

CAPSHUL

CAPSHUL PTY LTD ABN 15 670 744 671

TERMS OF SERVICE

INTRODUCTION

Capshul Pty Ltd ABN 15 670 744 671 is an Australian company that provides the Capshul mobile & web application enabling account Owners to upload, preserve and present Memories for the benefit of their friends and family. All information in Capshul is secure and private. Access to Capshul is only available to Owners, Admins authorised to use Capshul by the Owner, and Visitors. Use of Capshul is subject to these Terms of Service.

IMPORTANT TERMS

A KEY DEFINITIONS

A.1 The following terms are used regularly throughout this Agreement and have a particular meaning (more general definitions are found in the General Conditions):

- (a) **Admin** means a user approved by the Owner to have admin access to their Capshul account.
- (b) **Adult** means a person that has reached the legal age of majority (generally over the age of 18).
- (c) **Agreement** means these Terms of Service.
- (d) **Capshul** means the Capshul:
 - i Web application accessible from <https://capshul.com> or other domains associated with the Company from time-to-time; and/or
 - ii Mobile application available from the Apple® App Store®, Google Play® and other mobile application marketplaces.
- (e) **Company** means Capshul Pty Ltd ABN 15 670 744 671.
- (f) **Fees** means any fees payable for access to or use of Capshul as notified by the Company from time to time.
- (g) **Memories** means any files, information, images, video and other content uploaded into Capshul by a User.
- (h) **Owner** means the person that registers an Owner account in Capshul.
- (i) **Privacy Policy** means Capshul's privacy policy as updated from time-to-time, which can be found at <https://capshul.com/privacy-policy>.
- (j) **Private Content** means Memories that have restrictions placed on them by the Owner or Admin, limiting access to select Users.
- (k) **User** means any Owner, Admin or Visitor that uses Capshul, as the context so requires.

- (l) **Vault** means the area of the Owner's account where Memories Private Content are stored.
- (m) **Visitor** means a user that has been invited to view the Owner's Memories.

B AGREEMENT

B.1 This Agreement governs the use of Capshul by any User and limits the liability of the Company to any User. This Agreement has specific terms of use (in addition to the General Conditions) that apply to:

- (a) Owners (**Item C**)
- (b) Admins (**Item D**)
- (c) Visitors (**Item E**)

B.2 In addition to any other express or implied consents, by using Capshul the User accepts and agrees to the terms of:

- (a) This Agreement; and
- (b) The Privacy Policy.

B.3 Each User agrees and acknowledges that ongoing access to Capshul may be dependent on the payment of Fees to the Company. In the event that the Owner or Admin (as the case may be) determines to discontinue its use of Capshul, the User's access to the Memories may be limited or no longer available.

B.4 **Age Requirement:** To enter into this Agreement and use Capshul, Users must be at least 18 years old. Users under the age of 18 may only use Capshul under the supervision of a parent or legal guardian who agrees to be bound by this Agreement. The parent or legal guardian accepting this Agreement on behalf of a User under the age of 18 assumes all liabilities resulting from the User's use of Capshul, including any breaches of this Agreement.

C OWNER TERMS OF USE AND RESPONSIBILITIES

C.1 Capshul enables the Owner to:

- (a) Upload or enter Memories into Capshul;
- (b) Manage the Vault;
- (c) Authorise and manage Admin access to their account;
- (d) Invite Visitor's to access their Memories, and manage their access (including to Private Content); and
- (e) Such other features as the Company may allow the Owner to use from time to time.

C.2 The Owner agrees and warrants that:

- (a) They shall ensure all personal information it has access to through its use of Capshul is stored and used in accordance with the Privacy Act and/or other local privacy laws;
 - (b) They shall only use Capshul for its intended purpose as set out in this Agreement;
 - (c) They are responsible for the Memories they or any Admin they authorise upload or input into Capshul; and
 - (d) Their licence to use Capshul, as provided for in the General Conditions, is subject to the payment of all necessary Fees.
- C.3 Any person who registers an Owner in Capshul warrants that they are an authorised representative of the person to whom the Memories relate, with the requisite authority to bind the Owner to this Agreement.

D ADMIN TERMS OF USE AND RESPONSIBILITIES

D.1 Subject to any restrictions the Owner places on the Admin's access to the Owner's account, Capshul generally enables Admins to:

- (a) View an Owner's Memories;
- (b) Upload and manage access to Memories in the Vault (including setting Memories to be Private Content);
- (c) View and Manage Private Content in the Vault;
- (d) Invite Visitor's to access the Owner's Memories, and manage access (including to Private Content); and
- (e) Such other features as the Company may allow the Owner to use from time to time.

