

Overlay AI Platform Terms

By submitting an Application to us, you are requesting that we provide you with our Services. When we notify you that we accept your Application, we agree to provide you with those Services and these Terms, Your Plan and your Application together form the Agreement between you and us.

1 Definitions and interpretation

1.1 Definitions

In these Terms, the following terms have the meaning given to them below, unless the context requires otherwise:

Account means your account with us that enables access to and use of the Platform and Software Services by you and your Users;

Account Credentials means the unique user name and password created for you and each User to access the Platform;

Agreement means these Terms, Your Plan and your Application;

Application means the application for an Account that you complete and submit to us through the Site;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Adelaide, South Australia;

Business Hours means from 9am to 5pm Australian Central Time on Business Days;

Change of Control occurs when a person acquires Control of an entity;

Claim means any claim, action, proceeding or investigation of any nature or kind and includes the allegation or threat of a claim;

Commencement Date means the date we notify you that we accept your Application;

Concurrent Objects means all Objects that you and your Users have trained the Platform to identify, excluding those that you subsequently remove from the Platform;

Confidential Information means all information belonging or relating to a party to this Agreement, whether oral, graphic, electronic, written or in any other form:

- (a) that is, or should reasonably be regarded as, confidential to the party to whom it belongs or relates; or
- (b) that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement;

Consequential Loss means any:

- (a) loss of revenue, loss of profit, loss of use, loss of goodwill or reputation, loss of savings, loss of business or opportunity or loss or corruption of data; and
- (b) other loss suffered by a party that cannot reasonably be considered to arise naturally from a breach of this Agreement or the events giving rise to the loss;

Control includes the power to directly or indirectly:

- (a) dictate the management or policies of the company; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that party or otherwise;

CPI means the Consumer Price Index, Australia, All Groups, Weighted Average of Eight Capital Cities, published by the Australian Bureau of Statistics and, if that index ceases to be published, an alternative consumer price index nominated by us;

Customer, you and your means the person identified in the Application as the "Customer";

Customer Content means any data, information, content or other material which:

- (a) is uploaded by you or the Users via the Software Services;
- (b) is provided by you or the Users to us to upload for access through the Software Services; or

(c) is processed via the Software Services, but excludes any information, content or material that we have provided to you and/or the Users (including the Deliverables and the Overlay AI Material) and Outputs;

Customer System includes your entire computer and information technology network and infrastructure (including hardware, software, firmware, communications platforms, cabling and any parts or components of any of the foregoing);

Data Breach means any:

- (a) breach of Privacy Laws; or
- (b) unauthorised processing, disclosure, use, modification or access, or attempted unauthorised disclosure, use, modification or access, or misuse or loss of, Personal Information;

Defect means any characteristic that makes the whole or any part of the Software Services wholly or partly inoperable;

Deliverables means the Services, the Documentation and the Outputs;

Documentation means any manuals and other materials (whether in printed or electronic format) relevant to the operation of the Platform, including user manuals, programming manuals, modification manuals, flow charts, drawings, instructions and any similar documentation;

Expiry Notice has the meaning given to that term in clause 2(b);

Extension Notice has the meaning given to that term in clause 2(b);

Fees means the fees payable to Overlay AI as detailed in your Plan;

Force Majeure Event means:

- (a) natural disasters, acts of terrorism, riots, civil disturbances, pandemics, epidemics, industrial disputes and strikes;
- (b) interruption or breakdown in telecommunications networks or the internet that are beyond Overlay AI's reasonable control; and
- (c) any other event which is outside of Overlay AI's reasonable control;

GST has the meaning in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Initial Term means the initial period we grant to you to access the Platform, as specified in your Plan or, if no such period is specified in your Plan, the period of 1 month, commencing on:

- (a) the Service Start Date; or
- (b) if your Plan includes a Trial Term, the day immediately after the last day of your Trial Term;

Insolvency Event means, in respect of a party, any one or more of the following events or circumstances:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
- (b) that party having a receiver or receiver and user appointed over any of its property or assets, or an administrator, liquidator or provisional liquidator appointed to that party;
- (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the *Corporations Act 2001* (Cth) or any other applicable Law;
- (d) seeking protection from its creditors under any applicable Law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
- (e) any analogous event or circumstance to those described in paragraphs (a) to (d) above under any applicable Law

of any jurisdiction,
unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party;

Intellectual Property Rights means all statutory and other proprietary rights whether registered or unregistered (including rights to require information be kept confidential) in respect of know-how, trade secrets, copyright, trademarks, design, patent, semiconductor or circuit layout rights and any application for registration or registration of those rights;

Law means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct;

Level 1 Support means the support services which you will provide to Users and which is described in Schedule 1;

Loss means any loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind;

Non-Excludable Guarantee has the meaning given to it in clause 12.8(a);

Notifiable Data Breach means an 'eligible data breach', as that term is defined by the Privacy Act, and any other suspected or actual circumstance that a party is required to notify to a third party under a Privacy Law;

Object means an individual object that you or your Users have trained the Platform to identify in a workspace within your business or operations.

