

STREAMWISE D.I. TERMS AND CONDITIONS

These terms and conditions (**Terms**) set out the terms that govern the Licence to use the Solution (**Licence**) and are incorporated into any proposals and quotes that sets out the services we will provide to you (**Proposal**).

By signing the Proposal (electronically or otherwise), or otherwise indicating acceptance of the Proposal including by allowing us to attend a Site, conduct any Site Assessment or testing of Hardware, you agree to be bound by these Terms which form a binding contractual agreement between you or the company that you represent ("**you**", "**your**") and Streamwise Pty Ltd ABN 43 641 597 373 ("**we**", "**us**", "**our**").

You represent and warrant that you have valid authority to enter into these Terms on behalf of any entity you may represent.

Please note that the Licence will continue to renew indefinitely, and you will continue to incur Licence Fees, unless you notify us that you want to cancel the Licence in accordance with clause 10.

We may change these Terms at any time by notifying you, and your continued use of the Solution following such an update will represent an agreement by you to be bound by the Terms as amended.

In these Terms, capitalised words and phrases have the meanings given to them where they are followed by bolded brackets, or as set out in the table titled "Definitions" at clause 14.2.

1. THE SOLUTION

1.1 THE LICENCE AND THE SOLUTION

- (a) **(the Solution)** The solution includes, to the extent described on the Website and the Proposal:
- (i) the Site Assessment;
 - (ii) the Software;
 - (iii) the Reports;
 - (iv) the Hosted Services;
 - (v) the Support Services; and
 - (vi) any other services we may provide to you as set out in the Proposal or otherwise agreed with you.
- (collectively, the **Solution**)
- (b) **(Licence Package)** The functions and features available for the Solution will depend on the package (**Licence Package**) selected by you and will be set out on the Proposal.
- (c) **(commencement of Licence)** The Licence will start on the earlier of:
- (i) your activation of the Edge Device via its QR code; or
 - (ii) 30 days after your receipt of the Edge Device,
- (Licence Commencement Date)**.
- For clarity, if you do not activate the Edge Device within 30 days of receipt, the Licence will automatically commence 30 days after receipt of the Edge Device.
- (d) **(term)** The Licence will start on the Licence Commencement Date and continue for the period set out in the Proposal (**Initial Term**) at the end of which it will automatically and continuously renew for additional periods equal to the Initial Term (each a **Renewal Term**) unless cancelled by you in accordance with these Terms (**Licence Term**).
- (e) **(provide information)** You may be required to provide personal information to use the Solution. You warrant that any information you give to us is accurate, honest, correct and up to date.
- (f) **(compliance with laws)** We will provide the Solution in accordance with all applicable Laws.

1.2 THE SOFTWARE

- (a) During the Licence Term, we grant to you a non-exclusive, non-transferable licence to use the Software for the Number of Solution Uses. If the Website or Proposal does not specify a Number of Solution Uses, the Licence to use the Software under this clause will be limited to one user.
- (b) We may from time to time in our absolute discretion release enhancements to the Software, where enhancements means any upgraded, improved, modified or new versions of the Software. Any enhancements to the Software will not limit or otherwise affect these Terms. Enhancements may cause downtime or delays from time to time, and credits will not be provided for such downtime.
- (c) Unless otherwise agreed in writing, we may not provide access, or suspend access, to any part of the Solution until you have paid the relevant instalment of Licence Fees.

