



TERMS AND CONDITIONS

1. TERMS

- 1.1. These Terms and Conditions ("**Terms**"), together with our Privacy Policy, apply to your use of WhyHive Pty Ltd's (ACN 629 917 184) ("**WhyHive**", "**we**", "**us**" or "**our**") website ("**Site**") and our data visualisation and analysis application ("**Services**").
- 1.2. By using our Site and Services, you agree and acknowledge that:
 - (a) you have read these Terms and that these Terms will become a legally binding agreement between you and WhyHive; and
 - (b) you represent and warrant that you have the full right, power and authority to agree to and be bound by these Terms.
- 1.3. Before using our Services, you must agree to these Terms by confirming that you consent or by clicking to submit the sign up form on our Site.
- 1.4. If you use our Services on behalf of an organisation, you represent and warrant that you are an authorised representative of that entity with authority to be bound by these Terms.

2. DEFINITIONS AND INTERPRETATION

- 2.1. In these Terms, the following expressions have the following meanings, unless otherwise stated:

"Authorised User" means you, any of your employees or contractors who you authorise to use the Software on your behalf, and who must also subscribe to use the Software via the Site, and agree to these Terms;

"Annual Subscription" means your access to the Software on an annual basis in exchange for the Annual Subscription Fees, until your account is cancelled or terminated;

"Annual Subscription Fees" means the fees as agreed by the parties and set out on the payment system that we will charge on an annual basis for access and use of the Software;

"Business Day" means a day other than a weekend or public or bank holiday in Victoria, Australia;

"Customer Data" has the meaning in clause 8.4;

"Developed IP" is defined in clause 8.2;

"Indemnified" is defined in clause 12;

"Intellectual Property Rights" means all present and future intellectual and industrial property rights throughout the world of whatever nature (whether or not registered or registrable) including but not limited to all rights in respect of technical information, the Software, know-how, copyright, trade marks, designs, patents, domain names, business names, logos, drawings, trade secrets, the right to have confidential information kept confidential or other proprietary rights, or any rights to registration of such rights;

"Monthly Subscription" means your access to the Software on a monthly basis in exchange for the Monthly Subscription Fees, until your account is cancelled or terminated;

"Monthly Subscription Fees" means the fees as agreed by the parties and set out on the payment system that we will charge on a monthly basis for access and use of the Software;

"Privacy Laws" means the *Privacy Act 1988* (Cth);



"**Provider IP**" is defined in clause 8.1;

"**Registration Data**" is defined in clause 3.2;

"**Related Bodies Corporate**" has the meaning given in the *Corporations Act 2001* (Cth);

"**Retention Period**" is defined in clause 16.2;

"**Services**" has the same meaning as set out in clause 1.1, and includes provision of our Software or as otherwise listed on our Site from time to time;

"**Site**" means whyhive.com or any other website operated by us;

"**Software**" means the cloud-hosted software we provide under these Terms, that provides data visualisation and analysis services, and which includes any associated software, technology, code and all Intellectual Property Rights contained therein, as located on the Site;

"**Subscription**" means an Annual Subscription or a Monthly Subscription;

"**Subscription Cycle**" means each billing cycle which is either one month in length for a Monthly Subscription or one year in length for an Annual Subscription, unless communicated otherwise by us;

"**Subscription Fees**" means an Annual Subscription Fees or a Monthly Subscription Fees; and

"**you**" or "**your**" means the person or entity that has registered to use the Software or an Authorised User (as applicable).

