

# SensibleSync Terms of Service

Last Updated: 1 April 2015

Welcome to the SensibleSync service supplied by Sensible Business Solutions Pty Ltd. Please read these terms and conditions of service (these "**Terms**") carefully. Once accepted they form a contract ("**Contract**") between you and Sensible Business Solutions Pty Ltd, a company registered in New South Wales, Australia (ABN 88 11 062 476). ("**Sensible**", "**SensibleSync**", "**we**", "**us**", or "**our**") that governs your access and use of the SensibleSync services, which shall comprise (together the "**Services**"):

1. the hosted storage solution provided by Sensible for online content storage, sharing and processing of files, materials, data, text, audio, video, images or other content (collectively, "**Content**");
2. the websites owned or operated by Sensible, including those located at <http://www.SensibleSync.com> ("**Site**") or applications; and
3. any written or electronic use or features guides or other documentation provided or made available by Sensible (the "**User Guides**").

You should also read our [Privacy Policy](#) for information about our approach to privacy and your information.

**BY CLICKING THE "CONTINUE" BUTTON, REGISTERING FOR AN ACCOUNT OR USING ANY OF THE SERVICES YOU ARE INDICATING YOUR ACCEPTANCE TO THESE TERMS AND ARE AGREEING TO BE BOUND BY AND A PARTY TO THIS BINDING CONTRACT.**

**IF YOU DO NOT AGREE WITH THESE TERMS, OR DO NOT HAVE THE AUTHORITY TO AGREE TO THEM ON BEHALF OF YOUR ORGANISATION YOU MUST NOT REGISTER FOR AN ACCOUNT WITH US AND MUST NOT USE THE SERVICES.**

Should you have any questions concerning these Terms, please contact [sales@SensibleSync.com](mailto:sales@SensibleSync.com).

**Business users** : If you are not a consumer and are using the Services on behalf of an organisation:

1. you are agreeing to these Terms for that organisation and represent and warrant to Sensible that you have the authority to bind that organisation to these Terms (in which event, "you" and "your" will refer to that organisation) unless that organisation has a separate paid contract in effect with us, in which event the terms of that contract will govern your use of the Service;
2. you may use the Services only in compliance with these Terms and only if you have the power to form a contract with Sensible and are not barred under any applicable laws from doing so; and
3. your use of the Services shall be governed by these Terms, except where any separate agreement governing your SensibleSync business account that expressly purports to supersede or prevail over these Terms.

If you would like to know more about a business account at SensibleSync, please visit the Site: [www.sensiblesync.com](http://www.sensiblesync.com).

For the purposes of these Terms, "consumer" means anyone purchasing and using the Services not in the course of a business. These terms are not intended to affect any consumers' statutory rights and will apply to the extent that applicable law allows in the country where that consumer is resident.

**Please note that, to the maximum extent permitted by applicable law and except as set out in these Terms, Sensible provides limited warranties for the Services. This contract also limits our liability to you. See Sections 13 (Limited Warranty) and 15 (Limitation of Liability) of these Terms for details.**

You should print a copy of these Terms or save them to your computer for future reference.

## 1. CHANGES TO THESE TERMS

We may change these Terms from time to time due to changes in our Services and the laws that apply to us and you. We will date and post the most current version of these Terms on the Site. If we make any changes, we will notify you by revising the "Last Updated" date at the top of these Terms and in some cases, where appropriate, we may provide you with additional notice (such as adding a statement to our homepage or sending you an email notification). Any changes will be effective upon posting the revised version of these Terms on the Service (or such later effective date as may be indicated at the top of the revised Terms).

If in our sole discretion we deem a revision to these Terms to be material, we will notify you via the Service and/or by email to the email address associated with your account. Notice of other changes may be provided the Site or related SensibleSync blogs. We therefore encourage you to check the date of these Terms whenever you visit the Site to see if these Terms have been updated.

If we do update these Terms and you do not agree to the updated Terms, you shall be free to decide whether to accept the terms or stop using the Services. You can deactivate your account with us at any time by deactivating your account through "Your Account" [settings](#).

**Your continued access or use of any portion of the Service constitutes your acceptance of such changes. If you don't agree to any of the changes, we're not obligated to keep providing the Service, and you must cancel and stop using the Service.**

## 2. ACCESS TO THE SERVICE

Once you have created an account (see "[Your Account](#)") and you accept these Terms you may use the Services on a non-exclusive, non-transferable basis, solely in strict compliance with these Terms and all applicable laws. You do not obtain any other right or interest in SensibleSync or the Services.

You may only purchase Services from our Site if you are at least 18 years old. Individuals under the age of 18 are not permitted to use the Site without the consent or supervision of a parent or legal guardian.

