

## SupportAbility

### TERMS OF SERVICE

(version: May 2020)

These Terms of Service cover the use of the client management system (**SupportAbility Service**) owned by SupportAbility Software Pty Ltd ABN 72 113 901 830 (**SupportAbility**).

By using the SupportAbility Service, You agree to be bound by the following Terms of Service. SupportAbility may update these Terms of Service from time to time without notice. Your continued use of the SupportAbility Service after any changes have been made to these Terms of Service signals Your acceptance of those changes.

You may review the most current version of these Terms of Service at any time through the SupportAbility website.

#### 1 DEFINITIONS

**Authorised Representatives** means the individuals (with a maximum of two (2)) nominated by You from time to time as being the representatives that are authorised to liaise with SupportAbility on Your behalf and which are acceptable to SupportAbility.

**Business Day** means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Melbourne, Victoria.

**Confidential Information** means all trade secrets and all financial, research and development, marketing and technical information, ideas, practices and policies, concepts, know-how, technology, processes and knowledge which is confidential or of a sensitive nature to SupportAbility and includes not only written information but also information transferred orally, visually, electronically or by other means and includes copies, but does not include any information that is:

- (a) in the public domain, unless it came into the public domain by a breach of confidentiality;
- (b) already lawfully known by the other party at the time of disclosure;
- (c) created or developed independently by the other party without any knowledge of the party's information; or
- (d) obtained lawfully from a third party without any breach of confidentiality.

**Data** means all of Your information, data, digitised documents, materials and content which is from time to time posted or uploaded on the SupportAbility Service in accordance with these Terms of Service.

**Derivative Work** means a work that is based upon or incorporates the SupportAbility Service, in whole or in part, including without limitation, a revision, modification, translation, abridgement, condensation, expansion, compilation or any other form in which the SupportAbility Service may be recast, transformed, included or adapted, and if prepared without first obtaining prior written authorisation from SupportAbility, constitutes an infringement of the IPR of SupportAbility.

**Fees** means any and all applicable fees payable by You to SupportAbility in consideration for access to the SupportAbility Service and includes, without limitation, the Initial Setup Fee, the Subscription Fee, and any Secondary Subscription Fees.

**First Tier Support** means the initial support level that is responsible for receiving and responding to issues raised by Your users of the SupportAbility Service.

**Further Subscription Period** means a further period of Subscription to the SupportAbility Service agreed in writing and beginning on a day agreed between the parties after the expiry of the Subscription Period.

**GST** has the same meaning as defined in the GST Law and also includes penalties and interest.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced from time to time.

**GST Law** has the same meaning as defined in the GST Act.

**Initial Setup Fee** means the one-time subscription establishment fee, as set out in SupportAbility's website, to be paid at the commencement of the Initial Term which covers the provisioning of Your new SupportAbility Service installation.

**Initial Subscription Date** means the date on which SupportAbility first provided You with access to the SupportAbility Service, as set out in Item 2 of the Schedule.

**Initial Subscription Period** means the first period where you were given access to the SupportAbility Service beginning on the Initial Subscription Date.

**Intellectual Property Rights** or **IPR** means any copyright, trade mark (whether registered or unregistered), design, patent, semiconductor or circuit layout rights, trade, business or company names, other proprietary rights and rights to the registration of any of the foregoing existing anywhere in the world and existing before, on or after the commencement of these Terms of Service.

**Knowledge Base** means <http://help.supportability.com.au/> and includes all pages within it. The Knowledge Base provides You with articles on how to use the SupportAbility Service, how the SupportAbility Service works, and suggested strategies for success.

**Law** means all relevant Australian state, territory and Commonwealth laws and regulations.

**Learning Centre** means the learning centre feature built into the SupportAbility Service that provides video training content on how to use the SupportAbility Service, how the SupportAbility Service works, and suggested strategies for success.

**License Seat** represents a single individual's requirement to access the SupportAbility Service directly with an active user account and/or be represented as a staff member within the SupportAbility Service for the purposes of managing Human Resources records and/or rostering.

**Notice of Dispute** means a notice in writing given by one party to the other in accordance with clause 19.

**Paid Support Time** refers to services for support, consultancy or development services that fall outside the scope of these Terms of Service, and require payment. The pricing of which is available on the Knowledge Base and is subject to change from time to time without notice.

**Payment Terms** means the method and frequency of payment of the Fees set out in Item 4 of the Schedule.

**Privacy Laws** means the *Privacy Act 1988* (Cth), the *Health Records Act 2001* (Vic) and any other state, territory or federal law regulating the handling of personal information.

**Secondary Subscription Fee** means the fee(s) (as amended from time to time) for any additional subscription services required by You that are not included as part of the standard Subscription Fee.

