



## **BOSSII EULA**

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## **This EULA is made on today's date.**

### **Parties**

#### **BOSSII Ltd, Help Us Pty Ltd, Help You Pty Ltd**

(BOSSII, "us", "we")

### **The User**

(User, "You", "Your")

### **Background**

- A. BOSSII has developed the Software which they provide as a Service to End Users.
- B. The Software allows End Users to manage many functions related to hospitality businesses.
- C. You wish to create an Account to use the Service.
- D. You agree to be bound by the terms and conditions within this EULA, and any other documents under reference.

### **Operative provisions**

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#### **1. Interpretation**

##### **1.1 Definitions**

Unless the terms and conditions of the EULA explicitly state otherwise, expressions used in the EULA have the following meanings:

**Account** means the End User's account to use the Software, including your account.

**Account Sign-Up** means the process through which a user creates an account on the Software by entering the information requested by us and agrees to all terms, including (but not limited to) this EULA and the Privacy Policy.

**Business Day** means a day (other than a Saturday or Sunday) upon which banks are ordinarily open for business in Brisbane, Queensland, Australia.

**Commencement Date** means the date that the parties execute this EULA.

**Confidential Information** means information that is by its nature confidential, including but not limited to information relating to the:

- (a) personnel, policies, practices, clientele or business strategies of the parties;
- (b) Intellectual Property Rights of either party;
- (c) the terms of the EULA;

but does not include information:

- (d) already rightfully known to the receiving party at the time of disclosure by the other party; or
- (e) in the public domain (including information made publicly available via a mechanism in the Software by you) other than as a result of disclosure by a party in breach of its obligations of confidentiality under the EULA.

**Consequential Loss** means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, loss in relation to taxation or other punitive actions by a regulator, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

**Consumer Law** means the Australian Consumer Law, which is Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

**Content** means the software, technology, text, forum posts, chat posts, profiles, widgets, messages, links, emails, music, sound, graphics, pictures, video, code, and all audio visual or other material appearing on or emanating to or from the Services, as well as the design and appearance of our websites. All Content is either owned by us or our licensors, or is licensed to us and our licensors pursuant to this EULA or any other agreements in writing as may be applicable from time to time.

**Cost** means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.

**End User** means an individual who completes the Account Sign-Up process and accesses the Software in any capacity or on any device.

**EULA or End User License Agreement** means the terms and conditions set out in this document and agreed to by you, as amended from time to time.

**Fees** means any amount payable by you to us in connection with this EULA.

**Insolvency Event** means in respect of a party:

- (a) the appointment of an administrator, a receiver or receiver and manager in respect of that party;
- (b) an application to a court or an order for the winding up of the party; or
- (c) the occurrence of anything analogous or having a substantially similar effect to any of the preceding events.

**Intellectual Property** means all intellectual property, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registrable or not), eligible circuit layout rights, domain name licences, know-how, trade secrets, code, software, repositories, specifications, formula, technical know-how, documentation.

**Intellectual Property Right** means all present and future rights conferred by statute, common law or equity in or in relation to Intellectual Property, including the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

**Malicious Code** means any code, program, script, software, file, thing or device which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including viruses, exploits, malware, logic bombs, denial of service attacks, flood or mail bombs, back-doors and other similar things or devices.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988 (Cth)*.

**Platform** means the cloud-based application which we provide to Restaurants for them to manage their medical facilities, staff and engagement with patients.

Privacy Law means:

- (a) the *Privacy Act 1988 (Cth)*; and
- (b) any code registered under the *Privacy Act 1988 (Cth)* or Australian Privacy Principles.

**Privacy Policy** means our privacy policy which is available on our Website at ([www.bossii.com](http://www.bossii.com)) or as amended by us from time to time.

**Product** means any physical or digital goods, such as Software, computer systems, specific configurations or code, that you request, order or purchase under these Terms and/or as part of the Services.

**Representative** includes an employee, agent, officer, director, auditor, advisor, researcher, partner, consultant, contractor, sub-contractor or related entity of that person or of a related body corporate of that person.

**Restaurant** means a Restaurant which has an active subscription to our restaurant management Platform.

**Service** means any service we provide by way of the Software, the Website and in connection with the Software.

**Software** means the BOSSII application owned and designed by us and offered as an application on various platforms.

**Submitted Materials** means any material including documents, information or data provided by you to us in connection with the Software and Service.

**Term** means the period of time as set out in clause 2.1.

**Unforeseen Event** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

**Website** means our website located at <http://bossii.com/>.

## 1.2 Interpretation

In this EULA:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
  - (c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
  - (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
  - (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
  - (g) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this EULA, and a reference to this EULA includes any schedule, exhibit or annexure to this EULA;
  - (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (i) references to payments to any party to this EULA include payments to another person upon the direction of such party;

- (j) all payments to be made under this EULA will be made by unendorsed bank cheque, through a third-party payment provider (such as Stripe) or by other immediately available funds;
- (k) the word "includes" in any form is not a word of limitation;

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## **2. EULA length**

### **2.1 Term**

This EULA will commence on the Commencement Date and will continue:

- (a) for as long as you hold an account with us;
- (b) at any time which you have the Software installed on a device owned or controlled by you; or
- (c) until the date of termination of this EULA in accordance with clause 18.

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## **3. Licence**

### **3.1 Licence**

We grant to you a limited, non-transferrable, non-exclusive and revocable licence to access, use and upload data to the Services, subject to the terms and conditions of this EULA.

