

Tikabu Glue Subscription Agreement - 20191025

This Tikabu Glue Subscription Agreement is between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually ("you" or "your"), and Tikabu Pty Ltd ("Tikabu", "we", "us", or "our"). It consists of the terms and conditions below and the Offer Details for your Subscription or renewal (together, the "agreement"). It is effective on the date we provide you with confirmation of your Subscription or the date on which your Subscription is renewed, as applicable. Key terms are defined in Section 8.

1. Use of Glue.

- a. Right to use.** We grant you the right to access and use Glue and to install and use the Software included with your Subscription, as further described in this agreement. We reserve all other rights.
- b. Acceptable use.** You may use the Product only in accordance with this agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Product, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of Glue. You may not rent, lease, lend, resell, transfer, or host the Product, or any portion thereof, to or for third parties except as expressly permitted in this agreement.
- c. End Users.** You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement. For example, you will ensure End Users comply with the Acceptable Use Policy.
- d. Customer Data.** You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide Glue to you without violating the rights of any third party or otherwise obligating Tikabu to you or to any third party. Tikabu does not and will not assume any obligations with respect to Customer Data or to your use of the Product other than as expressly set forth in this agreement or as required by applicable law.
- e. Responsibility for your accounts.** You are responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of Glue. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials or any security incident related to Glue.
- f. Preview releases.** We may make Previews available. Previews are provided "as-is", "with all faults", and "as-available", and are excluded from all limited

warranties provided in this agreement. Previews may not be covered by customer support. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into general availability.

g. Administrator Assumption of Control. If you use an email address provided by an organization you are affiliated with (e.g. an employer) to order Glue individually, you represent that you have authority to use that organization's domain to sign up for a Subscription in your capacity as a member of that organization. The organization, as the owner of the domain associated with your email address, may assume control over and manage your use of Glue. In such a case, your organization's designated administrator (your "admin") may

(i) control and administer your account, including modifying and terminating your access and

(ii) access and process your data, including the contents of your communications and files. Tikabu may inform you that your organization has assumed control of Glue covered by your Subscription, but Tikabu is under no obligation to provide such notice. If your organization is administering your use of Glue, direct your data subject requests and privacy inquiries to your administrator. If your organization is not administering your use of Glue, direct your data subject requests and privacy inquiries to Tikabu.

h. Additional Software for use with Glue. To enable data to be collected from onpremise, you may install and use certain Software in connection with your use of Glue. We license Software to you; we do not sell it. Proof of your Software license is (1) this agreement, (2) any order confirmation, and (3) proof of payment. Your rights to access Software on any device do not give you any right to implement Tikabu patents or other Tikabu intellectual property in software or devices that access that device.

2. Purchasing services.

a. Available Subscription offers. Tikabu provides Offer Details for available Subscription offers, which generally can be categorized as one or a combination of the following:

(i) **Commitment Offering.** You commit in advance to purchase a specific quantity of devices within Glue for use during a Term and to pay upfront or on a periodic basis in advance of use. Committed quantities not used during the Term will expire at the end of the Term.

(ii) Consumption Offering (also called Pay-As-You-Go). You pay based on actual usage in the preceding month with no upfront commitment. Payment is on a periodic basis in arrears.

(iii) Limited Offering. You receive a limited quantity of devices within Glue for a limited term without charge (for example, as a trial Subscription or free account) or as part of another Tikabu offering (for example, Proof of Concept). Provisions in this agreement with respect to pricing, cancellation fees, payment, and data retention may not apply.

b. Ordering.

(i) By ordering or renewing a Subscription, you agree to the Offer Details for that Subscription. You may place orders for your Affiliates under this agreement and grant your Affiliates administrative rights to manage the Subscription, but Affiliates may not place orders under this agreement. You also may assign the rights granted under Section 1.a. to a third party for use by that third party in your internal business. If you grant any rights to Affiliates or third parties with respect to Software or your Subscription, such Affiliates or third parties will be bound by this agreement and you agree to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

(ii) Some offers may permit you to modify the device limit ordered during the Term of a Subscription. Additional quantities of devices added to a Subscription will expire at the end of that Subscription. If you decrease the quantity during a Term, we may charge you a cancellation fee for the decrease in quantity as described below in Section 3.b..

c. Pricing and payment. Payments are due and must be made according to the Offer Details for your Subscription.

(i) For Commitment Offerings, the price level may be based on the quantity of devices within Glue you ordered. Some offers may permit you to modify the quantity of devices ordered during the Term and your price level may be adjusted accordingly, but price level changes will not be retroactive. During the Term of your Subscription, prices for Glue will not be increased, as to your Subscription, from those agreed with Tikabu at the time your Subscription became effective or was renewed, except where prices are identified as temporary in the Offer Details, or for Previews or Non-Tikabu Products. All prices are subject to change at the beginning of any Subscription renewal.