**Second Tier Support** means a more in-depth technical support level than First Tier and should only include support queries that are beyond the knowledge of First Tier Support and/or Your information technology services provider. All Second Tier support enquiries must be initiated by one of the two nominated Authorised Representatives by sending an email to [support@supportability.com.au](mailto:support@supportability.com.au).

**Schedule** means a schedule to these Terms of Service.

**Subscription** means Your entitlement to access and use the SupportAbility Service for the Term upon payment of the Subscription Fee.

**Subscription Fee** means the fee (as amended from time to time) set out in SupportAbility's website and payable in accordance with clause 5 in consideration for access to and use of the SupportAbility Service.

**Support Contract** means an additional contract between You and SupportAbility, as set out in clause 9.

**SupportAbility Service** means the service described in the following:  
[http://www.supportability.com.au/supportability\\_features](http://www.supportability.com.au/supportability_features).

**Subscription Period** means the period specified in Item 3 of the Schedule where SupportAbility will provide You with access to the SupportAbility Service in accordance with these Terms of Service.

**Terms of Service** means the terms and conditions contained within these terms of service, including any schedules or annexures, as amended from time to time.

**You** means you as an individual, and the organisation you represent that subscribes to the SupportAbility Service as set out in Item 1 of the Schedule.

## 2 SUPPORTABILITY ORGANISATION ACCOUNT

- (a) In order to access and use the SupportAbility Service, You must create an organisational account by providing the information requested by SupportAbility.
- (b) Where You create an account on behalf of an organisation, You must provide the organisation's name and ABN (or other applicable business registration number in jurisdictions outside Australia).
- (c) You acknowledge and agree that:
  - (i) You are responsible for the activity that occurs on Your account;
  - (ii) You and Your staff must take all necessary steps to protect user IDs, passwords and accounts from unauthorised access, use or disclosure; and
  - (iii) You will immediately notify us in writing if:
    - (A) the information You have provided is incorrect, inaccurate or incomplete; or

- (B) You become aware of or suspect that any user ID, password or account has been accessed or used by anyone other than the individual for whom it was created.

### 3 SUBSCRIPTION PERIOD

- (a) You are only permitted to use the SupportAbility Service for the Subscription Period, and in accordance with these Terms of Service.
- (b) At the end of the Subscription Period, if:
  - (i) SupportAbility has not ended these Terms of Service pursuant to the provisions of these Terms of Service; and
  - (ii) You have not given to SupportAbility no less than fourteen (14) days' notice of Your intention to end these Terms of Service,

these Terms of Service will remain in place until they are either terminated or extended for a Further Subscription Period.

- (c) Any Further Subscription Period will be for the period agreed in writing between the parties and will be on the same terms and conditions as SupportAbility's current Terms of Service , subject to the following:
  - (i) there will be no further Initial Setup Fee;
  - (ii) the Subscription Fees for the initial License Seats purchased will remain at the same price as the Initial Subscription Period for each Further Subscription Period, for a period of two (2) years from the Initial Subscription Date; and
  - (iii) if any Further Subscription Period extends beyond two (2) years from the Initial Subscription Date, then SupportAbility may increase any or all Fees by a maximum of 20 per cent per year by giving prior notice by email to You. SupportAbility may also elect in its discretion to not increase its price after the third year, but this will not prevent the Fees for any subsequent years increasing by 20 per cent compounding from the commencement of the fourth year.
- (d) Subject to this clause 3, all Subscription Fees and other fees as posted on the SupportAbility website may be increased to an amount as advised by SupportAbility to You on or about the date of each new Subscription Period that You accept these Terms of Service. Where this occurs, You must either:
  - (i) pay the new Subscription Fees as advised by SupportAbility within thirty (30) days of SupportAbility issuing a tax invoice for the new Subscription Fees; or
  - (ii) notify SupportAbility within fourteen (14) days of the date of SupportAbility's email that You do not wish to extend these Terms of Service for a Further Subscription Period.
- (e) If You do not notify SupportAbility in accordance with clause 3(d)(ii), and do not pay the invoice referred to in clause 3(d)(i) within fourteen (14) days of SupportAbility sending a reminder email to pay the invoice, then these Terms of Service will automatically be at an end.

- (f) For the avoidance of doubt, all staff who require access to the SupportAbility Service or who need to be rostered or who have Human Resources details tracked against them, require a Licence Seat.

