



Ardex Technology Terms and Conditions

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Ardex Technology Terms and Conditions

This version of the Ardex Technology (**Ardex**) Terms and Conditions is dated 30th April 2025.

Background

About us

Welcome to Ardex. We are delighted to have you on board.

Ardex is a software developer and vendor which provides applications designed to help you effectively manage your horse business operations. Our vision is to enhance operational efficiency, streamline processes and support growth in the horse industry through leading-edge technology.

Ardex provides three Products to suit your purpose: -

1. Premier
2. Essentials, and
3. EPONA

Our Products are innovative online horse-management software platforms that are owned and operated by Ardex. Our Products give subscribers the ability to effectively and efficiently manage horses under their care, with features including, but not limited to:

- centralised records, treatment history, customer details and contacts;
- appointment scheduling for future and recurring appointments;
- customisable permissions, so you can control what information is shared with customers;
- task allocation for your team members;
- receipt of service requests from other Product subscribers (for example, stud farms and racing stables) directly within said Product ; and
- real-time, two-way integration with supported accounting platforms.

We are constantly working to improve our service offering and user experience, so we may modify our Products existing features or introduce new features and functionalities in the future.

About this document

Before you start using our Products, you need to carefully read this document. We have tried to present this information clearly, without excessive jargon, to help ensure that you understand your obligations and our commitments to you.

Please read this document carefully as these Terms and Conditions ("**T&Cs**"):

- govern your use of our Products;
- outline our commitments as a service provider; and

- set out our respective legal rights and responsibilities.

If you do not agree to these T&Cs, we cannot provide you with access to our Products.

If you have any questions or comments about these T&Cs, please contact Ardex at support@ardex.com.au. We are here to help.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In these T&Cs:

- (a) **"ABN"** means Australian Business Number.
- (b) **"Affiliate"** means any entity, individual, firm, or corporation directly or indirectly controlled by or under common control with Ardex and, for the purpose of this defined term, "common control" means direct or indirect ownership of more than 50% of the voting interests of the entity.
- (c) **"Application"** or **"Application Form"** means the form you complete, sign and submit to Ardex to apply to subscribe to the Product.
- (d) **"App"** means an application or interface providing access to the Product.
- (e) **"Ardex"** or **"Ardex Technology"** means Ardex Technology Pty Ltd (ACN 097 604 601) registered office SFV House, Level 6, 2 Barrack Street, Sydney NSW 2000, Australia.
- (f) **"Ardex IP"** includes, but is not limited to, the contents, code, layout, design, colours, appearance, graphics and imagery of the Product, as well as all copyrights, trademarks, trade secrets, patents and other intellectual property contained in the Product.
- (g) **"Australian Consumer Law"** means the Australian Consumer Law which is contained in the *Competition and Consumer Act 2010* (Cth).
- (h) **"Australian Privacy Principles"** means the Privacy Principles set out in the Privacy Act.
- (i) **"Business Day"** means a day on which businesses are open in New South Wales excluding weekends and public holidays.
- (j) **"Claim"** means any direct or indirect loss, liability, action, proceeding, damage, cost, expense, claim, or suit, including legal costs, and any loss of business, profits, goodwill, or other intangible losses.
- (k) **"Client Data"** means all data submitted, uploaded, or created by you or your authorised users while using the Product. Client Data includes information such as customer contact details and the appointment and treatment history of Serviced Horses, but Client Data specifically excludes Images and Content.
- (l) **"Credentials"** means your username, password and any other access credentials related to your Product's profile.

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- (m) **"Customer"** means a current subscriber to one of our Products.
- (n) **"DD Account"** means the bank account nominated by the Customer as part of a Direct Debit Arrangement.
- (o) **"Direct Debit Arrangement"** means automated banking transactions made pursuant to a Direct Debit Request Service Agreement between the Customer and a financial institution.
- (p) **"Premier, Essentials and EPONA"** means our horse-management software Products that are owned and operated by Ardex and accessible via an App or the Ardex website and includes:
 - (1) any software that we provide to you; and
 - (2) any materials, information or documentation that we may provide to you in connection with your use of this software product including documentation, data, information developed by us, licensed to us or owned by us, and other materials which may assist in your use of the software product; and
 - (3) any content, writing, images, audiovisual content or other information published on the software or on the materials, information or documentation that we provide to you.
- (q) **"Fees"** for accessing and using the Product are set out in the fee schedule presented to you alongside the Application or updated from time to time and will include the Subscription Fee and associated costs for each Subscription Plan.
- (r) **"GST"** means the goods and services tax imposed under the GST Act.
- (s) **"GST Act"** means *A New Tax System (Goods & Services Tax) Act 1999* (Cth).
- (t) **"Images and Content"** means:
 - (1) all types of visual content including still photography, motion film or video, and may include audio elements, whether generated optically, electronically, digitally or by any other means, and shall include all metadata, keywords, descriptions and captions associated therewith; and/or
 - (2) any type of text, graphics, images, audio, video, software, data compilations and any other form of information capable of being stored on a computer.
- (u) **"Invited User"** means a potential or future Customer who has been invited by Ardex to participate in a free trial of the Product, the terms of which will be separately communicated by Ardex to the Invited User from time to time at Ardex' discretion.
- (v) **"Licence"** means the licence, created under clause 3, to use the Product.
- (w) **"Party"** means either Ardex or you (the Customer) and Parties means both.
- (x) **"Personal Information"** has the meaning given to it in the Privacy Act.

