

Terms of Service

For CAPEXinsights

These Terms of Service govern your access to and use of our Services as specified in an Order and together with all Orders comprise our agreement (“**Agreement**”). This Agreement is effective as of the effective date specified in an Order that references these Terms of Service (“**Effective Date**”). Unless the context requires otherwise, words and phrases defined in a relevant Order have the same meaning where used in these Terms of Service.

1. Services

1.1 We will provide the Services in accordance with each Order, these Terms of Service, and the applicable Documentation.

1.2 You may access and use the Services made available as part of the Services during the term of your Subscription.

1.3 We will provide support services (if any) in accordance with the applicable Order, otherwise we have no obligation to provide support in respect of the Services.

1.4 You and your End Users may require an account to use the Services (“**Account**”). You are responsible for the information provided to create Accounts, the security of any token and password for the Accounts and for any use of the Accounts and any password or token. If you become aware of any unauthorised use of an Account, password or token, you must notify us as promptly as possible.

1.5 We may add new services to the Services or make new applications, tools, features or functionality available from time to time through the Services, the use of which may require you to agree to additional terms.

1.6 We may make commercially reasonable updates to a Service, including to discontinue or replace any portion or feature of a Service, but we will not change its fundamental nature without your agreement.

2. Customer Data and Security

2.1 We will not access or use Customer Data, except as necessary for us or our suppliers and contractors (and their suppliers and contractors) to provide the Services to you or as provided for in this Agreement, or use it for any other purpose unless such Customer Data is anonymised.

2.2 You are solely responsible for Customer Data and End Users, and for making sure they comply with the obligations set out in clause 3.1.

2.3 You will obtain and maintain any required consents necessary to permit the processing of Customer Data under this Agreement.

2.4 Under this Agreement, we are merely a data processor and not a data controller.

2.5 You agree that we may process and store Customer Data in data centres located in Australia or Singapore.

2.6 All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards we have described in any document describing those standards which we have provided to you. We have implemented at least industry standard systems and procedures to (a) ensure the security and confidentiality of Customer Data, (b) protect against anticipated threats or hazards to the security or integrity of Customer Data, and (c) protect against unauthorised access to or use of the Services and Customer Data.

2.7 We will notify you promptly if we become aware that your Customer Data is accessed by, or disclosed to, an unauthorised party and will provide such details as we are able to, to enable you to assess and manage the associated impact. You or your personnel may notify us by means of the facility made available for this purpose through our Services if at any time you consider your Customer Data has been accessed by, or disclosed to, an unauthorised party.

3. Your Obligations

3.1 You will not, and will not allow your End Users or other third parties under your control to (a) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the Services (except to the extent such restriction is expressly prohibited by

applicable law), (b) upload to the Services any material that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libellous, invasive of another's privacy or right of publicity, hateful, or otherwise objectionable, (c) circumvent the user authentication or security of the Services or any related host, network or account, (d) perform any penetration testing on or with respect to the Services, including use of any tools, code or instruction intended to fuzz, damage, destroy, alter, reveal any portion or expose vulnerability of the Site, (e) sublicense, resell, or distribute any or all of the Services, (f) create multiple Accounts to simulate or act as a single Account or Transaction or otherwise access the Services in a manner intended to avoid incurring Fees, or (g) make any use of the Services that violates any applicable local, state, national, international or foreign law.

3.2 Third party components (which may include open source software) of the Services may be subject to separate licence agreements. To the limited extent a third party license expressly supersedes this Agreement, that third party license governs Customer's use of that third party component.

3.3 Where we provide Documentation for your use of the Services, which may specify restrictions on how the Services may be used, you agree to comply with any of those restrictions.

4. Fees

4.1 You agree to pay all Fees in accordance with our electronic bill or issued invoice, within 30 days of receipt. Payments must be made by means of wire transfer using the bank information we provide to you. Your obligation to pay Fees is non-cancellable. Late payment will accrue interest at a rate of one and one-half percent per month.

4.2 If under applicable tax legislation the Services are subject to local GST, then in addition to the Fees you will pay us a further amount equal to that GST, subject to receipt of a valid tax invoice.

4.3 You are responsible for any duties, customs fees, or taxes (other than our income tax) associated with the purchase of the Services, including any related penalties or interest ("**Taxes**") and will pay us for the Services without any reduction for Taxes. If you are required by law to withhold any Taxes from your payments to us, then you must provide us with an official tax receipt or other appropriate documentation to support such withholding. You will be liable to pay (or reimburse us for) any taxes, interest, penalties or fines arising out of any misdeclaration or non-payment by you.

