



HARVEST TECHNOLOGY PTY LIMITED

GENERAL TERMS

Revision Date: 28.07.2022



GENERAL TERMS

These General Terms apply to all Goods and/or Services supplied to you, our customer (**You, Your**) by any of **Harvest Technology Pty Ltd** (ABN 52 601 194 138) of 7 Turner Avenue, Technology Park, Bentley, Western Australia, Australia, **Harvest Technology (UK) Ltd** (Company Number 14032351) of 71-75 Shelton Street, Covent Garden, London WC2H 9JQ, United Kingdom, **Opsivity, Inc.** of 1155 SW Morrison St, Portland, Oregon, USA, and **Harvest Infinity Pty Ltd** (ABN 57 620 773 060) of 7 Turner Avenue, Technology Park, Bentley Western Australia, Australia (**Harvest, we, us, our**). All applicable Product-Specific Terms set forth in clause 1 are governed by and form part of these General Terms.

If You would like to hire, purchase or licence any of our Goods and/or Services, we will provide You with a Quote. You can place an order in response to a Quote by submitting a Purchase Order in accordance with clause 4 of these General Terms.

By purchasing or using our Goods and/or Services, you agree to be bound by these General Terms and the current applicable Product-Specific Terms. We recommend that You retain a copy of these General Terms and the applicable Product-Specific Terms for Your own records.

We may change or update these General Terms and/or the Product-Specific Terms from time to time. You will be bound by the General Terms and the applicable Product-Specific Terms in force as at that date during the term of the applicable Purchase Order or, in any other case, as long as you use our Goods and/or Services. We recommend that each time You place a Purchase Order and at regular intervals during your use of our Goods and/or Services, You check to ensure that You agree to the General Terms and the applicable Product-Specific Terms in force at the time, and that You retain a copy of the correct versions.

1. Definitions and Interpretation

1.1. Capitalised terms are defined below or in the applicable Product-Specific Terms:

Agreement has the meaning given to it in clause 3.1.

Confidential Information of a party means (whether or not in material form and whether or not disclosed before or after the execution of the Agreement) any information of whatever kind that:

- (a) is by its nature confidential; or
- (b) is designated by a party as confidential; or
- (c) the receiving party knows or reasonably ought to know is confidential,

and includes, without limitation, all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form and, in our case, includes Our Software and our pricing of the Goods and/or Services. Confidential Information does not include information that (a) has become publicly known through no wrongful act of the Receiving Party; (b) has been rightfully received by the Receiving Party from a third party without restriction on disclosure and without breach of this Agreement or other Agreements entered into between the third party and the Disclosing Party; (c) has been independently developed by the Receiving Party, as evidenced by its written records; and (d) has been approved for release by written authorization of the Disclosing Party.

Default Rate means the interest rate for overdrafts charged by the Westpac Banking Corporation plus 2%, calculated on daily rests from the due date to the date of payment.

Defence Entity means:

- (a) any national, state, local, regional, territorial or municipal government and any executive, legislative, judicial or administrative body and any ministry, governmental department, other



administrative division or instrumentality thereof and any commission, board, bureau, or agency, with authority, power, control or responsibility in relation to matters of defence or military regardless of location;

(b) any contractor or service provider to any of the entities mentioned in sub-clause (a) above.

Dispute has the meaning given to it in clause 14.1(a).

Dispute Notice has the meaning given to it in clause 14.1(a)

Downloadable Software means the software, provided by us as a download and install electronic file or application, described in our Quote.

Embedded Software means the software or firmware embedded in or loaded onto the Hardware.

Fees means the fees payable to us for the Goods or Services specified in a Quote, or otherwise in writing by us.

Goods means any and all Hardware, SaaS Products and Our Software supplied by us.

Hardware means the hardware (including any Third-Party Hardware), consisting of both the hardware and any Embedded Software, described in our Quote.

Initial Invoice has the meaning given to it in clause 5.1(a)(i).

