

## SCHEDULE 1

# TERMS AND CONDITIONS

## 1. INTRODUCTION

1.1 These Terms and Conditions govern your access to and use of the Solution and the provision of the Services to you by Safe Food Pro.

## 2. DEFINITIONS

2.1 In these Terms and Conditions, unless the context or subject matter otherwise requires:

- (a) **Access Keys** means any certificates, usernames, passwords or other security mechanisms issued to you by Safe Food Pro in order for you to access and use the Solution.
- (b) **Authorised Users** means your Personnel who you authorise to use the Solution (subject to any restriction on the number of Authorised Users permitted under your agreement with Safe Food Pro).
- (c) **Authorisation** means any consent, authorisation, registration, filing, lodgment, permit, licence, agreement, notarisation, certificate, permission, direction, declaration, authority or exemption issued by any Government agency, or any other party under law which has a right to impose a requirement or whose consent is required with respect to these Terms or otherwise.
- (d) **Business Day** means a day, not being a Saturday, Sunday or public holiday, on which banks are generally open for business in Queensland, Australia
- (e) **Claim** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, Liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.
- (f) **Confidential Information** means any information in any form whatsoever disclosed by Safe Food Pro to you, that is designated by Safe Food Pro as confidential, that you know or reasonably ought to know is confidential (including any client information), or that is by its nature confidential (and in the case of Safe Food Pro, includes all information relating to the Solution and any associated Source Code or other components and parts of the Solution).
- (g) **Consequential Loss** means: (i) loss of revenue, profits, data, opportunity to make profits, reputation or goodwill, business, business opportunity, use or amenity or loss of anticipated savings; (ii) special, exemplary or punitive damages; and (iii) any loss or Liability which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of these Terms, including (without limitation) any of the above types of loss arising from an interruption to a business or activity.
- (h) **Documentation** means the documentation made available to you in any format, including online or such other web address notified by Safe Food Pro to you from time to time which sets out the user instructions for the Solution.
- (i) **Direct Competitor** means any of the following:
  - (i) a provider of any software system or platform which provides any of the functions of the Solution; and
  - (ii) any other person that:
    - (A) owns, operates or is otherwise involved in a business or operation similar to or competitive with Safe Food Pro's business or the Solution; or
    - (B) is involved in the sale, distribution or promotion of any goods or services which are similar to or competitive with Safe Food Pro's goods or services.
- (j) **Effective Date** means the date you accept these Terms and Conditions.
- (k) **EULA** means the Safe Food Pro End User Licence Agreement detailed in these terms and conditions, as updated by Safe Food Pro from time to time.

- (l) **Fees** means the fees payable by you to Safe Food Pro in accordance with the Fee Proposal provided to you.
- (m) **Force Majeure Event** means an event beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation in accordance with these Terms. Such circumstances include (without limitation): adverse changes in government regulations; any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster; acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber-attacks, viruses or malware, data loss as a result of the actions of a third party; strikes or industrial disputes; materials or labour shortage; and acts or omissions of any third party network providers (such as internet, telephone or power provider).
- (n) **GST** means: the same as in the GST Law; any other goods and services tax, or any tax applying to this transaction in a similar way; and any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.
- (o) **GST Law** has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (p) **Indemnified Parties** means Safe Food Pro and its Related Entities (and their respective Personnel).
- (q) **Intellectual Property Rights** means any patent, trademark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.
- (r) **Liabilities** means all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatsoever description.
- (s) **New IP** means any and all Intellectual Property Rights (including in relation to Source Code) created on and from the date you first access the Solution and the Services, in the course of, or connection with, these Terms, but in all instances excluding Your Data.
- (t) **Obligation** means any express or implied legal, equitable, contractual, statutory or other Obligation, agreement, covenant, commitment, duty, undertaking or liability.
- (u) **Parent Account** means the account established by Safe Food Pro for the use of the Solution by you and your Authorised Users.
- (v) **Parent Account Access Keys** means any certificates, usernames, passwords or other security mechanisms issued to you by Safe Food Pro in relation to the Parent Account in order for you to access and use the Solution.
- (w) **Personnel** means officers, employees, secondees, agents, contractors and subcontractors.
- (x) **Privacy Policy** means the Safe Food Pro privacy policy available at [www.my.safefoodpro.com.au](http://www.my.safefoodpro.com.au) or provided on request, as updated from time to time.
- (y) **Related Entities** has the meaning given to that term in the Corporations Act 2001 (Cth).
- (z) **Retention Period** means a period commencing on the expiry of the Term and ends on the earlier of:
  - (i) the date notified by you to Safe Food Pro in writing, which date must not be later than the date that is 2 years after expiry of the Term; and
  - (ii) the date that is [30 days] after expiry of the Term.
- (aa) **Safe Food Pro** means Safe Food Pro Australia Pty Ltd ACN 638 933 687 and our Related Entities.
- (bb) **Services** means the provision of the Solution, together with all other services that are provided by Safe Food Pro to you from time to time in connection with the Solution.
- (cc) **Solution** means the Safe Food Pro application with all or some of the following functionality: App, Web Dashboard, Form Builder or other online software applications and services that Safe Food Pro makes available to you from time to time, and includes any