3. ACCESS, ACCOUNTS & AUTHORISED USERS

- 3.1. WhyHive provides a cloud-hosted software platform which allows Authorised Users to explore, analyse and create visualisation of their own data. All Services are listed on our Site, which are subject to change from time to time.
- 3.2. To access our Services, you may provide us with the following information to create an account:
 - (a) email address;
 - (b) first name;
 - (c) last name; and
 - (d) a password,(collectively, the "**Registration Data**").
- 3.3. You agree that you have sole responsibility for any activity that occurs on your account, which for the avoidance of doubt may include activity that occurs due to the use of an Authorised User.
- 3.4. All account details must be accurate, up to date, and secured by a password. You agree to notify us immediately if you become aware of or suspect any security breach or unauthorised use of your password or account.
- 3.5. We may, in our absolute discretion, terminate your account, disable your account or restrict your or an Authorised Users access to the Services or Site (temporarily or permanently) where you or another Authorised User have breached these Terms or applicable law. We will, where practicable, notify you of the reasons for and duration of any termination or suspension of your account or use of the Services. Under these circumstances, you or another Authorised User may be prevented from accessing all or parts of our Services or the Site, including the Software, your account details or any other content associated with your account. We will not be liable to you or any third party if this occurs.



- 3.6. We may impose limits or restrictions on the use you may make of the Site or the Software, by providing you with reasonable written notice in advance. Further, we may, acting reasonably, and where practicable, with reasonable prior notice to you, withdraw the Site or Software, or change or remove Site functionality or Software. If you do not wish your Subscription to continue as a result of a material change to the functionality of the Site or Software in accordance with this clause 3.6, you may terminate your Subscription by notice in writing to us, in which case, we will provide a pro-rata refund of any prepaid Subscription Fees.

4. LEGAL CAPACITY

- 4.1. You or an Authorised User may only use our Services and/or Software if you are over the age of 18 years old.
- 4.2. By accepting these Terms and using our Services or Software, you represent and warrant that you are at least 18 years old. We reserve the right to request age verification or to take any necessary action to verify compliance with this requirement.
- 4.3. You agree to indemnify and hold us harmless for any claims, damages or liabilities arising out of or related to a violation of our age restriction clause.
- 4.4. We reserve the right to modify or update the age restriction clause any time. Any changes will be effective immediately upon posting the update on our Site or Software or otherwise circulating the change-information to users.

5. USE OF OUR SERVICES

- 5.1. Depending on the subscription tier you have subscribed for, you and Authorised Users will have access to the Software's functionalities which are listed on our Site or otherwise agreed upon with you, and which may be updated from time to time under the relevant subscription tiers.
- 5.2. Both you and Authorised Users must agree and acknowledge that you both will not:
- (a) modify the Software or merge any aspect of the Software with another programme other than as expressly provided under these Terms;
 - (b) record, reverse engineer, copy, duplicate, reproduce, create derivative works from, frame, download, display, transmit or distribute any of the Software, the source code of the Software or any documents, manuals or setup instructions provided with the Software (for the avoidance of doubt, this does not include any data, visualisations or documents that are generated by you for your use as part of the Services);
 - (c) licence, sell, rent, lease, transfer, assign or otherwise commercially exploit the Software without our prior agreement;
 - (d) engage in unlawful behaviour, including unauthorised access to or use of data, services, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures;
 - (e) access, store, create, use, distribute or transmit:
 - (i) viruses, worm, trojan or other malicious code that corrupts, degrades or disrupts the operation of the Software;
 - (ii) material (including data or insights) that is or is in the reasonable view of WhyHive, unlawful, unethical, harmful, threatening, discriminatory, defamatory, obscene, infringing, harassing or racially or ethnically offensive or a contravention of any policy of WhyHive or the rights of any third party;
 - (iii) material that facilitates illegal activity; or
 - (iv) material that abuses or causes damage or injury to any person or property;



