

# Lyssna Services Agreement

This online platform (**Platform**) is operated by UsabilityHub Pty Ltd ACN 158 305 205 trading as Lyssna, or its successors and assignees (**UsabilityHub, Lyssna, we, our or us**). The Platform is available at [lyssna.com](https://lyssna.com) (**Site**) and the websites of our sub-brands (**Sub-brand Sites**). The Sub-brand Sites are available at [usercrowd.com](https://usercrowd.com) (**UserCrowd**) and [fivesecondtest.com](https://fivesecondtest.com) (**Five Second Test**).

The Platform connects businesses (**Businesses, you or your**) requiring factors, including the quality or usability, of the Businesses' goods, services, website, or mobile application, to be reviewed by individuals sourced by Lyssna (**Reviewing Services**). Individuals may join and create accounts on the Site or Sub-brand Sites as members of our research panel, to review and provide feedback on a Business' products or services available to be reviewed on the Site or Sub-brand Sites (**Panel Participants**). Businesses may also invite their own customers and clients to participate in a study, test, or interview to obtain their preferences and opinions (**Company Sourced Participants**).

## 1 Acceptance

- (a) We own the cloud-based Platform and Sub-brand Sites, including any updates, modifications or releases of any part of that Platform which is accessible on the Site or Sub-brand Sites.
- (b) This services agreement (**Terms**):
  - (1) sets out the terms and conditions upon which we agree to grant you a right to use the Platform and Sub-brand Sites, as described on the Site or Sub-brand Sites (**Platform Service**) and provide any other services to you as set out in these Terms (the Platform Service and the Reviewing Service shall be known as the **Services**); and
  - (2) is binding on you from the date (**Effective Date**) on which we provide you with an account to enable you to access and use the Services (**Account**) until the date on which your Account is terminated in accordance with these Terms (**Term**).
- (c) Please read these Terms carefully and immediately terminate your Account if you do not agree to them.
- (d) If the processing of any of your employees' or Company Sourced Participants' data (**Company Personal Data**) is governed by the General Data Protection Regulation 2016/679 (**GDPR**), the additional terms in our Data Processing Agreement (**DPA**) apply and form part of these Terms.
- (e) By creating an Account and/or accessing and/or using the Services, you:
  - (1) warrant to us that you have reviewed these Terms including our Privacy Policy, available on the Site, and you understand them;
  - (2) warrant to us that you have reviewed the DPA, if applicable (available on the Site), if the processing of any Company Personal Data is governed by the GDPR;
  - (3) warrant to us that you are over 18 years of age and have the legal capacity to enter into a legally binding agreement;
  - (4) warrant to us that you have the authority to act on behalf of any person or entity for whom you are using the Services, and you are deemed to have agreed to these Terms on behalf of any entity for whom you use the Services;
  - (5) warrant to us that you have all hardware, software, and services which are necessary to access and use the Services; and
  - (6) agree to use the Services in accordance with these Terms.

## 2 Personal Data

- (a) You acknowledge and agree that:

- (1) in collecting, holding, and processing Company Personal Data through the Services, we are acting as the data processor for the purposes of the GDPR. Where the GDPR applies, you must obtain all necessary consents from the relevant individual to enable us to collect, use, hold, and process Company Personal Data in accordance with these Terms and, if applicable, the DPA; and
  - (2) in collecting, holding, and processing Panel Participant data we are acting as the data controller for the purposes of the GDPR. Where the GDPR applies we warrant that we have obtained all the necessary consents from the relevant Panel Participants who shall take part in the Reviewing Services to enable us to collect, use, hold, and process the Panel Participant's personal data.
- (b) Lyssna will comply with all GDPR and Australian data protection laws to the extent such laws by their terms impose obligations directly upon Lyssna in connection with its processing of personal data (as defined under the GDPR) under these Terms (and all related activities);
- (c) Lyssna agrees that it shall:
- (1) process personal data only for the purposes of these Terms (and any other processing separately consented to by the data subject (as defined under the GDPR) from time to time);
  - (2) promptly assist you in complying with any data subject rights request under the GDPR that you may receive from any data subject;
  - (3) promptly assist you in complying with any duties to cooperate with supervising authorities under the GDPR;
  - (4) implement appropriate security measures reasonably designated to avoid accidental or unlawful destruction, accidental loss, alteration, unauthorized disclosure or access, and against all other unlawful forms of processing of personal data;
  - (5) provide notice of the processing to the data subject in accordance with applicable laws;
  - (6) if Lyssna processes the personal data for the purposes of direct marketing, Lyssna shall ensure that effective procedures are in place to allow the data subject to "opt-out" from having their personal data used for such direct marketing purposes and the appropriate consent has been obtained from the relevant data subject to allow the personal data to be used for the purposes of direct marketing in compliance with all applicable laws; and
  - (7) provide adequate training to its relevant staff and ensure such staff will carry out the security measures and comply with the obligations of Lyssna under these Terms.

