



# Software Subscription Agreement General Terms & Conditions Agreement

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V2.0 » December 2022

## 1. Binding Agreement

- 1.1 These General Terms and Conditions, the EULA together and the Airlock Invoice constitute a binding agreement (**Agreement**) between the purchasing entity set out in the Schedule (**Customer**) and Airlock Digital Pty Ltd ABN 87 169 643 770 (**Airlock**), governing the provision and use of the Subscription Services from Airlock to the Customer (and any Customer affiliates named on the applicable Airlock Invoice).
- 1.2 A contract is formed upon the earlier of execution of this Agreement or the Customer making payment of the Subscription Fee set out in an Airlock Invoice, and the Customer confirms that it has read, understands and agrees to be bound by the terms of this Agreement.
- 1.3 For the avoidance of doubt, the Customer agrees that:
  - (a) none of the Customer’s terms apply to the Subscription Services offered by Airlock to the Customer pursuant to this Agreement; and
  - (b) any document issued by the Customer to Airlock, including but not limited to a purchase order, shall be taken as the Customer’s internal administrative document issued for its own convenience only, and any terms therein will not be binding on Airlock.

## 2. Application Of Terms

- 2.1 These General Terms and Conditions comprise three parts:
  - (a) Part A applies to the use of all Airlock Software, products and services;
  - (b) Part B contains additional specific terms applicable to the Platform; and
  - (c) Part C contains additional specific terms applicable to Consulting Services.

# PART A

## 3. DEFINITIONS

- 3.1 In this Agreement

<b>Airlock Data</b>	means proprietary information gathered or created by Airlock and provided to the Customer as part of the Subscription Services, including Deliverables, but excluding third party content and Customer Data.
<b>Airlock Invoice</b>	means an invoice issued by Airlock to the Customer specifying the Software, Platform or Services to be provided pursuant to this Agreement.
<b>Authorised User</b>	means a person the Customer authorises and notifies to Airlock may access the Platform.

<b>Consulting Services</b>	means any custom professional services (e.g., Platform implementation, support or strategic consultancy) that are provided to the Customer as set out in an Airlock Invoice.
<b>Customer Data</b>	means the Customer's proprietary data information provided by the Customer to Airlock in connection with the performance of the Subscription Services. For clarity Customer Data is not Usage Data.
<b>Customer Portal</b>	The site located at <a href="https://www.airlockdigital.com/portal/login-page/">https://www.airlockdigital.com/portal/login-page/</a> or such other site as advised by Airlock from time to time.
<b>Deliverables</b>	means any deliverables provided by Airlock in connection with Consulting Services.
<b>Documentation</b>	means the documentation included with the Software or as found in the Customer Portal
<b>End Point</b>	means the specific device upon which the Software may be used and installed, for which the Customer has paid the Subscription Fees.
<b>EULA</b>	means the Airlock Digital End User Licence Agreement in force from time to time as published in the Customer Portal.
<b>Force Majeure</b>	means any occurrence or omission as a direct or indirect result of which Airlock is prevented from or delayed in performing any of its obligations, is beyond its reasonable control and which could not have been prevented or mitigated by reasonable diligence or precautionary measures, including forces of nature, natural disasters, acts of terrorism, riots, revolution, civil commotion, epidemic, industrial action and action or inaction by a government agency.
<b>Intellectual Property Rights</b>	means all intellectual property rights which may subsist anywhere in the world, now or in the future, including but not limited to the following rights: <ul style="list-style-type: none"> <li>(a) patents, copyright, rights in circuit layouts, specifications, designs, drawings, discoveries, inventions, trade secrets, product concepts, formulae, brands, logos, data bases, know how, trademarks, domain names, business names, copyright and any right to have confidential information kept confidential; and</li> <li>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a), whether or not such rights are registered or capable of being registered</li> </ul>
<b>Renewal Period</b>	any period of extension of the current Subscription Period.
<b>Platform</b>	means the cloud based SaaS provided by Airlock to operate the Software.
<b>SLA</b>	means the Airlock Digital Service Level Agreement
<b>Software</b>	means any Airlock software or third-party software used by Airlock to provide the Subscription Services as set out in an Airlock Invoice.

<b>Subscription Fee</b>	means the amounts payable by the Customer for the Subscription Services during the Subscription Period.
<b>Subscription Period</b>	means the period during which Airlock will provide the Subscription to the Customer as set out in the Airlock Invoice.
<b>Subscription Services</b>	means the use of the Software, Consulting Services or access to the Platform by the Customer as set out in an Airlock Invoice.
<b>Usage Data</b>	means data that is generated by or derived from the Customer's use of the Software processed by Airlock for its analysis, development, improvement, maintenance, auditing of the Software and Platform, security, fraud detection and prevention for the Subscription Services, and similar technological operational purposes and as described in the Airlock's PII & Data Collection Policy.