documentation made available by Safe Food Pro in any format (including online or such other web address notified by Safe Food Pro to you from time to time) which sets out the user instructions for the Solution.

- (dd) Source Code means computer programs expressed in a source language or form which can be interpreted or compiled and then executed by a computer as commands and all documentation and tools reasonably required to enable a person having commercially available computer programming skills to read, understand and modify such computer programs.
- (ee) Subscriber means a person or entity who registers an account with Safe Food Pro to use the Solution.
- (ff) System Outage includes outages, unavailability, inaccessibility or down time to the Solution.
- (gg) Taxation or Tax means and includes:
  - (i) all taxes levied, imposed or assessed under the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, GST Law or any other law in Australia or elsewhere;
  - (ii) superannuation guarantee and superannuation guarantee charge under the SGA;
  - (iii) all taxes in the nature of sales tax, consumption tax, value-added tax, GST, payroll tax, group tax, PAYG tax, undistributed profits tax, fringe benefits tax, recoupment tax, withholding tax, land tax, water rates, municipal rates, stamp duties, gift duties or other State, Territorial, Commonwealth or municipal charges or impositions levied, imposed or collected by any Government Agency; and
  - (iv) any additional tax, interest, penalty, charge, fee or other amount of any kind assessed, charged or imposed in relation to the non, late or short payment of the same or the failure to file any return.
- (hh) Taxable Supply means any supply made by a party as a consequence of a transaction contemplated by these Terms and Conditions in respect of which another party is or becomes liable to pay GST.
  - (ii) Terms and Conditions or Terms means these Terms and Conditions, as updated by Safe Food Pro from time to time.
  - (jj) Term means the period commencing on the Effective Date and expiring after the number of months/years specified in the quote, unless this agreement is terminated earlier in accordance with these Terms and Conditions.
- (kk) Third Party Platforms means servers, platforms, software and hardware supplied or made available by third parties.
- (ll) Third Party Provider means a third-party provider of servers, platforms, software and hardware which are utilised by Safe Food Pro in the providing the Services.
- (mm) Your Data means all documents, files and information (in any format): uploaded to, entered into, accessed by or stored in the Solution; or otherwise supplied or made available to Safe Food Pro, by you or on your behalf or by any actual or potential Authorised User.

### 3. PROVISION OF THE SOLUTION

- 3.1 Safe Food Pro will provide you the Services during the Term on the terms set out in these Terms and Conditions.
- 3.2 During the Term, Safe Food Pro grants you a non-exclusive, non-transferable right to use and permit your Authorised Users to use the Solution and the Documentation for your own internal business purposes (including for the purposes of providing services to your clients) on the terms set out in these Terms and Conditions (and any rules protocols, policies or directions of Safe Food Pro from time to time). These Terms and Conditions govern any releases, revisions, or enhancements to the Solution that Safe Food Pro may publish for your use.
- 3.3 You must not license, sub-license, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Solution in any way.

3.4 You acknowledge and agree that Safe Food Pro may supply products or services similar to or the same as the Services and the Solution to its customers or other third parties in its sole and absolute discretion.