D.2 The Admin agrees that in using Capshul, the Admin will:

- (a) Use Capshul in accordance with this Agreement;
- (b) Only use Capshul for its intended purpose as set out in this Agreement;
- (c) Only access the Owner's account and Memories with the permission of the Owner;
- (d) Not share any Private Content with any person without the permission of the Owner; and
- (e) Not access or use Capshul to access or use any Memories other than those of the Owner.

E VISITOR TERMS OF USE

E.1 Capshul enables Visitors to:

- (a) Accept an invitation to view an Owner's Memories, and set up their Visitor account;
- (b) View the Owner's Memories.

E.2 In using Capshul, the Visitor agrees and accepts that:

- (a) All Memories are the responsibility of the Owner, and not the Company;
- (b) Capshul is not authorised to access, share, change or delete content about a an Owner without the authority of the Owner, or their authorised Admin; and
- (c) Access to Memories may be:
 - i Limited, restricted or denied by the Owner or Admin; and
 - ii Terminated by Capshul if the Owner or Admin ends the Owner's use of Capshul, or the Owner's Agreement with Capshul is otherwise terminated.

F FEES

- F.1 Fees apply as advertised to the use of Capshul, and the payment terms for those Fees are set out in the General Conditions.
- F.2 Where a Fee is paid for a particular term of access to Capshul, the User shall not be entitled to a pro-rata refund of any Fees if it elects to stop using Capshul within that term.

G COPYRIGHT BREACHES AND PROHIBITED CONTENT

- G.1 Users of Capshul are required to respect copyright laws and the intellectual property rights of others. All Memories entered into Capshul must also not be illegal, immoral, or otherwise inappropriate. Users must not upload, enter or distribute any Memories that:
 - (a) infringe upon the copyrights, trademarks, or other proprietary rights of any third party without obtaining the necessary permissions or licenses; or
 - (b) are illegal, immoral, or otherwise inappropriate, including but not limited to underage images.
- G.2 In the event that the Company receives a notice alleging that certain Memories infringe on the rights of a third party, or are otherwise in violation of this clause, the Company reserves the right, at its sole discretion, to remove or disable access to the disputed or offending Memories on Capshul. Such removal or disabling of access will continue until the Company receives satisfactory evidence that:
 - (a) the dispute or issue has been resolved; or
 - (b) the User who uploaded the disputed Memories has the rights to use and distribute those Memories through Capshul.
- G.3 The User acknowledges that they will be solely responsible for any damages or legal consequences arising from any infringement related to the Memories they upload or share on Capshul, or from the upload, entry or distribution of any prohibited content.

The User agrees to indemnify and hold harmless the Company against any claims, damages, losses, or legal fees arising from their violation of this clause.

- G.4 The Company's decision to remove or disable access to Memories under this clause does not constitute an admission as to the validity of any claim or a waiver of any of the rights of the Company under this Agreement or under law. Furthermore, these actions are undertaken to encourage responsible use of Capshul, to uphold the integrity of the platform, ensure a safe user experience and to protect the Company from legal liability.

H USER DISPUTES

- H.1 The Users acknowledge that they are responsible for the Memories that they upload or enter into Capshul. This includes any files, information, images, videos and other content, such as group photos or shared information, which may be subject to dispute. Any dispute arising between Users, or between a User and a third party, regarding the rights to use or distribute any Memories, must be resolved by the respective parties involved. The Company is not obliged to mediate or resolve such disputes.

- H.2 However, in the event that the Company receives a formal notice of a dispute over any Memories, or a notice alleging that the use of certain Memories infringes on the rights of a third party, the Company reserves the right, at its sole discretion, to remove or disable access to the disputed Memories on Capshul. Such removal or disabling of access will continue until the Company receives satisfactory evidence that the dispute has been resolved or that the User who uploaded the disputed Memories has the necessary rights to use and make those Memories available through Capshul.

- H.3 The Company's decision to remove or disable access to Memories under this clause does not constitute an admission as to the validity of any claim or a waiver of any of the rights of the Company under this Agreement or under law.

I TERM & LIMITATIONS

I.1 Term.

The User's license to access Capshul shall be ongoing until terminated by the Company in accordance with this Agreement.

I.2 Limitations on Use.