### 3 Registration and Account

- (a) You will be required to create an Account with us in order to access and use the Services. You must ensure that any personal information you give us when creating an Account is accurate and up-to-date. All personal information that you give to us will be treated in accordance with these Terms, our Privacy Policy, and, if applicable, the DPA.
- (b) When you create an Account, we will give you certain Account details (such as a username(s) and password(s)). You agree that we may alter or update these details at any time during the Term. It is your responsibility to keep your Account details confidential. You are liable for all content posted by you and all activity on your Account, including purchases made using your Account details and content posted by others who have logins or accounts associated with your Account, and you must immediately notify us of any unauthorized use of your Account.

(c) Businesses and Panel Participants may create Accounts on the Site or Sub-brand Sites. If you choose to create a study or test using our Services (**User Research**), then you may choose to receive responses:

- (1) from Panel Participants; and/or
- (2) from Company Sourced Participants.

(d) At our sole discretion, we may refuse to allow any person to create an Account.

#### 4 Collection Notice

(a) We may collect personal information about you in order to enable you to access and use the Site or Sub-brand Sites and its associated functionality, to contact and communicate with you, and for the other purposes set out in our Privacy Policy and, if applicable, the DPA.

(b) We may disclose that information to third party service providers who help us deliver our services (including information technology service providers, data storage, web-hosting and server providers, professional advisors, payment systems operators, and our business partners) or as required by law. If you do not provide this information we may not be able to provide the Services to you. We disclose your personal information to third parties located, or who store data, outside Australia.

(c) Our Privacy Policy and, if applicable, the DPA contains further information about: (i) how we store and use your personal information; (ii) how you can access and seek correction of your personal information; (iii) how you can make a privacy-related complaint; and (iv) our complaint handling process. By providing personal information to us, you consent to us, during the Term only, collecting, holding, using, and disclosing your personal information in accordance with our Privacy Policy and, if applicable, the DPA.

(d) Notwithstanding anything to the contrary in these Terms or elsewhere, we may monitor, analyze, and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymized format (**Analytics**). For the avoidance of doubt, we acknowledge and agree the Analytics will not contain any of your Data. You agree that we may make such Analytics publicly available, provided that it: (i) does not contain identifying information i.e. it is strictly anonymized; and (ii) is not compiled using a sample size small enough to make the underlying data identifiable. We and/or our licensors own all rights, title, and interest in and to the Analytics and all related software, technology, documentation, and content provided in connection with the Analytics, including all intellectual property rights in the foregoing.

#### 5 Platform Licence

(a) In consideration for payment of the fees, as set out on the Site (**Fees**), for your chosen subscription plan (**Plan**) or if you create an Account and use our Services through our 'Free' subscription plan, we grant you and your group companies, a worldwide, non-exclusive, royalty-free, non-transferable, non-sublicensable (except as otherwise permitted under these Terms) and revocable license to access and use the Platform Service for business purposes for the Term (**Platform Licence**).

(b) You agree that:

- (1) the Platform Licence permits you to use the Platform Service in accordance with the Platform Service's normal operating procedures;
- (2) the Platform Licence permits you to access and use the Platform Service in accordance with the maximum test length and other limitations as set out in your Account or otherwise agreed by us;

- (3) if the number of authorized team members is exceeded as set out in your Plan, or if you request to add authorized team members, we may charge a fee for each additional authorized team member as specified on the Site; and
  - (4) we reserve the right at any time and from time to time to: (i) refuse any request in relation to the Platform Service that we deem inappropriate, unreasonable, or illegal; and/or (ii) modify or discontinue, temporarily or permanently, access to the Platform Service (or any part thereof) with notice; and (iii) change or remove features of the Platform Service provided that, where there is any material alteration to the Platform Service in accordance with this clause, we will provide you with at least 20 business days' prior notice in writing.
- (c) The Platform Service includes functionality to notify you if you have exceeded the included features or other limits of your Plan.

