

nexus Terms of Service

The Service is provided by Mpire Media Pty Ltd (ABN 66 126 813 214) (**nexus, us, we, our**). The term '**You**' or '**Your**' refers to the Customer as defined in the Pricing Plan Agreement.

These Terms of Service take effect when You:

- (a) enter into a separate Pricing Plan Agreement which incorporates these nexus Terms of Service.

These Terms of Service (specifically only clauses 2.3 to 2.8 inclusive, 2.13, 2.14, 6.1 to 6.7, 7, 8, 9, 10, 11, 12, 16, 17), also apply to Users who are permitted by a Customer to use the Service from time to time.

You may only use the Service if you enter into a separate Pricing Plan Agreement which incorporates these Terms of Service. If You do not agree to these Terms of Service, You cannot use the Service.

1. Term

- 1.1. This agreement takes effect on the Commencement Date and remains in force for the Term, unless terminated earlier or extended in accordance with its terms.

2. Service

Our obligations to provide the Service and Licence

- 2.1. We must make the Service available to You to permit Users to access and use the Service during the Term and on the terms set out in this agreement.
- 2.2. Subject to payment of the Licence Fee in accordance with clause 4, We grant to You the non-exclusive, non-transferrable, non-sublicensable right to use the Service and Our Materials during the Term.

Use and Access

- 2.3. You must:
 - 2.3.1. not assign, sublicense, license, sell, lease, rent or otherwise make the Service or Our Materials available to third parties (other than Users) or use the Service to provide outsourced or bureau services to any third party;
 - 2.3.2. ensure that any access to and use of the Service and Our Materials is solely for Your own business purposes; and
 - 2.3.3. ensure that both You and Your personnel take all reasonable steps to safeguard access to the Service and Our Materials.

- 2.4. You and Your Users must provide complete and accurate Account Details when requested by Us and must keep these details accurate and up to date during the Term.

Restrictions

- 2.5. All rights not expressly granted to You under this agreement are reserved to Us.
- 2.6. You must not, and must ensure that Your Users do not:
- 2.6.1. copy, modify, translate, enhance or adapt the Service or Our Materials;
 - 2.6.2. reverse engineer, disassemble, or decompile the Service or Our Materials or determine or attempt to determine any source code, algorithms, methods or techniques used or embodied in the Service or Our Materials;
 - 2.6.3. circumvent the Service or Our Materials so as to gain access to parts of the Service or Our Materials which You are not authorised to access;
 - 2.6.4. distribute, sell, sublicense, rent, transfer or otherwise dispose of the Service or Our Materials;
 - 2.6.5. exploit or use the Service and/or Our Materials otherwise than as permitted under this agreement, including providing the Service and/or Our Materials to a third party;
 - 2.6.6. attempt to create any competitive product or any service which has features or functionality the same as or similar to the features and functionality of the Service or copy any features, functions, graphics or interfaces of the Service;
 - 2.6.7. transmit any content, data or information that is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libellous invasive of another's privacy right or right of publicity, or racially or ethnically objectionable;
 - 2.6.8. hack into or insert malicious code, including viruses, trojans, worms, logic bombs or other harmful or destructive code or data, into the Service or any operating system, including through password mining, phishing or other means;
 - 2.6.9. infringe the intellectual property rights of any person;
 - 2.6.10. interfere with or disrupt the software or systems used to host the Service, or other systems, equipment or networks connected to the Service;
 - 2.6.11. remove any product identification, proprietary, copyright or other notices contained in the Service or Our Materials;

- 2.6.12. circumvent or disclose the user authentication or security of the Service; or
- 2.6.13. make any use of the Service or Our Materials to commit fraud or make any use that otherwise violates any applicable law or regulation.

Your responsibilities regarding access

- 2.7. You acknowledge and agree that:
 - 2.7.1. You are responsible for all actions and activity that occurs through the access to the Service provided to You;
 - 2.7.2. Your login credentials (including your password) (**Login Credentials**) used to access the Service are Your responsibility and You must keep these credentials safe and secure at all times;
 - 2.7.3. You will not share Your Login Credentials with anyone else;
 - 2.7.4. You must notify us immediately upon suspecting or becoming aware that someone else may be using the Service with your Login Credentials.