Outputs means any data, information, content or other material that is generated from the Customer Content by us;

Overlay AI, we, us and our means Overlay AI Pty Ltd ABN 86 668 655 249 of 35-37 Stirling Street Thebarton SA 5031;

Platform means the online AI object recognition platform which provides real time information about Objects in your workspace that we make available to you for use by you and your Users;

Overlay AI Material means any data, information, content or material (including the Documentation) used in providing the Services, or developed by us or on our behalf of as a result of the provision of the Services, including all software, tools, know-how, equipment or processes, trade marks, logos, designs and other materials;

Permitted Purpose means: (i) for us to provide the Deliverables and otherwise perform our obligations under this Agreement, (ii) to improve our products and services, (iii) the use, correction, re-ordering and transformation of the Customer Content for the purposes of the creation and use of Outputs, and (iv) such other purposes agreed between the parties from time to time;

Permitted Use means you are permitted to use the Software Services to:

- (a) allow your Users to access and use the Platform for object recognition in their workplace and/or training facility; and
- (b) allow your Users to train the Platform to recognise objects;

Personal Information has the meaning given to it in the Privacy Act;

Personnel means a party's officers, employees, agents, contractors and subcontractors;

Plan means a plan for use of our Services, including the fees and other terms applicable to that plan, as published on our Site from time to time and **your Plan** is the Plan that you nominate in your Application;

Privacy Act means the *Privacy Act 1988* (Cth), including the Australian Privacy Principles;

Privacy Law means in relation a Party:

- (a) the Privacy Act;
- (b) all other Laws regulating access to or Processing of Personal Information which that Party is required to comply with from time to time; and
- (c) all other Laws regulating access to or Processing of Personal information which apply to the other Party and

which the other Party has notified in writing to the first mentioned Party;

Processing (or **Process**) means collection, use, adaption, alteration, storage, transfer, disclosure, or any other handling of Personal Information;

Renewal Term has the meaning given to that term in clause 2(b);

Scheduled Outages means any outage of the Software Services which we notify to you in advance of the outage;

Services means all services provided by us to you under this Agreement, including the Software Services and the Support Services;

Service Start Date means the date on which we first make the Platform available to you after we have implemented the Platform ready for use by you and your Users;

Software Services means the provision of access to and use of the Platform;

Support Services means the maintenance and support services which are described in Schedule 1;

Term means the period commencing on the Commencement Date and continuing until the end of the Initial Term and all extensions under clause 2(b), unless terminated earlier in accordance with its terms;

Terms means these Overlay AI Platform Terms, including the Schedules, with the terms and conditions in the main body prevailing over the Schedules to the extent of any inconsistency;

Trial Term means the period of your free trial of the Platform (if any), commencing on the Service Start Date and ending on the last day of the period of your free trial as specified in your Plan;

Users means your Personnel who access and use the Software Services; and

Website means our website located at www.overlay.ai.

1.2 Interpretation

In this Agreement (unless the context requires otherwise):

- (a) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (b) other grammatical forms of defined words or expressions have corresponding meanings;
- (c) a reference to a party is to a party to this Agreement;
- (d) a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (e) if something is required to be done on a day that is not a Business Day, then it must be done on the next Business Day;
- (f) a reference to a month is to the period starting at the start of any day of a calendar month and ending immediately prior to that day in the next calendar month or, if there is no such day, ending at the end of the next calendar month;
- (g) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- (h) "includes", "including", "for example", "such as" and similar terms are not words of limitation; and
- (i) if there is any inconsistency between: (i) your Plan; (ii) these Terms; and (iii) your Application, the earlier listed document prevails to the extent of the inconsistency.

2 Term

- (a) This Agreement commences on the Commencement Date and continues for the Trial Term (if any) and until the end of the Initial Term (unless extended or terminated in accordance with its terms).
- (b) At the end of the Initial Term, this Agreement will automatically extend for successive periods of 1 month each (each a **Renewal Term**), unless either party notifies the other party in writing at least 5 Business Days prior to the end of the Initial Term or a subsequent Renewal Term that it wishes for the Agreement not to extend for the next Renewal Term (in which event the Agreement will expire

at the end of the Initial Term or then current Renewal Term).

- (c) If your Agreement with us extends for a Renewal Term, subject to clause 2(d), these Terms will continue to apply to our Services and your access to and use of the Platform for that Renewal Term.
- (d) If we have notified you of any new or updated terms for access to the Platform (**New Terms**) no less than 20 Business Days prior to the end of your then current Initial Term or Renewal Term, the New Terms (and not these Terms) will apply to our Services and your access to and use of the Platform on and from the commencement of that Renewal Term.

3 Services

3.1 General

We agree to supply the Services and associated Documentation to you, and you agree to acquire them from us, at the prices in your Plan and on the terms of this Agreement.

