

1. Your Acceptance

Thank you for choosing to use Tan Ninety's products and services.

- a. This agreement (**Agreement**) governs any Tan Ninety products and services (**Services**) provided to you through the Tan Ninety websites at tanninety.com.au or 1task.com.au (**Site**), online application suite (**Tan Ninety Platform**) or that Tan Ninety otherwise provides or makes accessible to you and the seats (being the named individual users of the Services) that you nominate (**End Users**). This Agreement does not apply if you have executed a hard copy agreement with Tan Ninety for the provision of the Services.
- b. This Agreement is between Tan Ninety Pty Ltd ABN 50 148 918 576 (**Tan Ninety**) and the person or entity agreeing to these terms (**you**).
- c. You warrant that you are over the age of eighteen and have the power and authority to enter into and perform your obligations under this Agreement. If you enter this Agreement on behalf of your company, then "you" in the remainder of this Agreement means your company, and you warrant that you are properly authorised to bind your company to this Agreement.
- d. You agree to the terms of this Agreement when you submit an Order, create an account on the Site or clicking on the "I agree" button that is presented to you at the time of submitting your Order. If you do not agree with this Agreement, do not click the "I agree" button and stop using and uninstall the Services. The Agreement becomes binding on the date that Tan Ninety accepts your Order or first makes the Services available to you, whichever is earlier (**Commencement Date**).

2. Scope

- a. This Agreement comprises of:
 - i. these terms and conditions (**General Terms**);
 - ii. the terms specified in the relevant order form completed pursuant to section (12) (**Order**);
 - iii. the terms applicable to each Service set out in product modules in Part B of this Agreement (**Product Modules**);
 - iv. the *Privacy Policy* and any other Tan Ninety policies and attachments posted on the Site or Tan Ninety Platform, each of which may be modified from time to time (**Tan Ninety Policies**).
- b. If any of the terms listed in this section (2)(a) are inconsistent, the terms first listed will have priority.

3. Services

- a. The Services include:
 - i. all services, technology, data, information, programs, material and other content that Tan Ninety makes accessible to you through the Site or the Tan Ninety Platform, including on any desktop, mobile telephone

- or handheld device (**Device**) owned or controlled by you or your End Users (**Subscription Services**); and
- ii. any other services that Tan Ninety otherwise provides to you, but excludes:
 - iii. data, information, templates, content, code, video, images or other materials or information of any type that you upload to the Tan Ninety Platform, or otherwise provide to Tan Ninety in connection with the Services (**Your Data**);
 - iv. Your Modifications (as defined in section (8)(a));
 - v. shared materials created by Tan Ninety, you or other users of the Services that are published or made accessible through the Site and Tan Ninety Platform, including in the “Public Library” (**Shared Materials**); and
 - vi. Sensor Hardware supplied by Tan Ninety in accordance with the Sensor Product Module.
- b. Tan Ninety reserves the right to make changes to the Subscription Services in its sole discretion from time to time, including the functionality, performance, user interface, usability, and the service description published on the Site or that Tan Ninety provides to you (**Service Description**), and you agree that this Agreement will apply to any changes or updates to the Subscription Services. Subject to Tan Ninety’s obligations under existing Orders, Tan Ninety may discontinue any Service in whole or part at any time without notice or liability to you.
- c. Tan Ninety will make the Subscription Services available to you and your End Users solely for your internal business operations during the subscription period specified in your Order (**Subscription Term**) and in accordance with any usage restrictions specified in the applicable Order and Product Module.
- d. Unless permitted by law or as otherwise expressly permitted in this Agreement, you must not (nor may you authorize any third party to):
- i. rent, lease, distribute, license, sublicense, sell, transfer, assign, distribute or otherwise provide access to the Subscription Services to a third party;
 - ii. reproduce, modify, adapt, or create derivative works of, the Subscription Services or remove or tamper with any disclaimers or other legal notices in the Subscription Services;
 - iii. reverse engineer, disassemble, decompile, transfer, exchange or translate the Subscription Services or otherwise seek to obtain or derive the source code or API;
 - iv. incorporate the Subscription Services into any service that you provide to a third party; or
 - v. use the Subscription Services to provide services, or to create a service that competes with the Subscription Services.
- e. You must promptly notify Tan Ninety in writing of any breach of the above conditions of use.

