

1. **Access**
 - 1.1 Subject to these Terms and Conditions, Findation grants to you a non-transferable right to access and use the Platform during the Term for the Permitted Use.
 - 1.2 Your right to access and use the Platform is a non-exclusive right. It doesn't restrict us granting rights to any other person.
2. **Support**
 - 2.1 We will, at our cost and within a reasonable time, use our reasonable endeavours to correct any manifest error, defect, malfunction or nonconformity in the Platform that you report to us in writing or in respect of which we become aware.
 - 2.2 We will use our reasonable endeavours to ensure that the Platform is available to you via the internet (but it is your responsibility to ensure that you have access to the internet to access the Platform).
 - 2.3 Notwithstanding clause 2.2, we don't promise or represent that you (or any other person) will have continuous access to the Platform. There may be circumstances outside of Findation's control that arise from time to time which will result in the Platform not being available to you.
 - 2.4 As examples, but without limiting the effect of clause 2.3, we won't be liable if the Platform is not accessible due to:
 - 2.4.1 scheduled maintenance that we tell you about;
 - 2.4.2 your failure to follow reasonable instructions;
 - 2.4.3 any of your acts or omissions (including those by your employees, contractors, officers or agents); or
 - 2.4.4 any of your materials, software, equipment or internet access.
3. **Client Co-Operation**
 - 3.1 You must ensure that our support personnel are provided with all information, facilities, assistance and accessories reasonably required by us to enable us and them to comply with our obligations under these Terms and Conditions.
 - 3.2 Notwithstanding the provisions of clause 3.1, we have no obligation to provide support services other than by remote access.
4. **Fees and Payment**
 - 4.1 You must pay the Fee to us in consideration for your access to and use of the Platform.
 - 4.2 You must pay the Fee monthly in arrears, thirty (30) days after the end of the month to which the Fees relate.
 - 4.3 If you do not pay the Fee in accordance with clause 4.2, then we may charge interest on any overdue amount at the Rate.
5. **Intellectual Property**
 - 5.1 **Ownership**
 - 5.1.1 Title to and ownership of the Platform (including all modifications, additions or improvements to the Platform) and all related Intellectual Property Rights, will remain with us. No title or ownership of the Platform is transferred to you or to any other person as a result of these Terms and Conditions or your registration to use the Platform.
 - 5.1.2 You agree that neither you nor any of your Personnel have any right to (and you will ensure that none of them or you will) mortgage or charge the Platform or use the Platform or any right under these Terms and Conditions as surety or collateral.
 - 5.2 **Modifications**
 - 5.2.1 You agree that you will not (and will ensure that none of your Personnel will) modify the whole or any part of the Platform or combine or incorporate the whole or any part of the Platform in any other program or system, except as authorised by us in advance in writing.
 - 5.2.2 Any modification of the Platform by you or your Personnel pursuant to clause 5.2.1 must be separately approved by us prior to you or your Personnel commencing development, testing and go-live of such modification.
 - 5.3 **Reverse engineering**

You agree that neither you nor any of your Personnel will reverse assemble or reverse compile the Platform or any part of the Platform.
 - 5.4 **Unauthorised Conduct**
 - 5.4.1 You must not (and must ensure that your Personnel do not) engage in conduct which may result in the unauthorised copying, disclosure or loss of proprietary rights in any part of the Platform.
 - 5.4.2 You must conduct yourself and your business (and ensure that your Personnel conduct themselves and their business) in such a manner that it shall not detrimentally affect the reputation and marketability of the Platform.
 - 5.5 **Security**

You must (and must ensure that your Personnel) use your and their reasonable endeavours to protect the Platform at all times from unauthorised access, use or damage.
 - 5.6 **Infringements**
 - 5.6.1 Each Party must promptly inform the other Party upon becoming aware of any third party infringement of Findation's Intellectual Property Rights and/or challenges to Findation's ownership of and/or the Client's right to use the Platform or any other matter that may reasonably be expected to have a material effect on the Platform.
 - 5.6.2 The Parties must cooperate and provide reasonable assistance to each other to pursue or defend the matters described in clause 5.6.1, or with respect to any other matters relating to the Platform.
 - 5.6.3 We warrant that, to the best of our knowledge, neither the Intellectual Property Rights in the Platform nor the use of the Platform on the Domains in accordance with these Terms and Conditions will infringe the intellectual property rights of any third party.