### **3.2 Licence Conditions**

The grant of the licence in clause 3.1 is subject to and conditional upon:

- (a) successfully completing the Account Sign-Up;
- (b) complying at all times with the requirements of this EULA and Privacy Policy;
- (c) your continued acceptance of this EULA as amended and updated from time to time; and
- (d) you complying with our reasonable directions at all time.

### **3.3 Licence Restrictions**

The grant of the licence in clause 3.1 is subject to the following restrictions:

- (a) You must comply with the obligations set out in clause 7 (Your Obligations);
- (b) You must comply with all requirements listed in this EULA, other referenced documents, relevant legislation and any lawful directions we give you;
- (c) You must agree (and continue to agree) to our Privacy Policy as amended from time to time.

### **3.4 Our right to suspend**

We reserve the right to limit or suspend your license to use the Services or Software if you breach any of your obligations in this EULA.

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## **4. Relationship**

### **4.1 Sub-contractors**

You acknowledge and agree that we may subcontract any of our obligations of this EULA to a third party (or multiple third parties) without notification to or consent from you.

## 4.2 Relationship

You have no authority to act for or bind us except as specifically provided in this EULA or with our express written consent.

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## 5. Submitted Material

### 5.1 Submitted Material

- (a) You must not submit or cause to be submitted to the Software or Services any of the following:
- (i) any material that you don't own or have the right to use;
  - (ii) any confidential information of any third party which you have not obtained the express consent of the third party for;
  - (iii) any material that is illegal, unlawful, improper, harmful, threatening, unlawful, defamatory, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, hateful, or otherwise objectionable;
  - (iv) any material that infringes the Intellectual Property Right of a third party;
  - (v) would breach any privacy, security or anti-money laundering obligations, such as duties under the Privacy Law;
  - (vi) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
  - (vii) causes damage or injury to any person or property;
- and we reserve the right, without incurring any liability to you, to disable your access to any material that we consider, in our sole discretion, breaches the provisions of this clause (or, if we deem it necessary, the Services).
- (b) You grant us a non-exclusive, royalty free license to use any material supplied by you in connection with this clause 5.1 for our commercial and business purposes, including the commercial and business purposes of any of our associated bodies corporate.

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## 6. Payment

### 6.1 Fees

- (a) You will pay us any Fees which are required for the Services as we require from time to time.
- (b) All amounts and fees stated or referred to in this agreement are:
- (i) non-cancellable and non-refundable (subject to clause 16.1(d)); and
  - (ii) inclusive of GST, which shall be shown on our invoice(s) at the applicable rate.
- (c) Where you have payment obligations in relation to the Services under an applicable head agreement with us, you must register a valid payment method with us prior to using the Services.
- (d) You must not have a total of more than \$500 outstanding with us at any one time. In the event that you exceed this amount and do not pay at least 50% of the outstanding amount within seven (7) days, we reserve the right to cease all Services without further notice to you and take any further action necessary to recover the debt.
- (e) You are solely responsible for any duties in relation to taxation, legal or regulatory compliance with regards to payment and Fees.

- (f) If you fail to pay any invoice by the due date, then without prejudice to our other rights or remedies, until payment is made in full (including for any accrued interest), we reserve the following rights:
  - (i) to charge for interest on all overdue amounts at the RBA cash rate plus 6 percentage points, compounded daily from the due date of the relevant invoice; and
  - (ii) to immediately suspend any or all Services on foot, and provide you with a Notice of Default.
- (g) You acknowledge and agree that you are liable by way of liquidated damages for all amounts payable under this clause plus all costs of debt collection and enforcement, including legal fees on a solicitor and own client basis.
- (h) We may charge a reinstatement fee to unlock your Services after a suspension. You warrant that you will pay such a fee if and when requested.

## **6.2 Where End User is not Responsible**

Where your payment obligations are handled by your employer or an associated organisation under a payment agreement with us, your use of the Services is contingent upon that payment continuing to be made.

## **6.3 Our right to change Fees**

We may amend the Fees at any time.

## **6.4 GST Wording**

Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

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# **7. Your Obligations**

## **7.1 Positive Obligations**

During the term of the EULA, you must:

- (a) not to do anything which will have an adverse effect on us, the Services or Software;
- (b) comply with any and all terms and requirements of the Services outlined in this EULA;
- (c) ensure that you use the Services in accordance with the terms of this agreement and any other terms (such as our Privacy Policy);
- (d) ensure that you, do not (in use of the Services) breach any laws, regulations, policies or other legal instruments;
- (e) do all acts and things necessary to ensure that you do not breach the terms of this EULA; and
- (f) not publish or otherwise communicate any review of, or information about, the Services (which is not publicly available) to any third party without the prior written consent of us, except as specifically provided for in an agreement with us, including this EULA.

You will be responsible for the breach of any obligation in this clause except to the extent the breach is caused by our negligent act. The above obligations apply to any use of your Account, including use by any third party. You agree to be responsible for any breach of this EULA, including this clause 7.1, where that breach occurs through use of your Account, regardless of whether you actually committed the breach or not.

