

**Hively**

## **Hively Terms of Use**

**Hively Trading Pty Ltd ACN 688 041 474**

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## 1. Background

Thank you for visiting our Terms of Use (**Agreement**), we are Hively Trading Pty Ltd ACN 688 041 474 (**Hively Trading, we, our, us** and other similar terms). We provide a mobile application to monitor and manage beehives, known as Hively (**Hively**).

This Agreement outlines the terms and conditions associated with your use of Hively. It is your obligation to ensure that you have read, understood and agree to the most recent terms available on our Website or on Hively.

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## 2. Agreement

### 2.1 Accepting this Agreement

By creating a Hively Account, you agree to comply with and be legally bound by the terms and conditions of this Agreement. If you do not agree to these terms, you have no right to continue using Hively.

You must not use Hively if you are not able to form legally binding contracts. If you create an Account on behalf of your employer or any other entity, you represent and warrant you hold authority to enter into this Agreement on behalf of that entity and that the entity will comply with the obligations contained herein.

### 2.2 About this Agreement

Throughout the Agreement we use some capitalised words and phrases, like the word Agreement. These capitalised words and phrases are defined throughout this Agreement and in clause 17. They aid to clarify the terms and conditions.

Please feel free to email us at [info@hivelyapp.com.au](mailto:info@hivelyapp.com.au) if you have any questions.

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## 3. Term

This Agreement will commence when you create an Account for Hively and will continue for the Subscription Period or until the date of termination of this Agreement in accordance with clause 15.

If this Agreement is not terminated in accordance with clause 15, prior to the expiry of the then current Subscription Period, this Agreement will automatically renew for a period equal to the current Subscription Period.

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## 4. Licence

We grant you a non-transferrable, non-exclusive and revocable licence to access Hively for the Subscription Period, subject to and conditional upon your compliance with the terms and conditions of this Agreement.

The features available to you are determined by the inclusions and usage restrictions set out in the Subscription Package which you choose at the time of subscribing to Hively. You acknowledge and agree that if you exceed the usage restrictions or wish to make use of alternate or new features of Hively, you may be required to upgrade your subscription.

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## 5. Payment

Unless expressed otherwise, Subscription Fees are quoted in Australian Dollars and are inclusive of GST, withholding taxes, tariffs, duties and charges imposed or levied in Australia, or overseas, in connection with this Agreement.

All Subscription Fees and applicable GST must be paid at the beginning of each Subscription Period.

You are responsible for all bank fees and charges applied by the payment gateway provider, which you use.

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## **6. Requirements for use**

### **6.1 Access**

You acknowledge and agree that certain features of Hively will only be accessible using the internet, by users with a valid Account and its full functionality may not be available "locally" from your own servers or devices.

In order to make full use of the mobile application version of Hively you may be required to allow your device access to certain services including data connectivity, email, storage, camera, microphone and your device gallery. If you refuse to grant access to the required mobile device services, the mobile version of Hively may not function as anticipated, or at all.

### **6.2 Support**

Support for Hively is provided in accordance with the support arrangements made available via Hively or as set out on our Website and may vary from time to time.

### **6.3 Hively outages and system maintenance**

If it is necessary to interrupt your use of Hively, we will endeavour to provide you with reasonable notice (where possible) of when, and the anticipated duration for which, Hively will be unavailable.

You acknowledge access to Hively may be changed, interrupted or discontinued for many reasons, some of which are beyond our control and during routine maintenance there may be updates to Hively which may change the interface and manner in which it functions.

To the maximum extent permitted at law, we are not liable for any loss, foreseeable or not, arising from any interruption to access Hively, whether planned or not, and any such interruptions will not constitute a breach by us of this Agreement.

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## **7. Your use of Hively**

### **7.1 Registering an Account**

In order to use Hively, you are required to provide us with Personal Information and create an Account with us.

You agree to provide any information reasonably requested by us for the purpose of setting up your Account. You warrant that all of the information you provide to us is accurate and complete in all respects, you will inform us by updating your Account details whenever any such information changes and you will not provide false or misleading information.

### **7.2 Account security**

Maintaining the security of your Account is important to ensuring your Personal Information, and that data which we process on your behalf, remains safe. We work hard to keep Hively secure and we ask you to contribute.

You agree not to request or allow another person to create an Account on your behalf, for your use, or for your benefit, except that an authorised employee or agent may create an Account on behalf of your business. You also agree not to disclose your Account security credentials to another person or permit them to access your Account. You are responsible for the activities undertaken using your Account which occur via Hively, whether such activities are authorised by you or not.

## 7.3 Lawful use of Hively

You undertake not to upload, store or access any data on Hively if such access or storage would infringe a person's Intellectual Property right, breach any Privacy Law or breach any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory of Australia).

## 7.4 Conduct which is expressly prohibited

You must not use or include any part of Hively in any service bureau or fee generating service offered to third parties.

