

TERMS OF USE

SkedGo

1. TERMS OF USE

SkedGo Pty Limited (ABN 38 140 031 456) provides the Services (which are defined in clause 3 below). The terms and conditions in these "Terms of Use" are the terms and conditions of an agreement between SkedGo Pty Limited and the person "Accessing" (which is also defined in clause 3 below) the Services.

2. REFERENCES TO "YOU" AND "US" IN THESE TERMS OF USE

Each reference in these Terms of Use to:

- (a) **"we", "us", "our" or "ours"**: is a reference to SkedGo Pty Limited (ABN 38 140 031 456); and
- (b) **"you", "your" or "yours"**: is a reference to the person Accessing the Services.

3. OTHER DEFINITIONS

Each reference in these Terms of Use to:

- (a) **"Access"** (and **"Accessing"**) is, when used in relation to the Services or any other thing, a reference to downloading, installing, paying for, communicating or interacting with, or accessing and/or using that thing in any way (including by contributing Content to or in connection with that thing), however the mere act of reading these Terms of Use is not considered Accessing the Services;
- (b) **"API"** has the meaning it is given in the definition of "Services" below;
- (c) **"Content"** is a reference to information and material of all kinds (including text, data, analysis, images (moving and still), sound, graphics, software, code, hyperlinks, logos, trade marks and functionality);
- (d) **"External Location"** is a reference to a website, program, application or location that is not owned or operated by us;
- (e) **"Fair Go Policy"** is a reference to our policy as outlined in clause 21;
- (f) **"Personal Information"** is a reference to all information about you that is of a personal nature which you, in any way (including by your Accessing the Services in such a way as to make it possible for us to ascertain such information), share, enter, upload or contribute to the Services or otherwise provide to us. Personal Information includes: information capable of identifying you; demographic information; contact information; information in your social media profiles; socio-economic information; financial information; information about the devices and technology and programs you use; information about your behaviour in connection with your Accessing of the Services; information about your contacts; and information about your preferences, interests and geographic location at any given time;
- (g) **"Services"** is a reference to any or all of the functionality, information and material (including all Content and other outputs) made available by us (or on our behalf) in, or as part of, any or all of the following:
 - (i) **(websites)**: any website whose directories contain these Terms of Use or whose home page is at (or whose subdomains appear before, or whose directories appear after) the domain names "www.skedgo.com" or "http://tripgo.skedgo.com" or "tripgo.com" or "wotgo.com" ("the **Websites**");
 - (ii) **(tools, including widgets)**: any tool, device or code (including any widget) that is deployed or made available, in order to provide a service similar to that provided by any or all of the Websites referred to in 3(g)(i) above, on an External Location ("the **Tools**");

- (iii) **(applications):** any application (including any application that resides or operates on a phone, tablet, computer or other device) that provides a service similar to that provided by the Websites referred to in 3(g)(i) above ("the **Apps**"); and
- (iv) **(APIs):** any 'application programming interface' (API) that we make available to allow developers to develop, deploy, offer and use other applications and services that communicate or interact with the Websites, Tools and/or Apps referred to in sub-clauses (i), (ii) and (iii) above; and
- (h) **"Terms of Use"** is a reference to the terms and conditions (including notices, policies, exclusions, limitations and disclaimers) contained in this document, and also as otherwise notified to you by us on or through the Services.
- (i) **"Transaction"** has the meaning given in clause 15.2.

4. **ACCEPTANCE AND AMENDMENT OF TERMS**

- (a) **You must accept in order to Access:** If you would like to Access the Services, you must accept and comply at all times with the Terms of Use. If you do not accept the Terms of Use, you do not have our consent to (and you must not) Access any of the Services (including any of the Content or functionality contained in or otherwise associated with the Services), other than to uninstall the Services from all locations and devices on which you have them installed.
- (b) **Acceptance by you:** You are confirming that you accept the Terms of Use:
 - (i) whilst ever a computer, server, phone, tablet or other device that you own, operate or access contains an installation of one or more components of the Services; and/or
 - (ii) each time you Access the Services in any way.
- (c) **We may amend:** We may, at any time in our sole discretion and without any notice to you, amend the Terms of Use. Amended terms will take effect when they are posted or uploaded into or as part of the Services (or as otherwise communicated to you in writing beforehand). Since you are bound by the Terms of Use, you should (and warrant that you will) refer to them and make sure you accept them in their latest form before each occasion on which you Access any of the Services.