1.3 THE HARDWARE

- (a) In order to use the Solution, you will be required to:
- (i) purchase the Streamwise D.I. edge device from us (**Edge Device**); and
 - (ii) use your own functioning sensors, probes, cameras and other equipment required for your Solution (**Hardware**).
- (b) It is your responsibility to make sure that any Hardware you use is working properly and functioning as intended.
- (c) You may purchase the Hardware from us or alternatively from a third party supplier (in which case the terms of the third party supplier will apply). By purchasing the Edge Device and, if you choose to, the Hardware from us (**Order**), the following terms will apply:
- (i) Your Order must be paid in advance and is non-refundable for change of mind.
 - (ii) Once we confirm receipt of payment of your Order, your Order is binding and cannot be changed by you.
 - (iii) We may charge you delivery costs which will be advised to you prior to placing your Order.
 - (iv) We will endeavour to ensure that the Hardware provided will be substantially the same as agreed with you in writing prior to placing your Order.
 - (v) We reserve the right to charge you a storage fee (at a rate to be determined us in our discretion) on Hardware not delivered within 7 days of us notifying you of its availability to be delivered.
- (d) We will provide you with the required specifications for the Hardware to work with the Software. It is your responsibility however to ensure that the Hardware meets the required specifications, so it is compatible with the Edge Device and Software. We will not be liable for any loss or damage(s) you may suffer as a result of purchasing Hardware that is not compatible with the Edge Device and Software.

1.4 INSTALLATION AND MAINTENANCE

- (a) You acknowledge and agree that you are solely responsible for installation of the Hardware at your Site (**Installation**).
- (b) We may provide remote assistance with Installation, for example via instruction manuals and diagrams.
- (c) If you request onsite assistance with Installation, we reserve the right to charge you an installation fee (**Installation Fee**) for us or our Agents to attend the Site to assist with the Installation.
- (d) You acknowledge that the reliability of the data received from the Hardware and Edge Device depends on both being adequately cleaned, maintained and serviced throughout the Licence (**Maintain**). We accept no liability for any loss or damage(s) suffered by you as a result of inaccurate or incorrect data received from the Edge Device or Hardware due to your failure to Maintain them.

1.5 CUSTOMISATION

If you require customisation to your Solution we may charge further Licence Fees or additional fees, depending on the type of customisation you require.

1.6 HOSTED SERVICES

If the Solution includes services to host Client Data (**Hosted Services**), the following terms apply:

- (a) **(hosting location)** You acknowledge and agree that we may use storage servers to host the Software (and associated Client Data) through cloud-based services, and potentially other locations outside Australia.
- (b) **(service quality)** While we will use our best efforts to select an appropriate hosting provider, we do not guarantee that the hosting of the Solution (and associated Client Data) will be free from errors or defects or that the Software (and associated Client Data) will be accessible or available at all times.
- (c) **(security)** We will use our best efforts to ensure that Client Data is stored securely. However, we do not accept responsibility or liability for any unauthorised use, destruction, loss, damage(s) or alteration to Client Data, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.
- (d) **(backups & disaster recovery)** In the event that Client Data is lost due to a system failure (e.g. a database or webserver crash), we cannot guarantee that any backup will be available, or if available that such a backup will be free from errors or defects.

1.7 SUPPORT

If the Solution includes services to provide you with support (**Support Services**), the following terms apply:

- (a) We will take reasonable steps to provide Support Services where necessary. You must first endeavour to resolve any issues with the Software internally and we will not assist with issues that are beyond our reasonable control.
- (b) You are responsible for all internal administration and managing access, including storing back-up passwords and assisting your Personnel to access and use the Software.
- (c) We will not be liable for any loss or damage(s) suffered by you for any failure or delay in Support Services.

1.8 REPORTS

If the Solution includes services to provide you with reports (**Reports**), the following terms apply:

- (a) The Software can generate Reports based on the Solution Data.
- (b) What Reports are to be generated will be set out on the Proposal.
- (c) Reports will be automatically generated and made available on the Solution to Users you choose to have access to the Reports.

1.9 EMAIL AND SMS – ALARMS

- (a) You may choose to be notified either via e-mail or SMS (for critical) for any alarms (**Alarms**). If you do so, you consent to receiving e-mails and SMS messages, from us for Alarms. You can let us know at any time if you no longer wish to receive these Alarms.
- (b) We will not be liable for any loss or damage(s) you may suffer, including damage to any equipment (including Hardware), as a result of you not taking the appropriate measures or actions to respond to an Alarm.