(ii) For Consumption Offerings, pricing is subject to change at any time upon notice. **d. Renewal.**

- (i) Upon renewal of your Subscription, this agreement will continue.
- (ii) For Consumption Offerings, your Subscription will renew automatically for additional one-month terms until you terminate the Subscription.
- (iii) For Limited Offerings, renewal may not be permitted.

e. Taxes. Prices are exclusive of any taxes unless otherwise specified on the invoice as tax inclusive. You must pay any applicable GST. We will be responsible for all other taxes, including those based on our net income, gross receipts taxes imposed in lieu of taxes on income or profits, or taxes on our property ownership.

If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority; provided, however, that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You must ensure that any taxes withheld are minimized to the extent possible under applicable law.

3. Term, termination, and suspension.

a. Agreement term and termination. This agreement will remain in effect until the Subscription is terminated.

b. Subscription termination. You may terminate a Subscription at any time during its Term; however, you must pay all amounts due and owing before the termination is effective.

(i) **One-Month Subscription.** A Subscription having a one-month Term may be terminated anytime without any cancellation fee.

(ii) **Subscriptions of more than one-month.** If you terminate a Subscription to Glue within 30 days of the date on which the Subscription became effective or was renewed, no refunds will be provided, and you must pay for the initial 30 days of the Subscription, but no payments will be due for the remaining portion of the terminated Subscription. If you terminate a Subscription to Glue at any other time during the term, you must pay for the remainder of the Term, and no refunds will be provided.

(iii) **Limited Offerings.** Tikabu may terminate your Subscription to a Limited Offering at any time during the Term immediately without notice.

(iv) **Other Subscriptions.** For all other Subscriptions, if you terminate a Subscription before the end of the Term, you must pay a fee equal to one-month's Subscription fee and you will receive a refund of any portion of the Subscription fee

you have paid for the remainder of the Term; provided, however, no refunds will be provided for partially unused months.

c. Suspension. We may suspend your use of Glue if: (1) it is reasonably needed to prevent unauthorized access to Customer Data; (2) you fail to respond to a claim of alleged infringement under Section 5 within a reasonable time; (3) you do not pay amounts due under this agreement; (4) you do not abide by the Acceptable Use Policy or you violate other terms of this agreement; or (5) for Limited Offerings, the Subscription becomes inactive from your failure to access Glue as described in the Offer Details. If one or more of these conditions occurs, then:

(i) For Limited Offerings, we may suspend your use of Glue, your Subscription and your account immediately without notice.

(ii) For all other Subscriptions, a suspension will apply to the minimum necessary part of Glue and will be in effect only while the condition or need exists. We will give notice before we suspend, except where we reasonably believe we need to suspend immediately. We will give at least 30 days' notice before suspending for nonpayment. If you do not fully address the reasons for the suspension within 60 days after we suspend, we may terminate your Subscription and delete your Customer Data without any retention period. We may also terminate your Subscription if your use of Glue is suspended more than twice in any 12-month period due to your misuse of the service.

d. To the extent necessary to implement the termination provisions of this agreement, both parties waive any rights they have, or obligation that they may have, now or in the future under any applicable law or regulation, to request or obtain the approval, order, decision or judgment of any court to terminate this agreement.

4. Warranties.

a. Limited warranty.

(i) Glue. We warrant that Glue will meet the terms of the SLA during the Term. Your only remedies for breach of this warranty are those in the SLA.

(ii) Software. We warrant for the term of the agreement that it will perform substantially as described in the applicable user documentation. If Software fails to meet this warranty we will, at our option and as your exclusive remedy, either (1) return the price paid for the Software or (2) repair or replace the Software.

b. Limited warranty exclusions. This limited warranty is subject to the following limitations:

- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
- (ii) this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;
- (iii) this limited warranty does not apply to problems caused by your failure to meet minimum system requirements advised by us; and
- (iv) this limited warranty does not apply to Previews or Limited Offerings.

c. DISCLAIMER. Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.

d. Customer Remedies. Notwithstanding anything in this Agreement, consumers may have the benefit of certain rights or remedies pursuant to the Competition and Consumer Act 2019 (Cth) and similar state and territory laws in Australia in respect of which liability may not be excluded. If so, then to the maximum extent permitted by law, such liability is limited, at Tikabu's option, in the case of goods, to either (1) replacement of the goods or (2) correction of defects in the goods. Australian law requires us to notify consumer purchasers of Tikabu goods that: Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

5. Defence of claims.

a. Defence.

- (i) We will defend you against any claims made by an unaffiliated third party that a Product infringes that third party's patent, copyright or trademark or makes unlawful use of its trade secret.
- (ii) You will defend us against any claims made by an unaffiliated third party that (1) any Customer Data, or Non-Tikabu Products, or services you provide, directly or indirectly, in using the Product infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret; or (2) arises from your violation of the Acceptable Use Policy.

b. Limitations. Our obligations in Section 5.a. will not apply to a claim or award based on:

- (i) any Customer Data, Non-Tikabu Products, modifications you make to the Product, or services or materials you provide or make available as part of using the Product;
- (ii) your combination of the Product with , Non-Tikabu Product to the extent the combination caused the infringement;
- (iii) your use of a Tikabu trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim;
- (iv) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party; or
- (v) Products provided free of charge.

c. Remedies. If we reasonably believe that a claim under Section 5.a.(i). may bar your use of the Product, we will seek to:

