

4Tomorrow Environmental Solutions Pty Ltd

ACN 673 161 049

Subscription Terms and Conditions

Effective 01 December 2023

1. Definitions and interpretation

1.1 Definitions

ACL means the Australian Consumer Law under Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Agreement means the following documents, in order of precedence:

- (a) these Subscription Terms and Conditions (**Terms**);
- (b) the Pricing Schedule; and
- (c) Outline of Services;

Application means the application to subscribe for the services in the form provided by 4Tomorrow.

Business Day means any day other than: a Saturday, Sunday or public holiday in New South Wales;

Customer Data means all information, documents, works, materials, and other particulars which the Customer provides to 4Tomorrow or uploads to the Platform (or which is provided to 4Tomorrow on behalf of the Customer by any person) which are necessary for 4Tomorrow to carry out the Services including any such information uploaded to the Platform or emailed to 4Tomorrow;

Confidential Information means:

- (a) either party's information of whatsoever kind or nature that is expressed to be confidential either by the use of words such as "private", "in confidence", "strictly confidential", "not to be disclosed," and all other information which by its nature is confidential including business records, agreements or arrangements with customers, suppliers and/or contractors and advices and/or reports to the other party; and
- (b) all information of whatsoever kind or nature relating to the affairs of third parties in the possession of either party that the other party may have access to at any time during the Term, but excludes all information which is or becomes at any time in the public domain except where such information comes into the public domain as a consequence of any act or omission by a party constituting a breach of this Agreement.

Direct Debit Service Provider has the meaning given in clause 3.3.

Fees means the amounts specified in the Pricing Schedule and as amended in accordance with this Agreement or as otherwise agreed from time to time.

Force Majeure means a circumstance beyond the reasonable control of the parties that results in a party being unable to observe or perform on time an obligation under this Agreement, including acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, terrorism, riots, malicious damage, sabotage, revolution, strikes, and pandemics.

Intellectual Property Rights means all copyright, registered designs, patents, rights in databases, technology, trade marks, design rights, confidential information, trade secrets, know-how or other intellectual property anywhere in the world, statutory or otherwise, whether or not registered and including applications for registration of any of them.

Loss means any liabilities, losses, damages, expenses, and costs (including legal costs on a full indemnity basis and whether incurred or awarded) of any kind or nature;

Material means all reports, manuals, procedures, instructions, booklets, and any other information in any form, provided by 4Tomorrow as part of the Services.

No Claim means no claim on any basis whatsoever, whether contractual, tortious (including in negligence), statutory or pursuant to any other principle of law or equity;

Outline of Services means any document or other written notice from 4Tomorrow specifying the Services to be provided;

Personal Information has the same meaning as in the *Privacy Act 1988* (Cth);

Pricing Schedule means the document or other notice in writing provided by 4Tomorrow specifying the monthly subscription fee (and any other applicable fee) for the Services;

Services means all of the work to be performed by 4Tomorrow identified in the Outline of Services, as varied in accordance with these Terms;

Subscription means the Customer's subscription permitting the Customer to access the Platform or to otherwise receive the Services provided by 4Tomorrow by email;

Subscription Fee means the fee payable monthly by the Customer to 4Tomorrow for access to the Platform or otherwise receive the Services, as specified in the Pricing Schedule.

Support Services has the meaning given in clause 9.1.

1.2 Interpretation

In this Agreement:

- (a) words denoting persons also denote companies, and words denoting the singular include the plural;
- (b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to "includes", "including" and "include" is to be read as if followed by the words "without limitation".
- (d) A reference to a person include an individual, firm or a body, corporate or unincorporated. A reference to a party is a reference to a party to this Contract;

2. Entire Agreement

- 2.1 This Agreement becomes binding upon the Customer:
 - (a) accepting the Outline of Services and Pricing Schedule; and
 - (b) completing the Application.
- 2.2 To the extent permitted by law, this Agreement constitutes the entire Agreement between the parties in relation to its subject matter and supersedes all previous agreements and understandings between the parties in relation to its subject matter.
- 2.3 4Tomorrow may change these Terms from time to time. These Terms and any changes to them will be shown on 4Tomorrow's website or otherwise emailed to the Customer, on and from the date the relevant Terms are effective. By entering into an Agreement after that effective date, the Customer accepts and is bound by the changed Terms for that Agreement. To the extent that any changed Term is unfair to the Customer and if this Agreement constitutes a "consumer contract" or "small business contract" under the ACL, that changed Term does not apply to any Agreement.