1.10 THIRD PARTY SOFTWARE, TERMS & CONDITIONS

- (a) Any service that requires us to acquire goods and services supplied by a third party on your behalf (including those of our Payment Provider) may be subject to the terms and conditions of that third party (**Third Party Terms**).
- (b) You acknowledge and agree that Third Party Terms may apply to your use of the Solution and will be updated from time to time and we will not be liable for any loss or damage(s) suffered by you in connection with such Third Party Terms.
- (c) You agree to familiarise yourself with any Third Party Terms applicable to any such third party goods and services used in providing the Solution and, by instructing us to acquire the goods or services on your behalf, you will be taken to have agreed to such Third Party Terms.
- (d) Without limiting clause 1.10(c), we will take reasonable steps to notify you of Third Party Terms.

- (e) You acknowledge and agree that issues can arise with transferring data to and between software, and when integrating software with other software. We cannot guarantee the integration processes to other software will be free from errors, defects or delay. You agree that we will not be liable for the functionality of any third party goods or services, including any software.
- 1.11 AGENTS AND PARTNERS - SUBCONTRACTING
- (a) We may need to subcontract aspects of the Solution (including assistance with Installation) to approved contractors (including subcontractors), agents and partners (**Agent**).
- (b) You consent to such subcontracting of any aspect of providing the Solution, particularly the Site Assessment, and Installation (if required), to Agents.
2. LICENCE FEES AND PAYMENT
- 2.1 LICENCE FEE
- (a) You must pay fees to us in the amounts and at the times specified set out in the Proposal (**Licence Fees**).
- (b) All Licence Fees must be paid in advance and are non-refundable for change of mind.
- (c) Licence Fees may be one off or payable on a reoccurring basis.
- (d) For reoccurring Licence Fees, unless otherwise agreed in writing, the Licence Fees are due and payable monthly for the duration of the Licence Term.
- (e) We will automatically charge the Licence Fees from your chosen payment method each month or if otherwise agreed, each payment period as agreed.
- (f) You are responsible for paying your Licence Fees.
- (g) (**GST**) Unless otherwise indicated, the Licence Fees do not include GST. In relation to any GST payable for a taxable supply by us, you must pay the GST subject to us providing a tax invoice.
- (h) (**invoices**) Despite clause 2.1(e), we may issue a tax invoice for payment of Licence Fees. You must pay any invoice in accordance with the remittance method and at the times set out in any invoice.
- (i) (**card surcharges**) We reserve the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card.
- (j) (**online payment partner**) We may use third-party payment providers (**Payment Providers**) to collect payments for the Licence. The processing of payments by the Payment Provider will be, in addition to these Terms, subject to the terms, conditions and privacy policies of the Payment Provider and we are not liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting your payment.
- (k) (**missed or failed payments**) If a payment is missed or fails to be processed you will be responsible for any additional fees which our Payment Provider may charge.
- (l) (**changes in fees**) We reserve the right, from time to time, to change the Licence Fees. We will notify you in advance if we do this.
- 2.2 DISCOUNTS
- We may offer discounts. We reserve the right to revoke any discount at any time without notice.
- 2.3 DIRECT DEBIT
- If you choose to pay ongoing Licence Fees using direct debit (**DD**) you:
- (a) authorise direct debit in line with our Payment Provider's separate "DD Authorisation Form" and any "DD Terms" as applicable;
- (b) agree to enter into any DD Terms required by our Payment Provider;
- (c) authorise us to charge your credit card in advance in line with any DD Authorisation Form and any DD Terms;
- (d) must ensure that there are sufficient funds available on your credit card to allow our Payment Provider to debit the Licence Fees payable; and
- (e) acknowledge and agree that there may be additional payments required from the Payment Provider if you miss of fail to make any payment. These terms are separate and in addition to these Terms.
3. DISCLAIMER
- (a) (**no legal or regulatory compliance**) The purpose of the Solution is to assist you in providing relevant data for your Site. We are limited in only providing you with the data from the Solution (**Solution Data**). We are not legal or compliance professionals. You are responsible for ensuring that you comply with any Laws, including relevant local council, water authority or other policies, regulations and/or directions. We will not be held responsible for any non-compliance or breach of any applicable Laws, or otherwise for your non-compliance with Laws. We cannot guarantee that Solution Data is exhaustive of all the data you need for your compliance purposes. There may be many additional statutory provisions which may affect your compliance and which extend beyond the scope of what is covered in our Solution. It is your responsibility to investigate these. You fully indemnifies us, our Personnel (including Agents) from any issues of non-compliance with Laws, including relevant local council, water authority or other policies, regulations and/or directions, and non-compliance with wastewater regulations.
- (b) You are encouraged to provide metrics from your wastewater authority to add to the Solution. However, as above, we will not be liable for any non-compliance issues from your use of the Solution and you fully indemnify us, our Personnel (including Agents) from any non-compliance with your wastewater authority, or otherwise as above.
- (c) The Solution does not provide wastewater compliance or other regulatory approvals and is not a guarantee of compliance with any relevant Laws, or prevention of enforcement action from the relevant authorities. You may need to obtain independent legal or other professional advice. Relevant authorities may have statutory powers beyond what is covered in our Solution to require you to undertake certain tasks, submit certain information or documentation or restrict and contain your wastewater.
