

BUYER TERMS AND CONDITIONS

This online platform is operated by Realview Technologies Pty Ltd ABN 60 085 790 834, trading as Partica (**Partica**). It is available at: www.partica.com and may be available through other addresses or channels.

In these Terms, **Platform** refers to Partica's content platform regardless of how it is accessed. The Platform allows businesses or individuals (**Buyers**) to search, select and purchase articles, materials and other content (**Content**). In these Terms, Buyer refers to a corporation, business or other entity purchasing Content from Partica on its own behalf or as an agent for a client.

1 Acceptance

1.1 By accessing and/or using the Platform and/or by accepting these Terms and Conditions (**Terms**), either by clicking a box indicating your acceptance or by executing an order form that references these Terms, you:

- (a) warrant to Partica that you have reviewed these Terms, and that you understand these Terms;
- (b) warrant to Partica that you have the legal capacity to enter into a legally binding agreement with Partica and if you are accepting these Terms on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these Terms;
- (c) warrant that, in the event that Partica, in its sole discretion, believes that you do not have the authority to bind another party, you must do all things necessary to procure and provide evidence of such authority to Partica prior accepting these Terms; and
- (d) agree to use the Platform in accordance with the Terms.

Please read the Terms carefully. You must immediately cease using the Platform if you do not agree to the Terms. In this clause, "you" refers to the Buyer. Partica may, at any time and at its discretion, vary these Terms by publishing the varied terms on the Platform. Partica recommends you check the Platform regularly to ensure you are aware of the current Terms.

2 Platform Summary

2.1 Partica does not create Content and only provides a Platform for publishers of Content to sell their Content to Buyers.

3 Registration

3.1 A Buyer must create an account in order to purchase Content (**Account**). A Buyer must ensure that any information provided when creating an Account is accurate and up-to-date.

- 3.2** When a Buyer creates an Account, Partica will provide account details for the Account. It is the Buyer's responsibility to keep its account details confidential. A Buyer is liable for all activity on its Account.
- 3.3** A Buyer may register for an Account using its Google+, Facebook or other social media network account (**Social Media Account**). If a Buyer signs in to its Account using its Social Media Account, the Buyer authorises Partica to access certain information on its Social Media Account.
- 3.4** The Buyer will immediately notify Partica of any unauthorised use of its Account.
- 3.5** At Partica's sole discretion, Partica may refuse to allow any person to register or create an Account.

4 Fees and Payments

- 4.1** It is free to register for an Account on the Platform.
- 4.2** A Buyer may purchase Content from Partica as set out on the Platform. Any order placed through the Platform is an offer by the Buyer to purchase Content for the price notified at the time the order is placed.
- 4.3** Content fees (**Content Fees**) are set out on the Platform.
- 4.4** The payment of Content Fees will be made through Partica's third party payment processor or by any other payment method set out on the Platform.
- 4.5** Partica may change the Content Fees and payment terms applying to the Platform at its sole discretion and any change is immediately effective upon Partica publishing the change on the Platform and will apply to any use of the Platform following the change.

5 Content Licensing and Intellectual Property

5.1 Licence

In consideration for the payment of the Content Fees, Partica grants the Buyer a non-exclusive, non-transferable, royalty free, perpetual, personal licence to use the purchased Content including to reproduce, retransmit, distribute, disseminate, publish, broadcast, circulate, modify, enhance or adapt the purchased Content (**Partica Standard Content Licence**). For some Content, the Buyer will be asked to accept and agree to a licence which is different to the Partica Standard Content Licence at the time the Content is purchased (**Additional Licence**). Where an Additional Licence applies to Content, the Partica Standard Content Licence and clause 5.2 below will be of no effect. Where there are inconsistencies between any Additional Licence and these Terms, the Additional Licence will prevail over these Terms.

5.2 Restrictions

Unless otherwise agreed with Partica, the Buyer:

- (a) must not copy or use, in whole or in part, any Content on the Platform other than specific Content obtained by paying the Content Fee;
- (b) must not assign or transfer any of its rights under these Terms or grant sublicences of any of its rights under these Terms; or
- (c) must not permit a Third Party to use the Content or sell any Content to a Third Party.

5.3 This clause 5 will survive the termination or expiry of these Terms.

6 Intellectual Property Rights

6.1 A Party's ownership of, or any right, title or interest in, any Intellectual Property Rights in an item which exists prior to the date the Buyer agrees to these Terms (**Pre-Existing Material**) will not be altered, transferred or assigned by virtue of these Terms.

6.2 If any person makes any claim alleging that any of the Content (or use of the Content) infringes any Intellectual Property Rights or Moral Rights of any persons, the Buyer must:

- (a) promptly notify Partica in writing;
- (b) not make any admissions or take any action in relation to the claim without Partica's consent; and
- (c) cooperate with, assist and act at all times in accordance with the reasonable instructions of Partica in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.

