



**BONDI**LABS

# Software Services Terms of Service

1st November 2018

# Welcome to Bondi Labs!

Effective: 1<sup>st</sup> November 2018

Thanks for using a Bondi Labs Software Service! These Software Services Terms of Service (these “**Terms of Service**”) describe your rights and responsibilities as a customer of our Software Services. If you are being invited or added to a Software Service set up by a Bondi Labs customer, the [User Notice](#) governs your access and use of the Software Service (and not these Terms of Service). These Terms of Service are between you and the Bondi Labs’ entity (as Licensor) listed in an applicable Order for the Software Services that you are accessing or using (“**Bondi Labs**”, “**we**” or “**us**”). “You” means the entity you represent in accepting these Terms of Service or, if that does not apply, you individually. If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or such entity to these Terms of Service; (ii) you have read and understand these Terms of Service; and (iii) you agree to these Terms of Service on behalf of the party that you represent. If you don’t have the legal authority to bind your employer or the applicable entity please do not click “I agree” (or similar button or checkbox) that is presented to you.

PLEASE NOTE THAT IF YOU SIGN UP FOR A SOFTWARE SERVICE USING AN EMAIL ADDRESS FROM YOUR EMPLOYER OR ANOTHER ENTITY, THEN (A) YOU WILL BE DEEMED TO REPRESENT SUCH PARTY, (B) YOUR CLICK TO ACCEPT WILL BIND YOUR EMPLOYER OR THAT ENTITY TO THESE TERMS OF SERVICE, AND (C) THE WORD “YOU” IN THESE TERMS OF SERVICE WILL REFER TO YOUR EMPLOYER OR THAT ENTITY.

These Terms of Service are effective as of the date you first click “I agree” (or similar button or checkbox) or use or access a Software Service, whichever is earlier (the “**Effective Date**”). These Terms of Service do not have to be signed in order to be binding. You indicate your assent to these Terms of Service by clicking “I agree” (or similar button or checkbox) at the time you register for a Software Service, create an account with Bondi Labs, or place an Order. For No-Charge Services, you also indicate your assent to these Terms of Service by accessing or using the applicable No-Charge Service.

Please read these Terms of Service carefully. If you do not agree with these Terms of Service stop using and uninstall the Software Service immediately.

## 1. Definitions

“**Additional Services**” means technical or other services related to the Software Services we provide to you, as identified in an Order (eg product customisation or user training). For the avoidance of doubt, Additional Services do not include the standard level of support included in your subscription licence.

“**Affiliate**” means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party, where “control” means the power to direct the management or affairs of an entity, and “ownership” means the beneficial ownership of greater

than 50% of the voting equity securities or other equivalent voting interests of the entity.

**“Authorised User”** means an individual you or an Affiliate permits or invites to use the Software Services. For the avoidance of doubt: (a) individuals invited by your Authorised Users, and (b) individuals under managed accounts; including individuals referred to as Manager Users and Trainee Users in some Software Services.

**“Authorised User Account”** means an account established by you or an Authorised User to enable the Authorised User to use or access a Software Service.

**“Bondi Labs Legal Notice”** means our Acceptable Use Notice, Privacy Notice, Website Terms of Use, Cookies & Tracking Notice, User Notice and (unless specified) any other notices or Terms of Service referenced in these Terms of Service (as may be modified by Bondi Labs from time to time and available at <https://www.bondilabs.com/legal>).

**“Documentation”** means user help files, user instructions and other written materials published by Bondi Labs that relate to the Software Services.

**“Feedback”** means comments, questions, ideas, suggestions or other feedback relating to the Software Services, Support or Additional Services.

**“GDPR”** means European Union General Data Protection Regulation 2016/679.

**“Intellectual Property Rights”** means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, knowhow, rights in relation to circuit layouts and all other rights of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

**“Laws”** means all applicable local, state, federal and international laws, regulations and conventions, including those related to data privacy and data transfer, international communications and the exportation of technical or personal data.

**“Licensor”** means a party granted the rights by us to licence and distribute the Software Services.

**“Notification Email Address”** means the email address you used to register for a Software Service account or otherwise sign up for a Software Service. It is your responsibility to keep your email address valid and current so that we are able to send notices, statements, and other information to you.

**“Order”** means the order entered into between you and us (including a Licensor), which contains details of: (i) the Software Services to be accessed and used by you and your Authorised Users; (ii) and Additional Services; (iii) the applicable Order Fees and Payment Terms; (iv) your Authorised Licence Manager; (v) the number of Authorised User licences; (vi) the Subscription Term.

**“Our Deliverables”** means any materials, training, modifications, derivative works or developments that we provide in connection with any Additional Services.

**“Our Technology”** means the Software Services (including all No-Charge Services), Our Deliverables, their “look and feel”, any and all related or underlying technology and any modifications or derivative

works of the foregoing, including as they may incorporate Feedback.

“**PCI DSS**” means the Payment Card Industry Data Security Standards.

“**Product-Specific Terms of Service**” means additional Terms of Service that apply to certain Software Services and Additional Services.

“**Sensitive Data**” means any (i) categories of data enumerated in GDPR or any successor legislation; (ii) patient, medical or other protected health information; (iii) credit, debit or other payment card data subject to PCI DSS; (iv) social security numbers, driver’s licence numbers or other government ID numbers; or (v) any data similar to the foregoing that is protected under foreign or domestic laws or regulations.

“**Software Services**” means the hosted or cloud-based products and services licensed to you as set out in an Order.

“**Subscription Term**” means your permitted subscription period for a Software Service, as set forth in the applicable Order.

“**Website**” means a website provided by us.

“**Your Data**” means any data, content, video, images or other materials of any type that you (including any of your Authorised Users) submit to Software Services. In this context, “submit” (and any similar term) includes submitting, uploading, transmitting or otherwise making available Your Data to, through or generated within the Software Services.

“**Your Materials**” means your materials, systems, personnel or other resources.

