



Date of effect: August 22, 2024

# TERMS OF AGREEMENT

## 1. SUBSCRIPTION AND SERVICES

1.1 Products and Support Services. For the duration of the subscription term set forth in the Subscription Product Form, Sustainable Platform shall: (a) make the Products available to Client subject to this Agreement; (b) provide the applicable Support Services for the Products; and (c) provide the Products in accordance with laws and regulations applicable to Sustainable Platform and its provision of its Products to its customers generally.

1.2 Professional Services. Sustainable Platform shall provide to Client any Professional Services specified in the Subscription Product Form, subject to the terms and conditions of this Agreement and the Subscription Product Form.

1.3 Support Services. Sustainable Platform shall provide support services as described in the relevant Support Services schedule referenced in the Subscription Product Form. Support Services may include, but are not limited to, technical support, product updates, and access to online resources.

## 2. USE OF PRODUCTS AND SERVICES

2.1 Product Subscriptions. Subject to the terms of the Agreement, Client shall have the right to access and use the Products and related Support Services as specified in the Subscription Product Form for the duration of the applicable subscription term.

2.2 Usage Parameter. Client's right to access and use the Products is subject to any Usage Parameters set forth in the Subscription Product Form.

2.3 Restrictions on Access and Use. Client may access and use the Products and Documentation solely for its internal business purposes during the term of the Agreement. Client shall not:

- (a) use the Products on behalf of or for the benefit of any person or entity other than Client except as expressly stated otherwise in this Agreement;
- (b) make the Products or Documentation available to, or allow use by, any person or entity other than Client except as expressly stated otherwise in this Agreement;
- (c) licence, sublicense, sell, resell, transfer, assign, distribute, rent or lease the Products or Documentation;
- (d) interfere with or disrupt the integrity or performance of the Products;
- (e) attempt to gain unauthorised access to the Products or their related systems or networks;
- (f) use the Products to store or transmit any malicious code or any material that is infringing, libellous, or unlawful;
- (g) remove or obscure any copyright, trademark, or other proprietary notices contained in the Products;
- (h) modify or create derivative works of a Product or Documentation or any part thereof.

2.4 Client Responsibilities. Client shall be solely responsible for all activity occurring under its accounts and shall abide by all applicable law and regulation in connection with its use of the Products. Client shall ensure that its Authorised Users comply with all terms and conditions of the Agreement.

2.5 Connectivity and Transmission. Client will be solely responsible, at its own expense, for acquiring, installing, maintaining and updating all connectivity equipment, hardware, software, and other equipment as may be necessary for Client to connect to, access and use the Products.

### 3. INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

3.1 Intellectual Property; Reservation of Rights. Client shall obtain no rights in the Products, Services and Documentation other than as expressly set forth in this Agreement. Sustainable Platform reserves all right, title and interest in and to the Products, Services and Documentation, including all related intellectual property rights.

3.2 Ownership and Licence to Business Data. As between Sustainable Platform and Client, Client owns the Business Data and all intellectual property rights therein. Client hereby grants to Sustainable Platform a royalty-free, worldwide licence to access and use the Business Data to configure and provide the Products and Services to Client, and to improve or develop new or existing Sustainable Platform products and services.

## 4. TERM AND TERMINATION

4.1 Term. The Agreement shall commence on the date it is accepted by the Client by executing the Subscription Product Form referencing these Terms. The initial term of a Product subscription purchased on a Subscription Product Form shall be as specified in the Subscription Product Form. Following the initial term, the term of each Product subscription shall renew automatically for successive renewal terms of one year each unless either party provides notice of non-renewal to the other party not less than thirty (30) days prior to the first day of any such renewal term.

4.2 Termination. Either party may terminate this Agreement (i) upon thirty (30) days' notice to the other party of a material breach if such material breach remains uncured at the expiration of such period; or (ii) if the other party becomes insolvent or the subject of a bankruptcy or insolvency proceeding.

4.3 Effect of Termination. Upon termination of the Agreement for any reason, Client shall cease all use of the Product(s), destroy or return to Sustainable Platform any affected Products and related Documentation, and certify to Sustainable Platform in writing Client's compliance with this section.

## 5. PAYMENT OF FEES

5.1 Fees. Unless otherwise identified in the Subscription Product Form, Client shall pay to Sustainable Platform the fees for each Product or Service as set forth on the Subscription Product Form.

Except as otherwise specified herein or in the Subscription Product Form, all fees (i) shall be payable by Client annually in advance; and (ii) are non-refundable and non-cancellable.

5.2 Taxes. The fees set forth do not include any applicable local taxes such as sales tax. Client shall pay, or reimburse Sustainable Platform for, all such locally applicable taxes.

## 6. REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS

6.1 General Warranties. Each party represents and warrants that (a) it has validly entered into this Agreement, and (b) it will comply with all applicable laws and regulations affecting its performance hereunder.

6.2 Product Warranties. Sustainable Platform warrants that during the applicable subscription term for a Product: (a) the Product will perform materially in accordance with the Documentation; and (b) although Sustainable Platform may modify the Products in its discretion, Sustainable Platform will not materially decrease the overall functionality of the Product.

6.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SUSTAINABLE PLATFORM MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. ALL DATA IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND.