3.2 Implementation

- (a) We will promptly implement the Platform ready for use and access by you and your Users as part of the Software Services after the Commencement Date.
- (b) You must work with us promptly and in good faith (including by providing all information and assistance we request) to allow us to complete the creation and set up of your access to the Platform, as scheduled by us.
- (c) We will notify you when the Platform is ready for use by the you and the Users.
- (d) Access to the Platform will be via a website.
- (e) Each of your Users will be assigned the Account Credentials to enable them to access the Platform.

3.3 Trial Services

- (a) If your Plan includes a free trial, we will give you free access to the Platform for the Trial Term on a non-exclusive and non-transferable basis to assess it for your requirements.
- (b) You may terminate your Agreement with us at any time during the Trial Term under clause 14.1.

3.4 Software Services

- (a) The Software Services are supplied to you on a non-exclusive and non-transferable basis.
- (b) We will provide the Software Services with due care and skill, and will use commercially reasonable endeavours to ensure that the Platform operates free of errors, defects and in an uninterrupted manner. but we do not guarantee that they will be continuous or fault free.
- (c) We will use reasonable efforts to ensure the Software Services are available during Business Hours. However, the Software Services may be unavailable to permit maintenance or other development activity to take place, or if a Force Majeure Event occurs. We will notify you via email in advance (if possible) of any unavailability.
- (d) The Software Services may interoperate with a range of third party service features. We do not make any warranty or representation on the availability of those features.
- (e) Your access to the Software Services is only permitted through the Platform and only as a non-perpetual ongoing fee based solution. Failure to pay the required fees by the required dates may result in restrictions on your use of the Software Services.

3.5 Maintenance and support

- (a) You are responsible for Level 1 Support.
- (b) Subject to you performing the Level 1 Support, we will provide the Support Services to you.
- (c) From time to time, the Software Services will be unavailable due to maintenance. Reasonable endeavours will be taken to program Scheduled Outages so as to limit their impact on your business.
- (d) You acknowledge that Software Services may be interrupted by factors beyond our direct control and that we will have no liability for such Software Service

interruptions.

3.6 Other services

From time to time, you may request that we provide additional services. If we agree to do so, we may charge you additional fees which will be based on our (or our third party supplier's) then current rates and charges. Additional terms and conditions may also apply. We will provide all relevant information, including terms and costs, in a written proposal to you for you to accept.

4 Modifications and updates

- (a) We may modify or update the Software Services, at any time during the Term, by giving you prior reasonable notice of not less than 20 Business Days.
- (b) If, in your reasonable opinion, a modification or update has a material and adverse impact on the features and functionalities of the Software Services, you may terminate this Agreement, provided the you gives us written notice of such termination within 5 Business Days of the implementation of the relevant modification or update.

5 Security

5.1 Account Credentials

- (a) We will provide the Account Credentials to you to allow you and your Users to access the Software Services.
- (b) You must only provide Account Credentials and permit access to and use of the Software Services by Users in accordance with this Agreement.
- (c) Only a User who has been granted the Account Credentials directly by the Customer may access and use the Software Services.
- (d) The Customer and each User must maintain the security and secrecy of the Account Credentials.
- (e) The Customer and each User must not permit any other person to access, use or modify the Software Services by using the Account Credentials.

5.2 Third party content

The Software Services may link to third party websites or feeds which are connected or relevant to the Software Services. The availability of any link from the Software Services does not imply that we endorse, approve, recommend, or accept responsibility for, those websites or feeds, or their content or operators. To the maximum extent permitted by Law, we exclude all responsibility and liability for those websites and feeds.

6 Customer obligations

6.1 General

Without limiting your other obligations under this Agreement, you:

- (a) must provide us with all information, material and assistance requested by us to enable us to provide the Services to you;
- (b) must, and must ensure that your Users, only use the Software Services for the Permitted Use;
- (c) must, and must ensure that your Users, use the Software Services in accordance with the Documentation and your directions from time-to-time;
- (d) must, and ensure that your Users, comply with this Agreement and all applicable Laws when using the Deliverables;
- (e) must obtain or procure all necessary rights to use the Customer Content and associated data that will be used in connection with the Software Services and to enable us to perform the Services;
- (f) must ensure that the Customer System complies with the relevant specifications notified by us from time to time;
- (g) must not undermine the operation, security and integrity of the information technology infrastructure in which we deploy the Platform, including by introducing any virus, malicious code or other similar item in the Platform;
- (h) must not, and ensure your Users do not, use the Platform in any way that may impair the ability of other Overlay AI customers to use the Platform;

- (i) must not, and must ensure that Users do not, use the Platform to view, access or copy any material or data other than that which the Customer and the Users are expressly authorised to access;
- (j) must not and ensure your Users do not access or use the Deliverables for the purpose of creating a product or service which competes with the Software Services;
- (k) must not resell, resupply or share the Deliverables, except as expressly permitted under this Agreement;
- (l) must not permit third parties to access or use the Deliverables, except as authorised by us in writing;
- (m) are solely responsible for selecting, supplying and maintaining facilities and equipment (including Customer Systems) for use in connection with the Software Services; and
- (n) are solely responsible for any use of the Deliverables by the Customer or any third party (including the Users), whether the use is authorised by the us or not.