4.4 We may vary the Fees for the next Renewal Period at any time until 90 days prior to its commencement.

5. Intellectual Property

5.1 Except as expressly stated in this Agreement, this Agreement does not grant either party any rights to the other's content or any of the other's intellectual property.

5.2 As between the parties (a) you own all Intellectual Property Rights in Customer Data, except as necessary to provide the Services to you, and (b) we own all Intellectual Property Rights in the Services and Documentation, and in anything that we develop.

5.3 If you provide Feedback, then we may use that information without obligation to you, and you hereby irrevocably assign to us all right, title, and interest in and to that Feedback.

5.4 You agree that we may use and retain any data, content, materials or intellectual property you provide us, or that are input into or generated by the Services, to provide the Services during the term of your Subscription, and to improve and further develop our services generally during or after the term of your Subscription, subject at all times to our compliance with applicable laws and the confidentiality obligations in clause 6.

6. Confidentiality

6.1 Subject to clause 6.2, the recipient will not disclose Confidential Information, except to any Affiliate, employees, agents or professional advisers who need to know it and who have agreed in writing, or in the case of professional advisers, are otherwise bound, to keep it confidential. The recipient will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfil obligations under this Agreement, while using reasonable care to keep it confidential.

6.2 The recipient may also disclose Confidential Information to the extent required by law, provided that the recipient uses commercially reasonable efforts to (a) promptly notify the other party of such disclosure before disclosing (unless this would be a breach of law or lead to death or serious physical harm), and (b) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. As between the parties, you are responsible for responding to all third party requests concerning use of the Services by you and your End Users.

7. Term and Termination

7.1 At the end of the initial term for your Subscription, your Subscription will automatically renew for further periods of one year at a time (each a “**Renewal Period**”). You or we may decline the next Renewal Period by giving the other party at least 60 days’ notice prior to the start of the next Renewal Period. In either case, your Subscription will come to an end at the close of the current period for your Subscription.

7.2 Either party may terminate this Agreement immediately upon written notice for breach if (a) the other party is in material breach of the Agreement and fails to cure that breach within 30 days after receipt of written notice, or (b) the other party ceases its business operations or becomes the subject of insolvency proceedings and the proceedings are not dismissed within 90 days.

7.3 You may stop using the Services at any time [on 30 days written notice to us]. You may terminate this Agreement for your convenience at any time on prior written notice and upon termination, must cease use of the applicable Services.

7.4 If you have terminated this Agreement for our breach or insolvency, we will refund you any prepaid Fees covering the remainder of the then current period of your Subscription.

7.5 If this Agreement is terminated, then (a) the rights granted by one party to the other will immediately cease, except for any that are expressly stated to continue following termination, and (b) upon request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party, except to the extent that retention is permitted by this Agreement.

7.6 If your Subscription comes to an end for any reason, we will allow you a further period of 90 days to download your Customer Data from our Services

7.7 We may suspend all or part of the Services at any time (and promptly notify you) if we are required to do so to comply with law, protect our systems or security, or the safety of any individual.

8. Indemnities

8.1 Unless prohibited by applicable law, you will defend and indemnify us against any settlement amounts approved by you and damages and costs finally awarded against us by a court of competent jurisdiction to the extent arising from a Claim regarding (a) Customer Data, or (b) your use of the Services that is in breach of clause 3.1.

9. Warranties

9.1 Each party represents and warrants that (a) it has full power and authority to enter into this Agreement, and (b) it will comply with all laws applicable to its provision, or use, of the Services. We warrant that the Services will perform, and be performed, substantially in accordance with the applicable Order and Documentation. We undertake that any professional services we provide will be performed with reasonable skill and care, taking into account your instructions to us and the information you supply for the purposes of those services. To the maximum extent permitted by applicable law, our sole liability and your sole remedy for any liability arising under this clause 9.1 (a) if the breach relates to our Services is limited to, at our option, re-supply of the Services or the payment of the cost of having the Services supplied again, and (b) if the breach relates to a defective Sensor that is owned by us, is limited to replacement of the Sensor.