The Services are not currently directed to children and we expect that the use of the Services by children will only be done with the guidance, supervision and consent of

their parents, guardians and/or authorized school officials. Further, we rely on parents and guardians to ensure minors only use the Services if they understand their rights and responsibilities as stated in these Terms and the [Privacy Policy](#). Please ensure that you are complying with any laws applicable to you before submitting any child's personal information or permitted any child to submit personal information to us in connection with the SensibleSync Service.

### 3. YOUR ACCOUNT

To obtain access to certain Services, you will be required to obtain an account with SensibleSync (become a "**Registered User**"). You can create an account by completing a registration form and designating a user ID and password.

SensibleSync will evaluate the registration application in good faith and will notify you in a timely matter regarding your acceptance or rejection. SensibleSync may deny approval or withdraw such approval at any time in its sole discretion, with or without cause.

When registering with SensibleSync you must: (a) provide true, accurate, current and complete information about yourself as requested by the Services registration form (such information being the "**Registration Data**"); and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You can amend your Registration Data at any time via the "Your Account" [page](#).

Upon acceptance of these Terms and completion of the registration process, you will have opened an account with SensibleSync and will become a Registered User. At this point you can begin using all of the Services. Only you may use your SensibleSync account. You must keep your account and passwords confidential and not authorise any third party to access or use the Services on your behalf, unless we provide an approved mechanism for such use. **Sensible will not be liable for any loss or damage arising from any unauthorised use of your accounts.**

If a third party such as an employer, or school gave you your account, that party has rights to your account and may: manage your account, reset your password, or suspend or cancel your account; view your account's usage and profile data, including how and when your account is used; and read or store Content in your account.

If you are an individual Registered User of the Services, and the domain of the primary email address associated with your account is owned by an organisation and was assigned to you as an employee, contractor or member of such organisation, and that organisation wishes to establish a commercial relationship with us and add your account to such relationship, then, if you do not change the email address associated with your account, your account may become subject to the commercial relationship between SensibleSync and such organisation and controlled by such organisation.

We may suspend or terminate your account if it appears to us that you are, or your account has been used in breach of these Terms (including by providing false Registration Data or other misuse of the Site and Services) or any applicable laws.

You can close your account with us at any time by deactivating your account through "Your Organization" settings.

#### **4. CONSENT TO ELECTRONIC COMMUNICATIONS AND SOLICITATION.**

By registering with SensibleSync, you understand that we may use your email address send you communications or data regarding the Services, including but not limited to: (a) notices about your use of the Services, including any notices concerning violations of use; (b) updates; and (c) where you agree, promotional information and materials regarding Sensible's products and services, via electronic mail. For further information on how we use your personal information and how to change your preferences, and to unsubscribe from promotional materials (including newsletters, marketing messages and email notifications) please see our [Privacy Policy](#).

#### **5. CONTENT**

Except for material that we license to you, we don't claim ownership of any Content that is transmitted, stored, or processed in your account(s) and such Content is your sole responsibility as the person who created the Content or introduced it into the Services. We also don't control, verify, or endorse the Content that you and others make available on the Service.

We provide functions that allow you to control who may access your Content. If you enable the features that allow you to share the Content with others, anyone you've shared content with (including the general public, in certain circumstances) may have access to your Content.

You hereby grant Sensible and its contractors the right, to transmit, use and disclose Content posted on the Services solely to the extent necessary to provide the Services or as otherwise permitted by these Terms, or to comply with any request of a governmental or regulatory body, as otherwise required by law, or to respond to an emergency which Sensible believes in good faith requires Sensible to disclose information to assist in preventing the death or serious bodily injury of any person..

You represent and warrant that: (a) you have all the rights in the Content necessary for you to use the Services and to grant the rights in this Section; and, (b) the storage, use or transmission of the Content doesn't breach any law or these Terms.

You will: (a) be solely responsible for the nature, quality and accuracy of the Content; (b) ensure that the Content (including the storage or transmission thereof) complies with these Terms and any and all applicable laws, and regulations including The Australian Copyright Act 1968 including Copyright Amendment (Online Infringement) Bill 2015; (c) promptly handle and resolve any notices and claims relating to the Content, including any notices sent to you by any person claiming that any Content violates any person's rights, such as take-down notices pursuant to the US Digital Millennium Copyright Act (or any similar legislation around the world) and any other notices; and (d) maintain appropriate security, protection and backup copies of the Content, which may include, your use of additional encryption technology to protect the Content from unauthorised access.

Sensible shall use reasonable skill and due care in providing the Services, but Sensible does not guarantee or promise that any Content you may store or access through the Services will not be subject to inadvertent damage, temporary unavailability, corruption or loss. To the maximum extent permitted by law and except as set out in these Terms, Sensible will have no liability of any kind as a

result of the deletion of, correction of, destruction of, damage to, loss of or failure to store, access or encrypt any Content.

