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# Qoria Legal Agreements

## Customer Terms

### Enterprise Customers





## Our Customer Terms

Set out below is the Customer Terms. These terms may be updated from time to time, with notice as described herein. In this document Agreement refers to the Customer Agreement between you and us and terms have the meanings set out in our Customer Terms unless otherwise defined in this document or unless the context suggests otherwise.



## Background

We are a provider of online safety & security Products and related Services. Our Products & Services are provided to Customers under a Customer Agreement which consists of all of the following:

- A Customer Order which sets out the key commercial arrangements and selections of a particular Customer;
- Our Customer Terms which set out the legal terms and conditions that apply to all Customers; and
- Our Terms of Service which set out the specific conditions within which we supply specific Product or Services; and
- Our Customer Policies which set out how we work with Customers, End Users and protect Data.

Additionally, End Users of our Products are subject to the **End User Licence Agreement** which sets out the terms applicable when individuals download, install or use our software.

We appoint **Partners** to **Re-sell** our Products and Services. You may have acquired Products and/or Services from a Partner of ours. Partners are required to Re-sell our Products and Services in accordance with the requirements of the Customer Agreement.

You may, at your absolute discretion, refer other Third Parties to us. This may include for example referring a parent or a guardian to procure **Consumer** Product. Should a referral result in a Consumer account being then such accounts are separate and independent from your account and the Customer Agreement.

Within the Customer Agreement documents **You** or **“your”** refers to the party which has entered into the Customer Agreement contract with us or a Partner. This will be set out in the Customer Order. You accept the Customer Agreement by accepting and signing a Customer Order. Until you do so and on termination of your Customer Agreement you may not use our Products and Services.

**We, us, our, Qoria** and **Qoria Group** refers to Qoria Limited (Australia) and it’s subsidiary companies including inter alia Family Zone Inc (USA), DerbyTech Inc (USA), Net Ref Education, LLC (USA), Smoothwall Inc( USA), Smoothwall Limited (UK), Family Zone NZ Cyber Safety Ltd, Cyber Education Pty Ltd, EI Pty Ltd, Qustodio LLC, Qustodio Technologies SLU, Digital Literacy SLU or a Partner.



# Interpretation

## Meaning of Words

Words used in this document have the following meanings.

**Action** means any claim, action, suit, inquiry, proceeding, audit or investigation by or before any governmental authority, or any other arbitration, mediation or similar proceeding, including claims or allegations of infringement, inducement to infringe, contributory infringement, and misappropriation.

**Affiliate** means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, is controlled by, or is under common control with, such first Person.

**Associated Parties** means in relation to a Party to this Agreement, third parties that service, supply, for the purposes of the relevant party completing its obligations under this Agreement, are delegated, organisations, sales agents, suppliers and customers, Partners, employees and/or device manufacturers or software vendors.

**Bundled Hardware** refers to arrangements where we sell Hardware in conjunction with our Software Products as a subscription contract.

**Business Hours** means 8:30 a.m. to 5:00 p.m. Monday to Friday (excluding weekends and any applicable public or federal holidays in your Location unless otherwise specified on the Customer Order.

**Business Day** means days other than declared public holidays in your Service Location.

**Claim** means any claim, demand, action, proceeding, judgment, settlement or award, whether at law, under statute, in equity or otherwise, for losses, damages, liabilities, deficiencies, penalties, fines, injunctions, debt, restitution or any other remedy and any costs, charges, expenses or payment.

**Code of Conduct** means our governance expectations of you set out in these Customer Terms under the heading Code of Conduct.

**Consulting** means cyber safety, security and technology consulting services provided by us.

**Consumer** means a Customer that is an individual person that is not using or intending to use the Products as part of a commercial business, enterprise or in education and is capable, at law, of entering into a contract.

**Contracted Term** means an agreed minimum contractual time period for your Customer Agreement. This is set out in your Customer Order.

Customer, you and your means the person(s) or legal entity named on the Customer Order. If there is more than one, and/or it means each of you separately and all of you jointly and severally.

**Customer Agreement** means a contractual agreement between you and the provider of our Products and/or Services, which may be us or a Partner and which consists of the following documents. These have been listed in order of precedence should any terms within these documents conflict with one another: 1) The Customer Order which sets out the key commercial arrangements with you and which has been signed by you and approved by us; 2) The Customer Terms which set out the legal terms and conditions that apply to all Customers; 3) The Terms of Service which set out the specific conditions within which we supply specific Product or Services; 4) The Customer Policies which set out how we work with Customers, End Users and protect Data; and 5) our End User License Agreement which when individuals download, install or use our software.

