

TESTGRID SERVICE TERMS & CONDITIONS

1. ACKNOWLEDGMENT AND ACCEPTANCE OF TERMS OF SERVICES

The Services defined below are provided by Test Grid (Aust) Pty Ltd (ACN 090 542 911) (“we” or “Testgrid”) and is provided to you (“you” or “Customer”) under the terms and conditions of this agreement.

This agreement comprises the entire agreement between Customer and Testgrid and supersedes all prior agreements between us regarding the subject matter of this agreement. However this agreement will be modified by any subsequent written agreement signed by an authorised representative on behalf of each party.

2. DESCRIPTION OF THE SERVICES

2.1 During the term of this agreement we licence you to access via the Internet a suite of video technologies, assessment tools, programs, software, databases and other related items (‘the Services’) via the Testgrid and Vieple online platforms (‘the Websites’) for the purpose of assessing yourself, prospective and existing employees (‘Participants’).

2.2 Data used in the provision of the Services is either sanitized or deleted in accordance with Testgrid’s data retention policy. Upon termination of this agreement, we may elect not to retain your data. We therefore recommend that you retain any copies of data you may require prior to termination.

3. CUSTOMER OBLIGATIONS AND VERIFICATION OF RESULTS

3.1 You will:

- a. only use the Services for the purpose of conducting assessments and assessment-related activities, and analysing the results thereof and for no other purpose;
- b. provide current, complete and accurate information about you and the Participants to enable proper and efficient use of the Services;
- c. pay the fees for the Services, as published from time to time, in accordance with the terms set out in this agreement;
- d. You will nominate persons as your ‘Nominated Contacts’ to communicate with us and will specify the Primary Contact (to deal with contractual issues), the Admin Contact (to administer your accounts) and the Invoice Contact (to be responsible for payment administration). You will advise us of any changes.

3.2 Given the inherent nature of unsupervised assessments, you acknowledge our recommendation that it is desirable to verify the results of unsupervised assessments by other process and the use of verifiable recruitment services. We accept no liability for Participant results which have not been so verified and we do not guarantee the identity of Participants.

4. MODIFICATIONS TO AGREEMENT

4.1 We may update the terms of provision of the Services from time to time in the normal course of our business. Upon any change in the terms we will notify you by posting the changes as a start-up screen prior to your subsequent use of the Services. If you agree to be bound by the changes, you must again click the “I Accept” button that will follow the posted changes. Notwithstanding clause 14.3, if you do not click the “I Accept” button, you may terminate your use of the Services at that time.

4.2 Your continued use of the Services constitutes an affirmative acknowledgment by you of the terms as amended in accordance with clause 4.1 and your agreement to abide and be bound by the terms as amended.

5. MODIFICATIONS TO SERVICES

The Testgrid Websites are being constantly developed and reviewed and we may modify the functionality and look and feel of the in accordance with our normal site development practices from time to time.

6. CUSTOMER ACCOUNT, PASSWORD, AND SECURITY

6.1 We will issue you with an account and a password. You will issue Participants with usernames and passwords using the client administration function within the corresponding account, maintaining the confidentiality of this account and passwords and are entirely responsible for any and all use and access to the Services which occur under this account. You may change the password at any time by following the appropriate instructions.

6.2 You agree to immediately notify us, on you becoming so aware, of any unauthorised use of your account or any other breach of security.

7. PRICES, TAXES AND PAYMENT

7.1 The fees for the Services are set out in the agreement provided to you outlining the proposed Services offered.

7.2 You will pay the annual subscription as agreed.

7.3 Unless otherwise agreed in writing our standard fee arrangements are:

Subscription Access: Payable upon acceptance of this proposal.

Standard Payment Terms: 14 days upon invoicing.

7.4 You may pay the fees by way of credit card or electronic funds transfer.

7.5 In the event that any payment is in arrears, the amount of the arrears shall bear interest at the rate of 3% per month, or the maximum amount allowed by law, if lower. We reserve the right to discontinue your access to the Services pending payment of any outstanding moneys. Any costs or fees incurred by Testgrid in the collection of unpaid invoices will be borne by you.

7.6 All prices quoted, all orders accepted, and all billings rendered are exclusive of all taxes, fees, or charges imposed by any governmental authority on any transaction. You will reimburse us for any such tax, fee or charge at the time of sale or thereafter that Testgrid is required to pay.

7.7 You will pay our reasonable out of pocket expenses reasonably incurred in delivering the Services in the manner required by you including, without limitation, courier fees, travel and accommodation.

