



## **Ibis Business Intelligence Solutions Pty Ltd Standard Supply Terms and Conditions for the provision of Hosted Managed Services (Supply Terms and Conditions)**

**Effective 1<sup>st</sup> June, 2026**

### **IMPORTANT INFORMATION – PLEASE READ**

The Standard Supply Terms and Conditions are comprised of the following parts, which together constitute a single legally binding contract relating to your use of any services, software or other products supplied by Ibis Business Intelligence Solutions Pty Ltd:

- Part A – Terms and Conditions for Ibis Managed Hosted Services

These Supply Terms and Conditions are to be read in conjunction with the 'Managed Hosted Service' Proposal' or any 'Specific Supply Terms and Conditions' provided to the Consumer by Ibis. Together, these documents record the contractual agreement in relation to the Products and Services to be provided to the Consumer by Ibis Business Intelligence Solutions Pty Ltd (**Agreement**) between the Consumer and Ibis Business Intelligence Solutions Pty Ltd. These documents (Agreement) constitutes the complete and exclusive statement between the Consumer and Ibis Business Intelligence Solutions Pty Ltd and no statement or representation not contained in this Agreement will be binding on Ibis Business Intelligence Solutions Pty Ltd as a warranty or otherwise.

# Part A – General Terms and Conditions

## Definitions

“**Australian Consumer Law**” means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010* as amended from time to time.

“**Claim**” will mean any action, claim, proceeding or demand whatsoever, whether presently existing or arising at any time in the future and whether referable to events or circumstances which have already occurred or which may occur in the future.

“**Confidential Information**” means:

- a. know-how, trade secrets, ideas, concepts, technical and operational information confidential to or used by either party;
- b. information concerning the affairs or property of either party or any business, property or transaction in which either party may be or may have been concerned or interested;
- c. information about the terms or effect of this Agreement;
- d. any information relating to the Intellectual Property; and
- e. information which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to:
  - i. either party; or
  - ii. any third-party with whose consent or approval either party uses that information,

but excludes any information which;

- (1) is in or enters the public domain through no fault of the recipient; or
- (2) was already known to the recipient at the time it was made available to the recipient and the recipient obtained the information by lawful means from a third party in circumstances that did not involve the third party breaching an obligation of confidence owed to the discloser; or
- (3) was developed by the recipient without reference to or use of information referred to in the definition of ‘Confidential Information’ of the discloser.

“**Consumer**” means the person or legal entity identified in a Proposal, or Amendment or Invoice who purchases a Product or Services from Ibis.

“**Proposal**” means the ‘Computer Systems and Services Proposal’ agreed between the Consumer and Ibis setting out the Products supplied to the Consumer by Ibis and the applicable Price, licence period, and other details;

“**Effective Date**” means the date and time that the Consumer accepts the Proposal or Specific Supply Terms and Conditions (and therefore these Standard Supply Terms and Conditions), by either, accepting or signing the Proposal or Specific Supply Terms and Conditions (electronically or otherwise) or by verbal confirmation of the Proposal or Specific Supply Terms and Conditions, by clicking “I accept” or by installing or using or accepting the Services or Products supplied by Ibis (whichever occurs first).

“**Force Majeure**” means any circumstance beyond the reasonable control of a party which result in a party being unable to perform an obligation due under this Agreement. Such circumstances include any act of God, earthquakes, floods, storms, explosions, fires and/or any natural disaster but exclude any workforce or industrial action;

“**GST Law**” means *the A New Tax System (Goods & Services Tax) Act 1999* (Cth).

“**Ibis**” means Ibis Business Intelligence Solutions Pty Ltd ACN 602 532 918 and ABN 15 602 532 918.

“**Improvements**” means all modifications, alterations, derivative works and improvements to the Products, Services, Ibis’ Confidential Information or Intellectual Property which are developed by Ibis or the Consumer.

“**Intellectual Property**” will mean all past, present and future industrial and intellectual property rights relating to either party, including without limitation:

- a. inventions, patents, copyright, trade business, company or domain names, rights in relation to circuit layouts, plant breeders’ rights, registered designs, registered and unregistered trade marks, know how, trade secrets and the right to have confidential information kept confidential, and any and all other rights to intellectual property which may subsist anywhere in the world; and
- b. any application for or right to apply for registration of any of those rights.

