

The HiVE - Terms of Service

Version 1.0. Effective from August 2017

These Terms of Service (“**Terms**“) form part of the Customer Agreement which you have entered into with Harvest Digital Planning Pty Ltd (ABN 53 102 443 916) (“**Harvest**“) and apply to the supply to you by Harvest of services for access to and use of The HiVE Digital Engagement System (“**Services**“) and other related services.

1. Scope of Terms of Service

These Terms govern your initial purchase as well as any future purchases made by you of services for access to and use of the The HiVE Digital Engagement System (including any apps, databases, platforms, networks, websites and APIs) and any other related services.

In order to be eligible to purchase these services you must meet any minimum requirements specified in the Product’s Technical Specifications. If you fail to comply with your obligations under these Terms, then Harvest may suspend or terminate in whole or in part the supply of any services which you have purchased under these Terms.

The Terms include:

- (i) these terms and conditions and any Addendum;
- (ii) The HiVE’s Acceptable Use Policy, Fees and Pricing Policy, Moderation Policy, and Support Policy;
- (iii) each Order Form; and
- (iv) any other documents incorporated into these Terms by attachment or reference.

In the event and to the extent of any inconsistency between any of these documents forming part of these Terms, then these documents will be interpreted in the order of priority (highest to lowest) specified above.

2. Use of Services

2.1 Subscription Term

During the Subscription Term Harvest agrees to supply to you the Services specified in an Order Form in accordance with these Terms.

2.2 Renewal

You may renew your Subscription Term for the supply of any Services in accordance with any renewal procedure specified in an Order Form.

2.3 Authorised Users

An Authorised User must be a current employee, directly employed by you unless otherwise agreed in writing. Only an Authorised User will be permitted to access and use the Services.

You agree to take all reasonable steps to prevent:

- (i) any person who is not an Authorised User accessing or using the Services; and
- (ii) the User Account of an Authorised User being used by any other person to access or use the Services.

Upon request by Harvest, you agree to promptly arrange for each Authorised User to execute and provide an undertaking in a form specified by Harvest in respect of access to and use of the Services.

2.4 User Licenses

The Services allow you to designate different types of user licences for various Authorised Users. Each licence type may have different levels of functionality and the pricing of each user licence may vary in accordance with Harvest's Pricing Policy.

You may increase the number of Authorised Users permitted to access the Services by making a request to Harvest, or in some instances, directly through the System. In all cases, you must pay the applicable fee for the increased number of Authorised Users.

2.5 User Accounts

To access and use the Services, an Authorised User will be provided with a User Account. A User Account must belong to a single Authorised User, and may not belong to a group of persons, unless otherwise agreed with Harvest.

Each User Account is protected by a user ID, password and other login credentials set up by either you or Harvest. You must ensure that each Authorised User keeps their ID, password and other login credentials associated with their User Account strictly confidential and does not share such information with any unauthorised person.

You are responsible for all activities that occur under your User Accounts, regardless of whether the activities are undertaken by your Personnel or any third party.

2.6 End User terms

You agree to publicly display on each webpage which you publish or otherwise make publicly available using the Services appropriate terms for End Users (including, without limitation, any relevant terms of use, privacy policy and moderation policy) to ensure that you comply with your obligations under these Terms and the other provisions of the Customer Agreement, and all applicable laws, standards, codes and other legislative or regulatory requirements.

2.7 Harvest brand marks

You agree that we may incorporate our corporate, service and product logos, marks and other branding elements into the footer (or an alternative location agreed with you) of each website which you publish or otherwise make publicly available using the Services unless otherwise agreed in writing.

2.8 Service unavailability

In the event that an outage of the Services occurs making the Services unavailable for use (excluding any Scheduled Downtime) Harvest will notify you as soon as reasonably possible.

Where possible, the notice will include an explanation of the issue, estimated time until the use of the Services is restored, and an identification of any potential impacts on the Services that may have occurred.

2.9 Service exclusions

You acknowledge and agree that Harvest will not be responsible where you are unable to access or make full use of the Services due to:

- (i) any services, products or assistance provided at your request by Harvest in connection with the Services;
- (ii) a telecommunications failure or fault;
- (iii) your software, hardware or other equipment;
- (iv) circumstances beyond Harvest's reasonable control; or
- (v) a breach by you of any of these Terms or other provisions of the Customer Agreement.

