



HARVEST TECHNOLOGY PTY LIMITED

SAAS PRODUCT TERMS

Revision Date: 28.07.2022



These SaaS Product Terms, together with our General Terms, apply to all SaaS Products 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 (**we, us, our**). These SaaS Product Terms are Product-Specific Terms and, together with our General Terms, form part of the Agreement between You and Us.

1. Definitions and Interpretation

1.1. Capitalised terms are defined below or in our General Terms:

Administrator has the meaning given to it in clause 2.2

Agreement has the meaning given to it in the General Terms and, for the supply of SaaS Products to You, includes the applicable Authorised User Terms.

Authorised User has the meaning given to it in clause 2.3.

Authorised User Terms means the terms applicable to the supply of specific SaaS Products.

Beta Versions has the meaning given to it in clause 11.1.

Content means any data or audio-visual material input to or streamed by You when using the SaaS Products.

Effective Date means the date set out in the Purchase Order.

Feedback has the meaning given to it in clause 11.1(b)(ii).

SaaS means Software as a Service

Term has the meaning given to it in clause 13.1.

Third Party Software has the meaning given to it in clause 10.1.

Your Property has the meaning given to it in clause 8.7(a).

2. Access

2.1. We grant to You access during the Term to use the SaaS Products solely for Your internal business purposes in accordance with the terms of this Agreement.

2.2. You must designate an account administrator (**Administrator**) to manage access to the SaaS Products, account administration and communications between us and You. You must identify the Administrator by completing and returning to us the Administrator Details Form provided by us. You may replace the Administrator by completing and sending to us a new Administrator Details Form.

2.3. The Fees for the access granted under clause 2.1 during the Term is calculated in accordance with the number of end users authorised or granted access to the SaaS Products (each an **Authorised User**), as specified in the Quote.

2.4. Subject to clause 2.5, access under clause 2.1 is limited to the number of Authorised Users specified in the Purchase Order.



- 2.5. You may add additional Authorised Users at any time by submitting a Purchase Order to us.
- 2.6. The additional Fees for any additional Authorised Users will be charged:
 - (a) if the additional Authorised User is added during the Term, in accordance with Fees in the Quote; and
 - (b) if the additional Authorised User is added after the Term, our rates current at the time the Authorised User is added.
- 2.7. We will give notice prior to the expiry of the Term and any anniversary of Term of our Fees for Authorised Users for the next 12 month period.

3. Changes to the SaaS Products

- 3.1. We may, on reasonable notice to You, change or modify the SaaS Products (without materially reducing their general functionality), including by providing You with a new version at any time.
- 3.2. We may make available to You new functionality or features for the SaaS Products. If the new functionality or features increase the Fees payable for the SaaS Products, You will have the option of accepting or declining the new functionality or features.

4. Authorised Users

In addition to the terms and conditions of the applicable Authorised User Terms:

- 4.1. Each Authorised User must have a unique username and password issued or otherwise assigned by You for access to and use of the SaaS Products.
- 4.2. You must immediately notify us of any unauthorised use of an Authorised User's login credentials or any other breach of security known to You or Your Authorised Users.
- 4.3. Use of an Authorised User's login credentials or SaaS Products access by You or Your Authorised Users other than as provided in the Agreement will be considered a breach of the Agreement by You.

5. Availability

- 5.1. We will use commercially reasonable efforts to maintain availability of the SaaS Products during the Term.
- 5.2. You agree and understand that there will be times when the SaaS Products will not be available, such as:
 - (a) scheduled maintenance times;
 - (b) outages;
 - (c) emergency maintenance;
 - (d) unavailability caused by software, hardware, or other customers; and
 - (e) causes beyond our reasonable control.
- 5.3. We will make commercially reasonable efforts to notify You of any planned downtime and unavailability of the SaaS Products.
- 5.4. We are not liable for any delays, interruptions, or other transmission errors resulting from any lack of SaaS Products access or caused by Your device or Your internet or wireless service provider.



