

# Platform One Terms and Conditions

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Effective Date: 01 August 2024

## 1. DEFINITIONS AND INTERPRETATION

1.1. Definitions: In this Agreement, the following words and phrases shall have the following meanings:

- **"Agreement"** means a Statement of Work or Order Form as the circumstances require, together with these Terms and Conditions.
- **"Authorised User"** means an individual employed by the Client who has been authorised by the Client to make use of a Core Platform.
- **"Client"** means the party so identified in the Agreement.
- **"Client Materials"** means any data, information, materials, logos, content, processes, and policies, not provided by Platform One, which are inputted into a Core Platform by the Client or on its behalf.
- **"Confidential Information"** means any and all information disclosed by one party to the other party in connection with this Agreement, which is of a confidential or proprietary nature as further detailed in Clause 12, or which is otherwise identified by the disclosing party as being confidential information or which is information which the receiving party should reasonably determine to be confidential information.
- **"Core Platform"** means the collection of online applications, as updated and amended by Platform One from time to time, access to which is provided to the Client by Platform One via a URL under this Agreement.
- **"Data Protection Law"** means the *Privacy Act 1988* (Cth) and any other applicable Australian laws relating to privacy and the protection of personal information.
- **"Deliverables"** means each Core Platform, and any Services selected on an applicable Statement of Works or Order Form, including any software, firmware, code, product, invention, discovery, improvement, document, and any other material created or provided by Platform One under this Agreement or in connection with this Agreement.
- **"Effective Date"** means the date indicated on the applicable Statement of Work or Order Form.
- **"Fees"** means the fees, charges and amounts set out in the applicable Statement of Work or Order Form.
- **"Force Majeure Event"** means any event affecting the performance of any provision of this Agreement arising from or attributable to acts, events, regulations, restrictions, omissions, accidents or non-performance which are unforeseen and beyond the reasonable control of such party and which could not reasonably have been prevented by such party including, without limitation, any acts of god, war,

rebellion, sabotage or riots, floods, unusually severe weather that could not reasonably have been anticipated, floods, earthquake, drought, lighting, fires, explosions or catastrophes, the acts or omission of the government or other competent authorities, riots, or any other concerted acts of workmen structural damage, epidemic, pandemic or other natural physical disaster, failure or shortage of power supplies, military operations, crowd disorder, strike, lock-outs or other industrial action, terrorist action or threat, civil commotion or other occurrences, and any legislation, regulation, ruling or omissions of any ruling or governing authority

- **"Intellectual Property Rights"** means all intellectual and industrial property or protected rights throughout the world including copyright and future copyright, patents, trademarks, trade names, registered or unregistered designs, database rights and domain rights and domain rights; in each case whether registered or not; rights under licences and consents in relation to any of them; an other forms of protection of a similar nature or having a similar effect to any of them and which may subsist anywhere in the world including, without limitation, Moral Rights.
- **"Moral Rights"** means the rights conferred by Part IX of the *Copyright Act 1968* (Cth) as amended from time to time
- **"Order Form"** means a document so titled, which forms part of this Agreement.
- **"Statement of Works"** means a document so titled, which forms part of this Agreement.
- **"Terms and Conditions"** means this document.

## 1.2. Interpretation:

The following rules of interpretation apply to this Agreement:

- References to days means calendar days.
- References to a person includes a natural person, company, incorporated association, partnership and trustee
- The time for doing any act or thing under this Agreement shall, if time ends on a Saturday, Sunday, bank holiday in Sydney New South Wales, or public holiday in Sydney New South Wales, be deemed to end on the day next following which is not a Saturday, Sunday, bank holiday or public holiday.
- Headings in this Agreement shall not form part of this Agreement and shall not be used in the interpretation of this Agreement.
- Words importing plurality include the singular, and vice versa.
- Words importing a gender include every other gender.
- References to **dollar**, **AUD** and **\$** are references to Australian currency.
- In the interpretation of this Agreement, no rule of construction shall apply to the disadvantage of one party on the basis that party put forward or drafted the Agreement or any part of the Agreement.

