

DRUMBEAT TERMS OF USE

These terms of use (the **Terms**) govern your access and use of our Services and form a legally binding contract between you and us. The **Agreement** between you and us is made up of the Quote, these Terms and our Privacy Policy (and any amendments to those documents from time to time in accordance with the Agreement). In the event of any conflict, the following order of priority applies: the Quote; then the Terms; then the Privacy Policy.

By signing up for the Services following receipt of your Quote, you acknowledge and agree your acceptance of this Agreement through the Application's in-built click-to-accept process. This acceptance constitutes your agreement to the terms and conditions of this Agreement. Your continued use of the Services further confirms your acceptance. If you do not agree, you must not proceed with the Application's sign-up process.

'Drumbeat', 'we', 'our' and 'us' refers to Drumbeat Limited and our permitted successors or assigns.

'User', 'you' or 'your' refers to you, the User entity, set out in the Quote.

1. Services

- 1.1. **Service:** We will provide you with the Services in accordance with the Agreement.
- 1.2. **Services standards and Application availability:** We will provide the Services in accordance with Good Industry Practice. We will use reasonable efforts to ensure the Services are available with 99% uptime, excluding scheduled maintenance windows. You acknowledge that we may release updates to or new versions of the Services (or any parts of it), change the method of provision of, or access by you to, the Services, including as a result of changes to our arrangements with third party suppliers and/or to change or discontinue any feature or functionality of the Services for any reason as part of the evolution of the Services (including changing or switching out any of the underlying data or datasets). You also acknowledge that the Services may be temporarily unavailable or suspended for scheduled maintenance, updates or changes, or for unscheduled emergency maintenance, either by us or by our third-party providers, or because of other causes beyond our reasonable control. We will use reasonable efforts to provide advance notice in writing of any such material update, change or discontinuance and/or any scheduled service disruption, and to schedule such maintenance, updates or changes to occur outside of business hours.

2. Permitted Users:

- 2.1. You may permit your Permitted Users to access and use the Application. Usage is limited to the number of Permitted Users specified in the Quote (if any). We will provide user credentials to you to enable access to the Application.

3. Term and Termination

- 3.1. **Term:** The Agreement starts on the Start Date set out in the Quote and, unless terminated earlier in accordance with its terms, shall continue until the End Date (unless validly terminated earlier in accordance with the Agreement) (**Initial Term**). At the End Date, this Agreement will renew automatically for successive renewal periods of 12 months each (each a **Renewal Period**) unless either party gives the other party not less than 30 days' notice to terminate in advance of such End Date or the then-current Renewal Period, in which case this Agreement ends on expiry of the End Date or the then-current Renewal Period (as applicable). The Initial Term together with any Renewal Period(s) constitutes the **Term** of this Agreement.
- 3.2. **Termination for cause:** Either party may terminate the Agreement immediately by notice in writing to the other party if the other party: (a) commits any material breach of the Agreement which is not capable of remedy; (b) commits any material breach of the Agreement which is capable of remedy (which includes your failure to make any payment due under the Agreement) and fails to remedy such breach within thirty (30) days of receipt of written notice requiring it to do so; (c) commits repeated breaches of the Agreement that, while individually do not constitute a material breach, collectively amount to a material breach when taken together; or (d) becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.
- 3.3. **Termination:** We may terminate the Agreement (including, for the avoidance of doubt, the Quote) immediately by notice in writing to you. If the Agreement is terminated by us under this clause 3.3, you will be entitled to a refund of any prepaid Fees in relation to the remainder of the Term.
- 3.4. **Effect of termination:** On termination or expiry of the Agreement: (a) your right to access and use the Services ends (and you shall destroy all access codes or passwords related to the Service in your possession or control); (b) each party shall delete, destroy, or return all of the other parties' Confidential Information in its possession or control; (c) the rights and liabilities of the parties accrued at any time up to the termination date are not affected; (d) all clauses and sections of the Agreement which by their nature should survive termination will survive termination; and (e) at any time prior to the date of termination or expiry, you may request a copy of any User Data stored using the Services, provided that you pay our reasonable costs of providing

that copy. On receipt of that request, we will provide a copy of the User Data in a common electronic form but we do not warrant that the format of the User Data will be compatible with any software.