#### **4 GRANT OF LICENCE**

- (a) Subject to You complying with these Terms of Service and paying any applicable Fees, SupportAbility grants You a non-exclusive, non-transferable licence to use the SupportAbility Service for the Subscription Period.
- (b) You do not, and will not, acquire any right, title, or interest in any SupportAbility Service or documentation, or in any Derivative Works or any copyright or other Intellectual Property Rights in the SupportAbility Service or any part of it or any software which forms part of or is utilised in providing the SupportAbility Service, which shall at all times remain the exclusive property of SupportAbility.
- (c) You agree to use the SupportAbility Service for internal business purposes only, and You shall have no right to sub-license, resell, lease, rent, distribute, operate as an outsourcer or transfer such SupportAbility Service or any of its rights under these Terms of Service.
- (d) To the extent permitted by Law, You shall have no right to, and agree not to, disassemble, reverse compile, reverse engineer, create Derivative Works, or attempt to discover or modify in any way the underlying source code of the SupportAbility Service or any software which forms part of or is utilised in providing the SupportAbility Service.
- (e) You must ensure that employees and contractors using the SupportAbility Service on Your behalf do so only in accordance with these Terms of Service.
- (f) SupportAbility may, acting reasonably, prohibit particular employees or contractors from using the SupportAbility Service and You must comply with any such prohibition.

#### **5 FEES AND PAYMENTS**

- (a) To access and use the SupportAbility Service for the Subscription Period, You must pay to SupportAbility:
  - (i) the Initial Setup Fee (for the Initial Subscription Period only);
  - (ii) the Subscription Fee; and
  - (iii) the Secondary Subscription Fees (where applicable).
- (b) All Fees must be paid in accordance with the Payment Terms set out in Item 4 of the Schedule, as well as the terms in any invoices issued by SupportAbility.
- (c) Subject to clause 7(c), all Fees paid to SupportAbility are non-refundable. No refunds or credits shall be payable by SupportAbility for partial years of service, or upon cancellation and/or termination of these Terms of Service for any reason. For the avoidance of doubt, if You cancel the SupportAbility Service before the end of the Term, the cancellation will take effect immediately and You will not be entitled to any refund of any money paid to SupportAbility for the Term.

- (d) In addition to clause 5(c), if You decrease Your Subscription (for example, by reducing Your License Seats), You will not be entitled to a refund of any Fees paid or payable to SupportAbility. However, a pro-rata credit will be calculated from the difference arising from any decrease, which will be applied to Your next invoice for the SupportAbility Services. If Your Subscription Period is due to expire, and you do not renew for a Further Subscription Period, this pro-rata credit is forfeited.
- (e) Despite anything in these Terms of Service (excluding clause 3(c)), all Fees are subject to change upon thirty (30) days' notice from SupportAbility. Such notice may be provided at any time by posting the changes to the SupportAbility website or the SupportAbility Service itself.
- (f) Pricing for any and all standard and secondary subscriptions will be based on the current pricing as displayed on the SupportAbility website and replaces any pricing previously communicated.
- (g) You acknowledge and agree that SupportAbility reserves the right to post alerts within the SupportAbility Service when invoices are seven (7) or more days overdue to notify You that Fees are outstanding.

## 6 SUSPENSION AND MONITORING

- (a) SupportAbility may elect to suspend the SupportAbility Service from time to time (or to modify the SupportAbility Service from time to time) with a minimum of 48 hours prior notice to You (or any such lesser period as is reasonable or necessary in the circumstances).
- (b) You acknowledge and agree that we may monitor Your activity on the SupportAbility Service from time to time for purposes including (but not limited to) implementation support, customer support, release testing, release planning and related activities.
- (c) Without limiting our rights under these Terms of Service or at Law, You acknowledge and agree that we may at any time suspend Your access to the SupportAbility Service, including (without limitation) if any of the following occurs:
  - (i) we detect any suspicious activity occurring in relation to Your use of the SupportAbility Service;
  - (ii) You default in payment of the Subscription Fee when it falls due;
  - (iii) You breach these Terms of Service and do not rectify the breach within seven (7) days;
  - (iv) we determine that the information You have provided to us is inaccurate, incomplete or outdated and You do not immediately take steps to rectify the inaccuracy, incompleteness or timeliness of the information; and
  - (v) we are required to disable access to the SupportAbility Service for the purpose of carrying out support and/or maintenance in relation to SupportAbility Service.