6.3 The Buyer grants to Partica a limited licence to copy, transmit, store and back-up or otherwise access, use or make reference to any Intellectual Property Rights in the Data:

- (a) to supply the Platform and any services on it including to enable the Buyer to access and use the services;
- (b) for diagnostic purposes;
- (c) to test, enhance and otherwise modify the services offered on the Platform whether requested by the Buyer or not;
- (d) to develop other services or products; and
- (e) as reasonably required for the performance of Partica's obligations under these Terms.

6.4 Unless otherwise indicated, Partica owns or licences all rights, title and interest (including intellectual property rights) in the Platform. The Buyer's use and access to the Platform does not grant or transfer to it any rights, title or interest in relation to the Platform.

6.5 This clause 6 will survive the termination or expiry of these Terms.

7 Prohibited Use

- 7.1** In relation to the Platform and any Content, Buyers must not, and must not attempt to do, anything that is unlawful; anything prohibited by any laws which apply to the Platform or which apply to the Buyer or the Buyer's use of the Platform; anything which Partica would consider inappropriate; or anything which might bring Partica or the Platform into disrepute, including (without limitation):
- (a) anything that would constitute a breach of an individual's privacy (including uploading private or personal information without an individual's consent) or any other legal rights;
 - (b) using the Platform to defame, harass, threaten, menace or offend any person;
 - (c) interfering with any user on the Platform;
 - (d) tampering with or modify the Platform, knowingly transmit viruses or other disabling features, or damage or interfere with the Platform, including (without limitation) using trojan horses, viruses or piracy or programming routines that may damage or interfere with the Platform;
 - (e) anything that might violate any local, state, national or other law or regulation or any order of a court;
 - (f) using the Platform to find Content and then copying Content or completing a transaction independent of the Platform in order to circumvent the obligation to pay any fees related to our provision of the services on the Platform;
 - (g) using the Platform to send unsolicited email messages; or
 - (h) facilitating or assisting a third party to do any of the above acts.

8 Privacy

8.1 Each Party and its Personnel agrees to comply with its obligations under the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines as amended from time to time in relation to personal information collected, used or disclosed by that Party or its Personnel in connection with the Platform and these Terms.

8.2 This clause 8 will survive the termination or expiry of these Terms.

9 Representations and Warranties

9.1 Partica does not warrant that the Platform or the Content will be error-free or will operate without interruption or that, except as set out in these Terms, the Platform will meet the requirements of the Buyer.

9.2 Buyers

On every day during the term of these Terms, the Buyer warrants that:

- (a) any of its Personnel or any person who creates an Account on behalf of the Buyer has authority to create the Account; and
- (b) it will not directly or indirectly do anything that would or might invalidate or put in dispute Partica's in relation to the Content.

10 Indemnity and liability

10.1 Despite anything to the contrary (but subject to clause 10.2), to the maximum extent permitted by the law:

- (a) Partica's maximum aggregate Liability arising from or in connection with these Terms will be limited to, and must not exceed the aggregate amount of any fees paid by the Buyer to Partica in the three-month period immediately preceding the event that gave rise to the Liability or \$100 if no such fees have been paid; and
- (b) Partica will not be liable to the Buyer for any loss of profit (including anticipated profit), loss of benefit (including anticipated benefit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of use and/or loss or corruption of Data,

whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

10.2 Clause 10.1 will not apply to Partica's Liability to the Buyer under these Terms for any liability which cannot be excluded or limited by applicable law, including:

- (a) fraud or criminal conduct; or
- (b) death or personal injury.

10.3 Despite anything to the contrary, to the maximum extent permitted by the law, Partica will have no Liability, and the Buyer releases and discharges Partica from all Liability, arising from or in connection with any:

- (a) failure or delay in providing the Platform; or
- (b) breach of these Terms,

where caused or contributed to by any:

- (c) event of Force Majeure; or
- (d) act or omission of the Buyer or its Personnel.

10.4 Partica uses third-party service providers such as Azure to host the Platform. Partica will not be liable for any interruption to the Platform, unavailability or outage, or any interruption, caused by any such third-party service provider.

- 10.5** Buyers agree that, to the maximum extent permitted by the law, these Terms exclude all terms, conditions and warranties implied by statute, in fact or on any other basis, except to the extent such terms, conditions and warranties are fully expressed in these Terms.
- 10.6** To the maximum extent permitted by law, the Buyer must indemnify Partica, and hold Partica harmless, against any Liability suffered by Partica arising from or in connection with the Buyer's use of the Platform or the Content or any breach of these Terms or any third party's claim in relation to Intellectual Property or any applicable laws by the Buyer. This indemnity is a continuing obligation, independent from the other obligations under these Terms, and continues after these Terms end. It is not necessary for Partica to suffer or incur any Liability before enforcing a right of indemnity under these Terms.
- 10.7** This Clause 10 will survive the termination or expiry of these Terms.