4. Fees and Payment

4.1. **Fees:** You will pay us the Fees in accordance with the Payment Terms set out in the Quote. Except as set out otherwise in a Quote, payment is due within 30 days of invoice date. Fees are exclusive of taxes. All amounts due from you shall be paid in full without any set-off, counterclaim, deduction or withholding other than any deduction or withholding of taxes as required by law, subject to the following. If any such withholding or deduction is required by law, you shall, when making the payment to which the withholding or deduction relates, pay us such additional amount as will ensure that we receive the same total amount that we would have received if no such withholding or deduction had been required.

4.2. **Late payments:** If Fees are not paid when due, we may no less than fourteen (14) days after written notice to you of the late payment: (a) charge you interest for late payment on the outstanding balance effective from the due date at 1.5% per month or the maximum permitted by applicable law whichever is lower (plus all expenses of collection); and/or (b) suspend your access to and use of the Services, until the overdue amount is received in full (and without prejudice to any other rights or remedies available to us).

5. Restrictions and Responsibilities

- 5.1. **Restrictions:** You will not, and you must ensure that your Permitted Users do not (nor attempt to), directly or indirectly:
- (a) reverse engineer, de-aggregate, decompile, disassemble, translate or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services, Drumbeat Data or Application;
 - (b) data mine, scrape, crawl, aggregate, copy, extract or attempt to harvest (whether by any automated process, 'brute force attack' or otherwise) the Services, Drumbeat Data or Application for any purpose, including setting up or adding to a database;
 - (c) use the Services, Drumbeat Data or Application for any purpose other than your own business purposes or for the benefit of anyone other than yourself or for any illegal, dishonest, fraudulent, malicious or unauthorised purpose;
 - (d) use the Services, Drumbeat Data or Application in any way to build a product or service that competes in any way with our business;
 - (e) use the Services, Drumbeat Data or Application for the purposes of monitoring the availability, performance or functionality of the Services, Drumbeat Data or Application or for any other benchmarking or competitive purposes;
 - (f) use the Services, Drumbeat Data or Application in a way that may damage, disable, overburden, or impair the Services, Drumbeat Data or Application or the networks connected to the Services, Drumbeat Data or Application;
 - (g) distribute through the Services or Application any attachments, documents or files that: (i) infringe on any copyright, patent, trade secret, trademark or other third party proprietary rights; (ii) violate any law, statute, ordinance or regulation; (iii) contain viruses, trojan horses, worms, time bombs, or similar harmful programming routines; and/or
 - (h) use the Services, Drumbeat Data or Application in any way that constitutes a misuse of any person's Confidential Information or breach of any person's rights (including Intellectual Property and privacy) or breaches applicable law.
- 5.2. **Unauthorised access:** You will take reasonable steps to prevent unauthorised access to the Services, including without limitation, by protecting user credentials or log-in information. You must notify us immediately of any known or suspected unauthorised use of the Services or breach of its security and shall use your best efforts to stop any such unauthorised use or breach.
- 5.3. **Responsibility for user account:** You are responsible and liable for any use of the Services made available to you, including the acts and omissions of your Permitted Users and any unauthorised users.
- 5.4. **Monitoring:** Although we have no obligation to monitor your use of the Services, we may do so and may suspend access and any use of the Services if we become aware of, or reasonably suspect, a breach of this clause 5.

6. Confidential Information, Privacy and Security

- 6.1. **Confidentiality:** Each party (the **Receiving Party**) agrees and acknowledges that the other party (the **Disclosing Party**) has disclosed, or may disclose, Confidential Information pursuant to the Agreement. Where the Receiving Party receives Confidential Information from the Disclosing Party under or in connection with the Agreement, the Receiving Party will: (a) keep the Confidential Information strictly confidential; (b) not use, modify, reproduce or exploit the Confidential Information for any purpose other than as is permitted under the Agreement; and (c) subject to clause 6.2, not disclose Confidential Information to any person other than its representatives whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this clause 6. Other than as expressly stated, the Agreement does not transfer ownership of Confidential Information or grant a licence thereto.
- 6.2. **Permitted disclosures:** Notwithstanding clause 6.1, the Receiving Party may disclose Confidential Information: (a) to its professional advisors, to obtain legal or other professional advice in relation to matters arising under or in connection with the Agreement; and (b) to the extent required to comply with any applicable law, binding directive of a regulator or a court order, in which case the Recipient must use reasonable endeavours to give the Disclosing Party prior notice of such disclosure (to the

extent permitted by law) and disclose only that portion of the Confidential Information necessary to satisfy the relevant requirement.