## 2. Scope

2.1 Software Services: These Terms of Service govern your use of the Software Services, related Support and Additional Services, as well as any technology you download from us that references these Terms of Service. These Terms of Service include the Bondi Labs Legal Notice (including our [Privacy Notice](#)), the Product-Specific Terms of Service, and your Orders, and any other references to Bondi Labs notices and attachments posted on our Website from time to time as though those notices were included in these Terms of Service. If any of the provisions of any applicable Bondi Labs notice conflict with these Terms of Service, these Terms of Service have priority, solely to the extent such Terms of Service apply to the Software Service.

2.2 Product-Specific Terms of Service: Some Software Services may be subject to additional Terms of Service specific to that product as set forth in the Product-Specific Terms of Service. By accessing or using a product covered by the Product-Specific Terms of Service, you also agree to the Product-Specific Terms of Service.

## 3. Account Registration

3.1 To activate the Software Services you must complete an Order which is available via our websites or by contracting [sales@bondilabs.com](mailto:sales@bondilabs.com).

- 3.2 You, and your Authorised Users, may need to register for an account in order to access or use any Software Services. Any registration information that you and your Authorised Users provide to us must be accurate, current and complete. You must also update your information so that we may send notices, statements and other information to you by email or through your account. You are responsible for all actions taken through your accounts.
- 3.3 You agree that our responsibilities do not extend to the internal management or administration of the Software Services for you and that we are merely a software provider.
- 3.4 You, and your Authorised Users, agree to receive notices and material from us regarding upgrades, updates, new products and services and new product features associated with the Software Services that become available from time-to-time.

#### **4. How the Software Services are Administered**

- 4.1 Authorised Licence Manager: Through the Software Services, you may be able to specify an Authorised Licence Manager, who will have important rights and controls over your use of the Software Services and other Authorised User Accounts. This may include making Orders for Software Services or enabling Apps (which may incur fees); and having the rights and obligations of an Administrator User.
- 4.2 Administrator Users: Through the Software Services, you may be able to specify certain Authorised Users as Administrator Users, who will have important rights and controls over your use of the Software Services and other Authorised User Accounts. This may include creating, de-provisioning, monitoring or modifying Authorised User Accounts, and setting Authorised User usage permissions; and managing access to Your Data by Authorised Users or others. Administrator Users may also take over management of accounts previously registered using an email address belonging to your Order. Without limiting Section 4.5 (Responsibility for Authorised Users), which fully applies to Administrator Users, you are responsible for whom you allow to become Administrator Users and any actions they take, including as described above. You agree that our responsibilities do not extend to the internal management or administration of the Software Services for you.
- 4.3 Authorised Reseller as Administrator User: If you order a Software Service through an Authorised Reseller, then you are responsible for determining whether the Authorised Reseller may serve as an Administrator User and for any related rights or obligations in your applicable agreement with the Authorised Reseller. As between you and Bondi Labs, you are solely responsible for any access by an Authorised Reseller to your accounts or your other Authorised User Accounts.
- 4.4 Authorised User Consent: You will provide all required disclosures to and will obtain and maintain all required consents from Authorised Users to allow: (i) Administrator Users to have the access described in these Terms of Service and the [Privacy Notice](#); and (ii) Bondi Labs' provision of the Software Service to Administrator Users and Authorised Users. You will provide

evidence of such consents upon our reasonable request.

- 4.5 **Responsibility for Authorised Users:** Our Software Service have various user on boarding flows. Some Software Services require users to be designated by Administrator Users; some allow users to sign up for individual accounts which can become associated with teams or organisations at a later time; and some may allow users to invite other users. You are responsible for understanding the settings and controls for each Software Service you use and for controlling whom you allow to become an Authorised User. If payment is required for Authorised Users to use or access a Software Service, then we are only required to provide the Software Service to those Authorised Users for whom you have paid the applicable fees, and only such Authorised Users are permitted to access and use the Software Service. Some Software Services may allow you to designate different types of Authorised Users (for example, Kuube distinguishes between “Administrator User” and “Trainee User”), in which case pricing and functionality may vary according to the type of Authorised User. You are responsible for compliance with these Terms of Service by all Authorised Users, including for any payment obligations. Please note that you are responsible for the activities of all your Authorised Users, including Orders they may place and how Authorised Users use Your Data, even if those Authorised Users are not from your organisation or domain. We may display our [User Notice](#) to Authorised Users at sign up, account creation, Software Service registration, or in-product. If you use single sign-on (SSO) for identity management of your Software Service(s) such that Authorised Users will bypass these screens and our User Notice, you are responsible for displaying our User Notice to Authorised Users and for any damages resulting from your failure to do so.
- 4.6 **Credentials:** You must require that all Authorised Users keep their user IDs and passwords for the Software Service strictly confidential and do not share such information with any unauthorised person. User IDs are granted to individual, named persons and may not be shared. You are responsible for any and all actions taken using Authorised User Accounts and passwords, and you agree to immediately notify us of any unauthorised use of which you become aware.
- 4.7 **Age Requirement for Authorised Users:** The Software Services are not intended for, and should not be used by, anyone under the age of 16. You are responsible for ensuring that all Authorised Users are at least 16 years old.
- 4.8 **Domain Name Ownership:** Where you are required to specify a domain for the operation of a Software Service or certain Software Service features, we may verify that you own or control that domain. If you do not own or control the domain you specify, then we will have no obligation to provide you with the Software Service or Software Service features.

## 5. **What’s Included in your Software Services Subscriptions; What are the Restrictions**

- 5.1 **Access to Software Services:** Subject to these Terms of Service and during the applicable

Subscription Term, you may access and use the Software Services for your own business purposes or personal use, as applicable, all in accordance with these Terms of Service, the applicable Order and the Documentation. This includes the right, as part of your authorised use of the Software Service, to download and use the customer software associated with the Software Service. The rights granted to you in this Section 5.1 are non-exclusive, non-sublicensable and non-transferable.