**“Partners”** means third party developers and subcontractors that Ibis works with to write a Custom Development

**“List Price”** means the price recommended by the supplier of the Software or Goods, set out in the Proposal or Specific Supply Terms and Conditions as changed from time to time;

**“Moral Rights”** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, as defined in the *Copyright Act 1968* (Cth).

**“Product”** means any Software, Custom Development, Hardware or Equipment supplied by Ibis to the Consumer.

**“Specific Supply Terms and Conditions”** means any Supply Terms and Conditions specifically agreed between the Consumer and Ibis that take precedence over the ‘Standard Supply Terms and Conditions’ setting out the Products and Services supplied to the Consumer by Ibis and the applicable Price, licence period, and other details.

**“Price”** means the price specified in the Proposal;

**“Software”** will mean any Software, Software Licences, Software Subscription or Ibis Software or Business Intelligence Development supplied by Ibis Business Intelligence Solutions Pty Ltd to the Consumer.

**“Software Developer”** means a software developer who provides Ibis with Software to provide pursuant to the Software Developer’s Licence Agreement.

**“Software Licence Agreement”** means the licence agreement of a Software Developer.

**“Managed Hosted Services”** will mean any hosted database, cloud hosting, remote access, monitoring and related support services supplied by Ibis, including where Consumers connect directly from their Computer to a specified Ostendo database.

**“Third Party Services”** will mean any third party services and infrastructure on which the Managed Hosted Services may rely to deliver certain functionalities.

### **General Term and Conditions**

1. All Computer systems, Products and Services supplied by Ibis are supplied to the Consumer on the following terms and conditions, including (for the avoidance of any doubt), the terms and conditions of the Proposal or Specific Supply Terms and Conditions to the Consumer.
2. All Computer systems, Products and Services supplied by Ibis are supplied to the Consumer on the following terms and conditions, including (for the avoidance of any doubt), the terms and conditions of the Proposal or Specific Supply Terms and Conditions to the Consumer.
3. This Agreement commences from the Effective Date.
4. Upon acceptance of this Agreement by the Consumer, the Consumer agrees to comply with the following terms and conditions when accessing any Products and/or Services provided by Ibis.
5. The Consumer acknowledges and agrees that Ibis may engage third-party providers (including the Third Party Services, Partners, and Software Developer) to provide Products and/or Services to the Consumer. The Consumer must (and will procure its employees, subcontractors or agents to) comply with any terms and conditions imposed by these third-party providers as advised by Ibis from time to time, and failure to do so may result in the Consumer being unable to access the relevant Products and/or Services.
6. The Consumer’s acceptance of the Proposal or Amendment acknowledges the indebtedness and waives any right to dispute the account at a later date.
7. Any information published or otherwise about the Software and Goods is by way of information only and cannot be considered a parallel contract.
8. The most recent “Specific Supply Terms and Conditions for the provision of Computer Systems and Services” accepted by the Consumer will take precedence over the “Proposal” and “Standard Supply Terms and Conditions for the provision of Computer Systems and Services” and in the case of any conflict between these terms and conditions, the most recent “Proposal” or “Specific Supply Terms and Conditions for the provision of Computer Systems and Services” accepted by the Consumer will prevail.
9. Apart from the “Specific Supply Terms and Conditions for the provision of Computer Systems and Services with the Consumer”, these “Supply Terms and Conditions” will take precedence over any oral terms or terms printed on any Proposal or Order form and in the case of any conflict between these terms and conditions and any other document that may exist, these “Supply Terms and Conditions” will prevail.

10. Where Ibis fails to enforce any terms and conditions of this Agreement or fails in any way to exercise its rights under this Agreement, Ibis will not be deemed to have waived these rights with respect to any term or condition or right.

### **Amendments to these Supply Terms**

11. Ibis may amend any terms of this Agreement at any time, in its sole discretion.
12. An amendment will be notified to the Consumer either:
  - a. At the time the Consumer permits or purchases Product updates; or
  - b. By email notification at any time.
13. Subject to clause Part A.14, an amendment will apply and come into effect on the earlier of:
  - a. 30 days after it is notified to the Consumer; and
  - b. When the Consumer indicates acceptance on any notification of an amendment.
14. The consumer is deemed to have consented to any amendment requested by Ibis by continuing to use the Product or Services 30 days after an amendment has been notified to the Consumer, without notifying Ibis of an objection to the amendment.
15. If the Consumer does not consent to an amendment notified by Ibis, the Consumer must inform Ibis of this in writing no later than 30 days after receiving notification of the amendment.
16. If the Consumer does not consent to the amendment of a material term of this Agreement, the Consumer may request termination of this Agreement by notice to Ibis provided all fees and charges owing by the Consumer have been paid to Ibis.