5. **YOUR PERMITTED USE OF THE SERVICES**

Provided you continue to comply at all times with the Terms of Use, you may (and we grant to you a revocable, non-exclusive, non-sublicensable, non-transferrable, licence in order for you to) Access the Services, provided that you must only do so solely for the purpose of using the Services for their intended use, and for no other purpose.

6. **RIGHTS INCLUDING INTELLECTUAL PROPERTY RIGHTS**

- (a) **Our rights:** We own, or have licences under or authorisations from third parties with respect to, all intellectual property rights in and in relation to the Services (including in relation to all Content in, used by, generated, produced and provided by the Services). Such intellectual property rights are protected by Australian and international laws (including laws relating to copyright and trademarks).
- (b) **Your rights:** You are not assigned, given or granted any rights (including with respect to intellectual property), in or in relation to the Services (including in or in relation to any Content or functionality in or in connection with the Services) other than those rights explicitly granted to you in writing in the Terms of Use.

7. **OUR CONTROL OVER THE SERVICES**

You agree that we may, at any time in our sole discretion, without any notice to you:

- (a) **user Access:** restrict or terminate completely your ability to Access the Services in any way; and

- (b) **changes:** change any or all aspects of the Services (including their appearance, Content and functionality), including by issuing and installing updates on devices on which you have installed the Services.

8. RESTRICTIONS

You must not, without our prior written consent, do or attempt to do (or directly or indirectly ask, direct, invite or permit any other person to do or attempt to do), any of the following things:

- (a) **commercial use:** charge any person any direct or indirect fee in any form for, or in connection with, any Accessing of the Services (excluding use of the API, for which commercial use is allowed by 15.4 (c));
- (b) **modification:** modify any component of the Services in any way (including by changing Content or functionality or appearance, or by removing notices such as copyright notices);
- (c) **reproduction:** reproduce, republish or otherwise make available through any means (including by, on or through other privately or publicly accessible media such as on drives, databases, the internet, in newspapers, journals, television or radio) the Services or any Content associated with the Services (including Content on which the Services are based or that makes provision of the Services possible);
- (d) **translate, manipulate, improve or adapt:** translate, decompile, reverse-engineer, extract the source-code of, make any improvements to, or make any derivative works based on, the Services or any Content associated with the Services (including Content on which the Services are based or that makes provision of the Services possible);
- (e) **combine or 'mashup' or contaminate our results:** make use of or process the information or results produced by or through the Services in such a way as to combine or 'mashup' such information or results with other information sources so as to create or display a new single set of results visible to an end user who makes use of such information, where the single set of results is presented in a way that does not allow that end user to identify with ease and perfect accuracy which of the results visible to them were produced by the Services;
- (f) **misleading others:** do any thing (including by making any representation or utilising any design or code, such as website framing) that could actually or potentially mislead or deceive a person into believing that any component of the Services is being provided by any person other than us or a person appropriately authorised by us; and
- (g) **prohibited uses:** Access the Services or any Content associated with the Services (including Content on which the Services are based or that makes provision of the Services possible) by any means or for any purpose:
 - (i) **unauthorised purposes:** other than for the purposes for which the Services are intended to be used;
 - (ii) **unauthorised access:** that involves interfering with or hindering the Services, or Accessing or trying to Access: (i) the Services in ways other than using the interfaces, tools, environments and instructions we provide; or (ii) any component of the Services that you are not authorised to Access (including components relating to the functionality and operation of the Services, or that house information of any kind);
 - (iii) **advertising:** that promotes any other product or service, other than as explicitly invited or permitted as part of any inherent advertising functionality built in to the Services specifically for the purposes of promoting or advertising third party goods or services;
 - (iv) **automated information mining:** that involves the automated bulk collection of data or information from or through the Services (where 'bulk collection' means collection that would exceed that which a reasonable personal user would be expected to collect for personal, non-commercial use);

- (v) **damaging use:** that is contrary to our interests (including to encourage users of the Services to use other services that are similar to, in competition with or substitutes for, the Services);
- (vi) **illegal use:** that would be unlawful under any relevant law;
- (vii) **infringing use:** that infringes our rights or the rights of any other person; or
- (viii) **unsafe use:** in any way (including on mobile devices) that distracts you unsafely, such as when you are operating vehicles or heavy machinery or when you are required to concentrate on your surroundings (including when you need to obey traffic, workplace or safety laws).