Intellectual Property means all intellectual property rights including without limitation:

- (a) the Goods and/or Services, including without limitation the Hardware and Software, and all code, software, images, illustrations, designs, photographs, video clips, text, graphics, icons, designs, applications, written information and screens therein;
- (b) patents, copyright (including future copyright), designs, rights in circuit layouts, trademarks, domain names, inventions, trade secrets, know-how, discoveries, including improvements or modifications of any kind, whether registered or not;
- (c) inventions, processes, know-how, trade secrets, improvements, other intellectual property and other assets;
- (d) rights to prevent the use and disclosure of the Confidential Information; and
- (e) any application or right to apply for registration of any of the rights defined in this clause.

Nominated Representative has the meaning given to it in clause 14.1(b).

Operation Guides means the documentation and materials provided by us to You which contain information relating to how to install, operate and/or maintain the Hardware.

Our Software means any of the following:

- (a) Embedded Software;
- (b) Downloadable Software; and
- (c) SaaS Products.

Price means the price payable to us for the Hardware specified in a Quote or otherwise in writing by us.

Product-Specific Terms means the terms applicable to the supply of specific Goods and/or Services, as specified in clause 2.1.



Purchase Order means the purchase order provided to us by You for specific Goods and/or Services.

Quote means any quote, proposal, or pricing schedule or Cost Time & Resources Sheet we provide to You in relation to specific Goods or Services.

SaaS Products means any products described by us as, or otherwise in the nature of, “Software as a service” as specified in our Quote.

Second Invoice has the meaning given to it in clause 5.1(a)(ii).

Services means the services to be provided by us to You, including implementation, installation, network, Help Desk Support, Premium Support, bandwidth, and custom development services, specified in our Quote, or otherwise agreed to be provided by Us.

Space Entity means:

- (a) any national, state, local, regional, territorial, or municipal government and any executive, legislative, judicial or administrative body and any ministry, governmental department, other administrative division or instrumentality thereof and any commission, board, bureau, or agency, with authority, power, control or responsibility in relation to matters of space regardless of location;
- (b) any contractor or service provider to any of the entities mentioned in sub-clause (a) above.

Third-Party Claim has the meaning given to it in clause 8.1.

Third-Party Hardware means any Hardware identified by us as third-party hardware in a Quote or otherwise.

Upfront Fee means any upfront fee specified in a Quote.

1.2. Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3. Unless the context otherwise requires:

- (a) a reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes an individual, a body corporate and a government;
 - (iv) anything (including a right, obligation or concept) includes each part of it;
 - (v) “including” will be construed as “including without limitation”; and
- (b) a word which denotes the singular denotes the plural and vice versa; and
if a word is defined, another part of speech has a corresponding meaning.

2. Product-Specific Terms

2.1. These General Terms must be read in conjunction with the following applicable Product-Specific Terms:



- (a) if you are purchasing Hardware from us – [Sale Terms](#) and, if any Third-Party Hardware is included in that purchase, - [Third-Party Hardware Special Conditions and Warranty Terms](#) ;
- (b) if you are hiring Hardware from us – [Hire Terms](#) and, if any Third-Party Hardware is included in that hiring, - [Third-Party Hardware Special Conditions and Warranty Terms](#);
- (c) if you are licensing our SaaS Products - [SaaS Products Terms](#);
- (d) if you are licensing our Downloadable Software - [Downloadable Software Licence Terms](#);
- (e) if you have engaged us to provide Services (other than Network Services) to you - [Services Terms](#);
- (f) if you have engaged us to provide Network Services to you - [Network Services Terms](#); and
- (g) if you have engaged us to provide Inmarsat Fleet Connect Bandwidth Services to you - [Inmarsat Fleet Connect Bandwidth Terms](#).
- (h) in addition to the above terms, the country specific terms – [Country-Specific Terms](#).