The Company may limit or restrict access to Capshul from time-to-time as it sees fit, including (but not limited to):

- (a) **Entities.** The Company may restrict access only to reputable and/or registered Organisations; and
- (b) **Location.** The Company may restrict access to Capshul to certain jurisdictions where it is able to offer Capshul.

J REGISTRATION

J.1 Registration.

- (a) The User must register an account in Capshul to use Capshul.

- (b) The Company may set any registration requirements in its absolute discretion.

K CONFIDENTIAL INFORMATION

The Company will keep confidential all information that it becomes aware of regarding the User's:

- (a) Personal information;
- (b) Child information; and
- (c) Business, employees and contractors;

L TERMINATION

- L.1** Either party may end this Agreement at any time by 30 days' written notice to the other party before the end of any agreed fixed term.
- L.2** Where The Company terminates this Agreement without cause, it shall provide a pro-rata refund for any fees paid in advance.

M DISCLAIMER – THIRD PARTY INFORMATION, SERVICES & DATA STORAGE

M.1 The User acknowledges that Capshul:

- (a) Is dependent on third-party services, including but not limited to banks, merchant services, credit card providers, hosting services, telecommunications services, and data storage services such as Amazon Web Services (**AWS**); and
- (b) User data is stored in the AWS - Asia Pacific (Sydney) region, in accordance with AWS's data privacy compliance (<https://aws.amazon.com/compliance/australia-data-privacy>).

M.2 The User agrees that the Company shall not be responsible or liable in any way for:

- (a) Interruptions to the availability of Capshul due to third-party services, including any potential outages or disruptions in AWS services that may affect data storage;
- (b) Information contained on any linked third-party website;
- (c) The deletion of data from AWS servers following the termination of a User's account. User data will be retained for a period of thirty (30) days following account deletion, after which all data associated with the User's account will be completely cleared from AWS servers.

M.3 The User acknowledges and agrees that, despite the Company's use of AWS for data storage, the Company does not control and is not responsible for the security measures employed by AWS and cannot guarantee the protection of User data stored on AWS servers.

N MODIFICATION OR DISCONTINUATION OF SERVICES

- N.1** The User acknowledges and agrees that the Company reserves the right at any time to modify, suspend or discontinue, temporarily or permanently, the services of Capshul or any part thereof, with or without notice.
- N.2** Such modifications may include, but are not limited to, changes in pricing, addition or removal of features, redesign of interface, improvement of security measures, and maintenance or upgrade of the underlying technology.
- N.3** The Company shall endeavour to provide reasonable notice of any major changes that could significantly impact the use of Capshul, but is under no obligation to do so.
- N.4** The Company shall not be liable to the User or any third party for any modification, suspension, or discontinuance of the services of Capshul. It is the User's responsibility to review the Agreement periodically for changes.
- N.5** The User's continued use of Capshul following any changes constitutes an acceptance of those changes and an agreement to be bound by any such modifications. If a User does not agree to any change, they must stop using Capshul and terminate their account.

O GENERAL

- O.1** **Governing Law.** Victoria, Australia
- O.2** **Reference City.** Melbourne.

GENERAL CONDITIONS

1 INTERPRETATION

- 1.1** The following definitions apply in this document:
- (a)** **ABN** means Australian Business Number.
 - (b)** **ACN** means Australian Company Number.
 - (c)** **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the Reference City set out in item M of the Important Terms.
 - (d)** **Confidential Information** means all information (whether or not it is described as confidential) in any form or medium concerning any past, present or future business, operations or affairs of either party, including, without limitation:
 - i** All technical or non-technical data, formulae, patterns, programs, devices, methods, techniques, plans, drawings, models and processes, source and object code, software and computer records;

- ii All business and marketing plans and projections, details of agreements and arrangements with third parties, and customer and supplier information and lists;
- iii All financial information, pricing schedules and structures, product margins, remuneration details and investment outlays;
- iv All information concerning any employee, customer, contractor, supplier or agent of the relevant party;
- v The party's policies and procedures; and
- vi All information contained in this document,

But excludes information that the other party can establish:

- vii Is known by or is in the other party's possession or control other than through a breach of this document and is not subject to any obligation of confidence; or
- viii Is in the public domain other than by a breach of this document or any obligations of confidence.

- (e) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (f) **Force Majeure** means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party:
 - i Act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions;
 - ii Act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
 - iii The effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and
 - iv Embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.
- (g) **General Conditions** means the terms and conditions set out in the section of this Agreement entitled "General Conditions".
- (h) **GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (i) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property;
- (j) **Intellectual Property Rights** means, for the duration of the rights in any part of the world, any Moral Rights, industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for

the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.