**Customer Order** means an invitation provided to a Customer to purchase or subscribe to our Products and/or Services. The Customer Order will only be binding on us if it includes an acknowledgment that our Products and Services are provided under the Customer Agreement. We may quote you for Products and/or Services. A quote is not a Customer Order until signed (wet, electronically or otherwise) by you and then accepted by us.

**Customer Data** means any data captured by us from you or your End Users in the operation of your account and Products and includes, without limitation, registration information, usage information, information about computing devices and networks and software running on them, geo-location information, system logs, diagnostic data, messages and submitted comments, information, ideas, concepts, reviews, documents and materials.

**Confidential Information** means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, including personal data, and any information recorded in writing and electronically relating to and forming part of the Products, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

**End Users** means the ultimate users of the Products or is deemed to be an End-User of the Products..



## Interpretation cont.

**End User Licence Agreement** means the software license agreement made between us and End Users relating to the use of our Software Products.

**Fees** means any fees and charges charged or chargeable by us by you under the Customer Agreement.

**GSA Customer** means a Customer procuring our Products and/or Services through the U.S. General Services Administration.

**Hardware** means computing equipment and associated software and accessories and includes any substituted equipment, components and accessories.

**Insolvency Event** means, in relation to a Party, where that Party is: unable to pay its debts as and when they fall due; or states that it is, insolvent within the meaning of relevant insolvency legislation; subject to any arrangement, assignment, moratorium or composition, protected from creditors under any applicable law or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other party); the subject of an application (not contested in good faith and that is not stayed, withdrawn or dismissed within 30 days of its commencement) made to a court for an order or an order is made, that it be wound up or that a liquidator be appointed to it; has appointed over any or all of its assets, a receiver, receiver and manager, trustee, administrator or similar official; or suffers or incurs anything analogous, or having substantial similar effect to, any of the events described in this definition under the law of any applicable jurisdiction.

**Intellectual Property** means all intellectual property rights arising from or associated with the following, whether protected, created or arising under the laws of any jurisdiction: trade names, trademarks and service marks (registered and unregistered), domain names and other Internet addresses or identifiers, trade dress and similar rights, and applications (including intent to use applications and similar reservations of marks and all goodwill associated therewith) to register any of the foregoing (collectively, "Marks"); patents and patent applications (collectively, "Patents"); copyrights (registered and unregistered) and applications for registration (collectively, "Copyrights"); trade secrets, know-how, non-public parts of the source code of software, inventions, methods, processes and processing instructions, technical data, specifications, research and development information, technology, product roadmaps, customer lists and any other information, in each case to the extent any of the foregoing derives economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use, excluding any Copyrights or Patents that may cover or protect any of the foregoing (collectively, "Trade Secrets"); and moral rights, publicity rights, database rights and any other proprietary or intellectual property rights of any kind or nature that do not comprise or are not protected by Marks, Patents, Copyrights or Trade Secrets.

**Law(s)** means any law, regulation, statute, statutory provision or subordinate legislation or any mandatory rules or guidance issued by any regulatory body having jurisdiction over the applicable party.

**Legislative Obligations** means provisions of consumer trade practices statutes, rules and regulations which may be applicable to our supply of Products to you and which may imply certain non-excludable warranties or conditions or mandate certain statutory guarantees.

**Location** means the place our Products have been located or installed.

**Our Bank** means our commercial or transactional banking provider in your jurisdiction. If we do not have a banker in your jurisdiction then Our Bank is Australian bank, Westpac Banking Limited.

**Our Intellectual Property** means any Intellectual Property owned by us or any Intellectual Property that are licensed to us including Our Marks.

**Our Marks** means any Marks owned by us or any Marks that are licensed to us.

**Partner** means a Party that is a party to the Partner Agreement with us to Re-sell our Product and/or services.

**Party** means a party to your Customer Agreement, being you and us.

**Product(s)** means hardware and software products provided by us under the Customer Agreement, including products under our brands and may include third party software, open source software and services including information and communication technology, network components and other computing devices.

**Regulatory Impediment** means where a government, regulatory authority or controlling body of any country or territory in which our Products and/or Services are distributed or made available, imposes any law, restriction or regulation that makes it illegal to distribute or make available them available, or any portion of them, or places a substantial burden on our doing so.