3.5 You acknowledge and agree that:

- (a) you must, and ensure that all Authorised Users, accept and comply with (and will be bound by) all terms and conditions (and any other rules, protocols or policies) implemented or imposed by Safe Food Pro in connection with the Solution or Services from time to time, including (without limitation) these Terms and Conditions, the EULA and the Privacy Policy;
- (b) you are liable for any breach by an Authorised User of these Terms and Conditions, the EULA or the Privacy Policy;
- (c) Safe Food Pro may amend, supplement, or replace these Terms and Conditions, the EULA and the Privacy Policy (and any other terms and conditions, rules, protocols or policies) from time to time by posting the amended or new Terms and Conditions, EULA or Privacy Policy (or other terms and conditions, rules, protocols or policies), as the case may be, to Safe Food Pro's website and, where reasonably practicable, Safe Food Pro will notify you by email or in-platform communication;
- (d) unless otherwise noted by Safe Food Pro, the amended or new Terms and Conditions, the EULA and the Privacy Policy (or other terms and conditions, rules, protocols or policies) as the case may be, will become effective immediately after they are posted; and
- (e) if you, or your Authorised Users, do not agree to the amended or new Terms and Conditions, the EULA and the Privacy Policy (or other terms and conditions, rules, protocols or policies) as the case may be, you or the relevant Authorised User must immediately stop using the Solution and notify Safe Food Pro in writing.

3.6 You acknowledge the Solution requires certain third party software products to be installed on your computer, including an operating system, an Internet browser, and browser plug-ins. Safe Food Pro sets minimum requirements in regard to these third party software products, and updates to the Application may require you to, independently and at your own expense, source and install updates to any or all of these third party software products.

## 4. YOUR GENERAL OBLIGATIONS

4.1 You must:

- (a) provide Safe Food Pro with all information and co-operation reasonably necessary to enable Safe Food Pro to provide the Services;
- (b) provide Safe Food Pro with access to your property, equipment, resources, premises, computer hardware, software, networks and systems as may be reasonably required by Safe Food Pro to enable Safe Food Pro to provide the Services;
- (c) provide and maintain the appropriate technology, equipment and facilities to enable you to access and use the Solution; and
- (d) promptly notify Safe Food Pro of any event or incidents that is likely to or will impact on access and use of the Solution, the provision of the Services or any other obligation of Safe Food Pro.

4.2 You must not, and must not permit others to:

- (a) use the Solution in an unlawful manner at any time;
- (b) use the Solution to send or distribute any messages, materials or content that may be considered to be unlawful;
- (c) engage in any illegal or unethical business practice;
- (d) remove or tamper with any legal or copyright notices on, or contained in, the Solution;
- (e) attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system(s) on which the Service is hosted;
- (f) stress test or load test the Service;
- (g) perform penetration testing of the Service;
- (h) use, or misuse, the Services in any way which may impair the functionality of the Services or Solution, or other systems used to

deliver the Services or impair the ability of any other user to use the Services or Solution; or

- (i) do anything which could adversely impact on the operation of the Solution or Services.

## 5. PARENT ACCOUNT ACCESS KEYS

5.1 You are responsible for all access and use of the Parent Account whether or not authorised by you, and you must:

- (a) maintain the confidentiality of the Parent Account Access Keys;
- (b) take all reasonable security measures to ensure that the Parent Account Access Keys are not disclosed to any person, other than to Authorised Users; and
- (c) ensure that each person accessing and using the Parent Account or otherwise using the Solution, the Services or the Documentation in any way:
  - (i) is aware of, and complies with, all of your Obligations under these Terms and Conditions (including those Obligations regarding use of and access to the Solution, the Services and the Documentation); and
  - (ii) does not do any act, matter or thing which, if done by you, would constitute a breach of the Obligations on your part under these Terms and Conditions.

5.2 You are responsible for all Authorised Users' use of and access to the Solution (including level of access).

## 6. FEES AND PAYMENT

### 6.1 Fees

- (a) Safe Food Pro will invoice you for the Fees, and you must pay any such Fees (without any deduction, setoff or counterclaim) within 30 days following its receipt of an invoice from Safe Food Pro for such Fees.
- (b) Safe Food Pro must provide all information reasonably requested by you in order for you to confirm the Fees payable.
- (c) Subject to mutual agreement, Safe Food Pro may vary the Fees payable under these Terms and Conditions from time to time by giving no less than 30 days' notice to you. The varied Fees will apply from the date set out in the notice (subject to the rights of the parties under clause 16.2).

### 6.2 GST

- (a) The consideration for any Taxable Supply under these Terms and Conditions will, unless expressly provided to the contrary, be exclusive of GST.
- (b) If a party (**Supplier**) is obliged pursuant to the GST Law to pay an amount of GST in respect of a Taxable Supply made by the Supplier to another party (**Recipient**), pursuant to the provisions of these Terms and Conditions, the Recipient shall pay the Supplier on demand that amount of GST upon production of a valid Tax Invoice by the Supplier in addition to the moneys otherwise payable by the Recipient to the Supplier on account of that Taxable Supply.
- (c) Each of the parties warrants and covenants to the other party that it is and will continue to be at all times during the Term, registered under the GST Law.