- 5.7 **Client Intellectual Property Rights**
- 5.7.1 You grant us (for yourself and on behalf of your Related Entities) a non-exclusive, royalty free licence for the Term to feature your and their products and brands in advertisements, promotions and marketing initiatives agreed between the Parties from time to time (**'Approved Campaigns'**).
- 5.7.2 We acknowledge that this clause does not operate to transfer any ownership in your and your Related Entities' products and brands to us.
- 5.7.3 You undertake to provide us with all marketing text, brand images, promotional material and logos that we reasonably require for an Approved Campaign and we will make no claim, representation or warranty or use any theme, slogan, artwork, copy, literature or other advertising or marketing material with respect to those products that has not been expressly approved in writing by you. All such material provided by you will remain your (or your Related Entities') property.
6. **Access**
- Nothing in these Terms and Conditions requires us to provide any product or services to you by any particular time or at all. You agree that you have no remedy against us for any loss or damage incurred by you arising out of any lack of access to the Platform (otherwise than as a result of a material breach of our obligations to you under these Terms and Conditions) and you release us from and hold us harmless against all such damage, costs, claims and liabilities.
7. **Warranties, Liabilities and Indemnities**
- 7.1 **Excluded warranties**
- To the extent permitted by law, the express warranties granted under these Terms and Conditions are in lieu of all other warranties or conditions express or implied, including implied warranties or conditions of merchantable quality and fitness for a particular purpose and those arising by statute or otherwise in law or from a course of dealing or use of trade.
- 7.2 **Limitation of liability**
- 7.2.1 You acknowledge that the Platform provides output which is subjective and not all output will be universally accepted as accurate.
- 7.2.2 We make no claim that the use of the Platform will result in any increased revenue for you or sales of your products.
- 7.2.3 You release and agree to hold us harmless from and against any claims which you may otherwise make in relation to the matters addressed in clauses 7.2.1 and 7.2.2.
- 7.2.4 You acknowledge that, subject to any other provision of these Terms and Conditions that may further limit our liability in connection with your access and use of the Platform, to the greatest extent permitted by law, our maximum liability in connection with your access and use of the Platform and these Terms and Conditions is limited to the Fees actually paid by you to us.
- 7.3 **Indemnity**
- You must indemnify and at all times keep us indemnified against any and all losses, damages, actions, proceedings, costs, claims, fines, demands, liabilities (including full legal costs on a solicitor and own client basis) (**'Liabilities'**) which are suffered or incurred by us as a result of a breach by you or your Personnel of any of the provisions of these Terms and Conditions, save to the extent that such Liabilities arise or are increased as a result of our acts or omissions or the acts or omissions of any of our employees, offices, agents or contractors
8. **Termination**
- 8.1 Either Party may terminate this Agreement on the expiration of the Initial Term by giving the other Party one week's written notice prior to the expiration of the Initial Term.
- 8.2 After the Initial Term, either party may terminate this Agreement by giving the other Party one month's prior written notice.
- 8.3 Without limiting the generality of any other clause in this Agreement, a Party may, without prejudice to any other rights, terminate this Agreement immediately by notice in writing if the other Party suffers an Insolvency Event.
- 8.4 For the avoidance of doubt, termination of this Agreement does not affect any right or claim of any Party which has arisen in respect of this Agreement before termination.
- 8.5 Without prejudice to the above, this Agreement may be terminated forthwith by either Party if the other Party commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty (30) days of a written request to remedy the same, without prejudice to any rights or remedies accrued to either Party prior thereto.
9. **After Termination**
- Upon the termination of this Agreement:
- 9.1 You must cease to use or exploit the Platform. All rights granted with respect to the Platform to you revert to Findation.
- 9.2 You must execute any documents and do all things necessary to divest you and your Personnel of any rights relating to the Platform.
- 9.3 You are not, on any account whatsoever, relieved of your obligation to pay any moneys due by to us under this Agreement, save where:
- 9.3.1 termination is by us (not due to a default or an Insolvency Event on your part), in which case you will have no obligation to make any minimum monthly payment in respect of the month of termination nor be obliged to make any further payment other than for any Fee accruing before the termination date; or
- 9.3.2 termination is by you due to a default or an Insolvency Event on our part, in which case you shall not be obliged to make any further payment other than for any Fee accruing before the termination date.
- 9.4 All obligations of the Parties which expressly or by their nature survive the termination of this Agreement will continue in full force and effect notwithstanding such termination.