9. IF YOU CONTRIBUTE CONTENT

If you contribute (or if you would like to contribute) Content to, or in connection with, the Services in any way (including by submitting, posting or entering data or information, or making tools, code or functionality available), you agree to the following (unless you have our prior written consent otherwise):

- (a) **permitted purposes only:** you must only contribute Content for the purposes of using the Services for the purpose for which they are intended to be used, and as otherwise permitted by us in writing;
- (b) **you must comply with terms:** you must comply at all times with the Terms of Use, including by not contributing Content in any way or for any purpose that would or could be a breach of the Terms of Use (including the restrictions in clause 8);
- (c) **you are responsible:** you are legally responsible and liable for all Content you contribute, and for the consequences of and events caused by your contributions;
- (d) **your warranties:** you warrant that:
 - (i) **required rights:** you have all the required ownership rights, permissions and licences (including with respect to confidential information and intellectual property rights, including trade marks, copyright and related moral rights) to contribute the Content you contribute; and
 - (ii) **nature of content:** all Content you contribute: (i) is true and accurate; (ii) does not infringe the rights (including with respect to confidential information and intellectual property) of any other person; (iii) is not illegal, threatening, discriminatory, harassing, abusive, offensive, defamatory, vilifying, obscene, pornographic or indecent; (iv) is not Contributed in contravention of any applicable law or in contempt of any court or parliament; (v) does not contain any computer virus or malware or other harmful or potentially harmful components; and (vi) is not capable of being used for any purpose other than for the purposes for which the Services are intended to be used;
- (e) **our control:** we may, for any reason at any time and in our sole discretion, without any notice to you, edit, block or delete any Content you contribute;
- (f) **our rights:** you grant to us a perpetual, sub-licensable, royalty-free, non-exclusive, world-wide licence to use, in our discretion (including by copying, re-distributing, adapting, transmitting, publishing, broadcasting, publicly performing and displaying in any media), any Content you contribute (and you warrant that you have the necessary or rights and powers to grant such a sub-licensable licence to us), provided that we may only do so for the purpose of being able to provide, maintain, understand, manage and improve the Services;
- (g) **moral rights:** you consent (and warrant that you have all rights necessary to grant such consent) to us doing the following things in relation to the Content you contribute: (i) not attributing you or any person as the author of such Content; (ii) attributing any other person as the author of such Content; and (iii) modifying, altering or using such Content in any way in our discretion (even if this is done in a way that would constitute derogatory treatment of such Content or would affect the reputation of the author of such Content) provided that we may only do so for the purpose of being able to provide, maintain,

understand, manage and improve the Services and the services of others with whom we interact in connection with our provision of, or your Accessing of, the Services.

10. SECURITY

- (a) **Your account:** If you are a registered subscriber of the Services, you may receive or establish an account which may include login details, passwords and other information specific to you (an "**Account**").
- (b) **Using your Account:** You must not:
 - (i) reveal your Account password to others (whether deliberately or through carelessness or by failing to take reasonable steps to protect the secrecy or security of your password); or
 - (ii) allow others to use your Account.
- (c) **Account security:** Without limiting the effect of clauses 16, 17, and 18, you are entirely responsible for all activities that occur on or through your Account (and for the consequences of such activities) even if those activities were conducted by another person, and you agree to notify us immediately in writing of any unauthorised use of your Account or any other breach of security.
- (d) **Unauthorised Access:** You must not (whether yourself, or through the activities of any other person), directly or indirectly use, Access or attempt to Access any Account that is not yours.
- (e) **Inherent risks:** You acknowledge that you are aware that there are inherent risks associated with the transmission of information through or in connection with the Services. Without limiting the effect of clauses 16, 17, and 18, you agree that we do not guarantee the safe and secure transmission of information to or from you in connection with the Services.

11. IF YOU DEPLOY THE SERVICES ON AN EXTERNAL LOCATION, OR IF YOU ADVERTISE

If you deploy any of the Services on an External Location (such as by using a widget or by making use of an API we make available), or if you agree to advertise or offer any goods or services on or through the Services in such a way as to direct a person to an External Location, then, in addition to the other terms in the Terms of Use (all of which continue to apply):

- (a) **your warranties:** you warrant that:
 - (i) **required rights:** you have all the required rights, permissions and licences (including with respect to intellectual property) to do so; and
 - (ii) **nature of Content:** none of the Content contained on the External Location in question: (i) is untrue, inaccurate or misleading; (ii) infringes the rights (including with respect to confidential information and intellectual property) of any other person; (iii) is illegal, threatening, discriminatory, harassing, abusive, offensive, defamatory, vilifying, obscene, pornographic or indecent; (iv) is on the External Location in contravention of any applicable law or in contempt of any court or parliament; (v) contains any computer virus or malware or other harmful or potentially harmful components; or (vi) will allow any person to Access the Services for any purpose other than for the purposes for which the Services are intended to be used; and
- (b) **publicity:** you give us permission to disclose and promote publicly (including on our websites) that you have so deployed or advertised (including by us publicly using expressions such as "as seen on" and "as used by"), and you hereby consent to us using your name, logo and other trademarks solely for that purpose.