- (k) **Moral Rights** means:
 - i Moral rights pursuant to the *Copyright Act* 1968 (Cth);
 - ii Or any rights analogous to the rights set out in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works* 1886 (as amended from time to time).
- (l) **Important Terms** means this Agreement's details and variables set out in the section of this Agreement entitled "Important Terms".
- (m) **Pricing** means the pricing as notified to the User in writing by the Company from time-to-time.
- (n) **Privacy Act** means the *Privacy Act* 1989 (Cth).
- (o) **Special Conditions** means any addition terms and conditions made in relation to this Agreement that are intended to increase or vary the terms of this Agreement as between the parties.
- (p) **Tax Invoice** has the meaning given by the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).
- (q) **User Content** means both Memories and data that is uploaded or input into Capshul by the User or that forms part of the User's Intellectual Property.

2 APPLICATION OF THIS AGREEMENT

- 2.1 This Agreement applies to all use of and access to Capshul.
- 2.2 Where the User does not accept the terms and conditions of this Agreement, the User must immediately cease using Capshul.
- 2.3 This Agreement may be updated by the Company at its absolute discretion from time-to-time, and unless stated otherwise by the Company in writing, such updates shall come into effect for use of Capshul at the User's next login after the User receives written notice of the update(s).

3 THE CAPSHUL PRODUCT

- 3.1 Capshul is the product described in the Important Terms.
- 3.2 Capshul is only accessible to the User for the term set out in the Important Terms.
- 3.3 The User agrees and accepts that Capshul is:
 - (a) Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and

(b) Managed and supported exclusively by the Company from the Company servers and that no 'back-end' access to Capshul is available to the User unless expressly agreed in writing.

3.4 As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter Capshul.

3.5 The Company shall not exercise its rights under clause 3.4 in a manner that would intentionally cause the User to lose access to User Content or fundamentally decrease the utility of Capshul to the User, other than in accordance with the terms of this Agreement.

4 LICENSE

4.1 By accepting the terms and conditions of this Agreement, the User is granted a limited, non-exclusive and revocable license to access and use Capshul for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.

4.2 The Company may issue the license to the User on the further terms or limitations (including the number of users or volume of use or transactions) as it sees fit.

4.3 The Company may revoke or suspend the User's license(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in this Agreement by the User or any of its users. The Company will ordinarily advise the User of any suspension or revocation however it is under no obligation to do so.

5 USE

5.1 The User agrees that it shall only use Capshul for legal purposes and shall not use it to engage in any conduct that is unlawful, immoral, threatening, abusive, or in a way that is deemed unreasonable by the Company in its discretion. This includes not uploading or sharing any content that infringes on the rights of others, including copyright or privacy rights, or content that is illegal or immoral, such as underage images.

6 AUTHORISED USERS

6.1 The User shall authorise users to access Capshul in its absolute discretion. The Company accepts no liability for access to User Content by users authorised by the User or using login details of users authorised by the User.

6.2 The User is responsible for the security of its username and password for access to Capshul, and the Company will take reasonable measures to protect this information. In the event of a suspected account compromise, the User must immediately notify the Company. The Company will not be responsible for any loss or damage resulting from the User's failure to comply with this security obligation.

6.3 The User shall notify the Company as soon as it becomes aware of any unauthorised access of its Capshul account.

7 USER DATA AND DATA RETENTION

- 7.1** The Company obtains no right, title or interest in User Content, including any Intellectual Property found within it, except as necessary to provide its services to the User. The Company accepts no liability for the content of User Content
- 7.2** The User is responsible for the accuracy, quality and legality of User Content and the User's acquisition of it, and the users that create, access and/or use User Content.
- 7.3** In line with the purpose of Capshul, which is to provide a platform for long-term availability of Memories, the Company retains User Content in accordance with its Privacy Policy and applicable laws and regulations. User Content is stored for as long as the User's account remains active to ensure the continuous provision of services.
- 7.4** Despite clause 7.1, the Company shall be authorised to permanently delete User Content where outstanding Fees remain unpaid in accordance with clauses 10 and 12, or if the User Content violates the terms of this Agreement, including but not limited to, the clauses pertaining to Copyright Breaches, Prohibited Content, and User Disputes.
- 7.5** The Company shall not use, modify or otherwise deal with User Content except where required by compulsion of law or upon the User's authority (such as to provide support for Capshul).
- 7.6** The Company maintains regular backups of User Content for the purposes of disaster recovery and safeguarding the integrity of the Memories stored on Capshul. However, the Company makes no guarantee that deleted User Content, whether deleted accidentally or intentionally by the User, can be recovered once it has been removed from the active servers.
- 7.7** In the event of accidental deletion of User Content by the User, the User should contact the Company as soon as possible. The Company will make reasonable efforts to recover the User Content, but cannot guarantee recovery.
- 7.8** In the event of account termination, whether by the User or by the Company, the User's User Content will be retained for a period of thirty (30) days. After this period, all User Content associated with the User's account may be permanently deleted from the Company's servers, unless the law requires otherwise. The Company is not responsible for any loss of User Content resulting from account termination.
- 7.9** Although the Company maintains backups, Users are strongly advised to regularly backup their Memories and other important User Content themselves to prevent data loss.

