

End User Licence Agreement – Nullify

The platform and its related software, services, websites and tools (together the Platform) is owned and operated by Evalify Pty Ltd ABN 32 664 474 980 (Provider). This End User Licence Agreement (**Agreement**) governs access to and use of the Platform by you, the individual using the Platform, and any legal entity on whose behalf you are acting. By clicking “I agree” (or a similar button) that is presented to you in relation to this Agreement, or by using or accessing the Platform, you indicate your assent to be bound by this Agreement. The Provider may update this Agreement from time to time, and your continued use of the Platform constitutes acceptance by you of any updates.

1. Definitions

In this Agreement unless inconsistent with the context or subject matter the following terms have the corresponding definitions:

- (a) **Account:** an account established on the Platform which enables you to access and use various features on the Platform.
- (b) **ACL:** the Australian Consumer Law (as set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth)).
- (c) **Applicable Law:** any laws governing or affecting the arrangements contemplated by this Agreement.
- (d) **Intellectual Property Rights:** all present and future rights conferred by law in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.
- (e) **Loss:** any loss, liability, cost (including legal costs on a solicitor and own client basis), charge, expense, tax or damage of any nature whatsoever, including lost profits, loss of goodwill, loss of business, loss of production and any other special, incidental, exemplary, compensatory or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence).
- (f) **Materials:** all materials, documentation and information (whether reduced to written form or otherwise) provided to you by the Provider at any time.
- (g) **Personnel:** the directors, officers, employees, contractors, suppliers, advisers or agents of a party.
- (h) **Platform:** the platform managed by the Provider as described above.
- (i) **Services:** the provision of the Platform and any ancillary services provided by the Provider which are not the subject of another agreement between you and the Provider.
- (j) **User Data:** all data, files, works and materials uploaded to or stored on the Platform by you, transmitted to the Platform at your instigation, or supplied by you to the Provider for uploading to, transmission by or storage on the Platform.
- (k) **you:** means the person or entity that accesses the Platform and ‘your’ shall be interpreted accordingly.

2. Interpretation

In this Agreement the following rules of interpretation apply, unless the contrary intention appears or context otherwise requires:

- (a) Headings and subheadings are for convenience only and do not affect the interpretation of this Agreement.
- (b) Words denoting the singular include the plural and words denoting the plural include the singular.
- (c) The word ‘person’ includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any government agency.
- (d) A reference to a body (other than a party to this Agreement), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions.

- (e) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this Agreement.
- (f) Specifying anything in this Agreement after the terms 'include', 'including', 'includes', 'for example', 'such as' or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.
- (g) A reference to writing or written includes email.
- (h) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

3. Licence

- (a) Your use of this Platform is pursuant to a limited, non-exclusive, non-sublicensable, revocable, non-transferable or sublicensable licence granted by the Provider strictly in accordance with this Agreement.
- (b) You acknowledge and agree with the Provider that you will not, as a result of being granted a non-exclusive licence, acquire any rights (including without limitation Intellectual Property Rights) in the Platform other than the non-exclusive rights granted in accordance with this Agreement.
- (c) The Platform is available only to, and may only be used by, individuals who can form legally binding contracts under Applicable Laws. If you do not qualify, please do not use the Platform.
- (d) In order to use this Platform, you require the equipment and connections necessary to access the World Wide Web. Without limitation, you are responsible for:
 - (i) the provision of any such connection or access to the World Wide Web;
 - (ii) the payment of any fees associated with such connection or access (such as those charged by an internet service provider or other online service); and
 - (iii) the provision of all equipment necessary for you to make any such connection to the World Wide Web.

4. Account

In order to use the Platform you will need to create an Account. In creating and using your Account:

- (a) you must not use false or misleading information and you must update your details should they have changed from the last time you used the Platform. The Provider is not responsible for any Loss (including misdirected notifications) which may occur because you have not provided the Provider with up to date, accurate or complete information;
- (b) you may be required to choose a username and password. You are responsible for the security of your login information and the Provider will assume that anyone using your Account is authorised to do so by you and you are responsible for their actions. Under no circumstances will unauthorised access and use of your Account reduce your liability to the Provider; and
- (c) you must notify the Provider immediately if you become aware of any unauthorised use of your Account or other security breach.

