



**HARVEST**

# **GENERAL TERMS**

Revision Date: 17 October 2024



### GENERAL TERMS

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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, **Harvest Infinity Pty Ltd** (ABN 57 620 773 060) of 7 Turner Avenue, Technology Park, Bentley Western Australia, Australia, and **HTE (Harvest Technology) Limited** (Reg No. 772155) of Suite 4, Eden Gate Centre, Delgany, Greystones, Wicklow, A63WY44, Ireland (**Harvest, we, us, our**).

All applicable Product-Specific Terms set forth in clause 1 are governed by and form part of these General Terms.

These General Terms and the current applicable Product-Specific Terms will apply to any supply of Goods and/or Services by us to You. 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 in accordance with clause 18.

#### 1. Definitions and Interpretation

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1.1. Capitalised terms are defined below, throughout these General Terms, or in the applicable Product-Specific Terms.

**Agreement** has the meaning given to it in clause 3.1.

**Australian Consumer Law** means the provisions of Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*, as applied under Part XI or under a law of a State or Territory.

**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 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.

**Data Hosting** means the process of storing, managing, and maintaining digital assets, in a data centre or cloud based environment or infrastructure provided by Harvest, You or a third-party service provider.

**Data Protection Laws** means the applicable data protection and privacy laws and regulations.

**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 16.1(a).

**Dispute Notice** has the meaning given to it in clause 16.1(a).

**Fees** means the fees payable to us for the Goods or Services specified either:

- (a) in a Quote;
- (b) in our online e-commerce store; or
- (c) otherwise in writing by us.

**Goods** means any and all Hardware and/or Our Software supplied to You by us.

**Hardware** means any hardware (including any Third-Party Product), provided to You by us.

**Help Desk** has the meaning given to it in clause 6.1(a).

**Help Desk Support** means the support described in clause 6.

**Initial PS Term** has the meaning given in clause 7.3.

**Intellectual Property Rights** means all intellectual property rights including:

- (a) 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;
- (b) inventions, processes, know-how, trade secrets, improvements, other intellectual property and other assets;
- (c) rights to prevent the use and disclosure of the Confidential Information; and
- (d) any application or right to apply for registration of any of the rights described above.

**Nominated Representative** has the meaning given to it in clause 16.1(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.

**Order** means any order provided to us by You for specific Goods and/or Services, including a purchase order and/or via our online e-commerce store.

**Our Software** means the software provided to You by us in any format and via any channel, including, but not limited, to Nodestream™, NodestreamLive™, NodestreamX™, RiS™, Wearwolf™, Nodester™ and AVRLive™.

**Personal Information** means any information relating to an identified or identifiable natural person (as defined by Data Protection Laws) which is protected under Data Protection Laws.

**Premium Support** means the services set out in clause 7.1.

**Price** means the price payable to us for the Hardware specified, as applicable:

- (a) in a Quote or otherwise in writing by us; or



(b) on our online e-commerce store;

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

**PS Term** means the Initial PS Term and all Renewal PS Terms.

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

**Renewal PS Term** has the meaning given in clause 7.3.

**Services** means the services to be provided by us to You, including implementation, installation, network, Data Hosting, the Help Desk, 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.

**Taxes** has the meaning given to it in clause 5.9.

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
- (c) if a word is defined, another part of speech has a corresponding meaning.

## 2. Product-Specific Terms

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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](#) ;
- (b) if You are hiring Hardware from us – [Hire Terms](#);



- (c) if You are licensing Our Software – [Software Product Terms](#) and [Our Software Authorised User Terms](#);
- (d) if You have engaged us to provide Services - [Services Terms](#); and
- (e) in addition to the above terms, the country specific terms – [Country-Specific Terms](#).

### 3. Agreement

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- 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, the Country Specific Terms, the Data Processing Addendum, Authorised User Terms (if applicable), any Quote and Order (when the latter is accepted by us in accordance with clause 4.3) will form the agreement between the parties (**Agreement**).
- 3.2. The terms of any 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, an Order, the Country Specific Terms, these General Terms and applicable Product-Specific Terms, the Data Processing Addendum and the Authorised User Terms, the following order of precedence (highest to lowest) will apply:
  - (a) the Country Specific Terms;
  - (b) if applicable, the Quote;
  - (c) the Product-Specific Terms including, if applicable the Authorised User Terms;
  - (d) these General Terms;
  - (e) if applicable, the Data Processing Addendum; and
  - (f) if applicable, the accepted Order.