3. Data, privacy and security

3.1 Customer Data

Title and all Intellectual Property Rights in all Customer Data will at all times remain vested in you and your third party licensors. You hereby grant to Harvest a non-exclusive licence to use, copy and modify any Customer Data to the extent necessary for the purpose of Harvest supplying any Services to you. You warrant that the use by Harvest of any Customer Data for the purpose of supplying any Services to you will not infringe the Intellectual Property Rights of any third party.

3.2 Responsibility for Customer Data

You are solely responsible for managing all of your Customer Data at all times. Harvest is not responsible for preparing, modifying, correcting any defect, error, bug or other issues arising out of or in connection with any of your Customer Data. If you become aware of any Customer Data which breaches Harvest's Acceptable Use Policy then you must immediately delete the Customer Data.

To the full extent permitted by law, Harvest and its Personnel will have no Liability to you arising out of or in connection with any unauthorised use or disclosure of any of your Customer Data by any third party.

3.3 Data Backups

Any Customer Data hosted on any Production Environment will be backed up by Harvest on a regular basis in accordance with the process identified in your Order Form. You acknowledge and agree that your Customer Data will be backed up by Harvest on an "as is, where is" basis, with all faults, and that any backed up Customer Data may not be accurate, current, complete or reliable.

You can access your Customer Data using the Services in accordance with these Terms. However, following the expiry or earlier termination of your Subscription Term, you will not be permitted to access any of your Customer Data which has been stored using the Services. It is your responsibility to make any copies of your Customer Data prior to the expiry or earlier termination of your Subscription Term.

You acknowledge that the The HiVE is not a records management Service, and as such it is the responsibility of the Customer to keep appropriate records in accordance with any applicable laws or policies.

3.4 Data Restoration

In the case that your Customer Data is corrupted or otherwise unusable, Harvest will use all commercially reasonable efforts to restore your Customer Data to the nearest, usable Recovery Point.

You acknowledge that Customer Data is backed-up for emergency purposes only, and additional fees may apply to restore your Customer Data where any such request is not for this purpose.

3.5 Customer Data retention and deletion

You acknowledge that you delete strictly at your own risk any Customer Data stored using the Services. Harvest does not guarantee that it will be able to recover any deleted Customer Data.

After a 90 day “cool-down” period commencing on the expiry or earlier termination of your Subscription Term, all of your Customer Data will be permanently deleted by Harvest. Harvest will not retain any of your Customer Data after this period unless otherwise agreed with you.

3.6 Privacy and security

Harvest will make all reasonable efforts to protect your Customer Data in accordance with Harvest’s Privacy Policy and any laws, policies or procedures specified in an Order Form.

Harvest implements a number of security features and procedures to help protect your Customer Data from security attacks. However, Harvest cannot guarantee that its security procedures will be error-free, that transmissions of your Customer Data will always be secure or that unauthorised third parties will never be able to defeat Harvest’s security measures or those of its third party service providers.

You acknowledge and agree that:

- (i) the use of the Services necessarily involves the transmission of your Customer Data over networks that are owned, operated or controlled by third parties; and
- (ii) Harvest is not responsible for any of your Customer Data that is lost, altered, intercepted, copied or stored whilst being transmitted across such networks.

If Harvest becomes aware of any actual or reasonably suspected unauthorised access to or use of your Customer Data then it will notify you in writing as soon as reasonably possible.

3.7 Usage data

Harvest is always striving to improve its services and products including correcting defects, errors, bugs or other issues and enhancing the functionality of its services and products. Harvest may collect data, metadata and other information about your access to and use of the Services (including, without limitation, access to and use of the Services by Authorised Users and End Users) as described in Harvest's Privacy Policy.

4. Support and maintenance

4.1 Technical Support

During the Subscription Term Harvest will provide you with Support Services in accordance with Harvest's Support Policy, any applicable Service Levels and these Terms.

You agree to promptly notify Harvest upon becoming aware of any defect, error, bug or other issue arising out of or in connection with your access to or use of the Services. Harvest is not responsible for any issues or damages caused by your delay in notifying us of any such defect, error, bug or other issue.

You agree to provide Harvest with any information that it reasonably requests from you to resolve any defect, error, bug or other issue arising out of or in connection with your access to or use of the Services.

If you fail to provide Harvest with such information then it may not be able to resolve any such defect, error, bug or other issue, and Harvest will have no Liability to you arising out of or in connection with such defect, error, bug or other issue.

