no person uses any part of the Services to break any Law or infringe any person's rights (including Intellectual Property Rights and privacy rights) or in any way that damages, interferes with or interrupts the supply of the Services; (i) the Services and any associated programs and files are used at your own risk; (j) any information, advice, material, work and services (including the Services and any Results produced as part of these Services) provided by us under these Terms does not constitute legal, financial, due diligence or risk management advice and are relied on at your own risk; (k) you will inform us if you have reasonable concerns relating to our provision of the Services under these Terms, with the aim that the Parties will use all reasonable efforts to resolve these concerns; and (l) you have all hardware, software and services which are necessary to access and use the Services (other than those required to be provided by us under these Terms).

15 Australian Consumer Law

- 15.1 **Statutory Rights:** Certain legislation, including the ACL, and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of our services which cannot be excluded, restricted or modified ("**Statutory Rights**").
- 15.2 **Limitations:** If the ACL applies to you as a consumer, nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the Services provided to an entity defined as a consumer under the ACL is governed solely by the ACL and these Terms.

15.3 **Exclusions:** Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services (including the Services) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or any other basis.

16 Limitations on Liability

16.1 **Limitations on liability:** Despite anything to the contrary and to the maximum extent permitted by law: (a) we will not be liable for any Consequential Loss; (b) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure to mitigate that Liability; and (c) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to us (1) repaying you the amount of the Fees paid by you to us in the immediately preceding 12 months for the supply of the relevant Services to which the Liability relates; or (2) if no Fees have been paid, to \$100.

17 Exclusions to Liability

17.1 **Exclusions to liability:** Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability, to the extent caused or contributed to by, arising from or connected with: (a) loss of, or damage to, any property or any injury to or loss to any person; (b) the Computing Environment; (c) any reliance on any Results, suggestion, content or feature provided as part of the Services when making a business decision; (d) any delay or failure by you or any of your Personnel to provide any permissions, information or documentation necessary to allow us to provide the Services; (e) your or your Personnel's acts or omissions; (f) any use or application of the Services by a person or entity other than you, or other than as reasonably contemplated by these Terms; (g) any work, services, goods, materials or items which do not form part of the Services (as expressed in these Terms), or which have not been provided by us; (h) any Third Party Inputs or Third Party Products; (i) subject only to the Service Level Agreements in Annexure 1 and 2, the Services being unavailable, or any delay in us providing the Services to you, for whatever reason; and/or (j) any event outside of our reasonable control (including any Force Majeure Event).

18 Indemnity

18.1 **Your indemnity:** Despite anything to the contrary, to the maximum extent permitted by law, you are liable for, and agree to indemnify us and hold us harmless in respect of, any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with: (a) any Third Party Product; and (b) any third party claim, fine or compensatory damages imposed or awarded against us as a result of your (or your Personnel's) use of the Services in a manner that: (1) breaches any third party rights; or (2) interferes with any person's privacy.

19 Termination

- 19.1 **Suspension:** We may immediately suspend the Services (or any Authorised User's access to the Services) with notice to you if: (a) we reasonably consider that your continued use of the Services (or that of any Authorised User) may result in harm to the Services, other clients or third parties; (b) we reasonably consider that you (or any of your Personnel) are in breach of any Laws; or (c) we are required to do so by Law.
- 19.2 **Termination without cause:** Either Party may terminate these Terms at any time by giving not less than 30 days' notice in writing and these Terms will terminate: (a) on the next Monthly Date, if you have a free Account; or (b) on the next Payment Date, if you have a paid Plan, which is at least 30 days after the notice date.
- 19.3 **Termination by us with cause:** These Terms will terminate immediately upon written notice by us if: (a) you (or any of your Personnel) breach any material term of these Terms; (b) you (or any of your Personnel) breach any provision of these Terms and that breach has not been remedied within 10 Business Days of being notified by us; (c) you (or any of your Personnel) breach any agreement with a Third Party Product; (d) for any other reason outside our control which has the effect of compromising our ability to provide the Services; or (e) you are unable to pay your debts as they fall due.
- 19.4 **Termination by you with cause:** These Terms will terminate immediately upon written notice by you, if: (a) we are in breach of a material term of these Terms, and that breach has not been remedied within 10 Business Days of being notified by you; or (b) we issue you with a notice under clause 3.6 that the Services are being varied and within 30 days of the date of the notice you choose to terminate these Terms in accordance with clause 3.6; (c) we issue you with a notice under clause 20.4 that these Terms are being varied and within 30 days of the date of the notice you choose to terminate these Terms in accordance with clause 20.4; or (d) we are unable to pay our debts as they fall due.
- 19.5 **Consequences of termination:** Upon expiry or termination of these Terms: (a) we will cease providing the Services; (b) if you submit a request within 30 days of the date of expiry or termination, we will return to you in an accessible format (such as a csv file) Your Data and provide the Results to you; (c) we will be entitled (in our sole discretion) to permanently delete, destroy or de-identify all of Your Data and Results 31 days after expiry or termination of these Terms; (d) you agree that subject to your Statutory Rights and to the maximum extent permitted by law, any payments made are not refundable unless you terminate in accordance with clause 19.4, in which case you will be entitled to a pro-rata refund of any pre-paid amounts for Services not provided; (d) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms; (e) you will immediately return (at our request) or delete or destroy any of our property (including any of our Confidential Information and Our Intellectual Property); and (f) the rights or liabilities that a Party has accrued under these Terms will not be affected.