8 PRIVACY

- 8.1** The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and other customers.
- 8.2** The Capshul website may use cookies (a small tracking code in your browser) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.

9 RESPONSE TO UNAUTHORIZED ACCESS

- 9.1** In the event of unauthorized access to the Vault or Private Content, whether due to a bug in code or a compromised user account, the Company is committed to taking immediate and appropriate action.
- 9.2** Upon becoming aware of an unauthorized access incident, the Company will promptly conduct an investigation to determine the cause and extent of the incident. This may involve internal resources or third-party forensic investigators.
- 9.3** The Company will notify affected Users as soon as reasonably possible, consistent with the legitimate needs of law enforcement and any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system. The notification will include information about what is known about the breach, any potential risks to Users, and steps the Company is taking to address the breach and prevent future incidents.
- 9.4** The Company shall take steps to prevent future occurrences, which may include reviewing and updating security protocols, implementing additional monitoring and alert systems, training staff, and improving user account security measures.
- 9.5** In the event of a compromised user account, the Company will assist the User in securing their account, which may include resetting passwords, providing recommendations on how to prevent unauthorized access, and offering additional security features.
- 9.6** The Company is committed to maintaining the privacy and security of User data and will make every reasonable effort to protect User data against unauthorized access. However, the User acknowledges that no internet transmission or storage system can be guaranteed to be 100% secure and the Company cannot ensure the security of the information Users transmit to Capshul. Users are responsible for maintaining the confidentiality of their account information and for controlling access to their devices.

10 FEES

- 10.1** The User agrees to pay all Fees as and when they fall due and to the extent permissible by law. Fees are non-cancellable and/or non-refundable once ordered or paid. If the User fails to pay the Fees on time, the Company reserves the right to suspend or terminate the User's access to Capshul.
- 10.2** The Company may introduce new services with corresponding Fees by giving the User written notice of their availability and applicability.
- 10.3** The Company shall maintain all Fees for the term of the licence paid for.
- 10.4** The Company may revoke or suspend the User's license to access Capshul for unpaid Fees without liability.
- 10.5** Where the Company:
- (a)** Is required to perform any services for the User outside of what is set out in this Agreement or otherwise in writing; and
 - (b)** Is subject to delays caused by changes or complexities outside of its control (and not caused by its breach of this Agreement); then

The User agrees that the Company shall be entitled to charge the User an additional amount that is reasonable for the service performed.

10.6 All transactions are processed in Australian dollars and conversion rates may apply for foreign currencies.

10.7 GST is applicable to any Fees charged by the Company to Users within Australia. Unless expressed otherwise, all Fees shall be deemed exclusive of GST. The Company will provide the User with a Tax Invoice for its payment.

11 REFUND POLICY AND ACCOUNT MANAGEMENT

11.1 The Company offers a refund policy for its services under certain conditions. If a User is not satisfied with the services provided by Capshul, they may request a refund within fourteen (14) days of the payment date.

11.2 All refund requests should be submitted in writing to the Company's customer service email, detailing the reasons for the request. The Company reserves the right to approve or deny refund requests at its sole discretion.

11.3 If a refund is issued to a User, the User's account may be suspended or terminated at the Company's discretion. Suspension or termination of an account due to a refund does not relieve the User of any obligations under this Agreement that are intended by their nature to survive such termination, including but not limited to indemnification obligations, warranty disclaimers, and limitations of liability.

11.4 In the event of account termination due to a refund, the User's data will be retained for a period of thirty (30) days. After this period, all data associated with the User's account may be permanently deleted from the Company's servers, unless the law requires otherwise. The Company is not responsible for any loss of data resulting from account termination.