3. Agreement

- 3.1. These General Terms apply to all Goods and/or Services supplied by us to You, which, together with the then-current applicable Product-Specific Terms, Quote and Purchase Order (when the latter is accepted by us in accordance with clause 4.2) will form the agreement between the parties (**Agreement**).
- 3.2. The terms of any Purchase Order will not apply except as necessary to designate the Goods and/or Services and quantities and other similar terms.
- 3.3. To the extent of any inconsistency between a Quote, Purchase Order, these General Terms and applicable Product-Specific Terms or Authorised User Terms, the following order of precedence (highest to lowest) will apply:
 - (a) the Quote;
 - (b) the Product-Specific Terms;
 - (c) these General Terms;
 - (d) if applicable, the Authorised User Terms;
 - (e) the Purchase Order.

4. Ordering procedure

- 4.1. You can order the Goods and/or Services by submitting a Purchase Order to us.
- 4.2. We will not be bound by any Purchase Order from You unless we have notified You that we have accepted Your Purchase Order.
- 4.3. You must pay us any applicable Equipment Bond and/or Upfront Fee as specified in the Quote within 30 days of the date of an invoice from us or as otherwise specified on the invoice.
- 4.4. Subject to receiving payment in accordance with clauses 4.3 and 5, we will provide to You the Goods and/or Services the subject of an accepted Purchase Order in accordance with the terms of the Agreement.



5. Fees and payment

- 5.1. Unless otherwise agreed in writing or specified in the Quote, We will issue tax invoices to You:
- (a) for Hardware purchases, for:
 - (i) 50% of the Price for the Hardware (excluding the Embedded Software), on acceptance of your Purchase Order in accordance with clause 4.2 (**Initial Invoice**);
 - (ii) the remaining 50% of the Price for the Hardware (excluding the Embedded Software) on the date of collection of the Hardware in accordance with the Sale Terms (**Second Invoice**); and
 - (iii) the Fees for the Embedded Software, monthly in arrears;
 - (b) the Fees for:
 - (i) Hardware hire;
 - (ii) Our Software; and
 - (iii) the Services,on a monthly basis in arrears.
- 5.2. Unless otherwise agreed in writing or specified on the invoice, You must pay:
- (a) for Hardware purchases:
 - (i) our Initial Invoice prior to the date of collection of the Hardware; and
 - (ii) Our Second Invoice within 30 days of the date of that invoice; and
 - (b) for all other invoices, within 30 days of the date of the invoice.
- 5.3. If You fail to pay any sum due under the Agreement by the due date:
- (a) You must pay interest on that sum from the due date until the date of payment at the Default Rate; and
 - (b) we may (without prejudice to any other rights):
 - (i) delay the supply of any undelivered Hardware;
 - (ii) suspend Your access (and Your Authorised Users' access) to any SaaS Products, Our Software, Downloadable Software and the Services; and
 - (iii) suspend Your access (and Your Authorised Users' access) to the Help Desk Support and Premium Support (if applicable),until receipt of the relevant payment (and any applicable interest payable under clause 5.3(a)) in full by us.
- 5.4. Unless otherwise specified in a Quote or invoice, all payments under the Agreement must be made in United States Dollars (USD) to the account specified in the invoice.
- 5.5. You must pay any applicable sales, use, excise, or other taxes, duties, and other governmental charges (collectively, "taxes") under the Agreement. Other than net income taxes imposed on us, You will bear all taxes, resulting from this Agreement. If You have a legal obligation to withhold any taxes from Your



payments to us, You must remit those taxes to the appropriate government authority, and You may reduce Your payment to us by the amount of the taxes withheld provided that You provide to us documentary evidence of the withholding those taxes that we may claim any foreign tax credits (or similar) to which we are entitled. If we are legally obligated to collect applicable taxes, we will invoice You for the appropriate amount and You will pay our invoice, unless You provide us with a valid tax exemption certificate.

6. Responsibilities

6.1. You must:

- (a) Only submit or provide information to us that is accurate and complete. You agree that we are entitled to rely on:
 - (i) all information provided by You, or by your Authorised Users (as defined in the applicable Authorised User Terms) or others on Your behalf; and
 - (ii) all of Your decisions.
- (b) Ensure that Your employees, contractors, and third party suppliers meet the requirements of clause (a).