### 6.3 Late payments

- (a) You must pay interest to Safe Food Pro on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate of 10% per annum. This interest must be paid on demand.
- (b) Interest on an unpaid amount:
  - (i) accrues daily;
  - (ii) is capitalised (if not paid) every 7 days; and
  - (iii) is calculated on the basis of the actual number of days on which interest has accrued and of a 365 day year.
- (c) This clause 6.3 does not affect your Obligation to pay each amount under these Terms and Conditions when it is due.

## 7. YOUR DATA

7.1 Through your use of the Solution, and the provision and receipt of the Services, Safe Food Pro will receive and have Your Data stored on Safe Food Pro's (or Third-Party Providers') servers.

7.2 You grant Safe Food Pro a non-exclusive perpetual licence to host and store Your Data for the sole purpose of providing the Services, and Safe Food Pro may sublicense these rights to Safe Food Pro's subcontractors.

7.3 Safe Food Pro will:

- (a) only process Your Data as part of providing the Services (including in relation to developing improvements to the Solution) and in accordance with your reasonable and lawful instructions from time to time; and
- (b) not purport to sell, let for hire, assert a lien over, assign rights in or otherwise dispose of any of Your Data, except where you have given us your consent to do otherwise.

7.4 During the Retention Period, if requested by you, Safe Food Pro must use reasonable endeavors to:

- (a) provide you or your nominee with access to, and copies of, your Data;
- (b) return all of you Data in a form reasonably accessible by you; and/or
- (c) if requested by you:
  - (i) securely destroy your Data (except to the extent Safe Food Pro is required by law to retain a copy); and
  - (ii) promptly certify to you in writing that Safe Food Pro has done so.

For the avoidance of doubt, Safe Food Pro's obligations under this clause will cease to apply upon expiry of the Retention Period.

7.5 Notwithstanding clause 7.4, you acknowledge and agree that you are solely responsible for making backups of Your Data and Safe Food Pro will not be responsible for, or have any Liability in relation to, backups of Your Data (or the loss or corruption of Your Data for any reason).

7.6 Safe Food Pro reserves the right to withhold, remove and/or discard Your Data without notice for any breach, including, without limitation, your non-payment.

7.7 Safe Food Pro processes Telemetry Data to deliver, enhance, improve, customize, support, and/or analyze the Solution and other offerings by Safe Food Pro and otherwise may freely use Telemetry Data that does not identify you or any Authorized Users. You have the ability to configure the Solution to limit the Telemetry Data collected, but in some cases, You can only opt out of the Telemetry Data collection by uninstalling or disabling the Solution.

**"Telemetry Data"** means all information and data that the Software generates in connection with your use, including but not limited to, network policy, log and configuration information; threat intelligence data, URLs, metadata or net flow data; origin and nature of malware; the types of software or applications installed on a network or an endpoint; information about the devices connected to a network; information generated by sensors, devices and machinery; information related to the usage, origin of use, traffic patterns or behavior of the users of a network or Solution; and information relating to the existence of cookies, web beacons, and other similar applications.

## 8. AVAILABILITY OF THE SOLUTION

### 8.1 Support Services

During the Term, Safe Food Pro will (subject to you complying with your Obligations under these Terms and Conditions, and subject to any other limitation or exclusion set out in these Terms and Conditions or the EULA) provide the following services to you:

- (a) Safe Food Pro will provide information to you regarding the configuration, customisation and maintenance of any software used in relation to the Solution and of any software required to be loaded upon your systems for the purpose of accessing and using the Solution in accordance with, and for the purposes contemplated in, these Terms and Conditions.]

- (b) Safe Food Pro will provide other email support services (as determined by Safe Food Pro from time to time) as is reasonably required to ensure that the Solution is made accessible to Authorised Users in a functional and operational state in accordance with, and for the purposes contemplated in, these Terms and Conditions.]