- f. You are solely responsible for ensuring that your Devices and systems are compatible with the Subscription Services and meet any minimum requirements specified in the applicable Service Description.

4. No-Charge Services

Tan Ninety may offer certain Services to you at no charge, including free accounts, trial use, and access to pre-release and beta products (**No-Charge Services**). Your use of No-Charge Services is subject to any additional terms that Tan Ninety specifies and is only permitted for the period designated by Tan Ninety, or if no such period is designated, 30 days. Tan Ninety may terminate your right to use No-Charge Services at any time and for any reason in Tan Ninety's sole discretion, without liability to you.

5. Your Accounts

- a. You must register an account in order to access or receive Services and to receive notices and information from Tan Ninety (**Customer Account**).
- b. All End Users must establish a named account on the Tan Ninety Platform (**End User Account**).
- c. You may specify one or more administrators who may elect to have password protected rights to access administrative account(s) (**Admin Account(s)**) to administer the Subscription Services and End User Accounts.
- d. You are responsible for your Customer Account and all End User Accounts and Admin Accounts under your Customer Account (together, **Your Accounts**). Your responsibilities include:
 - i. maintaining the confidentiality of the passwords associated with each of Your Accounts;
 - ii. ensuring that only those individuals authorised by you have access to Your Accounts; and
 - iii. ensuring that all activities that occur in connection with Your Accounts comply with this Agreement.

6. Intellectual Property Rights

- a. Tan Ninety and its licensors have and retain all rights, title and interest, including all intellectual property rights, including copyright, trade or service marks, designs, patents, rights in circuit layouts, domain names and trade names anywhere in the world (**Intellectual Property Rights**) in and associated with the Services.
- b. You and your licensors retain ownership of all rights, including Intellectual Property Rights, in Your Data.

- c. You grant to Tan Ninety, or must procure the grant to Tan Ninety of, a non-exclusive, worldwide, irrevocable, royalty-free licence (including the right to sublicense) to use and develop the Intellectual Property Rights in Your Data to the extent required to:
 - i. enable Tan Ninety to exercise its rights and discharge its obligations under this Agreement, including to provide or support the Services, and to offer to provide you with any other goods or services (including other products); and
 - ii. generate aggregated data sets, reports and analysis relating to technical data about customer use of the Subscription Services in a form that is anonymised and does not identify you or any individual (**Aggregated Data**). You acknowledge and agree that Tan Ninety will own all Intellectual Property Rights in Aggregated Data.
 - iii. Tan Ninety may use Aggregated Data to analyse, improve, support and operate the Services and for related internal business purposes.

7. Integration with Third Party Products

You may choose, in your sole discretion, to integrate the Services with third party products or services (**Third Party Products**). If you choose to use any Third Party Products in connection with the Services, Tan Ninety may provide such third parties access or use of Your Data to the extent required for the interoperation of the Services with the Third Party Product. Your use of any Third Party Product will be subject to the applicable agreement between you and the relevant third party provider. Tan Ninety is not responsible for any access to or use of Your Data by such third party providers. TAN NINETY DISCLAIMS ALL LIABILITY FOR ANY THIRD PARTY PRODUCTS AND FOR THE ACTS OR OMISSIONS OF ANY THIRD PARTY PROVIDERS OF THIRD PARTY PRODUCTS.

9. Downloading Shared Materials

If you download Shared Materials, to the extent permitted by law:

- a. your use of Shared Materials is at your own risk;
- b. Tan Ninety excludes all liability to you and any third party in respect of your use of Shared Materials; and

- c. it is your responsibility to assess (and if necessary, obtain professional advice on) the suitability of Shared Materials for your purposes and any modifications required to meet those purposes.

10. Confidentiality

- a. In this Agreement, **Confidential Information** of a party means information of a confidential nature including information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any Shared Materials, or any other information which is in the public domain other than through a breach of confidence.
- b. Each party (**Recipient**) must keep confidential and not disclose to any third party Confidential Information of the other party, with the exception that a Recipient may disclose such Confidential Information:
 - i. to:
 - a. a third party with the prior written consent of the other party; and
 - b. the Recipient's, or affiliates or subsidiaries of the Recipient's, officers, agents, professional advisers, employees, contractors, subcontractors, auditors and insurers; and provided that such recipients are subject to confidentiality obligations no less stringent than under this Agreement in relation to that Confidential Information; and
 - ii. where the Recipient is legally compelled to do so by any government or any governmental, administrative, regulatory, fiscal or judicial body, department, commission, authority, tribunal, or agency, provided that it first uses commercially reasonable efforts to give the other party written notice prior to disclosure if permitted by law.
- c. Each party must only use Confidential Information of the other party for the purpose for which it was disclosed in connection with this Agreement.

