

Standard Terms of Service  
Bynder Pty Ltd

**IMPORTANT NOTICE ABOUT BYNDER PTY LTD STANDARD TERMS OF SERVICE**

Under the Bynder Pty Ltd Standard Terms of Service for the supply of the Product:

- The Customer gives warranties in relation to its Customer Data and Specifications.
- To the extent permissible by law, payment obligations are non-cancellable and all amounts paid are non-refundable.
- Bynder may charge fees for late payment of amounts Customer owes.
- All warranties and guarantees that Bynder does not expressly give in the Agreement are excluded. Where permitted, Bynder also limits its liability for consumer guarantees to supplying the relevant goods or services again or the cost of doing so. Bynder also excludes its liability for indirect or consequential loss.
- Customer is required to indemnify Bynder for any loss or damage Bynder may suffer as a result of its failure to comply with the Agreement or any applicable law or regulation and the use of the Product by Customer and Users that infringes on the intellectual property rights or data privacy rights of any third party.
- The Agreement will automatically renew for an additional 12 month period of the same Terms unless either Party provides written notice of its intention not to renew no less than 90 calendar days prior to the expiration of the Term.
- If the Agreement is terminated by Bynder for cause, Customer will not receive a refund on any prepaid amounts.

These standard terms of service ("**Terms**") apply to any Order Form between Bynder Pty Ltd ACN 656 251 213 ("**Bynder**") and the entity that has executed the Order Form ("**Customer**"). Bynder's Global Privacy Policy, Cookie Policy, and Service Level Agreement, located at [www.bynder.com/en/legal](http://www.bynder.com/en/legal) (collectively the "**Usage Policies**"), are hereby incorporated by reference into each Order Form, and all Order Forms together constitute this agreement (collectively referred to as the "**Agreement**")

**1. Order Form**

- 1.1 Pursuant to the terms of the Agreement, and from time to time during the term of the Agreement, Bynder may provide Customer with services or access to a product or application as specified in an order form (each, an "**Order Form**"). Each Order Form is incorporated into the Agreement by reference and will include a description of the services or a description of the product or application to be provided by Bynder and the fees payable to Bynder for the services, product, application, or related deliverables provided (the "**Product**"). To the extent that any conflict arises between the Agreement and an Order Form, the Order Form shall control. The parties acknowledge and agree that until an Order Form is executed by the parties, Bynder is not required to provide any services or access to any product or application hereunder by virtue of the Agreement alone.
- 1.2 Each Order Form includes a statement of work ("**SOW**") which describes the work requirements for the implementation of the Product and defines project-specific activities and deliverables.

**2. Product Access Terms**

- 2.1 Customer's subscription to the Product grants Customer access to and use of the number of portals, Users, modules, quantity of storage, and traffic volume specified in the applicable Order Form.
- 2.2 This Agreement governs the access to and use of the Product by Customer and any individual who accesses and/or uses the Product through Customer's account ("**User**").
- 2.3 Each User is assigned unique login credentials that grant the User access to the Product as provided in any applicable Order Form. Customer and Users are expressly forbidden from allowing another individual to access the Product using the same login credentials. Each User account must correspond solely to one individual person.
- 2.4 Access to and use of the Product is granted to Customer subject to its Users abiding by the terms of the Agreement, expressly including the Usage Policies.
- 2.5 Customer may provide User accounts to any individual, including, without limitation, to Customer employees, freelancers, employees of Customer affiliates and Customer's own clients. Customer is responsible for Customer's and its Users' access to and use of the Product, and Customer Data, as defined in Section 4.1.
- 2.6 Users may access the Product only if Customer has paid in full any applicable Subscription Fee.
- 2.7 The Product is designed and intended to hold Customer's promotional branding and marketing materials and its components.
- 2.8 Customer may access the Product and use any content in the Product for Customer's business purposes in accordance with this Agreement.
- 2.9 In case of violation of the Product Access Terms in this Section 2 by Customer, Bynder may, at its sole discretion, after a fair and reasonable remedy period depending on the severity of the violation, either suspend or terminate access to the Product.
- 2.10 The terms of the Agreement apply to all offers and contracts pursuant to which Bynder provides to Customer the Product. Customer agrees that purchases made by Customer through a User are valid purchase orders accepted by Bynder. Bynder will invoice Customer for the purchase beginning from the date that the purchase is made available to Customer.