4.2 Scheduled Maintenance

Harvest may perform Scheduled Maintenance of the Services from time to time for the purpose of maintaining the Services. While some maintenance may occur without disruption to the Services, occasionally maintenance may result in specific Services being unavailable for a short period of time.

Harvest will make all reasonable efforts to limit any disruption to your Services whilst performing Scheduled Maintenance, and will perform any required Scheduled Maintenance outside of Business Hours where reasonably possible.

If any Scheduled Maintenance will result in an outage or unavailability of any Services then Harvest will notify you in writing at least 48 hours in advance.

During any outage or unavailability of the Services due to Scheduled Maintenance, Harvest will display a notification to End Users warning them that your website is down due to Scheduled Maintenance.

4.3 Emergency Maintenance

In addition to Scheduled Maintenance, Harvest may need to perform Emergency Maintenance, including, without limitation, security patch installation and hardware replacement. In this case, Harvest will be unable to provide you with advance notice of any required Emergency Maintenance.

5. Third party applications

If you use any third party applications or services, or add or modify any other software, in connection with your use of the Services, you acknowledge and agree that you do so solely at your own risk. You also warrant that your use of any third party applications or services or modification of any other software will comply these Terms and the other

provisions of the Customer Agreement, and all applicable laws standards, codes and other legislative or regulatory requirements.

Harvest will not be responsible for correcting any defect, error, bug or other issue with the Services arising out of or in connection with your use of any third party applications or services, or addition or modification of any other software, in connection with your use of the Services.

If we are required to remedy any defect, error, bug or other issue associated with such use of any third party application or addition or modification of any other software then you may be responsible for paying additional charges to remedy the defect, error, bug or other issue.

Harvest reserves the right, at its sole discretion to request that you remove any third party application or service or any additional or modified software and you must immediately comply with any such request.

6. Modifications to the Services

6.1 Application of Updates

Harvest may apply Updates to the Services from time to time. You acknowledge and agree that the form and nature of the Services provided by Harvest may change from time to time as a result of Harvest making Updates to the Services.

6.2 Critical issues and Hotfixes

Harvest will be entitled to assume that any issue with the Services which you report as critical via the Harvest Helpdesk (or by phone or email using words like “urgent” or “critical”) are of such urgency and importance that a Hotfix may be appropriate.

You consent to Harvest applying a Hotfix to resolve any such reported issue with the Services where considered appropriate by Harvest. You acknowledge that Hotfixes are

developed and deployed straight to your Production Environment, often with minimal testing.

You authorise Harvest to apply a Hotfix or take any other action considered appropriate by Harvest where live system monitoring reports an issue, and upon investigation, Harvest discovers that any website which you have published or otherwise made publicly available using the Services is either substantially non-functional, offline or has suffered any form of security breach.

To the full extent permitted by law, you agree to release and indemnify Harvest and its Personnel from and against any and all Liability directly or indirectly arising out of, or in connection with Harvest applying a Hotfix or taking any other action which it considers appropriate to resolve any issue with the Services in accordance with this clause 6.2.

6.3 Notification of Updates

Harvest will use all reasonable endeavours to provide you with at least 48 hours' written notice of the application of any significant Update to the Services that is deemed to substantially alter the functionality or user experience of the Services, or where major customer impacts or disruptions are anticipated by Harvest.

You acknowledge and agree that Harvest may not notify you of any Update to the Services which introduces new features, alterations, improvements, or bug fixes that are deemed to not substantially alter the functionality or user experience of the Services, or where minor, or no customer impacts or disruptions are anticipated by Harvest.

6.4 Deprecation of Features

Harvest agrees to provide you with at least 48 hours' written notice where it intends to apply an Update which will discontinue or make backwards incompatible changes to the Services where it considers that the Update will have a limited or minor impact on your use of the Services.

Harvest agrees to provide you with at least 90 days' written notice where it intends to apply an Update which it considers will significantly alter your use or operation of the Services.

6.5 Experimental Features

When applying an Update to the Services Harvest may mark or otherwise indicate that some new features or versions of the Services are “beta” or “experimental”.

You acknowledge and agree that any new features or versions of the Services which are marked by Harvest as “beta” or “experimental” may not be fully tested and may contain bugs or other issues, and that your use of such features or versions of the Services is strictly at your own risk. You should carefully weigh up the risks and benefits before using any such features or versions of the Services.