10. Confidentiality

- 10.1 Each Party acknowledges that information which comes into its possession concerning the other Party or Parties pursuant to or as a result of their involvement in this Agreement is confidential information ('**Confidential Information**').
- 10.2 Each Party must not, and will ensure that, its employees, agents and contractors do not:
- 10.2.1 use the Confidential Information; or
- 10.2.2 disclose the Confidential Information to a third party without first obtaining the written permission of the other party or parties as the case may be, other than for the purposes of this Agreement.
- 10.3 The obligations in clause 10.2 do not apply to a part of the Confidential Information:
- 10.3.1 if such part is in the public domain through no fault or breach by a party; or
- 10.3.2 if such part is disclosed to the professional adviser of a Party; or
- 10.3.3 if such part is required to be disclosed by law and then only for the disclosure required by law.
- 10.4 In the event that a party must make disclosure of Confidential Information to a third party for specific business purposes, it must obtain the prior written approval of the other Party which approval must not be unreasonably withheld.

11. Data Privacy

Where applicable, and in the event Findation deals with any and all personal data received from the Client, Findation must comply with all relevant and applicable data protection laws and regulations, including the Federal Privacy Act 1988 (Cth) of Australia and all subsidiary legislation related thereto with regard to any and all personal data that it receives from the Client. You undertake to use your reasonable endeavours to notify us if you believe that we will receive any personal data as a result of the use of the Platform from your Domains.

12. GST

- 12.1 This clause applies if a Party makes a taxable supply (within the meaning of any law imposing GST) in connection with this Agreement for consideration.
- 12.2 Subject to this clause, the consideration payable by a Party represents the value of the taxable supply.
- 12.3 Subject to clause 12.5, unless an amount specified in this Agreement is specified to be inclusive of GST, the Party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, a further amount calculated by multiplying:
- 12.3.1 the amount otherwise payable; by
- 12.3.2 the GST rate for the time being.
- For the avoidance of doubt, where an amount specified in this Agreement is expressed to be inclusive of GST no further amount on account of GST is payable.
- 12.4 If this Agreement requires a Party ('**Paying Party**') to pay, reimburse or contribute to an amount paid or payable by the other Party in respect of an acquisition from a third party for which the other Party is entitled to claim an input tax credit, the amount required to be paid, reimbursed or contributed by the Paying Party will be the value of the acquisition by the other Party plus, if the

other Party's recovery from the paying party is a taxable supply, any GST payable under the previous sub-clause.

- 12.5 A Party's right to payment under this clause is subject to a valid Tax Invoice being delivered to the Party liable to pay for the taxable supply.

13. Dispute Resolution

- 13.1 If a dispute arises between the Parties in respect of any matter arising from this Agreement (**Dispute**) then the Dispute must be resolved strictly in compliance with the provisions of this clause 13. Compliance with the provisions of this clause 13 is a condition precedent to seeking relief in respect of a Dispute, except as provided in clause 13.4.
- 13.2 In relation to a Dispute, a Party seeking to so resolve a Dispute must notify the existence and nature of the Dispute to the other Party ('**Notification**'). Upon receipt of a Notification, the other Party must refer the Dispute to its directors(s) (or nominees) for resolution.
- 13.3 If the Dispute has not been resolved within one (1) month of the Notification, then either Party may take any action it considers necessary to resolve the Dispute.
- 13.4 Nothing in this clause 13 will prevent either Party from seeking interlocutory relief through courts of appropriate jurisdiction.