8. CANCELLATION POLICY

In an effort to effectively manage resources and provide our clients with a timely service, our cancellation terms and conditions are:

8.1 Workshops : for cancellations and reschedules more than 48 hours prior to the event, there is a \$500 + GST cancellation fee. Cancellations that occur less than 48 hours prior to the event will incur a fee equal to 50% of the total project cost.

8.2 Debriefs : For cancellation and reschedules more than 48 hours prior to the debrief, there is a \$100 + GST cancellation fee. Cancellations that occur less than 48 hours prior to the debrief will incur a fee equal to 50% of the total project cost.

9. CONFIDENTIALITY

9.1 We will use reasonable endeavours to maintain the confidentiality of information added to our Websites by you and your Participants. We will not copy or reproduce any part of your information except for the purposes of providing the Services, we will not

make your information available to any third party and we will only use your information pursuant to any agreement between us. We may disclose your information to third parties if required by law or with your prior consent. We may use information in a broad aggregated and de-identified manner, which does not reveal the identity of you, a candidate, an employer or an agency. We may use AI tools to aggregate and analyse data, in line with our AI Policy.

10. SERVICE DELIVERY

10.1 We will exercise all due care and skill when providing the Services.

10.2 We do not accept responsibility for any delay in, or failure to complete the Services where that delay is the result of any act of God, industrial dispute, act of a third party or failure on your part to meet your obligations.

10.3 We do not accept responsibility for the accuracy of any information provided to us by you, candidates or third parties.

10.4 We warrant that the Services do not contain any spyware.

11. LIMITATION OF LIABILITY

11.1 Except as stated in this agreement, Testgrid expressly disclaims all warranties and conditions, express or implied, to the fullest extent to which these warranties and conditions can be excluded under applicable laws.

11.2 Nothing in this agreement will exclude, restrict or modify any condition, warranty, right or remedy implied or imposed by any statute or regulation if it cannot lawfully be excluded, restricted or modified.

11.3 If any condition or warranty is implied into this agreement under any applicable law, and cannot be excluded, the liability of Testgrid for breach of the condition or warranty will be limited to one or more of the following as determined by Testgrid and the Customer:

a. in the case of goods, any one or more of the following:

- i. the replacement of the goods or the supply of equivalent goods;
- ii. the repair of the goods;
- iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- iv. the payment of the cost of having the goods repaired; and

b. in the case of Services:

- i. the supplying of the Services again; or
- ii. the payment of the cost of having the Services supplied again.

11.4 The liability of Testgrid to the Customer in contract or in tort (including negligence) or otherwise, for any loss or damage (other than indirect or consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the Services or any act or omission on the part of Testgrid to comply with its obligations under this agreement, shall be limited to the value of the Fees paid for the Services.

11.5 Testgrid will not be liable for any indirect or consequential loss or damage including without limitation loss of revenue, profits, bargain, goodwill or loss or corruption of data however caused, whether or not such loss or damage was foreseeable or contemplated by any party and whether or not the other party has been advised of the possibility of such loss.

11.6 For the avoidance of doubt, Customer acknowledges that Testgrid is the provider of the Services. Customer's interpretation of the results of any services undertaken as part of the Services, and any decisions based on such interpretation are the sole responsibility of the Customer.

11.7 Notwithstanding any other provision under this Agreement liability arising out of or in connection with this Agreement howsoever caused or arising shall be limited to fees paid.

12. COMPLIANCE WITH LAWS

12.1 Customer's use of the Services is subject to various laws and regulations and Customer agrees to:

a. comply with the laws of Australia regarding the upload of information to Testgrid websites, particularly in relation to the use, export, and cross-border disclosure of personal information and/o export or transmission of technical data through the Services

b. not to use the Services for illegal or unethical purposes; and

c. not to intentionally interfere or disrupt networks connected to the Services.

12.2 The Services make use of the internet to send and receive certain messages and Customer must observe the generally accepted proper practices for use of the internet including not transmitting obscene or pornographic material or spamming.

12.3 Testgrid may, at its sole discretion, immediately terminate Services should the Customer breach this agreement.

13. INDEMNIFICATION

13.1 Customer agrees to indemnify and hold Testgrid, its related bodies corporate, officers and employees, harmless from any claim or demand, including reasonable legal fees, made by any third party due to a breach of this agreement by Customer, or the infringement by Customer of any intellectual property right of Testgrid in the Services.