6.2. You must not:

- (a) permit anyone to, reverse engineer, or disassemble or tamper with the Hardware or Our Software, or determine or attempt to determine any source code, algorithms, methods or techniques used or embodied in Our Software;
- (b) use Our Software or the Services otherwise than as permitted under the Agreement;
- (c) modify, adapt or alter Our Software or the Hardware in any way without our prior written consent;
- (d) use our Intellectual Property or Confidential Information, or your knowledge gained during your use of our Intellectual Property or Confidential Information, to create or attempt to create any competitive product or any service which has features or functionality the same as or similar to the features and functionality of the Hardware or Our Software, or copy any features, functions, graphics or interfaces of the Hardware or Our Software;
- (e) remove any product identification, proprietary, copyright, trademark, or other notices contained in or on our hired Hardware or Our Software;
- (f) interfere with, compromise the system integrity or security, or decipher any transmissions to or from the servers running Our Software or the Services or circumvent or disclose the user authentication process or security of the Hardware, Our Software or the Services;
- (g) make any use of Our Software or the Services that violates any applicable law;
- (h) dispute or challenge our Intellectual Property rights, or those of our licensors, in and to any of the Hardware Our Software or the Services; or
- (i) make any use of the Hardware, Our Software or the Services, including providing access to any Hardware, Our Software or the Services to a Defence Entity or a Space Entity without our prior written approval.
- (j) make use of or provide access to any of the Hardware, Our Software or the Services in, or to anyone in, an embargoed or sanctioned country under United Nations Security Council (UNSC)



sanctions regimes and Australian autonomous sanctions regimes, without Our prior written approval.

7. Export controls and licensing

- 7.1. For projects located outside of Australia, You acknowledge and agree to comply with all applicable laws, regulations and orders (including those of the United States, the United Nations, the United Kingdom, and the member states of the European Union and the European Free Trade Association) applicable to the export, re-export, transfer or resale of products or the provision of services and related technical data.
- 7.2. No Goods and/or Services can be used in any country where doing so is a violation of applicable law, and no Goods and/or Services can be used by any person or entity identified on any denied-persons list under any jurisdiction. Without limiting the foregoing, in no instance can the Goods and/or Services be used in an embargoed, sanctioned or otherwise restricted country without the express written consent of Harvest (which will only be provided upon a showing that the proposed use is licensed or otherwise authorised by the applicable government authority).
- 7.3. You will manage the logistics of obtaining any and all licences, permits, or authorisations, and associated costs and expenses, as may be required to use or operate the Goods and/or Services in a specific country or jurisdiction where You intend to utilise the Goods and/or Services. You will provide to us, verification and documentation of such licences and permits, upon our request. You agree that You are ultimately responsible for compliance with all local licensing laws and regulations in any jurisdiction in which You use Harvest provided services.

8. Third party claims

- 8.1. Subject to clauses 8.2 and 8.3, we will:
 - (a) defend You (at our expense) against all claims made against You by any third party alleging that Your use of Our Software, in accordance with the terms of the Agreement, infringes the Intellectual Property rights (other than patent rights) of that third party (**Third-Party Claim**); and
 - (b) pay the costs and damages finally awarded based on any Third-Party Claim or the amount of any settlement we enter into regarding that Third-Party Claim.
- 8.2. Our obligations under clause 8.1 are subject to:
 - (a) You promptly notifying us of that Third-Party Claim (and in any event no later than 7 days after receiving the Third-Party Claim);
 - (b) us being given sole control of the defence and settlement negotiations of the Third-Party Claim;
 - (c) You providing any and all reasonably requested assistance for defence of the Third-Party Claim; and
 - (d) You not making any admission prejudicial to the defence of the Third-Party Claim.
- 8.3. Our obligations under clause 8.1 will not apply if the Third-Party Claim results from:
 - (a) Your breach of the Agreement;
 - (b) modification of Our Software that was not made by us; or
 - (c) use of Our Software in conjunction with any other hardware, software or service not provided by us.