## **7.2 Restrictions**

Except as we expressly permit under this EULA, you shall not:

- (a) access all or any part of the Services in order to build a product or service which competes with the Services;
- (b) use the Services to provide services to third parties;
- (c) license, sell, rent, lease, transfer, assign, distribute, display, disclose, commercially exploit or otherwise make the Services available to any third party;
- (d) take any action which imposes or may impose (in our judgement) an unreasonable or disproportionately large load on our, or our third-party providers', infrastructure;
- (e) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services;
- (f) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and Software (as applicable) in any form or media or by any means; or
- (g) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (h) bypass, circumvent or attempt to bypass or circumvent any measures we may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services);
- (i) attempt to obtain, or assist third parties in obtaining, access to the Services other than as provided under this agreement; or
- (j) otherwise take any action in violation of any guidelines, policies or supplemental documentation which shall be applicable to the Services from time to time.

and shall not permit any other person to do the above acts, howsoever related to you.

## **7.3 Fair Use**

You shall not use, or permit any other person to use:

- (a) any method to circumvent the provisions of this agreement or to obtain Services in excess for those in which you have purchased or are allowed in the normal operation of the Software; and
- (b) any mechanism to exceed the amount of resources assigned to you (or conceal any such activities).

## **7.4 Our right to suspend**

We reserve the right to limit or suspend the access of any individual or association to the Services if any individual or association is in breach of this clause 7.

## **7.5 Audit**

If required by us, you will provide us reasonable access to your records, systems or hardware for the purposes of ensuring compliance with this EULA.

## **7.6 Other Responsibilities**

Unless expressly stated otherwise, you are responsible for, and expressly agree that we are not responsible for:

- (a) providing any installation or integration services;
- (b) any performance outcomes from your use of the Software;



- (c) any aspect of your current operating systems, software or hardware;
- (d) any issues or defects arising in relation to your data, business processes, software, equipment or network; and
- (e) your sole reliance on the Software without any backups, redundancy or alternative solutions in the event of an emergency.

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## **8. Products**

### **8.1 Provision**

We may provide Products to you as part of the Services. We only offer warranties provided by manufacturers for Products, and ownership will only pass to you if you've paid for the Products in full.

### **8.2 Damage**

Where you make a claim for a damaged Product, our only responsibility is to assist in liaising with the manufacturer in relation to having that Product repaired or replaced. You acknowledge and agree that we have no responsibility for the Product itself (save for any requirements at law).

### **8.3 Delivery**

We'll arrange for delivery at your address, but we're not responsible for unloading (unless we agree otherwise). You'll be deemed to have accepted our delivery after 2 business days. We aren't responsible for any delays from third parties.

### **8.4 Price**

Current prices of Products aren't promises of prices in the future. We'll revise our pricing to cater for increases by suppliers, substitution and exchange rate fluctuations (among other things).

### **8.5 Refund**

Where our Services end and we haven't ordered a Product yet, we'll provide you with a refund for any money paid. Where we've already ordered the product, we'll refund where we can return it to a manufacturer. Otherwise, we'll supply it to you and retain payment.

### **8.6 Failures**

You acknowledge that we're not manufacturers Point of Sale Products and agree that any issues, claims or liability arising from those Products will be the sole and exclusive responsibility of the manufacturer.

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## **9. Privacy**

### **9.1 Privacy Policy**

- (a) You agree and consent to our handling of Personal Information in accordance with our Privacy Policy.
- (b) We reserve the right to amend the Privacy Policy at any time.
- (c) We reserve the right to immediately terminate this EULA if you are in breach of this clause 9.

## 9.2 Privacy Obligations - BOSSII

If Personal Information is disclosed to us in the course of this EULA, we agree that we will not:

- (a) sell the Personal Information to any third party in a form which has not been sufficiently de-identified so that it no longer represents information by which the End User could be personally identified by the third party; or
- (b) distribute or disclose identifiable Personal Information to any third party other than:
  - (i) to our personnel and/or related bodies corporate;
  - (ii) service providers who require the information in the provision of providing those services to the party;  
who will only use the Personal Information for the purposes contemplated by this EULA.

## 9.3 Privacy Obligations – End User

If Personal Information is disclosed to you in the course of this EULA, you agree that you will not:

- (a) sell the Personal Information to any third party in any form; or
- (b) distribute or disclose Personal Information to any third party other than:
  - (i) to your personnel and/or related bodies corporate; or
  - (ii) service providers who require the information in the provision of providing services to you;  
who will only use the Personal Information for the purposes contemplated by this EULA.

## 9.4 No Warranty

- (a) We make no warranties or guarantees that the manner in which we manage Personal Information is compliant with any foreign privacy laws and it is your sole and absolute responsibility to ensure you are compliant with any foreign privacy laws in your use of the Software.
- (b) In the event that you request changes to the Services in order to achieve compliance, you acknowledge and agree that you will be liable for all work performed by us.

## 9.5 The Privacy Act

For the purposes of this clause 9 the term *disclose* is to have the same meaning as defined in the *Privacy Act 1988* (Cth).

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# 10. Intellectual Property

## 10.1 Our Intellectual Property Rights

- (a) All title, ownership rights and Intellectual Property Rights, including copyright in relation to the Service and the Software is owned or used under licence by us.
- (b) Without our express prior written consent, you undertake that you will not and will not permit any person to:
  - (i) interact with our Intellectual Property or trade mark(s) (whether registered or not) that could cause any adverse effect to our ownership and/or rights to the intellectual property; or

- (ii) copy or reproduce, or create an adaptation or translation of, all or part of the Software in any way, except to the extent that reproduction occurs automatically through the ordinary use of the Software in accordance with this EULA;
- (iii) incorporate all or part of the Software in any other webpage, site, application or other digital or non-digital format. For the avoidance of doubt, you may incorporate images of the Software into hard or soft copy documents for training or communication purposes;
- (iv) (subject to other rights explicitly granted under this EULA) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of the Software on any medium;
- (v) do anything that will infringe the Intellectual Property Rights of us or any third party; or
- (vi) attempt to do any of the above.