20 General

- 20.1 **Publicity:** By entering into these Terms, you agree that we may display your logo and use your name to advertise or publicise the broad nature of our provision of the Services to you, including on our website and in our marketing and promotional material. You may at any time provide us with written notice revoking your agreement to this clause 20.1. Following our receipt of such notice, we will take steps to promptly remove all references to you in our advertising, marketing or promotional material.
- 20.2 **Communication:** We may contact you and your Authorised Users with functional communications via the SaaS Services using in-Account notifications or via off platform communication channels, such as email. You acknowledge and agree that we may also send marketing and promotional material which may be of interest to you, using your contact details. You may opt out of receiving direct marketing messages at any time. Where you opt-out we will continue to send you functional communications relevant to your use of the Services.
- 20.3 **Survival:** The following clauses will survive expiry of termination of these Terms: (a) 10 (Intellectual Property + Data); (b) 11 (Confidential Information); (c) 12 (Privacy and Security); (d) 14 (Your Obligations); (e) 15 (Australian Consumer Law); (f) 16 (Limitation on Liability); (g) 17 (Exclusions to Liability); (h) 18 (Indemnity); (i) 19.5 (Consequences of termination); and (j) 20 (General).
- 20.4 **Amendment:** We may update these Terms or modify the Fees at any time with not less than 30 days notice to you via an in-Account notification or via email. If you can demonstrate that any such amendment will have a material adverse effect on you and you do not agree with it you may terminate these Terms within 30 days of the date of the notice in accordance with clause 19.4(c). If we make minor changes to these Terms, we may instead update these Terms by posting the updated version on our Site.
- 20.5 **Assignment:** You consent to us, at any time, assigning or novating these Terms (or part thereof, including any of our rights or obligations under these Terms) by providing prior notice to you of such assignment or novation. You must not assign or deal with the whole or any of your rights or obligations under these Terms without our prior written consent (such consent is not to be unreasonably withheld).
- 20.6 **Dispute:** If any dispute or claim (including any question regarding its existence, validity or termination) arises out of or in connection with these Terms ("**Dispute**"), either Party may issue a notice to the other Party outlining the dispute or claim ("**Notice of Dispute**"). Within 14 days of a Notice of Dispute, senior representatives of the Parties (who are authorised to make a decision with respect to the Dispute) must meet in good faith to resolve the Dispute by negotiation or such other means as they mutually agree. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Institute of Victoria to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause 20.6 will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 20.7 **Entire agreement:** These Terms contain the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 20.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay or failure is due to any circumstance beyond our reasonable control (including but not limited to terrorism, war, flood, fire, earthquake, storm, epidemic, pandemic, COVID-19 or Government sanctioned restrictions and orders, whether known or unknown at the time of entering into these Terms) ("**Force Majeure Event**").
- 20.9 **Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to these Terms and your obligations under it.
- 20.10 **Governing law:** These Terms are governed by the laws of Victoria, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 20.11 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 3 Business Days in the case of post, or at the time of transmission in the case of transmission by email on a Business Day, or on the next Business Day in the case of transmission by email not on a Business Day.
- 20.12 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 20.13 **Severance:** If a provision of these Terms 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 these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions.