**Re-sell** means to market, promote and/or sell Products and/or Services to Customers.

**Service Levels** means our commitments to levels of service as set out in our Terms of Service.



## Interpretation cont.

**Services** means such services including consultancy, delivery, installation, training, managed services, cloud/hosted services or Support Services as are provided by us and/or a Partner to Customers and/or End Users in accordance with the Customer Agreement.

**Service Change** means changes to our Terms of Service.

**Software** means an executable program and/or application associated with the Products.

**Support Services** means the maintenance and technical support services as set out in our Terms of Service and generally consisting of:

- **Customer Support** being services to deploy, configure, troubleshoot and provide general advice with respect to the Products.
- **Managed Services** being outsourced management, monitoring and configuration of the Products.
- **Product Support** being the Product maintenance and escalated customer support.

**Terms of Service** means terms applicable to specific Products and Service as set out on our website and subject to change from time to time.

Third Party means a party other than a Party to a Partner Agreement.

**Third Party Products** means Products offered by us to a Partner for Re-sell which have been provided to us by a Third Party.

**Unbundled Hardware** refers to arrangements where we sell Hardware in conjunction without an associated subscription contract for Software.

**Force Majeure** means any circumstances beyond the reasonable control of the affected party, including fire, flood or other extraordinarily severe weather conditions, acts of God, war, riot or armed conflict, epidemic or pandemic, acts of terrorism, raw materials or labour shortages, failure of suppliers, industrial relations difficulties, strikes, lock-outs, failure in plant or equipment or similar matters. If you are a GSA Customer the terms of FAR 552.212-4(f) apply.

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## Interpretation

In our agreements, unless the context otherwise requires:

- headings and emphasis are for convenience only and do not affect the interpretation of the agreement;
- words importing the singular include the plural and vice versa;
- words importing gender include every gender;
- a reference to a thing includes part of that thing;
- other parts of speech and grammatical forms of a word or phrase defined in the agreement have a corresponding meaning;
- terms of inclusion are to be interpreted without limitation;
- a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- a reference to a law or regulation shall include any applicable amendments
- a reference to a document includes every permitted amendment, modification or supplement to, or replacement or novation of, that document;
- a reference to a party includes that party's successors and permitted assigns;
- an expression importing a natural person includes any company, partnership, joint venture, association, corporation, or other corporate entity and any government agency;
- a reference to a clause, party, annex, exhibit or schedule is a reference to a clause of, a party, annex, exhibit or schedule to the relevant document agreement and a reference to an agreement includes any annex, exhibit or schedule thereto;
- where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the preceding Business Day; and
- no principle of construction or rule of law that provides that an inconsistency or ambiguity in the agreement will be construed against the drafter of the agreement will have any application.



# Provision of Products & Services

**Terms of Service:** Subject to the Customer Order and acceptance of the Customer Terms, we will supply you with our Products and/or Services. Unless otherwise agreed in writing, you acknowledge and agree that the Products and Services are provided in accordance with the Terms of Service, as may be modified from time to time. You acknowledge and agree that the Terms of Service:

- include important obligations on us and you;
- have been made available to you and you have read, understood and agreed to them; and
- may be subject to Service Changes from time to time at our sole discretion.

**Service Change:** You agree that we may make a Service Change from time to time. Where we do so we agree to:

- Make such Service Changes effective 30 days after posting notice of the change; and
- Where a Service Change is in our sole opinion materially detrimental to you then (a) we will provide you with 30 days' notice of the Service Changes; (b) we will offer you a right to terminate this Agreement without penalty; and penalty and You shall be entitled to a pro rata refund for any fees paid not used; and (c) to do so you must provide us with written notice of termination within 30 days of receipt of notification of the Service Changes; and
- Whilst we will endeavour to, we make no promise to make available prior versions of the Terms of Service on our website.

**Hardware:** We may sell you Bundled Hardware or Unbundled Hardware. We may also provide you Hardware for trial. We retain ownership of Bundled Hardware and Hardware provided for trial. We retain ownership of Unbundled Hardware until it is fully paid for. We sell and supply Hardware in accordance with the Terms of Service.

**Subcontractors:** You acknowledge that subject to this Agreement we may use Subcontractors to fulfil certain of our obligations under this Agreement and We will remain liable for the actions of Subcontractors at all times.