3. Application

- 3.1 The Customer must complete and submit an Application to 4Tomorrow via email to 4Tomorrow's email address carbon@4Tomorrow.com.au or by 4Tomorrow's online application process.
- 3.2 As part of the Application, the Customer must provide accurate and up to date information including credit or debit card details.
- 3.3 The Customer acknowledges that 4Tomorrow uses a third party direct debit service provider (**Direct Debit Service Provider**) and accordingly, the Customer consents to its relevant account details and Personal Information being provided to the Direct Debit Service Provider (as may be varied from time to time) for the purpose of debiting the Fees payable under this Agreement.
- 3.4 The Customer acknowledges that the Direct Debit Service Provider's privacy policy applies to the information provided to the Direct Debit Service Provider and the Direct Debit Service Provider's terms of service otherwise apply in respect of the debit arrangement, including in respect of any dishonour fees which the Customer acknowledges they are liable for.
- 3.5 4Tomorrow is not liable for any Loss sustained by the Customer due to the Direct Debit Service Provider's acts or omissions.

4. Subscription

- 4.1 Upon this Agreement become binding in accordance with clause 2, the Customer is deemed to have subscribed to the Subscription.
- 4.2 The Customer will be issued with a username and preliminary password.
- 4.3 The Customer must provide complete and accurate information during the Application process and must update the Customer's information to ensure it remains accurate during the Agreement term.
- 4.4 The Customer must not disclose its username, password, or two-factor authentication information (if applicable) to any unauthorised person. The Customer is responsible for all activity that occurs under the Customer's username, regardless of whether undertaken by the Customer, the Customer's employees, or a third party (including contractors or agents). 4Tomorrow accepts no liability for

unauthorised access to the Platform under the Customer's Subscription where that unauthorised access was caused or facilitated by the Customer failing to take due care of the Customer's Subscription details or login credentials.

- 4.5 The Customer must contact 4Tomorrow promptly if the Customer believes, or ought reasonably have been aware, that unauthorised access to, or activity under, the Customer's login credentials has been undertaken, or if the Customer's Subscription details or login credentials is lost or stolen.

5. Subscription Fees

- 5.1 The Customer must pay 4Tomorrow the Subscription Fees in accordance with the Pricing Schedule.
- 5.2 The Subscription Fee must be paid by direct debit on the date this Agreement becomes binding under clause 2 and thereafter, monthly on the same date as the Agreement became binding but not later than the 28th day of each month.
- 5.3 The Subscription automatically renews each month until terminated in accordance with clause 13.
- 5.4 The Subscription Fee may be varied by 4Tomorrow giving the Customer one months' notice in respect of any subsequent Subscription periods.
- 5.5 Except as expressly provided for elsewhere in this Agreement, and subject to any applicable remedy under a non-excludable statutory guarantee, the Customer is not entitled to a refund in full or part of the Subscription Fee for any reason.
- 5.6 In case of any dishonoured Subscription Fees, the Customer is liable for any associated fees charged by the Direct Debit Service.

6. Services

- 6.1 4Tomorrow must provide the Services to the Customer in accordance with the Service Outline.
- 6.2 The Customer must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 6.3 The Customer must not use the Services:
 - (a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.