### **Pricing**

17. Software and Goods are licensed or sold at the List Price (i.e. the recommended price set by the Supplier) current at the date of invoice.
18. Software and Goods priced in foreign currency will be invoiced in Australian dollars at the currency exchange rate on the date of invoice. If the invoice is unpaid after the due date a new invoice will be issued for the supply of Software and Goods.
19. Any expenses incurred by Ibis in respect of the sale transaction (including but not limited to bank fees) will be on-charged to the Consumer.

### **GST**

20. All terms in this clause not defined elsewhere in this Agreement take their meaning under the GST Law.
21. Unless otherwise expressly stated, the Price and other sums payable or consideration to be provided under this Agreement are exclusive of GST.
22. If GST is payable by the Consumer on any supply made by Ibis under this Agreement, the Consumer must pay to Ibis an additional amount that is equal to the amount payable by the Consumer for the relevant supply multiplied by the prevailing GST rate. This additional amount is payable at the same time as the Price or other consideration for the relevant supply to which the additional amount relates.
23. In the event of a taxable supply, Ibis will provide a valid tax invoice (in the form prescribed by the GST

### **Licensed Software**

24. All Software must be used strictly in accordance with the terms of the Software Licence Agreement with the Software Developer. The Consumer will ensure that its employees, subcontractors or agents who have authorised access to the Software read, understand and agree to comply with the Software Licence Agreement. The Consumer takes full responsibility for any breach or alleged breach of the terms of the Software Licence Agreement by the Consumer or any of its employees, subcontractors or agents and indemnifies Ibis in respect of any claim, costs or damages suffered by Ibis as a result of any such breach or alleged breach.
25. All rights, title or interest in respect of the intellectual property rights in the Software remain with Ibis, or the Software Developer at all times.

### **Payment Terms**

26. Full payment of invoices without set-off or deduction or retention is due and payable by the due date on the invoice. Payment terms are detailed in the 'Computer Systems and Services Proposal' or the 'Specific Supply Terms and Conditions' sent to the Consumer.
27. Ibis will apportion payments to outstanding accounts as it thinks fit.

28. Ibis is under no obligation to supply goods and services on credit to the Consumer.
29. If payment is not made by the due date, Ibis is entitled to charge the Consumer interest on the unpaid overdue balance at the rate of five percent (5%) per annum above the current rate charged by Ibis' bank, calculated from the due date of payment down to the actual date of payment, and Ibis may at its discretion suspend its supply of Goods or Services until the overdue amounts are paid in full.
30. Should any invoice be unpaid after thirty (30) days from the due date of the invoice, Ibis reserves the right to withhold the supply of further Goods and Services and change the Consumer's credit terms to payment in advance for Goods and Services.
31. If at any time Ibis deems the credit of the Consumer to be unsatisfactory, it may require the Consumer to provide at its cost, security for payment and/or Ibis may suspend performance of its obligations under this Agreement until satisfaction of security is provided.

### **Confidentiality**

32. Each party undertakes to keep confidential any Confidential Information (written or oral) concerning the business and affairs of the other which was obtained during the negotiation of the Proposal, or during the provision of Products or Services.
33. Ibis undertakes to treat the Consumer's data with the utmost integrity and confidentiality and not to utilise it for any other purpose than to service the Consumer.
34. Ibis may disclose (or permit anyone else to disclose) Consumer's data and Confidential Information to a third party who:
  - a. has been approved in writing by the Consumer; or
  - b. is an employee or contractor of, or a professional adviser to Ibis, including any Third Party Services, Partners, Software Developer, or any third-party providers who have been engaged by Ibis to provide any Products and/or Services to the Consumer,  
(referred to as a **Permitted Party**).
35. A disclosure to a Permitted Party may only be made:
  - a. for the provision of Products or Services to the Consumer;
  - b. if previously consented to in writing by the Consumer; or
  - c. if required by law or the rules of a stock exchange, government or government agency having jurisdiction over the party concerned.