- (i) obtain the right for you to keep using it; or
- (ii) modify or replace it with a functional equivalent and notify you to stop use of the prior version of the Product. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights.

d. Obligations. Each party must notify the other promptly of a claim under this Section. The party seeking protection must

- (i) give the other sole control over the defence and settlement of the claim; and
- (ii) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defence and payment of judgments (or settlement the other consents to) under this Section 5 are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

6. Limitation of liability.

a. Limitation. The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the amount paid under this agreement for Glue during the 12 months before the cause of action arose; provided, that in no

event will a party's aggregate liability for Glue exceed the amount during the Subscription. For Products provided free of charge, Tikabu's liability is limited to direct damages up to \$5,000.00 AUD.

b. EXCLUSION. Neither party will be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible or reasonably foreseeable.

c. Exceptions to limitations. The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 5; or (2) violation of the other's intellectual property rights.

7. Miscellaneous.

a. Notices. Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier confirmation of delivery. Notices to Tikabu must be sent to the following address: Tikabu Pty Ltd

24/48 Upper Pitt St

Kirribilli, NSW 2061

Australia

Notices to you will be sent to the address that you identify on your account as your contact for notices. Tikabu may send notices and other information to you by email or other electronic form.

b. License Transfers and Assignment. You may not assign this agreement either in whole or in part or transfer licenses without Tikabu's consent.

c. Consent to partner fees. When you place an order, you may be given the opportunity to identify a "Partner of Record" associated with your Subscriptions. By identifying a Partner of Record, directly or by authorizing a third party to do so, you consent to our paying fees to the Partner of Record. The fees are for pre-sales support and may also include post-sales support. The fees are based on, and increase with, the size of your order. Our prices for Glue are the same whether or not you identify a Partner of Record.

d. Severability. If any part of this agreement is held unenforceable, the rest remains in full force and effect.

e. Waiver. Failure to enforce any provision of this agreement will not constitute a waiver.

- f. No agency.** This agreement does not create an agency, partnership, or joint venture.
- g. No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- h. Applicable law and venue.** This agreement is governed by Australian law, without regard to its conflict of laws principles. If we bring an action to enforce this agreement, we will bring it in the jurisdiction where you have your headquarters. If you bring an action to enforce this agreement, you will bring it in the State of NSW, Australia. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to a violation of intellectual property rights.
- i. Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this Tikabu Glue Subscription Agreement, (2) the applicable Offer Details, and (3) any other documents in this agreement.
- j. Survival.** The terms in Sections 1, 2.c., 2.e., 4, 5, 6, 7, and 8 will survive termination or expiration of this agreement.
- k. Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labour disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of the Glue Service)). This Section will not, however, apply to your payment obligations under this agreement.
- l. Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf. If you specify an entity, or you use an email address provided by an entity you are affiliated with (such as an employer) in connection with a Subscription purchase or renewal, that entity will be treated as the owner of the Subscription for purposes of this agreement.
- m. Government customers.** Government customers should consult with Tikabu prior to acceptance. By accepting this agreement, you represent that you have complied and will continue to comply with all applicable laws and governmental procurement requirements.

n. Supply Terms.

(i) Appointment as Supplier. You appoint Tikabu Pty Ltd as the supplier of all Products under this Agreement. You will order Products from Tikabu Pty Ltd and agree to pay all amounts due to Tikabu Pty Ltd. The terms of this Agreement will apply to each order.

(ii) Failure to Pay. Your failure to make any payment to Tikabu Pty Ltd by the required date will constitute a material breach of the Agreement. In the event Tikabu terminates the Agreement for cause, all amounts due to Tikabu Pty Ltd shall become due and payable immediately.

8. Definitions.

Any reference in this agreement to "day" will be a calendar day.

"Acceptable Use Policy" is defined in Section 9.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 2.

"End User" means any person you permit to access Glue or otherwise use Glue.

"Non-Tikabu Product" is any software not created by Tikabu.

"Offer Details" means the pricing and related terms applicable to a Subscription offer, as document in the Subscription offer.

"Glue" means any of the Tikabu-hosted services to which you subscribe under this agreement.

"Previews" means preview, beta, or other pre-release version or feature of Glue or Software offered by Tikabu to obtain customer feedback.

"Product" means Glue (including any Software).

"Software" means Tikabu software we provide for installation on your device as part of your Subscription or to use with Glue to enable certain functionality.

"Subscription" means an enrollment for Glue for a defined Term as specified in the Subscription offer.

"Term" means the duration of a Subscription (e.g., 30 days or 12 months).

9. Acceptable use policy.

Neither Customer, nor those that access Glue through Customer, may use Glue:

- in a way prohibited by law, regulation, governmental order or decree;
- to violate the rights of others;
- to try to gain unauthorized access to or disrupt any service, device, data, account or network;
- to spam or distribute malware;
- in a way that could harm Glue or impair anyone else's use of it;
- in any application or situation where failure of Glue could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage; or
- to assist or encourage anyone to do any of the above.

Violation of the terms in this section may result in suspension of Glue in accordance with clause 3.c.