5. System Integrity & User Conduct

- (a) You must not use the Platform to:
 - (i) impersonate or otherwise misrepresent your identity or affiliation with any other person or entity;
 - (ii) input, upload, post, disclose or transmit any material that is defamatory, obscene, indecent, lewd, violent, abusive, insulting, threatening, harassing, fraudulent or misleading or deceptive;
 - (iii) input, upload, post, disclose or transmit any material which is subject to Intellectual Property Rights of the Provider or any third party or breaches any duty of confidence or contractual obligation owed to the Provider or any third party;

- (iv) input, upload, post, disclose or transmit any material that is unlawful, dangerous or violates any law;
 - (v) send junk, obscene, indecent, offensive or threatening electronic mail or electronic mail in contravention of the *Spam Act 2003* (Cth) to any person or company;
 - (vi) upload any files that contain viruses, Trojan horses, worms, time bombs, corrupted files or any other similar software or programs that may damage the operation of the Platform or another's computer or property of another;
 - (vii) sub-license, rent, lease, transfer or attempt to assign the rights in the Platform or Materials to any other person and any dealing in contravention of this sub-clause shall be ineffective;
 - (viii) falsify or delete any attributions, legends, or other proprietary designations of origin or source of any content of the Platform;
 - (ix) conduct, display, or forward surveys, contests, pyramid schemes, or chain letters;
 - (x) interfere with or disrupt the Platform or servers or networks connected to the Platform, or disobey any requirements, procedures, policies, or regulations of networks connected to the Platform;
 - (xi) attempt to gain unauthorised access to the Platform or computer systems or networks connected to the Platform through any means;
 - (xii) commit fraud or forgery (or attempted forgery), harass or abuse any individual, or harm minors in any way;
 - (xiii) collect, store, input, upload, post, disclose or transmit personal information or data about others, including, without limitation email addresses; or
 - (xiv) contravene or breach any Applicable Laws.
- (b) You acknowledge and agree that you must not:
- (i) directly or indirectly copy, reproduce, share, republish, frame, download, transmit, distribute, sell, licence, sublicense, reverse engineer, decompile, translate, alter, modify, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Platform or any software, documentation or data related to the Services (except to the extent expressly permitted by the Provider or authorised within the Platform);
 - (ii) create derivative works based on the Platform (except to the extent expressly permitted by Provider or authorised within the Platform);
 - (iii) use the Platform for any purpose other than the purpose for which it was designed and intended;
 - (iv) commit or permit any act which may interfere with the use of the Platform by any other user;
 - (v) breach or violate any of the Provider's policies;
 - (vi) infringe any third party's rights or violate any Applicable Laws;
 - (vii) create liability for the Provider;
 - (viii) damage the credibility or integrity of the Platform or the Provider;
 - (ix) copy, store or otherwise access any information contained in the platform for purposes not expressly permitted in this Agreement;
 - (x) tamper with, hinder the operation of or make unauthorised modifications to the Platform or any part thereof; or

- (xi) damage, modify, alter, adapt or amend the Platform or any content within the Platform or any part thereof in any way.

6. Third party integration

- (a) This Platform may require third party integrations (**Third Party Programs**). Those Third Party Programs are not under the control of the Provider and the Provider is not responsible for the content, availability, functionality and defects of the Third Party Programs or any webcasting or other transmission received from any such Third Party Programs.
- (b) Neither the Provider nor its Personnel recommend or endorse the content of any Third Party Programs which may be linked to or from the Platform or services of any third party organisations mentioned or described on this Platform. You acknowledge that you use any Third Party Programs at your own risk.

