Pipe Dream Service Agreement

LAST UPDATED: 19th August, 2019

PARTIES

1. Pipe Dream AU (A.B.N. 63 850 968 687) (the "**Provider**"); and

2. The entity or person ("you", "your", or "user") who registered on the Platform's sign up page to receive cloud software services offered by the Provider and any of its affiliates (the "**Customer**").

AGREEMENT

1.   Definitions

1.1   In this Agreement, except to the extent expressly provided otherwise:

"**Account**" means an account enabling a person to access and use the Hosted Services;

"**Administrator Account**" means an Account with privileges to be able to add, change or remove other Accounts;

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in Australia;

"**Business Hours**" means the hours of 09:00 to 17:00 AWST on a Business Day;

"**Charges**" means the following amounts:

(a)   the amounts specified in Part 2 of Schedule 1 (Hosted Services particulars);

(b)   such amounts as may be agreed in writing by the parties from time to time; and

(c)   amounts calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to the Customer before the Effective Date of this Agreement) by the time spent by the Provider's personnel performing the Support Services (rounded down by the Provider to the nearest quarter hour);

"**Customer Confidential Information**" means:

(a)   any information disclosed by or on behalf of the Customer to the Provider during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure:

(i)   was marked or described as "confidential"; or

(ii)   should have been reasonably understood by the Provider to be confidential; and

"**Customer Data**" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"**Customer Personal Data**" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement, but excluding data with respect to which the Provider is a data controller;

"**Data Protection Laws**" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, Australian privacy laws contained in Commonwealth, State and Territory Acts;

"**Documentation**" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"**Effective Date**" means the date of execution of this Agreement;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Hosted Services**" means Pipe Dream, as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

"**Hosted Services Defect**" means a defect, error or bug in the Platform having a material adverse effect on the operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

(a)   any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;

(b)   any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;

(c)   a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or

(d)   an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"**Hosted Services Specification**" means the specification for the Platform and Hosted Services set out in Part 1 of Schedule 1 (Hosted Services particulars) and in the Documentation;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Maintenance Services**" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"**Personal Data**" has the meaning given to it in the Data Protection Laws applicable in Australia from time to time;

"**Platform**" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"**Schedule**" means any schedule attached to the main body of this Agreement;

"**Services**" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer under this Agreement;

"**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"**Supported Web Browser**" means the current release from time to time of Google Chrome, or any other web browser that the Provider agrees in writing shall be supported;

"**Term**" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

"**Update**" means a hotfix, patch or minor version update to any Platform software; and

"**Upgrade**" means a major version upgrade of any Platform software.

2.   Credit

2.1   This document was created using a template from SEQ Legal (https://seqlegal.com).

3. Term

3.1 This Agreement shall come into force upon the Effective Date.

3.2 This Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 18 or any other provision of this Agreement.

4. Hosted Services

4.1 The Provider shall ensure that the Platform will, on the Effective Date, automatically generate an Account for the Customer and provide to the Customer login details for that Account.

4.2 The Provider hereby grants to the Customer a licence to use the Hosted Services by means of a Supported Web Browser for the internal business purposes of the Customer in accordance with the Documentation during the Term.

4.3 The licence granted by the Provider to the Customer under Clause 4.2 is subject to the following limitations:

(a) the Hosted Services may only be used by the officers, employees, agents and subcontractors of the Customer;

(b) the Hosted Services may only be used by the named users as created on the Platform, providing that the Customer may change, add or remove a designated named user in accordance with the workflow provided by the Platform; and

4.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:

(a) the Customer must not sub-license its right to access and use the Hosted Services;

(b) the Customer must not permit any unauthorised person to access or use the Hosted Services;

(c) the Customer must not use the Hosted Services to provide services to third parties;

(d) the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and

(e) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

4.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to Administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an Administrator Account.

4.6 The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer at the gateway between the public internet and the network of the hosting services provider for the Hosted Services, but does not guarantee 100% availability.

4.7 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:

(a) a Force Majeure Event;

(b) a fault or failure of the internet or any public telecommunications network;

(c) a fault or failure of the Customer's computer systems or networks;

(d) any breach by the Customer of this Agreement;

(e) Updates or Upgrades to the Platform; or

(f) scheduled maintenance carried out in accordance with this Agreement.