You must immediately notify Sensible in writing of any unauthorised use of: (a) any Content; (b) any account; or (c) the Services that comes to your attention. In the event of any such unauthorised use by any third party that obtained unauthorised access through you, you will take all steps necessary to terminate such unauthorised use. You will provide Sensible with such cooperation and assistance related to any such unauthorised use as Sensible may reasonably request.

## **6. SUSPENSION AND TERMINATION OF USE OF THE SERVICE**

We reserve the right to temporarily suspend or terminate your access to the Service at any time in our sole discretion, with or without notice and without incurring liability of any kind to you for: (a) your actual or suspected violation of these Terms; (b) your use of the Services in a manner that may cause Sensible to have legal liability or disrupt others' use of the Services; (c) the suspicion or detection of any malicious code, virus or other harmful code by you or in your account; (d) scheduled downtime and recurring downtime; (e) use of excessive storage capacity or bandwidth; (f) unplanned technical problems and outages; or (g) if you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of assets, or become the subject of any bankruptcy, reorganisation, liquidation, dissolution or similar proceeding. If, in Sensible's determination, the suspension might be indefinite and/or Sensible has elected to terminate your access to the Services, Sensible will use commercially reasonable efforts to notify you through the Services and/or by email to the email address associated with your account. We may also terminate the Contract for any reason by providing you 30 days advance notice.

**You acknowledge that if your access to the Services is suspended or terminated, you will no longer have access to the Content that is stored with the Services.**

Upon termination by Sensible, for reasons other than cause, or at your direction, you may request access to your Content, which we will make available for an additional fee. You must make such request with five (5) days following termination.

Otherwise, **any Content you have stored with the Services will not be retrievable**, and we will have no obligation to maintain any data stored in your account.

In addition to other termination provisions, if your account is not currently subject to a paid subscription plan with us, we at our discretion may terminate your account if: (a) you do not engage in any activity in your account within thirty (30) days after becoming a Registered User; or (b) you do not engage in any activity in your account for any period of one-hundred and twenty (120) consecutive days. In the event of such termination, any Content you may have stored will be lost.

If you have paid to use the Services and we terminate the Services without cause or materially downgrade its functionality, we will provide you with a pro rata refund of any pre-payment.

## 7. ACCEPTABLE USE

You must not use the Services to harm others or the Services. For example, you must not use the Services to harm, threaten, or harass another person, organisation, or Sensible and/or to build a similar service or website. You must not: damage, disable, overburden, or impair the Service (or any network connected to the Services); resell or redistribute the Services or any part of it; use any unauthorised means to modify, reroute, or gain access to the Services or attempt to carry out these activities; or use any automated process or Services (such as a bot, a spider, or periodic caching of information stored by Sensible) to access or use the Services.

In addition, you promise that you will not and will not encourage or assist any third party to:

1. modify, alter, tamper with, repair or otherwise create derivative works of any Software;
2. reverse engineer, disassemble or decompile the software used to provide or access the Services, including the Software, or attempt to discover or recreate the source code used to provide or access the Services, except and only to the extent that the applicable law expressly permits doing so;
3. use the Service in any manner or for any purpose other than as expressly permitted by these Terms, the [Privacy Policy](#), any User Guides or any other policy, instruction or terms applicable to the Service that are available on the Service ("**Policies**");
4. sell, lend, rent, resell, lease, sublicense or otherwise transfer any of the rights granted to you with respect to the Services to any third party;
5. remove, obscure or alter any proprietary rights notice pertaining to the Services;
6. access or use the Services in a way intended to improperly avoid incurring fees or exceeding usage limits or quotas;
7. use the Services in connection with the operation of nuclear facilities, aircraft navigation, communication systems, medical devices, air traffic control devices, real time control systems or other situations in which the failure of the Services could lead to death, personal injury, or physical property or environmental damage;
8. use the Services to: (i) engage in any unlawful or fraudulent activity or perpetrate a hoax or engage in phishing schemes or forgery or other similar falsification or manipulation of data; (ii) send unsolicited or unauthorised junk mail, spam, chain letters, pyramid schemes or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (iii) store or transmit inappropriate Content, such as Content: (1) containing unlawful, defamatory, threatening, pornographic, abusive, libellous or otherwise objectionable material of any kind or nature, (2) containing any material that encourages conduct that could constitute a criminal offence, or (3) in a way that violates or infringes upon the intellectual property rights or the publicity or privacy rights of any person or entity or that may otherwise be unlawful or give rise to civil or criminal liability; (iv) store or transmit any Content that contains or is used to initiate a denial of service attack, software viruses or other harmful or deleterious computer code, files or programs such as Trojan horses, worms, time bombs, cancelbots, or spyware; or (v) abuse, harass, stalk or otherwise violate the legal rights of a third party;

9. interfere with or disrupt servers or networks used by SensibleSync to provide the Services or used by other users' to access the Services, or violate any third party regulations, policies or procedures of such servers or networks or harass or interfere with another user's full use and enjoyment of any Software or the Services;
10. access or attempt to access SensibleSync's other accounts, computer systems or networks not covered by these Terms, through password mining or any other means;
11. cause, in Sensible's sole discretion, an inordinate burden on the Service or SensibleSync's system resources or capacity; or
12. share passwords or other access information or devices or otherwise authorise any third party to access or use the Software or the Services.

