

Terms and conditions governing provision of services

Conversagent™ Services and other services we provide are subject to the following terms and conditions.

1 Definitions and Interpretation

Unless the context otherwise requires the following words have the following meaning:-

- 1.1 **"Content"** means the combination of Your Content, Our Content and any Third Party Content incorporated in the Platform;
- 1.2 **"Contract Duration"** means the term of our engagement specified on the Product Website;
- 1.3 **"Fees"** means the fees set out in the Product Website;
- 1.4 **"Our Content"** means any scripts and other content that we make available on the Platform for access and use by your Users but does not include Third Party Content;
- 1.5 **"Password"** means the code or codes required for you or a User to obtain access to or use the Platform;
- 1.6 **"Payment Terms"** means the terms for payment of Fees set out on the Product Website;
- 1.7 **"Platform"** means the instance(s) of the Conversagent™ platform;
- 1.8 **"Product Website"** means <https://clevertar.com/> as updated from time to time.;
- 1.9 **"Restrictions"** means any limitations on the types or extent of use specified on the Product Website or these terms and conditions;
- 1.10 **"Services"** means the provision of the Platform and other services identified on the Product Website and any other services which we agree to provide;
- 1.11 **"Services Description"** means the description of services set out in the Product Website (if any) for the trial and subscription to any of the Services;
- 1.12 **"Submitted Data"** means any data submitted by you or by Users in the course of the use of the Services;
- 1.13 **"Third Party Content"** means any third party licensed scripts and other content that is made available on the Platform for access and use by your Users,
- 1.14 **"User"** means any of your staff, contractors, customers or anyone else that you have validly authorised to access or use the Services;
- 1.15 **"we", "us" or "our"** means Clevertar Services Pty Ltd (ACN 630 423 380) and its related corporations and their respective officers, employees, agents and contractors including (without limitation) site hosts, operators, developers and contributors of Our Content;
- 1.16 **"you" or "your"** means the customer(s) identified as the subscriber to the Services;
- 1.17 **"Your Content"** means any scripts or other content provided by you which is incorporated in our Platform and includes any Submitted Data: and
- 1.18 **"Your Responsibilities"** means your responsibilities as specified on the Product Website and these terms and conditions.

2 Payment for Services

- 2.1 You must pay us the Fees in accordance with the provisions of the Payment Terms.
- 2.2 If a genuine dispute arises regarding the amount of a Fee, you may suspend payment of the disputed amount pending resolution of the dispute but you must pay all other amounts in accordance with the Payment Terms.
- 2.3 If you fail to pay any amount to us by the due date, then (without limiting any other remedies) we may temporarily or permanently suspend the provision of all or some Services.

- 2.4 Any periodic fees specified on the Product Website may be increased by us from time to time by written notice.

3 Access to and use of Services

- 3.1 Subject to your payment of Fees, you and Users are authorised to access and use the Services for the Contract Duration. In order to access the Services, a User will need to have a supported version of a web browser.
- 3.2 You must ensure that your access to and use of the Services complies at all times with any Restrictions.
- 3.3 You must not resell our Services and you must not permit third parties (apart from Users) to access or use our Services, except to the extent expressly authorised by us in writing.
- 3.4 We will take all reasonable measures to prevent unauthorised access and use of the Services but you acknowledge that notwithstanding these measures unauthorised access and use of the Services may occur.
- 3.5 We do not monitor Your Content or act as a moderator and we accept no responsibility for Your Content including any Submitted Data. You must immediately remove any of Your Content if we notify you that we consider it objectionable and you acknowledge that if you fail to do so then (without limiting our other remedies) we may remove the relevant parts of Your Content or may suspend access to and use of the relevant Services.