- 5.2 Support: During the Subscription Term, we will provide Support for the Software Services in accordance with the [Support Documentation](#) (to the extent applicable), and the applicable Order.
- 5.3 Restrictions: Except as otherwise expressly permitted in these Terms of Service, you will not: (a) reproduce, modify, adapt or create derivative works of the Software Services; (b) rent, lease, distribute, sell, sublicense, transfer or provide access to the Software Services to a third party; (c) use the Software Services for the benefit of any third party; (d) incorporate any Software Services into a product or service you provide to a third party; (e) interfere with or otherwise circumvent mechanisms in the Software Services intended to limit your use; (f) reverse engineer, disassemble, decompile, translate or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to any Software Services, except to the extent expressly permitted by applicable law (and then only upon advance notice to us); (g) remove or obscure any proprietary or other notices contained in any Software Service; (h) use the Software Services for competitive analysis or to build competitive products; (i) publicly disseminate information regarding the performance of the Software Services; or (j) encourage or assist any third party to do any of the foregoing.

## 6. Demo, Trials and Betas: No-Charge Services

- 6.1 We may offer certain Software Services to you at no charge, including free accounts, demo/trial use and Beta Versions as defined below (collectively, “**No-Charge Services**”). Your use of No-Charge Services is subject to any additional Terms of Service that we specify and is only permitted during the Subscription Term we designate (or, if not designated, until terminated in accordance with these Terms of Service). Except as otherwise set forth in this Section 6, the Terms of Service and conditions of these Terms of Service governing Software Services, including Section 5.3 (Restrictions), fully apply to No-Charge Services. We may modify or terminate your right to use No-Charge Services at any time and for any reason in our sole discretion, without liability to you. You understand that any pre-release and beta Software Services, and any pre-release and beta features within generally available Software Services, that we make available (collectively, “**Beta Versions**”) are still under development, may be inoperable or incomplete and are likely to contain more errors and bugs than generally available Software Services. We make no promises that any Beta Versions will ever be made generally available. In some circumstances, we may charge a fee in order to allow you to access Beta Versions, but the Beta Versions will still remain subject to this Section 5. All information regarding the characteristics, features or performance of any No-Charge Services (including

Beta Versions) constitutes our Confidential Information. To the maximum extent permitted by applicable law, we disclaim all obligations or liabilities with respect to No-Charge Services, including any Support, warranty and indemnity obligations. NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS OF SERVICE, OUR MAXIMUM AGGREGATE LIABILITY TO YOU IN RESPECT OF NO-CHARGE SERVICES WILL BE AUD\$100.

## 7. Our Security and Data Privacy Notices

- 7.1 Security: We implement security procedures designed to help protect Your Data from security attacks.
- 7.2 Privacy: We collect certain data and information about you and your Authorised Users in connection with your and your Authorised Users' use of the Software Services and otherwise in connection with these Terms of Service. We collect and use all such data and information in accordance with our Privacy Notice, which you acknowledge.
- 7.3 Improving Software Services: We are always striving to improve the Software Services. In order to do so, we use analytics techniques to better understand how our Software Services are being used. For more information on these techniques and the type of data collected, please read our Privacy Notice.
- 7.4 Subpoenas: Nothing in these Terms of Service prevents us from disclosing Your Data to the extent required by law, subpoenas or court orders, but we will use commercially reasonable efforts to notify you where permitted to do so. Bondi Labs strives to balance your privacy rights with other legal requirements.
- 7.5 GDPR Data: If you are in the EEAU, Switzerland, or are otherwise subject to the territorial scope of GDPR, and to the extent that GDPR applies to any of the data with which you use the Software Service and/or No Charge Services, the provisions of Appendix 1 (Data Protection Compliance) and Appendix 2 (Data Processing Agreement) shall apply.

## 8. Terms of Service that Apply to Your Data

- 8.1 Using Your Data to provide Software Services to You: You retain all right, title and interest in and to Your Data in the form submitted to the Software Services. Subject to these Terms of Service, and solely to the extent necessary to provide the Software Services to you, you grant us a worldwide, limited term licence to access, use, process, copy, store, distribute, perform, export, and display Your Data. Solely to the extent that reformatting Your Data for display in a Software Service constitutes a modification or derivative work, the foregoing licence also includes the right to make modifications and derivative works. We may also access your accounts, Authorised User Accounts, and your Software Services with Authorised User permission in order to respond to your support requests.
- 8.2 Your Data Compliance Obligations: You and your use of Software Services (including use by your Authorised Users) must comply at all times with these Terms of Service, the Acceptable Use Policy and all Laws. You represent and warrant that: (i) you have obtained all necessary



rights, releases and permissions to submit all Your Data to the Software Services and to grant the rights granted to us in these Terms of Service and (ii) Your Data and its submission and use as you authorise in these Terms of Service will not violate (1) any Laws, (2) any third-party intellectual property, privacy, publicity or other rights, or (3) any of your or third-party notices or Terms of Service governing Your Data. Other than our express obligations under Section 7 (Our Security and Data Privacy Notices), we assume no responsibility or liability for Your Data, and you are solely responsible for Your Data and the consequences of submitting and using it with the Software Services.