6. Your responsibilities

- 6.1. You must, and must ensure that You and Your Authorised Users:
- (a) comply with all applicable laws, the terms of the Agreement, and the terms of service of any Third-Party Software with which You use the SaaS Products;
 - (b) only access and use the SaaS Products for Your own internal business purposes;
 - (c) take all reasonable steps to safeguard access to the SaaS Products; and
 - (d) not use the SaaS Products in any manner or for any purpose that:
 - (i) is unlawful;
 - (ii) would give rise to any civil or criminal liability for Yourself, us, or any third party; or
 - (iii) in any manner contrary to or prohibited by the Agreement.
- 6.2. Except for Authorised Users, You must not assign, sublicense, license, sell, lease, rent or otherwise make the SaaS Products available to third parties.
- 6.3. Without limiting clause 6.1 or any other provision in the Agreement, You acknowledge and agree that You are solely responsible for:
- (a) Your Authorised Users' compliance with applicable laws, the Agreement and the applicable Authorised User Terms;
 - (b) the acts and omissions of your Authorised Users, as if they were your acts and omissions;
 - (c) the Content uploaded to the SaaS Products, including its accuracy and legality;
 - (d) managing the security, confidentiality, and access to the SaaS Products of Your Authorised Users and for all Content uploaded to the SaaS Products;
 - (e) all liabilities incurred through use of the SaaS Products by Your Authorised Users and that any transaction under an Authorised User's login credentials will be deemed to have been performed by You; and
 - (f) ensuring that Your Authorised Users' account information is true and accurate information.
- 6.4. You acknowledge that Your Authorised Users may act on information submitted to us by Your Authorised Users whether or not such information is accurate or true, and You agree that You or Your Authorised Users rely on such information at Your own risk and that we are not liable to You or Your Authorised Users for Your or Your Authorised User's reliance thereon.
- 6.5. Any use of the SaaS Products by You or Your Authorised Users that in our reasonable opinion threatens the security, integrity, or availability of the SaaS Products may result in Your or Your Authorised Users' immediate suspension of access to the SaaS Products.
- 6.6. You agree to prohibit Your Authorised Users from uploading material to our servers in violation of the intellectual property rights of any party and to maintain and enforce a policy that complies with applicable law.



7. Acceptable Use

- 7.1. Without limiting clause 6.1 or any other provision in the Agreement, you must not, and must ensure that Your Authorised Users do not:
- (a) download, install or use the SaaS Products on any devices on which You do not have permission to operate the SaaS Products, or on which the SaaS Products cannot be legally and rightfully operated;
 - (b) send communications that are illegal;
 - (c) defraud, deceive, or mislead anyone;
 - (d) transmit any content, data or information that is abusive, harmful, threatening, harassing, defamatory, bullying, malicious, discriminatory, deceptive, misleading, unethical, unlawful, or which violates another person's privacy rights, or which is otherwise objectionable;
 - (e) copy, modify, translate, adapt, or otherwise create derivative works or improvements of the SaaS Products;
 - (f) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the SaaS Products;
 - (g) remove, delete, alter, or obscure any trade marks or any copyright, patent, or other intellectual property or proprietary rights notices from the SaaS Products, including any copy of them; or
 - (h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the SaaS Products, or any features or functionality of the SaaS Products, to any third party.

8. Your Licence to Us

- 8.1. Subject to the Agreement, You grant to us a non-exclusive, royalty-free licence during the Term to use, reproduce, store, archive, aggregate, process, produce reports, and benchmark the Content in order to provide the SaaS Products to You.
- 8.2. You further grant us a licence to review and monitor all use of the SaaS Products by Your Authorised Users to ensure compliance with all of the terms of this Agreement and evaluate performance of the SaaS Products. This licence includes the ability to analyse user behaviour to evaluate use of our website and emails, both on an individual basis and in the aggregate, and otherwise to collect, create, and analyse metadata about Your use of the SaaS Products.
- 8.3. We will not disclose or distribute such metadata or other information resulting from monitoring activities, except in an anonymised and aggregate format.
- 8.4. Subject only to the limited licences expressly granted under this clause 8, we acquire no right, title, or interest from You or Your Authorised Users under the Agreement in or to the Content, including any Intellectual Property in it.
- 8.5. You are solely responsible for the Content that You or Your Authorised Users upload, publish, display, link to or otherwise make available on or through the SaaS Products, and You agree that we are only acting as a passive conduit for the online distribution and publication of the Content which You control.
- 8.6. We will not review, share, distribute, or reference any of the Content except as provided in the Agreement to provide the SaaS Products or as may be required by law.
- 8.7. You:



- (a) are solely responsible for the accuracy, quality, and legality of all Content, software, and hardware that is used with the SaaS Products other than that provided by us (**Your Property**), and for the means by which You acquired Your Property; and
- (b) warrant that Your Property does not and will not violate third-party rights of any kind, including any Intellectual Property Rights or privacy rights.