## 6 Restrictions

- (a) You acknowledge and agree that these Terms incorporate by reference the terms of any acceptable use policy as set out on the Site or Sub-brand Sites or as provided to you from time to time.
- (b) You must not (and must ensure the authorized team members do not) access or use the Platform Service except as permitted by the Platform License and you must not do, omit to do, or authorize any act that would or might invalidate or be inconsistent with our intellectual property rights in the Platform Service. Without limiting the foregoing provisions, you must not permit any other person to:
  - (1) Re-sell, assign, transfer, distribute, or provide others with access to the Platform Service (except with our prior written permission);
  - (2) "frame", "mirror" or serve any of the Platform Service on any web server or other computer server over the Internet or any other network;
  - (3) copy, alter, modify, create derivative works from, reproduce to a third party, reverse assemble, reverse engineer, reverse compile, or enhance the Platform Service (except as expressly permitted by the *Copyright Act 1968 (Cth)*);
  - (4) alter, remove, or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers, or any other means of identification used on or in relation to the Platform Service;
  - (5) use the Platform Service in any way which is in breach of any applicable local, state, federal, and international laws and regulations (**Laws**) or which infringes any person's rights, including intellectual property rights;
  - (6) use the Platform Service in relation to crimes, including theft and fraud;
  - (7) use the Platform Service to transmit, publish, or communicate material that is defamatory, offensive, abusive, indecent, menacing, or unwanted, via User Research or otherwise;
  - (8) conduct User Research that is, or which contains material which is offensive, abusive, indecent, menacing, or unwanted;
  - (9) use the Platform Service in any way that damages, interferes with, or interrupts the supply of the Platform Service;
  - (10) introduce malicious programs into our hardware and software or our hardware, software, and services which are integrated and operate together, including our networks (**Systems**), including viruses, worms, trojan horses, and e-mail bombs;
  - (11) reveal your Account password to others or allow others to use your Account (other than authorized team members);
  - (12) use the Platform Service to make fraudulent offers of goods or services;

- (13) use the Platform Service to carry out security breaches or disruptions of a network. Security breaches include accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorized to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes);
- (14) 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 Platform Service;
- (15) send any unsolicited email messages through or to users of the Platform Service in breach of the *Spam Act 2003* (Cth) or to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the Platform Service in breach of any person's privacy (such as by way of identity theft or "phishing");
- (16) use the Platform Service to circumvent user authentication or security of any of your networks, accounts, or hosts or those of your customers or suppliers; or
- (17) solicit or entice away, any person or organization that was our actual or prospective, client, employee, contractor, representative, agent, or developer during the Term.

## 7 Support Services

- (a) During the Term, you have access to our help center, available on the Site. You may also contact us at [support@lyssna.com](mailto:support@lyssna.com) if you have any questions regarding our Services. We will endeavor to respond to you within a reasonable time.
- (b) We may also provide you with additional support services, including appointing a dedicated account manager for your Account. Additional support services may be subject to the payment of additional fees; we will notify you of these fees in writing and if you accept in writing the support services and any additional fees then we will provide you with our invoice for additional support services, if required.
- (c) We reserve the right to refuse any request for or in relation to support that we deem inappropriate, unreasonable, or illegal.
- (d) Any support we provide to you will be provided to you on a non-exclusive basis.

## 8 Your Data

- (a) **You own your content:** When you or your employees, contractors, officers, or agents (**Personnel**) upload, submit or transmit information, research, documents, feedback, and other data to the Platform Service (**Data**), you retain ownership of this Data and all intellectual property rights in your Data. We do not receive any licenses or rights to use your Data except in accordance with these Terms. The clause below describes how we are permitted to use your Data. You own all intellectual property rights in the responses provided as part of the Reviewing Services by Panel Participants and Company Sourced Participants.
- (b) **License:** You grant us and our sub-processors a worldwide, non-exclusive, limited, irrevocable, royalty-free, fully paid, license to (i) use, copy, back up, process, transmit, store, edit, aggregate, or combine the Data and (ii) otherwise access, use or make reference to the Data or any intellectual property rights in the Data during the relevant Term:
  - (1) to supply the Services (including enabling you, your Personnel and authorized team members to access and use the Platform Service and allow you to create a survey or interview via the Platform);
  - (2) for diagnostic purposes;
  - (3) to test, enhance and otherwise modify the Services (including to improve your user experience);