4 Provision of Services

- 4.1 We will provide the Services to you in accordance with the Services Description.
- 4.2 The Services will be provided to you for the Contract Duration unless our engagement is terminated at some earlier time in accordance with these terms and conditions
- 4.3 The Services are provided to you on a non-exclusive and non-transferable basis.
- 4.4 The Services will be provided in accordance with all applicable laws, due care and skill and with sound and accepted professional practice existing at the date of your acceptance of these terms and conditions .
- 4.5 Our provision of the Services is subject to you:
- 4.5.1 complying with Your Responsibilities as and when required by us; and
 - 4.5.2 paying Fees to us in accordance with the Payment Terms.
- 4.6 The Services may be provided by us or by a suitable contractor appointed by us.
- 4.7 We will endeavour to provide the Services without unreasonable delay but we will not be liable for any failure or delay in the provision of the Services which is caused or contributed to by you or your contractors or an event outside our direct reasonable control.
- 4.8 You acknowledge that our provision of Services and your access to and use of the Services will be dependent in part on the adequacy and reliability of your infrastructure and on various third parties over whom we have no control (such as telecommunications service providers and ISP's). Accordingly, we do not provide any warranty or assurance regarding the time for completion by us of any Services or the reliability, availability or quality of Services.
- 4.9 You acknowledge that from time to time the Services will be unavailable due to scheduled or unscheduled maintenance and that we will have no liability for such unavailability. We will use reasonable endeavours to program scheduled maintenance so as to limit its impact on your operations.
- 4.10 Your Content will be stored in the cloud within Australia or in the USA using suitable third party cloud service providers who will apply industry standard security processes to protect Your Content. For so long as this agreement continues and Fees are paid when due, Users will be able to access and use Your Content.
- 4.11 We may modify the functionality and other characteristics of the software used to provide the Services from time to time and this may have consequential impacts on the Services provided to you.

5 Intellectual Property Rights, Data, Confidentiality & Privacy

- 5.1 We retain all copyright and other intellectual property rights in our software, Our Content, know how and the materials we apply or produce in delivering the Services including any deliverables and we retain or obtain all intellectual property rights with respect to any copies, reproductions, adaptations, additions to, enhancements, alterations, modifications or translations made of that software, know how or those materials. The relevant third party will retain all copyright and other intellectual property rights in any Third Party Content.
- 5.2 We warrant that our provision of the Services will not infringe the intellectual property rights of any third party and we agree to indemnify you against any liability you may reasonably sustain if our provision of the Services infringes the intellectual property rights of any third party. If any aspect of the Services infringes a third party's intellectual property rights, we will arrange a non-infringing work-around, obtain a licence at our cost permitting your use of the relevant Services or suspend the availability of such Services.
- 5.3 You will give us notice of any infringement of our copyright or any other right of ours that comes to your attention.
- 5.4 You authorise us (and our contractors) to use any of Your Content or other material you provide to us to deliver the Services and you warrant that our use of any of Your Content or other material provided by you will not infringe the intellectual property rights of any third party. You will indemnify us and our contractors against any liability we or they may reasonably sustain if Your Content or other material you provide infringes the intellectual property rights of any third party.
- 5.5 You will retain ownership of, and all intellectual property rights in, Your Content. You authorise us to use and reproduce any of Your Content to analyse how we may improve the Services, to manage and deliver the Services to you and for any other reasonable purposes.
- 5.6 Each party must comply with the Australian Privacy Principles (or any future replacement of these privacy requirements) and privacy laws with respect to any personal information they receive or obtain in connection with the Services including, without limitation, personal information obtained from Users or third parties. Each party will promptly notify the other if a notifiable data breach occurs or it becomes aware of a possible breach of privacy law and the parties will co-operate and determine an agreed approach to the investigation, management and reporting of any notifiable data breach in compliance with all applicable laws
- 5.7 The provisions of this clause 5 shall survive and continue to binding upon you and us, notwithstanding termination.

6 Warranties & liability

- 6.1 If any warranty or condition is implied by law which may not be excluded or restricted (a " non-excludable term") our liability for any breach of a non-excludable term is limited solely to the resupply of the relevant Service or payment to you of the cost of having the Service provided again (at our option).
- 6.2 Apart from the express warranties contained in these terms and conditions and subject to any non-excludable terms, all warranties with respect to the Services are hereby expressly excluded. We accept no liability for the provision of the Services, whether arising by reference to the provisions of these terms and conditions, implied terms, tort or otherwise howsoever. If circumstances arise where you are entitled to claim damages from us notwithstanding the provisions of these terms and conditions, our liability to you for the aggregate of all such claims (regardless of the basis on which you are entitled to claim from us including, without limitation, negligence) is limited to the lesser of:
- 6.2.1 the amount of any actual loss or damage which you sustain;
- 6.2.2 the higher of (i) two times the Fees received by us from you during the preceding 12 months; and (ii) any amount actually received by us from our insurers with respect to our liability to compensate your loss or damage.

