

Project Health Monitoring Pty Ltd – End User Licence Agreement

1. Introduction

Welcome to Project Health Monitoring Pty Ltd ABN: 73 637 403 242 ('PHM') terms and conditions of use ('Terms'). These Terms are important because they set out the terms and conditions upon which PHM grants you a right to use the cloud-based and smart device software and PHM's services, including all instructions in hard copy or electronic form and any update, modification or release of any part of that software or those services ('Services'). You can access and use the Services by downloading the application on a mobile device or accessing another platform (for example on the Site (defined below)) ('App')

2. Who these Terms apply to

These Terms apply to:

- (a) the primary account ('**Primary Account**') holder ('**Primary Account Holder**');
- (b) you, where invited by the Primary Account Holder to create a user account ('**User Account**') as permitted by the Primary Account Holder's subscription package ('**Subscription**'); and
- (c) any other person or entity using the Services, (collectively referred to as '**you**' or '**your**').

2.2 When you accept these Terms

- (a) You accept these Terms by clicking a box indicating acceptance or by using or accessing the Services. By accepting these Terms, you warrant to PHM that you have the legal capacity to enter into a legally binding agreement.
- (b) If you accept these Terms then you agree to these Terms unless you already have a signed agreement with PHM that includes licensing terms that govern your use of the Services ('**Pre-Existing Agreement**'). If applicable, these Terms are deemed incorporated into the Pre-Existing Agreement by reference.
- (c) These Terms start on the date on which you accept the Services and will continue until the date these Terms are terminated in accordance with **clause 14 (Termination)** (the '**Term**'). Please read these Terms carefully and immediately terminate your Account if you do not agree to them.

3. Apple and Google mandatory terms.

If you access or download the App from the Apple Inc ('**Apple**') App Store, you agree to Apple's Licensed Application End User License Agreement and any Usage Rules set forth in the App Store Terms of Service, and if you download the App from the Google Play Store, you agree to Android's Google Inc. Terms and Conditions, including the License Agreement and Terms of Application.

4. Registration and Accounts

4.1 Acceptance

By creating an Account and/or accessing and/or using the Services, you:

- (a) warrant to PHM that you have reviewed these Terms, including PHM's Privacy Policy, available on PHM's website ('**Site**') or in the App and you understand them;
- (b) warrant to PHM that you have the legal capacity to enter into a legally binding agreement;
- (c) warrant to PHM that you have the authority to act on behalf of any person or entity for whom you are using the Services, and you are deemed to have agreed to these Terms on behalf of any entity for whom you use the Services;
- (d) warrant to PHM that you have all hardware, software and services which are necessary to access and use the Services; and
- (e) agree to use the Services in accordance with these Terms.

4.2 Account

You will be required to create a Primary Account or a User Account with PHM in order to access and use the Services (together an '**Account**'). You must ensure that any personal information you give PHM when creating an Account is accurate and up-to-date. All personal information that you give to PHM will be treated in accordance with PHM's Privacy Policy.

4.3 User usernames and accounts

When you create an Account, you will be able to choose certain Account details (such as a username and password). It is your responsibility to keep your Account details confidential. You are liable for all content posted and all activity on your Account and you must immediately notify PHM of any unauthorised use of your Account.

4.4 Profile

Once you have registered an Account, your account information will be used to create a profile which you may then curate ('**Profile**'). Your Profile is personal and you must not transfer it to others, except with PHM's written permission.

4.5 Age restrictions

You must not create an Account unless you are at least 13 years of age. If you are a parent or legal guardian permitting a person who is at least 13 years of age but under 18 years of age ('**Minor**') to create an Account and/or use the Services, you agree to:

- (a) supervise the Minor's use of the Services and/or their Account;
- (b) assume all risks associated with, and liabilities resulting from, the Minor's use of the Services and/or their Account;
- (c) ensure that the content on the Services is suitable for the Minor;
- (d) ensure all information submitted to PHM by the Minor is accurate; and
- (e) provide the consents, representations and warranties contained in these Terms on the Minor's behalf.

4.6 Our discretion

At PHM's sole discretion, PHM may refuse to allow any person to create an Account.

5. Privacy

5.1 Collection

PHM collects personal information about you, in order to enable you to access and use the App, to contact and communicate with you, to analyse your interests and provide tailored services suggestions, to respond to your enquiries and for other purposes set out in PHM's Privacy Policy.