## 8.2 Downtime and Limitations

Notwithstanding any provision of these Terms and Conditions (or the EULA) to the contrary, you acknowledge and agree that:

- (a) Safe Food Pro does not warrant that any person will have continuous access to the Services or the Solution; and
- (b) the provision of and access to the Services and the Solution is reliant upon various factors beyond Safe Food Pro's control, including but not limited to:
  - (i) Force Majeure Events;
  - (ii) the provision of goods and services by Third Party Providers (including the availability, capacity, operation and performance of Third Party Platforms);
  - (iii) acts or omissions by you, the Authorised Users or third parties (including Third Party Providers); and
  - (iv) your or the Authorised User's internet service provider, telecommunications provider or equipment used to access the Solution;
- (c) from time to time, Safe Food Pro may (but is not obliged to):
  - (i) make modifications to, or enhancements, updates or new releases of, the Solution;
  - (ii) undertake certain maintenance activities in relation to the Solution;
  - (d) certain activities or occurrences, including:
    - (i) those referred to in clauses 8.2(b) and 8.2(c); or
    - (ii) any act or omission of any third party (including any Third Party Provider or Authorised User); or
    - (iii) any act or omission of you, the Authorised User or your Personnel, may cause System Outages.

## 8.3 Suspension and Termination

You acknowledge and agree that Safe Food Pro may suspend or terminate the Services (and access to the Solution) at any time without prior notice to you, including (without limitation) where:

- (a) you have breached these Terms and Conditions, including non-payment of fees;
- (b) you or your Authorised Users have breached the EULA;
- (c) you have exceeded the applicable usage limitations (if any);
- (d) there is a malfunction, fault or breakdown of any of Safe Food Pro's (or its Third-Party Providers') equipment or if Safe Food Pro (or any of its Third-Party Providers) undertakes repair, maintenance, updates, modifications or replacement of any part of the Solution;
- (e) there is a security breach of any kind in relation to the Solution or Your Data;
- (f) Safe Food Pro is (or any of its Third-Party Providers are) required by law to do so;
- (g) a Force Majeure Event occurs, which affects or may affect Safe Food Pro's ability to provide access to the Solution;
- (h) there is a Claim made that the continued provision of access to the Solution infringes the rights of any person, or there is a Claim made that exposes Safe Food Pro to liability or prosecution for an offence.

Safe Food Pro reserves the right to suspend your access to support for versions of the Solution which have not been updated.

## 8.4 No Liability

Safe Food Pro will not be liable to you or any other person for any Claim or to any other extent for Liability or damage caused by loss of access or functionality to the Solution or Services (or where the Solution is

not available for at the minimum Availability percentage under clause **Error! Reference source not found.**

## 9. CONFIDENTIALITY

- 9.1 You acknowledge the Confidential Information is valuable to Safe Food Pro.
- 9.2 You undertake to keep the Confidential Information secret and to protect and preserve the confidential nature and secrecy of the Confidential Information.
- 9.3 At the request of Safe Food Pro, you must return to Safe Food Pro or destroy (and certify that it has been destroyed) all the Confidential Information.
- 9.4 You acknowledge that a breach of this clause may cause Safe Food Pro irreparable damage for which monetary damages may not be an adequate remedy. Accordingly, in addition to other remedies that may be available, Safe Food Pro may seek and obtain injunctive relief against such a breach or threatened breach.

## 10. PRIVACY POLICY

- 10.1 The Privacy Policy sets out how Safe Food Pro treats personal information and Your Data. You agree that Safe Food Pro can use your personal information and Your Data in accordance with the Privacy Policy.
- 10.2 You consent to the transfer of personal information and Your Data to the relevant hosting locations (which may be within Australia or overseas) for storage, processing and use by Safe Food Pro.

## 11. INTELLECTUAL PROPERTY

### 11.1 Ownership

Ownership of the Solution and Documentation is not modified or transferred by these Terms and Conditions. The Intellectual Property Rights in the Solution and Documentation (including all associated Source Code and all components and parts of the Solution) remain vested in Safe Food Pro (or its licensors).

### 11.2 New IP

- (a) The New IP will be the sole and exclusive property of Safe Food Pro.
- (b) You irrevocably assign to Safe Food Pro all right, title, and interest in and to the New IP.
- (c) In the event that Safe Food Pro provides new features or services based on requests or suggestions made by you, you acknowledge that the Intellectual Property Rights in any such new features or services (including all associated Source Code and all associated components and parts of the Solution) belong exclusively to Safe Food Pro and you will not be compensated for the request or suggestion.
- (d) In the event New IP is created by you, you will:
  - (i) promptly disclose the New IP to Safe Food Pro;
  - (ii) promptly cause that New IP to be assigned to Safe Food Pro; and
  - (iii) not be compensated for the assignment of the New IP.