**3. Ownership of Intellectual Property Rights**

- 3.1 Customer retains all of its rights to any Customer Data that Customer uploads, submits, posts or displays on or through the Product and Customer is responsible for protecting those rights. Customer grants to Bynder the right to access, use, or modify such Customer Data only as necessary to provide the Product and carry out its obligations under the Agreement.
- 3.2 Bynder retains all right, title, and interest in and to the Product and any documentation available in the Product. The source code is at all times owned by Bynder. Bynder grants to Customer all rights required for Customer to use the Product in accordance with the Agreement.
- 3.3 Except as expressly stated in the Agreement, no rights are granted by either Party to the other with respect to its intellectual property rights, and nothing in the Agreement shall be construed to grant to either Party any right, title, or other interest. There are no implied rights granted under the Agreement.

**4. Customer Data**

- 4.1 "**Customer Data**" means electronic data, text, documents, pictures, videos, or other materials uploaded to, generated and/or stored within the Product by Customer and Users.
- 4.2 All Customer Data is the sole responsibility of Customer. Any use of or reliance on any Customer Data or materials posted via the Product or obtained by Customer through the Product is at Customer's own risk. Bynder takes no responsibility and assumes no liability for Customer Data that Customer or any third party uploads, submits, posts or displays in or through the Product.
- 4.3 By using Customer Data in or through the Product, Customer warrants that: (a) Customer owns the Customer Data and/or has the right to use it and the right to grant Bynder the rights as provided in these Terms; (b) the Customer Data and Customer's use of the Customer Data in or through the Product does not violate the privacy rights, publicity rights, copyrights, trade secret rights, contract rights or any other rights of any individual or entity; (c) the

Customer Data and Customer's use of the Customer Data does not violate any applicable laws and does not advocate or could not reasonably be expected to induce illegal activity; (d) Customer Data and Customer's use of Customer Data is not threatening, abusive, harassing, stalking, defamatory, deceptive, false, misleading or fraudulent. Bynder reserves the right to immediately suspend Customer's account and take appropriate measures if Bynder receives a notice alleging that Customer Data infringes on third party intellectual property rights.

- 4.4 Bynder shall only access Customer Data: (a) upon the express consent or request of Customer; (b) to the extent required by applicable law or regulation or judicial proceeding; (c) to the extent Bynder believes in good faith that access is reasonably necessary to protect the property or rights of Bynder, third parties; and (d) to the extent reasonably necessary to provide the Product and carry out its obligations under the Agreement.

## 5. Acceptable Use Policy

- 5.1 Except as otherwise provided in our Responsible Disclosure Policy located at [www.bynder.com/en/legal/responsible-disclosure-policy](http://www.bynder.com/en/legal/responsible-disclosure-policy), Customer may not do any of the following while accessing or using the Product: (a) reverse engineer the Product or otherwise extract knowledge from or create derivative work of the Product; (b) test the vulnerability of any system or network or breach or circumvent any security or authentication measures, including without limitation, by scanning, penetrating testing and/or submitting the Product to bug bounty programs; (c) access or search the Product by any means (automated or otherwise) other than through interfaces that are provided by Bynder, unless Customer has been specifically allowed to do so in a separate written and executed agreement with Bynder; (d) use the Product to send altered, deceptive or false source-identifying information; or (e) interfere with or create an undue burden on the Product, including without limitation, by sending a virus, overloading or denying service, spamming or by scripting.

## 6. Bynder Responsibilities

- 6.1 Bynder shall meet the obligations set forth in the applicable SOW and provide support and maintenance services in accordance with the Service Level Agreement.
- 6.2 Except to the extent expressly set forth in any SOW, any measurements, specifications or other particulars provided in Bynder's drawings, images, catalogues, websites, offers, advertising material, standardization sheets, Product roadmap, etc. ("**Specification Estimates**") are estimates only, and Bynder shall not incur any liability, penalties, fines or other obligations if the Product fails to meet Specification Estimates for any reason.