- 8.4. If a Third-Party Claim is made or, in our reasonable opinion, is likely to be made, we may, at our expense:
- (a) procure for You the right to continue using Our Software under the terms of the Agreement; or
 - (b) replace or modify Our Software to be non-infringing without any material decrease in functionality.
- 8.5. If we notify You that the options described in clause 8.4 are not reasonably available, either we or You may, by notice to the other, terminate the Agreement.
- 8.6. Clauses 8.1 to 8.5 set out Your sole and exclusive remedies, and our entire liability to You, for any Third-Party Claims.

9. Disclaimer of warranties, exclusions, and limitation of liability

- 9.1. All terms, warranties and representations not expressly stated in the Agreement or in the applicable Product-Specific Terms, are excluded from the Agreement to the extent permitted by law.
- 9.2. We do not warrant that the Goods and/or Services will meet all of your requirements or that its operations will be uninterrupted or error-free, or that any defect within the Goods and/or Services will be corrected. No oral or written information, representation or advice given by us shall create a warranty without a writing signed by us reflecting the creation of such warranty. You expressly acknowledge and agree that use of Goods and/or Services is at your sole risk.
- 9.3. Subject to clauses 9.5 and 9.6, our maximum total aggregate liability under or in relation to the Agreement whether in contract, tort (including negligence) or otherwise is limited to:
- (a) in the case of Hardware purchased from us, the Price received by us for the Hardware the subject of the claim or the cost of replacing the goods the subject of the claim; or
 - (b) in the case of Hardware hired from us the subject of the claim, the Fees received by us for the month during which the event gave rise to the liability or the cost of replacing the goods the subject of the claim; or
 - (c) in the case of SaaS Products, the subject of the claim, the Fees received by us for the month during which the event gave rise to the liability; or
 - (d) in the case of Downloadable Software, the subject of the claim, the Fees received by us for the month during which the event gave rise to the liability; or
 - (e) in the case of the Services the subject of the claim, the greater of the Fees received by us for the month during which the event gave rise to the liability, capped at the amount of AU\$1,000.
- 9.4. To the maximum extent permitted by applicable law, we are not liable to you or any third party under any theory of liability or in any event for any:
- (a) lost profits, lost revenue, loss of data, loss of opportunity, loss arising out of business disruption, loss of goodwill, loss or corruption of data, loss of management time or failure to realise anticipated savings; or
 - (b) special, indirect, extraordinary, exemplary, punitive, incidental, or consequential damages, losses, costs, or expenses of any kind, however arising, even if we knew or should have known of the possibility of such damages, losses, costs, or expenses.
- 9.5. Notwithstanding any other clause of the Agreement, our liability under or in relation to the Agreement, whether in contract, tort (including negligence) or otherwise, in any calendar year is limited to the lesser of (a) the value of the liability in 9.3 or (b) US\$10,000.



- 9.6. Nothing in the Agreement excludes or limits our liability for matters for which liability cannot be excluded or limited under applicable law. The parties agree that this clause 9 is an essential element of the basis of the bargain between the parties.
- 9.7. Subject to clause 9.2 and to the maximum extent permitted by law, our liability to You under or in relation to the Agreement is reduced to the extent that Your acts or omissions, or those of a third party, contributed to or caused the liability, including:
- (a) any act related to, or misuse of, the Goods and/or Services by You (or a third party);
 - (b) accidental damage caused or contributed to by You (or a third party);
 - (c) the failure to comply with the Operation Guides;
 - (d) Your failure to comply with any direction or recommendation provided by us;
 - (e) the failure of any third-party service provider (e.g., power, internet or satellite link or services provider);
 - (f) any contamination or environmental problem occurring after the delivery or provision of the Goods and/or Services;
 - (g) the failure to comply with your obligations under the Agreement.
- 9.8. You agree to defend, indemnify, and hold Harvest, our subsidiaries and our affiliates, and their respective members, directors, officers, agents, partners, and employees, harmless (at Your expense) from and against any direct or third-party claims, losses, liabilities, costs, expenses, damages or demands, including without limitation reasonable attorneys' fees due to, relating to or arising out of:
- (a) any breach by You of the Agreement;
 - (b) any misuse of our Goods and/or Services, as determined by us in our sole discretion; and
 - (c) any unlawful or negligent act or omission of You or Your employees, agents or subcontractors in any way relating to the Agreement.
- 9.9. Notwithstanding anything to the contrary in clause 8.2, we may select our own legal counsel to represent our interests when defending against direct or third-party claims or demands, and you must:
- (a) reimburse us for our costs and attorneys' fees immediately upon request as they are incurred; and
 - (b) remain responsible to us for any loss, liability, cost, expense, claim, damages, or demand identified in clause 9.