### 11.3 Prohibited Activities

You must not:

- (a) allow or permit any person other than you and the Authorised Users to access, view or use the Solution (or any associated Source Code or component or part of the Solution), or the Services, for any purpose or for any reason;
- (b) allow or permit any Direct Competitor to access, view or use the Solution (or any associated Source Code or component or part of the Solution), or the Services, for any purpose or for any reason;
- (c) unless otherwise expressly authorised in writing by Safe Food Pro:
  - (i) reverse engineer or decompile the Solution;
  - (ii) reproduce, make error corrections to or otherwise modify

or adapt the Solution (including to create any derivative works based on the Solution);

- (iii) challenge the validity of any Intellectual Property Rights of Safe Food Pro;
- (iv) merge or interface any third-party software (including Source Code or open source software) with the Solution;
- (v) access or permit the Solution to be accessed in any unauthorised way or unintended way, including via interfaces (including exposing or "passing through" a software API);
- (d) do, or permit, or omit to do any act which infringes Safe Food Pro's Intellectual Property Rights (or those of its licensors);
- (e) do or permit the use of the Solution or Services in a way that could infringe a third party's Intellectual Property Rights;
- (f) use the Solution, or the Services, in any way (or otherwise do anything else) that could damage the reputation of Safe Food Pro or the Solution;
- (g) enter into any agreement or understanding to do any of the acts referred to in this clause; or
- (h) attempt, counsel, procure or otherwise assist any person (including but not limited to a Direct Competitor) to do any of the acts referred to in this clause.

#### 11.4 Notification of infringement claim

You must notify Safe Food Pro within five (5) business days of the date you become aware of:

- (a) any actual or suspected breach or infringement of your obligations under these Terms;
- (b) any actual or suspected infringement of Safe Food Pro's Intellectual Property Rights by you, your Personnel and other Authorised Users, or any third party; or
- (c) any actual or threatened claim by a third party that the third party's Intellectual Property Rights have or will be infringed by any act, omission or permission by a party in connection with these Terms.

## 12. SECURITY

12.1 Safe Food Pro will use reasonable endeavors (including by maintaining commercially reasonable administrative, physical and technical safeguards as determined by Safe Food Pro) to:

- (a) keep the Solution and Your Data secure;
- (b) prevent loss of, damage to, and unauthorised access to or use or disclosure of, any of Your Data;
- (c) protect the Solution; and
- (d) prevent intrusions, viruses, trojan horses, worms, time bombs and other similar harmful software (Harmful Code) which may affect the Services or Your Data, as well as vulnerabilities which may expose the Solution to the risk of intrusion or attack, (the **Security Objectives**).

12.2 In giving effect to such Security Objectives, Safe Food Pro will:

- (a) implement a risk management program that includes:
  - (i) identifying all reasonably foreseeable internal and external risks to the Services which may impact the Services or Your Data; and
  - (ii) establishing and maintaining appropriate safeguards (as determined by Safe Food Pro) against the risks identified;
- (b) promptly respond to any security related questions made by you when requested and provide related materials upon request;
- (c) notify you promptly if Safe Food Pro becomes aware of any actual or potential security breach, being any failure to achieve the matters referred to in clause 12.2(a), and make available appropriately skilled Personnel to address such breach or occurrence, including taking reasonable steps to rectify it and prevent it from reoccurring.

## 13. INDEMNITIES

13.1 Without limiting any other obligation or indemnity given by you under these Terms and Conditions, you must at all times indemnify and hold harmless the Indemnified Parties (including for legal costs on a full indemnity basis) from and against any Claim or Liability incurred or suffered by any of the Indemnified Parties which is caused or contributed to by any of the following:

- (a) a breach by you of your obligations pursuant to these Terms and Conditions or any warranty, representation or guarantee given by you under or in connection with these Terms and Conditions (whether express or implied);
- (b) any failure by you or your Authorised Users to fully comply with
  - (i) all applicable laws (including all applicable accounting, tax, industrial relations, payroll, and employment laws); and
  - (ii) all of your Obligations owed to your employees (whether under contract, award, law or otherwise);
- (c) any breach or infringement of the Intellectual Property Rights of any person (including Safe Food Pro) by you or your Authorised Users or Personnel; or
- (d) any willful, unlawful or negligent act or omission by you, your Authorised Users or Personnel.

## 14. LIABILITY

### 14.1 Force Majeure Events

Safe Food Pro will not be liable for any failure to perform its obligations under or in connection with these Terms (or any associated agreement or document) where that performance is delayed, prevented, restricted or interfered with as a result of a Force Majeure Event.