### 4. Ordering procedure

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- 4.1. You can order Goods and/or Services:
  - (a) directly from us; or
  - (b) from our online e-commerce store;by submitting an Order.
- 4.2. Where You submit an Order, You agree that:
  - (a) You have accepted our terms (as described in clause 3), as they apply, to the exclusion of Your terms and conditions, or any You intend to introduce;
  - (b) we will not be bound by any purchase order from You, unless we have notified You that we have accepted Your purchase order in accordance with clause 4.3; and
  - (c) subject to receiving payment in accordance with clause 5, we will provide to You the Goods and/or Services the subject of an accepted Order in accordance with the terms of the Agreement.
- 4.3. An Order will on be binding on us, when we accept the Order in writing (including where we issue you an invoice in accordance with clause 5.2(a)) or the Order is made on our online store.



- 4.4. Where we determine that an Order has been placed for use of the Goods and/or Services in any country referred to in clause 9.2, we reserve the right to immediately cancel the Order. On cancellation of an Order in such circumstances, the following applies.
- (a) Where you have already received Hardware, you must immediately return the Hardware to us at your cost.
  - (b) We will terminate your access to any of Our Software.
  - (c) We will cease providing any Services.
  - (d) Where such cancellation occurs after your payment of the corresponding Fees on such Order, we will issue you a refund in respect of such Fees pro-rated to take into account any usage of the Goods and/or Services prior to the date of cancellation, and, subject to our receipt of any returned Hardware and there being no damage to such Hardware (less any fair wear and tear).

### **5. Fees and payment**

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- 5.1. Unless otherwise agreed in writing, specified in the Quote, or specified in this clause 5, we will invoice You, and You must pay, for the Goods and/or Services, together with any shipping or transport costs, duties and Taxes (i.e. prior to collection or shipping of the Goods and/or Services) in accordance with this clause 5.
- 5.2. If You are purchasing:
- (a) Goods and/or Services directly from us, we will invoice You on receipt of Your Order (our invoice will be deemed to be acceptance of Your Order), and request payment by electronic bank transfer to permit the release of, and/or access to, the Goods and/or Services; or
  - (b) Goods and/or Services from our online store, You must pay by the payment methods prescribed by our online store to place the Order.
- 5.3. Fees for:
- (a) Hardware You purchase from us will be payable in full prior to collection or shipping of the Hardware;
  - (b) Our Software that You purchase from us will be charged to You in advance, either daily, monthly, or in full for a 12-month or 24-month period as agreed in writing;
  - (c) Hardware that You hire from us will be charged to You, in advance, either monthly during the term of hire of the Hardware, or for the full hire term of the Hardware as agreed in writing between us.
- 5.4. Fees for Our Software and/or any Hardware that you hire from us are subject to any additional provisions, including fee increase provisions, in the relevant Product-Specific Terms.
- 5.5. Regarding any licence of Our Software that is Nodestream™, You acknowledge and agree that:
- (a) our Fees are charged for:
    - (i) “connections”, where a connection is an established link between devices (a device being a machine or end point used to perform one or more tasks); or
    - (ii) the number of Authorised Users; or
    - (iii) the number of hours or days of live-streamed video, audio or data consumed; or



- (iv) the volume of data consumed; or
  - (v) additional features or modes of operating, including Nodestream™ Pro Mode; and/or
- (b) the requested number of Nodestream™ connections will be paid in advance in accordance with the timing agreed for your other Fees.

5.6. Regarding the Nodestream™ Pro Mode feature of Our Software that is NodestreamX™, You agree that:

- (a) You will only be permitted to activate Nodestream™ Pro Mode if You have a current Nodestream™ subscription;
- (b) our Fees are charged per hour (**Nodestream™ Pro Mode Hours**);
- (c) Nodestream™ Pro Mode Hours must be purchased in advance, in packages of not less than 24 hours;
- (d) You may consume Nodestream™ Pro Mode Hours at will via the “switch on, switch off” functionality in the software; and
- (e) Nodestream™ Pro Mode Hours are charged starting from the time Nodestream™ Pro Mode is “switched on” until Nodestream™ Pro Mode is “switched off”.