## 7. Customer Responsibilities

- 7.1 Customer shall ensure that access to and usage of the Product are always in accordance with the Product Access Terms in Section 2.
- 7.2 Customer may not copy any documentation provided on the Product for anyone that is not an User.
- 7.3 Customer shall cooperate with Bynder to implement and maintain the Product, including without limitation, making available to Bynder in a timely manner any documents, data, designs, specifications or other information ("**Specifications**") reasonably requested by Bynder.
- 7.4 Customer expressly warrants that the Specifications it provides to Bynder are accurate and complete. Bynder shall not be liable for any problems or issues with the Product that are related to inaccurate Specifications. In the event Customer discovers it has provided Bynder with inaccurate Specifications, it shall notify Bynder immediately of the error.
- 7.5 In the event that Customer fails to provide Specifications in a reasonable timeframe or in accordance with a timeframe provided in any applicable Order Form, Bynder may halt work on any Products ("**Work Pause**") until such time as the Specifications have been provided. Bynder shall inform Customer in writing of the commencement of a Work Pause. If a Work Pause lasts for more than 90 calendar days, Bynder may terminate the Agreement For Cause as provided in Section 19.5.

## 8. Third Party Products & API

- 8.1 A web browser and internet connection are required to access and use the Product. The Product may contain the application programming interface ("**API**") designed to interoperate with Third Party Products. No integration of any Third Party Product with the Product is required to use the Product. Subject to Section 8.3 below, by integrating the Product with any Third Party Product, Customer acknowledges that Bynder does not warrant or support any such integration, whether or not a Third Party Product is designated by Bynder as "certified" or "recommended" or otherwise. Bynder will have no liability whatsoever for damages, losses, or claims that arise from these integrations.
- 8.2 If Customer elects to enable, access, or use a third party's products, applications, services, software, networks, systems, directories, websites, databases, or information (collectively "**Third Party Products**"), Customer's access to and use of such Third Party Product is subject to the terms, disclaimers and policies of that third party provider. Bynder does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Third Party Products. Bynder cannot guarantee the availability (or continued availability) of any Third Party Product. Bynder shall not be liable for any damage or loss actually or allegedly caused by or in connection with Customer's enablement, access, or use of any such Third Party Products, or Customer's reliance on the privacy practices, data security processes, or other policies of such Third Party Products. Customer irrevocably waives any claim against Bynder with respect to such Third Party Products.
- 8.3 Bynder provides the following levels of support with regard to any integrations: (i) maintaining Bynder's API in accordance with the API endpoint usages stated in Bynder's API documentation; (ii) determining whether the API is functioning in accordance with the API documentation if an integration reported by Customer is malfunctioning; (iii) rectifying API malfunctions discovered under Section 8.3 (ii) that are the result of a deviation on Bynder's part from the API documentation.

## 9. Embedded Components

- 9.1 "**Embedded Components**" means third party products, applications, services, software, networks, systems, directories, websites, databases and information which are obtained or derived from a third party source outside of Bynder and made available to Customer in the Product.
- 9.2 Provided that it has no detrimental effect on the Product, Bynder may change such Embedded Components at any time. Unless otherwise expressly stated in the Agreement, Bynder is liable for any Embedded Components used in the Product.

## 10. Data Protection and Processing of Personal Data

- 10.1 In providing the Product, Bynder will comply with Bynder's Global Privacy Policy, in effect from time to time and available at [www.bynder.com/en/legal/privacy-policy](http://www.bynder.com/en/legal/privacy-policy). Bynder bases the processing of the Personal Data of Users on legitimate interest under applicable data protection law, to provide Customer with the necessary functionality required during the use of the Product and to develop and improve the Product(s).
- 10.2 To the extent that Personal Data is processed using the Product, the Parties acknowledge that Bynder is a Processor and Customer is a Controller and each Party shall comply with their respective statutory and regulatory data protection obligations. In as far and to the extent the EU General Data Protection Regulation applies to any Processing of Personal Data by Bynder on behalf of the Customer in connection with this Agreement, this Processing of Personal Data will be governed by Bynder's standard Data Processing Addendum ("**DPA**") available at <https://www.bynder.com/en/legal/data-processing-addendum/>.
- 10.3 Any capitalised terms not defined in these Terms are defined as set out in the Global Privacy Policy.

