

# TERMS OF USE

## 1. BACKGROUND

1.1 Deep Sphere is a product and brand wholly owned and developed by Neuro Pro Pty Ltd (ACN 614 460 178) (**Neuro Pro**).

1.2 Winning Lab Pty Limited ACN 638 154 033 (**Winning Lab**) has an exclusive licence from Neuro Pro to use and commercialise, including by way of sub-licence, Deep Sphere, subject to terms of a separate licence agreement.

1.3 These terms including the Schedule (collectively, the **Terms**) govern your use of Deep Sphere and related websites and form a binding contractual agreement between you and Winning Lab.

1.4 Deep Sphere is a proprietary predictive behavioural profiling tool that assists in providing an understanding of what drives individual behaviour at the deepest, subconscious level of the human brain, creating a behavioural profile, associated temperament and traits based on the activation of primal emotion systems. Deep Sphere can assist in examining how each individual can effectively regulate and control their emotional responses and can help identify individual values which can be strong predictors of particular classes of behaviours involving abstract decision making. It can, among other use cases, be applied at an individual, team, company-wide level across multiple industries. This clause 1.3 is collectively referred to in these Terms as the 'Site Purpose'.

## 2. AGREEMENT

2.1 Based on your selection in the Schedule above, acceptance of these Terms grants you rights to access and use the the Deep Sphere Application (the **App**) as the Deep Sphere Account Owner for the Term set out in the Schedule from the Commencement Date and in accordance with any direction and instruction provided from Winning Lab.

2.2 You may grant access to the App to Employee Users and Admin Users. Use of the App by these users will be governed by the Terms and you are solely responsible for these users adherence to the Terms.

2.3 By using the App you acknowledge and agree that you have had sufficient chance to read and understand the Terms and you agree to be bound by them.

2.4 By using the App, you agree that Winning Lab and/or Neuro Pro as the case may be, remains the owner of all Deep Sphere Account Owner Material inputted, uploaded or otherwise transferred into the Deep Sphere platform or the App.

2.5 By using the App, you also grant Winning Lab and/or Neuro Pro the ability to contact individual users on an ad-hoc basis as part of its ongoing research and development efforts.

## 3. INTERPRETATION

3.1 References to "we", "us" and/or "our" in these Terms is a reference to Winning Lab.

3.2 References to "you" and/or "your(s)" means the Deep Sphere Account Owner.

3.2 The following definitions apply in these Terms:

- a. "Admin User(s)" means any person appointed by a Deep Sphere Account Owner to be an Admin User.
- b. "App/Application" and/or "Site" means the Deep Sphere web App and/or any related websites.
- c. "Benchmarking" means the tests that we may run from time to time on aggregated, de-identified information to measure and compare qualitative data of all users of the App;
- d. "Claim(s)" means any loss, cost, action, proceedings, damages, expenses (including but not limited to legal costs and expenses), or liabilities.
- e. "Commencement Date" means the commencement date set out in the Schedule for the Term.
- a. "Confidential Information" means (whether or not in material form and whether or not disclosed before or after the Commencement Date) any information of whatever kind disclosed or released by one party (the "Disclosing Party") to the other party (the "Receiving Party") under or in relation to these Terms that:
  - i. is by its nature confidential;
  - ii. is designated by the Disclosing Party as confidential; or
  - iii. the Receiving Party knows or reasonably ought to know is confidential, and also means any commercial negotiations engaged in between the Deep Sphere Account Owner and Winning Lab relating to this agreement, including any discussions about the price per Employee User.
- b. "Employee User(s)" means any user who is an employee of the Deep Sphere Account Owner.
- c. "Employer(s)" means the Deep Sphere Account Owner.
- d. "Force Majeure Event" means any fire, flood, earthquake, elements of nature or acts of God, strikes, acts of war, terrorism, riots, civil disorders, rebellions or revelations, quarantines, embargoes and other similar governmental action, or any other similar cause beyond the reasonable control of a party.
- e. "Deep Sphere Account" means an account opened in the name of an Employer.
- f. "Deep Sphere Account Owner" means the legal entity in whose name a Deep Sphere Account is opened.
- g. "Deep Sphere Account Owner Material" means material in whatever form, including data, documents, reports, diagrams, information, text, drawings, tools, templates, ideas, practices, techniques, guides, methodologies, images, content or sounds (together with any database made up of any of these), business process and software:
  - i. entered into, stored in, generated or processed by the App; or
  - ii. supplied or made available to Winning Lab and/or Neuro Pro, by or on behalf of the Deep Sphere Account Owner or any actual or potential user in connection with these Terms.
- h. "Modern Slavery" means conduct defined as "modern slavery" in the Modern Slavery Act.
- i. "Modern Slavery Act" means the *Modern Slavery Act 2018* (Cth).
- j. "Output" means all material which is produced by the App as a result of processing the Deep Sphere Account Owner Material and which are derived from the Deep Sphere Account Owner Material.
- k. "Payment Terms" means the terms set out in the Schedule.
- l. "Personal Information" means personal information, as that term is defined in the *Privacy Act 1988* (Cth) or the GDPR (as the case may be), that is provided to or obtained or accessed by, us in the course of performing our obligations under these Terms including the Personal Information of the Admin Users and Employee Users.
- m. "Price" means the price set out in the Schedule for the Term.