Our obligations regarding security

- 2.8. We will use commercially reasonable security measures consistent with industry standards (such as password and firewall protection and encryption) in providing the Service only.

Our obligations regarding Support

- 2.9. Subject to clauses 2.10, 2.11 and 2.12, we must use reasonable commercial efforts to provide You the Support and to comply with the Service Levels during the Term.
- 2.10. During the Term, we will provide You up to 5 hours per calendar month in accordance with our Service Levels (**Monthly Support Cap**), which includes any Support You may require to integrate the Service into your existing platform.
- 2.11. After You reach the Monthly Support Cap for a calendar month, You will be charged for further Support You request us to provide during that month at our standard hourly rates as discussed with you.
- 2.12. If You experience technical problems with the Service during the Term, you must make all reasonable efforts to investigate and diagnose problems before contacting TrafficGuard.

Modification of the Service

- 2.13. We may, on reasonable notice to You, change or modify the Service and Our Materials at any time for the purposes of, among other things, fixing bugs, improving performance and general maintenance.

- 2.14. We may also provide new major functionality or features for the Service which You may use at Your discretion. You acknowledge that We may charge for any new major functionality or features which You choose to use.

3. Access

Your Responsibilities

- 3.1. You must ensure that all Users comply with the terms of this agreement.

Your Data

- 3.2. You grant to Us the non-exclusive, perpetual, royalty-free licence to:
- 3.2.1. use, reproduce, modify, upload, display, publish, communicate, distribute or otherwise make available Your Data for the purpose of Us providing the Service and providing the Support; and
 - 3.2.2. use Your Data for the purpose of Us further developing the Service including but not limited to improving its functionality and algorithms.
- 3.3. You acknowledge that You are responsible for:
- 3.3.1. entering Your Data into the Software;
 - 3.3.2. the content of Your Data supplied by You and Your Users;
 - 3.3.3. where Your Data is stored on or generated by Your systems (including third party servers), the availability of and connectivity to that data; and
 - 3.3.4. complying with the *Privacy Act 1988* (Cth) and all other applicable data privacy and protection laws, rules and regulations in relation to Your Data and End-User Data.
- 3.4. You warrant that You have obtained all permissions necessary for Us to deal with Your Data and End-User Data as contemplated by this agreement and that We are lawfully able to deal with Your Data and End-User Data as contemplated by this agreement.
- 3.5. We may remove any of Your Data and/or End-User Data if We reasonably consider that it breaches any law or third party rights or otherwise does not comply with the terms of this agreement.

Privacy

- 3.6. Without limiting Your obligations under clauses 3.3 or 3.4, You must:
- 3.6.1. not provide us with Personal Information (including any Sensitive Information) about any individual (including any such information comprising End-User Data) unless You have the express consent of that individual to do so or otherwise have a legitimate interest in processing such Personal Information;

3.6.2. if You do provide Us with Personal Information about an individual (including in any End-User Data), before doing so You:

- (i) must tell that individual that You will be providing their information to Us and that We will handle their information in accordance with Our privacy policy (as amended from time to time);
- (ii) must provide that individual with a copy of (or refer them to) Our privacy policy; and
- (iii) warrant that You have that individual's consent to provide their information to Us; and

3.6.3. otherwise comply with Our privacy policy (as amended from time to time).

3.7. You hereby agree to indemnify Us in relation any loss, damage, costs or expenses, whether direct or indirect, we suffer or incur as a result of your breach of clauses 3.4 and 3.6.2(iii).

3.8. Terms used in clause 3.6 have the meanings given to them in the *Privacy Act 1988* (Cth).

4. Fees

30-Day Free Trial

4.1. You may trial the Service for a period commencing on the Commencement Date and ending 30 days thereafter (**Trial Period**) without paying the Licence Fee.

4.2. If You do not wish to continue using the Service beyond the Trial Period, You must cancel Your access to the Service during the Trial Period by providing notice to Us in accordance with clause 15 below, which notice must be received by Us at least 2 days before the end of Trial Period.

4.3. Upon receipt of your notice in accordance with clause 4.2, this agreement will be terminated and the provisions of clauses 13.5, 13.6 and 13.7 will apply.