13.2 Testgrid agrees to indemnify and hold the Customer, its related bodies corporate, officers and employees, harmless from any claim or demand, including reasonable legal fees, made by any third party due to a breach of this agreement by Testgrid, or the infringement by Testgrid of any third party intellectual property rights.

14. TERM AND TERMINATION

14.1 Subject to any term agreed in writing, this agreement shall commence on the date of Customer's first registration and shall continue for a period of 12 months, or other term agreed upon by both parties, and will be automatically renewed for a period of 12 months unless extended or a notice of termination is given by either party at any time after the Service Commencement Date in accordance with this Agreement.

14.2 Either party may terminate this agreement upon 30 days written notice to the other. If you terminate the agreement under this clause 14.2:

a. any fees paid will not be refunded;

b. if you purchased at a discount price based on an agreed volume and that volume will not be achieved because of the termination, you will pay the difference between the discounted price and the price applicable for the volume actually used;

but if we terminate the Agreement under this clause 14.2 we will refund you for the unused portion.

14.3 Either party may terminate this agreement by written notice where the other party is in material breach of this agreement and such breach has not been resolved within 30 days of written notice of such breach in which case you will be entitled to a refund for any Units purchased but unused.

14.4 Upon termination of this agreement, Customer's right to use the Services immediately ceases.

14.5 Clauses 9, 11, 13 and 16 shall survive termination.

15. NOTICE

All notices to a party shall be in writing and shall be made either via email or conventional mail.

16. PROPRIETARY RIGHTS TO CONTENT

16.1 Customer acknowledges that the content of the Services and our software systems including Testgrid's websites, including but not limited to text, software, sound, data, photographs, video, graphics or other material contained in or presented to Customer as part of the Services ("Content") is protected by copyrights, trademarks, Services marks, patents or other proprietary rights and laws. Customer is only permitted to use this Content in accordance with the terms of this agreement. Customer may not reverse engineer, recompile, disassemble, copy, reproduce, distribute, or create derivative works from this Content without expressly being authorised to do so by Testgrid.

16.2 As between Testgrid and Customer, Customer shall own the physical copies of reports generated by the Customer using the Services and shall be entitled to use such reports for its internal business purposes only. Testgrid shall own all data and intellectual property rights in content and information derived from content. For the avoidance of doubt, such content is subject to the obligations of confidentiality outlined in clause 9.

17. PRIVACY

17.1 We will comply with our obligations under the Privacy Act and Australian Privacy Principles. We may use and disclose Personal Information provided by you for the purpose of providing the Service.

17.2 If you provide Personal Information to us about yourself, your employees or prospective employees, you must comply with the terms of the Privacy Act and Australian Privacy Principles regarding that Personal Information. In particular you should ensure that before disclosing any Personal Information to us you are entitled to disclose that information.

17.3 If you become aware of any breach or alleged breach of the Privacy Act or Australian Privacy Principles concerning information disclosed by you to us or us to you, you should immediately notify us.

17.4 In this clause "Personal Information" has the meaning given in the Privacy Act.

17.5 For more details regarding our privacy policies, please refer to our [Privacy Statement](#).

18. GENERAL

18.1 Testgrid represents and warrants that:

- a. it is entitled to enter into this Agreement and perform its obligations under this Agreement;
- b. it has all licences, authorisations, consents, approvals and permits required by applicable laws in order to perform its obligations under this agreement; and
- c. it will at all times comply with any applicable laws.

18.2 This agreement shall be governed by and construed in accordance with the laws of the state of Victoria, Australia and the Customer and Testgrid hereby submit to the exclusive jurisdiction of the courts of Victoria, Australia.

18.3 If any provision(s) of this agreement is held by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect.

18.4 Customer must not assign, sublicense or otherwise transfer its rights under this agreement without the prior written consent of Testgrid, such consent not to be unreasonably withheld. Testgrid may assign or otherwise transfer its rights under this agreement in whole or in part to a related body corporate.

18.5 Testgrid's failure to exercise or enforce any right or provision of this agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Testgrid in writing.

18.6 The headings in this agreement are solely used for the convenience of the parties and have no legal or contractual significance.

18.7 If there is a conflict between a term of this agreement and a written proposal given by us and accepted by you or a project plan agreed with you, the terms of this agreement will prevail unless expressly varied in writing.

18.8 Upon acceptance of the Agreement the customer authorises Testgrid to use the customer's logo on the Testgrid website.

18.9 Upon acceptance of the Agreement the customer authorises Testgrid to use statistical data obtained during the term of the Agreement for the purpose of case study material.