**Primary Responsibility:** You acknowledge that you are the registered user of the Products and you are responsible for any use or misuse of them, even if the misuse was committed by an unrelated or related third party.

**Compliance:** In connection with the Customer Agreement, you agree that you will:

- not use the Products for any unlawful purpose;
- not take any action that may be construed as being an infringement of any of our Intellectual Property Rights or Third Party Intellectual Property Rights;
- not take any action that impacts on another person's lawful activities; and comply with all applicable federal, state and local laws and regulations, including but not limited to consumer and privacy laws.



# Term And Termination

**Term:** The Customer Agreement commences on the date of the Customer Order and continues until terminated in accordance with the Customer Agreement. Your Customer Order may specify a Contract Term (e.g. annual contract) or a month to month basis. If no end date and/or a term is specified then we will assume a month to month basis. You may cancel use of your Products 90 days prior to the end of Contract Term. If not cancelled your Contract Term will be automatically extended by 12 months (an 'Auto-renewal'). We may adjust Fees to our current price book for auto-renewals or month to month arrangements and you may cancel your subscription in these circumstances.

**Termination:** We may terminate the Customer Agreement in the event of a Force Majeure event or if you suffer an Insolvency Event. If a Party fails to comply with, or breaches, any material obligation under the Customer Agreement and such Party fails to remedy such breach (if the breach is capable of remedy) or comply with its obligations within 14 Days of the non-defaulting party's notice to the defaulting party detailing the defaulting Party's breach or default, then your Customer Agreement automatically terminates on the date which is the earlier of:

- the date the non-defaulting party gives the notice if the breach or default is not capable of being remedied;
- the expiration of the 14 day notice period if the breach or default is not adequately remedied.

**US Disputes Act:** Notwithstanding any other provision of the Customer Agreement for GSA Customers we agree that any recourse against the United States for any alleged breach of the Customer Agreement will be taken in accordance with the Contract Disputes Act. We agree that should a dispute be brought, we shall proceed diligently with performance under the Customer Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Customer Agreement. We further agree to comply with any decision of the appointed contracting officer.

**Obligations Continue:** Notwithstanding termination or expiration of the Customer Agreement, your obligations under the Customer Agreement will continue in full force and effect until:

- You have fully paid for or returned in good working order any Bundled Hardware or trial Hardware supplied to you (as determined solely by us acting reasonably); and
- All amounts due to us for the period up to and including the termination date under the Customer Agreement have been paid in full.

**Service Suspension:** If we reasonably believe that our systems may be exposed to potential damage or misuse, or in the event of a Force Majeure, we may reasonably and temporarily suspend your access to our Products and/or Services. This right does not affect or limit any other rights we have under the Customer Agreement. Notwithstanding anything to the contrary in the Customer Agreement, in the event of a Regulatory Impediment either party shall have the right to suspend performance to the extent reasonably necessary.

**Effects of Termination:** On termination of the Customer Agreement:

- Any Fees owing at the date of termination shall be due immediately and any subsequent charges from us will be due immediately upon receipt of an invoice;
- Any Fees that have been paid to us at the date of termination shall be deemed to have been fully utilized and no refunds will be available; and
- You must immediately return to us at your expense any Bundled Hardware or any other items that we own such as trial hardware and you acknowledge and agree that we will charge you reasonable Fees if you do not do so within 30 Days or where we reasonably assess Product Damage for any returned items;
- Any licences or rights granted to you by us will automatically terminate and we shall cease providing you with our Products and/or Services; and
- You must immediately cease using our Products and Our Marks.



# Commercial Terms

**Fees:** Applicable Fees for your ordered Products are set out on your Customer Order or in the case of Auto-renewals, on the associated renewal invoice. You agree to pay us applicable Fees for the Products and/or Services we (or a Partner) supply to you in accordance with your Customer Order or as modified by us from time to time in accordance with the Customer Agreement.

**User Licenses:** Fees for the Products and/or Services specified on your Customer Order may be priced based on a number or band of applicable students or End Users. We call this User Licenses or similar. Your Customer Order may specify that arrangements that change the number of User Licenses during the Term. If set out specifically in your Customer Order, you may be able to increase or decrease User Licenses at will. If set out specifically in your Customer Order we may automatically adjust User Licenses based on actual usage or school directories or rolls. Your Customer Order may specify a minimum commitment of User Licenses for a particular Product and/or Services and if so, you must pay Fees for these irrespective of actual usage or other matters. Subject to any minimum commitment of User Licenses (specified on your Customer Order) Fee adjustments relating to changes in User Licenses are calculated on a pro-rata basis from the end of the calendar month 15 days after notice of the change.