## 7. INDEMNIFICATION

7.1 Sustainable Platform Indemnification. Sustainable Platform shall defend Client from and against any claim made or brought against Client by a third party alleging that the Products as provided to Client by Sustainable Platform infringe or misappropriate such third party's intellectual property rights, and will indemnify Client from any damages finally awarded against Client as a result of such claim.

7.2 Client Indemnification. Client shall defend Sustainable Platform from and against any claim made or brought against Sustainable Platform by a third party based on or arising out of Client's breach of the usage restrictions in this Agreement or Client's dissemination of any output from the Products to any third party, and will indemnify Sustainable Platform from any damages finally awarded against Sustainable Platform as a result of such claim.

## 8. LIMITATIONS OF LIABILITY

8.1 Exclusion of Indirect and Consequential Damages. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOST DATA, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

8.2 Limitation of Liability. EXCEPT FOR LIABILITY ARISING OUT OF A PARTY'S INDEMNIFICATION OBLIGATIONS OR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY.

## 9. CONFIDENTIALITY

9.1 Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorised by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

9.2 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

## 10. DATA PRIVACY AND SECURITY

10.1 Data Protection. Sustainable Platform will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Client's Business Data. Sustainable Platform will not (a) modify Client's Business Data, (b) disclose Client's Business Data except as compelled by law or as expressly permitted in writing by Client, or (c) access Client's Business Data except to provide the Products and Services or prevent or address service or technical problems, or at Client's request in connection with customer support matters.

10.2 Privacy Policy. Sustainable Platform's privacy policy, available on its website, provides further details on Sustainable Platform's data protection practices.

## 11. THIRD-PARTY DATA

11.1 Third-Party Data Usage. The Products may contain data obtained by Sustainable Platform from third-party suppliers. Client acknowledges that such third-party data is provided "AS IS" and Sustainable Platform makes no warranties regarding such data.

11.2 Restrictions on Third-Party Data. Client shall not (a) use any third-party data provided through the Products for any purpose other than in connection with the Products; (b) distribute or sublicense any such data to any third party; or (c) use such data in violation of any applicable laws or regulations.

## 12. AUDIT RIGHTS

12.1 Audit. During the term of the Agreement and for 18 months thereafter, Sustainable Platform may audit Client's use of the Products to ensure compliance with the terms of this Agreement. Such audit will be conducted during regular business hours and with reasonable notice to Client.

12.2 Cooperation. Client agrees to cooperate with Sustainable Platform's audit and provide reasonable assistance and access to information, including but not limited to relevant records, systems, and personnel.

12.3 Discrepancies. If an audit reveals that Client has exceeded its Usage Parameters or otherwise breached the terms of this Agreement, Client shall promptly pay for any overages and remedy any breaches.

## 13. SURVIVAL

The following provisions will survive any termination or expiration of this Agreement: Sections 3 (Intellectual Property and Proprietary Rights), 5 (Payment of Fees), 6.3 (Disclaimer), 7 (Indemnification), 8 (Limitations of Liability), 9 (Confidentiality), 12 (Audit Rights), 13 (Survival), and any other provisions which by their nature are intended to survive termination or expiration.

## 14. UPDATES TO TERMS

14.1 Amendments. Sustainable Platform may update these Terms from time to time. Sustainable Platform will notify Client of any material changes to these Terms and will provide Client with the opportunity to review the changes before they become effective.

14.2 Acceptance. Client's continued use of the Products after the effective date of any changes to these Terms will constitute Client's acceptance of the revised Terms.

## 15. GENERAL TERMS

15.1 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

15.2 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld).

15.3 Governing Law. This Agreement shall be governed by the laws of the State of Western Australia, without regard to its conflict of law principles.

15.4 Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Subscription Product Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

15.5 Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the second business day after sending by email.

15.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

## 16. DEFINITIONS

"Affiliate" means any legal entity which either Controls, is under the Control of, or is under common Control with a party.

"Agreement" means these Terms of Agreement, together with any Subscription Product Form referencing these Terms.

"Authorised Users" means individuals authorised by Client to access and use the Products and Support Services in compliance with this Agreement.

"Business Data" means electronic information submitted by Authorised Users to or through the Products for storage or processing.

"Client" means the entity identified as "Subscriber" in the Subscription Product Form.

"Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

"Control" means (a) the direct or indirect ownership by a person or entity of at least fifty (50) percent of the stock or other securities or interests entitled to vote for the election of the board of directors or other governing body of another entity, or (b) the direct or indirect ownership by a person or entity of at least fifty (50) percent of the equity or profits interest in another entity.

"Documentation" means the latest versions of the user guides, help screens, and other user manuals provided by Sustainable Platform for the Products.

"Subscription Product Form" means an ordering document executed by Sustainable Platform and the Client that references these Terms and sets forth the Products and Services to be provided to the Client.

"Products" means Sustainable Platform web services, information services, software-as-a-service, data feeds and other products and services identified in the Subscription Product Form.

"Services" means the Support Services and any Professional Services provided by Sustainable Platform.

"Sustainable Platform" means Sustainable Platform Pty Ltd.

"Usage Parameter" means any restriction or limitation imposed by Sustainable Platform on Client's use of a Product or Service, as specified in the Subscription Product Form.