## 7 TERMINATION

- (a) SupportAbility may terminate Your Subscription without further obligation or liability to You:
  - (i) at any time, for any reason, by the provision of sixty (60) days' notice to You in writing;

- (ii) if You fail to pay any Fees due under these Terms of Service and fail to remedy any such breach within fourteen (14) days after written notification is provided;
  - (iii) if You commit any material breach of these Terms of Service and fail to remedy any such breach within seven (7) days after written notification is provided;
  - (iv) if SupportAbility is required to do so in order to comply with an order, instruction, request or notice of a regulator, any other competent authority or by requirement of or under Law; or
  - (v) immediately, if You commit a serious breach of these Terms of Service in the reasonable opinion of SupportAbility.
- (b) If Your Subscription is terminated in accordance with clause 7(a), You will remain liable to pay any outstanding Fees to SupportAbility.
- (c) You will not be entitled to any refund of any Fees paid to SupportAbility for any reason unless SupportAbility terminates Your Subscription under clauses 7(a)(i), 7(a)(iv) or 7(a)(v), in which case SupportAbility will pay You a pro-rata refund of the Subscription Fees (excluding the Initial Setup Fee) paid by You for the relevant Term.
- (d) If You notify SupportAbility of Your intention to terminate Your Subscription, You must promptly complete and return the subscription termination authorisation form which will be provided to You by SupportAbility upon request. Your notification to terminate the Subscription is only valid once this form is received by SupportAbility and assessed as having been completed correctly.
- (e) Upon expiration or termination of Your Subscription, or upon the cancellation or termination of the SupportAbility Service for any reason:
- (i) Your access to the SupportAbility Service will be permanently taken offline;
  - (ii) the licence(s) granted under these Terms of Service and all other rights granted to You immediately cease, and You must immediately:
    - (A) cease to use the SupportAbility Service and destroy all copies of documentation and other materials associated with the SupportAbility Service (including copyright materials); and
    - (B) delete all copies of the SupportAbility Service or any portion of it from any computer storage device or medium on which You have placed or permitted others to place the SupportAbility Service; and
  - (iii) SupportAbility will provide to You system data in the form of CSV and SQL, and the files uploaded to the SupportAbility Service within 10 Business Days of the SupportAbility Service being taken offline. Data and files will be provided to You in the same raw data format in which they are stored by the SupportAbility Service. These assets can potentially be imported by another third party system but are not designed to be accessed and navigated by humans.
- (f) SupportAbility's termination of Your Subscription is without prejudice to any other remedies available to it under these Terms of Service or at law.
- (g) This clause 7 will survive expiration or termination of these Terms of Service.

## 8 YOUR OBLIGATIONS

- (a) You acknowledge and agree that:
- (i) the SupportAbility Service is constantly evolving and all upgrades are mandatory and can be applied without notice;
  - (ii) You are solely responsible for all inputs into the SupportAbility Service, the manner of use of the SupportAbility Service by all those to whom it provides access and all outputs derived, and all other results of such processing;
  - (iii) You will ensure that operators are adequately trained and informed to use the SupportAbility Service, and will comply with operator guidelines and user procedures supplied by SupportAbility in writing from time to time;
  - (iv) You will deactivate user accounts for staff or contractors that no longer work for You or are no longer involved with You; and
  - (v) SupportAbility is not responsible for any Data created, deleted or edited by Your staff.
- (b) You further acknowledge and agree that You are responsible for all of the Data that will be in the possession or control from time to time of SupportAbility. You indemnify SupportAbility for all loss and damage suffered by SupportAbility as a result of You (and/or others who have accounts) using SupportAbility.
- (c) You (or the Authorised Representatives, as the case may be) must:
- (i) maintain the security of Your account(s) and password(s); including provisioning staff accounts with the appropriate system privileges;
  - (ii) promptly report errors in the operation of any aspect of the SupportAbility Service provided under these Terms of Service, by sending an email to [support@supportability.com.au](mailto:support@supportability.com.au);
  - (iii) perform general data housekeeping (including deactivating old staff accounts, auditing staff privileges), testing, adjustment and/or maintenance as recommended by SupportAbility in respect of any equipment and elements of the SupportAbility Service used by You in respect of access to the SupportAbility Service, in order to maximise the availability of and performance of the SupportAbility Service or permit performance by SupportAbility of any of its obligations under these Terms of Service;
  - (iv) exercise due care and carry out such precautions which may be recommended by SupportAbility or otherwise required as a matter of prudence in response to the performance by SupportAbility of any of its obligations under these Terms of Service, including without limitation:
    - (A) advising staff of impending system changes or scheduled downtime;
    - (B) recording of error information;
    - (C) co-operating with other system administration activities such as running diagnostic tests and operational readiness tasks; and
    - (D) comply, at Your expense, with any recommendations and guidelines with respect to the use of the SupportAbility Service, including any adjustments or replacements required in respect of equipment and Service that is incidental or collateral to the use of the SupportAbility Service.