5.2 Third parties

PHM may disclose that information to third party service providers who help PHM deliver PHM's services (including information technology service providers, data storage, web-hosting and server providers, professional advisors, payment systems operators and PHM's business partners) or as required by Law. If you do not provide this information PHM may not be able to provide the Services to you. In certain circumstances, PHM may disclose your personal information to third parties located, or who store data, outside Australia.

5.3 Privacy Policy

PHM's Privacy Policy contains further information about:

- (a) how PHM stores and uses stores and uses your personal information;
- (b) how you can access and seek correction of your personal information;
- (c) how you can make a privacy-related complaint; and

- (d) PHM's complaint handling process. By providing personal information to PHM, you consent to PHM collecting, holding, using and disclosing your personal information in accordance with PHM's Privacy Policy.

5.4 Your compliance

You are responsible for the collection, use, storage and otherwise dealing with Personal Information related to your business and all matters relating to the User Data. You must, and must ensure that your personnel and your users, comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any privacy or anti-spam Laws applicable to you in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with these Terms.

6. Licence to use the Services

6.1 Licence

In consideration for your compliance with these Terms and if applicable, the terms of the Pre-Existing Agreement or a Subscription, PHM grants you a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable and revocable licence to access, display and use the object code versions of the Services for internal purposes for the Term and only on as many devices (whether virtual or physical), users, locations and in such configurations as set out on the Site or otherwise or as advised by PHM ('Licence').

6.2 Use

You agree that the Licence permits you to use the Services in accordance with these Terms. PHM reserves the right at any time and from time to time to refuse any request in relation to the Services that PHM deems inappropriate, unreasonable, illegal or otherwise non-compliant with these Terms and modify or discontinue, temporarily or permanently, access to the Services (or any part) without notice.

6.3 Free or Open Source

To the extent that the Services, or any part of the Services, are licensed under a free or open source software arrangement:

- (a) the terms of the Free or Open Source Licence will apply to those Services; and
- (b) the provisions of the Free or Open Source Licence will prevail over the remainder of these Terms in the event and to the extent of any inconsistency.

6.4 Shared Services

You acknowledge and agree that the Services may be provided on a shared service basis to you and other clients from a common code base and common environment and PHM may from time to time:

- (a) change add or delete the functions, features, performance, or other characteristics of the Services, and if such change, addition or deletion is made, the specifications of the Services will be amended accordingly; and
- (b) correct errors or upgrade the Services,

provided that the functionality or availability of the Services used by you will not materially decrease during the Term.

7. Intellectual Property Rights

7.1 Ownership

As the Services may be a shared environment, all Intellectual Property Rights in the Services and any Intellectual Property Rights developed, adapted, modified or created by PHM or PHM's officers, employees, contractors, sub-contractors or agents including in connection with these Terms and the Services and any machine learning algorithms output from the Services is, and will remain owned by PHM or PHM's third party service providers.

7.2 Feedback on the Services

You acknowledge and agree that PHM owns any suggestions, enhancement requests, recommendations or other feedback provided by you, your Personnel or customers, relating to the Services without Liability to you.

7.3 Analytics

- (a) Despite anything to the contrary in these Terms or elsewhere, PHM may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymised format ('Analytics'). You agree that PHM may make such Analytics publicly available, provided that the Analytics:
 - (i) do not contain identifying information; and
 - (ii) is not compiled using a sample size small enough to make the underlying data identifiable.
- (b) PHM or PHM's licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content provided in connection with the Analytics, including all Intellectual Property Rights in the foregoing.

8. Use guidelines

8.1 Guidelines

You must not:

- (a) resell, assign, transfer, distribute or provide others with access to the Services;
- (b) 'frame', 'mirror' or serve any of the Services on any web server or other computer server over the internet or any other network;
- (c) copy, alter, modify, create derivative works from, reproduce to a third party, reverse assemble, reverse engineer, reverse compile or enhance the Services or software;
- (d) alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the Services;
- (e) use the Services to make fraudulent offers of goods or services;
- (f) use the Services in any way which is in breach of any applicable local, state, federal and international laws and regulations or which infringes any person's rights, including Intellectual Property Rights;
- (g) use the Services to transmit, publish or communicate material that is defamatory, trolling, offensive, abusive, indecent, menacing or unwanted;
- (h) use the Services in any way that damages, interferes with or interrupts the supply of the Services;
- (i) introduce malicious programs into PHM's hardware and software or PHM's hardware, software and services which are integrated and operate together, including our networks, including viruses, worms, trojan horses and e-mail bombs;
- (j) reveal your Account password to others or allow others to use your Account;
- (k) use the Services to carry out security breaches or disruptions of a network. Security breaches include accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
- (l) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the Services;
- (m) send any unsolicited email messages through or to users of the Services in breach of the *Spam Act 2003* (Cth) or to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the Services in breach of any person's privacy (such as by way of identity theft or 'phishing'); and
- (n) use the Services to circumvent user authentication or security of any of your networks, accounts or hosts or those of your customers or suppliers.

8.2 Your responsibilities and obligations

You must, at your expense:

- (a) provide PHM with all reasonable assistance and cooperation in order for PHM to supply the Services in an efficient and timely manner;
- (b) ensure all information provided to PHM is kept up-to-date and the email address you provide is valid and regularly checked;
- (c) in case of technical problems, make all reasonable efforts to investigate and diagnose problems before contacting PHM. If you still need help, please check the help section on the App or failing that please email PHM; and
- (d) make any changes to your device, such as system upgrades, that may be required to support the delivery and operation of any Services.

9. Third Parties

9.1 Third Party's Inputs

You acknowledge and agree that:

- (a) the provision of the Services may be contingent on, or impacted by, third parties, other customers' use of PHM's services, suppliers, other subcontractors ('**Third Party Inputs**'); and
- (b) despite anything to the contrary, to the maximum extent permitted by Law, PHM will not be responsible and will have no Liability, for any default or breach of these Terms or Law, if such default or breach was caused or contributed to by any Third Party Inputs.

9.2 Optional features

You acknowledge and agree that the Services include certain optional functionality that may interface or interoperate with third party software, hardware or services. To the extent that you choose to use such functionality, you are responsible for the purchase of, the ancillary requirements related to, and the licensing obligations related to the applicable third party software, hardware and services. It is your responsibility to ensure the requirements are met in order for you to benefit from the specific functionality made available to you.

9.3 Permitted use

You may permit a third party to use the Services under these Terms if such use is solely on your behalf, for your internal operations and in compliance with these Terms. You agree that you are responsible for any breach of these Terms by a third party referred to in this clause.

10. Payment

10.1 Register

In the future, PHM advertises a fee to download the App you must pay PHM this fee in advance of downloading the App ('**Fee**') via your chosen payment method and as offered by the application store from which you choose to download the App, such as the Apple App Store or the Google Play Store.

10.2 Not refundable and GST

To the maximum extent permitted by law, there will be no refunds or credits. All Fee excludes GST. If you are located outside Australia you will not be charged GST. You are responsible for all taxes, levies or duties imposed by taxing authorities in your own country, and you will be responsible for payment of them. PHM has no responsibility to them on your behalf. If any payment is a requirement for download and is not made in accordance with PHM's payment terms you will be unable to download the App.

11. User Data

11.1 User Data is your data

- (a) In relation to the parties all User Data is and remains your property or the property of the Primary Account Holder (as applicable).

- (b) So PHM can provide the Services to you, you grant PHM a worldwide, non-exclusive, perpetual, royalty-free, fully paid licence to:
 - (i) use, copy, back-up, process, transmit, store, edit, modify, aggregate, combine, reproduce, distribute, display, perform, and prepare derivative works of the User Data;
 - (ii) otherwise access, use or make reference to the User Data or any intellectual property rights in the User Data;
 - (iii) to supply the Services, for diagnostic purposes and to test, enhance and otherwise modify the Services;
 - (iv) to develop other services; and
 - (v) as reasonably required for the performance of PHM's obligations under these Terms.

11.2 Your obligations in relation to the User Data

- (a) You must, at all times, ensure the integrity of any User Data inputted by you and that your provision of and use of the User Data is compliant with all Laws. You represent and warrant that you have obtained all necessary rights, releases and permissions to provide all User Data to PHM and to grant the rights granted to PHM in these Terms.
- (b) PHM assumes no responsibility or Liability for User Data. You are solely responsible for the User Data and the consequences of using, disclosing, storing or transmitting it.
- (c) PHM has no obligation to monitor any content uploaded. Nonetheless, if PHM deems such action necessary for any reason, PHM may (without limiting PHM's other rights) remove the User Data from the Services. PHM has no Liability to you for removing the User Data from the Services.