3.2 Capitalised terms that are not defined in these General Terms and Conditions have the meaning set out in the EULA.

3.3 In the event of a conflict between any of the documents forming this Agreement the descending order of precedence will be as follows: the Airlock Invoice, these General Terms and Conditions, the EULA, and any document annexed to the Airlock Invoice.

## 4. Grant Of Licence

4.1 Subject to and in accordance with this Agreement, Airlock grants to the Customer a worldwide, non-exclusive, non-transferable licence to use the Subscription Services during the Subscription Period.

4.2 Use of the Subscription Services is solely for the Customer's internal business purposes and limited to the number of End Points set out in the Airlock Invoice(s) as applicable from time to time.

4.3 The Customer must not:

- (a) use, or permit any third party to use, the Subscription Services for any purpose other than as set out in clause 4.2;
- (b) use the Software in any way that could damage Airlock's reputation or goodwill, or Airlock's other rights associated with the Software;
- (c) license, sublicense, sell, resell, rent, transfer, assign, distribute or otherwise commercially exploit or make the Subscription Services available to, or use for the benefit of, any third party;
- (d) except as expressly permitted by this Agreement:
  - i. reproduce, make error corrections to or otherwise modify or adapt the Subscription Services or create any derivative works based upon the Software or the Documentation;
  - ii. de-compile, disassemble or otherwise reverse engineer the Software or permit any third party to do so;

- (e) use the Subscription Services to build or develop:
    - i. a competitive product or service;
    - ii. a product using similar features, functions or graphics of the Software or Platform;
  - (f) modify or remove any copyright or proprietary notices on or included with the Subscription Services.
- 4.4 The Customer is responsible at its cost for meeting the then-current hardware, operating system, browser, telecommunications, internet and other technical requirements necessary to properly use the Subscription Services.
- 4.5 The Customer must immediately notify Airlock of any unauthorised use or breach of this Agreement of which the Customer becomes aware.

## 5. End Points

- 5.1 The Subscription Services may be used solely by the number of End Points specified in the applicable Airlock Invoice and may not be used by more than that number of End Points concurrently.
- 5.2 Unless otherwise specified in the Airlock Invoice, for each End Point licence purchased, the Customer may install one (1) instance of the Software on systems owned or operated by the Customer.
- 5.3 Each End Point is unique to a device and may not be shared but may be reassigned to a new device replacing one no longer requiring use of the Subscription Services.
- 5.4 The Customer may request additional End Points at any time during a Subscription Period in accordance with clause 8.
- 5.5 Airlock may monitor the Customer's End Point usage and invoice the Customer for any End Points additional to those paid for by the Customer, provided that Airlock shall notify the Customer in advance of any such billing.

## 6. Subscription Period

- 6.1 The Customer's Subscription Period shall commence on the date specified on the Airlock Invoice and continue until the earlier of
- (a) expiration of all Subscription Periods; or
  - (b) termination of this Agreement.
- 6.2 If a Subscription Period has not been renewed by the Customer within 5 Business days after the end of the Subscription Period Airlock may at any time thereafter disable the Software and suspend the Subscription Services.

## 7. Subscription Fees

- 7.1 Except as otherwise expressly specified on an Airlock Invoice, if Airlock offers the Customer promotional pricing or discounts in connection with the Subscription any such pricing will only be applicable to the initial Subscription Period for which they are offered, and not to any Renewal Periods.
- 7.2 The Subscription Fee may be subject to change without notice from time to time, provided that any revised Subscription Fees will only apply to Additional Scope (subject to clause 8.1) or to any Renewal Period.
- 7.3 Except as otherwise specified in these General Terms and Conditions or on an Airlock Invoice, and subject to any applicable laws, payment obligations are non-cancellable, and fees paid are non-refundable.

## 8. Upgrade or Additions to Customer Subscription

- 8.1 During the Subscription Period, the Customer may request to expand or purchase additional Subscription Services (**Additional Scope**).
- 8.2 If the Customer makes a request for Additional Scope Airlock will issue a new Airlock Invoice specifying the details of the Additional Scope.
- 8.3 Unless otherwise specified in the new Airlock Invoice, Additional Scope will be charged at Airlock's rates current at the date of the most recent Airlock Invoice issued to the Customer, prorated for the remainder of the current Subscription Period.
- 8.4 Upon payment of the amount set out in the new Airlock Invoice Airlock will provide the Additional Scope to the Customer.
- 8.5 For clarity, unless otherwise agreed by Airlock, Airlock is under no obligation to provide Additional Scope until the applicable Airlock Invoice is paid in full.

## 9. Cancellation of Subscription by Customer

- 9.1 The Customer may cancel its Subscription and terminate this Agreement at any time for any reason upon providing not less than 40 Business Days written notice to Airlock provided that upon any such termination:
  - (a) the Customer will not receive any refunds or credits for amounts relating to any part of the current Subscription Period; and
  - (b) to the extent that the Customer has not already paid all applicable Subscription Fees for the current Subscription Period, all such fees become immediately due and payable as a debt to Airlock.