Sensible reserves the right, in its sole discretion, to deactivate, change and/or require you to change your SensibleSync user ID and any custom or vanity URLs, custom links, or vanity domains you may obtain through the Services and which makes use of SensibleSync's trademarks for any reason or for no reason. Sensible may exercise such right at any time, with or without prior notice. We will make all judgments concerning the applicability of these guidelines in our sole and exclusive discretion. We reserve the right, in our sole discretion, to determine whether and what action to take in response to each such notification, and any action or inaction in a particular instance will not dictate or limit our response to a future complaint. We will not assume or have any liability for any action or inaction with respect to any Content.

## **8. UPDATES AND CHANGES TO THE SERVICE**

Sensible reserves the right, in its sole discretion, to make necessary unscheduled deployments of changes, updates or enhancements to the Services at any time.

**We may add or remove functionalities or features, and we may suspend or stop a Services altogether.**

Sensible may post on the Site and/or will send an email to the primary address associated with your account to provide notice of any material changes to the Services. It is your responsibility to check your email address and/or primary email address registered with SensibleSync for any such notices. You agree that Sensible shall not be liable to you or any third party for any modification, cessation or discontinuation of the Services.

If you have paid to use the Services and we terminate the Services without cause or materially downgrade its functionality, we will provide you with a pro rata refund of any pre-payment, as we determine appropriate.

## **9. SOFTWARE**

If you receive Software from us, its use will be subject to the terms of the licence agreement that accompany the Software. You must accept such terms in order to use the Software. If no license is presented to you when you download the Software, these Terms apply. We reserve all other rights to the Software.

We may automatically check your version of the Software. You acknowledge and agree that we may also automatically download to your computer or device new versions of the Software as part of the Services

Any Software is licensed, not sold. Unless we notify you otherwise, your right to use the Software ends when your right to use the Services ends. You must then promptly uninstall the Software, or we may disable it. You must not work around any technical limitations in the Software.

You must comply with all domestic and international export laws and regulations that apply to the Software. These laws include restrictions on destinations, end users, and end use. You represent and warrant that you're not on any of those lists or under the control of or an agent for anyone on those lists or the entities listed above.

## **10. THIRD PARTY SERVICES AND CONTENT**

All transactions you make using the Services are between the relevant transacting parties only. The Services may contain features and functionalities linking you or providing you with certain functionality and access to third party content, including Web sites, directories, servers, networks, systems, information and databases, applications, software, programs, products or services, and the Internet as a whole. You acknowledge and agree that we are not responsible for such content or services. We may also provide some content to you as part of the Services. However, Sensible is not an agent of any transacting party, nor are we a direct party in any such transaction. Any such activities, and any terms associated with such activities, are solely between you and the applicable third-party. Similarly, we are not responsible for any third party content you access with the Services, and you irrevocably waive any claim against us with respect to such sites and third-party content.

Sensible shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties.

**You are solely responsible for your dealings with any third party related to the Services, including the delivery of and payment for goods and services.**

Should you have any problems resulting from your use of any third party services, or should you suffer data loss or other losses as a result of problems with any of your other service providers or any third-party services, we will not be responsible unless the problem was the direct result of our breaches.

## **11. SENSIBLE PROPRIETARY RIGHTS**

As between Sensible and you, Sensible or its licensors own and reserve all right, title and interest in and to the Services and all hardware, software and other items used to provide the Services (including all intellectual property rights therein), other than the rights explicitly granted to you to use the Services in accordance with this Terms. No title to or ownership of any proprietary rights related to the Services is transferred to you pursuant to these Terms. All rights not explicitly granted to you are reserved by Sensible. In the event that you provide comments, suggestions and recommendations to Sensible with respect to the Services (including, without limitation, with respect to modifications, enhancements, improvements and other changes to the Services) (collectively, "**Feedback**"), you hereby grant to Sensible a world-wide, royalty free, irrevocable, perpetual license to use and otherwise incorporate any Feedback in connection with the Services.



## 12. PRIVACY AND DATA SECURITY

**Use of Data :** In order to operate and provide the Services, we collect certain personal information and data about you. As part of the Services, we may also automatically upload information about your computer or device, your use of the Services, and the performance of the Services.