5.7. 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), on notice to you:
  - (i) delay the supply of any undelivered Hardware;
  - (ii) suspend Your access (and Your Authorised Users’ access) to Our 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 5.7(a)) in full by us.

5.8. Unless otherwise specified in a Quote or invoice, all payments under the Agreement must be made in United States Dollars (USD) to a bank account or authorised vendor, nominated by us.

5.9. 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. Help Desk Support

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6.1. Subject to clause 6.2, we will use reasonable commercial efforts to do the following.



- (a) Provide a help desk support service to You, primarily by e-mail and telephone to resolve any issues that You may have in relation to the Hardware and Our Software in accordance with this clause 6 (**Help Desk**), operating during normal business hours of 9:00am to 5:00pm Australian Western Standard Time (AWST; GMT +8), Monday to Friday, excluding public holidays, except for unavailability due to:
- (i) any circumstance or event beyond our reasonable control, including delays caused by systems outside our control (e.g., internet service providers, satellite link providers, Your existing systems or third-party systems); and/or
  - (ii) us or our third-party service providers carrying out scheduled and unscheduled maintenance, upgrades, back-ups, testing or repairs on our systems; and
- (b) Prioritise issue resolution in accordance with the level of severity, as assessed by us, set out in the following table below.

Severity	Description
High	The Hardware, Our Software, or an essential component of them/it, is offline and seriously affecting Your business' operation or ability to operate. No acceptable workaround exists for the problem.
Medium	The Hardware, Our Software, or an essential component of them/it, is not working correctly, or is working with limited functionality. Business operation or ability to operate is not seriously affected because there is an acceptable workaround.
Low	A non-essential function of the Hardware or Our Software is not working or is working in a very restricted manner. Effect on Your business operation is minimal.

- 6.2. You will provide us with all reasonable assistance and access to Your premises, personnel, facilities, systems, and information as we reasonably request to allow us to provide the Help Desk Support and otherwise comply with our obligations under the Agreement.
- 6.3. Help Desk Support does not extend to issues arising from Your network, Your hardware, Your software, third-party hardware, third-party software or network implementation services (**Out of Scope Issues**).
- 6.4. You may request technical support for Out of Scope Issue via our Help Desk communication channels. If we agree to provide this to You, we will charge You for those hours of technical support at our current hourly rate. We will notify you of our current hourly rate prior to commencing any such technical support.





### 7. Premium Support

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- 7.1. If You subscribe to Premium Support, we will use best endeavours to provide You with the services of the Help Desk (excluding Out of Scope Issues) on a 24 hour, 7 day per week basis with a response provided within 30 minutes of a support request being made through [support@harvest-tech.com.au](mailto:support@harvest-tech.com.au) or a dedicated telephone number or chat channel provided by us to You.
- 7.2. The Fee for Premium Support will be as provided to You in a Quote and You may purchase Premium Support by submitting an Order to us.
- 7.3. Premium Support commences on the start date set out in the Quote and will continue for the period stated on the Quote (**Initial PS Term**). Premium Support will automatically renew for the successive periods which will be the same as the immediately preceding PS Term (each a **Renewal PS Term**), unless either party gives notice to the other at least 14 days before the end of the Initial PS Term or any Renewal PS Term, as applicable, that it does not want the Premium Support to renew. The pricing for the new PS Term will be the same as for the previous PS Term, unless we give You notice of new pricing at least 30 days before the end of the previous PS Term, and if we do and You do not notify us in writing you do not consent to the new pricing at least 14 days before the end of the previous PS Term, the pricing set out in the notice will apply to the new PS Term. If You do not notify us in writing you do consent to the new pricing at least 14 days before the end of the previous PS Term, the Renewal PS Term will not commence and we will cease providing Premium Support, unless the parties agree otherwise.