- n. "Privacy Policy": means the Winning Lab Privacy Policy found at [insert link]
- o. "Subscription Renewal Date" means the twelve (12) month anniversary of the date on which the Deep Sphere Account Owner paid for a subscription to the App or the date on which your membership was automatically renewed in accordance with these Terms;
- p. "Site Purpose" means the purpose of the Site as defined in clause 1.2 of these Terms.
- q. "Term" means the Term set out in the Schedule.
- r. "Terms" means the Deep Sphere user terms of use.

## **1. ACCESS TO INFORMATION**

- 1.1. You must not:
  - a. access, modify or delete Deep Sphere Account Owner Material or Output at any time for any reason, or otherwise use, publish or copy Deep Sphere Account Material or Output for any purpose other than as expressly permitted by these Terms.

## **2. PRIVACY**

- 2.1. You must adhere at all times to our Privacy Policy for information on how Deep Sphere collects, uses, stores, discloses and otherwise handles Personal Information obtained from Deep Sphere Account Owners, Admin Users and Employee Users.
- 2.2. Neither party may make any public statement (whether written or verbal) about these Terms, or anything related to the subject matter of these Terms, including a security breach, except where required by law, without the prior written consent of the other party.
- 2.3. You grant us permission to use the Deep Sphere Account Owner logo on the Deep Sphere website and for promotional and marketing materials. We will otherwise not use or display the Deep Sphere Account Owners name.

## **3. NO ADVICE**

- 3.1. The Site's only purpose is the Site Purpose.
- 3.2. The Deep Sphere Site does not provide advice of any kind. By using the Site you acknowledge and agree that nothing on the Site constitutes any advice whatsoever..

## **4. USER DISCRETION**

- 4.1. Any content posted or action performed on the App by you is done so at your complete discretion. We do not accept any responsibility whatsoever for any negative or positive comments, opinions, ratings, nominations and/or posts on the App.
- 4.2. By using the App you accept complete responsibility for the effect or consequences of any use by you or any users of the App or any content posted by you on the App, other than to the extent caused by our negligence.

## **5. PRICING**

You agree to pay the Price in accordance with the Payment Terms.