**Our Privacy Policy as modified from time to time and viewable at [Privacy Policy](#) identifies how we collect, uses and discloses, on a limited basis, the personal information and data of our users.**

**Content Stored in Australia:** The Services are available worldwide and currently hosted in Australia through our sub-processor **icita** and other service providers. Sensible requires that any sub-processor with access to personal data subscribes to our principles, or enters into a written agreement requiring that the sub-processor provides at least the same level of privacy protection as is required by the relevant Australian privacy protection rules to which Sensible is subject with respect to the transfer, processing and security of any personal data transferred. By submitting any personal information to us or our designees pursuant to these Terms or in connection with the use of the Services you consent to the collection, processing, transmission and disclosure of such information and related data by Sensible within its group of companies and authorised service providers pursuant to these Terms in order for Sensible to perform its obligations. Sensible reserves the right to store and process information anywhere, and will use commercially reasonable efforts to provide you with at least 30 days' notice of any such changes in the storage locations. Where you do not consent to such storage locations, you may terminate your Contract with us with immediate effect on written notice to Sensible.

**Data Processing :** If Sensible processes any "personal data" on your behalf when performing its obligations under the Contract, the parties record their intention that you shall at all times be the "data controller" and Sensible shall be a "data processor" and in any such case Sensible shall process such personal data only in accordance with these Terms and any lawful instructions reasonably given by you from time to time (and for the purposes of this Section "data controller", "data processor" and "personal data" shall have the meaning defined in Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (or applicable national legislation implementing that Directive).

We retain the right to block or otherwise prevent delivery of any type of file, email or other communication to or from the Services as part of our efforts to protect the Services, protect our customers, or stop you from breaching these Terms.

## 13. LIMITED WARRANTY AND DISCLAIMER

**Limited Warranty :** Where you are paying for the Services, we promise that we will try to operate the Services with reasonable care and skill and will use reasonable commercial efforts to promptly remedy any faults of which we are aware. We do not make any other promises or warranties about the products, or our performance of our responsibilities in these Terms. This warranty does not apply to any Services provided during a free trial period.

Sensible provides the Services and Site "as is" and "as available". To the maximum extent permitted by applicable law and except as expressly set out in these Terms,

Sensible makes no (and specifically disclaims all) representations, conditions or warranties of any kind, whether express, implied, statutory or otherwise, including, without limitation, any warranty that the Services will be uninterrupted, error-free or free of harmful components, that the Content will be secure or not otherwise lost or damaged, or any implied warranty of satisfactory quality, fitness for a particular purpose, or non-infringement, and any warranty or condition arising out of any course of performance, course of dealing or usage of trade.

You acknowledge and agree that your use of the Services and Site is at your own discretion and sole risk and that you will be solely responsible for loss of data that results from the submission or download of such content.

Some jurisdictions do not allow the exclusion of implied warranties or conditions, in such an event such exclusion will not apply solely to the extent prohibited by applicable law.

#### **14. INDEMNIFICATION**

To the extent permitted by law, you agree, at your expense, to indemnify, defend and hold Sensible its affiliates, officers and employees harmless against any cost, loss, damage, or other liability arising from any third party demand or claim that any Content provided by you, or your use of the Services (including all actions taken under your account), in breach of these Terms: (a) infringes a third party's intellectual property right, including but without limitation a registered patent, registered trademark, or copyright of a third party, or misappropriates a trade secret (to the extent that such misappropriation is not the result of Sensible's actions); or, (b) violates applicable law or these Terms. Sensible will reasonably notify you of any such claim or demand that is subject to your indemnification obligation.

#### **15. LIMITATION OF LIABILITY**

1. Nothing in these Terms limits or excludes Sensible's liability for: (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation or any other liability which cannot be limited or excluded by applicable law.
2. **For business customers** : Subject to (A) above, Sensible shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract or its subject matter for: (i) loss of profits or revenue; (ii) loss or damage to business or reputation; (iv) loss of anticipated savings; (v) loss of or damage to goodwill; (vi) loss of use or corruption of software, data or information; (vii) any indirect, special or consequential loss or damage, and for the purposes of this clause, the term "loss" includes partial loss or reduction in value as well as complete or total loss.
3. **Liability cap** : To the maximum extent permitted by applicable law, Sensible's total liability and that of its affiliates, officers, employees, agents, suppliers or licensors, arising under or in connection with the Contract: (a) for any Services for which no payment is due shall be limited to one hundred and fifty dollars (\$150.00); and (b) in all other cases, be limited to the total fees paid by you to Sensible for the specific use of the Services giving rise to the claim in the twelve (12) months preceding the event first giving rise to the claim under the Contract.

4. **For customers who are consumers:** If we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of the Terms or our negligence but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by you and us at the time we entered into this contract.