12. PRIVACY

- (a) You give us permission to collect, store, disclose (including to others located in the USA, Europe and other countries outside of Australia) and use Personal Information, provided that we may only do this:

- (i) for the purpose of us being able to provide, maintain, understand, manage and improve the Services and the services of others with whom we interact in connection with our provision of, or your Accessing of, the Services;
 - (ii) for any other purpose to which you consent; and
 - (iii) in addition to and without limiting the scope of 12(a)(i) above, as we are otherwise required to do so by relevant laws in the countries in which the Services are provided or Accessed.
- (b) You give us the permission referred to in clause 12(a) even if we have not adopted a privacy policy, but whilst ever we indicate on or through the Services that we will comply with any written policies with respect to privacy then we will collect, store and use your personal information in accordance with such applicable policies.

13. THIRD PARTY SERVICES AND INPUT

- (a) Without limiting in any way the effect of clauses 14, 16, 17 and 18, you understand and accept that certain elements of the Services may use, reflect or convey Content, services and other functionality (including booking-making and payment-processing services) provided by third parties, and this limits our ability to control the quality of the Services.
- (b) ***To the full extent permitted by law, we do not endorse, nor are we responsible or liable in any way for (or in connection with the Accessing of) any Content, services and other functionality provided by third parties which we or you Access in connection with your Accessing the Services or our providing the Services.***

14. REFERRALS (INCLUDING LINKS AND ADVERTISEMENTS) AND CONTENT AT EXTERNAL LOCATIONS

- (a) A reference in this clause 14 to:
- (i) a **"Referral"** is a reference to a link, advertisement, referral and all other Content or functionality that makes you aware of, or directs you to, anything (including any Content or service or offering) provided by a person other than us; and
 - (ii) **"External Content"** is a reference to Content on an External Location, where such Content is not part of the Services (for example, if a widget forming part of the services is deployed on an External Location, then all the Content other than the widget is considered "External Content" for the purposes of this clause 14).
- (b) ***To the full extent permitted by law: (i) we do not endorse, nor are we responsible or liable in any way for anything (including any Content, products or services) available, Accessed or purchased as a result of any Referral or through any External Content; and (ii) if you Access or purchase Content, products or services as a result of any Referrals, or through or based on any External Content, you do so entirely at your own risk.***

15. SPECIAL CLAUSES RE APPLICATION PROGRAMMING INTERFACES (APIs)

15.1 This clause

- (a) This clause 15 applies if you Access an API.
- (b) If there is any inconsistency between this clause 15 and the rest of our Terms of Use, then the terms in this clause 15 prevail to the extent of the inconsistency.

15.2 API tiers

- (a) We offer Access to our APIs through a number of different packages, which we call "tiers". Each tier has different costs, rights, entitlements and limitations, as outlined in this clause 15.2.

(b) Our tiers are identified using the following names:

- (i) "Free";
- (ii) "Pro"; and
- (iii) Enterprise".

(c) The table below sets out the costs, rights, entitlements and limitations that apply to each tier, where:

- (i) the tier that applies to you is the tier that you selected as part of the process of Accessing an API, or the tier to which you are automatically upgraded or downgraded as part of the terms of another tier you had selected; and
- (ii) **"Transaction"** means every time an API is asked or used to calculate, compute, determine or convey a single unique item of information for the purpose of allowing you (or users of your applications or services) to make use of the information calculated, computed, determined or conveyed by the API or the Content or Services on which the API is based or which the API forms part of;

(by way of example, using an API to make a basic routing call about navigating from point A to point B will equate to one Transaction, whereas using an API to determine one-to-many routes, or all-day routing, will equate to multiple Transactions (with the exact number of multiple Transactions depending on the complexity of the request));