## 11. Service Analyses

- 11.1 Bynder endeavours to continually improve the Product(s). In doing so, Bynder may collect metrics and information regarding Customer's use of the Product, including evaluating how Users use the Product ("**Usage Data**"). Usage Data is used to develop new features or improve existing features. The

processing of Usage Data is based on Bynder's legitimate interest to analyse trends in order to assess and improve the overall user experience in the Product(s) to the extent it is necessary for Bynder's legitimate interest under, and in accordance with applicable data protection law.

## 12. Pricing, Payment Terms, and Refunds

- 12.1 Unless otherwise provided, all prices are in AUD.
- 12.2 All prices are exclusive of goods and services tax (GST), value added tax (VAT) and other government taxes, banking fees, and regulatory fees that have been or are later imposed. Each Party agrees to pay any tax assessed to it by a competent tax authority. Customer shall remit payment in full to Bynder regardless of any taxes that are required to be deducted or withheld.
- 12.3 All payments are due 30 calendar days after receipt of an invoice. Customer shall be deemed to have received an invoice if Bynder has sent it to the email on the Execution Top Sheet of the Order Form.
- 12.4 If Customer uses a purchase order or similar system ("**PO**"), it must issue a PO upon execution of the Agreement, any renewal thereof, and any future add-on purchase. Any delay or failure in issuing a PO will not relieve Customer of its payment obligations under the Agreement. For the avoidance of doubt, Customer's general terms and conditions on a Purchase Order shall not apply.
- 12.5 If Customer fails to timely satisfy its payment obligations, Customer shall owe two percent per month or the highest rate permitted by law, whichever is lower, on the outstanding and undisputed amount without the need for Bynder to issue a demand or notice of default.
- 12.6 Bynder reserves the right to refer any invoiced, overdue and undisputed payment obligations (or any portion thereof) for collection.
- 12.7 After five business days' written notice, Bynder may suspend access to the Product if Customer has failed to timely satisfy its payment obligations.
- 12.8 Except as expressly set forth herein or in an applicable Order Form and to the extent permitted by law, all payment obligations are non-cancellable and all amounts paid are non-refundable.

## 13. Payment Disputes.

- 13.1 Any dispute of an invoice must be made by providing written notice to Bynder detailing the reasons for the dispute within 20 calendar days of receipt of the invoice. Customer must timely pay in full any undisputed amount under the invoice.
- 13.2 In the event a dispute arises between the Parties related to (a) whether amounts were properly charged; or (b) whether the Product, deliverables or services were properly provided or performed, Section 20 shall apply.

## 14. Confidentiality

- 14.1 "**Confidential Information**" means (a) information relating to the Agreement that is not generally known to the public or that constitutes a trade secret; (b) information that is owned, developed or otherwise acquired by either Party, including the Party's financial data, business plans, customer information, software, programming, systems and use documentation, technical information, technology, designs, ideas, inventions, data, data formats and files, and all copies and tangible embodiments thereof; (c) software originating from Bynder, and (d) other information that would reasonably be considered confidential.
- 14.2 While performing its obligations under the Agreement, either Party may deliver Confidential Information to the other. If a Party receives the Confidential Information of the other, such receiving Party shall (a) use such Confidential Information solely for the purpose of carrying out its obligations according to the Agreement, (b) hold such Confidential Information in confidence and take reasonable precautions to protect such Confidential Information (including all precautions that such Party employs with respect to its own confidential materials), (c) not divulge any such Confidential Information or any information derived therefrom to any third party and (d) only divulge such Confidential Information to those of its employees, representatives, and affiliates who have a reasonable need to know such information and are subject to confidentiality obligations at least as stringent as those in this Section 14.
- 14.3 The provisions of Section 14.2 may not apply (a) to any Confidential Information that (i) is or becomes (through no improper action or inaction by the receiving Party or any of its employees, representatives, or affiliates) generally available to the public; (ii) was in possession of or known by the receiving Party prior to receiving it from the disclosing Party; (iii) was properly disclosed to the receiving Party without any obligation of confidentiality; or (iv) was discovered or created by the receiving Party without reliance on such Confidential Information (as shown by the records of receiving Party); or (b) to disclosures to the extent required by applicable law or court order, provided that the receiving Party (1) uses reasonable efforts to limit such disclosure and to obtain confidential treatment or a protective order with respect thereto, (2) has allowed the disclosing Party to participate in the proceedings related to such legal or court-ordered requirement (to the extent reasonably practical) and (3) cooperates reasonably with the efforts of the disclosing Party to contest or limit the scope of such required disclosure.