Licence Fee – General

4.4. You will be liable to pay the Licence Fee to Us on a monthly basis from the day on which the Trial Period ends.

4.5. The Licence Fee for the first month will be calculated on a pro-rata basis based on the number of days occurring between the day the Trial Period ends and the end of the calendar month, inclusive.

4.6. During the Term, you may change how your existing Licence Fee is calculated (i.e. by selecting a different pricing plan) by notifying us of the change in accordance with clause 15 or selecting a different Licence Fee in your Account Details (**Change**).

- 4.7. If a Customer agrees to pay the applicable Monthly Access Fees for a period of 12 months in advance it will receive a discount equivalent to one month's Monthly Access Fee for the Term (**Pre-Paid Option**).

Licence Fee – Invoicing and Payment

- 4.8. Subject to the provisions of clauses 4.13, You acknowledge that we will automatically charge, on a monthly basis, the amount of the Licence Fee, the amount of any Support requested during the Licence Fee Period that exceeds the Monthly Support Cap and any applicable Overage Charge from the account, credit card, debit card or charge card You provide Us in Your Account Details (**Monthly Payment**).
- 4.9. We will process the first Monthly Payment at or shortly after the end of the calendar month in which your liability to pay the Licence Fee commences. Subsequent Monthly Payments will be processed at or shortly after the end of successive calendar months.
- 4.10. If we are unable to successfully process Your Monthly Payment (or any other payment We are entitled to process under this agreement), we will notify You and Your access to the Service will be suspended pursuant to clause 12.1.1(c) until You provide us with valid payment details.
- 4.11. If a Change results in an increase in the Licence Fee, We will immediately process a payment using your Account Details for the difference between the Monthly Access Fee prior to the Change and the Monthly Access Fee after the Change for the relevant Licence Fee Period in which the Change occurs. The new Monthly Transaction Allowance and Overage Transaction Fee will apply from the date of the invoice sent in accordance with this clause.
- 4.12. If the Change results in a decrease in the Licence Fee, the Change to your Monthly Access Fee, Monthly Transaction Allowance and Overage Transaction Fee will only take effect at the start of the Licence Fee Period following the Licence Fee Period in which the Change occurred.
- 4.13. If You have elected to use the Pre-Paid Option:
- (i) We will process a payment using Your Account Details for the Pre-Paid Option calculated as the Monthly Access Fee multiplied by 11 instalments. Where the Term in respect of which the Pre-Paid option is exercised begins with a Trial Period, we will process a payment for the pre-paid period in which the Trial Period falls calculated as the Monthly Access Fee multiplied by 10 instalments (in either case, the **Pre-Paid Fee**); and
 - (ii) You will otherwise continue to be charged and We will process Monthly Payments using your Account Details provided for any Support incurred and any applicable Overage Charge incurred in accordance with clause 4.8.
- 4.14. We reserve the right to cancel Your access to the Service if:

- (i) You provide erroneous or insufficient information in relation to Your payment method, billing details (including if the billing details You provide are different from the details your financial institution has on record) or shipping address; or
- (ii) we know of or suspect any fraudulent or dishonest activity in relation to Your access to and use of the Service.

5. GST

- 5.1. Amounts payable under or in connection with this agreement have been calculated without regard to GST. Accordingly:
 - 5.1.1. if the whole or any part of any such amount is the consideration for a taxable supply for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the first mentioned amount multiplied by the rate of GST;
 - 5.1.2. any reference to a cost or expense in this agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an input tax credit; and
 - 5.1.3. the payee will provide to the payer a tax invoice at the time of payment.
- 5.2. Terms used in clause 5.1 have the meanings given to them in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 5.3. The Customer is liable for any additional taxes, duties, charges or tariffs payable in respect of the Licence Fee.

6. Intellectual Property

Intellectual Property Rights

- 6.1. You acknowledge that:
 - 6.1.1. We own all Intellectual Property Rights in the Service, Software, Our Materials and any Feedback;
 - 6.1.2. this agreement does not assign to You any Intellectual Property Rights in the Service, Software, Our Materials or any Feedback.