## 16. GOVERNING LAW; LOCATION FOR RESOLVING DISPUTES

The laws of New South Wales, Australia shall govern the interpretation of these Terms and apply to claims for breach of these Terms. The Contract and any disputes or claims (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation will be subject to and construed in accordance with the law of New South Wales, Australia and you and we irrevocably consent to the exclusive jurisdiction of the courts of New South Wales, Australia. Notwithstanding the foregoing and save where consumer law prohibits such actions, Sensible may bring proceedings in the courts of any other state which have jurisdiction for reasons other than the parties' choice, for the purpose of seeking: (i) an injunction, order or other non-monetary relief (or its equivalent in such other state); and/or (ii) any relief or remedy which, if it (or its equivalent) were granted by the courts of New South Wales, Australia would not be enforceable in such other state. Nothing in this clause is intended to prevent any consumer that is a Customer from relying on the consumer law applicable in the jurisdiction in which the Customer resides.

## 17. NOTICES

We may send you, in electronic form, information about the Services, additional information, and information the law requires us to provide. We may provide required information to you by email at the address you specified when you signed up for the Services or by access to a website that we identify.

If you are a business customer, notices emailed to you will be deemed given and received when the email is sent. If you don't consent to receive notices electronically, you must stop using the Services. You may provide legal notice to us via email to [support@sensiblesync.com](mailto:support@sensiblesync.com), with a duplicate copy sent via registered mail, return receipt requested, to the following address: Suite 509, 4 Columbia Court, Baulkham Hills, NSW, Australia, 2153. Any such notice, in either case, must specifically reference that it is a notice given under these Terms. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

If you are a consumer, to cancel the Contract in accordance with your legal right set out in Clause 18, you must contact us in writing by sending an email to [support@sensiblesync.com](mailto:support@sensiblesync.com) or by sending a letter to Suite 509, 4 Columbia Court, Baulkham Hills, NSW, Australia, 2153. If you send us your cancellation notice by e-mail or by post, then your cancellation is effective from the date you sent us the e-mail or posted the letter to us.

## 18. PAYMENTS, REFUNDS AND CANCELLATIONS

**Amount:** The fees applicable for the Services ("**Fees**") are available on the Site and/or in SensibleSync's then-current and applicable published price list. The price stated for the Service for customers who are consumers shall include all GST (where

applicable) at the applicable current rate chargeable in Australia for the time being. Except as set out in this section, you shall be responsible for any taxes and for all other charges incidental to using the Services (for example, data charges and currency exchange settlements).

**You will pay Fees in Australian Dollars. In addition to any Fees, you may still incur charges incidental to using the Services, for example, charges for Internet access, data roaming, and other data transmission charges.**

We'll notify you in advance, either through the Service or to the email address you have most recently provided to us, if we change the price of the Service. If there's a specific length and price for your Service offer already in effect, that price will remain in force for that time. After the offer period ends, your use of the Service will be charged at the then-current price. If your Service is on a period basis (for example, monthly) with no specific length, we'll notify you of any price change at least 30 days in advance. If you don't agree to these changes, you must cancel and stop using the Service via a phone call to +61 2 8850 5766 or email to [support@sensiblesync.com](mailto:support@sensiblesync.com) with cancellation confirmation from a Sensible representative) no later than seven (7) business days prior to the conclusion of your current payment term, whether monthly, yearly, or otherwise. If you cancel, your Service ends at the end of your current Service period or payment period. If you fail to cancel in accordance with these Terms, we will automatically renew the Service at the then-current price and for the same subscription period and will charge your credit card on file with us commencing on the first day of the renewal of the subscription period.

**Payment Details** : All Fees will be billed to the credit card or bank account you designate during the registration process. If Sensible is unable to successfully charge your credit card or bank account for fees due, Sensible reserves the right to revoke or restrict access to your stored Content and the Services, delete your stored Content, or terminate your account.

You must be authorised to use the credit card or bank account that you enter when you create a billing account. You authorise us to charge you for the Services using your credit card or bank account details and for any paid feature of the Services that you choose to sign up for or use while these Terms are in force. We may bill: (a) in advance; (b) at the time of purchase; (c) shortly after purchase; or (d) on a recurring basis for subscription Services. Also, we may charge you up to the amount you've approved, and we'll notify you in advance of the difference for recurring subscription Services. We may bill you simultaneously for more than one of your prior billing periods. We may automatically renew your Services and charge you for any renewal term. You can opt out of having your Services automatically renewed at any time prior to the renewal date via a phone call to +61 2 8850 5766 or email [support@sensiblesync.com](mailto:support@sensiblesync.com) with cancellation confirmation from a Sensible representative).

All paid accounts are due the date the invoice is posted on your account.

Except as specifically set forth in this section, all Services are prepaid for the period selected (monthly, yearly or otherwise) and are non-refundable. This includes accounts that are renewed.

You must keep all information in your billing account current. If you want to designate a different credit card or payment account or if there is a change in your credit card or payment account status, you can access and modify your billing account information on the Site. You may change your payment method at any time. If you tell us to stop using your payment method and we no longer receive payment from you for the paid Service, we may cancel the Services. Your notice to us will not affect charges we submit to your billing account before we reasonably could act on your request.