## 15. Publicity

- 15.1 Each Party hereby gives its consent to publication of the other Party's name and logo for marketing purposes.

## 16. Warranties

- 16.1 Bynder hereby warrants to Customer that, as of the Effective Date: (a) it has the full right, power and authority to enter into, and fully perform its obligations under the Agreement; (b) it shall comply with all laws and regulations applicable to the performance of its obligations under the Agreement; and (c) it has not infringed upon the intellectual property rights of any third parties in granting Customer access to the Product for use in accordance with the Agreement.
- 16.2 Customer hereby warrants to Bynder that, as of the Effective Date: (a) it has the full right, power, and authority to enter into and fully perform its obligations under the Agreement; (b) it shall comply with all laws and regulations applicable to the performance of its obligations under the Agreement; and (c) it and Users will use the Product in accordance with the Agreement.
- 16.3 **EXCEPT AS EXPLICITLY STATED IN THE AGREEMENT, THE PRODUCT IS PROVIDED BY BYNDER ON AN "AS-IS" BASIS. TO THE EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES OR GUARANTEES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED OR CONTRACTUAL OR STATUTORY, ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITATION, BYNDER DOES NOT WARRANT THAT (a) THE OPERATION AND/OR USE OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE; (b) THE PRODUCT WILL PERFORM IN EVERY OPERATING ENVIRONMENT; (c) ALL DEFICIENCIES OR ERRORS IN THE PRODUCT ARE CAPABLE OF CORRECTION; OR (d) THE PRODUCT MEETS CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY DISCLAIMED.**

## 17. Indemnifications

- 17.1 To the extent not prohibited by law, Bynder agrees to indemnify and hold harmless Customer, its affiliates, and its and their officers, directors, employees, agents, and representatives from and against any and all liabilities, expenses, damages and costs, including but not limited to, reasonable legal fees and costs, related to all third party claims, charges and investigations that the Product, as delivered by Bynder and used as permitted under the Agreement, infringes on or misappropriates the intellectual property rights of a third party.
- 17.2 To the extent not prohibited by law, Customer expressly agrees to indemnify and hold harmless Bynder, its affiliates, and its and their officers, directors, employees, agents, and representatives (collectively, the "**Bynder Entities**"), from and against any and all liabilities, expenses, damages and costs, including but not limited to, reasonable legal fees and costs, related to all third party claims, charges and investigations related to: (a) Customer's failure to comply with the Agreement (including, without limitation, the Usage Policies) or any applicable law or regulation, and (b) the use of the Product by Customer and Users that infringes on the intellectual property rights or data privacy rights of any third party.

- 17.3 In order to be entitled to an indemnity, the indemnified Party must: (a) provide the indemnifying Party with prompt written notice, in no event more than 30 calendar days after becoming aware of such a claim; (b) give the indemnifying Party sole control and authority over the defence and/or settlement of such claim; and (c) provide the indemnifying Party with proper and full information and reasonable assistance to defend and/or settle any such claim; and (d) take reasonable steps to mitigate its loss.
- 17.4 This Section 17 provides the Parties' exclusive remedy for claims for any indemnity.