7. Customer Data

- 7.1 The Customer:
 - (a) acknowledges that 4Tomorrow, in performing the Services, is relying upon the Customer Data being provided in a timely manner, and being accurate;
 - (b) warrants to 4Tomorrow that the Customer Data is accurate;
 - (c) has No Claim against 4Tomorrow (or any employee of 4Tomorrow), in relation to or connection with any risks, Losses and delays suffered or incurred by the Customer as a result of the Customer Data not being accurate or provided promptly to 4Tomorrow, including where that inaccuracy or delay results in some defect in the Services; and
 - (d) must ensure that the Customer Data does not contain or consist of, and the Customer must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs,

routines, applications or technologies or any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

8. Protection of Customer Data

- 8.1 4Tomorrow agrees to:
- only access, collect, store or otherwise process Customer Data for the purpose of fulfilling 4Tomorrow's obligations under the Agreement or as expressly permitted by the Customer;
 - maintain reasonable and appropriate measures and safeguards to preserve and protect the security, integrity and confidentiality of Customer Data aligned with applicable industry standards; and
 - ensure the Platform is maintained and operated in accordance with industry recognised security requirements, including vulnerability management and compliance with applicable Laws.
- 8.2 If 4Tomorrow detects a confirmed or reasonably suspected misuse, unauthorised access, destruction, loss, alteration or disclosure of any Customer Data in relation to the Platform (each a **Security Incident**), 4Tomorrow will:
- promptly notify the Customer of the Security Incident, and of 4Tomorrow's steps to investigate and minimise the impact of the Security Incident on Customer Data; and
 - take prompt steps to investigate, contain and remediate any Security Incident.

9. Support Services for the Platform

- 9.1 Where the Customer's Subscription includes access to the Platform, 4Tomorrow must perform such services as it considers reasonable to ensure the adequacy of the Platform (**Support Services**). Such support may, at the sole option of 4Tomorrow, take the form of:
- telephone advice;
 - remote connection to the Customer's site;
 - on-site attendance; or
 - such other services as 4Tomorrow considers are more effectively provided off-site.
- 9.2 4Tomorrow must provide the Support Services in response to a report by the Customer of a suspected defect or error in the Platform, which defect or error allegedly causes the Platform to deviate from normal operating conditions.
- 9.3 4Tomorrow does not warrant any continuous or uninterrupted access to the Platform.
- 9.4 4Tomorrow does not warrant that it will be capable of promptly receiving, processing or otherwise acting upon a request for Support Services which is made outside of normal business hours of 9 am to 5 pm on a business day (excluding weekends and public holidays in the location from which 4Tomorrow provides the Support Services).
- 9.5 Immediately after making a request for Support Services which may involve error correction or program modification, the Customer must provide to 4Tomorrow on request, a documented example of the defect or error which it alleges prevents conformity of the Platform's normal operating conditions.
- 9.6 The Customer must, if so requested, give 4Tomorrow a listing of output and any other data which 4Tomorrow requires in order to reproduce operating conditions

similar to those present when any alleged defect or error in the Platform was discovered.

10. Privacy

- 10.1 Each party must comply with its obligations under the *Privacy Act 1988* (Cth) and the Australian Privacy Principles with respect to the processing, holding, and use of Personal Information.
- 10.2 The Customer warrants to 4Tomorrow that it has the legal right to disclose all Personal Information that the Customer in fact discloses to 4Tomorrow under or in connection with the Agreement.
- 10.3 4Tomorrow may only use the Customer Personal Information in accordance with its Privacy Policy and this Agreement, including for the purpose of providing the Services.
- 10.4 Notwithstanding any other provision of the Agreement, 4Tomorrow may process Personal Information if and to the extent that 4Tomorrow is required to do so by applicable Law.