- (d) You must not:
- (i) represent or imply to any person that You are in any way associated with the SupportAbility Service or SupportAbility;
  - (ii) reproduce, duplicate, copy, sell, resell or exploit any portion of the SupportAbility Service or any of the software used in the provision of the SupportAbility Service;
  - (iii) access or use the SupportAbility Service except in accordance with these Terms of Service;
  - (iv) upload, post, host, or transmit unsolicited email, SMSs, or “spam” messages;
  - (v) transmit any worms or viruses or any code of a destructive or damaging nature;
  - (vi) use the SupportAbility Service for any illegal or unauthorised purpose;
  - (vii) in using the SupportAbility Service, violate any Laws; or
  - (viii) export or re-export, or permit exportation or re-exportation of the SupportAbility Service outside Australia without first obtaining SupportAbility’s prior written consent, obtaining any required written permission to do so from the appropriate governmental agencies of Australia, and complying fully with all requirements of any general licence exempting the exportation or re-exportation from the requirement for that permission.

## 9 SUPPORT

- (a) Whilst SupportAbility provides some documentation via Learning Centre videos contained within the SupportAbility Service and articles via the Knowledge Base, it is under no obligation to create, or provide manuals for all parts of the SupportAbility Service. SupportAbility agrees to update the content of the provided documentation resources but can make no guarantee that this information is always up-to-date or accurate as the SupportAbility Service evolves constantly.
- (b) From time to time, You may request that SupportAbility investigate the cause of specific data being modified or deleted. Where the cause is found to be the result of the actions of You or one of Your users, You may be required to pay for the costs of the investigation (according to the paid support time rates in the Knowledge Base). Where the cause of the modification or deletion is found to be a bug or error in the SupportAbility Service, SupportAbility will pay for the costs of the investigation.

### **First and Second Tier Support**

- (c) You acknowledge that You are required to provide training for users where training is required. You further acknowledge and agree that Your staff need to view SupportAbility’s online resources which explain how the SupportAbility Service works.
- (d) You agree to provide First Tier Support services to users, making every effort to support users and provide them with the answers to their requests.
- (e) In cases where Your First Tier Support services are unable to resolve a user request, SupportAbility agrees to provide Second Tier Support for via email support requests addressed to [support@supportability.com.au](mailto:support@supportability.com.au) as long as all requests originate from the nominated Authorised Representatives. Any additional requirements for support, consultancy, integration or development, if approved by SupportAbility, will need to be managed using paid Support Contracts at the Your expense.

## Support Contracts

- (f) You may from time to time request in writing that SupportAbility enters into a Support Contract for additional paid support services for the SupportAbility Service.
- (g) If SupportAbility agrees to a request made under clause 9(f), a Support Contract will be deemed to have been entered into and You must pay in advance for the Support Contract pricing as set out in the Knowledge Base as amended from time to time.
- (h) If You elect not to pay for any support for the SupportAbility Service, then You will not be entitled to any support from SupportAbility except as specifically stated in these Terms of Service or otherwise advised in writing by SupportAbility. SupportAbility reserves the right to not undertake any paid or unpaid work requested even if You have purchased a Support Contract or have a positive balance of paid support hours remaining upon the termination or expiry of Your Subscription.
- (i) SupportAbility provides videos in the Learning Centre and articles in the Knowledge Base for the purposes of systems training. With the exception of providing such videos and articles, You acknowledge that SupportAbility does not provide training services, either face-to-face, or online.

## 10 INTELLECTUAL PROPERTY

- (a) You acknowledge and agree that:
  - (i) all right, title and interest in and to the SupportAbility Service (including the IPR subsisting in the SupportAbility Service) vest in and belong to SupportAbility;
  - (ii) the SupportAbility Service and all related documentation have been developed, acquired and maintained by SupportAbility on a confidential basis as valuable trade secrets of SupportAbility. You agree to preserve the confidential nature of these trade secrets and shall not permit the use or copying of the SupportAbility Service or documentation by, or disclose any information relating to the SupportAbility Service or documentation to any third party;
  - (iii) SupportAbility's rights in and to the SupportAbility Service are unique and that financial remedies will be insufficient to compensate SupportAbility for any infringement of such rights;
  - (iv) SupportAbility shall be entitled to seek injunctive and other equitable relief to protect, maintain, defend, enforce and preserve such rights, in addition to any other remedy that may be available to it; and
  - (v) nothing in these Terms of Service may be construed as constituting an assignment of the IPR or other rights in the SupportAbility Service from SupportAbility to You.
- (b) You must not:
  - (i) duplicate, copy, or reuse any portion of the HTML, CSS, JavaScript, JSON or visual design elements of the SupportAbility Service or any software which is utilised for the SupportAbility Service; or

- (ii) remove, suppress or modify in any way any proprietary marking, including any trademarks or copyright notice, on or embodied within the SupportAbility Service, or which is visible during their operation or which is on any media or on any documentation supplied with the SupportAbility Service.
- (c) All of the Data posted on the SupportAbility Service must comply with any applicable Laws.
- (d) If You request or contract SupportAbility to extend the functionality of the SupportAbility Service, SupportAbility retains all intellectual property rights to the code, concepts and functions. Without limiting the generality of the foregoing:
  - (i) SupportAbility may utilise such code, concepts and functions for other clients of SupportAbility without any obligation to You; and
  - (ii) If You contract SupportAbility to extend the functionality of the SupportAbility Service, SupportAbility retains the right to include the new functionality in the core SupportAbility Service for some or all other subscribers to the SupportAbility Service.
- (e) You agree to make no attempt to access the source code for the SupportAbility Service or the underlying data or systems.