11. Privacy

- a. In this section, **Personal Information** has the meaning given under the *Privacy Act 1988 (Cth)*, or the meaning given to any similar term under other applicable privacy or data protection laws that is used to describe information relating to an individual.
 - i. *You shall refer to the Privacy Policy published on <https://www.tanninety.com.au>*

12. Orders

To use the Services you must

- i. execute a paper-based quote or order form (**Quote/Order Form**) provided by Tan Ninety which sets out the relevant information in section (12)(a).

14. Warranties and Limitation on Liability

a. Tan Ninety warrants that:

- i. Subscription Services (other than No-Charge Services) will conform in all material respects with the applicable Service Description for the duration of the Subscription Term; and
- ii. Tan Ninety will use commercially reasonable efforts to prevent introduction of viruses, Trojan horses or similar harmful materials (**Malicious Code**) into the Services. To avoid doubt, Tan Ninety is not responsible for any Malicious Code introduced by third parties, or by you or your End Users.

Provided that you notify Tan Ninety in writing of any non-compliance under this section (14)(a) promptly after becoming aware of such non-compliance, Tan Ninety will use commercially reasonable endeavours to correct the non-compliance within a reasonable period. If Tan Ninety has not remedied the non-compliance by the date that is forty-five (45) days after your written notice, either party may terminate the affected Services.

THIS SECTION (14)(a) CONSTITUTES YOUR EXCLUSIVE RIGHTS AND REMEDIES, AND TAN NINETY'S SOLE LIABILITY, IN CONNECTION WITH THE WARRANTIES IN THIS SECTION (15)(a). YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF WARRANTIES REQUIRED BY STATUTE, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

- b. Except as expressly stated in this Agreement or required under any applicable law, the Services and any other goods or services provided by Tan Ninety to you are provided on an "as is" basis, and Tan Ninety does not make any representation or warranty (express or implied) in respect of the Services or any other goods or services provided by Tan Ninety to you, including, without limitation, any implied warranty of merchantability, of fitness for a particular purpose, that operation of the Services will be uninterrupted or error free, that all defects will be corrected, or that Tan Ninety will maintain Your Data without loss or corruption.
- c. If you reside in Australia and are a "consumer" for the purposes of the Australian Consumer Law, then the provisions in section (2) of Appendix 3 will apply.
- d. To the maximum extent permitted by law, in no event will Tan Ninety be liable to you or any third party in connection with this Agreement, whether in contract, tort, equity, statute or otherwise for:
 - i. your misuse of the Services, acts or omissions of your personnel;
 - ii. Service outage or interruption, or any damage or losses, arising from networks or websites outside of Tan Ninety's control;

- iii. any injury, damage to property, or loss to any person in relation to your use of the Services;
 - iv. subject to section (11), breach of any law applicable to your business activities, including but not limited to any work health and safety or food safety law, in connection with your use of the Services; or
 - v. loss of profits, loss of revenue, loss of anticipated savings, loss of use, loss or corruption of data, costs of delay or procurement of substitute or replacement goods and services, business interruption, failure of security mechanisms, loss of goodwill, and any other form of indirect, incidental, special or consequential or punitive damages.
- e. To the maximum extent permitted by law, in no event will either party's aggregate liability for any claims in connection with this Agreement exceed the total Fees actually paid by you under this Agreement during the twelve month period immediately prior to the event giving rise to the liability.