6.2 Use Requirements

Without limiting your other obligations under this Agreement, you:

- (a) must ensure that the number of Users does not exceed the maximum number of Users permitted to access the Platform, as specified in your Plan, without our prior written consent;
- (b) must, and must ensure that your Users, only access the Platform from within Australia, except with our prior written consent, which may be given or withdrawn in our discretion and may be subject to conditions;
- (c) must not, and must ensure that your Users do not, use the Software Services or any Documentation in any manner that is fraudulent, malicious, contrary to law or that could be detrimental to our reputation;
- (d) must not, and must ensure that your Users do not, permit any use or access of the Software Services by any third party other than a User permitted to access and use the Software Services under this Agreement;
- (e) must not, and must ensure that your Users do not, disassemble, adapt, merge, translate, decompile, reverse engineer or create derivative works based on the whole or part of the Software Services, or combine or incorporate the Software Services, in whole or part, into any other software or product, or attempt to do any such thing, except as permitted by Law;
- (f) must not, and must ensure that your Users do not, market, publish, distribute, re-sell or rent any part of Software Services or the Documentation;
- (g) must not, and must ensure that your Users do not, vary, delete, remove or obscure any product names, brand names, company names, trade marks, copyright notices or other notices or proprietary rights or restrictions appearing on or in any part of the Software Services or the Documentation;
- (h) must not, and must ensure your Users do not, make the Software Services available for use on any computer systems or devices not owned or wholly controlled by you or any User;
- (i) must not, and must ensure that your Users do not, impersonate another person or misrepresent authorisation to act on behalf of others;
- (j) must not, and must ensure that your Users do not, attempt to undermine the security of the underlying systems of the Software Services or attempt to remove, circumvent or modify any technological protection measures contained in the Software Services;
- (k) must be, and must ensure that your Users are, equipped with a computer, mobile phone, tablet or other internet-enabled device and have access to an active internet connection in connection with using the Software Services;
- (l) must be, and must ensure that your Users are, appropriately and adequately trained and qualified in the use of the Services and to undertake repair, maintenance or other work on any Object;

- (m) must, and must ensure that your Users, use the Software Services with all due care and skill and in accordance with all applicable instructions, directions, warnings, the Documentation and other information provided by us to you from time-to-time;
- (n) must ensure that your Users have their own Account Credentials or ensure your Users use one of the Account Credentials for guests where this is requested by you and created by us;
- (o) must not, and must ensure that your Users do not, use or misuse the Software Services in any way which may impair the functionality of its underlying systems or impair the ability of any other person to use the Software Services;
- (p) must not, and must ensure that your Users do not, attempt to use the Platform to view, access, upload or copy any material or data other than:
 - (i) that which you and your Users are expressly authorised to access; and
 - (ii) to the extent necessary for you and your Users to use the Software Services in accordance with this Agreement;
- (q) must not, and must ensure that your Users do not, use the Software Services in a manner, nor transmit, input or store any data, that breaches any third party right (including Intellectual Property Rights and privacy rights); and
- (r) must, and must ensure your Users, procure and hold all licences, authorisations and consents you and each User is required to hold to use the Software Services.

6.3 Responsibility for Users

- (a) You must ensure that all Users use the Software Services in accordance with the terms of this Agreement (as though a reference to you was a reference to each User).
- (b) You will be liable to us for all acts and omissions of your Users as if they were your acts or omissions.

7 Fees and payments

7.1 Fees and payments

- (a) You must pay us the Fees set out in this Agreement for the Services.
- (b) Unless otherwise stipulated, the Fees do not include GST and you must pay applicable GST in addition to the Fees.
- (c) The Fees will be billed at the time specified in the Plan.
- (d) You must pay all amounts payable to us under this Agreement within 30 days of the date of invoice or as otherwise notified by us in writing.
- (e) If a genuine dispute arises regarding the amount of a Fee, you may suspend payment of the disputed amount pending resolution of the dispute but you must pay all other amounts in accordance with this clause 7.
- (f) We may charge you interest (calculated on a daily basis) on any unpaid amount overdue by more than 14 days at the rate of two percent (2%) per annum above the published current lending rate for business overdrafts specified by the Commonwealth Bank of Australia.

7.2 Audit rights

- (a) From time to time we may require an audit of relevant records to verify your accurate disclosure of any information which is required to enable the calculation of Fees payable to us and to verify that you and your Users' compliance with other obligations under this Agreement.
- (b) The audit may be conducted by our Personnel and/or third parties engaged by us to assist with the audit.
- (c) You will provide access to and provide copies of any information required in connection with the audit and will ensure that all other relevant parties also provide access to and copies of information required for the purposes of the audit.
- (d) If the audit reveals that the you have underpaid Fees or identifies any other non-compliance with this Agreement, then you must:

- (i) promptly pay any underpayment of Fees to us together with interest, calculated in accordance with clause 7.1(f);
- (ii) remedy any other non-compliance with those obligations; and
- (iii) pay us an amount equivalent to the costs we have incurred in connection with the conduct of the audit.