## **10.2 Your Intellectual Property**

Nothing in this EULA will transfer ownership of the Submitted Material to us.

## **10.3 Threats and action**

If you become aware of any infringement or threatened infringement of any Intellectual Property Rights, you must give us notice pursuant to clause 22.1, including full particulars of the infringement. We may, in our absolute discretion, institute and prosecute an action against the infringer.

## **10.4 Provide all assistance**

You must execute all documents and do all things reasonably necessary to aid and co-operate in the prosecution of any actions brought by us under this clause.

## **10.5 Survival of Obligation**

The operation of this clause survives the termination of this EULA.

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# **11. Software**

## **11.1 Software Functionality**

- (a) The Software offers a variety of functions, including (but not limited to):
  - (i) predicting shift budgets;
  - (ii) managing staff rosters;
  - (iii) handling transactions;
  - (iv) managing reservations and bookings;
  - (v) creating member and VIP groups;
  - (vi) tracking, managing and integrating employees;
  - (vii) managing products and recipes;
  - (viii) tracking and controlling stock;
  - (ix) managing suppliers and orders;
  - (x) setting pricing and pricing policies;
  - (xi) facilitating and providing Point-of-Sale functionality; and

- (xii) managing 'back of house' functions.
- (b) Our role in providing the Software is as developer, facilitator and administrator only. We are not a Restaurant and don't perform any functions other than those expressly set out in this EULA

## 11.2 Hosting the Software

- (a) You acknowledge and agree that:
  - (i) parts of the Software and Services are accessible online and parts are built as '*cloud-based*' applications;
  - (ii) we require elements of the Software to be hosted by a third-party provider; and
  - (iii) this is reasonable considering the nature of the Software and Services, and that we would not be able to deliver the Services in their current or future form and to the standard necessary if we did not utilise the hosting services of third-party providers.
- (b) We use Microsoft Azure ([https:// azure.microsoft.com/en-au/](https://azure.microsoft.com/en-au/)) as a third-party provider for elements of the Software and delivery of the Services. Servers are:
  - (i) managed and maintained by Microsoft Azure;
  - (ii) where possible, located in Australian data centres; and
  - (iii) secured by Microsoft Azure software and technology.
- (c) You release and indemnify us fully for any damages you incur as a result of the mismanagement, negligence or any other acts or omissions by Microsoft Azure in their provision of servers, hosting and cloud technology to us.
- (d) You acknowledge that as Microsoft Azure is a reputable and '*enterprise-grade*' vendor, our use of their services and reliance on their technology is reasonable in the circumstances. If you do not agree with this assertion at any time, your sole and exclusive remedy is to terminate your use of the Software and Services. Your continued use of the Services and storing of your data (including Personal Information and Submitted Material) is taken as a current and continuing agreement to the acknowledgements in this clause 11.2.
- (e) We reserve the right to nominate a different server, third-party provider or cloud-based architecture at any time in our sole discretion.

## 11.3 Parts of Software not locally available

You acknowledge and agree that parts of the Software will only be accessible using the internet (or other connection to third party servers) and will not be available "locally" from your own servers or within your own local operating system environments.

## 11.4 Parts of the services controlled by third parties

You acknowledge and agree that the Software is operated from servers owned and controlled by a third party. As such, you acknowledge that certain functions are out of our control, including (but not limited to):

- (a) cloud services for servers;
- (b) proprietary and internal code, which may include bugs, errors and exploits;
- (c) actions by malicious, state-sponsored and hostile actors;
- (d) hardware and connection failure; and
- (e) data storage and backup.

### **11.5 Change of Services**

We reserve the right to upgrade, maintain, tune, backup, amend, add to or remove items from, redesign, improve or otherwise alter the Services (including offering new Services) at our sole and absolute discretion.

### **11.6 Unintentional inaccessibility**

- (a) From time to time, without notice, access to all or part of the Services may be disrupted or limited. During such an interruption, we will use reasonable endeavours to restore access to the Services as soon as practicable. Nothing in this agreement gives us any obligation or liability to you in any way whatsoever for unintentional inaccessibility.
- (b) We make no guarantees as to the uptime or availability of the Services or Software. You acknowledge that you will always ensure that you have means through which to access any material you have submitted to the Services

### **11.7 Intentional inaccessibility**

We reserve the right to make some or all of the Services inaccessible from time to time as is required for upgrades, maintenance and updates. We will use reasonable endeavours to provide you with advance notice of any inaccessible period but you accept that this may not always be possible and we are not liable for any harm or damage you may suffer during an interruption.

### **11.8 Errors**

- (a) You acknowledge and agree that there may be technical or administrative errors in the information on the Software, including but not limited to errors with respect to Restaurant data and availability.
- (b) We reserve the right to do any of the following, at our absolute discretion, without notice:
  - (i) correct any errors in the Software;
  - (ii) make the Software or Services inaccessible to work on errors;
  - (iii) update the Software;
  - (iv) remove and/or replace parts of the Software;
  - (v) move or re-organise data from one part of the Software to another; or
  - (vi) any other act or thing reasonably necessary to ensure that errors are corrected, and the Software continues to operate as intended.