## 10. Software Delivery and installation

- 10.1 Airlock will deliver the Software or provide access to the Platform through the delivery of online login instructions (typically via email) to the Customer following receipt of payment of the Subscription Fees.
- 10.2 The Customer is responsible for accessing the Customer Portal to determine when the Subscription Services are available for delivery.

- 10.3 Unless otherwise agreed by Airlock all deliveries of Software under this Agreement will be by electronic means only.
- 10.4 Installation and use of the Software is all times subject to the terms of the EULA.

## 11. Updates to Subscription Services

- 11.1 The Customer acknowledges that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Airlock regarding future functionality or features.
- 11.2 Provided that the Customer has an active and paid Subscription:
- (a) Airlock will provide updates to the Subscription Services from time to time as and when such updates are released by Airlock; and
  - (b) support services provided by Airlock as part of the Platform solution include technical support and workarounds so that the Platform operates in material conformance with the Documentation.
- 11.3 For the avoidance of doubt, updates:
- (a) to the Subscription Services may include subsequent software releases to, bug fixes, patches, error corrections, minor and major releases, new platform changes, or modifications or revisions that enhance existing performance; and
  - (b) exclude new products, modules or functionality for which Airlock may charge a separate fee.
- 11.4 The Customer acknowledges and agrees that:
- (a) Airlock may from time to time invite the Customer to participate in trials, early releases or beta testing of Subscription Services (Beta Versions) which may be subject to additional terms and conditions.
  - (b) any Beta Versions are still under development, may be inoperable or incomplete and are likely to contain more errors and bugs than generally available Subscription Services; and
  - (c) to the maximum extent permitted by applicable law, Airlock disclaims all obligations or liabilities with respect to Beta Versions, including any support, warranty and indemnity obligations.

## 12. Support

- 12.1 During the Subscription Period Airlock will provide support for the Subscription Services in accordance the terms of the SLA.

## 13. Payment

- 13.1 The Subscription Period commences upon the Customer's payment of the Subscription Fee as set out in the applicable Airlock Invoice.
- 13.2 Except as otherwise specified in an Airlock Invoice all Subscription Fees will be invoiced in advance and are due in full thirty (30) days from the invoice date (**Due Date**).
- 13.3 If the Subscription Period of an Airlock Invoice is for multiple years, the specified annual fees are due in advance in each year of the Airlock Invoice, or as otherwise specified in the Airlock

Invoice.

- 13.4 All payments must be made in the currency specified in the Airlock Invoice and unless otherwise agreed by Airlock in writing, and made by electronic funds transfer, wire or credit card.
- 13.5 In the case of payment by credit card Airlock reserves the right to charge the Customer a surcharge equivalent to the cost incurred by Airlock (including without limitation any merchant fees) to accept a credit card payment.
- 13.6 The Customer is responsible for providing complete and accurate billing and contact information to Airlock and notifying Airlock of any changes to such information.
- 13.7 Airlock reserves the right to charge late fees on the outstanding balance of any Subscription Fees not received from the Customer by the Due Date at the rate of 3% over the cash rate at the Reserve Bank of Australia (or, if that rate ceases to exist, a comparable rate nominated by Airlock) calculated daily from the date such payment was due until the date paid.
- 13.8 All Subscription Fees are stated exclusive of all local, state, federal or foreign taxes, GST, VAT, levies or duties of any nature (Taxes) and the Customer must pay to Airlock an additional amount equal to the prevailing rate of Taxes, at the same time and in the same manner as the Subscription Fees.

## 14. Intellectual Property Rights

- 14.1 The parties acknowledge and agree that:
  - (a) Airlock owns all Intellectual Property Rights in the Subscription Services, and title remains at all times exclusively vested in Airlock;
  - (b) as between the Customer and Airlock, the Customer retains all rights, title and interest in and to all Customer Data and Airlock will not obtain any ownership rights in such data;
  - (c) solely to the extent required to provide or improve the Subscription Services the Customer hereby grants to Airlock a royalty free, non-exclusive, irrevocable license during the Subscription Period to use, copy, adapt or modify the Customer Data; and
  - (d) Airlock may access the Customer Data if such access is required to respond to a Customer support requests.
- 14.2 If any person makes any claim alleging that any of the Subscription Services (or use of any of them) infringes any Intellectual Property Rights of any person, the Customer must:
  - (a) promptly notify Airlock in writing;
  - (b) not make any admissions or take any action in relation to the claim without Airlock's written consent;
  - (c) permit Airlock control over all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and
  - (d) cooperate with, assist and act at all times in accordance with the reasonable instructions of Airlock in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.