21 Definitions

- 21.1 In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in these Terms, and:

"**Account**" means an account accessible to you and/or your Authorised Users to use the Services, including, the SaaS Services;

"**Add-On**" means any extra software functionalities or service upgrades you request or we offer to you, such as advanced reporting or improved security measures;

“**Additional Services**” means any additional Services which we agree to provide to you, in accordance with clause 8;

“**Analytics**” has the meaning given in clause 10.10;

“**Australian Consumer Law**” means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time;

“**Authorised User**” means a user permitted to access and use the Services under your Account;

“**Business Day**” means a day on which banks are open for general bank business in Victoria, excluding Saturdays, Sundays and public holidays;

“**Computing Environment**” means your computing environment including all hardware, software, information technology and telecommunications services and Systems;

“**Consequential Loss**” includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise;

“**Feedback**” means any idea, suggestion, recommendation or request by you (or any of your Personnel or Authorised Users or Third Party Products), whether made verbally, in writing, directly or indirectly, in connection with the Services;

“**Fees**” means the fees due and payable by you for the Services, as set out in your relevant Plan;

“**Force Majeure Event**” has the meaning given in clause 20.8;

“**GST**” has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“**Intellectual Property**” means any copyright, registered and unregistered trade marks, designs (whether or not registered or registrable), domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing;

“**Intellectual Property Breach**” means any breach by you (or any of your Personnel) of any of Our Intellectual Property Rights (or any breaches of third-party rights including any Intellectual Property Rights of third parties), including, but not limited, to you (or your Personnel):

- (a) copying, altering, enhancing, adapting or modifying any of Our Intellectual Property;
- (b) creating derivative works from Our Intellectual Property;
- (c) providing or disclosing Our Intellectual Property to, or allowing Our Intellectual Property to be used by, any third party;
- (d) assigning or transferring any of Our Intellectual Property Rights or granting sublicenses of any of Our Intellectual Property Rights, except as expressly permitted in these Terms;
- (e) reverse engineering or decompiling any of Our Intellectual Property Rights, except where permitted by Law; or

using or exploiting Our Intellectual Property for purposes other than as expressly stated in these Terms (including, without limitation, using Our Intellectual Property for commercial purposes or on-selling Our Intellectual Property to third parties);

“**Laws**” means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with these Terms or the provision of the Services, and includes Privacy Laws;

“**Liability**” means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise;

“**Moral Rights**” has the meaning given in the *Australian Copyright Act 1968* (Cth);

“**Personal Information**” is defined in the Privacy Act;

“**Personnel**” means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents and in respect of you, your Authorised Users;

“**Privacy Act**” means the *Australian Privacy Act 1988* (Cth);

“**Privacy Laws**” means the Privacy Act and Australian Privacy Principles as set out in the Privacy Act;

“**Privacy Policy**” means the privacy policy set out on our [Site](#);

“SaaS” means software as a service which is a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted and made available via the Internet, and also includes all instructions in hard copy or electronic form and any update, modification or release of any part of that software as described on our Site;

“Site” means our website, located at: <https://www.teamform.co/>;

“Statutory Rights” has the meaning given in clause 15.1;

“System” means all hardware, software, networks and other IT systems used by a Party from time to time, including a network;

“Team” means two or more people grouped together in the Software to form a team to achieve an outcome, such as a product team or customer service team;

“Third Party Inputs” means Third Party Products and third parties or any goods and services provided by third parties selected by us, including customers, end users, suppliers, transportation or logistics providers or other subcontractors which the provision of the Services may be contingent on, or impacted by; and

“Third Party Product” means any third party service provider with which you have a direct relationship and which you instruct us to integrate, interface or interoperate with the Services.

For any questions and notices, please contact us at:

TeamForm Pty Ltd ABN 98 650 292 943

Address: Level 6, Mering House, 278 Collins Street, Victoria, 3000, Australia

Email: legal@teamform.co

ANNEXURE 1 – SILVER SERVICE LEVEL AGREEMENT

1 Overview

1.1 This Service Level Agreement applies to the SaaS Services as set out in the Terms.

2 Definitions

2.1 Capitalised terms have the meaning given in the Terms, and in this Service Level Agreement the following words mean:

“**Availability**” means
$$\frac{\text{Total Minutes} - \text{Downtime}}{\text{Total Minutes}} \times 100$$

“**Availability Target**” has the meaning given in clause 3.1 of this Service Level Agreement.