10. Confidentiality

- 10.1. Each party must:
- (a) take all such reasonable precautions as may be necessary to maintain the confidentiality of the Confidential Information of the other party;
 - (b) only disclose the Confidential Information of the other party to those of its employees who need to know for the purposes of the Agreement;
 - (c) ensure that each employee who comes into possession of the Confidential Information of the other party has agreed to keep the Confidential Information confidential on terms similar to this clause; and



- (d) immediately on demand from the other party or at the end of the Agreement:
 - (i) deliver to the other party all Confidential Information of the other party which is capable of being transferred by delivery; and
 - (ii) delete permanently all Confidential Information in electronic form stored on any computer or similar facility under its control.

10.2. Without limiting clause 10.1, each party must not:

- (a) communicate, or make available, any Confidential Information of the other party to any person;
- (b) use the Confidential Information of the other party for any purpose other than for the purposes of the Agreement;
- (c) use the Confidential Information of the other party for its own gain or in any manner which may cause loss to the other parties; or
- (d) copy the Confidential Information,

without the prior written consent of the disclosing party.

10.3. The parties' obligations under this clause 10 do not apply to any Confidential Information which:

- (a) a party can show was in its possession at the time of disclosure to it and was not acquired in breach of an obligation of confidence or under an obligation of confidence;
- (b) enters the public domain without any breach of the Agreement;
- (c) is lawfully acquired from a third party; or
- (d) is required by law to be disclosed and the recipient has complied with clause 10.4 in relation to the disclosure.

10.4. If the Receiving Party considers that disclosure of Confidential Information is required by law, it must

- (a) immediately notify the Disclosing Party of the requirement;
- (b) take all reasonable steps to lawfully resist or narrow the requirement to disclose the Confidential Information; and
- (c) assist and co-operate with the Disclosing Party if the Disclosing Party seeks to limit or resist the requirement for the Confidential Information to be disclosed.

10.5. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

11. Intellectual Property

11.1. You acknowledge and agree that:

- (a) as between You and us, we own, or are licensed to use, all Intellectual Property rights in the Goods and/or Services, including without limitation the Hardware and Our Software; and



- (b) the Agreement grants you a limited license to use the Intellectual Property and in no case does the Agreement sell or assign to You any Intellectual Property rights in the Hardware, Our Software or the Services.
- (c) Subject to the limited rights expressly granted under the Agreement, we reserve all rights, title, and interest in and to our Intellectual Property. No rights are granted to You hereunder other than as expressly set forth in the Agreement.
- (d) Your use of the Goods and/or Services does not authorise You to use any of our Intellectual Property in any manner other than specifically authorised by the Agreement. You may not use our Intellectual Property in any way that might confuse others or that disparages us. Any other use of our Intellectual Property, such as reproduction, without our prior written permission is strictly prohibited. Only a duly authorised officer of Harvest may grant permission or a license to use any of our Intellectual Property; any attempted grant or similar promise by anyone other than a duly authorised officer of Harvest is invalid.