- (d) (**Data**) The Solution Data that we receive from the Edge Device and the Hardware is complemented by an understanding of how your Site is managed operationally. We depend on you to provide us with adequate and appropriate information. We cannot guarantee you will receive adequate data.
- (e) The scope of the Solution are those areas of the Site set out in the Proposal (subject to any limitations set out in clause 3(f), or otherwise discussed with you) and those tests and sampling specifically sought or agreed by the you to be carried out, as set out in the Proposal or otherwise agreed.
- (f) No liability shall be accepted on account of the failure of the Solution to address any issues not sought by you, or for any area at the subject Site to which access for the Solution is or was denied or is/was unable to be easily accessed, and only records the observations and conclusions we have made based on your request. We will not accept responsibility for any test result relating to an area which any equipment or testing equipment (including if relevant, the Edge Device or Hardware) could not access without the removal of any structure, fittings or fixtures.
- (g) We will not be liable for any loss, damage(s), cost or expense, whatsoever, suffered or incurred by any person other than you in connection with the use of the Solution (including the Solution Data) by that person for any purpose or in any way, including the use of any Reports and Solution Data to the extent permissible by law. The only person to whom we may be liable and to whom losses arising in contract or tort sustained may be payable by us is you. Any third party relying on the Solution (including the Solution Data) whether in whole or part does so at their own risk.
- (h) Reports (and the Solution Data the Reports are based on) are accurate as at the date and time of either: your Site Assessment; the time the data is sourced from the Edge Device or Hardware; and/or the time we provide you with any Report. The results of the tests and sampling undertaken represent the conditions prevailing at the time of sampling and are not necessarily representative of all the conditions to which the subject Site is subjected, and as a result, may not accurately reflect the data and conditions that may be applicable on some other day or time.
- (i) Any recommendations in any Reports are our recommendations or solutions of what may be done by you to alleviate matters of concern raised by the Report based on the Solution Data and our knowledge, and experience at the time of preparing the Report, and are not to be taken as being exhaustive of all possible recommendations or solutions.
4. YOUR OBLIGATIONS
- 4.1 PROVIDE INFORMATION AND LIAISON
- (a) You must provide us, our Personnel (including our Agents), with all documentation, information and assistance reasonably required for us to provide the Solution.
- (b) You agree to liaise with us, our Personnel (including our Agents) as we reasonably request for the purpose of enabling us to provide the Solution and to provide any additional information as requested.
- 4.2 SITE ASSESSMENT
- (a) We may request to visit your wastewater premises on your site (**Site**) before the start of the Licence or during the Licence (**Site Assessment**). If you do not allow us to access your Site we may not be able to provide you with the Solution, or we may need to limit certain parts of the Solution, and any associated Solution Data.
- (b) You warrant that you have read and understood any instructional materials provided by us before the Site Assessment.
- (c) Prior to the Site Assessment, you must obtain any authority or approval so we can undertake the Site Assessment at the Site.
- (d) At the Site Assessment, you must:
- (i) be at the Site, and if reasonably requested by us, remain there for the entirety of the Site Assessment; and
- (ii) provide access to all our Personnel (including Agents) and equipment as required to carry out the Site Assessment.
- (e) You acknowledge and agree that it is your responsibility to show us the entirety of the relevant Site, and we are not liable for any loss or damage(s) suffered (including inaccuracies in or malperformance of the Solution caused by your failure to comply with this clause).
- (f) Once we have conducted our Site Assessment, we will verify if your Site is suitable for the Solution. In some circumstances, we may advise that your Site is not suitable for the Solution. In these cases, you will not be charged any fees. We may also require a more complex Site Assessment or full survey of your Site at a later date.
- (g) At the end of the Site Assessment, we will recommend what Solution we think would work best for you.
- 4.3 SAFE ACCESS TO SITE
- (a) You warrant that the Site is safe for us to enter and undertake the Site Assessment, including, where applicable, complying with any relevant occupational health and safety legislation requirements.
- (b) You warrant that you will provide us (including our Agents) with adequate insurance, including public liability insurance, to conduct the Site Assessment safely and assume full liability for any accidents, injuries or issues that occur during the Site Assessment.
- (c) You warrant that you will provide an adequate safe environment for us to conduct the Site Assessment and the Solution where applicable.
- (d) You must provide us, and our Personnel (including Agents), with any required site inductions (including safety inductions) in order for us to safely conduct the Site Assessment.
- (e) You warrant that you will let us know about and/or provide our Personnel (including Agents) with any required personal protective equipment to attend the Site.
- 4.4 USER COMPLIANCE
- (a) **You must, and must ensure that all Users, comply with these Terms at all times.** You acknowledge and agree that we will have no liability in respect of any damage(s), loss or expense(s) which arises in connection with your, your Personnel's, or any User's, breach of these Terms, and you indemnify us in respect of any such damage(s), loss or expense(s).
- (b) You must not, and must not encourage or permit any User, Personnel or any third party to:
- (i) share Solution account information with any other person and that any use of your account by any other person is strictly prohibited. You must immediately notify us of any unauthorised use of your account, password or email, or any other breach or potential breach of the Solution's security;
- (ii) use the Solution for any purpose other than for the purpose for which it was designed;
- (iii) upload sensitive information or commercial secrets using the Software;