- (4) as reasonably required for the performance of our obligations under these Terms; and
  - (5) where the Data is feedback on our Services, for our advertising and marketing purposes and to create new Services.
- (c) The license described in this clause is for us to use your Data for the limited purposes described above and continues even after you stop using our Services, with respect to feedback relating directly to our Services, aggregate and anonymized personal information derived from your Data and any residual backup copies of your Data made in the ordinary course of running our business. The license in clause 8(b) also extends to any trusted third parties we work with to the extent necessary to provide the Services to you. Please note that if you ever provide us with any feedback, we may use your feedback without any obligation to you.
- (d) **General:** You must, at all times, ensure the integrity of your Data and that your use of your Data is compliant with all Laws. You represent and warrant that: (i) you have obtained all necessary rights, releases, and permissions to provide all your Data to us and to grant the rights granted to us in these Terms; and (ii) your Data and its use by us as authorized by you under these Terms do not violate any applicable Laws (including those relating to export control and electronic communications) or rights of any third party, including any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection, and disclosure authorized in these Terms is not inconsistent with the terms of any applicable privacy policies. We do not endorse and assume no responsibility or liability for your Data, and you shall be solely responsible for your Data and the consequences of using, disclosing, storing, or transmitting it.
- (e) **Removals:** We have no obligation to monitor any content uploaded to the Platform Service. Nonetheless, if we deem such action necessary for any reason, we may (without limiting our other rights) remove your Data from the Platform Service. We have no liability to you for removing your Data from the Platform Service in accordance with this clause.

## 9 Your Responsibilities and Obligations

You must, at your expense:

- (a) provide us with all materials and all reasonable assistance and cooperation in order for us to supply the Services in an efficient and timely manner, including obtaining from authorized team members any consent necessary to allow you and your personnel to engage in the activities described in these Terms and to allow us to provide the Services;
- (b) ensure that only your personnel and authorized team members access and use the Platform Service and such use and access is in accordance with the terms and conditions of the Platform License;
- (c) ensure all information provided to us is kept up-to-date and the email address you provide is valid and regularly checked; and
- (d) make any changes to your Computing Environment, such as system upgrades, that may be required to support the delivery and operation of any Services.

We warrant that throughout the Term that:

- (e) we are properly constituted and have the right and authority to enter into this Agreement;
- (f) we are responsible for obtaining rights, licenses, and permissions from third parties including, without limitation, Panel Participants to provide all Services and the Site as envisaged under this Agreement and in accordance with its terms;
- (g) we will use the standard of diligence and care normally employed by duly qualified persons performing obligations similar to our obligations under these Terms;

- (h) we will only use your Data in accordance with these Terms and we will procure that our Panel Participants use your Data only for the purposes of providing the Reviewing Services, during the Term; and
- (i) we will provide the Services in accordance with all applicable laws and regulations including the GDPR where applicable.