- 6.3. **Exclusions:** The Disclosing Party agrees that clause 6.1 shall not apply in relation to any information that: (a) is or becomes generally available to the public through no act or fault of the Receiving Party; (b) was in the possession of the Receiving Party or known by the Receiving Party prior to receipt from the Disclosing Party; (c) was rightfully disclosed to the Receiving Party without restriction by a third party; (d) was independently developed without use of any Confidential Information of the Disclosing Party, provided that the Receiving Party enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 6.
- 6.4. **Remedies:** Each party agrees that breach of this clause 6 may cause irreparable injury to the other party, for which monetary damages may not provide adequate compensation, and that, in addition to any other remedy, the other party will be entitled to seek injunctive relief against any breach or threatened breach, without proving actual damage or posting a bond or other security.
- 6.5. **Personal information:** To the extent either party does collect, use, access or process any Personal Information in connection with the Agreement each party warrants and agrees that it will comply with applicable Privacy Laws. Without limiting the foregoing, you warrant that any Personal Information contained in the User Data or otherwise disclosed by you, or on your behalf, to us in connection with the Agreement has been collected in accordance with applicable Privacy Laws, and that, as required by applicable Privacy Laws, you have provided affected individuals with any information required to ensure that the individuals understand how their Personal Information may be used by us or obtained the affected individuals consent to the same. In addition to applicable Privacy Laws, our Privacy Policy sets out how we process any Personal Information disclosed by you, or on your behalf, to us in connection with the Agreement. You agree and acknowledge to our use, processing, transfer and/or disclosure of any Personal Information in the manner described in the Privacy Policy. We will use reasonable efforts to promptly notify you if we become aware of an actual or potential data security breach caused by our act or omission in respect of Personal Information.
- 6.6. **Security:** We will use commercially reasonable efforts to maintain the security and integrity of the Services and to implement appropriate administrative, physical, and technical safeguards designed to protect the security, confidentiality, and integrity of Confidential Information and any User Data.
- 7. Intellectual Property and Data**
- 7.1. **Ownership of Intellectual Property:** You acknowledge and agree that we (or our third party suppliers) own and/or retain all Intellectual Property: (a) in or arising out of the Services (including the Application and the Drumbeat Data); and (b) in any software, applications, inventions or other technology developed in connection with the Services, and all improvements, enhancements or modifications thereto. The Agreement does not grant you any rights, title or licence to the Intellectual Property in or to the Services or any of its components, except as expressly set out in the Agreement. Subject to any applicable terms in the Quote, we grant you a non-exclusive, non-transferable, royalty-free, licence to use the Application Data for your own business purposes subject to complying with clause 7.1 in relation to such use (including any use following the end of the Term).
- 7.2. **Feedback:** If you provide us with any feedback about the Services, we may use that feedback without any restriction or compensation to you provided that any feedback we use will not publicly identify you. We acknowledge all feedback you provide is provided as-is without warranties of any kind and that use of the feedback by us is at our own risk.
- 7.3. **User Data and User Generated Data:** We acknowledge and agree that you (or your licensors, as applicable) are and remain the sole and exclusive owner of all Intellectual Property in User Data and User Generated Data. You acknowledge and agree that we are entitled to rely on the accuracy and completeness of the User Data and, unless expressly required otherwise, we have no obligation to verify the accuracy or completeness of the User Data. You grant us a non-exclusive, non-transferable licence to use User Data and User Generated Data for the limited purpose of providing the Services to you (including generation of User Generated Data) and as otherwise set out in the Agreement. We will not use User Data for any other purpose without your prior written consent. You represent and warrant that: (a) our use of the User Data and/or User Generated Data in accordance with the Agreement will not infringe applicable laws or the Intellectual Property or privacy of any third party; and (b) you hold and will continue to hold all necessary licences, consents and authorisations required for us to use the User Data and User Generated Data in accordance with the Agreement.
- 7.4. **Brand:** You grant us a royalty-free, non-exclusive right to use your name and/or to display your brand (a) on our website and (b) in our marketing materials, solely in connection with promoting your use of the Services.
- 7.5. **Analytics:** We reserve the right to gather analytics in relation to your activity on, and use of, the Services for our internal purposes, such as billing, gauging interest, identifying usage patterns, benchmarking and research and development. You agree that such analytics do not comprise User Data for the purposes of the Agreement.
- 8. Warranties and Disclaimers**
- 8.1. **Compliance with laws:** Each party represents and warrants to the other on a continuing basis that it will comply with all applicable laws relating to: (a) in our case, providing the Services; and (b) in your case, the User Data and your use of the Services.