12. Privacy; Authorised Users

- 12.1. Our Privacy Policy, Data Processing Addendum, and all applicable terms and conditions (available at [Harvest | Terms and Conditions](#)) governing use of the Goods and/or Services by Your Authorised Users are part of and governed by the Agreement. Our Privacy Policy shall govern all collection and use of all Personal Information (as defined in the Privacy Policy) submitted to or stored or processed on the Services. You hereby agree to our Privacy Policy and Data Processing Addendum.
- 12.2. You are solely responsible your Authorised Users' compliance with our Privacy Policy, and You are solely responsible for:
 - (a) providing notice and obtaining consent from each of your Authorised Users in compliance with applicable laws, contracts, or internal policies or guidelines, including without limitation, notice and consent with respect to Personal Information collection, use, processing, storage, sharing or disclosure, and sale to third parties, as applicable; and
 - (b) if You engage in any activity that involves or results in the "sale" or "sharing" of Personal Information (as defined under applicable laws) that was collected or processed using the Services, You will ensure that You only do so with affirmative consent and having provided the option to opt-out at any time and without penalty or discrimination.
- 12.3. The following Authorised User Terms apply to the following applicable SaaS Products and form part of the Agreement between the parties:
 - (a) If you are subscribing to AVR Live - [AVR Live Authorised User Terms](#); or
 - (b) If you are purchasing a licence to the Downloadable Software – [Downloadable Software Authorised User Terms](#).
- 12.4. You are solely responsible for:
 - (a) Your Authorised Users' compliance with applicable laws and the Agreement;
 - (b) the accuracy and legality of any data, including Personal Information, that is input to the Services by Your Authorised Users; and
 - (c) ensuring that You and Your Authorised Users comply with the terms of service of any third-party software with which You use the Services.



- 12.5. You agree to prohibit Your Authorised Users from uploading material to our servers in violation of the intellectual property rights of any party or entity.

13. Termination

Termination by either party

- 13.1. Either party may terminate the Agreement by notice to the other party if the other party:
- (a) commits a material breach of a term of the Agreement and the breach has not been remedied within 14 days after receiving notice of the breach;
 - (b) becomes, threatens or resolves to become or are in jeopardy of becoming subject to any form of insolvency administration;
 - (c) ceases or threatens to cease conducting business in the normal manner except through amalgamation or merger; or
 - (d) enters into or proposes to enter into a scheme, composition or arrangement with any of its creditors.

Immediate termination by us

- 13.2. Notwithstanding clause 13.1, we may terminate the Agreement by notice to You:
- (a) if You fail to pay any amounts owing to us by the due date; or
 - (b) if You or any of Your employees or contractors have used the Goods and/or Services in breach of the Agreement.

Effect of termination or expiry

- 13.3. Clauses 6, 8, 9, 10, 11, 13.3, 14 and 15. survive termination or expiry of the Agreement, together with any other provisions of the General Terms or the applicable Product-Specific Terms which are expressly stated to, or which by their nature, survive termination or expiry of the Agreement.

14. Dispute Resolution

- 14.1. The parties agree to attempt in good faith to resolve any dispute, difference or question arising out of the Agreement or any Goods and/or Services (**Disputes**) informally as described in this clause 14.1. If a Dispute is not resolved within 30 days after submission, either party may start a court proceeding as provided under clause 14.2.
- (a) A party claiming a Dispute must notify the other party giving details of the Dispute (**Dispute Notice**).
 - (b) Within 7 days (or any longer period agreed between the parties) after a Dispute Notice is given, the parties will each nominate a representative (**Nominated Representative**) that must use reasonable efforts to resolve the Dispute through negotiation.
 - (c) If the Nominated Representatives cannot resolve the Dispute within 14 days after the Dispute Notice is given (or any longer period agreed between the parties), the Nominated Representatives must immediately refer the Dispute to the Chief Executive Officers (or equivalent) of each party. The Chief Executive Officers of each party must use reasonable efforts to resolve the Dispute through negotiation



- (d) If the Chief Executive Officers fail to resolve the Dispute within 14 days after referral to them, either party may start court proceedings regarding the Dispute.
- 14.2. Except as otherwise required by applicable law, the Agreement and the resolution of any Disputes shall be governed by and construed in accordance with:
- (a) If You are located or use the Goods and/or Services in North America or South America, the laws of the State of Delaware without regard to its conflict of laws principles. Foreign laws and the United Nations on Contracts for the International Sale of Goods and any laws based on the Uniform Computer Information Transactions Act (UCITA) do not apply. The parties consent to the exclusive jurisdiction of the state and federal courts located in Multnomah County, Oregon, USA to enforce the Agreement or adjudicate any other Dispute, and you and we each agree to waive the right to a jury trial.
- (b) If You are located or use the Goods and/or Services in Europe, the laws in force in England will apply and the parties submit to the non-exclusive jurisdiction of the Court of England.
- (c) If paragraphs (a) or (b) do not apply, the laws in force in the State of Western Australia, Australia. The parties submit to the non-exclusive jurisdiction of the Courts of Western Australia, Australia.
- 14.3. The parties must continue to perform their respective obligations under the Agreement pending the resolution of a Dispute. Each party must bear its own costs of complying with this clause 12.