		Tier name		
		"Free"	"Pro"	"Enterprise"
feature/item	description			
Price per 1000 Transactions	This is the amount we will charge you for every block of 1000 Transactions. (for example, 1200 transactions is treated as, and charged as, 2 blocks of 1000 Transactions)		Free for the first 75,000 Transactions USD2.00 (for each block of 1000 Transactions, from the 75,001 st to the 300,000 th Transaction) USD1.50 (for each block of 1000 Transactions, starting from the 300,001 st Transaction)	Price on application (costs to be outlined in the separate enterprise level agreement)
Maximum Transactions per minute	This is the maximum number of Transactions, in a one minute period, that you are entitled to make when you are on the on the relevant tier.	100	2500	Unlimited (within normal industry practices, and subject to our Fair Go Policy)
Maximum Transactions per month	This is the maximum number of Transactions, in a one month period, that you are entitled to make when you are on the on the relevant tier.	10,000	Unlimited (within normal industry practices, and subject to our Fair Go Policy)	Unlimited (within normal industry practices, and subject to our Fair Go Policy)
Excess per minute	This is what will happen if you exceed the "Maximum Transactions per minute" entitlement referred to above.	Access to the API is blocked for the rest of that minute	Access to the API is blocked for the rest of that minute	Not applicable, as there is no relevant limit

		Tier name		
		"Free"	"Pro"	"Enterprise"
feature/item	description			
Excess per month	This is what will happen if you exceed the "Maximum Transactions per month" entitlement referred to above.	Access to the API is blocked for the rest of that month	Not applicable, as there is no relevant limit	Not applicable, as there is no relevant limit
Data	Is geocoding and timetable data included?	included	included	included
Basic routing	Is simple ('A-to-B' routing and routing 'via point X') included (including real-time information, but only where available)?	included	included	included
Advanced routing	Is advanced, computationally-intensive routing (such as 'one-to-many' routing, and 'all-day' routing) included?	included	included	included
Booking and payments	Does the API integrate with, or provide the ability to make bookings and payments for trips or trip segments?	no	no	yes
Client SDKs	Is a software development kit (SDK) made available for iOS and Android?	yes	yes	yes
Level 2 technical support	Is technical support for developers included?	no	no	yes (on terms to be included in the separate enterprise level agreement)
Account management	Are tools made available to allow you to track usage, expense and other details of your account?	no	no	yes (on terms to be included in the separate enterprise level agreement)
Service Level Agreements	Are there service level agreements, including to guarantee certain levels of availability and performance and support?	no	yes (depending on endpoints and region, and only if agreed terms are included in a separate service level agreement)	yes (depending on endpoints and region, and on terms to be included in the separate enterprise level agreement)
Custom integrations	Are custom integrations (such as adding support for new regions, adding support for new transport service providers, custom SDK developments, white labels or other features or tools) available?	no	no	yes (on terms to be included in the separate enterprise level agreement)

		Tier name		
		"Free"	"Pro"	"Enterprise"
feature/item	description			
On-selling	Can you re-sell or bundle the information generated by the API?	no	no	yes (on terms to be included in the separate enterprise level agreement)
Compulsory attribution (see cl 15.3)	Is it compulsory for your tools, services and Content that Access an API to include, prominently, when conveying the information based on Access to the API, the words "Powered by SkedGo/TripGo" (see cl 15.3)	yes, must include attribution (see cl 15.3)	yes, must include attribution (see cl 15.3)	attribution may be required (subject to terms to be included in the separate enterprise level agreement)

15.3 Attribution

If the table in clause 15.2 indicates that the tier that applies to you requires you to make the compulsory attribution then you must:

- (a) ensure that the words "Powered by SkedGo/TripGo" (or any other alternative words that we notify you of from time to time) are displayed:
 - (i) on the same screen as the screen displaying the information that has been derived based on Access to the API; and
 - (ii) prominently (which means that the words must be displayed in font that is at least the same size as the information, derived based on Access to the relevant API, being communicated to the user),

(and if you send us screenshots that demonstrate the manner in which you display the information required under this clause and we approve of the manner so demonstrated, then you can continue to use that approach for the purposes of this clause until we notify you otherwise);
- (b) allow any information, data or other Content that we deliver (as part of your Accessing the API) that includes the words "Powered by SkedGo/TripGo" or any other alternative words that we notify you of from time to time (together, the **"attribution words"**) to be displayed on your services, tools and other Content in accordance with the requirements in clause 15.3(a); and
- (c) not remove, restrict or interfere with the "attribution words" referred to in clause 15.3(b).

15.4 Special terms

Further to clause 15.1, the following clauses serve to amend or override the rest of these Terms of Use, but only to the extent that they apply to your Accessing of an API.