## 11 CONFIDENTIALITY

- (a) If either party receives from the other party information that is either marked as being “confidential” or which due to the nature of such information and the circumstances under which it was disclosed, ought reasonably to be treated as confidential information of the party disclosing it, the receiving party agrees that it shall not use or disclose such information except in the performance of these Terms of Service, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care.
- (b) The foregoing obligations of non-use and nondisclosure shall not apply to any information that:
  - (i) is or becomes available to members of the public other than by breach of these Terms of Service or other duty by the recipient;
  - (ii) is in rightful possession of the party receiving the information without an obligation of confidentiality;
  - (iii) is required to be disclosed by operation of law; or
  - (iv) is independently developed by the receiving party without reference to information disclosed by the other party.

## 12 PRIVACY

- (a) SupportAbility will handle all information in accordance with our privacy policy.
- (b) You warrant that You will comply with all applicable Privacy Laws in relation to any information you provide to SupportAbility for the purposes of these Terms of Service, including without limitation the information posted and uploaded onto the SupportAbility Service.

- (c) SupportAbility will not be liable for any loss or damage suffered or any claim or liability incurred as a result of Your failure to comply with clause 12(b).

## 13 WARRANTIES

- (a) You acknowledge and agree that SupportAbility does not make any warranties or representations as to:
  - (i) the accuracy, currency, adequacy, completeness or availability of any of the SupportAbility Service;
  - (ii) the access to or use of the SupportAbility Service being uninterrupted, timely, secure, error-free or continuing for any period of time;
  - (iii) the SupportAbility Service meeting Your specific requirements;
  - (iv) the availability of access to or use of the SupportAbility Service in respect of specific geographical areas; and
  - (v) the ability of the SupportAbility Service to operate with any other hardware, software, system or data.
- (b) SupportAbility will not be liable for any loss or damage incurred by You as a result of anything specified in clause 13(a).
- (c) SupportAbility will take all reasonable steps to ensure that the SupportAbility Service can be accessed at any time. However You acknowledge and agree that SupportAbility Service is made available to You on an “as is” and “as available” basis.
- (d) You acknowledge and agree that the internet is an inherently insecure medium, that no data transmission over the internet can be guaranteed as being totally secure and that Your data (including the content You upload or otherwise submit to us) is stored on SupportAbility Service at Your own risk.
- (e) Subject to clause 9, SupportAbility will undertake all reasonable efforts to provide technical assistance under these Terms of Service and to rectify or provide solutions to problems where the SupportAbility Service does not function as described in the SupportAbility Service documentation, but SupportAbility does not guarantee that the problems will be solved or that any item will be error-free.

## 14 THIRD PARTIES

- (a) SupportAbility may from time to time use third party vendors and hosting partners to provide the necessary hardware, networking, storage, software and related technology required to operate the SupportAbility Service.
- (b) The technical processing and transmission of the SupportAbility Service, including Your content, may be transferred or stored in an unencrypted state and involve:
  - (i) transmissions over various private networks; and
  - (ii) changes to conform and adapt to technical requirements of connecting networks or devices.

## 15 INDEMNITY

You agree to indemnify SupportAbility from and against any and all loss, claim or liability incurred by SupportAbility arising from or in connection with:

- (a) any breach of these Terms of Service;
- (b) tort, including negligence or breach of statutory duty;
- (c) damage to real or personal property or injury to, or death, of persons, caused or contributed to by an act or omission by You or any employees, directors, officers or authorised agents;
- (d) a breach by You of any obligation in respect of privacy and confidentiality (including clauses 11 and 12); and
- (e) any fraud, fraudulent misrepresentation or deceit by You or any employees, directors, officers or authorised agents.