## 15. Confidentiality

- 15.1 Except as otherwise set out in this Agreement, 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.
- 15.2 The Software, Documentation, Platform and any other Subscription Services (including any performance information relating to them) will be deemed Airlock's Confidential Information without any marking or further designation.
- 15.3 A Receiving Party:
- (a) will hold in confidence and not disclose any Confidential Information to third parties; and
  - (b) will not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement
  - (c) 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 clause 15
- 15.4 A Receiving Party's confidentiality obligations will not apply to information which the Receiving Party can demonstrate:
- (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information;
  - (b) is or has become public knowledge through no fault of the Receiving Party;
  - (c) was rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or
  - (d) was independently developed by employees of the Receiving Party who had no access to such information; or
  - (e) disclosure is required by law or a court order, but only to the minimum extent required to comply with such law or order following prior notice to the Disclosing Party.
- 15.5 Each Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and the Disclosing Party will be entitled to seek injunctive relief in addition to whatever other remedies it might have at law.
- 15.6 Solely and only to the extent required in connection with the provision of the Subscription Services to the Customer:
- (a) Airlock may share Customer Data or Customer's Confidential Information with Airlock's Affiliates or third-party vendors (Vendors) that work on Airlock's behalf or provide services to Airlock, including but not limited to necessary hardware, software, networking, storage, and technologies required to run the Platform, provided those Affiliates and Vendors are subject to confidentiality restrictions regarding Customer Data and Customer's Confidential Information no less stringent than required under clause 15;
  - (b) the Customer hereby consents to such use of Customer Data and Customer's Confidential Information by Airlocks Affiliates and Vendors; and
  - (c) Airlock shall remain fully liable for all acts or omissions of any of its Affiliates or Vendors.

## 16. Usage Data

- 16.1 The Customer acknowledges and agrees that Airlock may collect or receive Usage Data in connection with the Customer's use of the Subscription Service which may include details regarding:
- (a) any software, files, exploits or other threats flagged by the Software (including but not limited to relevant context of such flags, such as file source, file format and user information)
  - (b) the End Point hardware and any peripheral hardware associated with the End Point;
  - (c) the version of the Software or Platform used by any End Point and what operating conditions it runs under;
  - (d) the End Point internet protocol Address and geographic location; and
  - (e) log data, number of accounts, and usage statistics collected by the Subscription Services or otherwise provided by the Customer or its End Points relating to the Subscription Services.
- 16.2 The Customer acknowledges and agrees that:
- (a) Usage Data is collected and used for the purpose of tracking malicious software, exploits and other threats, and evaluating and improving Airlock's products and services; and
  - (b) Airlock may use the Usage Data for its business purposes, including, without limitation, sharing Usage Data relating to malicious software, exploits or other threats flagged by the Subscription Services with third parties, provided that such Usage Data:
    - i. to the extent, if any, it contains any Personal Information such as Personal Information is anonymised and/ or aggregated; and
    - ii. is not distributed or otherwise conveyed in a context that could reasonably identify the Customer as its source without the Customer's prior written consent

## 17. Marketing

- 17.1 Without limiting clause 16.2(b) Airlock will obtain the Customer's prior written approval for use of the Customer name, trademarks and logos in any Airlock marketing materials.

## 18. Privacy

- 18.1 Airlock's Privacy Policy, available at <https://www.airlockdigital.com/privacypolicy> and upon request (**Privacy Policy**) applies to each person that accesses or uses the Software or Platform (as applicable).
- 18.2 Airlock will manage all Customer Data and personal information in accordance with the Privacy Policy and applicable laws.
- 18.3 Without limiting the Privacy Policy the Customer acknowledges and agrees that Airlock may collect and track Usage Data in accordance with this Agreement.
- 18.4 The Customer and any person's use of the Software operates as its ongoing consent to the collection of the Usage Data by Airlock in accordance with this Agreement.

## 19. WARRANTIES

19.1 Each Party warrants and represents that:

- (a) no authorisation or approval from any third party is required in connection with its execution, delivery, or performance of its obligations under this Agreement; and
- (b) it shall comply fully with all applicable laws (including, without limitation, export laws, regulations relating to use of the Subscription Services in its place of business and privacy laws and regulations.

19.2 The Customer represents and warrants that

- (a) it has valid title or license to all Customer Data; and
- (b) it has all rights necessary to grant Airlock the rights set forth in this Agreement; and
- (c) it is not named on any Australian government list of persons or entities prohibited from receiving exports;
- (d) it will not to export, re-export, or transfer the Software or Documentation to any country to which Australia or the United States of America have embargoed or restricted the export of goods or services, to any national of any such country, wherever located, who intends to transmit or transport the products back to such country or to any person or entity who has been prohibited from participating in export transactions by any agency of the Australian government; and
- (e) it agrees that the Subscription Services is not intended to, and will not, operate as a data storage or archiving product or service, and Customer will not to rely on the Subscription Services for the storage of any Customer Data.