“**Downtime**” means the number of whole minutes within the relevant calendar month that you are unable to access the Services as measured by our monitoring and logging infrastructure, which the Parties agree is the source of truth for determining Availability, errors and whether we have met the Availability Target. Downtime does not include Scheduled Downtime, Emergency Maintenance or any unavailability of the SaaS Services caused by an Excluded Event.

“**Emergency Maintenance**” means any maintenance deemed necessary to protect and maintain the security or integrity of the SaaS Services.

“**Excluded Event**” has the meaning given in clause 3.2 of this Service Level Agreement.

“**Failure**” means we have failed to achieve the Availability Target for the SaaS Services in the relevant calendar month.

“**Scheduled Downtime**” means planned maintenance or upgrades to the SaaS Services with reasonable advance notice to you via the SaaS Services or email.

“**Total Minutes**” means the total number of minutes in the relevant calendar month.

3 Service Levels for the Services

3.1 During the Subscription Term we will use commercially reasonable efforts to provide Availability of the SaaS Services in accordance with the following Availability Target: 99.9%

3.2 Despite anything to the contrary, we will not be responsible for any failure to meet the Availability Target if the failure was caused or contributed to by:

- a) failure or disruption of your Computing Environment or any Third Party Inputs or Third Party Products;
 - b) any Force Majeure Event;
 - c) any modification, revision, variation, translation or alteration of the Services that is not authorised by us;
 - d) your acts or omissions (or the acts or omissions of others engaged or authorised by you), including, without limitation, any negligence, wilful misconduct, or use of the Services in breach of the Terms; and/or
 - e) outages elsewhere on the Internet or telecommunication network that impacts our Services,
- (together, “**Excluded Event**”).

3.3 You acknowledge and agree that nothing in this “Silver” Service Level Agreement entitles you to any remedy, including any rebate or service credit, or any right to seek damages, as a result of any Failure by us. You may choose to upgrade to the “Gold/Platinum” Service Level Agreement if you wish to receive service credits.

ANNEXURE 1 – GOLD/PLATINUM SERVICE LEVEL AGREEMENT

1 Overview

1.1 This Service Level Agreement applies to the SaaS Services as set out in the Terms.

2 Definitions

2.1 Capitalised terms have the meaning given in the Terms, and in this Service Level Agreement the following words mean:

“Availability” means
$$\frac{\text{Total Minutes} - \text{Downtime}}{\text{Total Minutes}} \times 100$$

“Availability Target” has the meaning given in clause 3.1(a) of this Service Level Agreement.

“Business Hours” means 9:30am – 5:30pm on a Business Day.

“Downtime” means the number of whole minutes within the relevant calendar month that you are unable to access the Services as measured by our monitoring and logging infrastructure, which the Parties agree is the source of truth for determining Availability, errors and whether we have met the Availability Target. Downtime does not include Scheduled Downtime, Emergency Maintenance or any unavailability of the SaaS Services or delay in providing the Support Services caused by an Excluded Event.

“Emergency Maintenance” means any maintenance deemed necessary to protect and maintain the security or integrity of the Services.

“Excluded Event” has the meaning given in clause 4.5 of this Service Level Agreement.

“Failure” has the meaning given in the table in clause 4.1 of this Service Level Agreement.

“Priority” means the urgency of a Support Request, as assigned by us and as described in the table in clause 3.1(b) of this Service Level Agreement.

“Resolution Time Target” means the time between our notice to you of receipt of your submission of the Service Request or Incident, or where we first become aware of an Incident, our notice of an Incident to you, and the time by which we provide an answer to your Support Request, or in response to an Incident, remove or block a security threat, restore the SaaS Services to their specifications or find a suitable workaround which restores the SaaS Services so as to allow you to continue using the SaaS Services without major interruptions or a major loss of functionality.

“Response Time Target” means the time between your proper submission of a Service Request or Incident and our notice to you of receipt of your submission of the Service Request or Incident, or where we first become aware of an Incident, the time between us becoming aware of the Incident and our notice of an Incident to you.

“Scheduled Downtime” means planned maintenance or upgrades to the Services with reasonable advance notice to you via the Services or email.

“Service Credit” means any fee rebate you claim against a future invoice as a result of a Failure and which is approved by us, as set out in this Service Level Agreement.

“Severity” means the urgency of an Incident, as assigned by us and as described in the table in clause 3.1(c) of this Service Level Agreement.

“Total Minutes” means the total number of minutes in the relevant calendar month.