- (iv) upload any inappropriate, offensive, illicit, illegal, pornographic, sexist, homophobic or racist material using the Software;
 - (v) upload any material that is owned or copyrighted by a third party;
 - (vi) make copies of the Software or reproduce the Software;
 - (vii) adapt, modify or tamper in any way with the Software;
 - (viii) remove or alter any copyright, trade mark or other notice on or forming part of the Software;
 - (ix) create derivative works from or translate the Software;
 - (x) publish or otherwise communicate the Software to the public, including by making it available online or sharing it with third parties;
 - (xi) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Software to any third party;
 - (xii) decompile or reverse engineer the Software or any part of it, or otherwise attempt to derive its source code;
 - (xiii) attempt to circumvent any technological protection mechanism or other security feature of the Software;
 - (xiv) permit any use of the Solution in addition to the Number of Solution Uses; or
 - (xv) act in any way that may harm our reputation or that of associated or interested parties or do anything at all contrary to the interests of us or the Solution;
- (c) If you become aware of misuse of the Solution by any person, any errors in the material on the Solution or any difficulty in accessing or using the Solution, please contact us immediately.
- 5. INTELLECTUAL PROPERTY**
- (a) **(our ownership)** We retain ownership of all materials provided to you via the Solution (including data, text, graphics, logos, design, icons, images, sound and video recordings, pricing, downloads and software) **(Solution Content)** and reserve all rights in any Intellectual Property Rights owned or licensed by us not expressly granted to you.
 - (b) **(Licence to you)** You are granted a licence to the Solution Content, for the Number of Solution Uses, and you may make a temporary electronic copy of all or part of any materials provided to you for the sole purpose of viewing them and using them for the purposes of the Solution. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish those materials or any Solution Content without prior written consent from us or as otherwise permitted by law.
- 6. CLIENT DATA**
- Our Rights and Obligations**
- (a) You grant to us (and our Personnel/Agents) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use Client Data to the extent reasonably required to provide the Solution.
 - (b) We will:
 - (i) establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised use, destruction, loss or alteration of Client Data;
 - (ii) not make any undocumented, unreported or authorised configuration changes to our systems or to the information security controls that secure Client Data, if those changes would materially decrease the protections afforded to Client Data; and
 - (iii) notify and keep you notified at all times of our current safety and security procedures and safeguards that are made from time to time.
 - (c) We reserve the right to remove any Client Data.
- Your Obligations and Grant of Licence to Us**
- (d) You are responsible for ensuring that you share Client Data only with intended recipients.
- 7. CONFIDENTIALITY AND PRIVACY**
- 7.1 CONFIDENTIAL INFORMATION**
- (a) Except as contemplated by these Terms, a party must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose to any person any Confidential Information disclosed to it by the other party without the disclosing party's prior written consent.
 - (b) Each party must promptly notify the other party if it learns of any potential, actual or suspected loss, misappropriation or unauthorised access to, or disclosure or use of Confidential Information or other compromise of the security, confidentiality, or integrity of Confidential Information **(Security Breaches)**.
 - (c) The notifying party will investigate each potential, actual or suspected Security Breach and assist the other party in connection with any related investigation.
- 7.2 COLLECTION NOTICE AND PRIVACY**
- (a) We collect personal information about you (and your Personnel if applicable) in order to provide you with the Solution, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our "Privacy Policy".
 - (b) Our Privacy Policy contains more information about how we use, disclose and store your information and details how you can access and correct your personal information.
 - (c) By using the Solution, you agree to be bound by the our Privacy Policy, which is found on the Website.
- 8. LIABILITY**
- 8.1 WARRANTIES AND LIMITATIONS**
- (a) **(warranties)** We warrant that:
 - (i) during the Licence Term, the Software will perform substantially as described on the Website and the Proposal;
 - (ii) during the Licence Term, the Solution will be provided as described to you in, and subject to, these Terms; and
 - (iii) to our knowledge, the use of the Software in accordance with these Terms will not infringe the Intellectual Property Rights of any third party.