7. Intellectual Property Rights

- (a) The Provider shall at all times retain all title, rights and interest in and to the Platform and Materials, including:
 - (i) the Intellectual Property Rights subsisting in each;
 - (ii) any customisations of, and modifications to, the Platform and Materials;
 - (iii) information or data, source codes and other information technology relating to or connected with the Services or Materials;
 - (iv) marketing information relating to or connected with the Platform or Materials; and
 - (v) technical information, including trade secrets, drawings, plans, encryptions, codes and product descriptions and information relating to or connected with the Platform,however the Provider does not own the User Data.
- (b) All company names and logos contained within the Platform are the trade marks, service marks or trading names of their respective owners, including the Provider.
- (c) You acknowledge and agree that no right, title or interest in any of the Intellectual Property Rights in the Platform is transferred or granted to you, other than the rights granted expressly by this Agreement.
- (d) You must not infringe, reduce the value of or otherwise damage the Intellectual Property Rights of the Provider.
- (e) You hereby grant to the Provider an irrevocable, worldwide, perpetual, transferable, non-exclusive license to use, communicate, display, copy, reproduce, store, distribute, publish, export, adapt, edit and translate the User Data to the extent reasonably required for the performance of the Provider's obligations (including to provide the Services) and the exercise of the Provider's rights under this Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement.
- (f) You warrant that:
 - (i) you own or have the necessary licenses to transmit such User Data through the Platform and that any User Data provided will not infringe any third party rights (including Intellectual Property Rights or confidentiality rights) nor give rise to a liability to make royalty or other payments to a third party;
 - (ii) the upload of the User Data to the Platform and use of the User Data will not:
 - i) breach the provisions of any law, statute or regulation;
 - ii) infringe the Intellectual Property Rights or other legal rights of any person; or
 - iii) give rise to any cause of action against the Provider, in each case in any jurisdiction and under any Applicable Law.

8. Information Provided and Privacy

The User Data will be used in accordance with this Agreement, the Provider's Privacy Policy and the terms the Provider has with the relevant licensor of whom you have been provided access to the Platform through.

9. Warranties

- (a) The Provider does not warrant that:
 - (i) the Platform will provide any function for which it is not specifically designed;
 - (ii) the Platform will provide any minimum level of performance; or
 - (iii) the Platform will be virus free or free of performance anomalies or be operational without interruption.
- (b) You warrant to the Provider that at the time of entering the Platform, you were not relying on any representation made by the Provider.
- (c) Except as expressly provided to the contrary, and to the extent permitted by law, the Provider makes no representations or warranties of any kind, express or implied as to the operation of your access to or the results of your access to the Platform (including any related or linked websites) or the correctness, accuracy, timeliness, or completeness or reliability of the Materials included within the Platform.

10. Disclaimer

- (a) Without limiting the other terms of this Agreement, you acknowledge and agree that:
 - (i) the Provider does not guarantee continuous, uninterrupted or secure access to the Platform or that any information provided by the Provider is up to date and accurate;
 - (ii) the Provider does not warrant that the use of the Platform will result in you achieving any specific result, or that the use of the Platform is suitable for any purpose;
 - (iii) the Provider does not warrant that:
 - i) the Platform will be able to find and monitor all vulnerabilities in all dependencies (including open source dependencies) included or used by your application or code;
 - ii) the Services will be able to fix any vulnerabilities discovered using the Services;
 - iii) the Platform will not throw any false positive; and
 - iv) the Platform is, or will remain suitable or lawful for your use;
 - (iv) while the Provider endeavours to keep the Platform up to date and build on the Platform's open source vulnerability database, you acknowledge that the Provider does not provide any legal or other professional advice in relation to the Services and that the Provider does not guarantee that the Platform is a complete source of all vulnerabilities and license issues for all dependencies or that it is relevant or suited to all the dependencies included or used by your code or applications;
 - (v) the Provider makes no guarantees that there will be no loss or corruption of your User Data at any time;
 - (vi) whilst best endeavours will be made to ensure the accuracy of the Platform and any output provided by the Platform, the Provider cannot guarantee the accuracy, currency, suitability, reliability and availability of the Platform and any content gained within;
 - (vii) the information provided on and in the Platform is general information and is not in the nature of financial, legal or any form of advice. You should obtain advice before making any decision based on the Platform;
 - (viii) the Provider reserves the right to withdraw, amend, update or change the functionality or content of the Platform at any time, without notice; and
 - (ix) complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Platform will be wholly free from defects, errors and bugs.
- (b) The Provider makes no guarantees that there will be no loss or corruption of your User Data at any time, or that data backups will be readable, or that any User Data is able to be

backed up or recovered. Unfortunately, data loss happens you agree to hold harmless and release the Provider for any Loss you suffer in the event that your User Data is lost.