3 Service Levels for the SaaS Services

3.1 On and from the Go-Live Date until the end of the Term:

- a) we will use commercially reasonable endeavours to provide Availability of the SaaS Services in accordance with the following Availability Target: 99.9%.
- b) we will use commercially reasonable endeavours to provide the Support Services in response to Support Requests in accordance with the below Response Time Targets and Resolution Time Targets:

Priority	Description	Response Time Target	Resolution Time Target
Priority 1	Management of user accounts but not an Authorised User access request.	2 Business Hours	10 Business Hours
Priority 2	Time sensitive general user questions or Authorised User access requests.	1 Business Day	2 Business Days
Priority 3	General questions.	1 Business Day	5 Business Days

- c) we will use commercially reasonable endeavours to provide the Support Services in response to Incidents in accordance with the below Response Time Targets and Resolution Time Targets:

Severity	Description	Response Time Target	Resolution Time Target
Severity 1	<p>Production service, customer tenant or other mission-critical systems are down and no workaround is immediately available.</p> <p>All or a substantial portion of Your Data is at significant risk of loss, unauthorised access or corruption.</p> <p>There is a substantial loss of service and your business operations have been severely disrupted.</p>	<p>15 minutes during Business Hours</p> <p>30 minutes outside Business Hours</p>	<p>2 hours during Business Hours</p> <p>4 hours outside Business Hours</p>
Severity 2	<p>Major functionality is severely impaired.</p> <p>Services can continue in a restricted fashion, although long-term productivity might be adversely affected.</p> <p>A major milestone is at risk. Ongoing and incremental releases are affected.</p> <p>A temporary workaround is available.</p>	<p>15 minutes during Business Hours</p> <p>30 minutes outside Business Hours</p>	<p>4 hours during Business Hours</p> <p>8 hours outside Business Hours</p>
Severity 3	<p>Partial, non-critical loss of functionality of the software.</p> <p>Impaired operations of some components, but allows the user to continue using the software.</p> <p>A single Authorised User can't sign in.</p>	<p>2 hours during Business Hours</p> <p>Next Business Day outside Business Hours</p>	<p>2 Business Days, whether during or outside Business Hours</p>
Severity 4	<p>Cosmetic issues, including errors in the documentation.</p>	<p>Next Business Day, whether during or outside Business Hours</p>	<p>Prioritised and scheduled into an upcoming software release</p>

4 Failures and Service Credits

4.1 Service Credits are calculated as follows:

Failure	Service Credit (% of monthly Fees)	
	We do not meet the Availability Target for the relevant calendar month.	Less than [99.9% but greater than or equal to 99.0%]
Less than [99.0% but greater than or equal to 90.0%]		20%
Less than [90.0%]		40%
We do not meet the Resolution Time for an Incident in the relevant calendar month.	Severity 1	10%
	Severity 2	5%
	Severity 3	[N/A]
	Severity 4	[N/A]

4.2 If in any calendar month there is a Failure to which a Service Credit attaches, you may claim the applicable Service Credit in accordance with the terms in this Service Level Agreement. To claim a Service Credit, you must send us an [email](#) within 30 days of the end of the calendar month in which the Failure occurred ("**Service Credit Request**"). A Service Credit Request must include details of all Failures experienced and any other information reasonably requested by us.

4.3 If we assess a Service Credit Request and confirm that there has been a Failure, we will apply the relevant Service Credit to the next invoice for the Services.

4.4 You acknowledge that Service Credits are:

- d) non-transferrable;
- e) non-refundable;
- f) not redeemable for cash;
- g) can only be used against the Fees in your next invoice and are calculated based on the Fees payable in your next invoice (not any past invoice).

4.5 Despite anything to the contrary, you will not be entitled to any Service Credit in any month:

- a) that exceeds 50% of the Fees in your next invoice;
- b) if any undisputed invoice is overdue;
- c) if there is an active Dispute;
- d) if you are in breach of any provision of the Terms; or
- e) if the Failure was caused or contributed to by:
 - (1) failure or disruption of your Computing Environment or any Third Party Inputs or Third Party Products;
 - (2) any Force Majeure Event;
 - (3) any modification, revision, variation, translation or alteration of the Services that is not authorised by us;
 - (4) your acts or omissions (or the acts or omissions of others engaged or authorised by you), including, without limitation, any negligence, wilful misconduct, or use of the Services in breach of the Terms; and/or
 - (5) outages elsewhere on the Internet or telecommunication network that impacts our Services,

(together, "**Excluded Events**").