19.3 Airlock warrants that:

- (a) the Subscription Services will:
  - i. under normal conditions of use, perform materially in accordance with the applicable Documentation;
  - ii. be performed in a professional manner consistent with general market standards for comparable services; and
- (b) it owns the Software and all applicable Intellectual Property or has the necessary licenses, rights, consents and permissions to use and supply the Subscription Services to perform its obligations under this Agreement.

## 20. Audit

20.1 The Customer must permit Airlock (or its nominated auditor) to audit the records and premises of the Customer at any time during, and for 2 years following the end of the Subscription Period on at least 5 days written notice, for the purpose of confirming the Customer's compliance with this Agreement.

## 21. Suspension

21.1 Without prejudice to or limiting any of its rights under this Agreement Airlock may suspend access to the Software or the Platform if, in Airlock's reasonable determination:

- (a) there are technical problems with the Subscription Services that requires repairs or maintenance;
- (b) the Customer fails to pay an undisputed invoice within ten (10) days after Airlock gives Customer notice of such failure (which may be by email or telephone);
- (c) the Customer uses or attempts to use the Subscription Services in a manner that contravenes any applicable local, state, federal, or foreign laws or regulations;
- (d) the Customer has committed a material breach of the terms of this Agreement (as determined by Airlock); or
- (e) it is necessary to comply with Airlock's legal obligations.

21.2 Airlock will provide notice of such suspension, and when commercially possible, will work in good faith with the Customer to resolve the issue causing the suspension so that access to the Subscription Services may be restored.

## 22. Termination

- 22.1 Either party may terminate this Agreement upon written notice if the other party materially breaches this Agreement and fails to correct the breach within fifteen (15) Business Days following written notice specifying the breach.
- 22.2 If this Agreement is terminated by the Customer in accordance with clause 22.1, Airlock's sole liability to the Customer will be a refund of any prepaid fees covering the remainder of the Subscription Period of all applicable Airlock Invoices after the effective date of termination.
- 22.3 If this Agreement is terminated by Airlock in accordance with clause 22.1, the Customer must pay any unpaid Subscription Fees relating to the remainder of all Subscription Periods of all Airlock Invoices.
- 22.4 In no event will termination relieve the Customer of its obligation to pay any fees due or payable to Airlock for the period prior to the effective date of termination.

## 23. Effect of Termination

- 23.1 Subject to clauses 23.2 upon the expiration or termination of this Agreement for any reason:
  - (a) the Customer's right to use the Subscription Services will immediately cease, and Airlock will have no further obligation to make the Subscription Services available to the Customer;
  - (b) all rights and licences granted to the Customer under this Agreement will immediately cease and terminate;
  - (c) without limiting the obligations set out in clause 22 the Customer must immediately pay any outstanding Subscription Fees to Airlock;
  - (d) Airlock will:
    - i. make available to the Customer, any logs or Customer Data (if any) hosted or stored in the Platform in a standard commercial format for a period not exceeding 30 days after the date of termination (**Data Retention Period**); and
    - ii. upon expiry of the Data Retention Period Airlock will have no obligation to maintain or provide any Customer Data, and will delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control as provided in the Documentation

or as Airlock routinely does such deletions and destructions in the ordinary course of its business, unless legally prohibited from doing so.

23.2 Except for any accrued rights or remedies under this Agreement or at law, neither party shall have any further liability or obligation to the other party in respect of this Agreement.

## 24. LIABILITY

24.1 This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations and if such legislation applies, to the maximum extent possible, Airlock limits its liability in respect of any claim to:

- (a) in the case of goods supplied to the Customer, the replacement of the goods or the supply of equivalent goods (or the payment of the cost to the Customer of the replacement or supply), or the repair of the goods (or the payment of the cost to the Customer of the repair); and
- (b) in the case of services supplied to the Customer, the supply of the services again or the payment of the cost to the Customer of having the services supplied again.

24.2 To the full extent permitted by law, Airlock excludes all liability in respect of loss of data, interruption of business or any consequential, incidental, punitive, exemplary, or indirect damages, including but not limited to any damages for anticipated profits, loss of revenue, economic loss, loss of data, costs of procurement of substitute goods or services, loss of use of equipment, or interruption of business, whether an action is in contract or tort and regardless of the theory of liability, even if a party has been advised of the possibility of such damages or such damages were in the contemplation of the parties when this agreement was formed.

24.3 Other than warranties expressly granted under clause 19 and those, if any, that cannot be disclaimed or excluded under applicable law to the full extent permitted by law, Airlock excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this agreement.

24.4 Airlock's total aggregate liability to the Customer for all claims howsoever arising (including, without limitation, negligence) in connection with this Agreement is limited to the Subscription Fees actually paid by the customer under this agreement for the 12 month period arising prior to the relevant claim.