Feedback

- 6.2. You acknowledge that, from time to time, we may request Feedback from You and Feedback may involve the creation of Intellectual Property Rights. You agree that We may incorporate the Feedback (including any Intellectual Property Rights therein) into future versions of the Service at our sole discretion.

- 6.3. You acknowledge that you will not be remunerated or be entitled to any remuneration or any other benefit for providing the Feedback.
- 6.4. You:
 - 6.4.1. hereby assigns to Us, all right, title and interest (including all Intellectual Property Rights) in any Feedback as and when created;
 - 6.4.2. will do all things, including signing documents, as reasonably requested by Us, in order to perfect such assignment;
 - 6.4.3. will procure any applicable moral consents (in a form approved by Us) from those individuals involved in the creation or development of the Feedback.
- 6.5. You must not use, publish or disclose any Feedback to any third party.
- 6.6. You must not make any patent application or other application to register any Intellectual Property Rights in respect of the Feedback.
- 6.7. If We consider that the Feedback or any part thereof warrants pursuing patent protection, or other form of intellectual property protection, You must provide all assistance requested by Us to pursue and secure such protection solely in our name, or the name of another person or entity nominated by us.

Our obligations regarding third party claims

- 6.8. Subject to clauses 6.9 and 6.10, We will:
 - 6.8.1. defend You (at Our expense) against all claims made against You by any third party alleging that Your use of the Service and/or Our Materials, in accordance with the terms of this agreement, infringes the Intellectual Property Rights of that third party (**Third Party Claim**); and
 - 6.8.2. pay the costs and damages awarded based on any Third Party Claim or the amount of any settlement We enter into regarding that Third Party Claim.
- 6.9. Our obligations under clause 6.8 are subject to:
 - 6.9.1. You promptly notifying Us of that Third Party Claim (and in any event no later than 7 days after receiving the Third Party Claim);
 - 6.9.2. Us being given sole control of the defence of the Third Party Claim; and
 - 6.9.3. You providing all reasonably requested assistance for defence of the Third Party Claim.
- 6.10. Our obligations under clause 6.8 will not apply if the Third Party Claim results from:
 - 6.10.1. use of the Service in conjunction with any other software or service not provided by Us;

- 6.10.2. use of an old version of the Service and/or Our Materials which we have recommended you no longer use;
- 6.11. If a Third Party Claim is made or, in Our reasonable opinion, is likely to be made, We may, at our expense:
 - 6.11.1. procure for You the right to continue using the Software and/or Our Materials under the terms of the agreement; or
 - 6.11.2. replace or modify the Software and/or Our Materials to be non-infringing without material decrease in functionality.
- 6.12. If We notify You that the options described in clause 6.11 are not reasonably available, either We or You may, by notice to the other, immediately terminate this agreement.
- 6.13. Clauses 6.8 to 6.12 set out Your sole and exclusive remedies and Our entire liability to You for any Third Party Claims.

7. Confidential Information

Obligations of confidence

- 7.1. A party must only use the Confidential Information of the other party solely for the purposes of performing its obligations under this agreement.
- 7.2. A party must keep the other party's Confidential Information confidential and must only use it for the purpose for which it was disclosed.
- 7.3. Subject to this clause 7, a party must not disclose the other party's Confidential Information without the prior written consent of the other party.

Exceptions

- 7.4. A party is not bound by this clause 7 in relation to information which:
 - 7.4.1. becomes generally available to the public without a breach of this clause 7;
 - 7.4.2. has been independently created, developed or acquired by that party; or
 - 7.4.3. has been independently disclosed, without an obligation of confidentiality, to that other party, their employee or subcontractor.
- 7.5. A party may disclose the Confidential Information of the other party to those of its employees, agents or sub-contractors who:
 - 7.5.1. need to know; and
 - 7.5.2. have executed a written agreement with the first-mentioned party to keep the Confidential Information confidential and (not use the Confidential Information) on terms similar to this clause.