### **Intellectual Property**

36. All rights, title, ownership or interest in respect of the intellectual property in ideas, techniques, concepts, inventions, processes used or developed or created by Ibis in the course of providing the Services to the Consumer remain with Ibis at all times.
37. All rights, title, ownership or interest in respect of the intellectual property in Custom Business Intelligence and Developments provided by Ibis remain with Ibis at all times. The Consumer is granted a non-exclusive, limited, non-transferable, non-sublicensable, royalty-free, Australia-wide licence to use them.
38. Nothing contained in this Agreement constitutes an assignment of any Ibis's Intellectual Property from Ibis to the Consumer.

### **Usage Restrictions**

39. The Consumer undertakes and agrees to (and will procure its employees, contractors and agents to):
  - a. not copy, imitate, mirror, reproduce, disseminate, publish, redistribute, translate, alter, merge, adapt, modify, dissemble, reverse engineer, decompile or otherwise tamper with the Products and Ibis's Intellectual Property;
  - b. not do any act which may, in the reasonable opinion of Ibis, harm the goodwill in the Products and Ibis's Intellectual Property, or in any other way diminish the value of the Products and Ibis's Intellectual Property;
  - c. not by act or omission, permit any employee, agent, contractor, sub-licensee or other person to diminish the value of the Products and Ibis's Intellectual Property by any means including by commenting unfavourably in public about the Products, Services and/or Ibis; or
  - d. not apply to register Ibis's Intellectual Property;
  - e. not permit a third party to use or otherwise access, reproduce or disclose Ibis's Intellectual Property without Ibis's prior written consent; or

- f. damage, infringe, or challenge Ibis's Intellectual Property, or otherwise use Ibis's Intellectual Property in a manner that:
  - i. brings, or may foreseeably bring (as determined by Ibis), Ibis into disrepute; or
  - ii. harms, or may foreseeably harm (as determined by Ibis), the goodwill, name or reputation of Ibis.
  - iii. reputation of Ibis.

### **Improvements**

40. The parties acknowledge and agree that:
41. certain Improvements may be made from time to time;
42. all Intellectual Property relating to the Improvements automatically vest in Ibis (or its nominees) upon creation, and shall be the sole and exclusive property of Ibis (or its nominees), excluding any Improvements to the Goods, which shall be owned by the Consumer provided that the Consumer has fulfilled its obligations under clause 29 of this Agreement; and
43. the Consumer will:
44. promptly inform Ibis of (and disclose to Ibis) all Improvements developed by the Consumer;
45. consent (and will obtain the consent of all their personnel) to any of Ibis's (or its nominees') acts or omissions which may be in breach of the Moral Rights that may be held by the Consumer and/or their personnel in any works constituting, containing or created in connection with the Improvements; and
46. do (and will procure their personnel to do) all things and sign all documents that may be necessary to vest and secure ownership, registration or other protection of such Intellectual Property relating to the Improvements in Ibis (or its nominees).

### **Indemnity and Third Party Liability**

47. Ibis does not represent or warrant, and hereby disclaim any representations or warranties, whether express or implied by law, to the extent permitted by law, that the provision of and access to the website and/or Managed Hosted Services and any information or software contained or referred to therein will be accessible, uninterrupted or error-free, that defects will be corrected, or that the website and/or Managed Hosted Services or the server that makes it available are free of viruses or other harmful components, or that the Consumer has the ability to transmit and receive information from or through the website.
48. The Consumer acknowledges that access to the website and/or Managed Hosted Services may be suspended, restricted, throttled, or interrupted for reasons including maintenance, system upgrades, cyber-attacks, DDoS events, platform migration, or failures in third-party infrastructure.
49. Ibis implements reasonable security measures but does not guarantee immunity from cyber threats. The Consumer is solely responsible for securing its devices, networks, browsers, and credentials when accessing the website and/or the Managed Hosted Services.
50. Ibis shall not be responsible for harm arising from:
  - a. phishing attempts impersonating Ibis
  - b. compromised user devices
  - c. insecure networks
  - d. man-in-the-middle attacks
  - e. third-party browser extensions or ad-blockers interfering with website content or functionality of Managed Hosted Services.
51. The Consumer acknowledges that the Managed Hosted Services may rely on third-party services and infrastructure to deliver certain functionalities (Third Party Services), and the Consumer to release Ibis from all liability and Claims resulting from the Managed Hosted Services being unavailable or otherwise interrupted due to the actions or inactions of those third parties.
52. The Consumer agrees to indemnify Ibis and hold Ibis harmless from all Claims and liability arising out of or in connection with the unavailability or interruption of the Managed Hosted Services caused by Third Party Services.
53. The Consumer acknowledges that the interruptions caused by Third Party Services may constitute a force majeure event, and Ibis shall be excused from performance of its obligations under this Agreement during such events to the extent reasonably necessary. For the avoidance of any doubt this includes circumstances where Microsoft, or Google, or Amazon have service interruptions.