To the full extent permitted by law, you agree to release and indemnify Harvest and its Personnel from and against any and all Liability directly or indirectly arising out of, or in connection with your use of any new features or versions of the Services which are marked by Harvest as “beta” or “experimental”.

7. Charges

You agree to pay the Subscription Fee to Harvest for the supply of the Services during the Subscription Term in accordance with Harvest's Pricing Policy.

You agree to pay additional Subscription Fee to Harvest in accordance with Harvest's Pricing Policy where:

- (i) your usage of the Services exceeds the usage limitations specified in the applicable Order Form;
- (ii) an Update includes custom functionality which has been commissioned by you;
- (iii) you request that any legacy functionality be retained after the application of an Update; or

(iv) Harvest is required to correct any defect, error, bug or other issue associated with your Customer Data or any third party application or service that prevents the Services from functioning properly.

In making payments to Harvest of the Subscription Fee for the supply of the Services you acknowledge and agree that you are not relying on future availability of the Services beyond the current Subscription Term or the application of any Update, upgrade or other feature enhancement to the Services.

8. Service acknowledgements

You acknowledge and agree that:

- (i) the Services are provided by Harvest on an “as is” basis without any representations or warranties as to the reliability, suitability or availability of the Services except to the extent expressly provided otherwise in these Terms of Service;
- (ii) you are responsible for providing your own facilities (including software, hardware and other equipment) necessary for accessing and using the Services which must comply with the minimum technical requirements specified in the Product’s Technical Specifications.[insert document reference];
- (iii) Harvest accepts no responsibility for any defect, error, bug or other issue with the facilities used by you for the purpose of accessing or using the Services;
- (iv) use of the Services will be subject to any data storage limitations specified in the applicable Order Form[insert document reference]; and
- (v) Harvest may collect data and information about your access to and use of the Services which Harvest may use for the purpose of correcting any defect, error, bug or other issue with the Services, or enhancing the functionality of the Services.

You acknowledge and agree that Harvest does not represent or warrant that:

- (i) your access to or use of the Services will be secure, uninterrupted or free from defects, errors, bugs or other issues;

- (ii) defects, errors, bugs or other issues with the Services will be able to be corrected;
- (iii) the Services will be free of viruses or any other harmful or destructive code;
- (iv) the Services will operate with any other hardware, equipment, software, services or data unless otherwise expressly provided in the applicable Order Form; or
- (v) any third party will be able to access or use the Services.

9. Service suspension and termination

9.1 Suspension of Authorised User

If you become aware that an Authorised User has breached Harvest's Acceptable Use Policy then you must suspend the Authorised User's User Account as soon as reasonably possible but within no longer than 2 Business Days after becoming aware of the breach of Harvest's Acceptable Use Policy.

Without limiting any other rights or remedies that Harvest may have against you arising out of or in connection with the Customer Agreement, Harvest may immediately suspend the supply of the Services to you in whole or in part (whether or not Harvest has given you any prior notice) where an Authorised User breaches Harvest's Acceptable Use Policy.

9.2 Suspension and termination of Services by Harvest

Without limiting any other rights or remedies that Harvest may have against you arising out of or in connection with the Customer Agreement, Harvest may by giving written notice to you suspend or terminate the supply of the Services in whole or in part effective immediately where you breach these Terms or the other provisions of the Customer Agreement and fail to remedy the breach within 30 days after receiving written notice requiring you to do so.

9.3 Suspension and termination of Services by you

You may at any time by giving written notice to Harvest suspend or terminate the supply of the Services in whole or in part at the end of then-current billing cycle. You acknowledge and agree that you will not be entitled to any refund or credit in respect of any Subscription Fee or other monies previously paid by you for the supply of the Services prior to the suspension or termination of the supply of the Services.

9.4 Consequences of suspension or termination

If the supply of the Services is suspended or terminated in whole or in part by you or Harvest then:

- (i) Harvest may retain any Subscription Fee or other monies previously paid by for the supply of the Services (whether or not paid for any period before or after suspension or termination of the Services);
- (ii) Harvest may charge you a reasonable sum for any Services supplied to you in respect of which no sum has previously been charged;
- (iii) you will remain liable for all Charges for the supply of the Services to the extent to which you or Authorised Users are able to continue to use the Services;
- (iv) during the suspension or after termination of the Services, you will not be able to access any Customer Data which has been stored using the suspended or terminated Services respectively unless otherwise notified by Harvest; and
- (v) Harvest may pursue any additional or alternative remedies provided by law.