8 Pricing and terms variations

- (a) Overlay AI may in its discretion review and increase fees with effect on and from 1 July of each year that this Agreement is in operation by the same percentage amount that the then current Consumer Price Index for "All Groups" as published on the Australian Bureau of Statistics website from time to time has increased since the previous 1 July. Overlay AI will provide the Customer with at least 30 days of written notice of a fee increase under this clause 8.
- (b) We may vary the terms of this Agreement at any time during the Term if we consider (acting reasonably) that are required to do so to protect our legitimate interests. This may include where we consider that any variations are required to meet the requirements of any Law or to meet any obligations that we have to any third-party.
- (c) We will provide you with 30 days prior written notice of any variations we propose to make under clause 8(b) where it is reasonably practicable to do so, however, we are not required to do so where the variation is required to immediately comply with any Laws, to comply with our obligations to any third party or to address a material or immediate risk to our Platform or our Services. In such cases, we will provide you with as much notice as is reasonably practicable.
- (d) If we make a variation to this Agreement under clause 8(b) that would cause you detriment:
 - (i) you may terminate this Agreement by giving written notice to us no later than 20 Business Days after we notify you of any variations under this clause;
 - (ii) your Agreement with us will terminate at the end of the monthly billing cycle in which you give us your notice to terminate under this clause; and
 - (iii) we will refund to you (on a pro rata basis) any amounts you have paid to us in advance under your Plan for any Services due to have been performed by us after the date of termination.

9 GST

- (a) If one party (in this clause 8(b), the **supplying party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the GST-exclusive consideration (in this clause 8(b), the **receiving party**) must also pay an amount (in this clause 8(b), the **GST amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the GST-exclusive consideration.
- (c) In this Agreement terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (in this clause 9(c), the **GST Act**) have the meaning given in the GST Act, unless the context makes it clear that a different meaning is intended.

10 Content ownership

- (a) Overlay AI acknowledges and agrees that all rights, title and interest in and to the Customer Content will at all times remain owned by the Customer or the licensors of that Customer Content.
- (b) The Customer represents and warrants that it and its Users will only upload and use Customer Content where permitted, duly licensed and authorised by any relevant third parties to do so.
- (c) The Customer grants to Overlay AI a worldwide, non-exclusive, non-transferable perpetual licence to (i) use, adapt, modify, reproduce, reformat, transform and process the Customer Content for the Permitted Purpose

and (ii) to use any Intellectual Property Rights in the Customer Content, to the extent necessary to undertake such activities.

- (d) The Customer acknowledges that it is solely responsible for ensuring the accuracy and completeness of Customer Content uploaded to the Platform by it or its Users.
- (e) The Customer is responsible for backing up all Customer Content uploaded to the Platform.
- (f) The Customer acknowledges that Customer Content may be stored by a third party hosting service provider located in Australia and/or overseas.
- (g) If the Customer wishes to extract Customer Content from the Platform, it must notify Overlay AI in writing at least 4 weeks in advance. Overlay AI, at its sole discretion, may extract the requested Customer Content from the Platform. Extraction of Customer Content from the Platform under this subclause will be treated as a Support Service and may be subject to additional fees and charges as notified to the Customer.
- (h) If the Customer requires Overlay AI's assistance with respect to the extraction of any Customer Content, then this will be treated as a Support Service and may be subject to additional fees and charges.
- (i) Nothing in these terms and conditions will inhibit the Customer's right to continue to use and deal with any Customer Content uploaded to the Platform by the Customer or its Users for the purpose of the Customer's usual business activities.
- (j) All Outputs (and the Intellectual Property Rights in the Outputs) will be owned by Overlay AI.

11 Intellectual Property Rights

11.1 Ownership

- (a) The Customer agrees that Overlay AI and/or Overlay AI's licensors own all Intellectual Property Rights in the Deliverables and the Overlay AI Materials, including all improvements, developments, changes, modifications or updates made to the Deliverables and the Overlay AI Materials (in this clause 11, the **Proprietary IP**). Except as expressly granted under this Agreement, nothing in this Agreement transfers ownership (or otherwise grants the Customer or its Users any right) in respect of the Proprietary IP.
- (b) The Customer must not (and ensure its Users do not) do, omit to do, attempt to do, or allow anyone to do anything which infringes the Proprietary IP, including:
 - (i) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute any part or all of the Deliverables and/or the Overlay AI Materials (as applicable) in any form or media or by any means; or
 - (ii) decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any part or all of the Software Services,
 except:
 - (iii) as expressly permitted by non-excludable Laws; or
 - (iv) with Overlay AI's prior written consent.

11.2 Feedback

If you or your Users provide us with ideas, comments or suggestions relating to the Deliverables (in this clause 11.2, the **Feedback**):

- (a) all Intellectual Property Rights in the Feedback and anything created as a result of that Feedback (including materials, enhancements, modifications or derivative works) will be owned by us and/or our licensors (at our election) on creation; and
- (b) we may use or disclose the Feedback for any purpose.