54. The information provided herein is to be used entirely at the Consumer's own risk. In no event shall Ibis or its principals, owners, officers, managers, employees, representatives, contractors or agents be liable for any direct, indirect, incidental, special, exemplary, punitive, or consequential loss, injury or damage of any kind whatsoever (including without limitation loss of data, loss of revenue or anticipated profits, loss of business, loss of opportunity, loss of goodwill or injury to reputation and losses suffered by third parties), however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise), arising in any way out of or in connection with the provision of or any access to, use of or participation in the website or Managed Hosted Services and any information or software contained or referred to therein, or any copying, display or other use thereof or the submission or contribution by the Consumer of any information to us or the website and/or the Managed Hosted Services, irrespective of whether such loss, injury or damage was foreseen, foreseeable, known or otherwise or whether we have been advised of the possibility of such loss, injury or damage, except only in the case of death or personal injury.
55. Upon a request by Ibis, the Consumer agrees to defend, indemnify, and hold harmless Ibis and its principals, owners, officers, managers, employees, representatives, contractors or agents from any and all liabilities, losses, Claims and expenses, including legal costs and expenses that arise from the Consumer's use or misuse of the Managed Hosted Services or any information or software contained or referred to therein or the Consumer's violation of these terms and conditions, without any obligation on Ibis' part to follow any instructions, directions or suggestions made by you.
56. The Consumer's indemnification obligations include, without limitation, Claims arising from:
- misuse of the website and/or Managed Hosted Services or automated scraping tools;
  - introduction of malware or harmful code;
  - infringement of third-party IP rights;
  - unlawful or defamatory content uploaded by the Consumer;
  - privacy or data-protection violations caused by the Consumer's activities;
  - fraudulent impersonation of Ibis representatives or customers;
  - breach of cybersecurity duties or attempted unauthorised access.
57. Ibis reserves the right (but not the obligation) to assume exclusive control of the defence of any claim for which you are required to indemnify us.

### **Supplier Warranty and Guarantees**

58. Ibis will not be held liable for economic loss, consequential loss or any other form of loss whatsoever where:
- the defect or failure of Goods and Services is due to or resulting from damage or misuse, negligent maintenance or care while in possession of the Consumer or the Consumer's failure to follow care instructions or recommended processes for Goods and completed Services.
  - the defect or failure of Goods and Services is outside the control of Ibis or due to situations Force Majeure.
59. State and Commonwealth legislation implies certain non-excludable guarantees, warranties and conditions into particular agreements for the supply of goods and services, which cannot be excluded, restricted or modified (**Non-Excludable Guarantees**). This Agreement does not exclude any Non-Excludable Guarantees.
60. The Consumer acknowledges and understands that apart from any Non-Excludable Guarantees which may be applicable, Ibis does not make or provide any express warranties or guarantees regarding the Goods or Services.
61. Subject to Part A clause 55, to the maximum extent permitted by law, Ibis excludes all warranties, terms, conditions and guarantees regarding the Goods, the Services and any other goods or services supplied or provided under this document which are implied by law (including the general law) or custom.
62. To the maximum extent permitted by law, Ibis's liability to the Consumer for a breach of any of the Non-Excludable Guarantees in respect of any goods or services provided to the Consumer under this document (including but not limited to the Goods and Services) is limited to any one of the following, at the option of Ibis:
- in the case of goods, replacement of the goods or the supply of equivalent goods, repair of the goods, payment of the cost of replacing the goods or acquiring equivalent goods, or payment of the costs of having the goods repaired; and
  - in the case of services, the supply of the services again, or payment of the cost of having the services supplied again.