### 8. Your Obligations

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- 8.1. You must:
- (a) only submit or provide information to us that is accurate and complete and 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 (including any of Your employees, contractors, and third-party suppliers); and
    - (ii) all of Your decisions; and
  - (b) ensure that Your Authorised Users, Your employees, contractors, and third-party suppliers submit or provide information to us that is accurate and complete.
- 8.2. You must not:
- (a) permit anyone (including any Authorised User and/or third-party) to:
    - (i) reverse engineer or disassemble or tamper with the Hardware or Our Software, or
    - (ii) determine or attempt to determine any source code, algorithms, methods or techniques used or embodied in Our Software, or
    - (iii) copy, modify, translate, adapt, or otherwise create derivative works or improvements of Our Software;
  - (b) use the Hardware or 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 Software, the Hardware and/or our Confidential Information (including any Intellectual Property Rights in respect of such items), 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 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 the Hardware, 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;
- (i) without our prior written approval:
  - (i) make any use of any of the Hardware, Our Software or the Services for the benefit of; or
  - (ii) provide access to any Hardware, Our Software or the Services to, a Defence Entity or a Space Entity; or
- (j) without our prior written approval:
  - (i) make use of any of the Hardware, Our Software or the Services in, or for the benefit of; or
  - (ii) provide access to any of the Hardware, Our Software or the Services to anyone in, an embargoed or sanctioned country under United Nations Security Council (UNSC) sanctions regimes or any Australian autonomous sanctions regimes.

### **9. Export controls and licensing**

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- 9.1. For projects located outside of Australia, You acknowledge and agree to comply with all 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.
- 9.2. 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 on You providing evidence reasonably satisfactory to us that the proposed use is licensed or otherwise authorised by the applicable government authority).
- 9.3. 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 Goods and/or Services.

### **10. Disclaimer of warranties, exclusions, and limitation of liability**

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- 10.1. This clause does not operate to exclude or limit any obligations we have, and/or any rights You have, under any applicable laws, including any consumer laws.
- 10.2. To the extent permitted by law:
- (a) all terms, warranties and representations not expressly stated in the Agreement or in the applicable Product-Specific Terms, are excluded from the Agreement; and
  - (b) we do not warrant that the Goods and/or Services will meet all of Your requirements or that their operations will be uninterrupted or error-free.
- 10.3. Subject to the remainder of this clause 10, 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, whichever is lower; or
  - (b) in the case of Hardware hired from us the subject of the claim, the Fees received by us for the month in which the event giving rise to the liability occurred; or
  - (c) in the case of Our Software, the subject of the claim, the Fees received by us for the month in which the event giving rise to the liability occurred; or
  - (d) in the case of the Services the subject of the claim, the Fees received by us for the month in which the event giving rise to the liability occurred capped at AU\$1,000.
- 10.4. To the maximum extent permitted by applicable law, neither party is liable to the other party or any third party under or in relation to the Agreement whether in contract, tort (including negligence) or otherwise 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.
- 10.5. 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 10.3; and (b) US\$10,000.
- 10.6. Nothing in the Agreement excludes or limits our liability for matters for which liability cannot be excluded or limited under applicable law.
- 10.7. A party's liability under Agreement will be reduced proportionately to the extent that any such liability arose as a result of the other party's act or omission and, in the case of Harvest also to the extent that such liability is caused or is contributed to by:
- (a) any 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) Your failure to comply with the Operation Guides and/or any direction or recommendation provided by us;
- (d) the failure of any third-party service provider (e.g., power, internet or satellite link or services provider); and/or
- (e) any contamination or environmental problem occurring after the delivery or provision of the Goods and/or Services.