11.3 Australian moral rights

If you or any of your personnel have any moral rights (as defined in the *Copyright Act 1968* (Cth)) ('**Moral Rights**') in any User Data, you (and you will ensure that your personnel) consent to the infringement of those Moral Rights by PHM or PHM's Personnel.

11.4 Security

PHM implements security procedures to help protect User Data from security attacks. However, you understand that use of the Services necessarily involves the transmission of User Data over networks that are not owned, operated or controlled by PHM and PHM is not responsible for User Data being lost, altered, intercepted or stored across such networks. PHM cannot guarantee that PHM's security procedures will be error-free, that transmissions of User Data will always be secure or that unauthorised third parties will never be able to defeat PHM's security measures or those of PHM's third-party service providers.

12. Australian Consumer Law

The Parties acknowledge that under the Australian Consumer Law and other similar legislation of Australian states and territories, certain statutory guarantees are conferred in relation to the supply of goods or services to a Consumer ('**Consumer Guarantees**').

Where you as a Consumer acquires goods and services under these Terms from PHM as a supplier and:

- (a) the goods or services are PDH Goods or Services, the operation of the Consumer Guarantees cannot be, and are not in these Terms, excluded, restricted or modified; or
- (b) the goods or services are not PDH Goods or Services, PHM limits its liability for a failure to comply with any Consumer Guarantee (other than: (a) a Consumer Guarantee as to title, encumbrances or undisturbed possession of goods conferred by the Australian Consumer Law; or (b) where to do so would otherwise cause all or part of this clause to be void) to, at PHM's option:
 - (i) in the case of goods, repairing or replacing the goods or paying the cost of having the goods repaired or replaced; and
 - (ii) in the case of services, re-supplying the services or paying the cost of having the services re-supplied.

PHM does not exclude or limit the operation of the Consumer Guarantees under any other provision of these Terms or in any other manner and the parties agree it is fair and reasonable in all the circumstances for PHM's liability to be so limited. In these Terms: (i) 'Australian Consumer Law' has the meaning given to that term in Section 4 of the *Competition and Consumer Act 2010* (Cth); (ii) 'Consumer' has the meaning given to that term in Section 3 of the Australian Consumer Law; and 'PDH Goods or Services' means goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

13. Risk

13.1 High risk environments

The Services are not fault-tolerant and are not designed or intended for use in High Risk Activities. To the extent permitted by Law, PHM expressly disclaims any express or implied warranty of fitness for High Risk Activities.

13.2 Limitation of Liability

Despite anything to the contrary, to the maximum extent permitted by Law:

- (a) PHM's maximum aggregate Liability arising from or in connection with these Terms (including the Services or the subject matter of these Terms) will be limited to, and must not exceed in the aggregate for all claims \$100; and
- (b) PHM's will not be liable to you for any Consequential Loss, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

13.3 Exclusions

Despite anything to the contrary, to the maximum extent permitted by Law, PHM will have no Liability, and you waive and release PHM from and against, all Liability (whether under statute, contract, negligence or other tort, indemnity, or otherwise) arising from or in connection with any:

- (a) loss of, or damage to, any property or any injury to or loss to any person;
- (b) failure or delay in providing the Services;
- (c) breach of these Terms or any Laws; or
- (d) unavailability, outage or interruption of the Computing Environment,

where caused or contributed to by any:

- (e) Force Majeure Event;
- (f) fault, defect, error or omission in the Computing Environment or User Data; or
- (g) your act or omission,

and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Services.

13.4 Indemnity

To the maximum extent permitted by Law, you indemnify and continue to indemnify PHM against all Liability PHM suffers or incurs arising from or as a consequence of a breach of these Terms, your use of the Services, including from any claim relating to the User Data.