- 8.3 No Sensitive Data: You will not submit to the Software Services (or use the Software Services to collect) any Sensitive Data. You also acknowledge that we are not acting as your agent, business associate or subcontractor. Notwithstanding any other provision to the contrary, we have no liability under these Terms of Service for Sensitive Data.
- 8.4 Your Indemnity: You will defend, indemnify and hold harmless us (and our Affiliates, officers, directors, agents and employees) from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) resulting from any claim arising from or related to (i) your breach of Section 4.4 (Authorised User Consent) or any claims or disputes brought by your Authorised Users arising out of their use of Software Services, (ii) your breach (or alleged breach) of Sections 8.2 (Your Data Compliance Obligations) or 8.3 (No Sensitive Data); or (iii) Your Materials. This indemnification obligation is subject to you receiving (a) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (b) the exclusive right to control and direct the investigation, defence or settlement of such claim and (c) all reasonable, necessary cooperation by us at your expense.
- 8.5 Removals and Suspension: We have no obligation to monitor any content uploaded to the Software Services. Nonetheless, if we deem such action necessary based on your violation of these Terms of Service, including Bondi Labs Legal Notice, or in response to takedown requests that we receive following our guidelines for Reporting Copyright and Trademark Violations, we may (1) remove Your Data from the Software Services or (2) suspend your access to the Software Services. We will use reasonable efforts to provide you with advance notice of removals and suspensions when practicable, but if we determine that your actions endanger the operation of the Software Service or other users, we may suspend your access or remove Your Data immediately without notice. We have no liability to you for removing or deleting Your Data from or suspending your access to any Software Services as described in this Section 8.5.
- 8.6 Research: To facilitate academic research, industry benchmarks, indices and enhancements to the Software Services, you grant us a non-exclusive, worldwide, irrevocable, royalty-free licence to use Your Data derived from accessing and using the Software Services in an aggregated, anonymous and non-identifiable manner.

## 9. Using Third-Party Products with the Software Services

- 9.1 Third-Party Products: You (including your Authorised Users) may choose to use or procure other third-party products or services in connection with the Software Services, including Third Party Apps or implementation, customisation, training or other services. Your receipt or use of any third-party products or services (and the third parties' use of any of Your Data) is subject to a separate agreement between you and the third-party provider. If you enable or use third party products or services with the Software Services we will allow the third party providers to access or use Your Data as required for the interoperation of their products and services with the Software Services. This may include transmitting, transferring, modifying or deleting Your Data, or storing Your Data on systems belonging to the third-party providers or other third parties. Any third-party provider's use of Your Data is subject to the applicable agreement between you and such third-party provider. We are not responsible for any access to or use of Your Data by third party providers or their products or services, or for the security or privacy practices of any third-party provider or its products or services. You are solely responsible for your decision to permit any third-party provider or third-party product or service to use Your Data. It is your responsibility to carefully review the agreement between you and the third-party provider, as provided by the applicable third-party provider.
- 9.2 Backup of Your Data: We engage third party service providers to maintain copies of Your Data inputted into the Software Services. We do not make any guarantees or give any warranty that there will be no loss or corruption of Your Data by these third parties.
- 9.3 DISCLAIMER: WE DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY THIRD-PARTY PRODUCTS OR SERVICES (WHETHER SUPPORT, AVAILABILITY, SECURITY OR OTHERWISE) OR FOR THE ACTS OR OMISSIONS OF ANY THIRD-PARTY PROVIDERS OR VENDORS.

## 10. Additional Services

- 10.1 Additional Services: Subject to these Terms of Service, you may purchase Additional Services that we will provide to you pursuant to the applicable Order. Additional Services may be subject to additional notices and Terms of Service as specified by us.
- 10.2 Our Deliverables: We will retain all right, title and interest in and to Our Deliverables. You may use any of Our Deliverables provided to you only in connection with the Software Services, subject to the same usage rights and restrictions as for the Software Services. For clarity, Our Deliverables are not considered Software Services, and any Software Services are not considered to be Our Deliverables.
- 10.3 Your Materials: You agree to provide us with reasonable access to Your Materials as reasonably necessary for our provision of Additional Services. If you do not provide us with timely access to Your Materials, our performance of Additional Services will be excused until you do so. You retain your rights in Your Materials, subject to our ownership of any Software Services, any of Our Deliverables or any of Our Technology underlying Your Materials. We

will use Your Materials solely for purposes of performing the Additional Services. You represent and warrant that you have all necessary rights in Your Materials to provide them to us for such purposes.

## 11. Billing, Renewals and Payment

- 11.1 Annual Subscription: Except for No-Charge Services, all Software Services are offered on an annual (1 or 2-year Subscription Term) subscription basis.
- 11.2 Order Fees & Payment: You agree to pay all fees in accordance with your Order. Unless otherwise specified in your Order, you will pay all amounts at the time you place your Order. For Additional Services provided at any non-Bondi Labs location, unless otherwise specified in your Order, you will reimburse us for our pre-approved travel, lodging and meal expenses, which we may charge as incurred. Other than as expressly set forth in Section 18.3 (Warranty Remedy), Section 20 (IP Indemnification) or Section 24 (Changes to these Terms of Service), all amounts are non-refundable, non-cancellable and non-creditable. You agree that we may bill your credit card or other payment method for renewals, additional users, expenses, and unpaid fees, as applicable.
- 11.3 Renewals: Except as otherwise specified in your Order, unless either party cancels your subscription prior to expiration of the current Subscription Term, your subscription will automatically renew for another Subscription Term of a period equal to your initial Subscription Term. You will provide any notice of non-renewal through the means we designate, which may include account settings in the Software Services or contacting our support team. Cancelling your subscription means that you will not be charged for the next billing cycle, but you will not receive any refunds or credits for amounts that have already been charged. All renewals are subject to the applicable Software Services continuing to be offered and will be charged at the then-current rates. If we do not want the Software Service to renew, then we will provide you written notice to this effect. This notice of non-renewal will be effective upon the conclusion of the then current Subscription Term.
- 11.4 Adding Users: You may add users or otherwise increase your use of Software Services by placing a new Order or modifying an existing Order. Unless otherwise specified in the applicable Order, we will charge you for any increased use at our then-current rates, prorated for the remainder of the then-current Subscription Term.
- 11.5 Delivery: We will deliver the login instructions for Software Services to your account or through other reasonable means no later than when we have received payment of the applicable fees. You are responsible for accessing your account to determine that we have received payment and that your Order has been processed. All deliveries under these Terms of Service will be electronic.
- 11.6 Overdue Payments: We may charge interest at the rate of one-and-one-half percent per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. You will have thirty days to pay overdue payments. If you do not pay overdue payments within

thirty days, we will automatically suspend your use of the Service Services. The duration of this suspension will be until you pay all outstanding payments. If you remain suspended for non-payment for more than sixty days, we may terminate your Subscription Term. You will be responsible for all reasonable expenses (including legal or collection fees) incurred by us in collecting such delinquent amounts, except where such overdue amounts are due to our billing inaccuracies.