- 7.6. A party may disclose Confidential Information to the extent required by law where the disclosure is required by the operation of law or in order to comply with any rules or regulations of any internationally recognised securities exchanges provided that the first-mentioned party does the following:
- 7.6.1. immediately notifies the other party of the requirement;
 - 7.6.2. takes all reasonable steps to lawfully resist or narrow the requirement to disclose the Confidential Information; and
 - 7.6.3. assists and cooperates with the other party if the other party seeks to limit or resist the requirement for the Confidential Information to be disclosed.
- 7.7. We may use Your Confidential Information (including Confidential Information in Your Data) to the extent necessary to allow Us to incorporate the Feedback into future versions of Our Service in accordance with clause 6.2 above and to develop, enhance, use and commercially exploit the Confidential Information, in relation to that portion of the Feedback which is incorporated in the Service.

8. External service providers

- 8.1. We may disclose Your Data to external service providers (for example, database administrators), which may be based inside or outside Australia, on a confidential basis and provided such service providers are limited in their use of the information to the purpose of Us providing the Service.

9. Risk

- 9.1. You acknowledge that:
- 9.1.1. You have been solely responsible for Your selection of the Service to achieve Your intended results and for Your use of and the results obtained from Your use of the Service;
 - 9.1.2. any Feedback provided will not necessarily result in changes to the Service provided under this agreement or in future versions of the Service;
 - 9.1.3. We provide no warranty or assurance as to the accuracy, validity or fitness for a particular purpose of the outputs of the Service (for example, results and analysis). All outputs are provided “as is” and Your use of such outputs is at Your own risk;
 - 9.1.4. You are solely responsible for Your access to the Service through Your internet services provider and that We will not be responsible for any connectivity issues or any damage to equipment used by You to access the Service;
 - 9.1.5. We are not responsible for the unavailability of the Service or Your Data;

- 9.1.6. You are solely responsible for ensuring that You have all the necessary licences and agreements to access or use any third party websites or service to be used in conjunction with the Service;
- 9.1.7. From time to time, the Service may function differently than before due to changes, beyond on our control, made by third parties to services that are integrated with our Service.

10. Your Warranties

- 10.1. You warrant that you:
 - 10.1.1. have all the rights and authority necessary to enter into and perform Your obligations under this agreement;
 - 10.1.2. Your Data and any Feedback do not infringe upon any copyright, patent or trade mark, or any other intellectual property or proprietary rights (including rights to confidential information) of any third party; and
 - 10.1.3. You will comply with all requirements and restrictions under this agreement, as well as all applicable laws, rules and regulations.

11. Exclusions and Limitations of Liability

Exclusion

- 11.1. All terms, warranties and representations not expressly stated in this agreement, are excluded from this agreement to the extent permitted by law.

Non-excludable rights

- 11.2. Nothing in this agreement excludes, restricts or modifies any condition, warranty, right or remedy implied or imposed by any statute or regulation which cannot lawfully be excluded, restricted or modified (**Non-Excludable Provision**).
- 11.3. Subject to clause 11.2, and to the extent that We are able to limit Our liability for breach of a Non-Excludable Provision, Our liability is limited, at Our option, to resupplying the services, or paying the cost of resupplying the services.

Maximum Liability

- 11.4. Except as provided in clauses 6.8, 11.2 and 11.3, Our maximum total aggregate liability for all loss, damage, cost or expense arising under or in relation to this agreement, whether in contract, tort (including negligence), equity, under statute, under an indemnity or on any other basis is limited to the Licence Fee received by Us under this agreement in the 6 month period preceding the event giving rise to the liability.
- 11.5. We are not liable for any (together, **Losses**):

- 11.5.1. lost profits, lost revenue, loss of opportunity, loss of management time or failure to realise anticipated savings, loss of or damage to reputation or goodwill; or
- 11.5.2. special, indirect, incidental or consequential damages, losses, costs, or expenses.

Reduction of Liability

- 11.6. Our liability to You under or in relation to this agreement is reduced to the extent that Your acts or omissions, or those of a third party, contributed to or caused the liability.