15. Miscellaneous

- 15.1. A notice under the Agreement must be in writing and may be given to the addressee by delivering or sending it by email (which, in the case of us, must be to commercial@harvest-tech.com.au) or by pre-paid registered post (which, in the case of us, must be to 7 Turner Avenue, Bentley, 6102 Western Australia, Australia). If a notice is given by e-mail, notice will be deemed to have been given on the day after the date the sender sends the email provided the sender does not receive an email message indicating the failure of the email to be delivered.
- 15.2. We will not be liable to You if the performance of our obligations to You is delayed, impeded, or prevented by any act or event beyond our control (**Force Majeure**), including without limitation, acts of God, strikes, labour disputes, acts of public enemy, governmental orders, pre-emption of existing services to restore service in compliance with governmental rules and regulations, wars, riots, terrorist activities, epidemics, pandemics including COVID-19, unusually severe weather, earthquakes, fires, floods, civil disturbances, explosions, train derailments, failure of or accidents to machinery, pipeline, or materials, and delay in delivery of Equipment, to the extent all such occurrences are beyond the reasonable control of Harvest or You, delay in performance by subcontractors to the extent such delay is beyond our reasonable control, and other delays incurred for reasons beyond our reasonable control, which, by the exercise of reasonable diligence, they are unable to prevent or avoid. Harvest's obligation to perform will be suspended for the duration of a period of Force Majeure and will resume as soon as reasonably possible, upon the cessation of the event of Force Majeure. If we are unable to perform our obligations, we must use reasonable endeavours to resume performance in accordance with the Agreement as soon as possible after the act or event ends or ceases (as the case may be).
- 15.3. Not all Goods and/or Services are available to all persons or in all locations. We reserve the right to limit, at our sole discretion, the provision of any Goods and/or Services to any person or entity or in any location. If you choose to access or use the Goods and/or Services in any manner, you do so on your own initiative and are responsible for compliance with applicable local laws. Any offer or use of a Good and/or Service in this Agreement shall be deemed void where prohibited.



- 15.4. No modification of or amendment to the Agreement, nor any waiver of any rights under the Agreement, will be effective unless in writing and signed by both parties.
- 15.5. You may only assign a right under the Agreement with our prior written consent. You are deemed to have assigned Your rights if Your management or control is transferred to any person other than those persons who manage or control You as at the date of the Agreement. If You experience a change of control, You must give notice to us within 30 days after the change of control. We may assign our rights and novate our obligations under the Agreement at any time by notice to You.
- 15.6. The parties to the Agreement are independent contractors. Nothing in the Agreement creates an agency, partnership, joint venture or employment relationship between us and You or any of the parties' respective employees, agents or contractors.
- 15.7. The Agreement (inclusive of the agreements and documents referenced herein) embodies the entire understanding and agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between the parties.
- 15.8. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or other copy of this Agreement shall have the full force and effect of the original. Each party must promptly execute all documents and do all things that the other party from time to time reasonably requests to effect, perfect or complete the Agreement and all transactions incidental to it.
- 15.9. If any part of the Agreement is void or unenforceable that part will be severable from and will not affect the enforceability of the remaining provisions. If such a severance goes to the essence of the Agreement, either party may terminate the Agreement immediately by notice. A party's waiver of any breach of this Agreement shall not constitute a waiver of any prior or subsequent breach of this Agreement.
- 15.10. Each party acknowledges and agrees that it has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and conditions of the Agreement. The Agreement shall not be construed against either party by reason of its drafting.