4.8 The Customer must comply with Schedule 2 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an Administrator Account comply with Schedule 2 (Acceptable Use Policy).

4.9 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

4.10 The Customer must not use the Hosted Services:

(a) in any way that is unlawful, illegal, fraudulent or harmful; or

(b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

4.11 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

4.12 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 14 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

5. Maintenance Services

5.1 The Provider shall provide the Maintenance Services to the Customer during the Term.

5.2 The Provider shall where practicable give to the Customer at least 7 days prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material

negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this main body of this Agreement.

5.3 The Provider shall provide the Maintenance Services with reasonable skill and care.

5.4 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 14 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

6. Support Services

6.1 The Provider shall provide the Support Services to the Customer during the Term.

6.2 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this main body of this Agreement.

6.3 The Provider shall provide the Support Services with reasonable skill and care.

6.4 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

6.5 The Provider shall respond promptly to all requests for Support Services made by the Customer through the helpdesk.

6.6 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 14 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

7. Customer Data

7.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement.

7.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

7.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was

taken, and shall retain and securely store each such copy for a minimum period of 30 days.

7.4   Within the period of 7 days following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 7.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration, and may result in additional charges.

9.   No assignment of Intellectual Property Rights

9.1   Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

10.   Charges

10.1   The Customer shall pay the Charges to the Provider in accordance with this Agreement.

10.2   If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 10.2.

10.3   All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated inclusive of any applicable sales taxes.

10.4   The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation.

11.   Payments

11.1   The Provider will communicate the Charges to the Customer in advance of the period(s) to which they relate.

11.2   The Customer must pay the Charges to the Provider within the period of 30 days following the payment request communication.

11.3   The Customer must pay the Charges by direct debit (using such payment details as are notified by the Provider to the Customer from time to time).

11.4   If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:

(a)   charge the Customer interest on the overdue amount at the rate of 12% per annum (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or

(b)   claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Bill 2003.

12.   Provider's confidentiality obligations

12.1 The Provider must:

(a)   keep the Customer Confidential Information strictly confidential;

(b)   not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer;

(c)   use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care; and

(d)   act in good faith at all times in relation to the Customer Confidential Information;

12.2 Notwithstanding Clause 12.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

12.3 This Clause 12 imposes no obligations upon the Provider with respect to Customer Confidential Information that:

(a)   is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality;

(b)   is or becomes publicly known through no act or default of the Provider; or

(c)   is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

12.4 The restrictions in this Clause 12 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.

12.5 The provisions of this Clause 12 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

13.   Data protection

13.1 The Provider shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

13.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.

13.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to this Agreement, the Personal Data of data subjects falling within the categories specified in Part 1 of Schedule 3 (Data processing information) and of the types specified in Part 2 of Schedule 3 (Data processing information); and the Provider shall only process the Customer Personal Data for the purposes specified in Part 3 of Schedule 3 (Data processing information).

13.4 The Provider shall only process the Customer Personal Data during the Term and for not more than 60 days following the end of the Term, subject to the other provisions of this Clause 13.

13.5 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside Australia), as set out in this Agreement or any other document agreed by the parties in writing.

13.6 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

13.7 Notwithstanding any other provision of this Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

13.8 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

13.9 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Part 4 of Schedule 3 (Data processing information).

13.10 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate this Agreement on 7 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each third party processor is subject

to the equivalent legal obligations as those imposed on the Provider by this Clause 13.

13.12 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

13.13 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider shall report any Personal Data breach relating to the Customer Personal Data to the Customer within 48 hours following the Provider becoming aware of the breach. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 13.13.

13.14 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 13 and the Data Protection Laws.

14. Warranties

14.1 The Provider warrants to the Customer that:

(a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;

(b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and

(c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

14.2 The Provider warrants to the Customer that:

(a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;

(b) the Hosted Services will be free from Hosted Services Defects;

(c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services;

(d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and

(e)   the Platform will incorporate security features reflecting the requirements of good industry practice.

14.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under Australian law.

14.4 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person under any applicable law.

14.5 If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

(a)   modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or

(b)   procure for the Customer the right to use the Hosted Services in accordance with this Agreement.