## 6. LICENCE TO USE THE APP

- 6.1. Subject to your compliance with these Terms (and any other written agreement you enter into with us) we grant you a non-exclusive, non-transferable licence to use the App in accordance with these Terms.
- 6.2. You must not add, modify, extract, edit the App or any content to the App:
  - a. unless you hold all necessary rights, licences, permissions and consents to do so;
  - b. that would cause you or us to breach any law, regulation, rule, code or other legal obligation;
  - c. that is or could reasonably be considered to be obscene, inappropriate, defamatory, indecent, seditious, offensive, pornographic, threatening, abusive, liable to incite racial hatred, discriminatory, blasphemous, in breach of confidence or in breach of privacy;
  - d. that would bring Winning Lab (or its Related Bodies Corporate, as that term is defined under the *Corporations Act 2001 (Cth)*), or the App, into disrepute;
  - e. that could reasonably be expected to infringe the intellectual property or other rights of any person; or
  - f. unless the content is expressly required for the proper use of the App.
- 6.3. The App may contain links to other websites as well as content added by people other than us. We do not endorse, sponsor, warrant or approve any such user generated content or any content available on any linked website.

## 7. PRIVATE USE ONLY

Information contained in the App or downloaded from the App is for your business use only and may not be sold, redistributed, published or used for any other purpose. You must not use the App for any purpose that is illegal or prohibited by these Terms. You agree not to use the App for the purpose of reproducing or reverse engineering its technology or processes in any way, now or at any point in the future.

## 8. USER ACKNOWLEDGMENT

- 8.1. You acknowledge and agree that:
  - a. we do not endorse any of the content posted on the App by users;
  - b. we retain complete editorial control over the App and may alter, amend or cease the operation of the App at any time in our sole discretion;
  - c. we may at any time assume control of your account an Admin User account or Employee User account to assist with any technical issues;
  - d. the App may not operate on a continuous basis, and may be unavailable from time to time (including for maintenance purposes). We will endeavour to provide you reasonable notice of any planned maintenance outages;
  - e. we reserve the right to modify, suspend or discontinue any part of the App with or without notice at any time and without any liability to you;
  - f. you are completely responsible for maintaining the security of your login details and passwords and in no circumstances are we to be held responsible for any unauthorised access to your account, to the extent such unauthorised access is not caused by or contributed to by us;
  - g. whilst we take great care in securing the transmission of information over the internet, we cannot ensure the security of any information you transmit to us (or anyone else) through the App and therefore you do so at your own risk;
  - h. We may, from time to time, collect information via Google Analytics (or any such other service provider as we may use, from time to time) and you

- consent to the collection and use of any content posted by you on the App for this purpose; and
- i. you agree to the terms of the Privacy Policy issued and updated by us from time to time.

## **9. CONTENT**

- 9.1. Any content posted on the App by you, Admin Users or Employee Users is owned by Winning Lab and may be used by us in an aggregated (de-identified) form for Benchmarking, industry reporting and other related matters, including for promotional purposes (or any other purpose permissible by these Terms).
- 9.2. In the event that a complaint is lodged in relation to any content posted on the App, we reserve the right to remove, edit, limit distribution of or disable access to any such content.
- 9.3. The provisions of this clause 12 are subject to clauses 4 and 14.

## **10. CONFIDENTIAL INFORMATION**

- 10.1. Each party agrees to keep confidential and not to use or disclose, other than as permitted by these Terms, any Confidential Information of the other party.
- 10.2. These obligations of confidence extend to any Confidential Information provided to or obtained by a party prior to entry into this agreement.
- 10.3. This clause 13 does not apply to Confidential Information:
  - a. that is in the public domain otherwise than as a result of a breach of this agreement or other obligation of confidence; or
  - b. that is already known by, or rightfully received, or independently developed, by the recipient free of any obligation of confidence.
- 10.4. Each party may disclose Confidential Information of the other party only on a "need-to-know" and confidential basis:
  - a. with the prior written consent of the other party; or
  - b. to its officers, agents, professional advisors (including lawyers), employees, contractors, sub-contractors and insurers; for the exercise of rights or the performance of obligations under these Terms.
- 10.5. Each party who discloses Confidential Information of the other pursuant to paragraph 13.4(b) must ensure that such information is kept confidential by the recipients on the basis set out in this clause 13.
- 10.6. Notwithstanding anything to the contrary in these Terms, either party may disclose Confidential Information of the other party where such Confidential Information is required to be disclosed by Law, provided that, prior to disclosing any such Confidential Information and where it is lawful to do so, the party making the disclosure has promptly notified the other party in writing to allow that party to take all reasonable steps to maintain such Confidential Information in confidence.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1. Nothing in these Terms constitutes a transfer of any intellectual property rights. You acknowledge and agree that, as between you and us, NeuroPro Pty Ltd owns all intellectual property rights in the App.