11.5 If a User's account is suspended, the User will not be able to access their data until the suspension is lifted. The Company maintains regular backups of user data for the purposes of disaster recovery and safeguarding the integrity of the Memories stored on Capshul, but makes no guarantee that all data can be recovered once an account has been suspended or terminated.

11.6 The Company reserves the right to modify its refund policy at any time. Changes will be effective immediately upon posting on the Capshul platform and Users will be notified accordingly. Continued use of the platform after any changes constitutes acceptance of the new refund policy.

12 INVOICING & PAYMENTS

12.1 The Company shall issue the User a Tax Invoice for all Fees for which GST applies.

12.2 The terms of payment set out in the Fees shall apply.

12.3 Should the User dispute a Tax Invoice, the User must notify the Company of the disputed item within 5 Business Days of the date of the Tax Invoice. The User must pay the amount of the Tax Invoice not in dispute within the prescribed payment period.

12.4 Overdue Tax Invoices shall accrue interest at the rate of 1.5% per month, or in default, the maximum rate of penalty interest prescribed under law.

- 12.5** The User authorises the Company to use the User's information for the purposes of obtaining a credit assessment or to otherwise make investigations as to the User's payment history.

13 DATA

- 13.1 Security.** The Company takes the security of Capshul and the privacy of its users very seriously. The Company implements industry standard security measures to protect Capshul and user data. In case a user account is compromised, the Company will take immediate steps to investigate and rectify the situation, including resetting the user password and notifying the affected user. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.

- 13.2 Transmission.** The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.

- 13.3 Storage.** The Company may limit the amount of data that the User stores in Capshul, and shall advise the User of such. Data that is stored with Capshul shall be stored according to accepted industry standards.

- 13.4 Backup.** The Company shall perform daily backups of Capshul using industry-standard backup methods. The Company does not warrant that it is able to backup or recover specific User Content from any period of time unless so stated in writing by the Company.

14 ACCESS

- 14.1** By accepting the terms of this Agreement the User agrees that the Company shall provide access to Capshul to the best of its abilities, however:

- (a)** Access to Capshul may be prevented by issues outside of its control; the Company will use its best efforts to resolve any such issues promptly and restore access as soon as possible.
- (b)** The Company will use its best efforts to ensure ongoing access to Capshul, except in circumstances beyond its reasonable control.

- 14.2** Users may prepare for unscheduled unavailability of Capshul by:

- (a)** Keeping their Capshul mobile app up to date, which may store local copies of the data; and
- (b)** Printing hard copies of presentations or reports.

15 SUPPORT AND RESPONSE TIME

- 15.1** The Company is committed to providing reasonable support to its Users to ensure a satisfactory experience with Capshul. Support may include resolving technical issues, answering queries relating to the services, or assisting in account management.

- 15.2** Users can submit support requests through the designated support channels as specified by the Company, including via email at info@capshul.com.
- 15.3** The Company aims to acknowledge receipt of support requests within two (2) business days. The acknowledgement will include an initial assessment of the support request and an estimated timeframe for resolution.
- 15.4** The Company will then do all things reasonably within its power to resolve the issue as soon as possible. However, the resolution timeframe may vary depending on the nature and complexity of the issue.
- 15.5** While the Company is committed to providing timely and effective support, it does not guarantee any specific outcome of a support request. The Company's provision of support does not constitute a warranty or representation regarding the performance or quality of Capshul, and does not alter the disclaimers and limitations of liability as set out in this Agreement.
- 15.6** The Company reserves the right to prioritize support and allocate resources as deemed necessary, and may not be able to resolve all issues immediately. Users are encouraged to use the self-help resources provided by the Company before submitting a support request.

16 ACCOUNT SUSPENSION

- 16.1** The Company reserves the right, at its sole discretion, to suspend or terminate any User's account for any reason, including but not limited to:
- (a)** Breach of any term of this Agreement, including the clauses pertaining to Copyright Breaches, Prohibited Content, and User Disputes.
 - (b)** Engaging in illegal activity or conduct that is harmful, threatening, abusive, or otherwise objectionable.
 - (c)** Repeated infringement of intellectual property rights, or other serious violations of the rights of others.
 - (d)** Failure to respond to communications from the Company or to provide necessary information when requested.
- 16.2** The process for account suspension or termination is as follows:
- (a)** The User will be notified via email of the intended suspension or termination, stating the reasons for such action.
 - (b)** The User will have a specified period, usually seven (7) days, to respond to the notice, providing any necessary information or taking any corrective action as required.
 - (c)** If the User fails to adequately respond or take appropriate action within the specified period, the account will be suspended or terminated.
 - (d)** In cases of serious breaches or illegal activity, the Company reserves the right to immediately suspend or terminate the account without prior notice.
- 16.3** A User whose account has been suspended or terminated may appeal the decision by contacting the Company within fourteen (14) days from the date of suspension or

termination. The appeal should provide detailed reasons why the account should be reinstated, along with any supporting evidence. The Company will review the appeal and make a decision within a reasonable time, usually within thirty (30) days. The decision of the Company on the appeal is final.