11.3 Further actions

You agree to execute all documentation necessary in order to give effect to clauses 11.1(a) and 11.2, and (if applicable) to cause your Users to execute such documentation.

12 Liability

12.1 Mutual Warranties

Each party warrants that it has full power to enter into and perform its obligations under this Agreement.

12.2 IP Warranties

- (a) We warrant and represent to you that:
 - (i) your use of any the Platform, Software Services and Documentation in accordance with the rights granted to you under this Agreement will not infringe the rights (including the Intellectual Property Rights) of any third party or contravene any law; and
 - (ii) we will not knowingly or recklessly use the Customer Content in a manner that infringes the rights (including the Intellectual Property Rights) of any third party.
- (b) You warrant and represents to us that:
 - (i) our use of any information or other materials provided by you will not infringe the rights (including the Intellectual Property Rights) of any third party or contravene any law; and
 - (ii) you will not knowingly or recklessly use the Deliverables in a manner that infringes the rights (including the Intellectual Property Rights) of any third party.

12.3 Exclusion of Warranties

Subject to clause 12.8 below, to the maximum extent permitted by Law, we do not warrant that:

- (a) the Software Services or the Platform will meet the Customer's requirements or be suitable for a particular purpose, including that the use of the Software Services will fulfil or meet any statutory role or responsibility;
- (b) subject to clause 3.4(b), the Software Services or the Platform will operate free of errors, defects or in an uninterrupted manner; or
- (c) the Software Services or the Platform is compatible or will interoperate with any particular computer system, equipment, software (including operating systems) or data format.

12.4 Implied terms

Subject to clause 12.8 below, to the maximum extent permitted by Law, all representations, warranties, conditions, guarantees, indemnities or undertakings that would be implied in, or affect, this Agreement by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage are excluded.

12.5 Liability cap

Subject to clause 12.8 below, to the maximum extent permitted by Law, each party's total aggregate liability to the other party in respect of all Claims arising under or in connection with this Agreement (excluding your obligation to pay the Fees), whether in contract, statute, tort (including negligence), equity or otherwise, is limited to all amounts paid and payable by the Customer during the Initial Term under this Agreement.

12.6 Limitation of Liability

Subject to clause 12.7 and 12.8 below, to the maximum extent permitted by Law:

- (a) Overlay AI is not liable to the Customer or any other person for defects, errors, service interruption, failure or delay in respect of or caused by any Software Services; and
- (b) neither party is liable to the other party for any special, indirect or Consequential Loss incurred or suffered by the other party under or in connection with this Agreement (whether arising under contract, in tort (including negligence) or otherwise), irrespective of whether other party previously notified the first party of the possibility of such Loss.

12.7 Unlimited Liability

The limitations and exclusions under clause 12.5 and 12.6 do not apply to limit each party's liability to the other party under or in connection with this Agreement for:

- (a) personal injury, illness or death;
- (b) infringement of a third party's intellectual property rights;
- (c) fraud or wilful misconduct; or
- (d) any other liability that cannot be excluded or limited by any Law.

12.8 Non-Excludable Guarantee

- (a) Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) or any other applicable Law that cannot be excluded, restricted or modified by agreement (**Non-Excludable Guarantee**).
- (b) To the maximum extent permitted by law, our liability to you for breach of a Non-Excludable Guarantee is limited, at our option, to: (a) in the case of goods, any one or more of the following: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; or (b) in the case of services: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again.

13 Indemnity

You indemnify us against all Claims and Losses suffered or incurred by us that are caused by or arise from:

- (a) any breach of this Agreement by you or your Users; or
- (b) any negligent or unlawful act or omission by your or your Users in connection with this Agreement,

except to the extent such Claim or Loss was caused or contributed to by us or our Personnel.

14 Termination

14.1 Termination during Trial Term

Where your Plan includes a Trial Term you may terminate this Agreement by giving written notice to us at any time during the Trial Term and receive a refund of any Fees that you have paid to us under that Plan.

14.2 Termination at the end of the Initial Term or Renewal Term

Either party may terminate this Agreement by written notice to the other party at the end of the Initial Term or then current Renewal Term by giving a notice to the other party as required by clause 2(b).

14.3 Termination for breach

Either party may terminate this Agreement immediately by giving the other party written notice if that party:

- (a) is the subject of an Insolvency Event; or
- (b) breaches this Agreement and:
 - (i) the breach is incapable of remedy; or
 - (ii) that party fails to remedy the breach within 20 Business Days of receiving notice requiring it to do so.