 - (b) **(Errors)** We will correct any errors, bugs or defects in the Software which arise during the Licence Term and which are notified to us by you unless the errors, bugs or defects:
 - (i) result from the interaction of the Software with any other solution or any computer hardware, software or services not approved in writing by us;
 - (ii) result from any misuse of the Software; or
 - (iii) result from the use of the Software by you other than in accordance with these Terms.
- (c) **(Service Limitations)** The Solution is made available to you strictly on an 'as is' basis. Without limitation, you acknowledge and agree that we cannot guarantee that:
- (i) the Solution will be free from errors or defects;
 - (ii) the Solution will be accessible at all times;
 - (iii) messages sent through the Solution will be delivered promptly, or delivered at all;
 - (iv) information you receive or supply through the Solution will be secure or confidential; or
 - (v) any information provided through the Solution is accurate or true.
- (d) **(Exclusion)** To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in these Terms are excluded.
- (e) **(Consumer law)** Nothing in these Terms is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) **(ACL)**. Under the ACL, you may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services we provide.
- 8.2 LIMITATION OF LIABILITY**
- To the maximum extent permitted by law, our liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims be only for economic loss, or for personal injury or other damage(s)) arising under or in connection with these Terms, the Solution or a Licence:
- (a) is totally excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits and loss of goodwill (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)); and
 - (b) is limited, insofar as concerns other liability, to the total money paid to us under these Terms as at the date the event giving rise to the relevant liability occurs (or, where there are multiple events, the date of the first such event).
- 8.3 INDEMNITY**
- You indemnify us from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise in connection with:
- (a) any breach of these Terms by you, your Personnel or a User;
 - (b) any non-compliance with any Laws, including wastewater Laws, relevant local council, water authority or other policies, regulations and/or directions; and any fines, damages or losses you suffer as a result of non-compliance; or
 - (c) any act or omission of you, a User or your Personnel.
- 9. UPGRADES, DOWNGRADES AND CANCELLATION OF THE LICENCE**
- 9.1 UPGRADE AND DOWNGRADES**
- (a) You may notify us that you would like to upgrade the Licence Package at any time. If you do, we will:
 - (i) take reasonable steps to promptly provide you with access to the new Licence Package; and
 - (ii) upon providing such access, apply the new, relevant Licence Fees on a pro rata basis, and from the next billing cycle you will be charged at the new Licence Fee.
 - (b) You may downgrade the Licence Package with 30 days notice before the end of the Initial Term or any Renewal Term.
 - (c) For the avoidance of doubt, if you choose to downgrade the Licence, the new Licence Fees will only start from the beginning of the new term.
 - (d) These Terms will be taken to be amended in accordance with any changes agreed in accordance with clauses 9.1(a) and 9.1(b).
 - (e) If you choose to downgrade the Licence, you acknowledge and agree that we are not liable for, and you release us for all claims arising in connection with, any loss of content, features, or capacity, including any Client Data in relation to a downgrade in the Licence.
- 10. DISPUTES AND CANCELLATION**
- 10.1 DISPUTE RESOLUTION**
- (a) The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with these Terms prior to commencing any proceedings.
 - (b) If you require resolution of a dispute, you must immediately submit full details of the dispute to us via email to feedback@streamwisedi.com.
 - (c) If we require resolution of a dispute, we must immediately submit full details of the dispute to your chief executive officer, or if you are an individual, to you, using the contact details on the Proposal.
 - (d) The parties acknowledge that compliance with this clause is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except:
 - (i) in the case of applications for urgent interlocutory relief; or
 - (ii) a breach by another party of this clause.
- 10.2 CANCELLATION BY US**
- (a) We may cancel the Licence in whole or in part immediately by written notice to you if:
 - (i) you are in breach of any term of these Terms; or
 - (ii) you become subject to any form of insolvency or bankruptcy administration.
 - (b) Upon cancellation of the Licence by us, the Licence Fees already paid will be non-refundable, and you must promptly pay:
 - (i) the remainder of the Licence Fees applicable for the Licence Term as if the Licence had not been terminated;
 - (ii) our expenses to date; and
 - (iii) any payments required by our Agents to discontinue their work.