- Reference to a statute includes all regulations under and amendments to that statute whether by subsequent legislation or otherwise, and any statute passed in substitution for the statute referred to or incorporating any of its provisions.
- The words **including**, **include** and **includes** will be construed without limitation.
- if a party consist of more than one person, then:
  - other than in respect of the liability to pay, this Agreement binds them jointly and each of them severally; and
  - where the Client is liable to pay Platform One any monies and whether this liability arises:
    - pursuant to the terms of this Agreement;
    - directly or indirectly as a consequence of this Agreement, the Client's obligations under this Agreement or a breach by the Client of those obligations (whether those obligations are owned jointly, jointly, severally, or otherwise); or
    - in any other way in connection with this Agreement.

each person comprising the Client shall be severally, and not jointly or jointly and severally, liable to Platform One for the payment of such monies to the extent of their respective ownership portions

## 2. SERVICES AND DELIVERABLES

### 2.1. Provision of Services

Platform One shall:

- 2.1.1. Provide the Deliverables to the Client in accordance with the Service Level Agreement (**SLA**) in the Statement of Work or Order Form.
- 2.1.2. Provide each Authorised User with access to each Core Platform as specified in the applicable Statement of Word or Order Form.
- 2.1.3. Issue a password or single sign-on access for each Authorised User.
- 2.1.4. Ensure compliance with all applicable laws in connection with the performance of its obligations under this Agreement.

### 2.2. Client Responsibilities

The Client shall:

- 2.2.1. Keep secure and confidential all passwords and usernames necessary for accessing a Core Platform.

- 2.2.2. Ensure all details entered into a Core Platform and/or provided to Platform One by Authorised Users are accurate and up-to-date.

### 2.3. Suspension of Services:

- 2.3.1. Platform One may suspend operation of a Core Platform, with reasonable notice, for maintenance or if necessary to protect the integrity of its services.

## 3. INTELLECTUAL PROPERTY RIGHTS AND LICENCING

- 3.1. Platform One IP: Platform One retains all Intellectual Property Rights in the Deliverables. The Client is granted a non-exclusive, non-transferable, revocable licence to use the Deliverables during the term of this Agreement, solely for the purposes of this Agreement and not otherwise.
- 3.2. Client IP: The Client retains all Intellectual Property Rights in the Client Materials. The Client grants Platform One a non-exclusive, revocable licence to use the Client Materials for the purposes of providing the Deliverables and fulfilling its obligations under this Agreement.
- 3.3. Further to the provisions of clause 3.1 and 3.2, each party acknowledges that nothing in this Agreement constitutes a transfer to the other party (including its directors, officers, shareholders, employees, representatives, agents and subcontractors) of any right, title or interest in a party's intellectual property associated or used in connection with this Agreement

## 4. CONFIDENTIALITY AND DATA PROTECTION

- 4.1. Confidential Information: Except as otherwise permitted by this Agreement, each party must keep confidential all Confidential Information disclosed by the other party and any information provided by a party in connection with this Agreement. The receiving party must not use, exploit or disclose the Confidential Information other than for the purposes for which it has been provided under this Agreement. However the requirements of clause 4.1 do not apply to Confidential Information:
  - 4.1.1. Already publicly available other than by the disclosure of the receiving party.
  - 4.1.2. That was already known to the receiving party on a non-confidential basis, at the time that it was disclosed by the other party.