13.5 Use

You acknowledge and agree that:

- (a) you are responsible for your use of the Services;
- (b) your use the Services and any associated programs and files at your own risk;
- (c) PHM does not warrant that the Services are error-free or will be uninterrupted;
- (d) any information, recommendations, guidance or reports generated by the Services (other than User Content) ('PHM Content') is general in nature and that the PHM Content does not take into account your specific needs or circumstances. It is not advice, it does not constitute an express or implied warranty and you must not rely on it. PHM does not assume

any Liability for the accuracy, completeness, usefulness of any PHM Content, or your reliance on any PHM Content;

- (e) the technical processing and transmission of the Services, including User Data, may be transferred unencrypted and involve:
 - (i) transmissions over various networks; and
 - (ii) changes to conform and adapt to technical requirements of connecting networks or devices;
- (f) PHM may use third party service providers to host the Services. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, PHM may cease providing any affected features;
- (g) the Services may use third party products, facilities or services. PHM does not make any warranty or representation in respect of the third party products, facilities or services;
- (h) PHM does not guarantee that any file or program available for download and/or execution from or via the Services are free from viruses or other conditions which could damage or interfere with the User Data, hardware or software with which it might be used;
- (i) PHM is not responsible for the integrity or existence of any User Data on the Computing Environment, network or any device controlled by you;
- (j) from time to time, PHM may make certain services and/or features available to you for use which are still in their development stage. These development stage services have not been fully tested and are provided on an 'as is' basis. To the fullest extent permitted by Law, PHM makes no representations, warranties or guarantees in relation to such development stage services; and
- (k) PHM may pursue any available equitable or other remedy against you if you breach any provision of these Terms.

13.6 Your warranties

You warrant and agree that:

- (a) you have reviewed these Terms;
- (b) you have all hardware, software and services which are necessary to access and use the Services (other than that specifically required to be provided by PHM in writing);
- (c) you will use the Services in accordance with these Terms;
- (d) all information and documentation that you provide to PHM in connection with these Terms is true, correct and complete and you acknowledge and agree that PHM will rely on such information and documentation in order to provide the Services;
- (e) you are responsible for obtaining any consents, licences, authorities and permissions from other parties necessary for the Services to be provided in accordance with these Terms, at your cost, and for providing PHM with the necessary consents, licences, authorities and permissions; and
- (f) if applicable, you will maintain the confidentiality and security of any of your Primary Account and/or User Account details and passwords.

14. Termination

14.1 How to terminate

You may only terminate your User Account and/or these Terms via your Profile. You are solely responsible for properly terminating your User Account and/or these Terms. If you are a Primary Account Holder, you may only terminate these Terms but providing PHM with notice via your Profile. Your Primary Account Holder may terminate your User Account, your access and these Terms at any time in their sole discretion. If your Primary Account Holder's Subscription is suspended or terminated PHM will also suspend your User Account, your access or terminate your User Account and these Terms (as applicable). If PHM believes you are misusing the Services or otherwise in breach of these Terms, PHM may immediately terminate your Primary Account and/or User Account and/or these Terms with notice to you.

14.2 Deleting an App doesn't delete your Account or relevant User Data

If you delete the App, your Account will remain active. Once your profile is deleted, the information you have put into the App will be archived and remain on PHM's database. You must ensure that all the applicable User Data on the Services are backed up so that you do not lose the relevant User Data if your Account is terminated or suspended. PHM will generally alert you when PHM takes such action and give you a reasonable opportunity to remedy any breach of these Terms, but if PHM determines that your actions endanger the operation of the Services or other users, PHM may suspend or terminate your Account immediately without notice. You will continue to be charged for the Services during any suspension period in which you are in breach of these Terms.

15. Notice regarding Apple

- (a) To the extent that you are using or accessing the App on an iOS device, you further acknowledge and agree to the terms of this clause. You acknowledge that these Terms are between you and PHM only, not with Apple Inc. ('Apple'), and Apple is not responsible for the App and any content available on the App.
- (b) Apple has no obligation to furnish you with any maintenance and support services with respect to the App.
- (c) If PHM's mobile application fails to conform to any applicable warranty, you may notify Apple and Apple will refund the purchase price of the mobile application to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the mobile application and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be PHM's responsibility.
- (d) Apple is not responsible for addressing any claims by you or any third party relating to PHM's mobile application or your use of PHM's mobile application, including but not limited to:
 - (i) product liability claims;
 - (ii) any claim that PHM's mobile application fails to conform to any applicable legal or regulatory requirement; and
 - (iii) claims arising under consumer protection or similar legislation.
- (e) Apple is not responsible for the investigation, defence, settlement and discharge of any third-party claim that PHM's mobile application infringes that third party's intellectual property rights.
- (f) You agree to comply with any applicable third-party terms when using PHM's mobile application.
- (g) Apple and Apple's subsidiaries are third-party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary of these Terms.
- (h) You hereby represent and warrant that:
 - (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and
 - (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

16. General

16.1 Export

The software, products, technology and services may be subject to local and extraterritorial export control laws and regulations ('Export Controls'). You will comply with Export Controls governing use, export, re-export, and transfer of software, products and technology and will obtain all required local and extraterritorial authorisations, permits or licenses.

