

## Cascade Terms and Conditions (Document version: v20220914)

### TERMS OF SERVICE

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY SIGNING THIS CONTRACT PHYSICALLY OR ELECTRONICALLY EACH CUSTOMER AGREES TO THESE TERMS OF SERVICE.

These Terms of Service constitute an agreement (this “**Agreement**”) by and between Responsis Pty Ltd (ABN: 26160406100), a limited liability company based at 59 Goulburn Street, Sydney, NSW 2000, Australia (“**Provider**”, “**us**” “**we**” or “**our**”) and [INSERT CUSTOMER NAME] (“**Recipient**”, “**you**” or “**your**”).

#### 1 Definitions

“**Addon**” refers to additional features or services purchased by the Recipient in addition to the Service as defined below.

“**Business Day**” refers to any weekday (other than a bank or public holiday) in New South Wales.

“**Data Policy**” refers to the Provider’s privacy & data policy as amended from time to time.

“**Effective Date**” refers to the date of execution or acceptance of this Agreement.

“**Materials**” refers to written and graphical content provided by or through the Service, including, without limitation, text, photographs, illustrations, and designs, whether provided by the Provider, another customer of the Service, or any other third party.

“**Our Website**” refers to <https://www.executestrategy.net>, [cascade.app](https://cascade.app). and any associated subdomains.

“**Plan**” refers to the Service plans and features selected by the Recipient at the Effective Date or as otherwise changed by mutual consent of the parties during the Term.

“**Privacy Policy**” refers to the Provider’s privacy policy as amended from time to time.

“**Recipient Data**” refers to data in electronic form, input or collected through the Service by or from the Recipient, and extends to include any trademarks, logos or other intellectual property of the Recipient.

“**Service**” refers to the Provider’s ‘Cascade Software as a Service’ service. The Service includes such features and services as are set forth on Our Website. The Provider may change such features and services from time to time, in its sole discretion.

“**SLA**” refers to the Provider’s Service Level Agreement as amended from time to time.

“**Subscription**” means a subscription to access the Service.

“**Term**” refers to the term of this Agreement, being the period commencing on the Effective Date until terminated in accordance with this Agreement.

#### 2 Agreement

- 2.1 This Agreement governs your use of the Service. This Agreement includes the Privacy Policy and Data Policy as though those policies were included in this Agreement.

#### 3 Service

- 3.1 Service: Provider will provide the Service to the Recipient pursuant to its standard policies and procedures then in effect. Some aspects of the Service, including but not limited to hosting services, may be provided through a third-party service provider.
- 3.2 Account: You may be required to register for an account to access or receive the Service (**Account**). You are responsible for maintaining the confidentiality of the username and password you designate during the registration of your Account or any update process, and you are solely responsible for all activities that occur under your username and password.

- 3.3 Scope: The Service is provided per the features outlined on Our Website and is subject to change. The features you have access to will depend on the Plan you select. An up to date list of the features available on each Plan can be found on Our Website. The Provider reserves the right, in its sole and absolute discretion and without liability to the Recipient, to make changes to the Service and Plans from time to time.
- 3.4 Addons: In addition to the Service, the Recipient may also opt in to receive nominated Addons. These Addons may change over time and are outlined in detail on Our Website. Any Addons purchased are subject to the same terms and conditions outlined in this Agreement.
- 3.5 No Charge Services: Provider may offer certain services at no charge, including but not limited to free accounts or trial use (**No Charge Services**). The Recipient's use of No Charge Services is subject to any additional terms specified by the Provider and is only permitted for the period designated by the Provider. The Provider may terminate the Recipient's right to use any No Charge Services at any time and for any reason at its sole discretion, without liability to the Recipient. To the maximum extent permitted by law, the Provider disclaims and excludes any obligation or liability whatsoever with respect to No Charge Services, including any support and maintenance, warranty and indemnity obligations.
- 3.6 Limited right to use: The Provider shall make the Service available to users nominated by the Recipient (**End Users**) solely for the Recipient's internal business operations. The Recipient must not (and must not authorise any third party to) modify, copy, distribute, transmit, display, perform, reproduce, publish, licence, create derivative works from, transfer, or sell any information, software, products or services obtained from the Service or otherwise commercialise the Service.