- (f) provide Software login details or passwords, or otherwise provide access to the Software, to any unauthorised third party and you will take all reasonable steps to prevent unauthorised access to, or use of, the Software; and
 - (g) engage in any conduct on the Software that is in breach of these Terms (or any agreements mentioned therein).
- 5.3. Both you and Authorised Users agree that when uploading Customer Data to our Software or sharing any content created publicly, it will not breach any laws, regulations or obligations relating to privacy, data protection and/or intellectual property rights.
- 5.4. You further acknowledge and agree that you will have all necessary rights, consents, and permissions to share any Customer Data through the Software, Site or otherwise. We may take any reasonable measures to protect the privacy and confidentiality of any Customer Data in accordance with any applicable laws or regulations.
- 5.5. Unless otherwise contemplated by these Terms, all rights granted to you under these Terms must not be leased, assigned, sold, licensed, resold or transferred to any third party in any manner whatsoever. You must not in any way encumber or allow the creation of any mortgage, charge, lien or other security interest in respect of the Software.
- 5.6. If we receive a complaint that your use of our Services, including through generating insights, breaches clause 5.2(e) above, we may terminate your account, disable your account or restrict your or an Authorised User's access to the Services or Site (temporarily or permanently) immediately by notice to you.

6. SUITABILITY OF SERVICES

- 6.1. You agree and acknowledge that:
- (a) while we will make all reasonable efforts to ensure the accuracy and reliability of our Services and Software, you are responsible for independently verifying the accuracy, completeness and reliability of any Customer Data, and associated insights, before relying on it;
 - (b) we make no representations or guarantees as to any accuracy of the results or recommendations generated as a result of Customer Data uploaded by you or an Authorised User;
 - (c) if you choose to use any text analysis features of the Software, themes will be assigned to your free text cells by a large language model. This means that theme accuracy will vary. It is your responsibility to review the assigned themes and edit them as required;
 - (d) our Software's automated data cleaning process may result in modified data in the form of removed cells, which the Software will notify you about as it processes the data; and
 - (e) we are not liable for any decisions made (business or otherwise) based upon the data analysis and visualisation produced following the use of our Site or the Software.

7. SUBSCRIPTIONS AND PAYMENT

- 7.1. In consideration for us granting you access to the Software, you agree to pay us either Monthly Subscription Fees or Annual Subscription Fees in advance.
- 7.2. Monthly Subscription Fees and Annual Subscription Fees will commence at the date that you sign up for an account via the Software and submit payment by providing your payment method details.
- 7.3. The Subscription Fees are inclusive of GST and, unless stated otherwise, are in Australian Dollars.
- 7.4. By initiating a:



- (a) Monthly Subscription, you authorise us to charge you the Monthly Subscription Fees at the rate that you sign up with . We may give you notice of changes to this rate from time to time, or
 - (b) Annual Subscription, you authorise us to charge you the Annual Subscription Fees at the rate that you signed up with, which we may give you notice of changes to from time to time.
- 7.5. We will provide you with reasonable notice before your Subscription automatically renews. The notice that is reasonable will vary depending on the duration of your Subscription, and is determined by WhyHive acting reasonably.
- 7.6. A Monthly Subscription automatically renews each month, and we will automatically bill the Monthly Subscription Fees to your nominated payment method, unless your subscription is cancelled, paused or terminated.
- 7.7. Subject to clause 7.5, an Annual Subscription automatically renews each year, and we will automatically bill the Annual Subscription Fees to your nominated payment method, unless your subscription is cancelled, paused or terminated.
- 7.8. If you are dissatisfied with your service and want to request your money back on your most recent billing cycle, please get in touch with our team directly or at info@whyhive.com.
- 7.9. For the avoidance of doubt, if you cancel your Subscription during your Subscription Cycle, you will not be entitled to a refund for that period unless otherwise agreed with us.
- 7.10. In addition to the above, we will refund any Subscription Fees you have incurred in error. We may also elect (in our absolute discretion) to refund the most recent Subscription Fee paid by you if your subscription is cancelled prior to the end of a Subscription Cycle due to a genuine hardship. We may ask for additional information or evidence from you regarding any hardship prior to making a determination on a refund.
- 7.11. From time to time, we may adjust the pricing of the Software. We will provide at least 30 days' notice of a price increase before it becomes effective (other than any increases due to legal or tax requirements) by posting a notification on the Site, sending an email or such other means as we reasonably determine. Changes to the Subscription Fees will not occur retrospectively and will apply from your next Subscription Cycle. If you do not cancel your Subscription, you will be deemed to have accepted these new fees.
- 7.12. If payment of the Subscription Fees is not received by any due date, as specified to you via the Software or on the Site, we will be entitled (without prejudice to any other right or remedy available to us under these Terms or at law) to withhold provision of the Software, or suspend your access to any or all of the Software, until payment of the outstanding amount is received by us in full.
- 7.13. Payment processing services for access to, and use of the Software, are provided by Stripe and are subject to Stripe's terms and conditions which can be found on their website (available here: [link](#)). By using our Services to process payments, you agree to be bound by Stripe's terms and conditions , which may be modified by Stripe from time to time.
- 7.14. As a condition of enabling payment processing services through Stripe, you agree to provide us with accurate and complete information about you. You authorise us to share any information and transaction information related to your use of the payment processing services provided by Stripe with the third party listed in 7.19 or any other party required as necessary for payment to be processed.
- 7.15. You will make all payments for the Subscription Fees without any deduction for tax unless a tax deduction is required by law. If you are required to make a tax deduction by law, the amount due will be increased to the amount that (after making the tax deduction) upon deduction of the amount attributable to tax equals the amount which would have been due if no tax deduction had been required.