### **11.9 Security Responsibilities**

We will take reasonable steps to ensure that the Software is secure from unauthorised access consistent with generally accepted industry standards in our industry. For clarity, these obligations shall only include taking reasonable measures to:

- (a) secure our physical premises from unauthorised access;
- (b) restrict access to critical parts of Service infrastructure to employees, contractors and third parties who are required to have access; and
- (c) implement recommendations from advisors provided to us from time to time in relation to securing the Software and Services.

### **11.10 Publishing of Content & Service Data**

Except as expressly permitted through this EULA, you must not publish, share or otherwise disseminate any content, data, graphs, visualisations or information provided to you through the Services outside the confines of the Software without our written permission.

### **11.11 Delivery of Support and Maintenance**

We will provide support and maintenance services in respect of the Services via email and/or direct dial in only, and will endeavour to respond within 24 hours (if that time period falls on a Business Day) or otherwise as soon as possible thereafter.

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## **12. Data**

### **12.1 Additional Terms**

Where not specifically dealt with in this EULA, we will collect, store and use your data in accordance with our Privacy Policy and any other terms listed on our [website](#) as updated from time to time.

### **12.2 Required Information**

- (a) In your use of the Services, we may require Personal Information to:
  - (i) ensure we can appropriately interact with third-party applications;
  - (ii) comply with any applicable laws and regulations, including any anti-money laundering, counter-terrorism or know-your-customer (KYC) requirements.
- (b) The Personal Information you may be required to provide for the continued use of the Software and Services may include (but is not limited to):
  - (i) Full name;
  - (ii) Email address;
  - (iii) Postal and/or residential address;
  - (iv) Date of birth; and
  - (v) Payment details.

### **12.3 Storage of Data**

- (a) All cloud Service and Software data is backed up regularly using Microsoft Azure backup procedures. While we make all efforts to ensure that backups occur regularly, we make no guarantees that data provided to the Services will be backed up at any particular interval of time, nor that the backups are safe from hostile, malicious or state-sponsored cyber-attacks.
- (b) All On Premise Service and Software data is the responsibility of the User to ensure that backups occur regularly. No responsibility is to be placed on Bossii to complete On Premise Data Storage backups.

### **12.4 Use of Data**

- (a) By using the Software and providing Submitted Material and End User data in your interaction with the Services, you understand, acknowledge and agree that we:
  - (i) may use that data in any way necessary to ensure you have the appropriate access and use of the Services;
  - (ii) may aggregate, distribute, prepare derivative works of, display, perform or otherwise use the data in connection with the Services, Software or our business;

- (iii) may share data with any third parties to whom we rely upon in providing the Services or running the Software;
  - (iv) may share data with any third parties to whom you allow within your account as an Integration;
  - (v) may use your data to provide better recommendations and targeted advertising within the Services;
  - (vi) may share data with any of our related bodies corporate for the purposes of furthering our commercial and business interests; and
  - (vii) may share data with our partners, affiliates and other associated third-parties in a manner consistent with our Privacy Policy.
- (b) You grant us an irrevocable, perpetual, non-restrictive, royalty free, transferable, assignable worldwide, fully paid, sublicensable license to use any data you provide to us in your use of the Services for the purposes listed in clause 12.4(a) and any other purposes listed in this EULA. This license shall survive the termination of this EULA.
  - (c) For clarity, the above license in clause 12.4(b) does not affect your other ownership or license rights in the Submitted Materials, including the right to grant additional licenses in writing, unless otherwise agreed. You represent and warrant that you have, and will continue to have, all necessary rights to grant the licenses in this clause 12 without infringing or violating any other rights (including Intellectual Property rights), assignments, licenses or agreements which may apply to the Submitted Materials.
  - (d) We reserve the right to access, read, preserve and disclose any information we believe is reasonably necessary to:
    - (i) satisfy any applicable law, regulation, legal process or governmental request;
    - (ii) enforce these terms, including investigation of potential violations;
    - (iii) detect, prevent, or otherwise address fraud, security or technical issues;
    - (iv) respond to user support requests; or
    - (v) protect the rights, property or safety of us, our users and the public.

## **12.5 Data Exporting**

- (a) While the Services and Software may allow users to export certain aspects of the Submitted Material, nothing in this EULA should be construed as an entitlement to export Submitted Material from the Services at will.
- (b) The ability to remove any Submitted Material or other content on the Services which relate to an End User in a downloadable and/or human readable format is wholly dependent on:
  - (i) the current functionality of the Software;
  - (ii) the status of any servers, infrastructure or other storage medium used to deliver the Services; and
  - (iii) our absolute discretion to enable export functionality from time to time.

## **12.6 End User Acknowledgements**

You acknowledge and agree that:

- (a) the Services may be subject to limitations, delays and other problems inherent in the use of communications facilities (such as network outages, congestion and hardware failures);

- (b) we may perform periodic penetration testing on the Services to satisfy our internal security standards;
- (c) Information you request from us may not be available or may not be provided at the time of request, and we don't guarantee that any information provided will be comprehensive or complete;
- (d) unless otherwise agreed to in writing, you shall be responsible for the preservation of your data, including any Submitted Material. Even where we do provide backup services, you must also take measures to safeguard and secure your data. Unless agreed in writing, you acknowledge and agree that we shall have no responsibility to preserve any data and no liability for any data, including Submitted Material, which may be lost or unrecoverable; and
- (e) we will not be responsible for you having appropriate devices and internet connections to access the Services. We will not be responsible for any physical devices, internet connections, communications or anything else used to connect or access the Services.