## 12. Taxes Not Included

- 12.1 **Taxes:** Your fees under these Terms of Service exclude any taxes or duties payable in respect of the Software Services or Additional Services in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by us, you must pay to us the amount of such taxes or duties in addition to any fees owed under these Terms of Service. Notwithstanding the foregoing, if you have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed, you may provide us with such exemption information, and we will use reasonable efforts to provide you with invoicing documents designed to enable you to obtain a refund or credit from the relevant revenue authority, if such a refund or credit is available.
- 12.2 **Withholding Taxes:** You will pay all fees net of any applicable withholding taxes. You and we will work together to avoid any withholding tax if exemptions, or a reduced treaty withholding rate, are available. If we qualify for a tax exemption, or a reduced treaty withholding rate, we will provide you with reasonable documentary proof. You will provide us reasonable evidence that you have paid the relevant authority for the sum withheld or deducted.

## 13. If You Purchased through an Authorised Reseller

- 13.1 If you make any purchases through an authorised partner or reseller of Bondi Labs ("**Authorised Reseller**"):
- 13.1.1 Instead of paying us, you will pay the applicable amounts to the Authorised Reseller, as agreed between you and the Authorised Reseller. We may suspend or terminate your rights to use the Software Services if we do not receive the corresponding payment from the Authorised Reseller.
- 13.1.2 Your order details (e.g., the Software Services you are entitled to use, the number of Authorised Users, the Subscription Term, etc.) will be as stated in the order placed with us by the Authorised Reseller ("**Reseller Order**") on your behalf, and the Authorised Reseller is responsible for the accuracy of any such Reseller Order as communicated to us.
- 13.1.3 If you are entitled to a refund under these Terms of Service, then unless we otherwise specify, we will refund any applicable fees to the Authorised Reseller and the Authorised Reseller will be solely responsible for refunding the appropriate amounts to you.
- 13.1.4 Authorised Resellers are not authorised to modify these Terms of Service or make any promises or commitments on our behalf, and we are not bound by any obligations to you

other than as set forth in these Terms of Service.

#### 14. No Contingencies on other Products or Service or Future Functionality

14.1 You acknowledge that the Software Services and Additional Services referenced in an Order are being purchased separately from any of our other products or services. Payment obligations for any products or services are not contingent on the purchase or use of any of our other products (and for clarity, any purchases of Software Services and Additional Services are separate and not contingent on each other, even if listed on the same Order). You agree that your purchases are not contingent on the delivery of any future functionality or features (including future availability of any Software Services beyond the current Subscription Term), or dependent on any oral or written public comments we make regarding future functionality or features.

#### 15. Intellectual Property Rights in the Software Services and Feedback

15.1 No Ownership Transfer: Software Services are made available on a limited access basis and no ownership right is conveyed to you, irrespective of the use of Terms of Service such as “purchase” or “sale”. We and our licensors have and retain all right, title and interest, including all Intellectual Property Rights, in and to Our Technology (including the Software Services).

15.2 Feedback: From time to time, you may choose to submit Feedback to us. We may in connection with any of our products or services freely use, copy, disclose, licence, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on Intellectual Property Rights or otherwise. No Feedback will be considered your Confidential Information, and nothing in these Terms of Service limits our right to independently use, develop, evaluate, or market products or services, whether incorporating Feedback or otherwise.

#### 16. Confidentiality

16.1 Except as otherwise set forth in these Terms of Service, each party agrees that all code, inventions, know-how and business, technical and financial information disclosed to such party (“**Receiving Party**”) by the disclosing party (“**Disclosing Party**”) constitute the confidential property of the Disclosing Party (“**Confidential Information**”), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any of Our Technology and any performance information relating to the Software Services will be deemed our Confidential Information without any marking or further designation. Except as expressly authorised herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under these Terms of Service. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided that they are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 16 and that the Receiving Party remains

responsible for compliance by them with the Terms of Service of this Section 16. The Receiving Party's confidentiality obligations will not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

## 17. Subscription Term and Termination

- 17.1 Subscription Term: These Terms of Service are effective as of the Effective Date and expire on the date of expiration or termination of all Subscription Terms of Service.
- 17.2 Termination for Cause: Either party may terminate these Terms of Service (including all related Orders) if the other party (a) fails to cure any material breach of these Terms of Service within thirty (30) days after notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).
- 17.3 Termination for Convenience: You may choose to stop using the Software Services and terminate these Terms of Service (including all Orders) at any time for any reason upon written notice to us, upon any such termination (i) you will not be entitled to a refund of any pre-paid fees and (ii) if you have not already paid all applicable fees for the then-current Subscription Term or related services period (as applicable), any such fees that are outstanding will become immediately due and payable.
- 17.4 Effects of Termination: Upon any expiration or termination of these Terms of Service, you must cease using all Software Services and delete (or at our request, return) all Confidential Information or other materials of ours in your possession, including on any third-party systems operated on your behalf. You will certify such deletion upon our request. You will not have access to Your Data (and we may delete all of Your Data unless legally prohibited) after expiration or termination of these Terms of Service (or its applicable Subscription Term), so you should make sure to export Your Data using the functionality of the Software Services during the applicable Subscription Term. If you terminate these Terms of Service in accordance with Section 17.2 (Termination for Cause), we will refund you any prepaid fees covering the remainder of the then-current Subscription Term after the effective date of termination. If we

terminate these Terms of Service in accordance with Section 17.2 (Termination for Cause), you will pay any unpaid fees covering the remainder of the then-current Subscription Term after the effective date of termination. In no event will termination relieve you of your obligation to pay any fees payable to us for the period prior to the effective date of termination. Except where an exclusive remedy may be specified in these Terms of Service, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under these Terms of Service, by law or otherwise.