- 7.16. Any unique customisation of the Software may incur additional Subscription Fees and be subject to separate terms and conditions.

8. INTELLECTUAL PROPERTY

- 8.1. All rights, title or interest in the Site and to the Software, and any information or technology in connection with the Software, as well as any metadata generated from your use of the Software, is owned, and will remain owned, by us or our licensors ("**Provider IP**"). Using the Software does not transfer any ownership or rights, title or interest in and to the Provider IP.
- 8.2. All Intellectual Property Rights discovered, developed or otherwise coming into existence as a result of, for the purposes of, or in connection with, developing the Software will automatically vest in, and are assigned to, us, including any enhancements, improvements and modifications to the Provider IP (collectively, the "**Developed IP**"). For the avoidance of doubt, this may include Intellectual Property Rights that are generated as a result of suggestions or feedback that you have provided to us.
- 8.3. You must not represent to anyone or in any manner whatsoever that you are the proprietor of the Software and/or the Provider IP.
- 8.4. You retain ownership rights to:
- (a) data and content that you upload to the Site and to the Software; or
 - (b) data, information, visualisations, analysis and other content that you produce in or generate using the Software,
- (together, "**Customer Data**"). You grant us a worldwide, perpetual, irrevocable, non-exclusive and royalty free license to access, display, host, copy, store and use the Customer Data for the purpose of performing our obligations under these Terms.
- 8.5. You represent and warrant that you and any Authorised User accessing the Software on your behalf owns all rights, title and interest in and to any Customer Data or that you or they have otherwise secured all necessary rights in the Customer Data as may be necessary to permit the access, use and distribution thereof as contemplated by these Terms. For the avoidance of doubt, this also includes the access, use and distribution of any cleaned data that we may have automatically prepared for you.
- 8.6. If you enable any third-party applications in conjunction with the Software, you agree that any Customer Data may be accessible by those third-party applications for such applications to function correctly. You will be bound by the terms of such third-party providers regarding the use of the Customer Data and we will not be held responsible for the disclosure, modification or deletions of the Customer Data by such third-party applications.
- 8.7. You agree that we may refer to you, your business name, publish your logo and/or trade mark and refer to you as a customer of ours in any communications or publications for the purposes of marketing or promoting our business. If you do not wish to be part of our communications or publications, please let us know by emailing us at info@whyhive.com.
- 8.8. Where you provide us with your prior consent and submit insights (including through visualisations or graphs) to us, we can use such insights as agreed between us and for the purposes as agreed between us.