#### **4 Effective Date and Duration**

- 4.1 The Service is provided on a subscription basis per Schedule 1, or such other term agreed to in writing by the Provider, from the Effective Date (**Initial Term**).
- 4.2 Thereafter, this Agreement will automatically renew for subsequent periods equivalent to the Initial Term (and the Recipient will be charged at the then-current rates) unless either party notifies the other in writing of its intent not to renew 10 or more days before the conclusion of the then current term. If any initial recurring payment falls on the 29th, 30th or 31st of any given month, we may adjust the billing cycle to the 1st of the following month on the next billing cycle.
- 4.3 If the Recipient cancels its Subscription at any time before the conclusion of the then-current term or otherwise elects not to renew the Service, the Recipient will not be entitled to any credits or refunds for amounts accrued or paid prior to such termination and will otherwise continue to be liable for the full term of the Subscription.
- 4.4 No refunds or credits will be offered for unused software or services (or portion of unused software or services), nor will any user licences or services roll over to future periods.
- 4.5 The Recipient may have the option to export all data upon discontinuation of the Service using tools provided within the software.

#### **5 Pricing**

- 5.1 The Recipient agrees to the pricing outlined in Schedule 1 (or as otherwise agreed in writing by the Provider) as of the Effective Date and each subsequent renewal date. The Provider may add new services for additional fees and charges, or amend fees and charges for existing Plans, at any time in its sole discretion; however, any price changes or changes to your Subscription will apply no earlier than 30 days following notice to you. The currency that the Recipient will be charged in can be selected at the time of setting up the Account, subject to the currencies accepted by the Provider for payment (which are subject to change at the Provider's sole discretion).

- 5.2 Taxes (including but not limited to any form of sales tax) and fees: Payment of all duties, customs, fees or taxes associated with the sale of the Service is the responsibility of the Recipient. The Provider may also charge the Recipient transaction fees to recover the costs it incurs for card and other payment methods. Any applicable taxes, levies, and/or other transaction fees will be added to the final amounts charged, regardless of whether such fees are displayed by, or known to, the Provider at the time billing. All payments by the Recipient shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.
- 5.3 Depending on the Plan selected, if you add End Users during the Term, the Provider will charge you for the increased number of End Users pursuant to the then-current applicable rates. You agree that the Provider may bill your credit card or otherwise charge you for renewals, additional End Users and unpaid fees as applicable.

## **6 Billing and Payment Terms**

- 6.1 You will be billed in accordance with the details provided in Schedule 1.
- 6.2 When paying with a credit card, debit card or other non-invoice form of payment, fees are due prior to you receiving the Service. Where we issue an invoice for payment rather than direct debt, payment shall be due ten days after the invoice date (or such later date specified on the invoice (if any)).
- 6.3 Overdue payments may bear interest at a rate of 1.5% per month from the due date until paid in full. You will be responsible for all reasonable expenses (including legal or collection fees) incurred by us in collecting such late payments.
- 6.4 If any fees remain outstanding for 30 days, we may automatically suspend your use of the Service until you pay all outstanding fees. We will continue to charge you fees during suspension and you must pay all outstanding fees in order to resume the Service.

## **7 Professional Services**

- 7.1 Where applicable, professional services will be provided as a combination of onsite and remotely using audio and video conferencing facilities. Where on-site professional services are required, the Recipient will be required to cover travel, accommodation and out-of-pocket expenses at cost.
- 7.2 Additional professional services may be available at any time during the Term. The scope of such services is variable and will be agreed on a case by case basis. However, typical uses of such services include:
- (a) additional customization of Cascade;
  - (b) bespoke feature development;
  - (c) integration; and
  - (d) additional reporting or other outputs outside the scope of the Service.
- 7.3 The professional services rate applicable to the Term is AUD\$300 per hour unless otherwise specified by the Provider.