14. General

- 14.1 Neither Party shall be liable for its failure to perform, or delay in performance of any obligation under this Agreement to the extent that the failure or delay is due to matters outside its reasonable control.
- 14.2 A Party seeking to rely upon clause 14.1 must immediately advise the other Party ('**Other Party**') by notice in writing of the details of the relevant event. If the occurrence of such an event continues for a period greater than ten (10) Business Days from the date of such notification, then the Other Party may by notice in writing terminate this Agreement
- 14.3 You acknowledge that we may sub-contract the performance of any of our obligations under this Agreement with your prior written consent, which you agree you may not unreasonably withhold.
- 14.4 The Parties agree that there are no conditions, warranties or other terms affecting the agreement between the Parties other than those embodied in the Agreement and the documents referred to these Terms and Conditions and that this Agreement and the documents referred to in these Terms and Conditions contain the whole of the agreement between the Parties. In the event of any conflict between the terms of the Agreement and the terms of any other document (other than any Commercial Terms Letter), these Terms and Conditions shall prevail and govern. We are under no obligation to enter into any Commercial Terms Letter but, if we do, the provisions of such Commercial Terms Letter (if any) will prevail over these Terms and Conditions.
- 14.5 You are not entitled to sub-license, assign or novate the benefits of any rights conferred on you under this Agreement to any person without our prior written consent, which consent shall not be unreasonably withheld if the person to which

- you wish to confer rights is a member of your wholly owned group of companies.
- 14.6 Waiver of any right arising from a breach of this Agreement must be in writing and signed by the Party granting the waiver.
- 14.7 A failure or delay in exercise, or partial exercise, of a right arising from a breach of this Agreement does not result in a waiver of that right.
- 14.8 A Party is not entitled to rely on a delay in the exercise or non-exercise of a right arising from a breach of this Agreement or from a default under this Agreement as constituting a waiver of that right.
- 14.9 A Party may not rely on any conduct of the other Party as a defence to exercise of a right by that other Party.
- 14.10 This clause may not itself be waived except by writing.
- 14.11 Subject to any provision to the contrary, this Agreement will enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not enure to the benefit of any other persons.
- 14.12 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration or termination of the Agreement will remain in full force and effect following the expiration or termination of the Agreement.
- 14.13 Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 14.14 Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 14.15 Where any provision of this Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions of this Agreement.
- 14.16 This Agreement is governed by the law of Victoria, Australia.
- 14.17 The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria and the Victorian division of the Federal Court of Australia, and the courts of appeal from them.
- 14.18 No Party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.
- 15. Notices**
- 15.1 Any notice or other communication, including but not limited to, any request, demand, consent or approval, to or by a Party:
- 15.1.1 must be in legible writing and in English and:
- (a) if to Findation, must be addressed to 4/177 Beavers Rd, Northcote VIC 3070 or kate@findation.com for the attention of Kate Morris;
- (b) if to the Client, must be addressed to the Client's
- Address for the attention of the Authorised Representative;
- or as is specified to the sender by a Party by written notice;
- 15.1.2 is regarded as being given by the sender and received by the addressee:
- (a) if by delivery in person, when delivered to the addressee;
- (b) if by post, three (3) Business Days from and including the date of postage; or
- (c) if by email, when the email enters an information system controlled by the recipient or a read receipt is received by the sender (whichever is the earlier) but if delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day.
- 16. Execution**
- 16.1 By using the Platform and inputting information, the Client agrees to the terms and conditions of this Agreement.
- 16.2 A person inputting information for registration of the Client to access and use the Platform warrants and represents (and the Client warrants and represents) that they have authority to bind the Client for the purpose of this Agreement.
- 17. Rules of interpretation**
- In this Agreement, unless the context otherwise requires:
- 17.1 headings do not affect interpretation;
- 17.2 singular includes plural and plural includes singular;
- 17.3 words of one gender include any gender;
- 17.4 reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 17.5 a month is a calendar month;
- 17.6 reference to a person includes a corporation, joint venture, association, government body, firm and any other entity;
- 17.7 reference to a Party includes that Party's personal representatives, successors and permitted assigns;
- 17.8 reference to a thing (including a right) includes a part of that thing;
- 17.9 a reference to *conduct* includes any omission and any statement or undertaking, whether or not in writing;
- 17.10 mentioning anything after *include*, *includes* or *including* does not limit what else might be included;
- 17.11 a provision must not be construed against a Party only because that Party prepared it;
- 17.12 if a thing is to be done on a day which is not a Business Day, it must be done on the Business Day after that day;
- 17.13 another grammatical form of a defined expression has a corresponding meaning;
- 17.14 a reference to this Agreement or any other agreement or document is to this Agreement or that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Agreement; and

17.15 monetary references are references to the currency in Australia.