9. WARRANTIES

- 9.1. We will use reasonable endeavours to provide constant, uninterrupted access to the Site and Software, but as with any software-based product, this cannot be guaranteed. We will not be responsible or liable for any direct or indirect losses or damages suffered or sustained by you as a result of, or in connection with, any interruption or delay in accessing and using the Site or Software.
- 9.2. To the maximum extent permitted by law, no further warranty, condition, undertaking or term,



express or implied, statutory or otherwise as to the condition, quality, performance or fitness for purpose of the Site or Software provided hereunder is given or assumed by us other than as required at law. You acknowledge and agree that the Site and Software are provided on 'as is' basis and that you will make your own investigations into whether or not it is fit for your purposes.

9.3. We make no representations, warranties or guarantees:

- (a) that content available on, or produced by or via, the Site and Software including as generated from your Customer Data is accurate, complete, reliable, current, error-free or suitable for any particular purpose. This content is provided on an 'as is' basis which is generated based on your inputted Customer Data and you acknowledge and agree that you exercise absolute discretion in choosing how to use this content; or
- (b) that the Site and Software is or will be free from viruses, worm, trojan or other malicious code. You are responsible for taking your own precautions in this respect.

10. CANCELLATION

- 10.1. You may cancel your Subscription and close your account at any time by contacting us via email or Slack. If you elect to terminate your Subscription, you will continue to have access to the Site, Software and our Services until the end of your current Subscription Cycle, unless we elect to refund the most recent Subscription Fee, in which case, your access will be terminated within 14 days' from your notice of termination.
- 10.2. When a termination or cancellation takes effect, you will no longer be able to access your account or the Services. It is your responsibility to download or back up any insights or Customer Data in the Services prior to termination.

11. LIABILITY AND EXCLUSIONS

- 11.1. Our total liability to you or any third party (whether based on warranty, contract, tort, statute, misrepresentation or otherwise) arising out of, or in connection with, these Terms, for any one event or a series of related events, will be limited to the total Subscription Fees paid (excluding GST and expenses) by you to access and use the Software in the twelve (12) months immediately prior to the event(s).
- 11.2. You assume sole responsibility for your use and any Authorised Users use of the Software (including any content contained therein) and for any reliance on, and use of, conclusions drawn from such use.
- 11.3. We will have no liability for any losses suffered or any damage caused by errors or omissions in any information or instructions provided to us by you in connection with the Software or any actions taken by us at your direction.
- 11.4. In no event will we be liable to you, an Authorised User or any third party for any:
 - (a) loss of profits, revenue, goodwill or business, business interruption, corruption, loss or alteration of data, downtime costs, loss of use, failure to realise anticipated savings or for any indirect or consequential loss or damage of whatsoever nature, however caused;
 - (b) breach by you or any third party of the Intellectual Property Rights of a third party or any laws, regulations or any relevant industry codes;
 - (c) viruses, worm, trojan or other malicious code introduced into, or transmitted to, you or any third party during the course of using the Software;
 - (d) loss of or damage to any property belonging to you or any third party; or
 - (e) any personal injury or death arising out of or in connection with these Terms.
- 11.5. The parties acknowledge that the limitations of liability contained in this clause 11 are a fair and



reasonable allocation of the commercial risk between the parties.

12. INDEMNITY

- 12.1. You agree to indemnify and hold us, our Related Bodies Corporate and our officers, directors, employees and contractors (collectively, the "**Indemnified**") harmless from and against any and all claims, actions, demands, proceedings, liabilities, losses, damages, expenses and costs that may be brought against the Indemnified or which the Indemnified must pay, sustain or incur as a direct or indirect result of or arising out of:
- (a) breach by you or an Authorised User of any of your obligations under these Terms;
 - (b) loss of, or damage to, any property belonging to you, an Authorised User or any third party or any personal injury or death arising out of or in connection with these Terms;
 - (c) breach of any third party's Intellectual Property Rights; or
 - (d) breach by you or an Authorised User of any law (including Privacy Laws).