- (a) **Amendments:** Despite clause 4(c) and subject to clause 15.4(b), if you are not on the "Free" tier referred to in clause 15.2 and we amend or propose to amend the Terms of Use in a way that affects your rights and obligations as you Access the API, then:
 - (i) **notice re costs:** we will give you at least 14 days' written notice of quantitative changes such as changes to prices and maximum allowances;

- (ii) **standard notice:** subject to 15.4(a)(iii), we will give you a period of notice at least equal to the minimum period to which you have committed in any sign-up process or other process that serves to commit you to a minimum period of Accessing an API, and the changes will not apply to you until the end of that notice period (for example, if you have signed up to a monthly commitment, then we will give you at least one month's notice of any changes to the Terms of Use that affect your rights and obligations as you Access the API); and
 - (iii) **shorter notice:** if we do not give you sufficient notice as required under 15.4(a)(ii) then your only remedy is that, if you write to us telling us that you do not wish to continue with your current minimum committed period, we will cancel your Access to the APIs until the end of the minimum committed period and we will refund to you a portion of any fees you had pre-paid, pro-rated for the period of time already used (for example, if you decide to cancel half way through a monthly commitment, then we will refund to you half of any fees you paid in advance); and
 - (iv) **acceptance:** if you continue to Access an API after the notice period expires then you will be deemed to accept the changes made and all ongoing Access by you of all APIs will be subject to the new terms as amended.
- (b) **Applicable changes:** Clause 15.4(a) only applies to:
- (i) changes or proposed changes that will affect your rights and obligations as you Access the API. For example, if you are on the "pro" tier and the proposed changes to the Terms of Use only affect the costs or maximum entitlements for users on the "free" tier (and not users on the "pro" tier), then clause 15.4(a) will not apply; or
 - (ii) changes or proposed changes that increase the costs or decrease the maximum entitlements of a tier to which you could potentially be automatically upgraded (as outlined in the table in clause 15.2(c)). For example, if you are on a lower tier and potentially subject to being upgraded automatically to a higher tier, and proposed changes to that higher tier do not increase the costs or decrease the maximum entitlements, then clause 15.4(a) will not apply.
- (c) **Permitted use:** If you Access an API you may, despite clauses 8(a), 8(c) and 8(g)(iii) (but subject to the rest of the Terms of Use) reproduce, republish and otherwise make available Content provided to you through the API for commercial use, but only for the purpose of providing and implementing the services, applications and tools in relation to which you are Accessing the API (including those services, applications and tools for which you charge others a fee – which you are permitted to do provided that the services, applications and tools in question do not compete with any component of the Services without our prior written consent).
- (d) **Payment:** The following clauses apply in relation to your payments to us in connection with your accessing of the APIs:
- (i) **"Payment Facility"** means any credit card, debit card, bankcard, Paypal account, bank account or other payment facility, details of which you provide to us for the purposes of your being able to make payments in connection with your Accessing of APIs;
 - (ii) **details:** you must provide us with, and make sure we have at all times, up to date details of your Payment Facility (chosen from the facilities that we indicate from time to time that we accept), and you warrant that you have all required permissions and authorisations to permit us to charge or draw down from or extract payments from the Payment Facility all amounts that you are required to pay to us under the Terms of Use;
 - (iii) **authority:** you authorise us (whether directly or through third party services that we deploy or engage to do so on our behalf) to charge, debit, draw down or extract funds (as the case may be) as necessary to allow us to receive payment of all amounts payable to us by you under the Terms of Use, and agree that you will take all steps necessary (as requested by us) to ensure that we are able to receive such payments without difficulty or delay;
 - (iv) **process:** at the end of each calendar month, we will:

- (A) **statement:** email to you (at the latest contact email address you have notified to us) a statement outlining details of your Access to APIs (including the number of Transactions as defined under clause 15.2(c)(ii)); and
 - (B) **payment:** charge, debit, draw down or extract funds (as the case may be) as necessary to allow us to receive payment of all amounts payable to us by you under the Terms of Use.
- (v) **problems and delays:** If we attempt to extract or obtain payment from your Payment Facility and the process does not work for any reason then:
- (A) **make good:** you must comply with all of our requests to ensure that we are able to extract all payments due to us under the Terms of Use;
 - (B) **access:** if the problem or delay was caused by your act or omission (for example, if you did not maintain correct details regarding your Payment Facility) then, without limitation to any other remedies that we may have, we may temporarily suspend your Access to APIs until we receive all payments that you are required to pay to us under the Terms of Use, or we may permanently cancel your Access to APIs; and
 - (C) **interest:** without limitation to any other remedies that we may have, interest will accrue and will be payable by you on all overdue amounts if the problem or delay was caused by your act or omission (for example, if you did not maintain correct details regarding your Payment Facility), such interest to be calculated on a daily basis from the date for due payment of the overdue amount until the date of payment of the overdue amount, at an interest rate equal to the Interest Rate, where:
- "Interest Rate"** means an annual rate of interest that is equal to: 3% + the "small business; variable; small overdraft" indicator lending rate ("FILRSBVSO", published by the Reserve Bank of Australia at www.rba.gov.au) that applied during the period when the amount was overdue.