14.4 Consequences of termination

If this Agreement expires or is terminated for any reason:

- (a) you and your Users must immediately cease using the Deliverables and all your rights and your Users rights to use the Deliverables immediately cease;
- (b) you must immediately pay us all outstanding fees by the due date stated in the relevant invoice or otherwise within 14 days of termination or expiry of this Agreement;
- (c) except to the extent that a party has ongoing rights to use Confidential Information, each party must deliver to the other party all Confidential Information of that party in its possession or control (or if requested by the other party, destroy it);
- (d) at any time prior to 20 Business Days after the date of termination or expiry, you may request:
 - (i) a copy of any Customer Content stored using the Software Services, provided that you pays us our reasonable costs of providing that copy of the Customer Content. On receipt of that request, we

will provide you with a copy of the Customer Content in a common electronic form. We do not warrant that the format of the Customer Content will be compatible with any particular software; and/or

- (ii) that we delete the Customer Content stored using the Software Services, in which case we will use reasonable efforts to promptly delete that Customer Content, to avoid doubt, we is not required to comply with clause 14.4(d)(i) to the extent that we have previously been asked by the Customer to delete the Customer Content under clause 14.4(d)(ii);
- (e) If you do not make a request under clause 14.4(d) we may delete all Customer Content without providing further notice to you; and
- (f) all rights that a party has accrued before termination continue.

14.5 Other remedies

The termination of this Agreement is without prejudice to either party's rights under this Agreement or at Law.

15 Suspension

- (a) Overlay AI may suspend the supply or performance of the Services at any time without further notice to you:
 - (i) if the Customer is subject to an Insolvency Event, subject to any laws that prevent the exercise of such rights;
 - (ii) if you fail to pay any amount due to us under this Agreement when due and you fail to pay that amount to us within 7 days of a demand to do so; or
 - (iii) if we reasonably suspect that you or any of your Users are in breach of their obligations under this Agreement and:
 - (A) we consider, acting reasonably, that such breach is likely to result in a third party claim, a safety issue, injury to any person or damage to any property, including our Platform; or
 - (B) we have notified you of that breach and you have not within 7 days of our notice, either remedied that breach or satisfied us that the breach will be remedied within a reasonable period, having regard to that breach, not exceeding 20 Business Days.
- (b) To the maximum extent permitted by Law, we exclude all liability to you if we suspend the Services under this clause 15.
- (c) The suspension of the Services under this clause 15 may continue until we notify you that we have received full payment of the overdue amount or that you have otherwise rectified the breach of this Agreement resulting in the suspension to our reasonable satisfaction.

16 Privacy

16.1 General

- (a) You acknowledge and agree that we may collect Personal Information of you and your Users. You consent to Processing your and your Users' Personal Information for the purposes of fulfilling our obligations under this Agreement and providing the Services and Deliverables.
- (b) To the extent you obtain any Personal Information from us, you must (and must ensure your Users) Process such information in accordance with the Privacy Law (whether or not you and/or your Users are bound by it).
- (c) You warrant and represent to us that you and your Users have complied (and will continue to comply) with all Privacy Laws (whether or not you are bound by them at Law), including by making such disclosures and procuring such consents as are required under Privacy Laws, when collecting and disclosing Personal Information to us in order to ensure that we comply with and do not breach our obligations under Privacy Laws and to ensure we are able to perform our obligations under this Agreement and Process Personal Information in accordance with our privacy policy (as published on the Website from time to

time).

- (d) You must:
 - (i) not, and you warrants and represents to us that it will not, Process or otherwise do or omit to do anything (including by your Users) in relation to Personal Information that would cause us to contravene any Privacy Law;
 - (ii) not do or omit to do anything (including by your Users) that causes a Data Breach involving Personal Information in connection with this Agreement;
 - (iii) cooperate with us to resolve any complaint or inquiry made under any Privacy Law, or in relation to any request for access to Personal Information;
 - (iv) notify us immediately if you or any of your Users become aware of any breach or potential breach of its obligations under this clause, provide any details in relation to the breach requested by Overlay AI; and without limiting any of our rights under this Agreement, immediately comply with any reasonable direction from us with respect to remedying that breach.

16.2 Notifiable Data Breach

In the event that we have reasonable grounds to suspect or believe that a Data Breach is a Notifiable Data Breach, then, to the extent permitted by Law, we may by written notice to you:

- (a) assume control of any assessment, remedial action, preparation of a statement and/or notification processes required under the applicable Privacy Law in respect of that Notifiable Data Breach; and
- (b) require you and your Users not to undertake such assessment, remedial action, preparation of a statement and/or notification and to instead rely on the steps taken by us in connection with those actions in accordance with the relevant provisions in the applicable Privacy Law.

17 Confidentiality

Each party must:

- (a) keep the other party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the other party;
- (b) take all reasonable steps to secure and keep secure all of the other party's Confidential Information coming into its possession or control; and
- (c) not deliberately memorise, use, modify, reverse engineer or make copies, notes or records of the other party's Confidential Information for any purpose other than in connection with the performance of its obligations under this Agreement.

18 Dispute resolution

18.1 Notice of dispute

- (a) Each party must follow the procedures in this clause 18 before starting court proceedings (except for urgent injunctive or declaratory relief).
- (b) A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- (c) If the parties cannot resolve the dispute within 10 Business Days after notice has been given under clause 18.1(b) above, the dispute must be referred to the chief executive officers of each party or their respective nominees (in this clause 18, the **Chief Executive Officers**) for resolution.