## **Disclaimer**

63. To the maximum extent allowed by law, Ibis disclaims all liability, whether in contract or tort, for any loss or damage arising from the Consumer's use of the Software. Such disclaimer applies to direct, indirect, special and consequential damages including loss of profit, business revenue, goodwill, loss of production, loss of product, losses resulting from down-time of the Consumer's domain or e-mail system, losses resulting from system crashes, loss of data or e-mails, or failure to achieve anticipated savings or efficiencies.

## **Workplace Health and Safety**

64. The parties (and their employees, agents and subcontractors) must comply with all applicable workplace health and safety laws and all safety instructions (including any Workplace Health & Safety policies) reasonably issued by the other party from time to time.

## **No Waiver**

65. All the original rights, powers, exemptions and remedies of Ibis will remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. Ibis will not be deemed to have waived any condition unless such waiver will be in writing under signature of Ibis or an authorised officer thereof and any such waiver, unless the contrary will be expressly stated, will apply to and operate only in a particular transaction, dealing or matter.

## **Default and Termination**

66. This Agreement may be terminated by Ibis in the event the Consumer is in breach of any of the foregoing terms and conditions without any further liability whatsoever on the part of Ibis.

67. This Agreement may be terminated by Ibis immediately on written notice to the Consumer, if an Event of Default of payments due to Ibis by the Consumer occurs.

68. Default will also mean, if the Consumer:

- a. Will commit any act of bankruptcy, or enter into any composition or arrangement with creditors.
- b. Where the Consumer is a Company do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of Ibis Ltd or if a Receiver is appointed in respect of all or any assets of Ibis.

69. Termination of this agreement will not relieve the Consumer of its obligations to pay all money owed by it to Ibis on any account whatsoever, which money will be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this agreement will not relieve the Consumer from liability arising from any antecedent breach of the terms of this agreement.

70. Upon the termination of this Agreement in the event of default or cessation of Services by the Consumer, all rights of the Consumer granted by this Agreement will terminate and the Consumer will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to this Agreement and the Consumer will return any Goods and Services remaining unpaid to Ibis.

71. The provisions of clauses 44 to 47 shall remain in force upon the termination of this Agreement and remain binding on the relevant parties.

## **Notices**

72. Any notice required to be given by the Consumer must be delivered to 'Ibis Business Intelligence Solutions Pty Ltd' at PO Box 197, Blackwood, South Australia 5051, or given by email to [admin@ibisbis.com.au](mailto:admin@ibisbis.com.au) or otherwise to the last known place of business by registered letter.

## **Dispute Resolution**

73. A party will as soon as reasonably practicable give the other party notice of any dispute arising between them under this agreement ('**Dispute**').

74. If there is a Dispute, the parties to the Dispute will endeavour to resolve the Dispute within a maximum of ten (10) business days of receiving notice of the Dispute.

75. If, following the Dispute resolution process set out in Part A clause 69, the parties do not resolve the Dispute, then the parties will endeavour to settle their Dispute by mediation. Either party may initiate mediation by giving written notice to the other party. The Dispute will be mediated in accordance with the current Australian Commercial Disputes Centre Guidelines for Commercial Mediation. Those Guidelines are incorporated into this Agreement. Where there is any inconsistency between those Guidelines and this Agreement, this Agreement prevails.

76. If the Dispute is not resolved by mediation within a further 10 business days, then parties may refer the Dispute to the Courts or arbitration.

77. Nothing in this Agreement will prevent either party from seeking urgent injunctive relief.

**Severance**

78. Any illegality, unenforceability or invalidity in this Agreement will not affect the rest of this Agreement which will remain in full force and effect unless the commercial interests of either party are materially and adversely affected.

**General**

79. This Agreement is governed by and construed according to the law in force in the state of South Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State.