## 18. Limitations of Liability

- 18.1 EXCEPT FOR SECTION 18.4, NOTHING IN THE AGREEMENT SHALL LIMIT A PARTY'S (a) LIABILITY, OR WARRANTY OBLIGATIONS HEREUNDER WITH RESPECT TO CLAIMS OF (i) BODILY INJURY AND DEATH, OR (ii) GROSS NEGLIGENCE OR WILFUL MISCONDUCT; AND (b) INDEMNITY OBLIGATIONS AS PROVIDED IN SECTION 17.
- 18.2 NON-EXCLUDABLE PROVISION. WHERE ANY LEGISLATION IMPLIES OR IMPOSES A GUARANTEE, TERM, CONDITION, WARRANTY, UNDERTAKING, INDUCEMENT OR REPRESENTATION IN RELATION TO THE AGREEMENT AND BYNDER IS NOT ABLE TO EXCLUDE THAT GUARANTEE, TERM, CONDITION, WARRANTY, UNDERTAKING, INDUCEMENT OR REPRESENTATION (**NON-EXCLUDABLE PROVISION**), AND BYNDER IS ABLE TO LIMIT THE REMEDY OF THE CUSTOMER FOR A BREACH OF THE NON-EXCLUDABLE PROVISION, THEN THE COMPANY'S LIABILITY FOR BREACH OF THE NON-EXCLUDABLE PROVISION IS LIMITED TO (AT THE COMPANY'S ELECTION): (a) IN THE CASE OF GOODS, THE REPAIR OR REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS (OR THE PAYMENT OF THE COST OF DOING SO); AND (b) IN THE CASE OF SERVICES, THE SUPPLYING OF THE SERVICES AGAIN (OR THE PAYMENT OF THE COST OF DOING SO).
- 18.3 LIMITATION ON AMOUNT OF LIABILITY. SUBJECT TO BYNDER'S OBLIGATIONS UNDER THE NON-EXCLUDABLE PROVISIONS AND WITHOUT PREJUDICE TO SECTION 18.1, IN NO OTHER EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY EXCEED THE SUBSCRIPTION FEE PAYABLE BY CUSTOMER TO BYNDER IN THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.
- 18.4 LIMITATION ON INDIRECT LIABILITY. SUBJECT TO BYNDER'S OBLIGATIONS UNDER THE NON-EXCLUDABLE PROVISIONS, NEITHER PARTY MAY BE HELD LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE DAMAGES, LOST OR ANTICIPATED REVENUES OR PROFITS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING FROM ANY CLAIM RELATING DIRECTLY OR INDIRECTLY TO THE AGREEMENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH PARTY WAS ADVISED OF OR OTHERWISE AWARE OF THE LIKELIHOOD OF SUCH DAMAGES.
- 18.5 If a third party seeks an injunction claiming that the Product infringes the intellectual property rights of a third party, and that injunction is not dismissed within 30 calendar days, or if a court of competent jurisdiction issues a judgment that the Product infringes upon the intellectual property rights of a third party, Bynder shall, at its sole discretion: (a) obtain for Customer the right to continue using the Product; (b) replace or modify the Product so that it does not infringe such proprietary rights and may be used by Customer; or (c) reimburse to Customer any prepaid fees that relate to the infringing Product.
- 18.6 The Bynder Entities shall have no liability whatsoever to Customer for any expenses, damages and costs related to the non-functioning of the Product (whether in part or in whole) due to unavailability of the internet or due to changes in legislation or technical restrictions that limit access to or functionality of the Product. In the event of a change in laws or regulations in any of the countries in which Customer has Users, including changes to laws and regulations on cloud computing services, data protection and privacy, or Software as a Service, which impact Bynder's ability to offer the Product, Customer accepts that Bynder may limit the availability of the Product in a manner to be determined in Bynder's sole discretion, and Customer hereby releases Bynder from any liability relating to such limitation. Bynder makes no warranties or guarantees whatsoever in relation to the availability of the Product in China. Neither the Service Level Agreement nor any other service agreement applicable to Customer's use of a Bynder Product will apply to use of such Product by Users within China.