12. Suspension

- 12.1. We may temporarily suspend Your access to the Service:
 - 12.1.1. if:
 - (a) We reasonably consider that the continued use of the Service may result in harm to the Service, other customers or the rights of third parties;
 - (b) We reasonably consider that You, any User or any person who accesses the Service through You are using the Service and/or Our Materials for an unlawful or improper purpose; or
 - (c) We are unable to process Your Monthly Payment;
 - (d) We are required to do so to comply with a regulator or a direction by a competent authority,

and We will endeavour to contact You immediately to inform You of this;

or

- 12.1.2. on 48 hours' notice to You if:
 - (a) You are in breach of any obligations under this agreement; or
 - (b) without limiting clause 12.1.2, You fail to pay any amount when due under this agreement.
- 12.2. You acknowledge that We are not responsible for any Losses arising from the suspension of your access to the Service under this clause.

13. Termination

1. Termination by Customer

- 13.1. You may terminate this agreement without cause by giving Us not less than 7 days' notice (**Notice Period**).

Termination for Breach

- 13.2. Either party may terminate this agreement by notice to the other party if the other party commits a material breach of a term of this agreement and the breach has not been remedied within 30 days after receiving notice of the breach.

Immediate Termination

- 13.3. Notwithstanding clause 13.2, We may terminate this agreement immediately by notice to You if You:
- 13.3.1. or any of Your employees or agents or any other Users, have used the Service or Our Materials in breach of this agreement;
 - 13.3.2. become, threaten or resolve to become or are in jeopardy of becoming subject to any form of insolvency administration;
 - 13.3.3. cease or threaten to cease conducting business in the normal manner except through amalgamation or merger; or
 - 13.3.4. enter into or propose to enter into a scheme, composition or arrangement with any of Your creditors.

Events on termination

- 13.4. On termination of this agreement in accordance with clause 13.1:
- 13.4.1. You will continue to be charged the Licence Fee until the last day of the Notice Period, after which Your access to the Service will be terminated and You must immediately stop using our Confidential Information and Our Materials and destroy or return all such data and information in Your possession or control to Us;
 - 13.4.2. We will be entitled to issue a final invoice for the Licence Fee in respect of the calendar month in which the Notice Period expires in accordance with clause 4;
 - 13.4.3. If You have exercised the Pre-Paid Option, we will refund you a pro-rated portion of the Pre-Paid Fee calculated by reference to the number of full calendar months remaining in the Term.
- 13.5. On termination of this agreement otherwise than in accordance with clause 13.1:
- 13.5.1. Subject to clause 13.6, on termination of this agreement, Your access to the Service will be terminated and You must stop using our Confidential Information and Our Materials immediately and destroy or return all such data and information in Your possession or control to Us.
 - 13.5.2. You acknowledge that the Licence Fee (in part or as a whole) is non-refundable regardless of the circumstances of termination;
 - 13.5.3. We will be entitled to issue a final invoice for the Licence Fee in respect of the calendar month in which the termination takes effect in accordance with clause 4.

- 13.6. You must give notice to Us no later than 7 days after termination if You wish to export and retrieve Your Data. We will assist You with exporting and retrieving Your Data subject to You paying our fees for doing so which will be calculated on a time and materials basis.
- 13.7. Clauses 2.5 and 2.6, 3.2, 3.7, 6, 7, 8, 9, 10, 11, 13, 14, 16.1, 17.1 and Schedule 1 survive any termination or expiry of this agreement.

14. Dispute resolution

Procedure for dispute resolution

- 14.1. The parties agree that a dispute arising under this agreement will be dealt with as follows:
- 14.1.1. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - 14.1.2. within 10 Business Days, each party will nominate a representative not having any prior involvement in the dispute;
 - 14.1.3. the representatives will try to settle the dispute by direct negotiation between them;
 - 14.1.4. if a resolution is not reached within a further 20 Business Days, either party may commence legal proceedings.

Exemption

- 14.2. This clause does not apply to legal proceedings by either party seeking urgent interlocutory relief.

15. Notices

- 15.1. Any notice or communication, including any consent or approval, given to a party under this agreement must be in writing and:
- 15.1.1. delivered or posted to a party's address set out in the Pricing Plan Agreement or as specified in the Customer Account or such other address as notified by that party to the other party;
 - 15.1.2. e-mailed to a party's e-mail address set out in Pricing Plan Agreement or as specified in the Customer Account or such other e-mail address as notified by the party to the other party.
- 15.2. Subject to clause 15.1, any notice or communication is to be treated as given:
- 15.2.1. if it is delivered, when it is left at the relevant address;
 - 15.2.2. if it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) Business Days after it is posted; or

- 15.2.3. if it is sent by email, where the sender receives either a computer generated receipt of notification of the delivery, or a personal email acknowledging receipt from the addressee of the email.
- 15.3. If any notice or communication is given on a day that is not a Business Day or after 5.00pm on a Business Day in the place of the party to whom it is sent, it is to be treated as having been given at the beginning of the next Business Day.