9. Security

- 9.1. We will use commercially reasonable efforts to implement and maintain data security practices for Your Property in accordance with applicable law and as set out in our Privacy Policy which can be accessed at [Harvest | Terms and Conditions](#).
- 9.2. Notwithstanding clause 9.1, You acknowledge that:
 - (a) Your access to and use of the SaaS Products is at Your own risk;
 - (b) we cannot guarantee that Your use of the SaaS Products will be uninterrupted or error free, or that the SaaS Products will be free of viruses or other harmful components
 - (c) we cannot guarantee that the Content will not be lost, or that unauthorised third parties will never be able to defeat the data security measures we have, or use the Content for improper purposes;
 - (d) we are not responsible for any loss or damage caused by a distributed denial-of-service attack, or any viruses, Trojans, worms, or other technologically harmful material that may infect Your device; and
 - (e) the internet is not secure and we are not responsible for any loss, corruption or interception of data sent to or from the SaaS Products.

10. Third-Party Software

- 10.1. You may have the option to use the SaaS Products through or integrated with third party software, applications, or platforms (**Third-Party Software**). You acknowledge and agree that:
 - (a) the Third-Party Software may have its own terms of use and privacy policies, and You agree to use the Third-Party Software in accordance with all applicable terms and privacy policies;
 - (b) we do not endorse and are not responsible or liable for the behaviour, features, or content of any Third-Party Software, or for any transaction You may enter into with the provider of any such Third-Party Software;
 - (c) should the provider of the Third-Party Software modify or change that Third-Party Software in any way, we cannot warrant the continuing compatibility of the Third-Party Software with our SaaS Products; and
 - (d) we will notify You if we become aware of any proposed modifications or changes to the Third-Party Software.



11. Free or Trial Subscriptions; Beta Versions

- 11.1. We may, in our sole discretion, make free, trial, and/or Beta Versions of the SaaS Products available to You. Because free, trial, or beta offerings are different from paid subscriptions, the following special terms apply:
- (a) if we make the SaaS Products, or a demonstration version of the SaaS Products, available to You on a free or trial basis, it is so that You can use the SaaS Products before purchasing a subscription to determine if the SaaS Products meets Your needs. Free/trial subscriptions to the SaaS Products, and any demonstration versions, are subject in all respects to the Agreement, except that we may discontinue the SaaS Products or Your ability to use the SaaS Products or demonstration version at any time, with or without notice to You and without further obligations to You; and
 - (b) we may make new versions of the SaaS Products available prior to their release to the general public, for testing and evaluation purposes (**Beta Versions**).
 - (i) Beta Versions of the SaaS Products are subject in all respects to the terms of the Agreement, except that we may discontinue the SaaS Products or Your ability to use a Beta Version at any time, with or without notice to You and without further obligations to You; and
 - (ii) You agree to notify us of all comments or suggestions about the SaaS Products, including any problems and ideas for improvements ("**Feedback**"), which come to Your attention during its use of the Beta Version; and
 - (iii) You assign to us all right, title and interest (including the Intellectual Property Rights) in the Feedback as and when created.

12. Disclaimer of Warranties

In addition to and without limiting any provision in the General Terms or elsewhere in the Agreement:

- 12.1. We make no warranty of any kind, whether express or implied, with regard to any Third-Party Software.
- 12.2. You agree that Your use of the SaaS Products is at Your sole discretion and risk.

13. Term and Termination

- 13.1. The term of the Agreement with respect to the SaaS Products commences as of the Effective Date and continues for a period of 12 months (**Term**) unless otherwise specified in a Quote or invoice.
- 13.2. You must notify us at least 30 days before the end of the Term of Your intent to terminate Your access to the SaaS Products.
- 13.3. If You fail to notify Us in accordance with clause 13.2, the Term will automatically renew for the same Term and We will continue to use the initial Purchase Order until such time as You supply a new or revised Purchase Order for the new Term.
- 13.4. On termination or expiry of the Agreement, unless otherwise agreed in writing, the following will apply:
 - (a) any licence rights granted to the other party with respect to the SaaS Products will terminate as of the date of termination or expiry;
 - (b) we will have no obligation to provide the SaaS Products to You or Your Authorised Users after the date of termination or expiry; and
 - (c) we will provide You and Your Authorised Users with access to the Content until 30 days after the date of termination or expiry, at which point such access will cease.