## 19. Term and Termination

- 19.1 An Order Form under the Agreement will become effective on the Effective Date and will continue in full force and effect for the Term specified in any applicable Order Form.
- 19.2 Upon expiration of the Initial Term (as defined in an applicable Order Form), and subject to Section 21.8, the Agreement shall automatically renew for an additional 12 month period on the same Terms applicable immediately prior to expiration of the Agreement unless either Party provides written notice of its intention not to renew no less than 90 calendar days prior to the expiration of the current Term. For the avoidance of doubt, if Customer and/or Users continue to access and use the Product after the expiration of the Agreement, the same Terms applicable immediately prior to expiration of the Agreement, including payment obligations, will continue to apply.
- 19.3 Either Party may terminate the Agreement, including any applicable Order Form, effective immediately upon written notice in the event of: (a) dissolution, liquidation, bankruptcy or insolvency of the other Party; (b) a Material Breach of the Agreement that has not been cured within 30 calendar days of receiving written notice of the breach; or (c) violation of the Usage Policies (each of sections (a)-(c), termination "**For Cause**"). "**Material Breach**" means (i) failure to timely satisfy payment obligations, breach of confidentiality obligations, infringement on the intellectual property rights of a third party, and failure to remedy such breach in accordance with the Agreement, (ii) breach of applicable laws, (iii) repeated non-material breaches cumulatively amounting to a material breach, and (iv) failure to keep current all billing information to the extent that it interferes with invoicing.
- 19.4 If the Agreement is terminated by Customer For Cause (as provided in Section 19.3), Bynder will refund the pro-rata amount of any pre-paid fees from the date of the event constituting Cause.
- 19.5 If the Agreement is terminated by Bynder For Cause, Customer will not receive a refund on any prepaid amounts.
- 19.6 Upon termination or expiration of the Agreement for any reason, Bynder shall immediately terminate Customer's access to the Product. All outstanding amounts owed to Bynder will immediately become due and payable. All payment obligations survive termination of the Agreement including any applicable Order Form.
- 19.7 Within 90 calendar days of termination or expiration of the Agreement, Customer may request in writing that Bynder return to Customer its Customer Data, in which case Bynder shall return Customer Data in a commonly accepted export format within 90 calendar days of the request. Customer will be invoiced on a time and material basis for work needed to return its Customer Data, unless Customer terminated the Agreement For Cause, in which case, Bynder will be responsible for the cost of returning Customer Data.
- 19.8 If Bynder does not receive a request to return Customer Data pursuant to Section 19.7, all Customer Data will be destroyed after 180 calendar days of termination or expiration of the Agreement, unless otherwise required by law, or on automatic back-ups. Upon written request, Bynder shall provide a certificate to Customer certifying that Customer Data has been destroyed.
- 19.9 Upon termination or expiration of the Agreement the provisions of the Agreement shall terminate except those sections a Party would expect to survive termination.

## 20. Governing Law and Jurisdiction

- 20.1 The Agreement will be governed by the laws of Victoria, Australia. Each party submits to the jurisdiction of the courts in Victoria, Australia in connection with matters concerning this Agreement and any connected agreement.
- 20.2 The Parties agree that any dispute related to the Agreement must first be submitted for at least one negotiation session and each Party shall use all reasonable endeavours to participate in the negotiation session in good faith to resolve the dispute before the dispute may be submitted for arbitration. If the dispute remains unresolved for more than 60 calendar days after the first negotiation session has begun, the dispute may proceed to arbitration.

- 20.3 The Parties agree that any and all disputes arising out of or related to the Agreement shall be exclusively submitted for final and binding arbitration pursuant to the Australian Centre for International Commercial Arbitration (ACICA) Rules of Arbitration in effect on the date of commencement of arbitration. The costs of arbitration (excluding each Party's legal fees and costs) shall be split between the Parties, unless the arbitration award provides otherwise. The arbitral tribunal shall consist of three arbitrators, unless the amount of claim as specified by the claimant in the arbitration does not exceed AUD\$500,000, in which case the arbitral tribunal shall consist of one arbitrator. The place of arbitration shall be Victoria, Australia. The language to be used in the arbitration proceedings shall be English. The arbitrator(s) shall not have the authority to award punitive or exemplary damages and the Parties expressly waive their rights to any such damages. The award may be confirmed and enforced in any court of competent jurisdiction in Victoria, Australia and Customer expressly consents to personal jurisdiction in that venue. Each Party waives any right it has to object to such proceeding being brought in those courts based on inconvenient forum.
- 20.4 Each Party acknowledges that the other Party is entitled to seek injunction and/or other equitable relief without proof of special damages, either to a court having jurisdiction in relation to such relief or order or under the ACICA Rules of Arbitration for expedited arbitration.
- 20.5 The Parties explicitly waive the right to claim consolidation of arbitral proceedings, excluding applicable cross-claims, and agree such a consolidation would be a deviation from the agreed arbitral proceedings.