18. Dictionary

The meanings of terms used in these Terms and Conditions are set out below (unless the contrary intention appears).

Term	Meaning
Agreement	the agreement formed between you and us when your Authorised Representative completed your registration to access and use the Platform, being an agreement on the Terms and Conditions
Authorised Representative	the person who completed your registration to access and use the Platform
Business Day	a day of the week excluding Saturday, Sunday or a public holiday in Melbourne, Victoria
Client / you / your	the business whose full legal name and ACN (or equivalent registration number) was registered by the Authorised Representative at the time of registration for access to the Platform
Client Address	the postal address and contact email address of the Client registered by the Authorised Representative at the time of registration for access to the Platform
Commencement Date	unless otherwise agreed between Findation and you, the date on which the Authorised Representative completed your registration to use the Platform
Commercial Terms Letter	a letter from us to you (and acknowledged and agreed to by you) pursuant to which we agree with you specific amendments to these Terms and Conditions
Confidential Information	<p>this Agreement and information of every form and kind:</p> <ol style="list-style-type: none">contained in or concerning a Party's:<ol style="list-style-type: none">Intellectual Property Rights;past, present and future business operations and affairs;business processes and methods;methods;employees, contractors and agents;which a Party is obliged by any current legislation to keep private or confidential;which is obviously confidential; orarising directly or indirectly out of any disclosure of any such information described above, and whether or not any such information is described as confidential, <p>but does not include:</p> <ol style="list-style-type: none">information which is lawfully in the public domain prior to its disclosure to a Party by another Party;information which hereafter enters the public domain otherwise than as a result of an unauthorised disclosure;information which is or becomes available to the recipient Party from a third party lawfully in possession thereof and who has the lawful power to disclose such information to the recipient Party on an on-confidential basis; andinformation which is rightfully known by the recipient Party (as shown by its written record) prior to the date of disclosure to it hereunder
Domains	unless otherwise agreed by Findation and you, the single domain listed by the Authorised Representative at the time they completed your registration to use the Platform (and the associated mobile application for that domain)
Fee	<p>Unless otherwise agreed between us and you the fees will be calculated as follows:</p> <ol style="list-style-type: none">US\$0.010 for each of the first 100,000 searches per month undertaken on the Platform from your Domains; andUS\$0.09 for each subsequent search per month undertaken on the Platform from your Domains, provided that the minimum fee for each month or part thereof will be US\$500. <p>All fees are quoted exclusive of GST (which will be added in accordance with these Terms and Conditions)</p>
Findation / we / us / our	Findation Pty Ltd as trustee of The Findation Trust or 3-4/177 Beavers Rd, Northcote VIC 3070
GST	goods and services tax as defined in A New Tax System (Goods & Services Tax) Act 1999 (Cth)
Initial Term	unless otherwise agreed between Findation and you, the period of 1 month commencing on the Commencement Date

Insolvency Event	in relation to a Party means any of the following events: <ol style="list-style-type: none"> 1. the Party ceases to (or is unable to) pay its creditors in the ordinary course of business, or announces its intention to do so; 2. a receiver, manager, receiver and manager, administrative receiver or similar officer is appointed to the Party or any of its assets; 3. the Party enters into, or resolves to enter into, a scheme of arrangement, compromise or composition with any class of creditors; 4. a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of that Party; or 5. anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
Intellectual Property Rights	the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar rights whether at common law or by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets, know-how, goodwill or Confidential Information
Parties	You and Us and ' Party ' means either of them
Permitted Use	making the Platform available on, or accessible from, the Domains
Personnel	your officers, employees, contractors and agents
Platform	the web-based foundation matching tool created by Findation (including upgrades and enhancements as released by Findation from time to time) and known as 'Findation', which is available on the Commencement Date at www.findation.com .
Rate	the interest rate which was quoted on the due date of payment (and if no rate was quoted on that day, the day on which it is next quoted) for overdrafts over \$100,000 by the Australian bank used by Findation
Related Entity	has the meaning as defined in the Corporations Act 2001 (Cth)
Tax Invoice	a tax invoice as defined in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)
Term	the Initial Term and each successive month thereafter until terminated by either Party pursuant to the terms of this Agreement
Terms and Conditions	these terms and conditions (as amended from time to time by Findation and notified to you in writing)