You must not:

- (a) in any way tamper with, hinder or modify Hively;
- (b) knowingly transmit any viruses or other disabling features to or via Hively;
- (c) intentionally disable or circumvent any protection or disabling mechanism of Hively;
- (d) install or store any software applications, code or scripts on or through Hively;
- (e) gain access to parts of Hively that you are not authorised or entitled to access under your Subscription Package;
- (f) use Hively in any way which could be reasonably expected to interfere with or damage our systems, any other operator's systems, or another user's enjoyment of Hively; or
- (g) attempt, facilitate or assist another person to do any of the above acts.

## 7.5 Our right to suspend

We reserve the right to limit or suspend your licence to access Hively if you fail to pay the Subscription Fee, or if in our reasonable opinion, you are in breach of any of your obligations or warranties in this Agreement. Suspending your Account will not constitute a breach of this Agreement by us, nor will it alter your obligation to pay the Subscription Fee.

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## 8. App Marketplace Providers

The Hively mobile application will be made available from Google Play and the Apple App Store (**App Marketplace Providers**).

This Agreement is between us and you only. We, and not the App Marketplace Provider, are responsible for Hively, and we are solely responsible for:

- (a) its support and maintenance;

- (b) the investigation, defence, settlement and discharge of any claim which relates to an infringement of third-party Intellectual Property rights arising from the use of Hively; and
- (c) any claim Hively fails to conform to any applicable legal or regulatory requirement, including product liability claims and claims arising under consumer protection laws.

The App Marketplace Provider's liability to you is limited to the refund of the purchase price of Hively and any other remedies under consumer protection law. Your right to use the mobile version of Hively is non-transferable and non-sublicensable, except to the extent the App Marketplace Provider permits family sharing or like sharing arrangements.

The App Marketplace Provider may monitor your use of Hively and is entitled to enforce the terms of this Agreement against you. You agree to submit to their legitimate enforcement activities.

If there is any inconsistency between this Agreement and the application use rules set out in the App Marketplace Provider's terms of service, their terms of service will prevail to the extent of the inconsistency.

You represent and warrant that you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and you are not listed on any U.S. Government list of prohibited or restricted parties.

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## 9. Privacy

You agree and consent to us handling your Personal Information in accordance with our Privacy Policy. We may amend our Privacy Policy in our sole discretion. If we amend our Privacy Policy, we will post the new version on our Website or on Hively.

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## 10. Third Party Services

Certain components or features of Hively may interface with applications or include links, data, resources, services and/or content that are provided or operated by third party service providers (**Third Party Services**).

You acknowledge and agree that, subject to any Non-excludable Condition, we are not liable for:

- (a) the availability of such Third Party Services;
- (b) any data, content, advertising or materials made available through such Third Party Services; or
- (c) any damages you incur or allege to incur, either directly or indirectly as a result of your use and/or reliance upon any such Third Party Services.

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## 11. User Content and Intellectual Property

### 11.1 Your User Content

If you provide us with content, including, without limitation, text, photos, images, audio, video, code and any other materials (**User Content**), your User Content stays yours. This Agreement does not transfer ownership of User Content to us.

When you provide User Content, you grant us a non-exclusive, worldwide, perpetual, royalty-free, sublicensable, transferable right and license to use, host, store, reproduce, modify, create derivative works of (such as those resulting from translations, adaptations or other changes we make so that User Content works better with Hively), communicate and publish User Content for the purposes of allowing us to provide, improve, promote and protect Hively. You waive any claims against us relating to any moral rights or similar rights worldwide that you may have in the User Content.

You represent that you own all rights to your User Content or otherwise have (and will continue to have) all rights and permissions to legally use, share, display, transfer and license your User Content to the extent that it is used within Hively.

While we reserve the right to take down any User Content which is in breach of this Agreement, you acknowledge and agree we are not required to monitor User Content, nor are we responsible for it.

### 11.2 Use of our Intellectual Property

We warrant we own or have a licence to use the Intellectual Property in Hively. You must not do any of the following, assist anyone to do any of the following or permit any person over whom you have effective control to:

- (a) create an adaptation or translation of, all or part of Hively in any way;
- (b) use Hively in a manner which may infringe any other persons Intellectual Property;
- (c) incorporate all or part of Hively in any other webpage, site, application or other digital or non-digital format; or
- (d) except to the extent that reproduction occurs automatically through its ordinary use, directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, content, architecture, or algorithms contained in Hively.

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## 12. Warranties

Subject to the Non-excludable Conditions and to the maximum extent permitted at law, we make no warranties or guarantees that Hively is fault free, regarding Hively's fitness for any particular purpose which we have not expressed, or regarding your access to, or the results of your access to, Hively including its correctness, accuracy, timeliness, completeness, reliability or otherwise.