10.8. If any supply by Harvest pursuant to this Agreement comprises a supply to a 'consumer' as defined in the Australian Consumer Law, then nothing contained in this agreement restricts or modifies guarantee, right or remedy which pursuant to the Australian Consumer Law applies to this agreement or is conferred on the You, provided that to the extent that the Australian Consumer Law permits us to limit our liability for breach of guarantee imposed by the Australian Consumer Law, then to the extent permitted by the Australian Consumer Law, our liability for such breach is limited to:

- (a) in the case of goods, any one or more of the following acts as determined by us:
  - (i) the replacement of the goods or the supply of equivalent goods; or
  - (ii) the repair of the goods; or
  - (iii) payment of the cost of replacing the goods or acquiring equivalent goods; or
  - (iv) the payment of reasonable costs of having the goods repaired; or
- (b) in the case of services any cost of the following as determined by us:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

10.9. You agree to 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 reasonable attorneys' fees due to, relating to or arising out of:

- (a) any breach by You and/or your Authorised Users of the Agreement;
- (b) any breach of an Authorised User of the Harvest Software Authorised User Terms;
- (c) arising out of or relating to Your use of any third party product;
- (d) any misuse of our Goods and/or Services, as determined by us in our sole discretion; and
- (e) any unlawful or negligent act or omission of You or Your employees, agents or subcontractors in any way relating to the Agreement.

10.10. To the extent permitted by law, Your maximum total aggregate liability under or arising out of the Agreement whether in contract, tort (including negligence) or otherwise is limited to the is limited to the Fees paid by You to Harvest in the 12 months prior to the event giving rise to liability.

10.11. Notwithstanding any other provision of this Agreement, the liability cap in clause 10.10 does not limit Your liability where the loss is caused by:

- (a) negligent or fraudulent acts or omissions by You;
- (b) Your wilful misconduct;
- (c) Your breach of applicable laws; and



- (d) Your breach of clauses 5, 8, , 11, 12, 13, and 14.

## **11. Confidentiality**

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### **11.1. 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.

### **11.2. Without limiting clause 11.1, 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.

### **11.3. The parties' obligations under this clause 11 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 11.4 in relation to the disclosure.

### **11.4. 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.

11.5. 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.

## **12. Intellectual Property**

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12.1. You acknowledge and agree as follows.

- (a) we own rights (including all Intellectual Property Rights) in and to:
  - (i) the Goods and/or Services, including the Hardware and Our Software, and all associated code, software, images, illustrations, designs, photographs, video clips, text, graphics, icons, designs, applications, written information and screens.
  - (ii) any accompanying materials or documentation, including that are created by and/or for you and/or any Authorised Users in connection with the use of Goods and/or Services, including the Hardware and Our Software; and
  - (iii) any variations, modifications, adaptations, developments and/or derivatives of any of the Goods and/or Services, and/or any accompanying materials or documentation.
- (b) Any rights necessary for you to access and use any Intellectual Property Rights in the Hardware, Our Software or the Services is set out in the relevant Product-Specific Terms.
- (c) Subject to the limited rights expressly granted under the Agreement, we reserve all rights (including Intellectual Property Rights), title, and interest in and to the Goods and/or Services. No rights are granted to You other than as expressly set forth in the Agreement.
- (d) Your use of the Goods and/or Services in accordance with Agreement does not authorise You to use any of our Intellectual Property Rights in any manner. You may not use Goods and/or Services in any way that might confuse others or that disparages us. Only a duly authorised officer of Harvest may grant permission or a license to use any of our Intellectual Property Rights and any attempted grant or similar promise by anyone other than a duly authorised officer of Harvest is invalid.

## **13. Third Party Products and Third Party Provider**

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13.1. You acknowledge and agree to the following in respect of third party products and providers.

- (a) Harvest uses products, solutions, applications, systems, and software, including servers and cloud solutions provided by third parties in respect of its Goods and/or Services and you consent to such use and such providers.
- (b) We may generate and provide usage reports to the third party providers for the purposes of account administration and product evaluation.