- 10.3 CANCELLATION BY CLIENT
- (a) You may cancel the Licence by giving us at least 30 days' notice before the end of the Initial Term or any Renewal Term.
- (b) You may also cancel the Licence if:
- (i) we have committed a material breach of these Terms and have failed to remedy the breach within 30 days' written notice by you; or
- (ii) we become subject to any form of insolvency or bankruptcy administration.
- (c) If you validly terminate in accordance with this clause 10.3 no further fees will be payable by you (unless later found that such termination was invalid).

- 10.4 EFFECT OF CANCELLATION
- (a) Upon cancellation of the Licence:
- (i) you must pay all unpaid Licence Fees and any other amounts payable as at the cancellation date;
- (ii) if requested, each party must return all property of the other party to that other party; and
- (iii) each party must immediately return to each other party, or (if requested by that party) destroy, any material in its possession or control containing Confidential Information of the other party.
- (b) **(cancellation and your data)** Upon cancellation, termination or expiry of the Licence, you will no longer have access to the Solution and we may delete any data and material associated with your Software, including Client Data, within 14 days after the Licence has ended. You may not be able to recover any of your data after 14 days after cancellation, termination or expiry of the Licence, so we recommend you back up or download anything important to you. We won't be responsible to you, or any User, for, and expressly disclaim any liability for, any cost, loss, damages or expenses arising out the cancellation, termination or expiry of the Licence and any loss of data.