- 4.1.3. Is independently developed by the receiving party without use of any of the Confidential Information.
  - 4.1.4. Disclosed by the receiving party to its directors, personnel and legal representatives for the purpose of delivering any services or Deliverables, provided that any such third party is bound by confidentiality obligations no less onerous than set out in this Agreement.
  - 4.1.5. Disclosed in compliance with an order made by a court, tribunal or regulatory body with competent jurisdiction, provided that the receiving party proposing to comply with such an order gives the other party at least 72 hours' advance notice of its intended compliance.
- 4.2. Data Protection: Platform One shall process any personal information provided by the Client in accordance with Data Protection Law and the Platform One Privacy Policy.
- 4.3. The Client:
  - 4.3.1. The Client acknowledges and agrees that any email lists used in connection with services provided by Platform One on the platform must comply with all applicable laws and regulations regarding email marketing, including but not limited to the CAN-SPAM Act, GDPR, Australian Privacy Act and any other relevant data protection and privacy laws.
  - 4.3.2. The Client warrants that all email recipients on their lists have provided explicit, informed, and unambiguous consent to receive marketing or other communications. The Client must maintain records of such consent and provide evidence of it upon request.
  - 4.3.3. The Client shall not use any email lists that contain records where the recipient has not provided proper consent. The Client is strictly prohibited from sending unsolicited emails, including but not limited to spam, using the platform.
  - 4.3.4. The Client agrees to indemnify, defend, and hold harmless Platform One, its affiliates, and its employees from any and all claims, damages, fines, or penalties arising from or related to the Client's breach of this clause, including but not limited to any legal actions or complaints brought against Platform One as a result of the Client's use of non-compliant email lists.

- 4.4. Platform One reserves the right to suspend or terminate email services if the Client is found to be in violation of this clause. Such suspension or termination shall not relieve the Client of its obligations under this agreement, including the obligation to pay for services rendered.
- 4.5. Platform One reserves the right to audit the Client's email list compliance practices to ensure adherence to this clause. The Client agrees to cooperate fully with such audits.

## **5. INVOICING AND PAYMENT**

- 5.1. Fees: Platform One shall invoice the Client as specified in the applicable Statement of Work or Order Form. The Client shall pay each invoice within 14 days of the invoice date.
- 5.2. Late Payment: If payment is not made when due, Platform One may charge interest at the rate of 4% per annum above the prevailing Commonwealth Bank of Australia Overdraft Reference Rate, from the date that the payment was due until payment is made.

## **6. SERVICE LEVEL AGREEMENT**

- 6.1. Refer to Clause 7 Service Level Agreements & KPI Reporting in the Statement of Work or Order Form.

## **7. INDEMNITIES AND LIABILITY**

- 7.1. Platform One shall have no liability to indemnify the Client under an Agreement if the alleged breach or infringement arises from or in any way relates to or is in any way connected with:
  - 7.1.1. the Client's products or services;
  - 7.1.2. a modification of the Deliverables by anyone other than Platform One;
  - 7.1.3. the Client's marketing, advertising, distribution or use of the Deliverables in a manner contrary to the instructions given to the Client by Platform One;

- 7.1.4. the Client's marketing, advertising, distribution or use of the Deliverables after notice of the alleged or actual infringement from Platform One or any appropriate authority; or
  - 7.1.5. the combination of the Deliverables with the Client's products or services in circumstances where, but for such combination, no infringement would have occurred.
- 7.2. Limitation of Liability: In all circumstances, Platform One's total liability under this Agreement shall be limited to the greater of the annual Fees paid by the Client or \$50,000, except for liabilities arising from death, personal injury, or fraud.
- 7.3. Nothing in an Agreement shall exclude or limit either party's liability for:
- 7.3.1. death or personal injury resulting from the negligence of the other or their servants, agents or employees;
  - 7.3.2. fraud or fraudulent misrepresentation; or
  - 7.3.3. the criminal acts of a party or its agents.
- 7.4. Subject to clause 7.3, neither party shall be liable in contract, tort (including, without limitation, negligence), pre-contract or for its representations (other than fraudulent misrepresentation) or otherwise arising out of or in connection with an Agreement for:
- 7.4.1. any economic losses (including, without limitation, loss of revenues, profits, contracts, data, business, anticipated savings or cost of substitute services;
  - 7.4.2. any loss of goodwill or reputation; or
  - 7.4.3. any special, indirect or consequential losses,
- in any case, whether or not such losses were within the contemplation of the parties at the Effective Date, suffered or incurred by either party arising out of or in connection with the provisions of, or any matter under, an Agreement.