8.2. **Disclaimer:** Except as expressly set out in the Agreement and to the maximum extent permitted by law, the Services (including the Application and the Drumbeat Data) are provided on an “as-is” and “as available” basis and all terms, warranties, representations and conditions are expressly excluded and disclaimed by us (whether express or implied, by law or otherwise) in respect of the Services, including that the Services will be merchantable; will meet your requirements; are fit or suitable for your intended purpose or use; or will be uninterrupted, error-free, correct, accurate, complete, current or up-to-date. You are responsible for any business decision made on the basis of the information derived from using the Services.

9. Indemnity

9.1. **Indemnification:** The first party (**Indemnifying Party**) will defend the other party (**Indemnified Party**) against any third party claim against the other party and indemnify and keep indemnified the other party from and against any liabilities, losses, damages, costs and expenses including reasonable legal costs (on a solicitor-client basis) associated with such third party claim to the extent caused by:

(a) where we are the Indemnifying Party, your use of the Services infringing upon such third party’s Intellectual Property; and

(b) where you are the Indemnifying Party, our use of the User Data infringing upon any third party rights,

each a **Third Party Claim**. The indemnifying Party’s obligations under this clause will not apply to the extent that the Third Party Claim results from the Indemnified Party’s breach of the Agreement.

9.2. **Indemnification remedy:** Where we are the Indemnifying Party and the Services are held by a court of competent jurisdiction to be or are believed by us to be potentially infringing a third party’s Intellectual Property, your sole and exclusive remedy will be, at our option and expense: (a) the replacement or modification the Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality; (b) obtaining for you a licence to continue using the Services; or (c) if neither of the foregoing is commercially practicable, terminating the Agreement and provide a refund of prepaid Fees in accordance with clause 3.3.

10. Limitation of Liability

10.1. **Mutual limitation:** Subject to clauses 10.2, 10.3, and 10.4, to the extent permitted by applicable law, each party’s maximum aggregate liability to the other party for all and any liabilities, losses or damages under or in connection with the Agreement will be limited to the total amount of Fees paid by you to us in the 12 months prior to the event giving rise to the claim.

10.2. **Exceptions to mutual limitation:** Subject to clause 10.3, the limitation of liability in clause 10.1 will not limit the liability of either party arising from or in connection with (a) the gross negligence or wilful misconduct of a party (b) death or personal injury caused by a party; (c) fraudulent acts or intentional misrepresentations by a party; or (d) any liability to the extent such liability cannot be limited or excluded by applicable law.

10.3. **No excluded loss:** To the maximum extent permitted by applicable law, neither party will be liable to the other party for any (a) special, indirect, consequential loss or damage; or (b) loss of use, loss of revenue, loss of profits or savings, loss of opportunity, loss or damage to or corruption of data, loss of business, loss of goodwill, loss of reputation (whether direct or indirect) whether arising in equity, for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise regardless of whether such damage was foreseeable and whether or not advised of the possibility of such loss or damage, arising out of or in connection with this Agreement.

10.4. **Licensing and IP:** The limitations and exclusions of liability in clauses 10.1 and 10.3, will not limit your liability arising from or in connection with your breach of: (a) clause 5; or (b) the representations and warranties set out in clause 7.3.

10.5. **Disputes:** For any dispute between the parties, both parties agree to first contact the other party in writing and refer such dispute to a senior executive officer of each party who will use best commercial efforts to resolve the dispute informally and in good faith. If the dispute is not resolved within thirty (30) days of the written notice of dispute, then either party may commence proceedings in any court or tribunal of competent jurisdiction. Nothing in this clause 10.5 prevents either party from seeking urgent interim or interlocutory or equitable relief from a court of competent jurisdiction as necessary to prevent an actual or threatened infringement of the Agreement, to preserve property or to prevent irreparable harm.

11. Miscellaneous

11.1. **Waivers and Severability:** Waivers must be signed by the waiving party’s authorized representative and cannot be implied from conduct. If any provision of the Agreement is held invalid, illegal or unenforceable, it will be limited to the minimum extent necessary so the rest of the Agreement remains in effect.

11.2. **Force majeure:** No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of the Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labour disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party’s reasonable control.

11.3. **Assignment:** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld).