11. NOTICES

- (a) A notice or other communication to a party under these Terms must be:
- (i) in writing and in English; and
- (ii) delivered via email to the other party, to the email address specified in the Proposal, or if no email address is specified in the Proposal, then the email address most regularly used by the parties to correspond regarding the subject matter of these Terms as at the date of these Terms (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
- (i) 24 hours after the email was sent; or
- (ii) when replied to by the other party, whichever is earlier.

12. FORCE MAJEURE

Under no circumstances will we be held liable for any delay or failure in performance resulting directly or indirectly from acts of nature, forces, or causes beyond its reasonable control, including, without limitation, internet failures, computer equipment failures, telecommunication equipment failures, other equipment failures, electrical power failures, strikes, labour disputes, riots, insurrections, civil disturbances, shortages of labour or materials, fires, floods, storms, explosions, pandemics (including COVID-19), acts of god, war, governmental actions, orders of domestic or foreign courts or tribunals, non-performance of third parties, or loss of or fluctuations in heat, light, or air conditioning.

13. GENERAL

13.1 GOVERNING LAW AND JURISDICTION

These Terms is governed by the law applying in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with these Terms. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

13.2 WAIVER

No party to these Terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

13.3 SEVERANCE

Any term of these Terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of these Terms is not limited or otherwise affected.

13.4 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

13.5 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party.

13.6 ENTIRE AGREEMENT

These Terms embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of these Terms.

13.7 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;

- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(these Terms)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of these Terms, and a reference to these Terms includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including these Terms) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word "includes" and similar words in any form is not a word of limitation; and
- (j) **(adverse interpretation)** no provision of these Terms will be interpreted adversely to a party because that party was responsible for the preparation of these Terms or that provision.

14. SPECIAL CONDITIONS AND DEFINITIONS

14.1 SPECIAL CONDITIONS

In the event of any inconsistency between these Terms and any Proposal, the clauses of these Terms will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms described as such in the Proposal) will prevail over these Terms to the extent of any inconsistency.

14.2 DEFINITIONS

Term	Definition
Agent	Has the meaning given in clause 1.11.
Client Data	files, data, materials or any other information, which is uploaded to the Software by you or a User, including any Intellectual Property Rights attaching to those materials.
Confidential Information	means information of or provided by a party that is by its nature is confidential information, is designated by that party as confidential, or that the other party knows or ought to know is confidential, but does not include information, which is or becomes, without a breach of confidentiality, public knowledge.
Edge Device	has the meaning given in clause 1.3(a)(i).
Hardware	has the meaning given in clause 1.3.
Hosted Services	has the meaning given in clause 1.6.
Initial Term	has the meaning given in clause 1.1(d).
Intellectual Property Rights	means any and all present and future intellectual and industrial property rights throughout the world, including copyright, trade marks, designs, patents or other proprietary rights, Confidential Information and the right to have information kept confidential, or any rights to registration of such rights whether created before or after the date of these Terms, whether registered or unregistered.
Laws	means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time and includes any industry codes of conduct, local council and water authority directions, regulations or ordinances.
Licence	has meaning given in the first paragraph of these Terms.
Licence Fees	has the meaning given in clause 2.1(a).
Licence Term	has the meaning given in clause 1.1(d). For clarity, the Licence Term includes the Initial Term.
Licence Package	has the meaning given in the first paragraph of these Terms.
Number of Solution Uses	means the number of Uses that you may make of the Solution, in accordance with the Licence.
Payment Provider	has the meaning given in clause 2.1(j).
Personnel	means, in respect of a party, its officers, employees, contractors (including subcontractors) and agents.
Renewal Term	has the meaning given in clause 1.1(d).
Report	has the meaning given in clause 1.8.
Site	has the meaning given in clause 4.2(a).
Software	means our Streamwise D.I. software as described on the Website and the Proposal.
Software Content	means all materials owned or licensed by us in connection with the Software and any Intellectual Property Rights attaching to those materials.
Solution	has the meaning given in clause 1.1(a).
Solution Data	has the meaning given in clause 3(a).
Support Services	has the meaning given in clause 1.7.
User	means the end users of the Solution you have given valid access.
Website	means the website at www.streamwisedi.com and any other website operated by us in connection with the Solution.