15. IP Indemnity

- a. Subject to section (15)(c), Tan Ninety will defend you against any third party claim alleging that the Subscription Services infringes any copyright or any patent (a "**Claim**"), and will indemnify you against any damages and costs finally awarded by a court of competent jurisdiction or any settlement amounts agreed in writing by Tan Ninety, provided that you provide Tan Ninety:
 - i. prompt written notice of any such claim;
 - ii. the exclusive right to control and direct the investigation, defence, or settlement of such claim; and
 - iii. all reasonably necessary cooperation and assistance in the defence and investigation of the Claim at Tan Ninety's expense.
- b. In the event of a Claim, Tan Ninety may, in its sole discretion:
 - i. procure the right for your continued use of the Subscription Services in accordance with this Agreement;
 - ii. replace the Subscription Services with a similar service with materially equivalent functionality; or
 - iii. terminate your Order in respect of the Subscription Services affected by the Claim and refund any prepaid, unused Fees in respect of the terminated Subscription Services.
- c. The indemnity obligation in this section (15) will not apply to the extent that any Claim arises:
 - i. in connection with your use of No-Charge Services;
 - ii. as a result of misuse of the Subscription Service or use of the Subscription Service with any third party data (including any Shared Materials), or in combination with any Third Party Products other than that for which the Subscription Services were designed or provided;
 - iii. as a result of modification to the Service made by any party other than Tan Ninety or its subcontractors; or

- iv. in connection with circumstances covered by your indemnification obligations under section (8)(d).
- d. THIS SECTION (15) CONSTITUTES YOUR EXCLUSIVE RIGHTS AND REMEDIES, AND TAN NINETY'S SOLE LIABILITY, FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH ANY SUBSCRIPTION SERVICES.

16. Term and Renewal

- a. This Agreement commences on the Commencement Date and expires when all Subscription Terms have expired, and all other Orders have been completed, unless otherwise terminated in accordance with this Agreement (**Term**).
- b. Unless otherwise set out in the relevant Order, each Subscription Term will automatically renew for periods equal to the initial Subscription Term at the then-current rates unless:
 - i. you elect not to renew your Subscription Term by providing written notice to Tan Ninety at least 30 days prior to the expiry of the then-current Subscription Term, in which case your subscription will expire at the end of the then-current Subscription Term; or
 - ii. Tan Ninety provides you notice that the Subscription Term will not renew at any time prior to the expiry of the then-current Subscription Term, in which case your subscription will expire at the end of the then-current Subscription Term.

17. Termination and Suspension

- a. You may terminate Subscription Services at any time by following the online process specified on the Site for cancelling your Subscription Term. If you choose to terminate this Agreement in accordance with this clause, you will not be entitled to any credits or refunds as a result of such termination.
- b. Either party may terminate this Agreement in whole or part, including any particular Order(s), immediately upon providing notice to the other party if:
 - i. the other party is in material breach of this Agreement and does not cure the breach within thirty (30) days after written notice of the breach; or
 - ii. if the other party ceases to operate, has an administrator appointed, enters a deed of company arrangement or other form of administration involving one or more of its creditors, is subject to an order that it be wound up, declared bankrupt, or that a liquidator or receiver be appointed, or otherwise becomes insolvent or is unable to meet its financial obligations.
- c. Tan Ninety may suspend the Services (including any of Your Accounts) immediately without providing you notice, or terminate this Agreement in

whole or part, including any particular Order(s), immediately upon notice to you, if:

- i. you are in material breach of this Agreement more than two times during the Term notwithstanding any cure of such breaches;
 - ii. you have failed to pay any Fees within sixty (60) days after the relevant due date;
 - iii. you infringe Tan Ninety's Intellectual Property Rights; or
 - iv. your use of the Services breaches any applicable law or any of the Tan Ninety Policies.
- d. If Tan Ninety suspends your use of the Services pursuant to its rights under this Agreement:
- i. Tan Ninety will continue to charge you Fees during the suspension period and you must pay any outstanding Fees prior to Tan Ninety resuming the provision of the Services; and
 - ii. Tan Ninety may, in its sole discretion, refuse to resume the provision of the Services until it is satisfied that you have cured the breach which caused the suspension to Tan Ninety's reasonable satisfaction.