11. Intellectual property and Confidentiality

- 11.1 Nothing in this Agreement transfers any right, title or interest in any Intellectual Property Rights to any party, except as expressly stated in this Agreement.
- 11.2 The Customer owns the Intellectual Property Rights in the Customer Data only.
- 11.3 4Tomorrow owns all Intellectual Property Rights in the Platform, Materials, and any other data created as part of performing the Services (whether provided by email or via the Platform).
- 11.4 4Tomorrow grants to the Customer a royalty free, revocable, non-exclusive and non-transferable license to access the Platform, and use the Materials for the purpose of the Customer's business operations (excluding for any purpose related to commercialising the Materials).
- 11.5 The Customer agrees that any Intellectual Property Rights in any comments, suggestions, or improvements that the Customer may provide to 4Tomorrow in connection with the Platform or Materials, or requests for new Platform features or Features in connection with the Materials (each, an **Improvement Suggestion**) becomes 4Tomorrow's sole property immediately upon the Customer uploading or posting that Improvement Suggestion to the Platform or otherwise (including by email) providing the Improvement Suggestion to 4Tomorrow, and the Customer hereby assigns all Intellectual Property Rights in all and any such Improvement Suggestions to 4Tomorrow effective as soon as the Customer provides each Improvement Suggestion to 4Tomorrow or uploads or posts an Improvement Suggestion to the Platform. The Customer consents to the infringement by 4Tomorrow and any third party that 4Tomorrow authorises, of all Moral Rights that You may have in any Improvement Suggestions.
- 11.6 Each party agrees:
- to keep the other party's Confidential Information confidential; and
 - to not disparage the other party.

12. Warranties and Liability Limit

- 12.1 Except to the extent that the Customer has the benefit of a non-excludable statutory guarantee:
- the Material is provided "as is" and 4Tomorrow makes no warranties or representations in respect of its accuracy;

- (b) to the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement may be implied into this Agreement; and
 - (c) 4Tomorrow makes no warranties or representations as to the suitability of the Material for any purpose the Customer (or any employee) may use (whether in breach of the Agreement or not) the Material for.
- 12.2 4Tomorrow's aggregate liability to the Customer arising in connection with this Agreement, whether based in contract, tort (including negligence), equity, statute, by way of indemnity or contributions, warranty, guarantee or otherwise, is limited to the lesser of:
- (a) the amount of Fees paid to 4Tomorrow within the 12 months ; and
 - (b) \$100,000.
- 12.3 If, and to the extent that, clause 12.1 is void as a result of section 64A of the Australian Consumer Law under Schedule 2 of the *Competition and Consumer Act 2010* (Cth), then 4Tomorrow's liability for a breach of a condition or warranty is limited to:
- (a) the supplying of the relevant Services or Materials again; or
 - (b) paying the cost of having the relevant Services or Materials supplied again.
- 12.4 4Tomorrow's liability to the Customer is excluded in relation to any loss of profit, loss of any contract, loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill, loss of customers or any other indirect or consequential losses or damages arising in connection with the Agreement.
- 12.5 Clauses 12.1 and 12.4 do not limit or exclude 4Tomorrow's liability in respect of claims, actions, costs, losses, damages or liability arising due to:
- (a) liability which cannot be limited at law; or
 - (b) fraudulent or criminal conduct.
- 13. Termination**
- 13.1 4Tomorrow may terminate this Agreement if the Customer:
- (a) breaches a material term of this Agreement;
 - (b) breaches a term of this Agreement and fails to remedy that breach within 14 days of 4Tomorrow's notice to so rectify;
 - (c) fails to pay any amount owing by the date due; or if 4Tomorrow:
 - (d) is prevented from lawfully completing the Services in accordance with this Agreement due to a change in any applicable Laws; or
 - (e) gives the Customer at least one months' notice that 4Tomorrow wishes to terminate for 4Tomorrow's convenience.
- 13.2 The Customer may terminate this Agreement:
- (a) immediately, if the Customer does not agree to a variation in the Subscription Fee under clause 5.4;
 - (b) if the Customer gives 4Tomorrow at least three months' notice that the Customer wishes to terminate for convenience; or
 - (c) by giving 4Tomorrow written notice to that effect if 4Tomorrow fails to remedy a substantial breach of a material term of this Agreement within 14 days of being requested by notice in writing to do so by the Customer.
- 13.3 On termination of this Agreement:
- (a) any amounts owing to 4Tomorrow in respect of the Services or Subscription Fees become immediately due and owing; and
 - (b) both parties must return or destroy (at the relevant discloser's request) any Confidential Information held by the other party.
- 13.4 Subject to any remedy the Customer is entitled under a non-excludable statutory guarantee, no Subscription Fees (nor any pro-rated amount) will be refunded. If the Customer gives notice of termination under clause 13.2(b) part way through a month, it must pay one last monthly Subscription Fee to comply with its obligation to give at least one months' notice of termination.
- 14. Force Majeure**
- 14.1 The Services may be totally or partially suspended by 4Tomorrow during any period in which 4Tomorrow may be prevented or hindered from performing the Services (or any part of the Services) through any circumstances outside 4Tomorrow's reasonable control or where such performance is rendered materially more expensive by such circumstances.
- 14.2 Circumstances beyond 4Tomorrow's reasonable control include strikes, lockouts or other labour difficulty, inability to obtain any necessary materials or services on usual terms, failure of software, hardware or communication network, or pandemic.
- 14.3 4Tomorrow incurs no liability to the Customer in respect of such suspension.
- 15. Dispute Resolution**
- 15.1 If a dispute or difference (**Dispute**):
- (a) arises in respect of any fact, matter or thing arising out of, or in any way in connection with, this agreement, or the conduct of a party in relation to the subject matter of this agreement at any time; and
 - (b) is not required to be determined in accordance with a procedure in another clause in this agreement,
- the Dispute must be determined in accordance with the procedure in this clause 15.
- 15.2 If a Dispute arises, any party may give the other(s) a notice (**Dispute Notice**) specifying:
- (a) particulars of the Dispute; and
 - (b) the position which the party believes is correct.
- 15.3 If a Dispute Notice is given, the parties must procure that their respective nominated representative meet and undertake genuine and good faith negotiations with a view to resolving the Dispute specified in that Dispute Notice.
- 15.4 If the Dispute specified in a Dispute Notice is not resolved within 10 Business Days after the date on which the parties receive that Dispute Notice, 4Tomorrow may elect that the Dispute must be referred to mediation in which case:
- (a) the mediation will be in accordance with, and subject to, the Mediation Rules of the Resolution Institute;
 - (b) the parties must participate in the mediation genuinely and in good faith.
- 15.5 This clause 15 will survive termination, completion, or expiration of this Agreement.
- 16. GST**
- 16.1 "**GST Law**" has the meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