11.4. **Entire agreement:** The Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of the Agreement. To the maximum extent permitted by applicable law, each party acknowledges that in

entering into the Agreement it does not rely on, and shall have no remedies in respect of, any warranty or representation that is not set out in the Agreement.

- 11.5. **No agency:** No agency, partnership, joint venture, or employment is created as a result of the Agreement and neither party has any power or authority to act for or to assume any obligation or responsibility on behalf of the other party or to bind the other party to any agreement.
- 11.6. **Delivery of notices:** All notices under the Agreement will be in writing and will be deemed to have been duly given: (a) when received, if personally delivered; (b) when receipt is electronically confirmed, if transmitted by e-mail; (c) the day after it is sent, if sent for next day delivery by a recognised overnight delivery service; and (d) upon receipt, if sent by certified or registered mail, return receipt requested.
- 11.7. **Governing law:** The Agreement will be governed and interpreted by the laws of New Zealand.
- 11.8. **Amendments:** Subject to clause 11.9, no variation to the terms of the Agreement will be of any force or effect unless it is in writing and agreed by the parties.
- 11.9. **Permitted updates:** Notwithstanding clause 11.8, we reserve the right to update the:
- (a) Terms and/or Privacy Policy at any time by posting a revised version on our website and/or the Application; and
 - (b) Fees on notice to you,
- provided that the updated Terms, Privacy Policy and/or Fees (as applicable) shall only then apply 30 days following such updates being posted or delivery by notice to you (as applicable). Your continued use of the Services and Application following any such updates constitutes your acceptance of the updated Terms, Privacy Policy and/or Fees.

12. Definitions

Except when expressly provided otherwise, the definitions in this clause apply in the Agreement.

Agreement means the Quote, the Terms and our Privacy Policy, and any amendments to those documents from time to time.

Application means the Software and Application Data presented in an online application hosted by us and which may be accessed by you and your Permitted Users (including via the web application).

Application Data means all data and information provided or made available by us to you as part of the Services, regardless of format and delivery method, but excluding any User Data or User Generated Data.

Confidential Information means the Agreement and any information that is not public knowledge that is directly or indirectly obtained from the other party in the course of, or in connection with, the Agreement and the provision and use of the Services (regardless of whether identified as such or not), and includes:

- (a) the business, technical or financial information relating to the relevant party's business;
- (b) the terms of the Agreement and the commercial arrangements between the parties;
- (c) any information that the other party knows, or ought to know, is confidential; and
- (d) trade secrets, know-how, specifications, inventions, processes or initiatives which are of a confidential nature.

Drumbeat Data means:

- (a) Application Data;
 - (b) any metadata generated by us and the Services in connection with your use of the Services,
- regardless of format and delivery method, but excluding any User Data or User Generated Data.

End Date means end date for expiry of the Services as set out in the Quote.

Fees means the fees payable by you for the Services as set out in the Quote, which may be amended from time to time as set out in this Agreement or in the Quote.

Good Industry Practice means exercising the degree of skill, diligence, prudence, foresight, and care which would reasonably and ordinarily be expected from a skilled and experienced provider of services or software products similar to those contemplated under the Agreement, operating in similar circumstances, and using commonly accepted methodologies and practices.

Intellectual Property means all present and future industrial and intellectual property rights whether conferred by statute, at common law or in equity, including all patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights (whether registrable or unregistrable), including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Payment Terms means the payment terms governing timing of invoices and payments set out in the Quote.

Permitted User means your representatives who are authorised by you to access the Services for the purposes permitted under the Agreement.

Personal Information means any information as defined by similar terms under any relevant Privacy Laws.

Privacy Laws means the Privacy Act 2020.

Privacy Policy means the privacy policy posted on our website.

Services means those services agreed to be provided to you in the Quote.

Quote means the quote document provided by us to you.

Software means the Drumbeat platform software application and any software, documentation or data related to the Services and/or made available to you, and includes any maintenance releases or updates to that software from time to time.

Term has the meaning set out in clause 3.1.

User Data means any data, information, text, content or other materials which you provide or make available to us in connection with the Agreement and/or the Services (both directly and/or indirectly) but, for clarity, does not include any data, information, text, content or other materials already held by us prior to any supply by you to us, any metadata generated by us and the Services in connection with your use of the Services.

User Generated Data means any data, information, or content that is generated, derived, or produced as a result of your use of the Services, including but not limited to usage data, transactional data, and operational metrics, where such data is a summarised, aggregated or processed form of the User Data.