## 21. General Provisions.

- 21.1 Any notice required or permitted to be delivered to either of the Parties according to the Agreement shall be (a) delivered according to such Party's Contact Information, as specified in the applicable Order Form; and (b) deemed effective (i) upon receipt, when delivered personally or by courier; (ii) the day delivered, if delivered by a reputable overnight delivery service; or (iii) if delivered via email, the earlier of written confirmation receipt or one business day, unless the sender receives an automated message that the email delivery has failed. Each Party is responsible for apprising the other Party of any changes in Contact Information.
- 21.2 The Agreement, including for the avoidance of doubt, the Global Privacy Policy, Usage Policies, Data Processing Addendum and each Order Form, constitutes the entire agreement between the Parties as to the subject matter hereof and supersedes all prior documents, negotiations and drafts of such parties with respect to such subject matter, whether written or verbal. No provision of the Agreement may be construed against either Party by reason of the drafting or preparation thereof.
- 21.3 Any term of the Agreement may be amended, waived, terminated or discharged only with the written consent of both Parties. The failure of either Party to insist upon the performance of any of the terms or conditions contained in the Agreement, and the failure of either Party to exercise any right hereunder, may not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such rights.
- 21.4 If any provision of the Agreement is held to be unenforceable, the Parties shall renegotiate each such provision in good faith in order to reflect the original intent of the Parties. If the Parties cannot agree upon an enforceable replacement for such provision, then (a) such provision shall be excluded from the Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) thereafter, the Agreement shall be enforceable in accordance with its terms.
- 21.5 Neither this Agreement nor any of the rights or obligations under this Agreement, may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any Party hereto without the prior written consent of the other Party hereto, and any such assignment without such prior written consent shall be null and void; provided, however, that the Parties may assign all of their rights and obligations under this Agreement to any one (1) of either their direct or indirect wholly-owned subsidiaries or affiliates following an acquisition, for reasons of corporate restructuring or internal reorganization, but only to the extent that such assignment would not result in an impairment of the other Party's rights under this Agreement. Any attempt to assign the Agreement other than in accordance with this Section 21.5 shall be null and void and of no legal force or effect. The Agreement shall be binding upon and shall inure to the benefit of the Parties permitted successors and assigns. Notwithstanding anything to the foregoing in this Section 21.5, Bynder may assign the right to receive money hereunder without the prior written consent of Customer.
- 21.6 Neither Party may be held liable for its failure to perform hereunder or for any loss or damage due to causes beyond its reasonable control, including governmental requirements, inability to obtain required export licenses, work stoppages, fire, civil disobedience, embargo, war, terrorism, riots, rebellions, earthquakes, strikes, floods, water and the elements, inability to security equipment, raw materials or transport or similar occurrences. Either Party may terminate the Agreement immediately upon written notice, if the other Party is unable to perform its obligations under the Agreement due to causes stated in this Section 21.6 for more than 30 calendar days.
- 21.7 Neither the Agreement nor any provision contained herein may be construed as creating or constituting a partnership, joint venture, or agency relationship between the Parties. For the avoidance of doubt, neither Party has the power or authority to, and no Party may, assume or create any obligation or responsibility on behalf of the other.
- 21.8 Bynder may revise these Terms from time to time, and the most current version will be available at [www.bynder.com/en/legal](http://www.bynder.com/en/legal). If the revision, in Bynder's sole discretion, is material, Bynder will notify Customer of such change, and Customer does not wish to be bound by such revision, Customer must notify Bynder at [legal@bynder.com](mailto:legal@bynder.com) within 30 calendar days of receiving the updated Terms of Customer's objection and Customer will remain subject to the prior Terms until termination or expiration of any applicable Term.
- 21.9 To the extent of any inconsistency between various documents making up the Agreement, the provisions of the hierarchy shall be: (i) Order Form; (ii) Terms; (iii) Usage Policies; and (vi) any other applicable terms.
- 21.10 The Agreement is made for the benefit of the Parties and is not intended to benefit or be enforceable by any third party. The rights of the Parties to terminate, rescind, or amend the Agreement, or to reach any settlement relating to the Agreement, are not subject to the consent of any third party.

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