## Part A - Terms and Conditions for Ibis Managed Hosted Services

1. Ibis Managed Hosted Services will be located in Australia East.
2. Ibis undertakes;
  - a. to implement reasonable security measures.
  - b. to maintain the Software to the requirements advised or published by the Software Developer.
  - c. To perform database maintenance on a regular basis.
  - d. to implement a backup system and disaster recovery plan, and regularly backing backup the Consumer's data and ensure the verification of the backed up data, with a sound backup copy retention policy.
  - e. To monitor the performance of the Managed Hosted Service, Ostendo database backups, Ostendo API services and Windows Scheduled Tasks.
3. The monthly fee for the Ibis Managed Hosted Service includes the initial setup of the Service. The monthly fee shall commence ten (10) business days after completion of the initial setup to allow the Consumer a reasonable period for testing.
4. Ibis reserves the right to adjust subscription fee for the Ibis Managed Hosted Service at any time, without prior notice, in the event of an increase in direct operational costs, third-party vendor fees, regulatory levies, or other expenses required to maintain the Services. Continued use of the Services following any such adjustment constitutes acceptance of the new fees.
5. Disk space usage under this Agreement shall be determined by Ibis based on the aggregate size of the Consumer's database(s), all files linked to or associated with the database(s), and a reasonable allowance for anticipated growth and future storage requirements. Ibis may also consider the number of Ostendo licences and the level of server resources reasonably required to support the Consumer's use of the Managed Hosted Service when determining storage allocations and any applicable fees. Ibis shall have the sole discretion to determine the appropriate allocation of disk space and server resources necessary to support the Consumer's use of the Managed Hosted Service.
6. Any automated functions or processes implemented for the Consumer may result in increased utilisation of server resources. Ibis reserves the right to apply additional charges based on the extent of such resource usage.
7. Professional Services, including (but not limited to) upgrades of Ostendo, testing the Consumer's Ostendo system and linked files, resolving issues relating to scripts, customisations or reports, providing or restoring backups on demand, and disaster recovery services, shall be charged on a do and charge basis at the Professional Services rates.
8. In the event that the Consumer's data requires restoration for any reason, the Consumer shall bear all costs of such restoration, including (without limitation) the costs of restoring the data and any associated setup and installation on a replacement or new server as required.
9. Remote access to the Managed Hosted Service server will not be provided to the Consumer under any circumstances.
10. To provide efficient and effective Professional Services, Ibis may assign this Agreement or sub-contract some or all of its obligations hereunder.
11. The Consumer acknowledges and agrees that Ibis will engage third-party providers to provide Managed Hosted Services to the Consumer. The Consumer must (and will procure its employees, subcontractors or agents to) comply with any terms and conditions imposed by these third-party providers as advised by Ibis from time to time, and failure to do so may result in the Consumer being unable to access the relevant Products and/or Services.
12. Ibis does not represent or warrant, and hereby disclaim any representations or warranties, whether express or implied by law, to the extent permitted by law, that the provision of and access to the Managed Hosted Services and any information or software contained or referred to therein will be accessible, uninterrupted or error-free, that defects will be corrected, or that the Managed Hosted Services or the server that makes it available are free of viruses or other harmful components, or that the Consumer has the ability to transmit and receive information from or through the website.
13. The Consumer acknowledges that access to the Managed Hosted Services may be suspended, restricted, throttled, or interrupted for reasons including maintenance, system upgrades, cyber-attacks, DDoS events, platform migration, or failures in third-party infrastructure.
14. Ibis implements reasonable security measures but does not guarantee immunity from cyber threats. The Consumer is solely responsible for securing its devices, networks, browsers, and credentials when accessing the Managed Hosted Services.