- 17.5 **Survival:** The following provisions will survive any termination or expiration of these Terms of Service: Sections 5.3 (Restrictions), 6 (Evaluations, Trials, and Betas) (disclaimers and use restrictions only), 8.4 (Your Indemnity), 9.1 (Third-Party Products), 11.2 (Order Fees & Payment), 12 (Taxes Not Included), 15 (IP Rights in the Software Services and Feedback), 16 (Confidentiality), 17 (Subscription Term and Termination), 18.4 (Warranty Disclaimer), 19 (Limitations of Liability), 20 (IP Indemnification) (but solely with respect to claims arising from your use of Software Services during the Subscription Term), 22 (Dispute Resolution) and 26 (General Provisions).

## 18. Warranties and Disclaimer

- 18.1 **Mutual Warranties:** Each party represents and warrants that it has the legal power and authority to enter into these Terms of Service.
- 18.2 **Our Warranties:** We warrant, for your benefit only, that we use commercially reasonable efforts to prevent introduction of viruses, Trojan horses or similar harmful materials into the Software Services (but we are not responsible for harmful materials submitted by you or Authorised Users) (the **“Performance Warranty”**).
- 18.3 **Warranty Remedy:** We will use commercially reasonable efforts, at no charge to you, to correct reported non-conformities with the Performance Warranty. If we determine corrections to be impracticable, either party may terminate the applicable Subscription Term. In this case, you will receive a refund of any fees you have pre-paid for use of the Software Service for the terminated portion of the applicable Subscription Term. The Performance Warranty will not apply: (i) unless you make a claim within thirty (30) days of the date on which you first noticed the non-conformity, (ii) if the non-conformity was caused by misuse, unauthorised modifications or third-party products, software, services or equipment or (iii) to No-Charge Services. Our sole liability, and your sole and exclusive remedy, for any breach of the Performance Warranty are set forth in this Section 18.
- 18.4 **WARRANTY DISCLAIMER:** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 18, ALL SOFTWARE SERVICES, SUPPORT AND ADDITIONAL SERVICES ARE PROVIDED “AS IS,” AND WE AND OUR SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING OUR EXPRESS OBLIGATIONS IN THESE TERMS OF SERVICE, WE DO NOT WARRANT

THAT YOUR USE OF THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT WE WILL REVIEW YOUR DATA FOR ACCURACY OR THAT WE WILL PRESERVE OR MAINTAIN YOUR DATA WITHOUT LOSS. YOU UNDERSTAND THAT USE OF THE SOFTWARE SERVICES NECESSARILY INVOLVES TRANSMISSION OF YOUR DATA OVER NETWORKS THAT WE DO NOT OWN, OPERATE OR CONTROL, AND WE ARE NOT RESPONSIBLE FOR ANY OF YOUR DATA LOST, ALTERED, INTERCEPTED OR STORED ACROSS SUCH NETWORKS. WE CANNOT GUARANTEE THAT OUR SECURITY PROCEDURES WILL BE ERROR-FREE, THAT TRANSMISSIONS OF YOUR DATA WILL ALWAYS BE SECURE OR THAT UNAUTHORISED THIRD PARTIES WILL NEVER BE ABLE TO DEFEAT OUR SECURITY MEASURES OR THOSE OF OUR THIRD-PARTY SERVICE PROVIDERS. WE WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE OUR REASONABLE CONTROL. YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

## 19. Limitation of Liability

- 19.1 Consequential Damages Waiver: EXCEPT FOR EXCLUDED CLAIMS (AS DEFINED BELOW), NEITHER PARTY (NOR ITS SUPPLIERS) WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OF SERVICE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.
- 19.2 Liability Cap: EXCEPT FOR EXCLUDED CLAIMS, EACH PARTY'S AND ITS SUPPLIERS' AGGREGATE LIABILITY TO THE OTHER ARISING OUT OF OR RELATED TO THESE TERMS OF SERVICE WILL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY YOU TO US UNDER THESE TERMS OF SERVICE IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.
- 19.3 Excluded Claims: "**Excluded Claims**" means (1) amounts owed by you under any Orders, (2) either party's express indemnification obligations in these Terms of Service, and (3) your breach of Section 5.3 (Restrictions).
- 19.4 Nature of Claims and Failure of Essential Purpose: The parties agree that the waivers and limitations specified in this Section 19 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in these Terms of Service is found to have failed of its essential purpose.



## 20. IP Indemnification

20.1 We will defend you against any claim brought against you by a third party alleging that the Software Services, when used as authorised under these Terms of Service, infringe a patent right granted in the Australia, United States or a member nation of the European Union or a copyright registered in such a jurisdiction (a “Claim”), and we will indemnify you and hold you harmless against any damages and costs finally awarded on the Claim by a court of competent jurisdiction or agreed to via settlement executed by us (including reasonable attorneys’ fees), provided that we have received from you: (a) prompt written notice of the Claim (but in any event notice in sufficient time for us to respond without prejudice); (b) reasonable assistance in the defence and investigation of the Claim, including providing us a copy of the Claim, all relevant evidence in your possession, custody, or control, and cooperation with evidentiary discovery, litigation, and trial, including making witnesses within your employ or control available for testimony; and (c) the exclusive right to control and direct the investigation, defence, and settlement (if applicable) of the Claim. If your use of the Software Services is (or in your opinion is likely to be) enjoined, whether by court order or by settlement, or if we determine such actions are reasonably necessary to avoid material liability, we may, at our option and in our discretion: (i) procure the right for your continued use of the Software Service in accordance with these Terms of Service; (ii) substitute a substantially functionally similar Software Service; or (iii) terminate your right to continue using the Software Service and refund any prepaid amounts for the terminated portion of the Subscription Term. Our indemnification obligations above do not apply: (1) if the total aggregate fees we receive with respect to your subscription to a Software Service in the twelve (12) month period immediately preceding the Claim is less than AUD\$50,000; (2) if the Software Service is modified by any party other than us, but solely to the extent the alleged infringement is caused by such modification; (3) if the Software Service is used in combination with any non-Bondi Labs product, software, service or equipment, but solely to the extent the alleged infringement is caused by such combination; (4) to unauthorised use of the Software Services; (5) to any Claim arising as a result of (a) Your Data or circumstances covered by your indemnification obligations in Section 8.4 (Your Indemnity) or (b) any third-party deliverables or components contained with the Software Services or (6) if you settle or make any admissions with respect to a Claim without our prior written consent. THIS SECTION 20 (IP INDEMNIFICATION) STATES OUR SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH ANY SOFTWARE SERVICE OR OTHER ITEMS WE PROVIDE UNDER THESE TERMS OF SERVICE.