14.6 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

14.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

15.   Acknowledgements and warranty limitations

15.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

15.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

15.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

15.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that

the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

16. Limitations and exclusions of liability

16.1 Nothing in this Agreement will:

(a)　limit or exclude any liability for death or personal injury resulting from negligence;

(b)　limit or exclude any liability for fraud or fraudulent misrepresentation;

(c)　limit any liabilities that are not permitted under applicable law; or

(d)　exclude any liabilities that may not be excluded under applicable law.

16.2 The limitations and exclusions of liability set out in this Clause 16 and elsewhere in this Agreement:

(a)　are subject to Clause 16.1; and

(b)　govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

16.3 The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

16.4 The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

16.5 The Provider shall not be liable to the Customer in respect of any loss of revenue or income.

16.6 The Provider shall not be liable to the Customer in respect of any loss of use or production.

16.7 The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.

16.8 The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software; providing that this Clause 16.8 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 7.3 and Clause 7.4.

16.9 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

16.10 The liability of the Provider to the Customer under this Agreement in respect of any event or series of related events shall not exceed the greater of:

(a)　$100.00; and

(b)   the total amount paid and payable by the Customer to the Provider under this Agreement in the 12 month period preceding the commencement of the event or events.

16.11 The aggregate liability of the Provider to the Customer under this Agreement shall not exceed the greater of:

(a) $200.00; and

(b)   the total amount paid and payable by the Customer to the Provider under this Agreement.

17.   Force Majeure Event

17.1   If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

17.2   A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

(a)   promptly notify the other; and

(b)   inform the other of the period for which it is estimated that such failure or delay will continue.

17.3   A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

18.   Termination

18.1   Either party may terminate this Agreement by giving to the other party at least 30 days' written notice of termination.

18.2   Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.

18.3   Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a)   the other party:

(i)   is dissolved;

(ii)   ceases to conduct all (or substantially all) of its business;

(iii)   is or becomes unable to pay its debts as they fall due;

(iv)   is or becomes insolvent or is declared insolvent; or

       (v)   convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

   (b)   an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

   (c)   an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or

   (d)   if that other party is an individual:

       (i)   that other party dies;

       (ii)   as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or

       (iii)   that other party is the subject of a bankruptcy petition or order.

19. Effects of termination

19.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.11, 11.2, 11.4, 12, 13.1, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10, 13.12, 13.13, 13.14, 16, 19, 22 and 23.

19.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

19.3 Within 30 days following the termination of this Agreement for any reason:

   (a)   the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and

   (b)   the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of this Agreement,

without prejudice to the parties' other legal rights.

20. Notices

20.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 20.2 and Part 3 of Schedule 1 (Hosted Services particulars)):

   (a)   delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery;

(b)   sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting; or

(c)   sent by email, in which case the notice shall be deemed to be received upon delivery to the provided email host,

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

20.2   The Provider's contact details for notices under this Clause 20 are as follows:

(a) Email: pipedream.app@gmail.com

(b) Postal address: available upon request.

20.3   The addressee and contact details set out in Clause 20.2 and Part 3 of Schedule 1 (Hosted Services particulars) may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 20.

21. Subcontracting

21.1   Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement.

21.2   The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

21.3   Notwithstanding the provisions of this Clause 21 but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

22. General

22.1   No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

22.2   If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

22.3   This Agreement may not be varied except by a written document accepted by or on behalf of each of the parties.

22.4 Neither party may without the prior acceptance of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

22.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

22.6 Subject to Clause 16.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

22.7 This Agreement shall be governed by and construed in accordance with Australian law.

22.8 The courts of Australia shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

23. Interpretation

23.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

23.2 The Clause headings do not affect the interpretation of this Agreement.

23.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

23.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

Execution of this agreement transpires when you, the Customer, registers on the Platform's sign up page. This Agreement describes the terms and conditions that apply to your use of the Hosted Services.

If you do not understand any of the terms of this Agreement, please contact us (see Clause 20.2) before using the Hosted Services.

You may not access or use any Hosted Services unless you agree to submit to all of the terms and conditions in this Agreement.

SCHEDULE 1 (HOSTED SERVICES PARTICULARS)

1.   Specification of Hosted Services

These Hosted Services have been designed and implemented using best practices of the software industry. At any point in time if you have any feedback or general enquiry you may use the provided feedback link under the "Get in touch" heading of the Platform.

Alternatively you may contact us via the following means:

(a) Email: pipedream.app@gmail.com; or

(b) Postal address: available upon request

and we will do our best to promptly respond and act.