16. DISCLAIMERS

- (a) **(No representations):** *To the full extent permitted by law, we make no representations or warranties (including in relation to availability, currency, accuracy, suitability, security, virus-free nature, malware-free nature, safety, effectiveness, performance, reliability, support, improvements, updates, merchantability, or fitness for any particular purpose) with respect to the Services (including with respect to their Content or functionality, and including those components of the Services that use, reflect or convey Content and other functionality provided by third parties).*
- (b) **(General information only):** *The Services (including all Content and functionality used, deployed or made available through the Services) are provided as general information only and should not be relied upon:*
 - (i) *in place of professional or expert advice; or*
 - (ii) *in circumstances of emergency or urgency or any other situation where a failure or deficiency with respect to the Services (including in relation to their availability, currency, accuracy, suitability, security, virus-free nature, malware-free nature, safety, effectiveness, performance, reliability, support, improvements, updates, merchantability, or fitness for any particular purpose) could result in harm or damage of any kind to any thing or any person (including to you).*
- (c) **(Use around the world):** *we make no representation that the Services, or your Accessing them, comply with the laws of any country outside Australia. If you Access the Services in or from a country outside Australia, you are solely responsible for ensuring that doing so is in compliance at all times with all laws in the place where you are located.*

17. LIABILITY

- (a) **(Exclusions):** *To the full extent permitted by law, neither we nor our employees, officers, agents or contractors, nor their employees, officers, partners, agents or contractors, shall be responsible or liable for any loss or damage (including, without limitation, any direct, indirect or consequential loss or damage, loss of profits, loss of data or loss of opportunity) howsoever caused (whether under statute, in contract, tort (including negligence) or otherwise), in connection with, or arising as a result of, you or any other person Accessing the Services.*
- (b) **(No claims):** *To the full extent permitted by law, you agree that you will not make any claim or commence proceedings of any nature against us in connection with our provision of, or your Accessing of, the Services (including in relation to their availability, currency, accuracy, suitability, security, virus- free nature, malware-free nature, safety, effectiveness, performance, reliability, merchantability, or fitness for any particular purpose, and including in relation to any third-party services to which you are directed or exposed in connection with or as a result of your Accessing of the Services or our providing the Services).*
- (c) **(Capped):** *To the full extent permitted by law, in so far as our liability (and/or that of our employees, officers, agents or contractors and their employees, officers, partners, agents and contractors) may not be excluded, such liability is limited, at our discretion, to the resupply again of any good or service giving rise to the relevant liability, or payment of the cost of having the good or service giving rise to the relevant liability performed again, or the replacement or repair of goods or services giving rise to the relevant liability or the payment of the cost of having such goods or services replaced or repaired, or the refund by us to you of some or all of any periodic fees paid by you in connection with the provision of a good or service in relation to which the relevant liability arose (eg a refund of some or all of a monthly fee with respect to the month in which the good or service giving rise to liability was provided), or the payment of a maximum aggregated total amount (aggregated across all claims made by all separate claimants in connection with the Services) of AUD500.00.*

18. INDEMNITY

- (a) *You agree to indemnify us and our employees, officers, partners, agents and contractors and our related bodies corporate and their employees, officers, partners, agents and contractors ("the Indemnified") from and against all costs (on a full indemnity basis including, without limitation, reasonable legal and accounting costs) damage, loss and liabilities that any or all of the Indemnified may incur or suffer in connection with any claims, demands, actions or proceedings brought or made against any or all of the Indemnified by any person in connection with, resulting from, or alleged to result from:*
 - (i) *your Accessing of the Services;*
 - (ii) *a breach of any representation or warranty made by you under the Terms of Use;*
 - (iii) *your violation of any of the Terms of Use; or*
 - (iv) *any act or omission of yours or of any of Your officers, employees, agents or contractors in connection with the Services (including in relation to the availability, operation, maintenance or Accessing of the Services).*
- (b) *We hold the benefit of the indemnity in this clause 18 on trust for each of "the indemnified" (as defined in clause 18(a)) and can, if requested by any of them, enforce it on their behalf.*

19. STORE APPLICATIONS

- (a) **(definitions)** For the purposes of this clause:
 - (i) **Device** means any and all of an Android Device, an Apple Device, and a Windows Device;