16.2 Words or expressions used in this clause 16 which are defined in GST Law have that defined meaning unless otherwise provided.

16.3 Except where express provision is made to the contrary, any amount that may be payable for the Contract Sum (and Variation Sum, if relevant) under this Agreement is exclusive of any GST. The applicable GST amount payable must be added to the Contract Sum (and the Variation Sum, if relevant).

17. General

17.1 The Customer agrees that, other than is expressly stated in this Agreement, in entering into the Agreement it has not relied upon any representation, warranty, or inducement by 4Tomorrow nor is any representation, warranty or thing made or done by 4Tomorrow to be inferred, incorporated or implied into the Agreement.

17.2 This Agreement may only be varied by a document signed by or on behalf of each party.

17.3 The Customer must not assign or novate this Agreement without 4Tomorrow's prior written consent.

17.4 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one Agreement.

17.5 This Agreement may be executed electronically and in a number of counterparts and by the parties on separate counterparts. Each counterpart comprises the Agreement of each party who has executed and delivered that counterpart.

17.6 A party's rights and obligations do not merge on completion of any transaction under this agreement.

17.7 If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

17.8 Without limiting any other provision of this Agreement, the parties agree that:

- (a) each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement; and
- (b) it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

17.9 Without limiting any other provision of this Agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement;
- (b) a waiver given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this Agreement operates as a waiver of another breach of that

term or of a breach of any other term of this Agreement.

17.10 This Agreement is governed by the law specified in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement, and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue is in accordance with the provisions of this clause 17.10