## **12.7 Software Limitations**

The Software is:

- (a) provided on an 'as is' basis; and
- (b) not designed to perform any functions outside those expressly advertised.

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## **13. Security**

### **13.1 Sufficient Security**

You shall use proper security measures in connection with your use of the Services. This shall include (but not be limited to) the following:

- (a) setting strong passwords and access control mechanisms;
- (b) safeguarding access to all logins and passwords (preferably with an industry-grade two-factor or hardware authentication system);
- (c) verifying the trustworthiness of persons with account access information; and
- (d) implementing any relevant procedures recommended by the Department of Industry, Innovation and Science (see - <https://www.business.gov.au/Risk-management/Cyber-Security>) and the Australian Cyber Security Centre (see - <https://www.acsc.gov.au/> and <https://cyber.gov.au>) from time to time.

### **13.2 Notifiable Data Breaches**

You shall notify in the manner specified in clause 22.1 within 48 hours if you learn of any security breaches relating to the Services. If the breach(es) could constitute a Notifiable Data Breach under Part IIIC of the Privacy Act, you shall notify us within 3 hours of the breach (suspected or confirmed) coming to your attention. You shall aid us fully in any subsequent investigation or legal action taken as a result of the breach.

### **13.3 Malicious Code**

It is your responsibility to protect your systems and the areas of the Services which are under your control from Malicious Code.

### **13.4 Internet Services**

You are responsible for the security of any and all internet connections used to access the Services, and the security of any device on which the Services are accessed.



### 13.5 Cyber Attacks

While we may take reasonable measures to secure the Software and the infrastructure on which the Services run from cyber-attacks and Malicious Code, new attack vectors and exploits are created or used by malicious actors every day. By using the Services, you acknowledge that we cannot be expected to anticipate these new vectors but can only employ industry-standard measures to mitigate the risks. Where we are actively employing measures to combat cyber-crime and an exploit or data loss occurs, you agree to hold us completely harmless for any consequences of same.

### 13.6 Indemnity

You release and indemnify us for any claim, action or liability resulting from your failure to comply with this clause 13.6. You acknowledge that while we may secure the Software as part of the Services, we are unable to protect you from a failure to properly secure your systems and practice good digital hygiene.

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## 14. Third Party Content and Services

### 14.1 Accessing Linked Content and Services

- (a) The Services may permit you to link to or access other websites, services or resources on the internet. When you access third party resources, you do so at your own risk. These other resources are not under our control, and you acknowledge that we're not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any link or integration to third party services does not imply our endorsement or any association between us and their operators.
- (b) You further acknowledge and agree that we will not be responsible or liable, directly or indirectly, for any damage or loss caused (or alleged to be caused) by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource.
- (c) We will not be responsible for any third-party advertising content displayed on the interface of the Software. Any link on the Software to a third-party website, or decision to accept any third party offer, is entirely at your own risk.

### 14.2 Third Party Integrations

- (a) In delivering the Services, we may offer augmented functionality through interfacing, providing or obtaining data, or otherwise co-operating with a third party and their software and/or services (**Integration**).
- (b) Several of the Integrations may have access to some Submitted Material, Personal Information and End User data. By using the Services, you expressly authorise us to provide any Submitted Material, Personal Information and End User data to Integrations for the purpose of providing the Services.
- (c) You acknowledge that the third parties who control the Integrations may:
  - (i) use Submitted Material, Personal Information and End User data to improve their services;
  - (ii) to the extent permitted by law, use, sell, license, distribute and disclose de-identified and/or aggregated Submitted Material, Personal Information and End User data; and
  - (iii) perform fraud screening, verify identities and verify Submitted Material, Personal Information and End User data for use across their network;and agree to the Integrations performing all of the above functions.

- (d) While we offer the Integrations and may have agreements with the third parties to whom they relate, we only have control over the Integrations to the extent permitted by our Software.

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## 15. Warranty

### 15.1 Exclusion of express warranties

Subject to our obligations in respect of the provision of the Software and Services under this EULA, we make no warranties or guarantees:

- (a) the Software and/or Services will be accessible at all times, uninterrupted or error free;
- (b) any of the Software is without bugs or viruses;
- (c) any of the technical information is without error or inaccuracy;
- (d) the Software is immune to unauthorised access or security breach; and
- (e) in respect of the retention of, or continued accessibility of, any data.

### 15.2 Warranties as to capacity

Each party represents and warrants to the other that:

- (a) it has full power and authority to execute this EULA and observe and perform all of its obligations;
- (b) it is not aware of any thing, matter or circumstance which may prevent it from fulfilling its obligations under this EULA; and
- (c) it is not insolvent and no receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to all or any of its affairs or material assets.