## **8 Service Level Agreement**

- 8.1 The Provider may in its sole discretion provide the Recipient with an SLA, in which case, in the event of any "Service Failure" as that term is defined in the SLA, the Provider will issue the Recipient such credits as are required by the SLA. Credits issued pursuant to the SLA apply to outstanding or future payments only and are forfeited upon termination of this Agreement. The Provider is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation,

termination of this Agreement. Credits issued pursuant to the SLA are the Recipient's sole remedy for the Service Failure in question.

## **9 Materials, Software, & IP**

- 9.1 **Materials:** The Recipient recognizes and agrees that: (i) the Materials are the property of the Provider or its licensors and are protected by copyright, trademark, and other intellectual property laws; and (ii) the Recipient does not acquire any right, title, or interest in or to the Materials except the limited and temporary right to use them as necessary for the Recipient's use of the Service.
- 9.2 **IP in General:** The Provider retains all right, title, and interest in and to the Service, including without limitation all software used to provide the Service and all logos and trademarks reproduced through the Service, and this Agreement does not grant the Recipient any intellectual property rights in or to the Service or any of its components.

## **10 Warranties**

- 10.1 **Recipient's Identity:** The Recipient warrants that: (i) it has accurately identified itself through its Account and will maintain the accuracy of such identification; and (ii) it is a corporation or other business entity authorized to do business pursuant to applicable law or an individual 18 years or older.
- 10.2 **Right to Do Business:** The Recipient warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.
- 10.3 **Disclaimers:** The Service is provided "as is" and as available, and the Provider makes no warranties, either express or implied, including without limitation any implied warranties of merchantability, fitness for a particular purpose, or noninfringement of intellectual property rights. The Provider does not warrant that the Service will perform without error or interruption.

## **11 Limitation of Liability**

- 11.1 In no event will the Provider be liable for any consequential, indirect, special, incidental, or punitive damages, regardless of the form of action (whether in contract, tort, strict product liability or otherwise) and even if the Provider has been advised in advance of the possibility of the damages in question and even if such damages were foreseeable.
- 11.2 The Provider's total liability to the Recipient, arising out of or related to this Agreement is limited to the lesser of (i) the aggregate total amount of fees paid by the Recipient for the Service in the month immediately preceding the claim, or (ii) AUD\$10,000.
- 11.3 If applicable law limits the application of the provisions of this section, the Provider's liability will be limited to the maximum extent permissible.

## **12 Indemnity**

- 12.1 The Recipient agrees to indemnify the Provider and its related parties, officers, agents and employees in respect of any and all claims, liabilities, losses, damages or costs arising from or relating to: (i) the use of the Service or any Materials by the Recipient or any End User nominated by the Recipient; (ii) a breach of this Agreement by the Recipient or any End User nominated by the Recipient; and (iii) a breach of any applicable law by the Recipient or any End User nominated by the Recipient.

## **13 Data Management**

- 13.1 **Access, Use, & Legal Compulsion:** Provider will: (i) use reasonable care to protect the confidentiality of the Recipient Data, (ii) not disclose Recipient Data to any third party (except our third party service providers or as otherwise permitted by our Privacy Policy or Data Policy), and (iii) limit access to Recipient Data to its employees, contractors,

advisors, third party service providers and agents. Upon notice to the Recipient, the Provider may disclose Recipient Data if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.

- 13.2 Retention & Deletion: Provider will retain all Recipient Data until specific written instruction is received from the Recipient to destroy or alter the data.
- 13.3 Data Aggregation: Certain features of the Service are powered by machine learning. To make these features available to the Recipient, Recipient Data may be anonymized and aggregated.
- 13.4 Recipient Data: The Provider will take reasonable steps to ensure that the Recipient's Data is protected against misuse and loss, and from unauthorized access, modification and disclosure.