- (c) The Provider will maintain appropriate technical and organisational measures to protect the security of your User Data. The Provider does not guarantee that unauthorised third parties will never be able to defeat those measures to access your User Data for improper purposes. You acknowledge that there are risks inherent in internet connectivity that could result in the loss of privacy, confidential information and your User Data. Accordingly, any User Data that is transmitted by you is transmitted solely at your own risk.
- (d) The World Wide Web exists across open public networks that are neither secure nor private. Accordingly, you acknowledge and accept the risk that any communication to or from the Platform may be intercepted, used or modified by third parties.

11. Exclusion and Limitation of Liability

- (a) The Provider provides the Services on an “as is” basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. Subject to the other terms of this clause 11, the Provider excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in this Agreement to the maximum extent permitted by law.
- (b) Subject to the other terms of this clause 11, the Provider’s maximum aggregate liability to you for any Loss or damage or injury arising out of or in connection with this Agreement, including any breach by the Provider of this Agreement however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual charges paid by you to the Provider under this Agreement in the 1-month period preceding the matter or event giving rise to the claim.
- (c) Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Provider in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
- (d) If the Provider is liable to you in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, the Provider’s total liability to you for that failure is limited to, at the option of the Provider the resupply of the services or the payment of the cost of resupply.
- (e) Without limitation to the other terms of this clause 11, the Provider excludes any liability to you, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential Loss arising under or in connection with this Agreement.
- (f) Notwithstanding anything else in this clause 11, the Provider’s liability will be reduced to the extent the Loss or damage is caused by or contributed to by you or your Personnel.
- (g) Without limiting the above, you release the Provider from any Loss arising from the use of, or reliance on the Platform, whether or not caused by any negligent act or omission by the Provider including but not limited to:
 - (i) loss of use, data or profits arising out of or in connection with the use of or the inability to use the Platform;
 - (ii) your reliance on the Platform;
 - (iii) the statements or actions of any Personnel of the Provider;
 - (iv) any unauthorised access to or alteration of your transmissions or data;
 - (v) any information that is sent or received or not sent or received;
 - (vi) any failure to store or loss of data or files or other content;
 - (vii) your fraudulent, negligent or otherwise unlawful behaviour;
 - (viii) any delay or interruption of the Platform;
 - (ix) any Loss incurred as a result of a third party obtaining your access details, either with or without your knowledge; and

- (x) any Loss in relation to the supply of services on or in relation to this Platform and any advertisement placed on the Platform or information made available on the Platform.

12. Indemnity

- (a) You indemnify the Provider against, and hold the Provider harmless from, any Losses (including any direct, indirect, special or consequential Losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the Provider arising out of or in connection with:
 - (i) your breach or negligent performance or non-performance of this Agreement;
 - (ii) the supply, suspension, restriction or cancellation of your access to the Platform;
 - (iii) your violation of any Applicable Laws;
 - (iv) your actual or alleged infringement of the Provider's Intellectual Property Rights;
 - (v) any reduction in value or damage to the Intellectual Property Rights of the Provider caused by or contributed to by your acts and/or omissions;
 - (vi) the enforcement of this Agreement by the Provider; and
 - (vii) any claim made against the Provider for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with your use of the Services.
- (b) You must make payments under this clause 12:
 - (i) in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by law; and
 - (ii) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.
- (c) Except where expressly stated to the contrary in this Agreement, the rights of a party under this clause 12 are in addition to any other rights available to that party whether those rights are provided for under this Agreement or by law.
- (d) It is not necessary for the Provider to incur expense or make payment before enforcing a right of indemnity under this clause 12.
- (e) The indemnities in this clause 12:
 - (i) are continuing obligations on you, independent from your other obligations under this Agreement and survive termination or expiry of this Agreement; and
 - (ii) are absolute and unconditional and unaffected by anything which otherwise might have the effect of prejudicing, releasing, discharging or affecting your liability.