## 10 Payment

- (a) You must pay us the Fee for your Plan and any other amount payable to us under these Terms, without set off or delay, via credit card or any other payment method set out on the Site.
- (b) The Fee for your Plan is payable in advance of the next billing cycle for your Plan and any additional subscription charges will be billed in arrears at the end of the Plan cycle (unless otherwise agreed).
- (c) You are responsible for reviewing the pricing schedule, features, and limits associated with your Plan, which are available on the Site. The Fee for your Plan is based on the Plan you select.
- (d) To conduct User Research using the Services, where you wish to obtain responses from our Panel Participants, you must purchase a sufficient amount of credits on the Platform. The price in credits is set out on the Site. Any credits you purchase that you do not spend on conducting User Research will be retained on your Account as a balance available for future use.
- (e) The number of credits required to perform User Research depends on the type and duration of your User Research.
- (f) We may, in our sole discretion, cancel or nullify your credits if you attempt to access or obtain credits by manipulating the Platform, such as by creating multiple fake accounts and/or abusing any referral arrangements we have in place with users.
- (g) The Fees are non-refundable. To the maximum extent permitted by law, there will be no refunds or credits for any unused Plan or credits (or part thereof), Plan downgrade, or unused Accounts. Downgrading your Plan may result in the loss of content, features, or capacity of your Account. We do not accept any liability for any losses or damages that may arise in such cases.
- (h) If you downgrade your Plan, then the Fee will be prorated.
- (i) If you upgrade your Plan, and you have a credit card linked to your Account this credit card will automatically be charged the Fee for your new Plan at the start of your next Plan billing cycle. Please ensure that this credit card has sufficient funds to pay the Fee. If your credit card expires and you do not cancel your Account, your Account will be placed in an automated dunning process and we will provide you with written notice of this. If no payment is received prior to the completion of the dunning period your subscription will automatically be canceled and your Account will revert to a free Account.
- (j) If you upgrade your plan and you have negotiated a manual payment method with us we will issue an invoice with the new Fee for your Plan.
- (k) You are responsible for all taxes, levies, or duties imposed by taxing authorities in your own country, and you shall be responsible for payment of them. We have no responsibility to them on your behalf.
- (l) The Fee is subject to change upon 30 days' written notice from us to you and will apply to the next Plan billing cycle. Such notice may be provided at any time by posting the changes on our Site, via email or via a notification to your Account. If you do not agree to the Fee change, you may cancel your Account in accordance with clause 16(a).
- (m) If any payment is not made in accordance with our payment terms, we may (at our absolute discretion):

- (1) immediately cease providing the Services and recover as a debt due and immediately payable from you our additional costs of doing so;
- (2) engage debt collection services and/or commence legal proceedings in relation to any unpaid amounts; and/or
- (3) report you to independent credit data agencies.

11 Intellectual Property Rights

- (a) All intellectual property (including copyright) in the Services, Platform, the Site and Sub-brand Sites developed, adapted, modified or created by us or our Personnel will at all times vest, or remain vested, in us.
- (b) You must not, without our prior written consent:
  - (1) copy or use, in whole or in part, any of our intellectual property;
  - (2) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our intellectual property to any third party; or
  - (3) breach any intellectual property rights connected with the Site, Sub-brand Sites or the Services, including (without limitation) altering or modifying any of our intellectual property; causing any of our intellectual property to be framed or embedded in another website (except where we expressly agree to this); or creating derivative works from any of our intellectual property.
- (c) This clause 11 will survive termination of your Account.

12 Exclusion of competitors

- (a) You are prohibited from using our Platform, including the information and materials available on it (**Content**), in any way that competes with our business. If you breach this term, we will hold you responsible for any loss, damage or expense, howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent (**Liability**) we suffer, and hold you accountable for any profits that you may make from non-permitted use.

13 Indemnity and Liability

- (a) Despite anything to the contrary, to the maximum extent permitted by the law:
  - (1) each party's maximum aggregate Liability to the other party arising from or in connection with these Terms (including the Services or the subject matter of these Terms) will be limited to, and must not exceed the total amount of Fees you paid to us in the year in which the Liability arose or \$1 if no such Fees have been paid; and
- (b) The parties will have no liability to the other party for any loss of profit (including anticipated profit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated 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.
- (c) Despite anything to the contrary, to the maximum extent permitted by the law, we have no Liability, and you release and discharge us from all Liability, arising from or in connection with any:
  - (1) injury or loss to any person;
  - (2) failure or delay in providing the Services;
  - (3) unavailability, outage or interruption to the Services or your Systems; or
  - (4) breach of these Terms or any Laws,

where caused or contributed to by any:

- (5) event or circumstance beyond our reasonable control;
- (6) a fault or defect in your Computing Environment; or



- (7) act or omission of you, your related parties, Personnel or a third-party service provider,

and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Services.

- (d) Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees, and remedies relating to our provision of our services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in these Terms attempts to exclude, restrict, or modify your Statutory Rights as a consumer under the ACL. Any and all other warranties or conditions which are not guaranteed by the ACL are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in these Terms.