**Price Changes** : We'll notify you in advance, either through the Services or to the email address you have most recently provided to us, if we change the price of the Services. If there's a specific length and price for your Service offer, that price will remain in force for that time. After the offer period ends, your use of the Services will be charged at the new price. If your use of the Services is on a periodic basis (for example, monthly) with no specific length, we'll notify you of any price change at least 30 days in advance.

If you don't agree to these changes, you must cancel and stop using the Services via a phone call to +61 2 8850 5766 (with cancellation confirmation from a Sensible representative) no later than fourteen (14) days prior to the conclusion of your current payment term, whether monthly, yearly, or otherwise. If you cancel, your Service ends at the end of your current Services period or, if we bill your account on a period basis, at the end of the period in which you cancelled. If you fail to cancel as required, we will automatically renew the Services for the same term and will charge your payment information on file with us commencing on the first day of the renewal term.

**Payment Terms:** Payments are due to us the date the invoice is posted on your account. It is not possible to change your invoice due date. You can find your invoice date on the "Your Account" [page](#).

**Late Payment** : If payment is not received by Sensible on the due date, user's account will be frozen, inaccessible, and all shared links will be turned off until all outstanding payments have been processed by Sensible. Users retain the responsibility for settling all outstanding balances in a timely manner and maintaining updated billing information. If not complied with, at the end of 90 days, user's account will be deactivated and all files will no longer be retrievable.

**Refunds:** Except as specifically set forth in this section, all Services are prepaid for the period selected (monthly, yearly or otherwise) and are non-refundable. This includes accounts that are renewed.

If you are on a legacy plan you will not be issued a refund for your most recent (or any previous) billing, unless you are a NON-TRIAL annual subscriber, in which event you may obtain a refund for a renewal fee only if you do so within 30 days of the day on which you were charged for the renewal of your account; in such an event, only a partial refund equivalent to 80% of the annual renewal fee will be returned. All cancellations and downgrades are processed automatically.

## **Trials**

If you are currently on our free 14-day trial, you may cancel or downgrade your account, free of charge, at any time until fourteen (14) days after your account was created. (The day of creation constitutes the first day of the 14-day trial.)

The last day of the 14-day trial signifies the due date of the first payment. If payment is not received by Sensible on the due date, user's account will be frozen, inaccessible, and all shared links will be turned off until all outstanding payments have been processed by Sensible. Users retain the responsibility for settling all outstanding balances in a timely manner and maintaining updated billing information. If not complied with, at the end of 90 days, user's account will be deactivated and all files will no longer be retrievable.

Unless we notify you otherwise, if you're participating in any trial period offer, you must cancel the Service by the end of the trial period to avoid incurring charges. If you do not cancel your Service and we have told you the Service will convert to a paid subscription at the end of the trial period, you authorize us to charge your credit card for the Service and no credits or refunds will be available (unless this is contrary to cancellation rights prescribed by local law: see Cancellation Rights below). You may, however, cancel your subscription before the next billing in accordance with the terms of this Agreement.

If you are a paid non-trial user you will not be issued a refund for your most recent (or any previous) billing, unless you are on a NON-TRIAL Annual Subscription Plan, in which event you may obtain a refund for a renewal fee only if you request the refund within thirty (30) days of the day on which you were charged for the renewal of your account; and in such an event, only a partial refund equivalent to 80% of the annual renewal fee will be returned (unless this is contrary to the cancellation rights prescribed by local law).

## **19. SUBSCRIPTION PERIOD**

You may elect one of the following subscription plans and billing options:

1. A monthly subscription plan ("Monthly Subscription Plan"). The subscription period for the Monthly Subscription Plan will be one month and will automatically renew unless you cancel your Monthly Subscription Plan in accordance with these Terms at least three (3) business days prior to the renewal date. You will be billed monthly for the Monthly Subscription Plan on or about the same day each month until such time that you cancel your Monthly Subscription Plan.
2. An annual subscription plan ("Annual Subscription Plan"). The subscription period for the Annual Subscription Plan will be one year and will automatically renew each year on the anniversary of your Annual Subscription Plan unless you cancel your Annual Subscription Plan in accordance with these Terms at least ten (10) days prior to your renewal date. You will be billed annually for the Annual Subscription Plan on or about the same day each year until such time that you cancel your Annual Subscription Plan. For the avoidance of doubt, please note, you will not be permitted to cancel, reduce the number of seats, or downgrade the Sensible Service you have selected until the anniversary of your Annual Subscription Plan. There will be no refunds for Annual Subscription Plan payments. Please be certain you are committing to a one (1) year period if you select the Annual Subscription Plan. If you are not certain, we recommend choosing the Monthly Subscription Plan.