13. Updates

- (a) You acknowledge and agree that this Agreement applies to updates, supplements and add on components of the Platform.
- (b) The Provider reserves the right to discontinue the provision of the Services at any time without notice.

14. Breach and Termination

- (a) If the Provider reasonably considers that you are using the Platform in breach of this Agreement, the Provider reserves the right to remove any infringing User Data from the Platform and the Provider shall have no liability to you.
- (b) The Provider reserves the right to deny you access to, or use of, all or part of the Platform, without prior notice, if you engage in any conduct that the Provider believes, in its sole discretion:
 - (i) violates any term or provision of this Agreement or any other terms or policies of the Provider in place from time to time;
 - (ii) violates the rights of the Provider or any third party; or
 - (iii) is otherwise inappropriate for continued access and use of the Platform.
- (c) The Provider may terminate your right to access to, or use of, all or part of the Platform, immediately on written notice to you if you:

- (i) commit a breach of this Agreement, which is capable of remedy, and you fail to remedy the breach within a reasonable time of a written notice to do so;
 - (ii) commit a breach of this Agreement which cannot be remedied;
 - (iii) are repeatedly in breach of this Agreement; or
 - (iv) are the subject of a bankruptcy order, or become insolvent, or make any arrangement or composition with or assignment for the benefit of your creditors, or if you go into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over your assets.
- (d) On termination or expiry of this Agreement your right to use the Platform shall cease.
 - (e) Termination of your access to the Platform shall be without prejudice to the rights of the parties accrued before termination. All restrictions imposed on you, disclaimers and limitations of liability set out in this Agreement will survive termination.

15. General

- (a) The Provider may from time to time amend, update, or change the Platform, including this Agreement, without prior notice.
- (b) This Agreement constitute the entire agreement between you and the Provider with respect to the Platform, and the Agreement replaces all prior or contemporaneous understandings or agreements, written or oral, regarding the Platform.
- (c) No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.
- (d) If any provision of this Agreement is found to be invalid or unenforceable, that provision shall be enforced to the maximum extent possible and will be deemed deleted to the extent that it is not enforceable, and the remaining provisions of this Agreement shall remain in full force and effect.
- (e) The failure by the Provider to insist upon or enforce strict performance of any of this Agreement will not be construed as a waiver of any right or remedy of the Provider in respect of any existing or subsequent breach of this Agreement.
- (f) No waiver by a party of a provision of this Agreement is binding unless made in writing.
- (g) The laws of New South Wales, Australia govern this Agreement. You hereby consent and submit to the non-exclusive jurisdiction and venue of the Courts of New South Wales and the Commonwealth of Australia for any cause of action relating to or arising under this Agreement.
- (h) The Provider operates the Platform in Australia. Information contained on the Platform may not be appropriate or available for use in other locations. If you access the Platform from other locations, you do so at your own initiative and you are solely responsible for compliance with local laws.
- (i) This Agreement shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.
- (j) The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under this Agreement.
- (k) The rights and remedies of a party to this Agreement are in addition to the rights or remedies conferred on the party at law or in equity.
- (l) You may not assign any part of your rights, title, interest and obligations pursuant to this Agreement to a third party without obtaining the Provider's prior written consent, which shall not be unreasonably withheld. The Provider may assign the Provider's rights, title, interest and obligations pursuant to this Agreement to a third party without your consent or notice to you.
- (m) Clauses 5, 7, 10, 11, 12 and 14 will survive termination or expiry of this Agreement together with any other clause which by its nature is intended to survive termination or expiry of this Agreement.