**Discounts:** Fees for the Products specified on your Customer Order may be subject to discount. Discounts may be subject to a condition such as early payment or maintaining the Product or a Customer Contract with us for multiple years. Should the relevant condition associated with a discount not be met, we reserve the right to rescind the discount effective from the date of the relevant Customer Order and invoice you for the difference.

**Fees for GSA Customers:** Notwithstanding any other provision of the Customer Agreement if you are procuring our Products and/or Services through the U.S. General Services Administration (GSA) you agree to pay us applicable Fees for the Products or Services we supply to you under your Customer Order in accordance with the relevant GSA schedule price list. We (or our relevant Partner) shall state separately on invoices taxes excluded from the Fees. You shall either pay us the taxes or provide evidence necessary to sustain an exemption in accordance.

**Price Changes:** Fees for our Products will not be subject to change during a Contracted Term.

**Third Party Products:** If you have ordered Third Party Products through us then unless otherwise specified in the Customer Order, you will be responsible for paying the cost of any price increases which we pass on to you. We will use our best efforts to mitigate these changes and provide you with prior notice.

**Tax:** All Fees are set out exclusive of taxes. We will levy taxes where required under local regulations unless you provide evidence of a relevant tax exemption.

**Invoicing and payment:** Unless otherwise specified in the Customer Order:

- Invoices are raised by us on signing of the Customer Order;
- Period-related Fees are due from the date the relevant Product is made available to you;
- Hardware-related Fees are due from the date of delivery of the items to you;
- Invoices will be issued in your local currency;
- Invoices are due 30 days from the invoice date;
- You have no right of offset against any of our invoices;
- Invoices not paid by the due date will bear interest at the interest rate established by the U.S. Secretary of the Treasury as provided in Title 41 U.S.C. 7109;
- You must make payments to us free of any withholding tax, and of any currency control or other restrictions; and
- Payment is not deemed to have been made until it has been cleared by our bank.



# Data Protection

## Privacy Policy

Our Privacy Policy is set out in our Customer Policies. It is available on our website and sets out our commitment and undertakings with respect to privacy and data protection as it relates to you and your End Users' information. You acknowledge that our Privacy Policy forms part of your Customer Agreement.

## Data Processing & Transfers

Certain jurisdictions impose specific limitations and rules with respect to the processing of data and transfer of data outside of that jurisdiction. You are responsible for understanding and compliance with local regulatory requirements. Our Data Processing Addendum ("DPA") may apply to you in these circumstances and if so, you hereby agree that our DPA is incorporated into your Customer Agreement.

We will make available on our website details of our sub processors and data hosting jurisdictions. Should you object to these you must do so in writing and we agree to work with you in good faith on a resolution.

Should the DPA or our Privacy Policy not be compatible with data protection laws in your jurisdiction then you must not purchase our Products or Services.

## Acknowledgements

You agree to:

- Comply with relevant local laws and regulations with respect to data protection and privacy;
- Respond promptly to our reasonable requests with respect to matters of data protection;
- At all times take all appropriate technical and organizational measures against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
- Immediately notify us if you receive any complaint, notice or communication which relates directly or indirectly to the processing of personal data under this agreement and provide full co-operation and assistance in relation to any such complaint, notice or communication.

# Legal Restrictions And Obligations

## Legal restrictions on using online safety technology:

In the legal jurisdiction within which we provide you with our Product and Services there may be legal limitations ('Legal Restrictions') with respect to when and how features such as the following may be used by you:

- Filtering technology (permitting the inspection, blocking and reporting of internet activity);
- Location tracking technology;
- Recording technology (permitting the capture or recording of audio or visual material);
- Safeguarding technology (such as key-logging or the scanning of cloud accounts); and
- Data capture with respect to the above.

Where such Legal Restrictions are applicable to you, then we will use reasonable efforts to ensure our Products and Services support such Legal Restrictions. Configuration of our Products & Services to meet applicable Legal Restrictions is your sole responsibility. If compliance with applicable Legal Restrictions is not possible within our Product and Services then it is your sole responsibility to not use them and we disclaim all liability.