- 16.4** Suspension or termination of an account does not relieve the User from any obligations under this Agreement, including the obligation to indemnify the Company against any claims, damages, losses, or legal fees arising from their violation of this Agreement.

17 INTELLECTUAL PROPERTY

- 17.1 Trademarks.** The Company has moral & registered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.

- 17.2 Proprietary Information.** The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of Capshul.

- 17.3 Capshul Application.** The User agrees and accepts that Capshul is the Intellectual Property of the Company and the User further warrants that by using Capshul the User will not:

- (a) Copy Capshul or the services that it provides for the User's own commercial purposes; and
- (b) Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in Capshul or any documentation associated with it.

- 17.4 Content.** All content (with the exception of User Content) remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to Capshul. The Company may use anonymized user data for the purpose of improving the services and for monetization, in accordance with the Company's Privacy Policy.

18 CONFIDENTIALITY

- 18.1** The information and classes of information set out in the Important Terms are Confidential Information for the purposes of this Agreement. In default, information relating to the business operations, personal information and other information that should be confidential is Confidential Information.

- 18.2** Each party acknowledges and agrees that:

- (a) The Confidential Information is secret, confidential and valuable to the disclosing party (**Discloser**);
- (b) It owes an obligation of confidence to the Discloser concerning the Confidential Information;

- (c) It must not disclose the Confidential Information to a third party except as permitted in this Agreement;
 - (d) All Intellectual Property rights remain vested in the Discloser but disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the receiving party; and
 - (e) Any breach or threatened breach by the receiving party of an obligation under this Agreement may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.
- 18.3** A party must notify the Discloser in writing, giving full details known to it immediately, when it becomes aware of:
- (a) Any actual, suspected, likely or threatened breach by it of clause 18.1;
 - (b) Any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or
 - (c) Any actual, suspected, likely or threatened theft, loss, damage, or unauthorised access, use or disclosure of or to any Confidential Information.
- 18.4** The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:
- (a) Any actual, suspected, likely or threatened breach of a term of this Agreement; or
 - (b) Any theft, loss, damage or unauthorised access, use or disclosure of or to any Confidential Information that is or was in its possession or control.

19 LIABILITY & INDEMNITY

- 19.1** The User agrees that it uses Capshul at its own risk.
- 19.2** The User agrees that it has had reasonable opportunity to obtain legal advice on this Agreement.
- 19.3** The User acknowledges that the Company is not responsible for the conduct or activities of any user, except where such conduct or activities are directly enabled or facilitated by the Company's negligence or wilful misconduct.
- 19.4** The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with Capshul, including any breach by the User of these Terms.
- 19.5** In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use Capshul or any content, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and

whether or not the Company knew or should have known of the possibility of such damage, to business interruption of any type, whether in tort, contract or otherwise.

19.6 Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:

- (a) The re-supply of services or payment of the cost of re-supply of services; or
- (b) The replacement or repair of goods or payment of the cost of replacement or repair.

20 BREACH

20.1 Where a party is in breach of this Agreement, the other party may issue a written notice (**Breach Notice**) requiring the party in breach that must set out:

- (a) The nature of the breach;
- (b) The provisions of the Agreement that are alleged to have been breached;
- (c) The breaching party shall have a fixed timeframe of 10 Business Days to remedy the breach; and
- (d) The action required to remedy the breach.

20.2 Where a party issues a compliant Breach Notice in accordance with clause 20.1, the receiving party shall be required to respond and/or remedy the breach as so set out in the Breach Notice. Failure to respond in writing setting out:

- (a) The steps taken to remedy the breach; or
- (b) Why the party believes it is not in breach as put forward in the Breach Notice,
- (c) Shall not in itself confirm the alleged breach but shall be in itself a breach of this Agreement.

20.3 Failure to remedy a breach set out in a Breach Notice shall be a material breach of this Agreement (**Material Breach**).