## 21. Publicity Rights

21.1 We may identify you as a Bondi Labs customer in our promotional materials. We will promptly stop doing so upon your request sent to [privacy@bondilabs.com](mailto:privacy@bondilabs.com).

## 22. Dispute Resolution

22.1 Informal Resolution: In the event of any controversy or claim arising out of or relating to these

Terms of Service, the parties will consult and negotiate with each other and, recognising their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach settlement within a period of sixty (60) days, either party may pursue relief as may be available under these Terms of Service pursuant to Section 22.2 (Governing Law; Jurisdiction). All negotiations pursuant to this Section 22.1 will be confidential and treated as compromise and settlement negotiations for purposes of all rules and codes of evidence of applicable legislation and jurisdictions.

**22.2 Governing Law; Jurisdiction:** These Terms of Service will be governed by and construed in accordance with the applicable laws of the State of Victoria, Australia, without giving effect to the principles of that State relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding arising out of or related to these Terms of Service must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State or Federal court in Melbourne, Victoria, Australia, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in Melbourne, Victoria, Australia, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. In any action or proceeding to enforce a party's rights under these Terms of Service, the prevailing party will be entitled to recover its reasonable costs and attorneys' fees.

**22.3 Injunctive Relief; Enforcement:** Notwithstanding the provisions of Section 22.1 (Informal Resolution) and 22.2 (Governing Law; Jurisdiction), nothing in these Terms of Service will prevent us from seeking injunctive relief with respect to a violation of Intellectual Property Rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

**22.4 Exclusion of UN Convention:** The terms of service of the United Nations Convention on Contracts for the Sale of Goods do not apply to these Terms of Service.

## **23. Export Restrictions**

**23.1** The Software Services may be subject to export restrictions by the Australian government and may be subject to import restrictions by certain foreign governments, and you agree to comply with all applicable export and import laws and regulations in your access to, use of, and download of the Software Services (or any part thereof).

## **24. Changes to these Terms of Service**

**24.1 Modifications:** We may modify the Terms of Service and conditions of these Terms of Service (including Bondi Labs Legal Notice) from time to time, with notice to you in accordance with Section 26.1 (Notices) or by posting the modified Terms of Service on our website. Together with notice, we will specify the effective date of the modifications.

**24.2 No-Charge Services:** You must accept the modifications to continue using the No-Charge Services. If you object to the modifications, your exclusive remedy is to cease using the No-Charge Services.

- 24.3 Paid Subscriptions: Except as otherwise indicated below, modifications to these Terms of Service will take effect at the next renewal of your Subscription Term and will automatically apply as of the renewal date unless you elect not to renew pursuant to Section 11.3 (Renewals). Notwithstanding the foregoing, in some cases (e.g., to address compliance with Laws, or as necessary for new features) we may specify that such modifications become effective during your then-current Subscription Term. If the effective date of such modifications is during your then-current Subscription Term and you object to the modifications, then (as your exclusive remedy) you may terminate your affected Orders upon notice to us, and we will refund you any fees you have pre-paid for use of the affected Software Services for the terminated portion of the applicable Subscription Term. To exercise this right, you must provide us with notice of your objection and termination within thirty (30) days of us providing notice of the modifications. For the avoidance of doubt, any Order is subject to the version of these Terms of Service in effect at the time of the Order.
- 24.4 Bondi Labs Legal Notice: We may modify Bondi Labs Legal Notice to take effect during your then-current Subscription Term in order to respond to changes in our products, our business, or Laws. In this case, unless required by Laws, we agree not to make modifications to the Bondi Labs Legal Notice that, considered as a whole, would substantially diminish our obligations during your then-current Subscription Term. Modifications to Bondi Labs Legal Notice will take effect automatically as of the effective date specified for the updated notices.

## 25. Changes to the Software Services

- 25.1 You acknowledge that the Software Services are on-line, subscription-based products, and that in order to provide improved customer experience we may make changes to the Software Services, and we may update the applicable Documentation accordingly. Subject to our obligation to provide Software Services and Additional Services under existing Orders, we can discontinue any Software Services, any Additional Services, or any portion or feature of any Software Services for any reason at any time without liability to you.

## 26. General Provisions

- 26.1 Notices: Any notice under these Terms of Service must be given in writing. We may provide notice to you through your Authorised Licence Manager's email address ("**Notification Email Address**"), your account or in-product notifications. You agree that any electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing. Any notice to you will be deemed given upon the first business day after we send it. You will provide notice to us by post to Bondi Labs Technologies Pty Ltd, The Arcade 164 Kings Way, South Melbourne, VIC, 3205, Australia, Attn: Commercial Director. Your notices to us will be deemed given upon receipt.
- 26.2 Force Majeure: Neither party will be liable to the other for any delay or failure to perform any obligation under these Terms of Service (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, such as a strike,

blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a licence by a government agency.