- 6.3 The liability cap in clause 7.2 will not apply with respect to our liability to you for death, personal injury, damage to tangible property, infringement of third party intellectual property rights or breach of confidentiality obligations.
- 6.4 You acknowledge that you have relied upon your own skill and judgement in determining the appropriateness of the Services for your own particular purposes and you have not relied on any statement or representation made by us or on our behalf prior to the date of entry into this agreement.
- 6.5 In no event will a party be liable for any indirect or consequential loss or damage, loss of profits, loss of savings or loss of revenue even if it has been advised of the possibility of such damages.

7 Default

- 7.1 If a party (the "Defaulting Party") commits any default with respect to the due observance or performance of any of its obligations under these terms and conditions, then the other party (the "Innocent Party") may, without prejudice to any other rights the Innocent Party may have, give written notice to the Defaulting Party identifying the default and requiring that the default be remedied (a "Default Notice").
- 7.2 If the Defaulting Party fails to remedy a default within 14 days after receipt of a Default Notice or, where the default is not capable of being remedied within 14 days and the Defaulting Party fails within that period to commence to remedy the default or fails to diligently proceed to remedy the default, then the Innocent Party may terminate the arrangements between you and us by written notice to the Defaulting Party.
- 7.3 If termination occurs, then (without limiting any other remedies) you must pay us any amounts that are due plus an amount equal to the value of any work completed or partially completed by us up to the date that the termination takes effect and which has not yet been invoiced (including any third party expenses incurred by us in connection with the Services). No refund of any pre-payment will be made if termination occurs.

8 Additional terms

- 8.1 You agree not to assign or transfer or otherwise deal in any way with any rights we grant or obligations you undertake without our express written permission, which permission may be granted or granted subject to conditions or refused in our absolute discretion.
- 8.2 No right will be waived by a party except by express written notice signed by that party.
- 8.3 If any provision of these terms and conditions is found to be invalid, unenforceable or illegal, then that provision will be deemed to be deleted to the extent necessary to remove the invalid, unenforceable or illegal portion and the balance of these terms and conditions will remain binding.
- 8.4 If any dispute arises between you and us which can not be resolved by negotiation within 14 days of a party sending the other party written notice containing details of the dispute, either party may commence proceedings, provided that this provision will not apply where you or we reasonably conclude that injunctive or other urgent proceedings are necessary to protect its position.
- 8.5 Notices or other formal communications may be given by hand delivery, by mail or by email transmission and will be deemed to be received:
- 8.5.1 in the case of hand delivery, upon delivery;
 - 8.5.2 in the case of mail, three (3) business days after the date of posting the article; or
 - 8.5.3 in the case of email, upon completion of transmission (except where transmission is completed after 5:00 pm on a business day, in which case receipt is deemed to occur at 9:00 am on the next business day).

- 8.6 The Product Website contains the complete and exclusive statement of the agreement between you and us and it supersedes all proposals or prior agreements, oral or written, and all other communications relating to the subject matter of the Proposal.
- 8.7 Due to the ongoing nature of these arrangements, we may vary any aspect of the arrangements (including any of these terms and conditions and the provisions of the proposal) by updating the Product Website). If you do not wish to be bound by the variation(s), you may terminate the agreement.
- 8.8 If any provision of these terms is unlawful, void or for any reason unenforceable, then that provision shall be deemed severed from these terms and shall not affect the validity and enforceability of any remaining provisions.
- 8.9 The arrangements between you and us are made in accordance with, and are subject to, the laws of South Australia. You and we irrevocably agree that all legal proceedings arising in connection with these arrangements must be prosecuted in the Courts of South Australia.