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## 13. Limitation of liability

### 13.1 Implied conditions

We expressly exclude all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.

### 13.2 Limitation of liability

Subject to the Non-excludable Conditions and to the maximum extent permitted at law, we exclude all other liability for any costs, including consequential losses, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

- (a) Hively being temporarily inaccessible for any reason;
- (b) incorrect, corrupt or lost data, or any inputs or outputs of Hively;
- (c) computer virus, trojan and other malware in connection with Hively;
- (d) security vulnerabilities in Hively or any breach of security that results in unauthorised access to, or corruption of data;
- (e) any unauthorised activity in relation to Hively;
- (f) the occurrence of an Event of Force Majeure; or
- (g) any act or omission by you, your personnel, your associates or any related body corporate under or in relation to this Agreement.

### 13.3 Limits to liability associated with goods and services

To the maximum extent possible under the law, we limit our liability for any breach to: in the case of goods, the re-supply of the goods or payment of the cost of the re-supply of the goods, or the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and in the case of services, the resupply of the services or the payment of the cost of having the services resupplied.

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## 14. Dispute Resolution

A party claiming a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute. The parties must submit themselves to the dispute resolution procedure set out in this clause 14 before commencing any legal proceedings.

If the parties cannot resolve the Dispute between themselves within 30 days then either party may require the Dispute to be referred for mediation. The mediation must be undertaken in accordance with the Resolution Institute Mediation Rules, within the jurisdiction of the Agreement and, unless otherwise agreed between the parties, using a mediator nominated by the Resolution Institute. If the

Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

Each party must pay its own internal and legal costs in relation to complying with this clause 14. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 14 does not apply to the recovery of any debt or prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

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## 15. Termination

### 15.1 Termination by either party

Either party may terminate this Agreement immediately on notice if the other party commits a material breach of this Agreement and the breach is incapable of being remedied or if the breach is capable of being remedied, the party in breach has failed to remedy the breach within 14 days after the receipt of notice to remedy.

We may end this Agreement if your Account remains suspended for a period of more than 30 days or prior to any Subscription Period in which case this Agreement ends at the end of the then current Subscription Period.

You may terminate this Agreement with us immediately by closing your Account or notifying us in writing, in which case this Agreement ends at the end of the then current Subscription Period.

### 15.2 Actions upon termination

Upon termination you must immediately stop using Hively, we reserve the right to permanently erase any data associated with your Account and you will no longer have access to your Account.

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## 16. General

**Assignment** – Neither party may assign, encumber, declare a trust over or otherwise create an interest in its rights in this Agreement without the other party's consent, which must not be unreasonably withheld.

**Entire Agreement** - This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

**Governing law** - The laws of New South Wales govern this Agreement. The parties submit to the exclusive jurisdiction of courts exercising jurisdiction there.

**Notices** - The parties agree all notices, disclosures and other communications that are provided in accordance with this clause, satisfy any legal requirement that such communications be in writing. Any communication under or in connection with this Agreement:

- (a) which we send to you, will be sent to the email address provided to us in your Account and by accepting these terms you give your consent to receive communications from us by email; and
- (b) which you send, must be either delivered or posted by prepaid post to our registered office or

sent by email to our email address set out at clause 2.2.

**Relationship** - Nothing in this Agreement is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties.

**Severability** - Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change its intended effect.

**Variations to this Agreement** - We may vary this Agreement by giving one month written notice to you. If you do not accept the terms of the variation, you may terminate your subscription in accordance with clause 15.1. The variation takes effect at the beginning of the next Subscription Period.

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## 17. Definitions

Unless the terms and conditions of the Agreement state otherwise, the following expressions used in this Agreement have the following meanings:

**Account** or **Hively Account** means the username and access credentials used when you access Hively.

**Agreement** means these terms and conditions and any document incorporated into them by reference.

**Event of Force Majeure** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, health epidemic, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

**Intellectual Property** means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, confidential information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

**Non-excludable Condition** means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

**Personal Information** means information or an opinion about an identifiable individual (not a company), whether or not that information or opinion is true or in a material form.

**Privacy Law** means both the privacy laws in the jurisdiction in which you operate and the *Privacy Act 1988* (Cth) incorporating the Australian Privacy Principles.

**Privacy Policy** means the privacy policy available on our Website as amended by us from time to time.

**Subscription Fee** means the periodic price for the Hively Subscription Package as set out on our Website, and if no price is specified then the use of the Subscription Package is free.

**Subscription Package** means any one of the subscription packages advertised on our Website from time to time.

**Subscription Period** means the period of time attached to the Subscription Package which you sign up for.

**You or your** means the person or entity using Hively.

**Us, we or our** means Hively Trading Pty Ltd ACN 688 041 474.

**Website** means the website located at [hivelyapp.com.au](https://hivelyapp.com.au) and any of its subdomains.