- (ii) **Android Device** is a device that operates an operating system known as an "Android" operating system or which is commonly associated with Google Inc or the products or services promoted on or through or associated with www.google.com or the Google Play Store (including at play.google.com) or www.android.com;
 - (iii) **Apple Device** is a device made available by or through, or commonly associated with, Apple Inc or the products or services promoted on or through or associated with www.apple.com or "iTunes" or the Apple "App Store" (including at www.itunes.apple.com); and
 - (iv) **Windows Device** is a device made available by or through, or commonly associated with, Microsoft or the products or services promoted on or through or associated with www.windows.com or www.microsoft.com or www.windowscentral.com.
- (b) **(rights)** If you use any of our Services on (or in, or through, or in connection with) an application or "app" or service on a Device, then all rights that we have (and all exclusions and limitations that we make or from which we benefit) under these Terms of Use are in addition to (and in no way limit) rights and protections that we have (and exclusions and limitations, including with respect to our liability to you, from which we benefit) under all other terms which you have accepted (including when you downloaded or used the relevant application or service) which serve to provide rights to (or to limit liability of) developers of applications and services for use on or in connection with the relevant Device (including under the "Licensed Application End User Licence Agreement" that relates to Apple Devices).
- (c) **(incorporated terms for Apple Devices)** If you use any of our Services on, or in, or through, or in connection with, an application or "app" or service on an Apple Device, then the terms, representations, rights and obligations as outlined, imposed and granted in Apple Inc's "Instructions for Minimum Terms of Developer's End-User License Agreement" (including as found at <https://www.apple.com/legal/internet-services/itunes/dev/mintterms/>) are hereby incorporated into these Terms of Use, and the parties to these Terms of Use agree that those representations, rights and obligations apply as if the instructions outlined by Apple had been properly implemented and reflected in these Terms of Use.

20. TERMINATION

- (a) **Duration:** The Terms of Use are effective until terminated by us, and we may terminate the Terms of Use and/or your ability to Access the Services at any time without notice.
- (b) **If terminated:** If we terminate the Terms of Use or if we terminate your ability to Access the Services, then, from the moment of such termination:
 - (i) you must immediately uninstall the Services from all locations and devices on which you have them installed;
 - (ii) you are no longer authorised to Access the Services (and you must stop doing so immediately, other than solely to uninstall the Services as required by sub-clause (i) above); and
 - (iii) all restrictions imposed on you, all licenses and permissions granted by you, all warranties and indemnities given by you, and all our disclaimers and limitations of liability, (in all cases as set out in the Terms of Use), will survive termination.

21. FAIR GO POLICY

In addition to anything else in these Terms of Use, and without limiting the Terms of Use in any way, You agree to Access our Services subject to our "fair go policy", which requires that you do not Access our Services in any manner, and that you do not do anything, that: (i) results in other people or customers being unable to Access our

Services in the usual way with the usual quality of Access; or (ii) that we consider unreasonable or unacceptable or unfair.

22. **GENERAL**

- (a) **Invalidity or unenforceability:** Any part of the Terms of Use that is held to be illegal, invalid, unenforceable or not permissible under the requirements or provisions of any relevant law that applies to the relationship between us and you, will (to the extent they are deemed to be illegal, invalid, unenforceable or not permissible) be deemed to be removed from the Terms of Use, but all other parts shall continue to apply.
- (b) **Amendment:** The Terms of Use can only be amended by us making available an amended written version on or through the Services. You are not able to amend the Terms of Use.
- (c) **Entire understanding:** The Terms of Use comprise the entire understanding of the parties in relation to their subject matter, and supersede all previous representations and agreements.
- (d) **Assignment:** You may not dispose of or assign your rights or obligations under the Terms of Use without our prior written consent. You consent to us, in our discretion at any time: (i) novating our rights and obligations under the Terms of Use; and/or (ii) disposing of, assigning, or otherwise creating an interest in our rights under the Terms of Use.
- (e) **Waivers:** Our rights under the Terms of Use may only be waived by us giving notice in writing to you. We do not waive any right under the Terms of Use merely by not exercising a right immediately.
- (f) **Governing law:** The Terms of Use are governed by the laws of New South Wales (in Australia), and you submit to the exclusive jurisdiction of courts exercising jurisdiction in that state.
- (g) **Interpretation:** References to a person include any entity and its successors and assigns; headings are for convenience only and do not affect interpretation; defined terms shall have the same meaning regardless of their grammatical form; single includes the plural and vice versa; use of "including" is non-limiting.