- 26.3 **Assignment:** You may not assign or transfer these Terms of Service without our prior written consent. As an exception to the foregoing, you may assign these Terms of Service in their entirety (including all Orders) to your successor resulting from a merger, acquisition, or sale of all or substantially all of your assets or voting securities, provided that you provide us with prompt written notice of the assignment and the assignee agrees in writing to assume all of your obligations under these Terms of Service. Any attempt by you to transfer or assign these Terms of Service except as expressly authorised above will be null and void. We may assign our rights and obligations under these Terms of Service (in whole or in part) without your consent. We may also permit our Affiliates, agents and contractors to exercise our rights or perform our obligations under these Terms of Service, in which case we will remain responsible for their compliance with these Terms of Service. Subject to the foregoing, these Terms of Service will inure to the parties' permitted successors and assigns.
- 26.4 **Entire Agreement:** These Terms of Service are the entire agreement between you and us relating to the Software Services and any other subject matter covered by these Terms of Service, and supersede all prior or contemporaneous oral or written communications, proposals and representations between you and us with respect to the Software Services or any other subject matter covered by these Terms of Service. No provision of any purchase order or other business form employed by you will supersede or supplement the Terms of Service and conditions of these Terms of Service, and any such document relating to these Terms of Service will be for administrative purposes only and will have no legal effect.
- 26.5 **Conflicts:** In event of any conflict between the main body of these Terms of Service and either Bondi Labs Legal Notice or Product-Specific Terms of Service, the Bondi Labs Legal Notice or Product-Specific Terms of Service (as applicable) will control with respect to their subject matter.
- 26.6 **Waivers; Modifications:** No failure or delay by the injured party to these Terms of Service in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity. Except as set forth in Section 24 (Changes to these Terms of Service), any amendments or modifications to these Terms of Service must be executed in writing by an authorised representative of each party.
- 26.7 **Interpretation:** As used herein, "including" (and its variants) means "including without limitation" (and its variants). Headings are for convenience only. If any provision of these Terms of Service is held to be void, invalid, unenforceable or illegal, the other provisions will continue in full force and effect.
- 26.8 **Independent Contractors:** The parties are independent contractors. These Terms of Service will not be construed as constituting either party as a partner of the other or to create any other

form of legal association that would give either party the express or implied right, power or authority to create any duty or obligation of the other party.

Congratulations! You've reached the end. Thanks for taking the time to learn about our Terms of Service and notices; we trust our Software Services will assist you to enhance your decision making and improve your performance and productivity.

## Appendices

The provisions of Appendix 1 (Data Protection Compliance) and Appendix 2 (Data Processing Agreement) form part of these Terms of Service to the extent that Section 7.5 applies.

### Appendix 1 (Data Protection Compliance)

**Data Protection Laws** means the EU Data Protection Laws and the laws of other states and territories that create and regulate substantially similar concepts and legal principles as are contained in the EU Data Protection Laws in relation to the processing of personal data and sensitive personal data.

**EU Data Protection Laws** means, up to and including 24 May 2018, any legislation in force from time to time which implements the EU Directive 95/46/EC and relevant national implementations of the same and, with effect on and from 25 May 2018, means the GDPR and any relevant national implementations of the same; **personal data**, **sensitive personal data**, **consent controller**, **processor**, **data subject** and **processing** mean those concepts, roles and activities as defined in the applicable EU Data Protection Laws and on and from 25 May 2018 **sensitive personal data** means those classes of personal data that are described in Article 9 of the European General Data Protection Regulation 2016/679) or, where relevant, equivalent concepts, roles and activities as described in other Data Protection Laws.

We are the controller in respect of personal data and sensitive personal data, such as account registration details that we collect directly from users of the Software Services and users of No-Charge Services (**End Users**), and which we use for the purposes of our business.

You are the controller and we are the processor in respect of any other personal data and sensitive personal data (including within Your Modifications) that is uploaded by End Users including data, templates, information, content, code, video, images or other material of any type (**Materials**), or which is provided by your Authorised Licence Manager or Administrator Users (see Section 4).

On and from 25 May 2018, to the extent that the Software Services and/or Non-Charge Services comprise the processing of personal data or sensitive personal data where we are the processor and you are the controller and the processing of personal data or sensitive personal data is subject to the GDPR:

- you will comply with the requirements of the GDPR as the same apply to you as controller of the personal data or sensitive personal data; and
- the provisions of Appendix 2 (Data Processing Agreement) to these Terms of Service shall apply

We will present our Privacy Notice to you and to others who may download Materials where we are a controller. To the extent that we do not have direct contact with End Users or the relevant data subjects, for example, where personal data or sensitive personal data is uploaded relating to your employees or customers, and where we are a processor and not a controller, it is your responsibility to ensure that in accordance with Article 13 of the GDPR:

- There is a lawful basis for the collection and processing of personal data and/or sensitive personal data; and
- You present our Privacy Notice to those End Users and other data subjects, as required

## **Appendix 2 (Data Processing Agreement)**

Bondi Labs shall:

1. process personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by European Union or the national law of an EU member state to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
2. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
3. implement appropriate organisational and technical measures as required pursuant to Article 32 (security of processing) of the EU General Data Protection Regulation 2016/679.
4. respect the conditions for engaging another processor referred to in paragraphs 2 and 4 of Article 28 (processor) of the EU General Data Protection Regulation 2016/679;
5. taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the EU General Data Protection Regulation 2016/679;
6. assist the controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the EU General Data Protection Regulation 2016/679 taking into account the nature of the processing and the information available to the processor;
7. at the choice of the controller, delete or return all the personal data to the controller after the end of the provision of services relating to processing, and delete existing copies unless EU law or the national law of an EU member state or another applicable law, including any Australian state or Commonwealth law to which the processor is subject requires storage of the personal data;
8. make available to the controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 (processor) of the EU General Data Protection Regulation 2016/679 and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller (in each case at the controller's cost).