## Legal obligations for notification, consent and reporting:

In the legal jurisdiction within which we provide you with our Product and Services there may be legal obligations imposed on you and us ('Legal Obligations') with respect to matters such as:

- Notification: The notification of End Users, staff, students or their parents or guardians about the use of our Services;
- Consent Obtaining consent from End Users, staff, students or their parents or guardians for the use of our Services;
- Reporting: Sharing of information captured by our Services in certain circumstances to relevant government bodies, End Users, staff, students or their parents or guardians.

Where such Legal Obligations are applicable, then:

- we require you to, and you agree to, perform any and all required actions;
- we disclaim all liability; and
- unless you are a GSA Customer, you agree at your own expense, to indemnify, defend and hold us harmless from and against any and all Actions brought against us, our affiliates, directors, officers, agents and employees arising in connection with a failure to comply with such Legal Obligations.



# Warranties And Indemnities

## Limited Warranty

We warrant that the products will perform substantially in accordance with products written materials accompanying it.

Except as expressly provided otherwise in this agreement the products are provided "as is." To the fullest extent permitted by law, we hereby disclaim all warranties, guarantees and representations, whether express, implied, statutory, or other (including all warranties arising from course of dealing, usage, or trade practice), and specifically disclaim all implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. Without limiting the foregoing, we make no warranty of any kind that the products, or any other goods, services, technologies, information, or materials, or any products or results of the use of any of them, will meet your or other person's requirements, operate without interruption, achieve any intended result, be compatible or work with any other goods, services, technologies, information, or materials except if and to the extent expressly set forth in this agreement, or be secure, accurate, complete, free of harmful code, or error free. All open source components and other third-party materials are provided "as is" and any representation or warranty of or concerning any of them is strictly between you and the third-party owner or distributor of such open source components or other third-party materials. Further, we have made no representation or statement and give no condition, warranty or guarantee about the dates for delivery or release of any products. To the extent that our liability with respect to any warranty, guarantee or representation cannot be excluded by law but can be limited, our liability is limited to the maximum extent permitted by law.

## Limitation of Liability

Notwithstanding anything herein to the contrary, to the maximum extent permitted by law, you agree that in no event shall we, our affiliates, or any of our directors, officers, employees or agents, be liable to you or any third party (including student or parent or other custodian) under or in connection with this agreement or its subject matter under any legal or equitable theory, including tort, strict liability, and otherwise, for any loss of use, profits, data, business, revenue, goodwill or reputation or for special, incidental, indirect, exemplary, enhanced, punitive or consequential damages of any kind (in each case even if advised in advance of the possibility thereof), resulting from: (a) the use or the inability to use the products, (b) unauthorized access to or alteration of customer data, or (c) any other matter relating to this agreement. In no event shall our aggregate liability to you or any third party (including student or parent or other custodian) under this agreement from any or all claims or causes

exceed the amount of the aggregate fees received by us. This limitation of liability is intended to apply in the aggregate and without regard to whether other provisions of this agreement have been breached or have proven ineffective. In addition, we take no responsibility nor accept any liability for the performance of third parties in relation to the products. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## Indemnity

We agree to indemnify, have the right to intervene to defend, and hold you harmless from any and all Claims brought against you, your affiliates, directors, officers, agents and employees by a Third Party arising from a claim of infringement of copyright or other intellectual property right arising from the use of a Product or Services. This indemnification will not apply in the event that the infringement is caused by your use of the Products or Services in combination with other software, hardware or materials not developed by us, your modification of our Products or Services, your general use of the internet, and/or an allegation made against You or based on actions you took prior to the execution of the Customer Agreement.

Except if you are a GSA Customer, you agree, at your own expense, to indemnify, defend and hold us harmless from and against any and all Actions brought against us, our affiliates, directors, officers, agents and employees by a Third Party:

- arising in connection with your breach of the Customer Agreement; or
- arising in connection with your unlawful conduct.

Under this Agreement any party's obligation to indemnify the other arises only if the party seeking to be indemnified promptly notifies the other party within 30 days of learning of an action for which indemnification is sought. If we provide indemnification to you, we retain sole right to direct the defence of and settle any such action and you agree to fully cooperate with any such action.

## Third Party Supplier Indemnity

If you have been supplied Products of a Third Party (through us or directly from that Third Party) You acknowledge that there are different Third Party's terms and conditions relating to supply, service or product.