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## 16. Limitation of liability

### 16.1 Consumer Law

- (a) You acknowledge and agree that we are not responsible for the conduct or activities of any other user of the Services
- (b) If you are a consumer within the meaning of the Consumer Law, there are certain rights, such as the consumer guarantees, implied by the Consumer Law which cannot by law be excluded (**Non-Excludable Conditions**). This clause is subject to those Non-Excludable Conditions.
- (c) Subject to the application of any applicable Non-Excludable Condition and to the maximum extent permitted by law, we:
  - (i) exclude from this EULA all guarantees, conditions and warranties that might but for this clause be implied into this EULA;
  - (ii) excludes all liability to you for any Costs, expenses, losses and damages suffered or incurred directly or indirectly by you in connection with this EULA, including using the Services, whether that liability arises in contract, tort or under statute; and
  - (iii) will not, under any circumstances, be liable to you for any Consequential Loss.
- (d) If our liability under this EULA cannot be lawfully excluded, to the maximum extent permitted by law, our liability for breach of any Non-Excludable Condition is limited:

- (i) in the case of goods, to (at our option) the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired;
- (ii) in the case of services, to (at our option) the supplying of the services again; or the payment of the cost of having the services supplied again.

## **16.2 Costs**

Subject to clause 16.1, we exclude, and you agree to indemnify and hold us harmless from, all other liability to you for any Costs, including Consequential Loss, suffered or incurred directly or indirectly by you in connection with the EULA, the Software and/or the Services, including (but not limited to):

- (a) the occurrence of an Unforeseen Event;
- (b) reliance on technical advice, modelling or calculations provided by us;
- (c) the infringement or claimed infringement by any person other than us or our Representatives of the Intellectual Property Rights or moral rights of any person in connection with the EULA;
- (d) the infringement, negligence, improper action, breach of privacy or any other action committed by a Restaurant or third party who you choose to share your information with through the Software;
- (e) any loss or damage to property, personal injury or death arising directly or indirectly in connection with the EULA;
- (f) any unauthorised activity in relation to the Software or Services by any user or third party;
- (g) your use of or reliance on the Software and/or Services for a purpose other than the business purposes of you or the reasonably expected purpose of the Software and/or Services; or
- (h) your failure to fulfil your obligations under the EULA.

The foregoing limitation applies however the Costs are caused whether they arise in contract, tort (including by our negligence) or under statute.

## **16.3 Third Party Integrations**

- (a) We make no guarantee as to the safety, security, merchantability, fitness, reliability or usability of any third party Integrations on the Services.
- (b) Where you suffer any damages, loss or injury due to the acts or omissions of an Integration, your sole and exclusive remedy is to pursue the owner of that Integration for those damages. You release and discharge us for all liability relating to any Integration, except to the extent where we have contributed to any damage, loss or injury.

## **16.4 Limitations Generally**

- (a) Despite any other provision to the contrary, our total liability in connection with this EULA whether under contract or tort, will not in any circumstances exceed \$500.00 (AUD).
- (b) You indemnify us for any reasonable legal expenses we incur as a result of your breach of this EULA, including expenses for enforcing payment, on a solicitor and own-client basis.

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## **17. Indemnity**

### **17.1 Indemnity**

You agree to release, indemnify, defend, and hold harmless us claim or liability arising whether directly or indirectly arising in connection with the Service, even if we knew or should have known about the possibility of such claim or liability. This includes (but isn't limited to) claims for:

- (a) libel, slander, defamation, product disparagement or indecent, false, misleading or deceptive conduct;
- (b) any breach of clause 5 (Submitted Material), clause 7 (Your Obligations), clause 9 (Privacy), 11 (Software), 12 (Data) and 13 (Security);
- (c) infringement of Intellectual Property Rights;
- (d) our compliance with any Technical Assistance Notice, Technical Assistance Request or Technical Capability Notice issued under the *Telecommunications Act 1997* (Cth) or Computer Access Warrant under the *Surveillance Devices Act 2004* (Cth) or any other applicable or comparable instrument from time to time;
- (e) invasion of the right of Privacy;
- (f) any incorrect, fraudulent or false information provided by you; and
- (g) any downtime, interruption, Platform failure or misuse, data loss, third party materials, loss or damage, denial of access, acts of third parties or Consequential Loss of any kind.

The obligations in this clause 17 survive termination of this EULA.

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## **18. Termination**

### **18.1 Termination by Notice**

Either party may terminate this EULA by providing the other party 30 days' notice.

### **18.2 Immediate Termination by us for Default**

We may terminate this EULA immediately by notice to you if:

- (a) an Insolvency Event occurs in relation to you; or
- (b) you commit any breach of any of your obligations under this EULA.

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## **19. Effects of Termination**

### **19.1 When Termination Occurs with Notice**

If this EULA is terminated in accordance with clause 18.1, this EULA will terminate at the expiry of the notice period.

### **19.2 When Termination Occurs without Notice**

If this EULA is terminated in accordance with clause 18.2 or 18.2, this EULA will terminate immediately.

### **19.3 Effects of Termination**

On termination of this EULA, any licences will terminate, third party products that may have been integrated into the Services will no longer function in the same manner and you must immediately;

- (a) cease all activities related to the Services; and

- (b) do any further things as may be reasonably required us to protect our right, title and interest in the Services.