## 16 LIMITATION OF LIABILITY

- (a) Nothing contained in these Terms of Service excludes or limits the liability of one party to the other for:
  - (i) death or personal injury caused by negligence caused or contributed to by an act or omission by a party or its employees, directors, officers or authorised agents;
  - (ii) infringement of intellectual property rights;
  - (iii) fraud or deceit; or
  - (iv) any other liability that cannot be excluded by law.
- (b) Subject to clause 16(a) (and without limiting clause 13(a)), in no event will SupportAbility be liable to You or to any third party for:
  - (i) malfunctions or failures caused directly or indirectly by:
    - (A) any third party;
    - (B) actions of SupportAbility that were expressly or impliedly authorised by You, or Your employees or agents;
    - (C) accident, misuse or abuse by anyone other than SupportAbility;
    - (D) alteration or modification of the SupportAbility Service by anyone other than SupportAbility;
    - (E) products (including any hardware or SupportAbility Service) not licensed or supplied by SupportAbility that are attached to or used with the Service;
    - (F) Your failure to provide a proper operating and working environment for the SupportAbility Service or a failure to provide the appropriate hardware and software for the operation of the SupportAbility Service;
    - (G) power surge or failure;

- (H) acts of God or acts outside SupportAbility's control; or
  - (I) any other condition not arising under normal operating conditions;
  - (ii) any modification, price change, suspension, inability to use or discontinuance of the SupportAbility Service;
  - (iii) any loss or damage of any nature arising or caused directly or indirectly by any breach of Your obligations or responsibilities set out in these Terms of Service;
  - (iv) any loss or damage from Your failure to maintaining the security of accounts and passwords;
  - (v) any loss of profit, business interruption, loss of or damage to goodwill, and/or any expectation benefit;
  - (vi) Your liability to any third party;
  - (vii) any incidental, consequential, special, exemplary or punitive damages of any nature;
  - (viii) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the SupportAbility Service;
  - (ix) the unauthorized access to or alteration of Your transmissions or Data;
  - (x) statements or conduct of any third party on the SupportAbility Service; and
  - (xi) any other matter relating to the SupportAbility Service.
- (c) Except to the extent specifically provided in this clause 16, SupportAbility's sole and exclusive liability to You for any and all breaches of these Terms of Service is be limited to the aggregate amount of the fees paid by You under these Terms of Service as at the date of the breach.

## 17 GST

### Consideration exclusive of GST

- (a) The consideration payable for any taxable supply made by one party to the other party under these Terms of Service is expressed as a GST exclusive amount, unless it is specifically referred to as GST inclusive.

### GST Payable

- (b) In addition to any consideration payable by one party to the other party under these Terms of Service the party liable to pay the consideration must pay to the other party an amount equal to the GST imposed on each taxable supply, if any, by the party liable to remit GST in respect of that consideration on the earlier of the following:
  - (i) the date the consideration is payable under these Terms of Service; or
  - (ii) if the liability for GST arises on or after the party liable to pay the consideration is entitled to receive the deposit, the consideration or other consideration or any part of it – the date the deposit, the consideration or other consideration is payable or that part of it in respect of which the liability for GST arises; or

- (iii) if the liability for GST arises on the happening of some other event - within 7 days of a written request by the party liable to remit GST, for payment of the GST.

### **Reimbursements**

- (c) If a party (the **payee**) is required to reimburse or indemnify the other party (the **payer**) for an amount on which the payer must pay GST, the payee must reimburse or must indemnify hold harmless and keep indemnified the payer for the amount plus all GST (except any GST for which the payer can obtain an input tax credit).

### **Tax Invoice**

- (d) A party is not required to pay an amount equal to the GST imposed on any supply under these Terms of Service until it receives a tax invoice or adjustment note for the supply to which the payment relates.

## **18 AUTHORISED REPRESENTATIVES**

- (a) You must nominate a maximum of two (2) Authorised Representatives to SupportAbility to act on Your behalf at all times. All communication and support requests must originate from the Authorised Representatives to not incur paid support charges.
- (b) The appointed Authorised Representatives have authority to act for and on behalf You in all matters in connection with these Terms of Service, including executing these Terms of Service on Your behalf. All statements made, commitments given and/or reports submitted by the Authorised Representatives or either of them shall be deemed to have been made, given or submitted by You.
- (c) It is Your responsibility to avoid situations of single person dependency and ensure that multiple staff can perform each of the various roles and responsibilities required to manage concerns using the product.

## **19 DISPUTES**

- (a) If a dispute arises between the parties, either party may give to the other party a Notice of Dispute specifying the dispute and requiring its resolution under this clause 19.
- (b) If the dispute is not resolved within seven (7) days after the Notice of Dispute is given to the other party, the dispute must be referred to mediation, to be conducted in Melbourne.
- (c) The Institute of Arbitrators & Mediators of Australia's Rules from time to time for the Mediation of Commercial Disputes will apply to the mediation.
- (d) If the parties have not agreed upon the mediator and the mediator's remuneration within seven (7) further days:
  - (i) the mediator is the person appointed by; and
  - (ii) the remuneration of the mediator is the amount or rate determined by;  
the President of the Law Institute of Victoria or the President's nominee, acting on the request of any party to the dispute.
- (e) Each party must pay its own costs of the mediation.