18.2 Mediation

- (a) If the Chief Executive Officers cannot resolve the dispute within 10 Business Days after referral under clause 18.1(c) above, the parties may agree to refer the dispute for mediation to be conducted by the Australian Disputes Centre.
- (b) If the parties do not agree to undergo mediation or mediation does not resolve the dispute, either party may

commence legal proceedings.

18.3 Costs of disputes

- (a) For the purposes of this clause 18, where more than one matter is in dispute, the amount involved in each matter in dispute must be separately assessed and the amounts will not be aggregated.
- (b) The costs of the mediator are to be borne equally by the parties.
- (c) Subject to clause 18.3(b), each party must pay its own internal and legal costs in relation to complying with this clause 18.
- (d) Nothing in this clause 18 prevents a party from commencing and prosecuting any application for urgent injunctive or other interlocutory relief.
- (e) Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

19 Notices

- (a) All notices must be in writing and delivered by hand or sent by post or email to the other party at the details below:
 - (i) For Overlay AI, the following details:
Address: 35-37 Stirling Street Thebarton SA 5031
Contact: Edward Carslon
Phone: 1300 833 765
Email: hello@overlay.ai
 - (ii) For the Customer, the details in the Application, or to such other details as are notified to the other party under this clause from time to time.
- (b) Notices sent:
 - (i) by hand, are taken to be received when delivered;
 - (ii) by post, are taken to be received by the third Business Day after posting, notwithstanding that a notice may be returned through the post office unclaimed; or
 - (iii) by email, are taken to be received at the time of confirmation of sending (except where the sender receives an automated message indicating that the email was not successfully delivered).

20 Force majeure

- (a) We shall not be liable for any loss or claim arising from any delay or failure by us to perform our obligations under this Agreement where such delay or failure is the result of a Force Majeure Event.
- (b) If we are unable to perform or are delayed in performing an obligation under this Agreement (other than an obligation to pay money) because of a Force Majeure Event, that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event.

21 Change of Control

- (a) A Change of Control of you will constitute an assignment requiring our prior written consent.
- (b) We will not unreasonably withhold our consent to an assignment of this Agreement to a related company or successor company operating the same business.
- (c) You must notify us as soon as practicable of any proposed Change of Control to which this Agreement relates.

22 General

- (a) This Agreement is the entire agreement between the parties in relation to its subject matter.
- (b) We may subcontract any part or all of the Services. Where we choose to do so, we remain responsible to you for the performance of the Services by our subcontractors as if those services were being performed by us.
- (c) Subject to clauses 2(c) and 8, this Agreement cannot be varied except by written agreement between the parties.
- (d) You must not assign this Agreement or any of your rights and/or obligations under this Agreement without our prior

written consent, including by way of Change of Control in which case clause 21 will apply. If we do not consent to any such assignment, then this Agreement must continue on its current terms.

- (e) This Agreement is governed by the Laws of the State of South Australia and the parties submit to the exclusive jurisdiction of the courts of that State.
- (f) If any clause or part of a clause is held by a court to be invalid or unenforceable:
 - (i) that clause or part of a clause is to be regarded as having been deleted from this Agreement; and
 - (ii) this Agreement otherwise remains in full force and effect.
- (g) A party may only waive its rights under this Agreement by a clear statement in writing. Any failure by a party to exercise a right or insist on strict performance of any obligation under this Agreement shall not constitute a waiver.
- (h) If this Agreement consists of a number of counterparts, each is an original and all of the counterparts together constitute the same document.
- (i) This clause 22 and clauses 6 (Customer obligations), 11 (Intellectual Property Rights), 12 (Liability), 13 (Indemnity), 14 (Termination), 16 (Privacy) and 17 (Confidentiality) survive the termination or expiry of this Agreement, as well as all other clauses which by their nature should survive the termination or expiry of this Agreement.
- (j) Nothing in this Agreement (whether express or implied) is intended to create or constitute a relationship of partnership, agency, employment, trustee or other fiduciary relationship between the parties. It is the intention of the parties that any such relationship is expressly denied.

Schedule 1– Support Services

1 Level 1 Support

- (a) The Customer must:
 - (i) use its existing first level support facilities; or
 - (ii) appoint one or more of its Personnel to provide this function, to assist its Users to address all non-technical issues relating to the Software Services (**Level 1 Support Facility**).
- (b) If the Customers Level 1 Support Facility identifies a problem:
 - (i) which is related to the Platform; and
 - (ii) which cannot be resolved by the Customers Level 1 Support Facility, the Customer may refer that problem to the Help Desk.

2 Help Desk

- (a) During the Business Hours, Overlay AI will provide the Customer with access to a telephone and email support service (**Help Desk**) to enable:
 - (i) Overlay AI to respond promptly to:
 - (A) all requests made to the Help Desk; and
 - (B) technical and User questions relating to the Software Services; and
 - (ii) the Customer to report to Overlay AI any Defects of which the Customer becomes aware.
- (b) When reporting a Defect to Overlay AI, the Customer must provide all information relating to that Defect which Overlay AI reasonably requests.