15. Ibis shall not be responsible for harm arising from:
  - a. phishing attempts impersonating Ibis
  - b. brute force attacks
  - c. compromised user devices
  - d. insecure networks
  - e. man-in-the-middle attacks
16. The Consumer acknowledges that the Managed Hosted Services may rely on third-party services and infrastructure to deliver certain functionalities (Third Party Services), and the Consumer agrees to release Ibis from all liability and Claims resulting from the Managed Hosted Services being unavailable or otherwise interrupted due to the actions or inactions of those third parties.
17. The Consumer agrees to indemnify Ibis and hold Ibis harmless from all Claims and liability arising out of or in connection with the unavailability or interruption of the Managed Hosted Services caused by Third Party Services.
18. The Consumer acknowledges that the interruptions caused by Third Party Services may constitute a force majeure event, and Ibis shall be excused from performance of its obligations under this Agreement during such events to the extent reasonably necessary. For the avoidance of any doubt this includes circumstances where Microsoft, or Google, or Amazon have service interruptions.
19. The information provided herein is to be used entirely at the Consumer's own risk. In no event shall Ibis or its principals, owners, officers, managers, employees, representatives, contractors or agents be liable for any direct, indirect, incidental, special, exemplary, punitive, or consequential loss, injury or damage of any kind whatsoever (including without limitation loss of data, loss of revenue or anticipated profits, loss of business, loss of opportunity, loss of goodwill or injury to reputation and losses suffered by third parties), however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise), arising in any way out of or in connection with the provision of or any access to, use of or participation in the Managed Hosted Services and any information or software contained or referred to therein, or any copying, display or other use thereof or the submission or contribution by the Consumer of any information to us or the Managed Hosted Services, irrespective of whether such loss, injury or damage was foreseen, foreseeable, known or otherwise or whether we have been advised of the possibility of such loss, injury or damage, except only in the case of death or personal injury.
20. Upon a request by Ibis, the Consumer agrees to defend, indemnify, and hold harmless Ibis and its principals, owners, officers, managers, employees, representatives, contractors or agents from any and all liabilities, losses, Claims and expenses, including legal costs and expenses that arise from the Consumer's use or misuse of the Managed Hosted Services or any information or software contained or referred to therein or the Consumer's violation of these terms and conditions, without any obligation on Ibis' part to follow any instructions, directions or suggestions made by you.
21. The Consumer's indemnification obligations include, without limitation, Claims arising from:
  - a. misuse of the website and/or Managed Hosted Services or automated scraping tools;
  - b. introduction of malware or harmful code;
  - c. infringement of third-party IP rights;
  - d. unlawful or defamatory content uploaded by the Consumer;
  - e. privacy or data-protection violations caused by the Consumer's activities;
  - f. fraudulent impersonation of Ibis representatives or customers;
  - g. breach of cybersecurity duties or attempted unauthorised access.
22. Ibis reserves the right (but not the obligation) to assume exclusive control of the defence of any claim for which you are required to indemnify us.
23. The Consumer is responsible for the security of the Ostendo API and the Ostendo API key in any connection between Ostendo Software and Ostendo Freeway or any third party system including, but not exclusive to, spreadsheets and websites. Ibis expressly disclaims any responsibility or liability for any security breach that results from the Consumer's use of the Ostendo API or the Ostendo API key.
  - a. The Consumer is responsible for ensuring that the Ostendo API key is not published to, or exposed in any URL or exposed in any spreadsheet, script, code or custom software it creates.
  - b. The Consumer is responsible for keeping the Ostendo API key secure and confidential.

- c. The Consumer is responsible to whom it provides the Ostendo API key or who it requests Ibis to provide it to.
  - d. The Consumer is responsible for managing user security setup in Ostendo Software to ensure that only authorised users have access to the Ostendo API key.
- 24. The Consumer may discontinue the Managed Hosted Service by giving Ibis at least thirty (30) days' prior written notice. Termination will take effect at the end of the current billing period occurring after the expiry of the notice period. All fees and charges incurred up to the effective termination date remain payable by the Consumer.
- 25. Upon termination of the Managed Hosted Service for any reason, and subject to the Consumer having paid all outstanding fees, charges and other amounts owing under this Agreement, including any reasonable costs incurred by Ibis in extracting, preparing and transmitting the Consumer's data, Ibis will provide the Consumer with an electronic download link enabling the Consumer to obtain a copy of the Consumer's data, database and files held as part of the Service.
  - a. Ibis may provide the data in a standard electronic format reasonably determined by the Supplier via a download link. The download link will be transmitted electronically to an email address or other destination nominated by the Consumer within a reasonable time after all amounts due under this Agreement have been paid.
  - b. The obligation by Ibis to provide the Consumer's data will be satisfied upon transmission of the download link to the nominated destination. The download link will remain available for thirty (30) days from the date of transmission, after which it may be disabled or deleted without further notice.
  - c. Following expiry of the download link, or thirty (30) days after transmission of the download link (whichever occurs first), Ibis will have no obligation to retain, store, make available or recover any of the Consumer's data, database or files.
  - d. The Consumer is responsible for downloading the data within the period specified above and for verifying the completeness, accuracy and integrity of the data upon receipt.