18. Consequences of Termination

- a. Upon the date that this Agreement or any Order expires or is terminated, then:
- i. subject to any further access to the Subscription Services granted by Tan Ninety under section (18)(b)(ii), you and your End Users must cease all access and use of the relevant Subscription Services, Your Modifications and any Shared Materials;
 - ii. if the Agreement or any Order is terminated:
 1. by you for Tan Ninety's breach, then Tan Ninety will refund any prepaid, unused Fees that relate to the terminated Subscription Services; or
 2. by Tan Ninety for your breach, then you must pay to Tan Ninety any and all outstanding Fees due for the remaining duration of any Subscription Term, which will become immediately due and payable upon termination;
 - iii. you must delete any software or other materials that Tan Ninety has provided to you, or made accessible for download by you, for use in connection with the Services (including any Shared Materials) from any Devices; and
 - iv. you must return, or if requested by Tan Ninety, destroy all of Tan Ninety's Confidential Information in your possession or control and provide written certification to Tan Ninety that you have done so.
- b. Within thirty (30) days after the effective date of expiry or termination of this Agreement, you must notify Tan Ninety if you would like Your Data returned to you or deleted. If you notify Tan Ninety that you elect to have Your Data:

- i. deleted (or fail to provide Tan Ninety notice of your election), then Tan Ninety will delete Your Data by removing pointers to it on Tan Ninety's active and replication servers and overwriting it over time; or
 - ii. returned, Tan Ninety will, at your election, use commercially reasonable endeavours to deliver Your Data to you, or provide you access to the relevant Subscription Service (other than a No-Charge Service) to access Your Data for a period of up to 30 days following the date of termination or expiry provided that you continue to pay Tan Ninety the then-current rates for the applicable Subscription Services in respect of that period.
- c. The following provisions will survive any termination or expiration of this Agreement: sections (8)(c), (8)(d), (9), (10), (13), (14), (15), (18), (20) and any other sections which by intent or meaning have validity beyond termination or expiration of this Agreement.

19. Amendments

Tan Ninety may update or modify the terms of this Agreement from time to time, including the Tan Ninety Policies and any other referenced documents (including the Service Descriptions) to respond to changes in Tan Ninety's products, services, business or as required by law, by giving notice to you. If an update or modification to the terms of this Agreement materially reduces your rights, you may terminate this Agreement upon providing notice to Tan Ninety within 30 days after the date of Tan Ninety's notice to you under this section, with such termination to be effective on the date of your notice or the effective date of the update or modification, whichever is later.

20. General

- a. Unless otherwise agreed in your Order, this Agreement is governed by the laws of Western Australia and the parties agree to submit to the exclusive jurisdiction of the courts in Western Australia.
- b. If any provision of this Agreement is held to be invalid, illegal, or unenforceable that provision shall be deemed omitted to the extent that it is invalid, illegal, or unenforceable and the remainder of this Agreement will be construed in a manner as to give greatest effect to the original intention of this Agreement.
- c. The failure of either party to exercise any right provided in this Agreement in any instance will not be deemed to be a waiver of such right.
- d. Except where an exclusive remedy is specified in this Agreement, the exercise by either party of any remedy, including termination, will be without

prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

- e. Other than in respect of an obligation to pay any Fee or other amount, neither party will be liable for non-performance or inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, pandemic, riot, labour condition, governmental action, power interruption, telecommunication, data and internet disturbance) that was beyond the party's reasonable control (**Force Majeure Event**).
- f. Your use of any website or software that is not provided by Tan Ninety to access or download the Services will be governed by the terms and conditions applicable to that website or software. Tan Ninety is not responsible for any consequences resulting from the use of such website or software, including but not limited to any damage to your property, including your Device, or the transfer of any computer virus or similar malicious code, except to the extent such consequences are caused by the Service.
- g. Any notices to you may either be posted on the Site or Tan Ninety Platform, or given in writing (which may be by email) to the address last notified by you to Tan Ninety. Any notices to Tan Ninety, and any questions, concerns or complaints relating to the Services must be in writing and addressed to:
 - i. info@tanninety.com.au
- h. You agree to use your commercially reasonable endeavours to resolve any dispute arising out of or relating to this Agreement with Tan Ninety prior to resorting to any external dispute resolution process or court proceedings.
- i. This Agreement, and any rights granted hereunder, must not be transferred or assigned by either party (**assigning party**) without the prior express written consent of the other party, except:
 - i. to a third party participating in a merger with, or acquisition of the assigning party; or
 - ii. in respect of Tan Ninety, to any of Tan Ninety's affiliates or subsidiaries.
- j. This Agreement contains the entire understanding between the parties regarding the subject matter of this Agreement. To avoid doubt, resellers of the Services are not authorised to modify the terms of this Agreement or make any representations, undertakings or other legally binding commitments on behalf of Tan Ninety.