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## **20. Dispute Resolution**

- (a) In the event of any issue which relates directly to us or the Software, your sole and exclusive remedy is the following procedure:
  - (i) within seven (7) days of the issue, you must send a message to the support address listed in Schedule 1 or, where the functionality exists, open a support ticket within the Software;
  - (ii) you must detail your issue in writing in as much detail as possible;
  - (iii) we will then review your issue and seek your further input if needed; and
  - (iv) we will make a decision in relation to the dispute at our discretion and provide you that decision in writing.
- (b) You agree that any decision we make is final and you will be bound by it. You indemnify us fully for any and all expenses we incur as a result of you failing to abide by our decision and continuing the dispute (including any subsequent legal proceedings).
- (c) You agree that, where you breach the above clause 20(b) and continue the dispute after a decision has been made, you will first contact us and seek in good faith to arrange a mediation for the relevant issue.

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## **21. Confidentiality**

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party will not be in breach of this confidentiality clause in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Notwithstanding any other provision of this clause, a party may disclose the terms of the EULA (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- (d) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the EULA, do not make public or disclose the other party's Confidential Information.

### **21.2 Breach notifications**

A party must notify the disclosing party in writing, giving full details known to it immediately, when it becomes aware of any actual, suspected, likely or threatened:

- (a) breach by any person of any obligation in relation to the Confidential Information; or
- (b) theft, loss, damage, or unauthorised access, use or disclosure of or to any Confidential Information.

### **21.3 Exclusion**

For the purposes of this EULA, Confidential Information does not include any User Generated Content.

### **21.4 Survival**

The obligations under this clause 21 survive termination of the EULA.

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## **22. General**

### **22.1 Notices**

- (a) Any communication under or in connection with this EULA:
  - (i) must be to the addressee as set out in Schedule 1 from time to time or where the functionality exists, sent via a message or support ticket within the Services and/or Software; and
  - (ii) must be in writing.
- (b) Either party may serve any communication on the other party by sending it to that party's email address or through the support ticket process. A communication by email will be taken to have been received by the addressee at the earlier of the time stated in a read receipt sent by the recipient's computer or when the message has been delivered to the email address of the addressee.
- (c) If delivery is made after 5:00pm on a Business Day, it must be treated as received on the next Business Day.
- (d) For the purposes of the *Electronic Transactions Act 1999* (Cth) and the *Electronic Transactions (Queensland) Act 2001* (Qld), the parties agree to send, receive and execute notices and documents electronically, and agree that any document signed electronically will be binding with the same effect as a physical signature.
- (e) In relation to any unforeseen event or downtime notices, it is sufficient for the purposes of this EULA that we provide information about such occurrences on our Website.

### **22.2 Unforeseen Event**

A party is not responsible for any loss arising out of any occurrences or condition beyond its control, including but not limited to acts of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware or other malicious code.

### **22.3 Assignment**

- (a) You may only assign, encumber, declare a trust over or otherwise create an interest in your rights under this document with our consent.
- (b) We may assign, encumber, declare a trust over or otherwise create an interest in its rights under this document without your consent, and may disclose to any potential holder of the right or interest any information relating to this document or any party to it.

### **22.4 Amendment**

We may amend this EULA from time to time at our complete discretion. We will provide notice on our website, the Software and/or via email of any changes we deem as 'major' to our EULA.

### **22.5 Liability for expenses**

Each party must pay its own expenses incurred in negotiating, executing and registering this document.

## **22.6 Giving effect to this document**

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

## **22.7 Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

## **22.8 Relationship**

Nothing in this EULA is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties. Unless expressly stated in this EULA, no party may act as agent of or in any way bind another party to any obligation.

## **22.9 Warranties as to capacity**

Each party represents and warrants to the other that:

- (a) it has full power and authority to execute this EULA and observe and perform all of its obligations herein;
- (b) it is not aware of any thing, matter or circumstance which may prevent it from fulfilling its obligations under this EULA; and
- (c) it is not insolvent and no receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to all or any of its affairs or material assets.

## **22.10 Operation of this document**

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

## **22.11 Inconsistency with other documents**

If this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

## **22.12 Reliance**

Neither party has entered into any contract under this EULA in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in this EULA.

### **22.13 Consents**

Where this EULA states that our consent or approval is required, we may:

- (a) give or withhold that consent or approval in our absolute discretion; and
- (b) give that consent or approval subject to conditions, unless this EULA expressly states otherwise.

### **22.14 Liability of Parties**

If a party consists of more than one person:

- (a) an obligation of that party is a joint obligation of all of those persons and a several obligation of each of them;
- (b) a right given to that party is a right given jointly and severally to each of those persons, and if exercised by one of them, is deemed to be exercised jointly; and
- (c) a representation, warranty or undertaking made by that party is made by each of those persons.

### **22.15 Survival**

The obligations set out under clauses 5, 7, 9, 10, 12, 12.6(e) and 21 survive termination of this EULA.

### **22.16 Execution**

This EULA may be accepted by you checking an acceptance box or making any other affirmative action such that we may reasonably conclude that you have understood and accepted this EULA. Upon your acceptance, we warrant to agree to the terms of this EULA and you may consider your acceptance execution by us for same. Your use of the Software also constitutes your acceptance, and continued acceptance, of the EULA as updated from time to time.

### **22.17 Governing law**

The laws of Queensland, Australia govern this EULA. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.



## Schedule 1 Notices

### Initial details

The addresses and numbers for service are initially:

### BOSSII

**Email:** [admin@bossii.com](mailto:admin@bossii.com)

**Attention:** BOSSII Support

### User

**Email:** As provided by user to BOSSII

**Attention:** As provided by user to BOSSII