16. General Provisions

Special conditions

- 16.1. The parties must comply with any special conditions specified in the Pricing Plan Agreement.

Relationship of the parties

- 16.2. Nothing in this agreement creates an agency, partnership, joint venture or employment relationship between the parties or any of their respective employees, agents or contractors.

Amendments

- 16.3. We may amend this agreement from time to time. If we do, the amended agreement will be published on our website (<https://nxus.mobi>) and, to the extent practicable, we will identify the amendments made since this agreement was last changed. You agree that it is your responsibility to check for updates to this agreement. You further agree that your continued use of the Service is acceptance of our amendments to this agreement.

Entire Agreement

- 16.4. This agreement, together with the Pricing Plan Agreement and any special conditions specified and incorporated by reference therein, constitutes the entire understanding between Us and You to the exclusion of any previous communications, representations or agreements between the parties whether verbal or written.

Assignment

- 16.5. We may assign our rights and novate our obligations under this agreement at any time by notice to You and You hereby consent to such novation.
- 16.6. You may only assign a right under this agreement with our prior written consent.
- 16.7. For the purposes of clause 16.6, You are deemed to have assigned Your rights under this agreement if the management or control of You is transferred to any person other than those persons who manage or control You as at the date of this agreement.

Further assurance

- 16.8. Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

Severance

- 16.9. If any part of this agreement is void or unenforceable that part will be severable from and will not affect the enforceability of the remaining provisions. If such a severance goes to the essence of this agreement, either party may terminate this agreement immediately by notice.

Waiver

- 16.10. A failure or delay by a party to exercise any right or remedy it holds under this agreement or at law does not operate as a waiver of that right.
- 16.11. A single or partial exercise by a party of any right or remedy it holds under this agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

Governing law and jurisdiction

- 16.12. This agreement is governed by the laws in force in the State of Western Australia, Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Western Australia, Australia.

17. Definition and Interpretation

- 17.1. In this agreement, the following definitions apply:

Account Details	means the details provided by a Customer during and/or after the Registration Process, as updated by the Customer from time to time, which contains, among other things, the Customer's details (including the Customer's name and contact details), billing information (including credit card details) and the applicable Term, Commencement Date and Licence Fee (including the Monthly Access Fee and Overage Charge).
Advertisers	means those clients of the Customer and its approved sub-licensees who the Customer and/or its approved sub-licensees have allowed to use the Service.
Advertising Network	means a third party who places advertisements on behalf of the Customer and/or its approved sub-licensees for the Advertisers.
Campaign	means an online advertising campaign coordinated by the Customer and/or its approved sub-licensees in which the Customer and/or its approved

Commencement Date

sub-licensees publishes advertisements on behalf of an Advertiser via Advertising Networks.
means the date:

- (a) specified in Pricing Plan Agreement; or
- (b) if no Pricing Plan Agreement applies, the date specified in the Customer's Account Details.

Confidential Information of a party

means (whether or not in material form and whether or not disclosed before or after the execution of this agreement) any information of whatever kind disclosed or revealed by that party to the other in relation to this agreement that:

- (a) is by its nature confidential; or
- (b) is designated by a party as confidential; or
- (c) the receiving party knows or reasonably ought to know is confidential,

and includes information that:

- (d) relates to, or is confidential in relation to, a third party, if a party is under an obligation of confidence to that third party in relation to that information;
- (e) is information obtained or developed by the receiving party in whole or in part through observation or examination of confidential information, demonstrations, or materials supplied by the disclosing party or any analyses, compilations, studies or other information prepared by the receiving party which incorporates the disclosing party's Confidential Information,

and in Our case includes the Service (including Our Software), Our Materials (including Our Data), Feedback, Licence Fee, and the terms of this agreement, and in Your case includes Your Data.