## Intellectual Property

You agree that you do not own Our Intellectual Property or Our Marks and that you will not make any claim of ownership to or concerning Our Intellectual Property or Our Marks during the course of the Customer Agreement.

You agree to use your reasonable endeavours to ensure no party can access the Products in any way which may facilitate the analysis, copying, reverse engineering of the Products, including but not limited to the operating system or copying of any music, video or message files.

We reserve the right to claim compensatory or other relief for breach of this term.

You agree that other than as provided in the Customer Agreement or as otherwise agreed in writing by us, you will not use, change, add to or modify any Products, related software or configuration.

## Confidentiality

**Confidentiality:** Each Party undertakes in relation to the other party's Confidential Information to maintain the same in confidence and not to make any commercial use thereof or use the same for the benefit of any third party other than pursuant to the Partner Agreement. Obligations with respect to Confidentiality under this clause shall not apply to any information or material which the recipient party can prove:

- was already known to it prior to its receipt thereof from the disclosing party;
- was subsequently disclosed to it lawfully by a third party who did not obtain the same (whether directly or indirectly) from the disclosing party; or
- was in the public domain at the time of receipt by the recipient party or has subsequently entered into the public domain other than by reason of the breach of the provisions of this clause 9 or any obligation of confidence owed by the recipient party.

**Disclosures:** Each Party shall notify the other Party if any of its staff connected with the provision or receipt of the Products or Services becomes aware of any unauthorized disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

**Agreement:** Unless required by law, the terms of the Customer Agreement may not be disclosed by you (other than to its legal advisors) without our prior written consent.

**Publicity:** Each Party may make public the existence of the Customer Agreement. Other than where required to disclose information under operation of law, by a court order, or by a governmental agency with jurisdiction,

neither party will publish or release any public relations materials or make any public announcement relating to the Customer Agreement or the other party without the other party's prior written consent. Each party agrees to exercise good faith dealing in respect of any such requests.

**Your Information:** For the purposes set out below; you authorise us, and you undertake to procure if requested by us authorisation from your directors (if you are a company) and trustee/s (if you are a trust) for us to collect, retain and use personal Information (the "Information") about you, your directors and trustee/s (as the case maybe). The purposes for which we may request the Information are:

- Checking your credit worthiness;
- Seeking to enforce our (or any financier's) rights (as applicable) under your Customer Agreement or at law;
- Providing information to or requesting Information from, credit agencies;
- Assignment (or potential assignment) of your Customer Agreement to a Third Party; and
- Any other purpose reasonably contemplated by your Customer Agreement.

You irrevocably acknowledge that the Information shall be deemed to be held by us for the purposes described above; and where the Information can be readily retrieved, you shall have access to it, the right to request correction and the right to be notified of action taken in response to any such request, subject to payment of any reasonable charge.



## Confidentiality cont.

**Communications:** You consent to receive communications from us for purposes reasonably related to your Customer Agreement. If you subscribe to news services from us, you will receive regular emails from us. We will continue to communicate with you by posting news and notices on our website and by sending you emails. You also agree that all notices, disclosures, agreements and other communications we provide to you electronically meet the legal requirements that such communications be in writing.

**Customer Communications:** We reserve the right to send electronic communications to Customers associated with you covering topics such as technical announcements, Product and Service developments as well as general company news.

**Regulator disclosures:** We recognize that you may be subject to regulations, such as the (U.S. Freedom of Information Act, 5 U.S.C. 552) which may require the disclosure of otherwise confidential information.

## General

**Assignment:** You may not assign or transfer all or any of your rights, benefits or obligations under the Customer Agreement without our prior written consent, the granting of which shall be at our sole discretion. Unless the Anti-Assignment Act, 41 USC 6305 applies (in which case we acknowledge the requirement to seek approval for assignment) we may at any time assign or otherwise transfer to any party all or any part of our rights, benefits or obligations under this Agreement and in that event the assignee or transferee will have the same rights against you as it would have had if it had been an original party to the Customer Agreement. You acknowledge that we may disclose Confidential Information to (subject to us entering into a confidentiality agreement with) a potential assignee or to any person who may otherwise enter into a contractual relationship with us related to the Customer Agreement. The Customer Agreement shall be binding upon and inure to the benefit of the Parties' successors and permitted assigns.