21 TERMINATION

21.1 Breach. Where a party is in Material Breach of this Agreement, the other party may terminate this Agreement by giving written notice of termination, which shall become effective 5 Business Days after the date of the notice.

21.2 Insolvency. Either party may terminate this Agreement immediately by notice, if either party:

- (a) Stops or suspends or threatens to stop or suspend payment of all or a class of its debts;

- (b) Is insolvent within the meaning of section 95A of the Corporations Act;
 - (c) Fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) unless:
 - i The debt to which the statutory demand relates is discharged within 15 Business Days of the date of the failure; or
 - ii The party demonstrates to the satisfaction of the other party (acting reasonably) that it is able to pay all its debts as and when they become due and payable;
 - (d) Has an administrator appointed in respect of it;
 - (e) Has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to the whole or a substantial part of its assets or undertaking and that controller or similar officer is not removed within 15 Business Days of the appointment;
 - (f) Has an order made or a resolution passed for its winding up or dissolution or it enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
 - (g) Has any security enforced over, or a distress, execution or other similar process levied or served against, the whole or a substantial part of its assets or undertaking; or
 - (h) Is subject to any event, which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.
- 21.3 Expiry or termination of this Agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this Agreement up to the date of expiry or termination.
- 21.4 The rights and obligations under the relevant provisions of clauses 6, 7, 8, 10, 12, 17, 18, 19, 20, 21, 22, 23, 24 and 24.6 survive termination of this Agreement.

22 DISPUTES

- 22.1 All disputes between a User and the Company relating to or arising out of this Agreement shall be resolved in accordance with the following procedures:
- (a) **Negotiation.** Within 5 Business Days of a party notifying the other party of a dispute, senior representatives from each party must meet (or discuss directly via the telephone or internet) and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions;
 - (b) **Mediation.** If the dispute is not resolved within five Business Days of notification of the dispute under Clause 22.1(a), the parties must agree to submit the dispute to mediation, administered by lawyers engaged in alternative dispute resolution; and
 - (c) **Court proceedings.** A party may not commence court proceedings in relation to a dispute relating to or arising out of this Agreement until it has exhausted the procedures in this clause 22.1(c) unless the party seeks appropriate

injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.

22.2 Disputes between Users are to be resolved between the Users involved. The Company is not responsible for mediating or resolving such disputes.

23 FORCE MAJEURE

23.1 If a party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of Force Majeure, it will promptly notify the other party accordingly. The notice must:

- (a) Specify the obligations and the extent to which it cannot perform those obligations;
- (b) Fully describe the event of Force Majeure;
- (c) Estimate the time during which the Force Majeure will continue; and
- (d) Specify the measures proposed to be adopted to remedy or abate the Force Majeure.

23.2 Following a notice of Force Majeure in accordance with clause 23.1 and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended, other than obligations to pay money that is due and payable.

23.3 The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

23.4 The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by the other party as a result of the party's failure to carry out its obligations under this Agreement.

23.5 The term of this Agreement will not be extended by the period of Force Majeure.

24 ELECTRONIC COMMUNICATION, AMENDMENT AND ASSIGNMENT

24.1 The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.

24.2 The User can direct notices, enquiries, complaints and so forth to the Company as set out in this Agreement. The Company will notify the User of a change of details from time-to-time.

24.3 The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.

24.4 A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.

24.5 Notices must be sent to the parties' most recent known contact details.

- 24.6** The User may not assign or otherwise create an interest in this Agreement.
- 24.7** The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the User.

25 GENERAL

- 25.1** **Special Conditions.** The parties may agree to any Special Conditions to this Agreement in writing.
- 25.2** **Prevalence.** To the extent that the Important Terms are inconsistent with the General Conditions, the terms of the Important Terms will prevail. To the extent that the Special Conditions are inconsistent with the Important Terms, the Special Conditions will prevail.
- 25.3** **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- 25.4** **Relationship.** The relationship of the parties to this Agreement does not form a joint venture or partnership.
- 25.5** **Waiver.** No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- 25.6** **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.
- 25.7** **Governing Law.** This Agreement is governed by the laws of the state set out in item M of the Important Terms. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- 25.8** **Severability.** Any clause of this Agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.
- 25.9** Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:
- (a) The singular includes the plural and the opposite also applies.
 - (a) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (b) A reference to a clause refers to clauses in this Agreement.
 - (c) A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
 - (d) Mentioning anything after *includes*, *including*, or similar expressions, does not limit anything else that might be included.
 - (e) A reference to a *party* to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).

- (f) A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
- (g) A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

END GENERAL CONDITIONS