- (e) You acknowledge and agree that:

- (1) you are responsible for all users using the Services associated with your Account, including your Personnel and any authorized team members;
- (2) you use the Services and any associated programs and files at your own risk;
- (3) we may use third-party service providers to provide the Platform. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, we may cease providing any affected features without liability or entitling you to any refund, credit, or other compensation;
- (4) we do not guarantee that using the Services or conducting User Research will help you improve your products or services, or that you will achieve measurable, actionable results from the User Research you conduct;
- (5) you are responsible for conducting User Research and determining the aspects or qualities of your goods or services that you would like test – we are not responsible for conducting User Research on your behalf;
- (6) the Platform Services may use third party products, facilities or services. We do not make any warranty or representation in respect of the third-party products, facilities or services other than where the GDPR and/or the DPA is applicable and as required in the DPA;
- (7) we may relocate the Data to another jurisdiction in accordance with all applicable laws (including without limitation the GDPR), in which case we will give you 15 business days' notice and use all reasonable endeavors to minimize the effect of such change on your access and use of the Services;
- (8) we are not responsible for any corruption or loss of any Data if such corruption or loss is due to an act or omission by you, your Personnel, your related bodies corporate or any authorized team members;
- (9) we are not responsible for the integrity or existence of any Data on the Computing Environment, network or any device controlled by you or your Personnel; and
- (10) we may pursue any available equitable or other remedy against you if you breach any provision of these Terms.

- (f) You must indemnify us and hold us harmless from and against any loss, cost, Liability or damage, howsoever arising, suffered or incurred by us and arising from or in connection with any claim relating to your Data.

- (g) This clause 13 will survive termination of the Account.

#### 14 Panel Participant Responses

- (a) Please note that while most User Research studies receive their allocation of responses within 24 hours, response rates vary based on the number of responses ordered, targeted demographics, and site traffic. We cannot guarantee how long it will take to fulfill your order, though we do our best to provide a good estimate at the time the order for Panel Participant responses is placed.
- (b) In progress orders (**Incomplete Orders**) may be canceled at any time prior to completion. If an Incomplete Order is canceled any responses not yet fulfilled will be refunded back on to your account as credits.
- (c) We do our best to ensure that all Panel Participants submit a valid response, but this is not possible in all cases.
  - (1) If you believe that you have received an invalid response from a Panel Participant to an unmoderated research study, you may delete a Panel Participant response using functionality on the Platform within 30 days of the order's completion and the deleted response will be automatically replaced with a new response from a different Panel Participant.
  - (2) If you believe that you have received an invalid response from a Panel Participant to an interview research study, you may report the Panel Participant to us within 5 days of completion of the session to receive a refund or new response from a different Panel Participant. We reserve the right to review reports prior to providing a refund or replacement response.
- (d) You must not delete or report:
  - (1) Panel Participant responses in order to groom or manipulate results or User Research data; or
  - (2) valid Panel Participant responses in order to receive other Panel Participant responses free of charge.
- (e) We reserve the right to investigate any deletion or mass deletion of Panel Participant responses and we may, in our discretion, decide that a Panel Participant response should not be deleted.
- (f) All responses ordered from us, using our Panel Participants, undergo a quality assurance process and a Panel Participant may be banned from testing if their responses have not met quality standards in the past.

#### 15 Confidentiality

- (a) **Definition:** The term Confidential Information means all trade secrets, know-how, inventions materials, developments, software, and other financial, business, or technical information that are disclosed by or for a party in relation to these Terms (including all copies, abstracts, summaries, analyses and derivatives thereof) and that are marked or otherwise identified as proprietary or confidential at the time of disclosure or that by their nature would be understood by a reasonable person to be proprietary or confidential. Confidential Information shall not include any information that the receiving party can demonstrate is (a) rightfully furnished to it without restriction by a third party without breach of any obligation to the disclosing party, (b) generally available to the public without breach of these Terms or (c) independently developed by it without reliance on such information.
- (b) **Confidentiality:** Each party shall use reasonable care to keep the other's Confidential Information secret and, except for the specific rights granted by these Terms, neither party shall possess, access, use, reproduce, or disclose any of the other's Confidential Information without its prior written consent. The receiving party may disclose Confidential Information only to its employees and contractors who have a need to know for the permitted purpose and who are bound to safeguard the Confidential Information pursuant to obligations that

are at least as protective as the restrictions in these Terms. Each party shall be responsible for any breach of confidentiality by its employees and contractors. Promptly after any termination of these Terms (or at the disclosing party's request at any other time), the receiving party shall return all of the other's tangible Confidential Information, permanently erase all Confidential Information from any storage media and destroy all information, records, and materials developed therefrom.