2.   Financial provisions

Periodic charges for the Hosted Services will be executed via means of a direct debit arrangement. Charges will be made monthly, and will vary based on the amount of users in the Customer's business. Amounts will be confirmed in advance.

3.   Contractual notices

The contact details to be used for sending any required contractual notices to the Customer will be the email address provided to the Provider upon user registration on the Platform's sign up page and/or any other contact details subsequently agreed upon by both parties.

SCHEDULE 2 (ACCEPTABLE USE POLICY)

1. Introduction

1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:

(a) the use of the website provided by the Platform, any successor website, and the services available on that website or any successor website] (the "**Services**"); and

(b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").

1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to the Provider (and "we" and "our" should be construed accordingly).

1.3 By using the Services, you agree to the rules set out in this Policy.

1.4 We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.

1.5 You must be at least 16 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 16 years of age.

2. General usage rules

2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.

2.2 You must not use the Services:

(a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or

(b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.

2.3 You must ensure that all Content complies with the provisions of this Policy.

3. Unlawful Content

3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).

3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:

(a) be libellous or maliciously false;

(b) be obscene or indecent;

(c)   infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;

(d)   infringe any right of confidence, right of privacy or right under data protection legislation;

(e)   constitute negligent advice or contain any negligent statement;

(f)   constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;

(g)   be in contempt of any court, or in breach of any court order;

(h)   constitute a breach of racial or religious hatred or discrimination legislation;

(i)   be blasphemous;

(j)   constitute a breach of official secrets legislation; or

(k)   constitute a breach of any contractual obligation owed to any person.

3.3   You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

4. Graphic material

4.1   Content must be appropriate for all persons who have access to or are likely to access the Content in question, and in particular for children over 12 years of age.

4.2   Content must not depict violence in an explicit, graphic or gratuitous manner.

4.3   Content must not be pornographic or sexually explicit.

5. Factual accuracy

5.1   Content must not be untrue, false, inaccurate or misleading.

5.2   Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

6. Negligent advice

6.1   Content must not consist of or contain any legal, financial, investment, taxation, accountancy, medical or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy, medical or other professional advisory services.

6.2   Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

7. Etiquette

7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.

7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.

7.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.

7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.

7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.

7.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.

7.7 You must ensure that Content does not duplicate other content available through the Services.

7.8 You must ensure that Content is appropriately categorised.

7.9 You should use appropriate and informative titles for all Content.

7.10 You must at all times be courteous and polite to other users of the Services.

8. Marketing and spam

8.1 You must not without our written permission use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.

8.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.

8.3 You must not send any spam or other marketing communications to any person using any email address or other contact details made available through the Services or that you find using the Services.

8.4 You must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs.

8.5 You must not use the Services in any way which is liable to result in the blacklisting of any of our IP addresses.

9. Regulated businesses

9.1 You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.

9.2 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of drugs or pharmaceuticals.

9.3 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of knives, guns or other weapons.

10. Monitoring

10.1 You acknowledge that we may actively monitor the Content and the use of the Services.

11. Data mining

11.1 You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

12. Hyperlinks

12.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

13. Harmful software

13.1 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.

13.2 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

SCHEDULE 3 (DATA PROCESSING INFORMATION)

1.   Categories of data subject

The categories of data subjects whose personal data may be processed includes:

(a) the users of the Hosted Services.

2.   Types of Personal Data

The types of personal data to be processed include but are not limited to:

(a) Identifying information (to uniquely identify/authenticate an individual);
(b) Financial information (limited to only what is required for subscription processing)

3.   Purposes of processing

The purposes for which personal data may be processed include:

(a) To allow the authentication of an individual when signing in and out of the Platform;
(b) To process relevant Charges for the provision of Services;
(c) Communications with regard to usage of the Hosted Services;
(d) Other usages required to directly provide the expected functionality of the Hosted Services

4.   Security measures for Personal Data

Security measures used to protect personal data include:

(a) All network traffic to and from the Hosted Services is secured using Transport Layer Security (TLS) which encrypts all traffic,
(b) Data is hosted privately in a protected network where backups are taken in accordance with Clause 7.3,
(c) All users of the Platform must be authenticated before accessing any personal data,
(d) All data access by users of the Platform must be authorised according to the permissions provided by managers of the user's business.