End-User

an internet user who receives or interacts with advertisements, products, or services of a Customer or their approved sub-licensee.

End-User Data

Information or data collected by the Service about an End-User including, but not limited to, their internet address, device identification number, cookie identification number, the number of downloads, impressions or clicks in respect of the relevant mobile device application, mobile device use and data regarding in-app events.

Feedback	means any and all feedback, comment, critique and analysis arising as a result of Your use (including Your User's use) of the Service and includes feedback on the Service itself and includes ideas for improvements, changes, variations, enhancements, adaptations or modifications to the Service.
Intellectual Property Rights	<p>means all:</p> <ul style="list-style-type: none"> (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, algorithms, methods or techniques; (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist; (c) trade and service marks (whether registered or unregistered) and domain names; (d) rights to prevent the use and disclosure of Confidential Information, including know-how; (e) proprietary rights under the <i>Circuit Layouts Act 1989</i> (Cth).
Licence Fee	<p>means the Licence Fee:</p> <ul style="list-style-type: none"> (a) set out in the Pricing Plan Agreement; or (b) if no Pricing Plan Agreement applies, the Licence Fee specified in the Customer's Account Details, <p>excluding any taxes, tariffs, charges and duties.</p>
Licence Fee Period	means each calendar month during the Term, which commences on the Commencement Date or on each 1 month anniversary after the Commencement Date.
Monthly Access Fee	means the term defined in the Pricing Plan Agreement, or if no Pricing Plan Agreement applies, the Monthly Access Fee specified in the Customer's Account Details.
Monthly Transaction Allowance	means the term defined in the Pricing Plan Agreement, or if no Pricing Plan Agreement applies, the Monthly Transaction Allowance specified in the Customer's Account Details.
Our Data	means all data, content, materials and information generated by or in relation to the Service (including but not limited to reports, meta-data about an internet user's attributes and online behaviour),

whether derived from Your Data or not and includes End-User Data.

Our Materials

means any materials (not including Your Data) produced by, on behalf of, or with Us related to the performance of this agreement and includes, among other things:

- (a) Our Data;
- (b) user documentation and user manuals;
- (c) all documentation and other materials (including source code) created in providing the Support;
- (d) source code, object code, software libraries and additional software including tracking links, application programming interfaces (i.e. APIs), software development kits (i.e. SDKs), web beacons, javascript tags, plugins and server-side modules provided by nxus to Customers for use with the Service.

Overage Charge

means the term defined in the Pricing Plan Agreement, or if no Pricing Plan Agreement applies, the Overage Charge specified in the Customer’s Account Details.

Overage Transaction Fee

means the term defined in the Pricing Plan Agreement, or if no Pricing Plan Agreement applies, the Overage Transaction Fee specified in the Customer’s Account Details.

Pricing Plan Agreement

an agreement entered into by nxus and the Customer which incorporates these nxus Terms of Service and includes any amendments made to it by the parties from time to time.

Service Levels

means the service levels described in Schedule 1.

Service

means the cloud-based service offered by nxus which allows Users to access and use the:

- (a) Software;
- (b) such other products as We may add from time to time by notice to You.

Software

means the cloud-based software as a service currently known as “nxus” as updated by Us from time to time.

Term

means the Term (including any Renewed Term):

- (a) specified in the Pricing Plan Agreement; or

(b) if no Pricing Plan Agreement applies, the Term specified in the Customer's Account Details.

Support

means the support described in Schedule 1.

Users

means Your employees, representatives, agents, contractors and consultants who are permitted to access and use the Service.

Your Data

means all data, content, materials and information relating to You, Your Users and Your operations, facilities, clients, personnel, assets and programs entered by You or Your Users into the Service.

17.2. In this agreement, unless the context otherwise requires:

- 17.2.1. the singular denotes the plural and vice versa;
- 17.2.2. other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- 17.2.3. a person includes a company, trust, partnership, joint venture, association, body corporate or governmental agency;
- 17.2.4. a reference to a thing includes a part of that thing;
- 17.2.5. a reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- 17.2.6. a reference to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced; and
- 17.2.7. an agreement which binds or benefits two or more persons binds or benefits those persons jointly and severally.