Clauses 1 (Scope of Terms of Service), 2.9 (Service exclusions), 3 (Data, privacy and security), 5 (Third party applications), 6 (Modifications to the Services), 7 (Service Charges), 8 (Service acknowledgements), 9 (Service suspension and termination) and 10 (Definitions and interpretation) and any other provision of these Terms or the Customer Agreement which is capable of having effect during the suspension or after termination of the supply of the Services, will survive and remain in full force and effect during the suspension or after termination of the supply of the Services respectively.

The suspension or termination of the supply of the Services for any reason does not affect any accrued rights or remedies of a party under any other provision of these Terms or the Customer Agreement.

10. Definitions and interpretation

In these Terms, unless the contrary intention appears:

“Acceptable Use Policy” means The HiVE’s Acceptable Use Policy available at www.the-hive.harvestdp.com as updated by Harvest from time to time.

“Authorised User” means any person authorised to access and use the Services in accordance with an Order Form.

“Business Hours” means the hours between 9:00am and 5:00pm on a Business Day.

“Comment Moderation” means any piece of user-contributed content which is displayed publicly and screened and actioned by Harvest’s moderators in accordance with our Moderation Policy.

“Customer Agreement” means the customer agreement entered into between you and Harvest that applies to the supply to you of any of Harvest’s technology related services and products.

“Customer Data” means any data, content, code, video, images, files or other materials of any type that you upload, store, display or collect using the Services.

“Data Storage” means the total available storage allocated to a Customer across the entire Service, including application code, files, and all relevant databases including analytics.

“Data Transfer” means any data which is moved in or out of the Service. This includes transferring data from the server out to the internet after a user has browsed to the site.

“Emails” means any email which has been triggered and sent by the Service to a user.

“Emergency Maintenance” means unplanned or unscheduled maintenance of the Services.

“End User” means any person who access or uses any webpage which you publish or otherwise make publicly available using the Services.

“Hotfix” mean an urgent change or fix that is required to be actioned straight away by Harvest (typically completed in a matter of hours) in order to fix a production-level bug or defect with the Services.

“Liability” means any claim, action, demand, proceeding, loss, damage, cost, charge, expense or liability of any kind or nature whatsoever (including, without limitation, any loss or loss of use of, or damage to, any property and any personal injury, illness or death of any person) directly or indirectly arising out of, or in connection with, these Terms (whether in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause).

“New Release” means a bug fix, security patch, major or minor release, or any other change, enhancement, or modification to the System.

“Order Form” means an order form entered into between you and Harvest for the supply of any Services.

“Personnel” means the officers, employees, agents and contractors of a party.

“Pricing Policy” means The HiVE’s Pricing Policy available at www.the-hive.harvestdp.com as updated by Harvest from time to time.

“Production Environment” means any website which you publish or otherwise make publicly available to End Users using the Services.

“Recovery Point” means an earlier point in time from which it is possible to recover data.

“Scheduled Downtime” means any time during a pre-scheduled period in respect of which you have been given at least 48 hours’ notice that the Service will be unavailable for use by you.

“Scheduled Maintenance” means planned or scheduled maintenance of the Services.

“Services” means services for access to and use of the System and any other related services specified in an Order Form which Harvest has agreed to supply to you.

“Service Levels” means any applicable performance levels and targets and as specified in an Order Form or Description of Services.

“Subscription Fee” means the subscription fees or other charges agreed in an Order Form which are payable by you to Harvest for the supply of any Services.

“Subscription Term” means the subscription term for the supply of any Services specified in an Order Form.

“Support Policy” means The HiVE’s Support Policy available at www.the-hiveharvestdp.com as updated by Harvest from time to time.

“Support Services” means technical support services for the Services described in Harvest’s Support Policy.

“System” means The HiVE Digital Engagement System and includes any apps, databases, platforms, networks, websites and APIs.

“Update” means a New Release of the System which Harvest makes generally available to its customers without payment of any additional fees or other charges.

“User Account” means an account with a login and password which enables an Authorised User to access and use the Services.

In these Terms, unless the contrary intention appears a reference to a clause is to a clause of these Terms.