13. PRIVACY

- 13.1. You must, in connection with these Terms:
- (a) ensure that you and your employees, contractors and agents are aware of your obligations under all applicable Privacy Laws;
 - (b) at all times comply with your obligations under applicable Privacy Laws; and
 - (c) take reasonable steps to assist us to comply with our obligations under applicable Privacy Laws as may be notified to you from time to time.
- 13.2. We are committed to protecting your privacy and personal information. Please see our Privacy Policy <https://www.whyhive.com/privacy-policy> for further details about our practices relating to the collection, use, disclosure and storage of your personal information.

14. SUPPORT SERVICES

- 14.1. We may, at our absolute discretion, provide support in relation to your use of the Software or the Site. Support levels may be set out on the Site or agreed with you.
- 14.2. To request support, you may contact us through Slack or via email during our Business Hours.
- 14.3. You may access help documents to diagnose any issues that you are facing on the Site. If, after reasonable efforts, you are unable to access or find the information relevant to you, you may contact us at info@whyhive.com, unless we have established an alternative direct contact method with you.
- 14.4. We will endeavour to provide support on Business Days during Business Hours; however this cannot be guaranteed.

15. SITUATIONS OR EVENTS OUTSIDE OUR REASONABLE CONTROL

- 15.1. There are certain situations or events that may occur which will not be within our reasonable control. Where this occurs, we will notify you of these circumstances and attempt to recommence providing the Software as soon as we are able. In such circumstances there may be a delay (sometimes a substantial delay) before we can start or continue providing the Software.

16. DATA RETENTION

- 16.1. By accepting these Terms, you acknowledge and agree to the following data retention provisions. If you do not agree, please do not use our Software or Services.



16.2. In the event that:

- (a) we terminate your account, disable your account or restrict your or an Authorised Users access to the Services, Software or Site (temporarily or permanently) due to breach of these Terms, we agree that we will retain any data stored in the Software for a period of one (1) month from the date we notify you of a breach of these Terms; or
- (b) you terminate your account and use of our Services, we agree that we will retain any data stored in the Software for up to one (1) month from the data you notify us of your wish to terminate our Services,

(collectively, the “**Retention Period**”).

- 16.3. During the Retention Period, we will maintain the data solely as a gesture of goodwill or for the purposes of investigating any breach or fulfilling any legal obligations.
- 16.4. At the end of the Retention Period or as soon as practicable thereafter, we will delete the stored data which will no longer be recoverable, and we will have no responsibility for any loss and inability to retrieve such data.
- 16.5. If after the Retention Period, we are legally compelled to retain the data for a longer period of time, we reserve such right but will only do so for as long as is legally necessary.
- 16.6. We agree that we will take reasonable measures to protect any retained data during the Retention Period.
- 16.7. If you request deletion of your data held by us at any time, you acknowledge and agree that it is your sole responsibility to download or otherwise back up any such data prior to requesting the deletion.
- 16.8. We will not be liable for any damages, losses or liability arising out of the retention or deletion of data pursuant to this clause, except in the case of our gross negligence or wilful misconduct.

17. GENERAL

- 17.1. We reserve the right to make changes to these Terms with 30 days’ notice to you by email. Any amendments to these Terms will have effect from 30 days’ of when they are published on the Site.
- 17.2. Any provision of these Terms which is void or unenforceable may be severed from these Terms without affecting the enforceability of other provisions.
- 17.3. A failure or delay by us to exercise a power or right under these Terms does not operate as a waiver of that power or right, and the exercise of a power or right by us does not preclude our future ability to exercise that or any other power or right.
- 17.4. You must not assign, novate or otherwise deal with these Terms without our prior consent. We may assign, novate or otherwise deal with these Terms at any time by providing notice to you.
- 17.5. These Terms are governed by, and must be construed according to, the laws of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction there.