**Assignment and Sub-Contracting:** You shall not assign, novate, dispose of, sub-licence, sub- contract or otherwise transfer your Customer Agreement nor any or all of their rights and obligations hereunder to any third party without our prior written consent (such consent not to be unreasonably withheld or delayed).

**Counterparts:** The Customer Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of your Customer Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

**Entire Agreement:** The Customer Agreement sets out the entire agreement between the parties in relation to the subject matter hereof and supersedes any previous agreement relating to the subject matter of the Customer Agreement, whether written or oral. Each party acknowledges and agrees that in entering into the Customer Agreement it places no reliance on any representation or warranty in relation to the subject matter of your Customer Agreement other than as expressly set out therein, nor shall have any remedy in relation to the subject matter of the same save as expressly set out in the Customer Agreement, provided always that nothing in this clause or in the Customer Agreement shall operate to exclude or restrict any remedy or liability for fraud or fraudulent misrepresentation.

**Enurement:** The provisions of the Customer Agreement will enure for the benefit of and be binding on the Parties and their respective successors and permitted substitutes and assigns and (where applicable) legal personal representatives.

**Further acts:** Each Party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by the other Party to give effect to this Agreement.



## General cont.

**Force Majeure:** Neither party shall not be in breach of the Customer Agreement, nor liable for any failure or delay in performance of its obligations under this Agreement, where the failure or delay was caused by an event of Force Majeure. If the event of Force Majeure continues for a period in excess of three months after the date on which it began, either party may give one month's written notice to the other Party terminating the Customer Agreement. Neither party

shall have any liability to the other in respect of termination of the Customer Agreement due to circumstances of Force Majeure, but rights and liabilities which have accrued prior to termination shall subsist. For GSA Customers excusable delays shall be governed by FAR 552.212-4(f).

**Governing Law:** This Customer Agreement shall be construed in accordance with the following table:

If you operate out of this region	This governing law applies	Jurisdiction
United Kingdom	The laws England	The courts of England
European Union	The laws of the European Union and the country in which the Partner operates	The courts of the European Union and the country in which the Partner operates
United States of America	If you are a GSA Customer then the Federal laws of the United States otherwise the laws of the Commonwealth of Virginia	The courts of Virginia
Australia	The laws of Western Australia, Australia	The courts of Western Australia
New Zealand	The laws of New Zealand	The laws of New Zealand
Other region	The laws of Western Australia, Australia.	The courts of Western Australia

**Non-Solicitation:** Neither party shall during the term of the Customer Agreement and for a period of 6 months after its termination solicit or endeavour to entice away whether or not on behalf of itself any of the employees of the other party without the prior written consent of the other party.

**Notices:** Any notice, approval consent or other communication under the Customer Agreement must be in writing, and delivered personally or sent by prepaid registered post or email to a Party at the address set out in the Schedule or updated from time to time, or to such other address as that Party may from time to time notify to the other for the purposes of this clause. Proof of posting by prepaid registered post or of dispatch of email will be proof of receipt, in the case of a letter, on the third Business Day after posting and, in the case of email, if the sender does not receive an automated email notifying the sender of non-delivery or delivery error in relation to the sender's email.

**Power of Attorney:** You irrevocably appoint us and any authorising officer of ours severally to be your attorney to execute all such documents and to do such things as may be required on your part to give effect to the provisions of the Customer Agreement.

**Relationship:** Nothing in your Customer Agreement establishes a partnership, employment, franchise of joint venture relationship between you and us. You are an independent contractor and you represent and warrant that compensation received from us is not your only source of income. You are not required by us to incur any costs or expenses pursuant to this Agreement. If you do incur costs and expenses, you agree to pay them and not seek reimbursement from us. No payment or withholding of any taxes related to income received by you from us will be made by us. You are solely responsible for withholding and payment of all applicable taxes. Neither party will have the power to bind the other party or incur obligations on the other party's behalf without the other party's prior written consent.

**Remedies:** The rights and remedies provided in the Customer Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

**Severability:** In the event that any provision of the Partner Agreement is determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from the Customer Agreement, such determination shall not affect the validity and enforceability of any other remaining provisions.



## General cont.

**Third Party Rights:** An entity which is not expressly a party to your Customer Agreement shall have no right to enforce any term of the Customer Agreement.

**Waiver:** No delay or failure by either party to exercise any of its powers, rights or remedies under your Customer

Agreement will operate as a waiver of them, nor any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing.

## Contacts

### For customers within the Australia and New Zealand

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