### 14.2 Exclusion of liability

To the extent permitted by law, you acknowledge and agree that:

- (a) the Solution and Services are provided "as is", the Solution and Services are never completely error or defect free and that Safe Food Pro will not have any Liability in connection with any defects or errors in the Solution or Services or System Outages;
- (b) your use of the Solution and the Services is at your own risk;
- (c) you are responsible for determining the suitability of the Solution and the Services for your own purposes;
- (d) your use of the Solution and the Services does not constitute the receipt of professional advice from Safe Food Pro or its Related Entities (or their respective Personnel);
- (e) you are solely responsible for (and Safe Food Pro accepts no Liability or responsibility in relation to):
  - (i) fulfilling statutory obligations or making any payment required by law that may arise in connection with any employer/employee relationship or arrangement;
  - (ii) payment of applicable taxes in relation to any employer/employee relationship or arrangement;
  - (iii) compliance with all applicable laws (including all applicable accounting, tax, industrial relations, payroll, employment and other laws, and other requirements relating to employee entitlements) or compliance with any Obligations owed by you to any Personnel (whether under contract, award, law or otherwise);
- (f) it is your responsibility to check that storage of and access to Your Data via the Solution will comply with laws applicable to you (including any laws requiring you to retain records and all privacy laws); and
- (g) you are responsible for the cost of consumables, replacement parts, hardware, software, network upgrades and any goods and services used in connection with the Solution.

14.3 Without limiting the foregoing, and to the extent permitted by law, Safe Food Pro does not represent or warrant that:

- (a) the Services or the Solution are suitable or fit for the proposed use by you;

- (b) the Services and the Solution will not be affected by System Outages, suspension or downtime;
- (c) the Services and the Solution will be uninterrupted or error free; or
- (d) the Services or the Solution will provide any functions or satisfy any requirements not expressly stated in these Terms.

14.4 Without limiting the foregoing and to the extent permitted by law:

- (a) you represent and warrant that you are aware of (and appropriately trained in respect of compliance with) all applicable industrial relations requirements and other laws and requirements relating to Personnel within all relevant jurisdictions (and will ensure that rostering and payment of Personnel complies with such requirements);

14.5 To the extent permitted by law, Safe Food Pro is not liable (and you will not in any circumstances have any Claim against Safe Food Pro) for or in respect of:

- (a) any Claim or Liability suffered or incurred by you (or any other person) in connection with:
  - (i) any defect, failure or non-performance of the Solution or Services or their design;
  - (ii) System Outages;
  - (iii) the Solution's and the Service's quality, merchantability or fitness for a particular purpose, or the suitability of the Solution for your business, products or service;
  - (iv) any acts or omissions of you, your Authorised Users or Personnel;
  - (v) any acts or omissions of any Third Party Provider or internet service provider;
  - (vi) any failure, error or non-performance of Third Party Platforms;
  - (vii) the unavailability or non-performance of the internet;
  - (viii) the security of the Solution, Your Data and any information stored on your servers;
  - (ix) any interception or corruption of Your Data or other information or data during any transmission over the internet or any telecommunications network or at any customer network access point;
  - (x) any content, products and deliverables displayed or offered via or in relation to the Solution or Services; or
  - (xi) any loss or damage incurred by you as a result of third party Claims; or
- (b) any Consequential Loss of any kind, however caused, and whether arising under contract, tort (including negligence) or otherwise, (even if you have advised us of their possibility), except to the extent caused by Safe Food Pro's gross negligence or willful misconduct.

14.6 You agree that Safe Food Pro is not liable to third parties in connection with these Terms and Safe Food Pro will have no Liability for Claims made by third parties arising out of or in connection with these Terms, including on account of Claims made by any Government agency whether due to your non-compliance with applicable laws or otherwise.

#### 14.7 Exclusions of warranties and representations

To the extent permitted by law, all warranties and representations concerning the Services and the Solution (other than those expressly set out in these Terms) are excluded.

#### 14.8 Implied terms

- (a) To the full extent permitted by law, any term which would otherwise be implied into these Terms is excluded.
- (b) In the event any statute implies terms into these Terms which cannot be lawfully excluded, such terms will apply to these Terms, save that the liability of Safe Food Pro for breach of any such implied term will be limited in accordance with the immediately following limitation of liability clause below.

#### 14.9 Limitation of liability

- (a) If you are not satisfied with the Services, your sole and exclusive remedy is to terminate the agreement in accordance with clause 16.
- (b) Irrespective of any other clause in these Terms and Conditions, to the fullest extent permitted by law, Safe Food Pro's cumulative Liability in the aggregate arising out of or in connection with this agreement (whether in contract, tort, statute or otherwise) shall in no event exceed the aggregate subscription fees paid by You to Safe Food Pro in the previous 3 months. This limitation is cumulative and not per incident.