## 16 Termination

- (a) You may only terminate a paid Account by downgrading your Account to a free Account and you may do this at any time. You may delete your Account from the Account settings page on the Platform. No refunds will be given upon termination in accordance with this clause 16(a).
- (b) We may, at any time and at our sole discretion, suspend or terminate your Account for any reason. You must ensure that all your Data on the Platform Service is backed up so that you do not lose your Data if we suspend or terminate your Account. We will generally alert you when we take such action and give you a reasonable opportunity to remedy any breach of these Terms, but if we determine that your actions endanger the operation of the Services or other users, we may suspend or terminate your Account immediately without notice. You will continue to be charged for the Services during any suspension period in which you are in breach of these Terms. If we suspend your Account and you are not in breach of these Terms, we will apply a credit to your Account for the Fees you have paid for any unused portion of your Plan to which the period of suspension relates. If we terminate your Account and you are not in breach of these Terms, we will refund you the Fees you have paid for any unused portion of your Plan. If we terminate your Account and you are in breach of these Terms, no refunds will be given.
- (c) Where you have a credit card linked to your Account, your Plan will automatically renew at the end of the Plan period (and for the same Plan cycle) unless you terminate your Account in accordance with clause 16(a).
- (d) Where you have negotiated a manual payment method with us we will send written notice 30 days before the end of your Plan period notifying you that your Plan is due to terminate. In these circumstances, your Plan will only be renewed with your written confirmation (including via email). If your Plan is not renewed, your Account will revert to a Free Account.

## 17 General

- (a) **Force Majeure:** If a party (**Affected Party**) is unable to perform any of its obligations under these Terms due to an event or circumstance beyond its reasonable control (**Force Majeure**) and it gives the other party prompt written notice of such, the Affected Party's obligations shall be suspended to the extent necessary. The Affected Party must use reasonable efforts to limit the impact of the event on its performance and must continue to perform its obligations in full as soon as the Force Majeure ceases.
- (b) **Publicity:** You consent to us using advertising or publicly announcing that we have provided Services to you, including but not limited to mentioning you on our Site or Sub-brand Sites and in our promotional material. You may remove your consent by providing us with 30 days written notice via our contact details below and within 15 days of receiving the notice we will cease using you for advertising or in public announcements.
- (c) **Disputes:** Neither party may commence court proceedings relating to any dispute arising from, or in connection with, these Terms without first meeting with a senior representative of the other party to seek (in good faith) to resolve that dispute (unless that party is seeking urgent interlocutory relief or the dispute relates to compliance with this provision).
- (d) **Notices:** Any notice given under these Terms must be in writing and addressed to us at the details set out below or to you at the details provided when setting up your Account. Any

notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or on the next business day in the case of email.

- (e) **Waiver:** Any failure or delay by a party in exercising a power or right (either wholly or partly) in relation to these Terms does not operate as a waiver or prevent a party from exercising that power or right or any other power or right. A waiver must be in writing.
- (f) **Relationship of parties:** These Terms are not intended to create a partnership, joint venture, or agency relationship between the parties.
- (g) **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.
- (h) **Assignment:** You must not assign any rights or obligations under these Terms, whether in whole or in part, without our prior written consent.
- (i) **Entire agreement:** These Terms contain the entire understanding and agreement between you and us in respect of their subject matter.
- (j) **Amendment:** We may, at any time and at our discretion, vary these Terms by providing you with prior written notice and publishing varied terms on the Site. Such variation will take effect at the commencement of your next Plan billing cycle. Prior to the commencement of each Plan billing cycle, we recommend you carefully read the terms that are in effect at that time to ensure you understand and agree to them. If you reasonably believe that such variation/s are materially detrimental to your use of the Service, then you may terminate your Account with effect from the end of your then current Plan billing cycle.
- (k) **Governing law:** These Terms are governed by the laws of Victoria. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waive any rights to object to proceedings being brought in those courts. The Services may be accessed in Australia and overseas. We make no representation that the Services complies with the laws (including intellectual property laws) of any country outside of Australia other than the GDPR where applicable. If you access the Services from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place you access the Services.

**For any questions, please contact us at:**

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