24.5 A party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.

24.6 Airlock has no liability to the Customer to the extent that:

- (a) Airlock's performance of the Agreement is prevented by Force Majeure; or
- (b) a failure of the Subscription Services (or any part thereof) is attributable to any act or omission on the Customer's part.

24.7 If Airlock is unable to perform its obligations under this Agreement as a result of Force Majeure for a period that lasts for longer than 60 days, either party may terminate this Agreement by written notice to the other (to take effect immediately) whereupon Airlock's sole liability to the Customer will be a refund of any prepaid fees covering the remainder of the Subscription Period of all applicable Airlock Invoices after the effective date of termination.

## 25. INDEMNITY

25.1 The Customer hereby indemnifies Airlock, its employees, agents, subcontractors and licensees (Airlock Parties) against any claim, demand, suit or proceeding (including legal costs on a solicitor client basis) made or brought against one or more of the Airlock Parties by a third party alleging that:

- (a) The Customer Data, or Customer's use of any Subscription Services in breach of this Agreement;
- (b) the use, disclosure or dissemination of any Customer Data in accordance with this Agreement

infringes or misappropriates such third party's Intellectual Property Rights or violates applicable law, including violation of privacy or spamming laws or regulations

## 26. Dispute resolution

26.1 If any dispute between the parties arises from or in connection with this Agreement or the Subscription Services (Dispute), the parties agree to resolve it in the manner set out in this clause, and a party may not commence court proceedings concerning the Dispute unless:

- (a) the party starting proceedings has complied with this clause; or
- (b) the party starting proceedings seeks urgent interlocutory relief.

26.2 A party claiming that a Dispute has arisen must notify the other party specifying the nature of the Dispute (**Dispute Notice**).

26.3 Within 10 Business Days after the date the Dispute Notice is given, a senior representative from Airlock and the Customer (**Representatives**) must attempt to resolve the Dispute acting reasonably and fairly with the aim of achieving a mutually beneficial outcome given the circumstances.

26.4 If the Dispute is not resolved by the Representatives within 10 Business Days of the Dispute Notice, the Chief Operating Officers / CEO (**Executive**) of each party must hold a meeting within 20 Business Days of the Dispute Notice at which the parties will use their best endeavours to resolve the Dispute.

26.5 If the Executives are unable to resolve the Dispute within 20 Business Days of the Dispute Notice, the Dispute must be referred to mediation in accordance with, and subject to, The Resolution Institute Mediation Rules.

26.6 If the identity of the mediator has not been agreed within 5 Business Days from the date the Dispute was referred to mediation under clause 26.5, the mediator shall be appointed by the Chair of the Resolution Institute (ACN 008 651 232).

26.7 Unless the parties otherwise agree, the mediation will be held in Adelaide.

26.8 If the Dispute is not resolved by mediation under clause 26.5, either party may commence litigation in connection with the Dispute.

26.9 Each party must pay its own expenses incurred in the Dispute resolution processes under this clause, except to the extent a court determines otherwise.

26.10 Subject to Airlock's rights under clause 21, each party must continue to perform its obligations under this Agreement despite the existence of a Dispute except to the extent that the matter the subject of the dispute and matters necessarily dependent on it cannot be proceeded with until the Dispute has been resolved.

## 27. Notices

- 27.1 Any notice under this Agreement must be given in writing.
- 27.2 Airlock may provide notice to the Customer at the physical or email address set out in the Airlock Invoice.
- 27.3 All notices to Airlock must be sent to the address set out in the Airlock Invoice or by email to [legal@airlockdigital.com](mailto:legal@airlockdigital.com)
- 27.4 A notice is treated as having been duly given and received:
- (a) when delivered (if left at that party's address provided it is delivered during business hours);
  - (b) on the third business day after posting (if sent by pre-paid mail);
  - (c) in the case of email, when the email has been sent except if:
    - i. the sender receives an email indicating that the email has not been received within four hours of being sent; or
    - ii. the time of dispatch is after 17:00 in the place in which the notice is received, in which case the notice is regarded as received at 09:00 on the next Business Day.

## 28. Variations to Terms

- 28.1 Airlock may vary these General Terms and Conditions or the EULA from time to time by providing notice to the Customer in accordance with clause 27 (Variation Notice).
- 28.2 A Variation Notice will specify the effective date of the variation and may include website links to the varied terms.
- 28.3 Subject to clause 27.4 variations described in a Variation Notice will take effect at the commencement of the next Renewal Period
- 28.4 Where a variation is required to address compliance with any law, or is necessary to implement new product features Airlock may specify that such variation become effective during the current Subscription Period provided that:
- (a) if the Customer objects to the variation it may (as its exclusive remedy) terminate the affected Subscriptions Services by written notice to Airlock within 30 days of the date of the Variation Notice;
  - (b) Airlock will refund the Subscription Fees already paid by the Customer for use of the affected Subscription Services for the terminated portion of the applicable Subscription Period.
- 28.5 Without limiting the rights and obligations under this clause 28 Airlock and the Customer may vary this Agreement by written agreement at any time.