- 11.2. The Deep Sphere Account Owner grants us a non-exclusive licence to host and store the Deep Sphere Account Owner Materials for the purpose of performing the services in accordance with these Terms, for further research and development purposes, benchmarking exercises and, where agreed to by the Deep Sphere account owner, promotional purposes.
- 11.3. By completing any survey through the App, you grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable right and licence to use that content for Benchmarking and to understand how users are working with the App for the purpose of improving software and improving the overall value being delivered to all users.
- 11.4. You consent to any act or omission which would otherwise constitute an infringement of your moral rights, and if you add any content in which any third party has moral rights, you must also ensure that the third party also consents in the same manner.
- 11.5. You represent and warrant to us that you have all necessary rights to grant the licences and consents set out in clauses 14.4, 14.5 and 14.6.
- 11.6. The licence in clause 14.5 will survive any termination of these Terms.

## **12. WARRANTIES**

- 12.1. We make no warranties whatsoever, whether express or implied, regarding your use of the App or the accuracy or timeliness of any content on the App.
- 12.2. You understand that use of the App is at your own risk and that the use of the Site is provided to you on an 'as is' basis.
- 12.3. Each party represents, warrants and undertakes to the other that:
  - a. it is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
  - b. it has full power, legal right and authority to enter into this agreement, and to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in accordance with these Terms;
  - c. it has taken all necessary corporate action to authorise the creation, execution, delivery and performance of this agreement, and to observe and perform the provisions of these Terms; and
  - d. it has all licence, authorisations, consents, approvals and permits required by applicable laws in order to perform its obligations under these Terms.
- 12.4. You warrant and represent to us that:
  - a. you have the legal capacity to post any material posted by you on the Site;
  - b. you have complied (and will continue to comply) with clause 9.2 of these Terms; and
  - c. the information you provide to us is true and correct and not in any way false or misleading.

## **13. LIABILITY AND INDEMNITY**

- 13.1. To the full extent permitted by law, we exclude all liability for (and you indemnify and hold us and any of our Related Bodies Corporate harmless against any Claims arising directly or indirectly from):

- a. any breach of these Terms by you, an Admin User or Employee User of the App;
  - b. any loss of data, interruption of business or any consequential or incidental loss or damage whatsoever and howsoever arising;
  - c. any advice provided by you, an Admin User or an Employee User through the App;
  - d. any comments, opinions, ratings, and/or nominations, posted on the App;
  - e. any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever arising out of or in any way connected with the use of the App;
  - f. any failure of performance, error, omission, interruption, deletion, defect or delay in transmission or operation of the App; and
  - g. any breach by You of any relevant Australia laws.
- 13.2. To the full extent permitted by law, we exclude all representations, warranties or terms (whether express or implied) other than those expressly set out in these Terms.
- 13.3. These Terms are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations.
- 13.4. You expressly agree to indemnify, hold harmless and keep us indemnified from and against any Claim by you, a third party and/or any other user of the App, which results from any breach of these Terms by you.
- 13.5. Subject to the limitations of liability set in these Terms, you agree that our total liability for any losses, damages and/or Claims (including but not limited to) liability for breach of contract, negligence, tort, or any other common law or statutory action, shall be limited to the subscription fees paid by you for the 12 months immediately prior to the event giving rise to the claim.

#### **14. MODERN SLAVERY**

- 14.1. We will:
- a. not, and take reasonable steps to ensure our personnel do not, engage in any conduct that would constitute Modern Slavery; and
  - b. (to the extent reasonably practicable) provide the Deep Sphere Account Owner with any information and records that it reasonably requests to help it comply with its reporting obligations under the Modern Slavery Act.