- (f) This clause does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.
- (g) Subject to clause 19(f), a party must not commence or maintain a court action or proceeding upon a dispute in connection with these Terms of Service until the dispute has been submitted to mediation, referred to arbitration and determined under this clause.

## 20 NOTICES

- (a) All notices, consents or approvals required under these Terms of Service must be in writing and delivered personally, sent by registered mail or email as follows:
  - (i) for SupportAbility, to [support@supportability.com.au](mailto:support@supportability.com.au) for email notices; and
  - (ii) for You, the address as notified by You to SupportAbility from time to time, or as displayed on Your website from time to time, or to the email address of either of the Your Authorised Representative for email notices,or to any such other address as either party may specify to the other party in writing.
- (b) Any notice given under the provisions of clause 20(a) is taken to be received:
  - (i) at the actual time of delivery if delivered personally;
  - (ii) at the time of receipt if transmitted by email;
  - (iii) three (3) Business Days subsequent to the date of posting if sent by post from and to an address within Victoria;
  - (iv) five (5) Business Days subsequent to the date of posting if sent by post to or from an address outside Victoria to or from an address within Victoria; and
  - (v) seven (7) Business Days subsequent to the date of posting if sent by post between addresses outside Victoria.

## 21 GOVERNING LAW

These Terms of Service shall be governed by the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of that State.

## 22 DELAYS AND FORCE MAJEURE

SupportAbility shall not be liable for any delay or failure in performing any of its obligations under these Terms of Service if such delay or failure is caused by circumstances outside its reasonable control, including but not limited to any defects, malfunctions or outages in third party services which affect the SupportAbility Services.

## 23 FURTHER ASSURANCE

Where necessary, desirable or required, each party must do all things (including executing any documents) to give full effect to these Terms of Service.



## 24 **ASSIGNMENT**

- (a) You may not assign any of its rights under these Terms of Service without the prior written consent of SupportAbility.
- (b) SupportAbility may assign its rights, duties and obligations pursuant to these Terms of Service to any person or entity upon giving You no less than fourteen (14) days' notice of its intention to do so.

## 25 **SEVERANCE**

If any provision of these Terms of Service is found by any court to be illegal or unenforceable, if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted, and, in any other case, the whole provision is omitted and the remainder of these Terms of Service continues in force.

## 26 **WAIVER**

The failure of SupportAbility to exercise or enforce any right or provision of these Terms of Service does not constitute a waiver of such right or provision.

## 27 **ENTIRE AGREEMENT**

These Terms of Service constitutes the entire agreement between You and SupportAbility governing the You use of the SupportAbility Service, superseding any prior agreements between You and SupportAbility (including, but not limited to, any prior versions of these Terms of Service).

## 28 **INTERPRETATION**

In the interpretation and application of these Terms of Service, unless inconsistent with or repugnant to the context, the following shall apply:

- (a) any headings are inserted for ease of reference and shall be disregarded in the interpretation and application of these Terms of Service;
- (b) words referring to persons includes companies, corporations and bodies corporate and vice versa;
- (c) words importing the singular includes the plural and vice versa;
- (d) words importing one gender means and includes all other genders;
- (e) references to any legislation, statute, act, rule or regulation of parliament or to any section, clause, rule or regulation includes any statutory modification amendment or re-enactment or any statutory provision enacted in substitution;
- (f) references to any deed, agreement, security or other instrument includes any amendment, variation, replacement or substitution; and
- (g) save where indicated to the contrary, any reference to a covenant, obligation, promise, representation, warranty or liability of any nature whatsoever from more than one person is binding upon all relevant persons on a joint and several basis.

## SCHEDULE

This sample schedule is provided for explanatory purposes only. Each subscribing organisation will receive a new Terms of Service document for each subscription period containing the relevant details.

<b>Item 1</b>	<b>Organisation Name</b>	My Organisation Inc.	
	<b>ABN / ACN</b>	12312312312	
<b>Item 2</b>	<b>Initial Subscription Date</b>	04/06/2009	
<b>Item 3</b>	<b>Subscription Period</b>	04/06/2020	to 03/06/2021
<b>Item 4</b>	<b>Payment Terms</b>	Annual	
		<i>Please refer to Your invoice issued by SupportAbility for further method of payment details</i>	

**EXECUTED** on behalf of the )  
organisation named in Item 1 of the )  
Schedule by a person with power to )  
bind the organisation (for example )  
Company Director or CEO): )



\_\_\_\_\_  
**Signature** (digital or handwritten)

Jane Smith

**Full Name**

Chief Executive Officer

\_\_\_\_\_  
**Position**