16.2 Unexpected events

If PHM is delayed from performing PHM's obligations due to such a circumstance for a period of at least two months, PHM may terminate the Primary Account, any User Accounts and/or these Terms with notice to you.

16.3 Disputes

Neither party may commence court proceedings relating to any dispute arising from, or in connection with, these Terms without first meeting with a senior representative of the other party to seek (in good faith) to resolve that dispute (unless that party is seeking urgent interlocutory relief or the dispute relates to compliance with this clause).

16.4 Entire agreement

These Terms contains the entire understanding between the parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

16.5 Notices

Any notice required or permitted to be given by either party to the other under these Terms must will be in writing addressed to PHM at the contact details below and to you on the contact details included in a User Account or Primary Account. A party may change its notice details by written notice to the other parties. Any notice may be sent by standard post or email and notice will be deemed to have been served on the expiry of 4 business days in the case of post or at the time of transmission in the case of transmission.

16.6 Waiver and severance

Any failure or delay by a party in exercising a power or right (either wholly or partly) in relation to these Terms does not operate as a waiver or prevent a party from exercising that power or right or any other power or right. A waiver must be in writing. If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions.

16.7 Assignment

PHM may assign, transfer, novate or otherwise deal with all or any of PHM's rights or obligations under these Terms without your prior written consent. You may not assign, transfer or otherwise deal with all or any of your rights or obligations under these Terms without PHM's prior written consent (not to be unreasonably withheld).

16.8 Governing law

These Terms are governed by the Laws of New South Wales. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waive any rights to object to proceedings being brought in those courts.

16.9 Overseas access

The Services may be accessed in Australia and overseas. PHM makes no representation that the Services comply with the laws of any country outside of Australia. If you access the Services from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place you access the Services.

16.10 Survival of specific clauses

Clauses 5 (*Privacy*), 6 (*Licence to use the Services*), 7 (*Intellectual Property Rights*), 8 (*Use guidelines*), 11 (*User Data*), 16 (*General*) and 17 (*Definitions*) will survive termination or expiry of these Terms.

17. Definitions

The following words will mean:

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales;

Computing Environment means your computing environment including all hardware, software, information technology and telecommunications services and systems;

Consequential Loss includes any indirect, incidental or consequential loss, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any remote, abnormal or unforeseeable loss, loss of use and/or loss or corruption of data or any loss or damage relating to business interruption, or otherwise, suffered or incurred by a person, arising out of or in connection with these Terms (whether involving a third party or a party to these Terms or otherwise);

Force Majeure Event means an event which is beyond a party's reasonable control including a fire, storm, pandemic, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strike by employees of a third person;

Free or Open Source Licence means any licence in relation to free or open source software;

High Risk Activities means use in environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, medical life support, aircraft navigation or communication systems, mass and air traffic control, weapons systems, life-support machines or any other application in which the failure of the Services could lead directly to death, personal injury or severe physical or property damage;

Intellectual Property means any copyright, registered and unregistered trade marks, designs (whether or not registered or registrable), domain names, know-how, inventions, processes, trade secrets or confidential information, or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing;

Intellectual Property Rights means any and all Intellectual Property rights, whether existing now or in the future, anywhere in the world, and the subject matter of such rights, including the following:

- (a) patents, copyright, rights in circuit layouts (or similar rights), registered designs, registered and unregistered trademarks, and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a),

whether or not such rights are registered or capable of being registered and whether existing under a Law, at common law or in equity;

Liability means any loss, liability, cost, payment, damages, debt or expense (including reasonable legal fees);

party means a party to these Terms;

Personal Information is defined in the *Privacy Act 1988* (Cth) and also includes any similar term as defined in any other privacy law applicable to you;

Subscription is defined clause 2(b); and

User Data means the information, documents and other data inputted by you, into the Services or stored by the Services or, subject to **clause 11** (*User Data*) generated by the Services as a result of your use of the Services.

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