#### **15. TERMINATION**

- 15.1. These Terms terminate automatically if, for any reason, we cease to operate the App. We will endeavour to provide reasonable notice to you of any such termination.
- 15.2. Either party may terminate these Terms with immediate effect by giving the other party notice of such termination if that party:
- a. breaches a provision of these Terms, and such breach is not remedied within 30 days' after that party receives notice of such breach; or
  - b. to the extent permitted by law, suffers an Insolvency Event.
- 15.3. We may terminate this agreement for convenience without penalty at any time by giving the Deep Sphere Account Owner at least 30 days' notice of such termination.

- 15.4. Termination or expiry of this agreement for any reason does not affect the accrued rights or remedies of either party.

## **16. PAYMENT TERMS**

- 16.1. We will invoice you the Price (exclusive of GST) for the Term on the Payment Terms as set out in the Schedule.
- 16.2. You must pay the Price within 30 days from the invoice date.

## **17. AUTOMATIC RENEWAL OF DEEP SPHERE ACCOUNT SUBSCRIPTION**

- 17.1. A subscription to the App includes an automatic renewal service which will automatically renew the Deep Sphere Account Owner's subscription to the App for an additional 12-month period on the Subscription Renewal Date.
- 17.2. In order to cancel the automatic renewal of your subscription, the Deep Sphere Account Owner must provide us with written notice of your intention to cancel at least thirty (30) days prior to the Subscription Renewal Date, in which case these Terms will expire at the end of the Term.

## **18. CHANGES TO TERMS**

- 18.1. We reserve the right to change the Terms (and any other terms listed on the App) in our absolute discretion. Such changes shall be effective immediately upon the new terms being posted on the App and notified to Employee Users. Further use of the App will be subject to the terms as revised from time to time.
- 18.2. If you do not agree with the App terms as revised, please cease using the App.

## **19. DISPUTES**

- 19.1. If you have a dispute about these Terms, our service, content posted by a user on the App or any other aspect of the App ("Dispute"), please contact us immediately at [hello@deepsphere.io](mailto:hello@deepsphere.io) to resolve the issue.
- 19.2. Within 14 days after notification of a Dispute, each party must nominate a representative who has express authority to resolve the Dispute, and those representatives must meet to seek to resolve the Dispute by negotiation. All aspects of the negotiation must be kept confidential, and all communications between representatives during the negotiation are made on a without prejudice basis.
- 19.3. If the dispute has not been resolved within 21 days after notification of the Dispute, either party may refer the Dispute for a mediation, as soon as practicable, in accordance with, such rules as the parties may agree or failing such agreement as specified by the President of the Law Society of New South Wales.

## **20. GENERAL**

- 20.1. You must not assign, sub-licence or otherwise deal in any other way with any of your rights under these Terms, without our prior written consent, such consent not to be unreasonably withheld.



- 20.2. If a provision of these Terms is invalid or unenforceable, it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 20.3. Each party must, at its own expense, do everything reasonably necessary to give full effect to the terms of these Terms and its obligations thereunder.
- 20.4. These terms are the entire agreement between the parties about the subject matter and replaces any previous agreements, understanding, representations and warranties about the subject matter.
- 20.5. Nothing in these Terms is intended to constitute a fiduciary relationship or an agency, partnership or trusty and neither party has the authority to bind the other party.
- 20.6. Clauses 4, 5, 13, 14, 15, 16, 17, 18.5, 23 and 24 survive termination or expiry of these Terms, together with any other term which by its nature is intended to do so.
- 20.7. No waiver of a right or remedy under these Terms is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- 20.8. A single or partial exercise of a right or a remedy under these Terms does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under these Terms does not operate as a waiver or prevent further exercise of that or of any other right or remedy.
- 20.9. Except as expressly provided in this agreement, the rights of a party under these Terms are in addition to and do not exclude or limit any other rights or remedies provided by law.
- 20.10. These Terms are governed by the laws of New South Wales, Australia and each party submits to the jurisdiction of the courts of New South Wales, Australia.