## 29. Miscellaneous

- 29.1 **Relationship:** The parties are independent contractors, and this Agreement will not establish any



relationship of partnership, joint venture, employment, franchise or agency between the Parties.

- 29.2 **No Assignment:** The Customer may not assign this Agreement without Airlock’s written consent, which consent shall not be unreasonably withheld or delayed.
- 29.3 **Waiver:** No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right and the failure of a party to require full or partial performance of a provision of this Agreement does not affect the right of that party to require performance subsequently.
- 29.4 **Severance:** If any provision of this Agreement is void, voidable or unenforceable, it shall be taken to be severed from the agreement without affect to the enforceability of the remaining provisions of this Agreement.
- 29.5 **Actions:** Each party agrees to do all things and take all actions that may be necessary to give effect to this Agreement.
- 29.6 **Survival:** All provisions of this Agreement relating to disclaimers of warranties, remedies, damages, confidentiality, payment obligations, restrictions on use, and any other terms that either expressly or by their nature should survive, shall survive any termination of this Agreement, and shall continue in full force and effect.
- 29.7 **Language:** The English-language version of this Agreement shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions, if any.
- 29.8 **Governing Law:** The laws in South Australia govern this Agreement. The Parties submit to the exclusive jurisdiction of the Courts of South Australia and the Federal Court of Australia (South Australian District Registry).

## PART B

### CLOUD BASED SERVICE / PLATFORM

The following additional terms apply specifically to use of the Platform by the Customer:

#### 1. Access To the Platform

- 1.1 Airlock grants to the Customer a non-exclusive, non-transferable, revocable license to use the Platform and the Documentation for the Subscription Period.

#### 2. Login Credentials

- 2.1 Airlock will give the Customer access to the Platform for the Subscription Period by providing login credentials to Authorised Users.
- 2.2 The Customer acknowledges and agrees that it is solely liable for:
  - (a) all actions taken using Authorised User accounts and passwords; and
  - (b) any breach of this Agreement by any Authorised User.



### 2.3 The Customer must:

- (a) take all reasonable precautions that it maintains the security of its access to the Platform and without limiting the generality of this obligation the Customer must not allow any person other than an Authorised User to access the Platform;
- (b) ensure that its Authorised Users comply with the obligations imposed on the Customer under this Agreement; and
- (c) ensure that all Authorised Users keep their user IDs and passwords strictly confidential and do not share such information with any other persons.

## 3. Intellectual Property

3.1 The Customer acknowledges and agrees that the Platform, the contents of the Platform, the Documentation and any other information or materials that are supplied by Airlock to the Customer during the Customer's use of the Platform remain the exclusive property of Airlock or its third party licensors.

### 3.2 The Customer must not:

- (a) modify or adapt or create derivative works of the Platform;
- (b) reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code underlying ideas, algorithms, file formats or non-public APIs to any part of the Platform, except to the extent allowed by applicable law for interoperability purposes; or
- (c) remove or obscure any proprietary or other notices contained in any part of the Platform;
- (d) use the Platform for competitive analysis or to build competitive products;
- (e) publicly disseminate information regarding the performance of the Platform;
- (f) use the Platform to access services other than the Subscription Services the Customer is entitled to use; or
- (g) encourage or assist any third party to do any of the above.

## 4. Platform Availability

4.1 Airlock will use all reasonable commercial efforts to ensure that the Customer may access the Platform as required but the Customer acknowledges and agrees that:

- (a) Airlock does not guarantee the reliability or availability of the Platform, or that the Platform will be available 24 hours a day seven days a week;
- (b) Airlock's ability to provide access to the Platform is dependent on third party suppliers to Airlock and thus the Platform may not be available if those third party suppliers are in breach of their obligations to Airlock; and
- (c) all online services suffer occasional disruptions and outages, and Airlock is not liable to the Customer for any downtime or other loss arising as a result of the unavailability of the Platform other than where directly caused by Airlock's negligent act or omission.

## 5. Changes To Platform

5.1 The Platform is an online product, and that in order to provide improved customer experience

Airlock may make changes to the Platform from time to time.

- 5.2 Subject to Airlock's obligation to provide a Platform during a current Subscription Period, Airlock may change the Platform provider or any portion or feature of the Subscription Services for any reason at any time without liability to the Customer.