9.2 Except as expressly provided for in this agreement, to the maximum extent permitted by applicable law, we and our suppliers do not make any other warranty of any kind, whether express, implied, statutory or otherwise, including warranties of merchantability, fitness for a particular use and non-infringement. We and our suppliers are not responsible or liable for the deletion of or failure to store any customer data. You are solely responsible for securing and backing up your customer data. Neither we nor our suppliers warrant that the operation of the services will be error-free or uninterrupted. Our content and free services are provided “as is”, exclusive of any warranty of any kind. Each party disclaims all liability and indemnification obligations for any harm or damages caused by any third-party suppliers.

10. Liability

10.1 To the maximum extent permitted by applicable law, and whether in contract, tort or otherwise, neither party, nor our suppliers, will be liable under this agreement for lost revenues, use or data, or for indirect, special, incidental, consequential, exemplary, or punitive damages, even if the party knew or should have known that such damages were possible and even if direct damages do not satisfy a remedy.

10.2 To the maximum extent permitted by applicable law, and whether in contract, tort or otherwise, neither us nor our suppliers, may be held liable under this agreement for more than the amount paid by you to us under this agreement during the twelve months prior to the event giving rise to liability.

10.3 You manage and control any workplace, site or location where the Services may be deployed or used. We have not and will not during the term of your Subscription or at any time after it, assume any liability or obligation as your agent or otherwise which may be imposed upon you from time to time pursuant to any legislation arising out of any engagement under the Agreement.

11. General

11.1 All notices must be in writing and addressed to both the other party's primary point of contact as identified in the applicable Order. For notices given by electronic mail, notices will be treated as given on receipt as verified by written or automated receipt or by electronic log (as applicable).

11.2 Each party will maintain, at its own expense during the term of the Agreement, insurance appropriate to its obligations under this Agreement, including as applicable general commercial liability, errors and omissions, employer liability, and worker's compensation insurance as required by applicable law.

11.3 You are permitted to state publicly that you are a customer of the Services. We may include your name or brand features in a list of our customers, online or in promotional materials. We may also verbally reference you as a customer of the Services. Neither party needs approval if it is repeating a public statement that is substantially similar to a previously-approved public statement. A party may revoke the other party's rights under this clause 11.3 with written notice to the other party and a reasonable period to stop the use.

11.4 Neither party may assign any part of this Agreement without the written consent of the other, which shall not be unreasonably withheld or delayed, except to a Affiliate where (a) the assignee has agreed in writing to be bound by the terms of this Agreement, and (b) the assigning party has notified the other party of the assignment. Any other attempt to assign is void.

11.5 Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.

11.6 This Agreement does not create any agency, partnership or joint venture between the parties.

11.7 No amendment or variation of the Order or these Terms of Service will be effective unless it is in writing and signed by each party, provided that we may update these Terms of Service to be effective for this Agreement by notification to you so long as your rights under this Agreement are not materially and adversely affected. The terms located at a URL referenced in this Agreement are incorporated by reference into the Agreement. After the Effective Date, we may provide an updated URL in place of any URL in this Agreement.

11.8 Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.

11.9 Each Order and these Terms of Service constitute the sole and entire understanding with respect to the subject matter hereof and supersede all prior discussions, proposals, representations and understandings, written or oral.

11.10 This Agreement does not confer any benefits on any third party unless it expressly states that it does.

11.11 All claims arising out of or relating to this Agreement or the services will be governed by the laws of Victoria, Australia, excluding that jurisdictions' conflict of laws rules, and will be litigated exclusively in the Victorian courts.

11.12 Orders may be executed in counterparts including facsimile, PDF and other electronic copies, each of which will be deemed an original and together will constitute the same instrument.

12. Definitions

12.1 Terms defined in an Order have the same meaning in these Terms of Service.

12.2 In this Agreement unless the context otherwise requires:

“**Account**” has the meaning given in clause 1.5.

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

“**Control**” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Agreement**” has the meaning given in the introduction to these Terms of Service.

“**Claim**” means any third party's claim, demand, suit or proceedings.

“**Confidential Information**” means information that one party (or a Affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered

confidential information. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient. Subject to the preceding sentence, as between you and us, Customer Data is your Confidential Information.

“**Customer Data**” means data, information, materials and any other content provided to us by you or your End Users (or at your or their direction) in connection with, or by means of, the Services.

“**Documentation**” means the documentation, usage guides and policies, as updated from time to time, which we have provided to you or are accessible by login to the applicable Service.