If you select the Monthly Subscription Plan, you can switch to the Annual Subscription Plan at any time. If you select the Annual Subscription Plan, you may

not change to the Monthly Subscription Plan until the end of the one-year term of your Annual Subscription Plan.

**You can close or upgrade your account with us at any time through "Your Account" settings .**

**Cancellation rights if you are a consumer :** Where you are a consumer and the Contract you enter into with us for the supply of Services, you may cancel the Contract without liability within a period of 14 working days from the date the Contract is formed, provided that the right to cancel the Contract will not exist where we have already commenced performance of the Services with your consent. If you do not wish to waive these rights, then we will be unable to commence the Services until the end of the relevant statutory cooling off period which is 14 days. No provision of these terms and conditions will adversely affect the rights of any NSW or Australian consumer regulations 2013.

## **20. MISCELLANEOUS**

### **20.1. Severability; Entire Agreement**

These Terms apply to the maximum extent permitted by relevant law. If a court holds that we cannot enforce a part of these Terms as written, you and we will replace those terms with similar terms to the extent enforceable under the relevant law, but the rest of these Terms will remain in effect.

To the maximum extent permitted by law, these Terms and any document expressly referred to in them constitute the entire contract and understanding between you and us regarding the Services. You acknowledge and agree that you have not relied upon any statement, promise or representation made or given by or on behalf of us, which is not set out in these Terms or any document expressly referred to in them. It supersedes any prior representations, understandings, contract or oral or written statements regarding your use of the Service or the subject matter of these Terms. Nothing in this clause 19.1 shall limit or exclude any liability for fraud.

### **20.2. Assignment and transfer**

We may assign, transfer, or otherwise dispose our rights and obligations under this Contract, in whole or in part, at any time without notice. You may not assign this contract or transfer any rights to use the Services.

If you are a consumer: (a) we may only transfer your rights or your obligations under these Terms to another person if you agree in writing; and (b) you may only assign or otherwise transfer the Contract or any rights hereunder following a satisfactory credit check of the person/company you wish to transfer your rights and their written agreement to comply with the Contract.

### **20.3. Independent Contractors; No third-party beneficiaries**

Sensible and you are not legal partners or agents; instead, our relationship is that of independent contractors. This contract is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors. Unless expressly provided in the Contract, no term of them is enforceable by any person who is not a party to it.

## **20.4. Claims**

Claims must be filed within one year. You must bring any claim related to these Terms or the Services within one year of the date you could first bring the claim, unless your local law requires a longer time to file claims. If it isn't filed in time, the claim is permanently barred.

## **20.5. Waiver**

The failure of either party to insist upon or enforce strict performance of any of the provisions of these Terms or to exercise any rights or remedies under these Terms will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will remain in full force and effect.

## **20.6. Government Use**

If you are a U.S. government entity, you acknowledge that any Software and User Guides that are provided are "Commercial Items" as defined at 48 C.F.R. 2.101, and are being provided as commercial computer software subject to the restricted rights described in 48 C.F.R. 2.101 and 12.212.

## **20.7 Severability**

If any of the provisions of these Terms are held to be in violation of applicable law, void, or unenforceable in any court of competent and appropriate jurisdiction, then such provisions are herewith waived to the extent necessary for these Terms to be otherwise enforceable in such jurisdiction.

## **21. COPYRIGHT COMPLAINTS AND REMOVAL POLICY**

Sensible does not tolerate content that appears to infringe any copyright or other intellectual property rights or otherwise breaches these Terms and will respond to notices of alleged copyright infringement that comply with the law and are properly provided to us. Such notices can be sending an email to [support@sensiblesync.com](mailto:support@sensiblesync.com). We reserve the right to delete or disable Content alleged to breach these Terms and to terminate repeat infringers.

Sensible follows standardised procedures, to aid us please ensure that your notice to us includes the following information:

1. Identification of the copyrighted work that you claim has been infringed;
2. Identification of the material, including URL, that you claim is infringing, with enough detail so that we may locate it;
3. Your address, telephone number, and e-mail address;
4. A statement declaring under penalty of perjury that (a) you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (b) the above information in your notice is accurate, and (c) you are the owner of the copyright interest involved or you are authorized to act on behalf of that owner; and
5. Your physical or electronic signature.

In order to implement or assess your request further Sensible may contact you for additional relevant information.



## **22. INTELLECTUAL PROPERTY NOTICES**

All contents of the Site and Services including but not limited to design, text, software, technical drawings, configurations, graphics, other files, and their selection and arrangement are: Copyright © Sensible Business Solutions Pty Ltd, and/or the proprietary property of its suppliers, affiliates, or licensors. All Rights Reserved.

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Sensible may have patents, patent applications, trademarks, copyrights, or other intellectual property rights covering subject matter that is part of the Services. Unless we have granted you licenses to our intellectual property in these Terms, our providing you with the Services does not give you any license to our intellectual property. Any rights not expressly granted herein are reserved.

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