## **8. TERMINATION**

- 8.1. Term and Renewal: This Agreement shall commence on the Effective Date and continue for the initial term specified in the Statement of Work or Order Form.

- 8.2. Termination : Unless stated otherwise in the Statement of Work, the Client cannot terminate prior to the end date stated.
- 8.3. Effects of Termination: Upon termination, all licences granted under this Agreement will terminate.
- 8.4. Clauses 4 and 8 survive the termination of, and the expiry of the operative term of this Agreement, and clauses 4 and 8 shall continue to apply beyond the termination or expiry of this Agreement .

## **9. GENERAL**

- 9.1. Assignment: The Client may not assign this Agreement without Platform One's prior written consent. Platform One may assign this Agreement at its discretion.
- 9.2. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of New South Wales, Australia.
- 9.3. Entire Agreement: This Agreement embodies the entire understanding and agreement between the parties as to the subject matter of this Agreement and supersedes all prior arrangements, understandings and agreements.
- 9.4. Waiver: No failure or delay in exercising any right of under this Agreement shall operate as a waiver of such right.
- 9.5. Severability: Any provision in this Agreement which is invalid or unenforceable is to be read down, and the remaining provisions of the Agreement shall not be affected and shall remain in full force and effect to the fullest extent permitted by law.
- 9.6. Variation: Any variation to this Agreement is invalid unless it is in writing and executed by or on behalf of each of the parties.
- 9.7. The parties agree that neither party has any authority to make any representations on behalf of the other party and that no partnership, joint venture, agency or other relationship is formed between the parties to this Agreement.

## **10. WARRANTIES**

- 10.1. Platform One Warranties: Platform One warrants that:



- 10.1.1. The Services will be performed in a professional and proficient manner, consistent with industry standards.
  - 10.1.2. The Core Platform will be free from viruses, worms, trojans, and other malicious code.
  - 10.1.3. It will comply with all applicable laws and regulations in the performance of its obligations under this Agreement.
- 10.2. Client Warranties: The Client warrants that:
  - 10.2.1. It has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
  - 10.2.2. It has obtained all necessary consents and permissions for Platform One to process any personal information provided by the Client under this Agreement.
  - 10.2.3. It will use the Core Platform and Services in accordance with applicable laws and this Agreement.
- 10.3. Disclaimer: Except as expressly provided in this Agreement, all conditions, warranties, and representations implied by statute or common law are excluded to the fullest extent permitted by law.

## **11. DISPUTE RESOLUTION**

- 11.1. In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt to resolve the dispute through good faith negotiations.
- 11.2. If the dispute cannot be resolved through negotiations, the parties agree to first attempt to resolve the dispute by mediation administered by a mediator appointed by the Australian Centre for International Commercial Arbitration (ACICA) before resorting to litigation or arbitration.
- 11.3. This Agreement shall be governed by the laws of the state and country specified in the Governing Law clause, and the parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

## 12.FORCE MAJEURE

- 12.1. If either party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement then:
- 12.1.1. its obligations shall be suspended while the Force Majeure Event continues to the extent that it is so prevented, hindered or delayed;
  - 12.1.2. it shall promptly give notice to the other party of the Force Majeure Event and provide the other party with such information in relation thereto as it may from time to time reasonably require;
  - 12.1.3. such delay or non-performance shall not be deemed to be a breach of this Agreement and no loss or damage shall be claimed by the other parties by reason thereof;
  - 12.1.4. it shall use all reasonable endeavours to mitigate the consequences of the Force Majeure Event for the other party;
  - 12.1.5. promptly after the Force Majeure Event ends, give notice to the other party and resume performance of its obligations under this Agreement;/Dr
  - 12.1.6. In case the Force Majeure Event continues beyond a period of ninety (90) days and defeats the objective of the Agreement, either party may terminate the Agreement without claim for further compensation. In the event of termination of this Agreement on the occurrence of a Force Majeure Event, both parties will act in accordance with their obligations on termination as specified in **clause 8** (Termination) of this Agreement.