### 15. WARRANTIES

15.1 You represent and warrant to Safe Food Pro that:

- (a) if a corporation, you are a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) you have full power, legal right and authority to enter into this agreement, and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with these Terms;
- (c) you have taken all necessary corporate action to authorise the creation, execution, delivery and performance of this agreement, and to observe and perform the provisions of this agreement in accordance with the Terms; and
- (d) you have all Authorisations required by applicable laws in order to perform its Obligations under these Terms and Conditions.
  - (a) you and your Authorised Users are authorised to use the Solution and the Services;
  - (b) you and your Authorised Users are authorised to use, upload and otherwise deal with Your Data in relation to the Solution and the Services;
  - (c) all information and data provided by you or your Authorised Users in connection with the Services and your use of the Solution is true, complete and accurate in all respects;
  - (d) the use by Safe Food Pro of third party materials provided by you or your Authorised Users does not, and will not, breach any legal rights of a third party, including any Intellectual Property Rights and nothing contained in the third party materials is misleading or deceptive, or likely to mislead or deceive; and
  - (e) you will be responsible for obtaining all necessary Authorisations in relation to the use by Safe Food Pro of third-party materials in providing the Solution and Services, and payment of all royalties and other fees associated with the use of such third-party materials.

### 16. TERMINATION

#### 16.1 Termination for cause

- (a) Safe Food Pro may terminate this agreement immediately by written Notice to you if you have failed to pay the Fees in accordance with clause 6 and fees are over 30 days overdue.
- (b) Either party may terminate this agreement immediately by written Notice to the other party upon the occurrence of one of the following events:
  - (i) if the other party is in breach of these Terms and Conditions and that other party has failed to remedy the breach within ten (10) Business Days of a written Notice to it from the first-mentioned party, specifying the breach and requiring it to be remedied;
  - (ii) if the other party is in breach of these Terms and Conditions and that breach is not capable of remedy (as reasonably determined by the non-breaching party); or
  - (iii) an Insolvency Event occurs in respect of the other party.

#### 16.2 Termination for convenience

Subject to clause 16.1, either party may terminate this agreement for convenience (and without having to give reasons) by giving the other party at least 30 days' written Notice.

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### 16.3 No prejudice of rights

Termination shall not prejudice or affect any right or action which shall have accrued or shall thereafter accrue to either party.

### 16.4 Consequences of Termination

Upon termination of this agreement:

- (a) the Services (and you and your Authorised Users' access to the Solution) will terminate;
- (b) all monies owing to Safe Food Pro under these Terms and Conditions become immediately payable and due;
- (c) each party must immediately return or (if requested to do so by other party) destroy all Documentation belonging to the other party in its possession or control;
- (d) each party must return to the other party or (if requested by the other party) destroy, and certify the destruction of (in a statutory declaration) all confidential information belonging to the other party, any you will not be entitled to any refund of Fees paid in advance.

## 17. AUDIT

- 17.1 During the term of this agreement and for a period of three (3) years after its expiration or termination, you will take reasonable steps to maintain complete and accurate records of your use of the Solution sufficient to verify compliance with this Agreement. No more than once every twelve (12) month period, you will allow Safe Food Pro and its auditors the right to examine such records and any applicable books, systems, and accounts, upon reasonable advanced notice, during your normal business hours. If the audit discloses underpayment of license fees, you will pay such fees plus the reasonable cost of the audit within thirty (30) days of receipt of written notice.

## 18. GENERAL PROVISIONS

### Assignment

- 18.1 You cannot assign, novate or otherwise transfer its rights or obligations under these Terms and Conditions without the prior written consent of Safe Food Pro.
- 18.2 Safe Food Pro can assign, novate or otherwise transfer its rights or obligations under these Terms and Conditions without your prior written consent.

### Severance

- 18.3 If a provision of these Terms and Conditions is held by a court to be illegal, void or unenforceable, the offending provision will be severed from these Terms to the extent and in the manner that best gives effect to the remaining provisions.

### Governing law

- 18.4 These Terms and Conditions and the transactions contemplated by these Terms and Conditions are governed by the law in force in the State of Queensland, Australia. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the State of Queensland, and all courts competent to hear appeals from those courts.

### Contra proferentem

- 18.5 No provision of these Terms and Conditions is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

### Survival

- 18.6 Sections 9, 11, 13, 14, 17 and 18 survive termination or expiration of this Agreement.