## **14. Privacy; Authorised Users**

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- 14.1. Any Personal Information submitted to, or stored or processed on or by Our Software, or otherwise provided to us by or on Your behalf (including by any of Your Authorised Users), will be handled by Us in accordance with the Data Processing Addendum, Our Privacy Policy and applicable privacy laws.
- 14.2. To the extent that You provide Personal Information to Us, You are solely responsible for:
- (a) providing notice to, and obtaining consent from, each individual (including Your Authorised Users) to whom the Personal Information relates, in compliance with applicable laws, contracts, and internal policies or guidelines, including, notice and consent with respect to Personal Information collection, use, processing, storage, sharing or disclosure, by Us in accordance with clause 14.1 and for the purposes of Us providing the relevant Goods and/or Services; and
  - (b) if You engage in any activity that involves or results in the “sale” or “sharing” of Personal Information that was collected or processed using Our Software, 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.
- 14.3. You acknowledge that each of Your Authorised Users will be asked to accept our Privacy Policy and the Authorised User Terms, and that if they do not do so, they will not be permitted to use Our Software or our Services.
- 14.4. You are solely responsible for:
- (a) Your Authorised Users’ compliance with the Authorised User Terms, all applicable laws and the Agreement;
  - (b) the accuracy and legality of any data, including Personal Information, which is input to the Services or Our Software by Your Authorised Users; and
  - (c) ensuring that You and Your Authorised Users comply with the terms of use of any third-party software with which You use Our Software or access the Help Desk Support.
- 14.5. 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.

## **15. Termination**

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### **Termination by either party**

- 15.1. 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

- 15.2. Notwithstanding clause 15.1, 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, contractors or Authorised Users, have used the Goods and/or Services in breach of the Agreement.

### Effect of termination or expiry

- 15.3. On termination or expiry of this Agreement,
- (a) each party must, on request, return or securely destroy all Confidential Information in that party's control;
  - (b) the effect of termination provisions in the applicable Product-Specific Terms apply in addition to this clause ; and
  - (c) clauses 6, 10, 11, 12, 15.3, 16 and 18 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.
- 15.4. Termination or expiration of this Agreement shall not affect any other rights of either party that may have accrued up to the date of such termination or expiration.

## 16. Dispute Resolution

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- 16.1. 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 16.1. If a Dispute is not resolved within 30 days after submission, either party may start a court proceeding as provided under clause 16.2.
- (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.
- 16.2. The Agreement and the resolution of any Disputes shall be governed by and construed in accordance with 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.
- 16.3. 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 16.





### 17. Variations

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- 17.1. This Agreement may be updated from time to time by giving You notice as follows.
- 17.2. In the event the variation materially impacts;
- (a) your access or use of the Goods and/or Services supplied by us to You under this Agreement; and/or
  - (b) either party's warranties, indemnities, liabilities and/or termination and effect of termination provisions under this Agreement,
- we will notify You 10 days prior to such variation taking effect (**Notice Period**).
- 17.3. Upon receipt of notice under clause 17.2, if you do not accept the proposed variation, you may terminate this Agreement, subject to issuing us a termination notice within the Notice Period.
- 17.4. All other changes will be effective from the date of notification.
- 17.5. Subject to clause 17.3, Your continued use the Goods and/or Services after the relevant effective date of notification constitute acceptance of the amended Agreement.

### 18. Miscellaneous

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- 18.1. 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](mailto: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.
- 18.2. A party will not be liable to the other party if the performance of its obligations under this Agreement is delayed, impeded, or prevented by any act or event beyond our control (**Force Majeure**), including, 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 the party, in our case, delay in performance by subcontractors to the extent such delay is beyond our reasonable control, and other delays incurred for reasons beyond the party's reasonable control, which, by the exercise of reasonable diligence, the party is unable to prevent or avoid. The party's obligation to perform such affected obligations 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. The affected party 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). This clause does not apply to Your obligation to pay any Fees under this Agreement.
- 18.3. Not all Goods and/or Services are available to all persons or in all locations. We reserve the right not to supply, at our sole discretion, any Goods and/or Services in any location. If You choose to access or use the Goods and/or Services in a location where we have chosen not to supply, You do so at Your own risk and You are responsible for ensuring that the Goods and/or Services comply, and Your use of them, with applicable local laws.
- 18.4. Any waiver of any right under the Agreement must be in writing and signed by the party granting the waiver. A party's waiver of any breach of this Agreement shall not constitute a waiver of any prior or subsequent breach of this Agreement.



- 18.5. 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.
- 18.6. 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.
- 18.7. The Agreement embodies the entire understanding and agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between the parties.
- 18.8. 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.
- 18.9. 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.
- 18.10. 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 of the Agreement. The Agreement shall not be construed against either party by reason of its drafting.