11 Termination

- 11.1** Partica may immediately suspend, terminate or limit a Buyer's access to and use of the Platform and (where applicable) the Buyer's Account) if the Buyer breaches the Terms and the breach cannot be remedied or is not remedied within 5 Business Days of Partica notifying the Buyer of the breach.
- 11.2** A Buyer may stop using the Platform at any time for any reason.
- 11.3** Partica may stop making the Platform (or any part of it) available without prior notice.
- 11.4** Expiry or termination of these Terms for any reason does not affect any Intellectual Property Rights or licence to use Content obtained by the Buyer during the term of these Terms.

12 General

- 12.1 Disputes:** Neither Party may commence court proceedings relating to any dispute arising from, or in connection with, these Terms without first meeting with a senior representative of the other Party to seek (in good faith) to resolve that dispute (unless that Party is seeking urgent interlocutory relief or the dispute relates to compliance with this clause).
- 12.2 Notices:** Any notice given under these Terms must be in writing and addressed to Partica at the details set out below or to a Buyer at the details provided when the Buyer registers for an Account. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of email.
- 12.3 Waiver:** Any failure or delay by a Party in exercising a power or right (either wholly or partly) in relation to these Terms does not operate as a waiver or prevent a Party from exercising that power or right or any other power or right. A waiver must be in writing.
- 12.4 Relationship of parties:** These Terms are not intended to create a partnership, joint venture or agency relationship between the parties.

- 12.5 Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions.
- 12.6 Assignment:** A Buyer must not assign any rights or obligations under these Terms, whether in whole or in part, without Partica's prior written consent.
- 12.7 Entire agreement:** The Terms contain the entire understanding and agreement between a Buyer and Partica in respect of their subject matter.
- 12.8 Amendment:** Partica may, at any time and at Partica's discretion, vary these Terms by publishing varied terms on the Platform.
- 12.9 Governing law:** These Terms are governed by the laws of New South Wales. The Platform may be accessed in Australia and overseas. Partica makes no representation that the Platform complies with the laws (including intellectual property laws) of any country outside of Australia. If a Buyer accesses the Platform from outside Australia, the Buyer does so at its own risk and is responsible for complying with these laws in the place the Buyer accesses the Platform.

13 Definitions and Interpretation

13.1 Definitions

In these Terms, unless the context otherwise requires:

Business Day means a day on which banks are open for general banking business in New South Wales, excluding Saturdays, Sundays and public holidays.

Claim means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise.

Corporations Act means the *Corporations Act 2001* (Cth).

Data means all of the information, documents and other data provided by the Buyer or their Personnel to Partica, any details on a Buyer or their Personnel's usage of the Platform, any content uploaded by the Buyer or their Personnel to Partica, or otherwise accessed by Partica in providing the services on the Platform.

Force Majeure means any event or circumstances beyond the reasonable control of a Party including any fire, lightning strike, flood, earthquake, natural disaster, sabotage, nuclear contamination, terrorism, war or civil riot that occurs to the extent that it:

- (a) would be unreasonable to expect the affected Party to have planned for, avoided or minimised the impact of such circumstance by appropriate risk management, disaster recovery or business resumption plan; and
- (b) results in a Party being unable to perform an obligation under these Terms on time.

Insolvency Event means the occurrence of any one or more of the following events in relation to a Party:

- (a) the Party is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable laws;
- (b) an application or order is made for the winding up, bankruptcy or dissolution of the Party or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Party or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (d) a controller is appointed in respect of any of the Party's property;
- (e) the Party is deregistered under the Corporations Act or other legislation or notice of its proposed deregistration is given to it;
- (f) a distress, attachment or execution is levied or becomes enforceable against the Party or any of its property;
- (g) the Party enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (h) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of the Party or its property;
- (i) a petition for the making of a sequestration order against the estate of the Party is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or the Party presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Party.

Intellectual Property means any:

- (a) copyright;
- (b) registered or unregistered design, patent, trade mark rights;
- (c) trade, business, company or domain names;
- (d) know-how, inventions, processes, trade secrets or confidential information;

- (e) circuit layouts, databases or source codes; or
- (f) similar rights in any part of the world,

relating to a Party and/or the operation of its business, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Rights means all present and future rights to Intellectual Property including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, any Intellectual Property.

Liability means any expense, charge, cost, liability, loss, damage, Claim, demand or proceeding (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Party means a party to these Terms from time to time.

Personnel means in relation to a Party, any employee, contractor, officer and agent of that Party.

Third Party means a person other than Partica or the Buyer.

13.2 Interpretation

In these Terms, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of these Terms;
- (d) if any act which must be done under these Terms is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (e) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (h) includes and similar words mean includes without limitation;

- (i) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (j) a reference to a party to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (k) a reference to these Terms or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (l) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (m) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) a reference to time is to local time in New South Wales, Australia; and
- (o) a reference to \$ or dollars refers to the currency of Australia from time to time.

For any questions and notices, please contact us at:

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