## 14 Term & Termination

- 14.1 Termination by Provider: Provider may terminate this Agreement at any time for any reason by providing the Recipient with 30 days written notice.
- 14.2 The Recipient may terminate this Agreement at any time with 30 days' written notice to the Provider.
- 14.3 In the event of termination by either party, the Recipient will not be entitled to any credits or refunds for prepaid but unused Services or Subscription fees and the Recipient will otherwise continue to be liable for the full term of the Subscription (for example, if you elected to pay for the Subscription annually for a fixed term of 12 months and terminate after 6 months, you will not be entitled to a refund in respect of the remaining 6 months). Any termination of the Subscription will take effect from the beginning of the next billing cycle.
- 14.4 Upon termination of this Agreement for any reason, (i) the rights and licences granted to the Recipient and its End Users will cease immediately, (ii) the Recipient must immediately pay all outstanding fees, (iii) the Recipient and its End Users must cease using the Service and any Materials, (iv) the Recipient and its End Users must delete the Service and any Materials made available to them through the Service as well as any confidential information belonging to the Provider.
- 14.5 Effects of Termination: The following provisions will survive termination of this Agreement: (i) any obligation of the Recipient to pay for the Service rendered before termination; (ii) Sections 9, 10, 11, 12 and 13 of this Agreement; and (iii) any other provision of this Agreement that must survive termination to fulfil its essential purpose.

## 15 Miscellaneous

- 15.1 Notices (electronic only): Notices issued pursuant to this Agreement must be provided by email only. Provider may send notices to the Recipient's email address listed in the Recipient's Account. The Recipient may send notices to the email address of the Provider listed on Our Website. Any notices provided in accordance with this Agreement will be deemed received on the day of transmission if there is confirmation that the transmission was completed before 5:00pm on a Business Day, and alternatively, on the next Business Day. Email service is effective only if there is confirmation that it was sent in full and without error and the message is not rejected or undeliverable as evidenced by a message to that effect received by the sender.
- 15.2 Amendment: Provider may amend this Agreement from time to time by posting an amended version on Our Website and sending the Recipient written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the "**Proposed Amendment Date**") unless the Recipient first gives the Provider written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of the Recipient's next term following the Proposed Amendment

Date. The Recipient's continued use of the Service following the effective date of an amendment will confirm the Recipient's consent thereto.

- 15.3 Independent Contractors: The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other and neither may bind the other in any way.
- 15.4 No Waiver: Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than (i) by an authorized representative of that party; and (ii) in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.
- 15.5 Force Majeure: To the extent caused by force majeure, no delay, failure, or default will constitute a breach of this Agreement.
- 15.6 Assignment & Successors: The Recipient may not assign this Agreement or any of its rights or obligations hereunder without the Provider's express written consent, except in relation to a merger or acquisition of the Recipient into another entity. Except to the extent forbidden in the previous sentence, this Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.
- 15.7 Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of New South Wales, Australia, without reference to such state's principles of conflicts of law. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of New South Wales, Australia.
- 15.8 Severability: To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfil its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 15.9 Conflicts among attachments: Unless expressly stated otherwise in writing by the Provider, in the event of any conflict between the terms of this Agreement and those of the SLA, the terms of this main body will govern. In the event of any conflict between this Agreement and any Provider policy posted on Our Website, including without limitation the Data Policy, the terms of this Agreement will govern.
- 15.10 Entire Agreement: Unless expressly stated otherwise in writing by the Provider, this Agreement sets forth the entire agreement of the parties and supersedes all writings, negotiations, and discussions with respect to the subject matter hereof preceding the Effective Date. Neither party has relied upon any such prior or contemporaneous communications.

## **Schedule 1**

### **[Customize this per customer]**

- You will be billed at a rate of **US\$xx** per user per annum for the first **xx number** of users added to your Account.
- Subsequent users will be charged at a rate of **US\$xx** per user per annum.
- You agree to the purchase of **xx** minimum users for the duration of the Agreement.
- You agree to an Initial Term of **xx** months from the Effective Date.
- You agree to pay a one-time implementation fee of **US\$xx**

- You will be billed for the Initial Term immediately upon execution of this Agreement, with payment due within 30 days. Subsequent terms will be billed immediately upon renewal and also be due within 30 days of invoicing. Any other invoices issued under this Agreement will also have payment terms of 30 days.

**Signatures**

**Signed on behalf of Responsis Pty Ltd  
(Cascade Strategy)**

**Signed on behalf of [CLIENT NAME]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_