## 6. Platform Maintenance

- 6.1 From time to time Airlock may be required to:
- (a) conduct preventative and remedial maintenance on the Platform and associated infrastructure that is deployed in the provision of the Subscription Services (**Scheduled Maintenance**); and
  - (b) conduct emergency or unscheduled maintenance, for example, to restore or preserve the performance of the Platform (**Unscheduled Maintenance**).
- 6.2 During any period of maintenance, the Platform may not be available or may not perform at optimum levels.
- 6.3 Airlock will use all reasonable endeavours to:
- (a) notify the Customer of any Scheduled Maintenance; and
  - (b) carry out Scheduled Maintenance outside the Customer's usual business hours.
- 6.4 If Airlock is required to conduct Unscheduled Maintenance due to the Customer's negligent act or omission (including by its employees, agents and contractors) or the Customer's breach of this Agreement Airlock reserves the right to charge the Customer to conduct the Unscheduled Maintenance (including without limitation any costs in repairing or replacing any affected equipment, costs incurred by Airlock from any service provider and any labour at such rates that Airlock may reasonably determine).

## 7. Fair Usage

- 7.1 The Customer acknowledges that and agrees that:
- (a) Access to the Platform may be subject to usage limits, including, for example, to categories and quantities of data and bandwidth usage; and
  - (b) Airlock may, after giving notice to the Customer, at any time and from time to time apply a fair use policy or take actions to throttle or control the Customer's use of the Platform as Airlock reasonably considers is necessary to maintain or preserve the quality and performance of the Platform.

## 8. Support

- 8.1 If the Customer has purchased Software support the terms of the SLA will take precedence to the extent of any inconsistency with this Part B.

## PART C

### CONSULTANCY SERVICES

If the Customer's Subscription Services includes Consulting Services the following additional terms and conditions apply:

#### 1. Consulting Hours

- 1.1 Airlock shall provide the Customer with the Consulting Services for the number of hours specified in the applicable Airlock Invoice (Hours).
- 1.2 Any time allocated by Airlock to providing Consulting Services to the Customer, including, but not limited to, any time spent on calls, e-mails, meetings, drafting of documents, presentation and other preparatory work shall be deducted from Customer's Hours.
- 1.3 Time spent on normal Platform training and support is not deducted from the Customer's Hours; provided, however, that Airlock reserves the right to charge a fee for training, upon prior written notice, if the Customer repeatedly fails to attend training session(s) or cancels them on short notice (as determined by Airlock).
- 1.4 Any unused Hours do not carry over from one Subscription Period to the next and are not usable or reimbursable upon expiration or termination of this Agreement except other than as a result of Airlocks breach.
- 1.5 Use of Hours in connection with Consulting Services will be coordinated with the Customer.

#### 2. Provision of Information

- 2.1 The Customer must:
  - (a) provide Airlock with any information, feedback, materials, data and graphics as may be needed by Airlock in order to provide the Consulting Services and Deliverables
  - (b) make itself and necessary employees available to Airlock to promptly answer any reasonable inquiry and request for information required by Airlock to deliver the Consulting Services and Deliverables.
- 2.2 The Customer acknowledges and agrees that failure by the Customer to deliver information requested by Airlock may result in delays or deficiencies in the Consulting Services or Deliverables for which the Customer shall be solely liable, and Airlock shall not be obligated to perform redelivery or remedy in such situations.
- 2.3 Any Deliverables and Consulting Services that are dependent on access to metrics, data and projects from the Customer's account/environment on the Platform are subject to the limitations of the Platform.

#### 3. Deliverables

- 3.1 Title in in the Deliverables remains exclusively with Airlock at all times, and subject to compliance with this Agreement Airlock grants to the Customer a royalty free, worldwide, perpetual licence to use the Deliverables for the Customer's internal purposes.

- 3.2 The Customer may not modify or remove any copyright or proprietary notices on or included with the Deliverables without Airlock's prior written consent.
- 3.3 Airlock will use its reasonable efforts to meet the Customer's preferred delivery date(s) for Deliverables provided that the Customer is not entitled to a reimbursement of any Subscription Fees or claim any amount due to delays or incomplete Deliverables attributable to the Customer's failure to comply with its obligations under this Agreement.

## 4. Non-Solicit

- 4.1 For a period of 12 months after the completion or termination of any Consultancy Services for whatever reason, the Customer agrees that it will not and will ensure that its employees, officers and agent do not:
  - (a) canvass, solicit or endeavour to entice from Airlock any person or organisation that was a customer or supplier of Airlock during the Subscription Period (or whose business or custom Airlock was cultivating during the Subscription Period), in relation to whom the Customer or dealt with during the Subscription Period;
  - (b) canvass, solicit or endeavour to entice any Airlock employee or agent to terminate their contracts of employment or agency with Airlock.
- 4.2 The Customer acknowledges that:
  - (a) any breach by the Customer of this clause would cause irreparable harm and significant damage to Airlock and that Airlock has the right to seek and obtain immediate injunctive relief in relation to any such breach; and
  - (b) the covenants in respect of non-competition contained in this clause are fair and reasonable and that the Airlock is relying upon this acknowledgement in entering into this Agreement.