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- (y) **"Personnel"** means officers, employees, agents, contractors, and subcontractors of either Party.
- (z) **"Privacy Act"** means the *Privacy Act 1988* (Cth).
- (aa) **"Privacy Laws"** means the Privacy Act and any applicable Australian legislation or regulations regarding privacy or the handling of Personal Information in Australia.
- (bb) **"Privacy Policy"** means Ardex Technology's Privacy Policy which is available at www.ardex.com.au/privacy.
- (cc) **"Product"** means any of Premier, Essentials and EPONA.
- (dd) **"Horse Treatment"** means a horse which has had a procedure, treatment or ad hoc transaction applied to it (for example, a vaccination, hoof trim or other service) whether or not recorded in the Product.
- (ee) **"Subscription"** means the subscription granting you and your authorised users access to our Products.
- (ff) **"Subscription Fee"** means the monthly Subscription Plan fee as set out in fee schedule that is payable by you for you and your authorised users to access and use our Products.
- (gg) **"Subscription Plan"** means any one of the plans described in the fee schedule.
- (hh) **"T&Cs"** means this document and any schedules or annexures to it.
- (ii) **"Third-Party Service Provider"** means a third party engaged by or on behalf of Ardex to perform operations related to the Product.
- (jj) **"you"** or **"your"** means an individual or company who is a potential, future or current Customer.

1.2 Interpretation

In these T&Cs, unless the context requires otherwise:

- (a) headings, capitalisation and bold type are for convenience only and do not affect the interpretation of these T&Cs;
- (b) the singular form includes the plural, and vice versa;
- (c) a reference to any gender includes all other genders;
- (d) any grammatical form of a word or phrase defined in these T&Cs carries a corresponding meaning;
- (e) a reference to a person includes a reference to a company, partnership, joint venture, association, corporation, government agency, or individual;
- (f) a reference to a clause, paragraph, Party, schedule, attachment, or exhibit refers to a clause or paragraph in, and a Party, schedule, attachment, or exhibit to, these T&Cs;
- (g) a reference to legislation includes all delegated legislation made under it, as well as any amendments, consolidations, replacements, or re-enactments;

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- (h) a reference to a document includes all amendments, supplements, replacements, or novation of that document;
- (i) a reference to a Party includes that Party's successors and permitted assigns;
- (j) if a Party consists of two or more persons, that Party's obligations under these T&Cs are joint and several;
- (k) no provision of these T&Cs shall be construed adversely against a Party solely because that Party was responsible for its preparation;
- (l) any reference to "currency", "dollars", "A\$" or "\$" is to Australian dollars;
- (m) words or phrases used in these T&Cs such as "include", "including", "includes", "for example", "such as" or similar expressions do not limit the meaning of the subsequent words, descriptions, definitions, phrases, or T&Cs unless explicitly stated otherwise;
- (n) any obligation on a Party not to do or omit to do anything includes an obligation not to permit that action or omission; and
- (o) a reference to time is a reference to the time in New South Wales, Australia.

2. Application process

2.1 Eligibility

To be eligible to subscribe to the Product, you must:

- (a) complete and submit an Application Form;
- (b) provide Ardex with a valid ABN (if you are an Australian company);
- (c) enter into a Direct Debit Request Service Agreement for the direct debit of Fees from your DD Account or as mutually agreed between Ardex and you to pay via an alternate method;
- (d) nominate and provide contact details for a representative(s) who is authorised to give instructions on your behalf regarding your DD Account, your Subscription, and any Fees payable; and
- (e) enter into any additional agreements with any Third-Party Service Provider as reasonably required to facilitate your access to and continued use of the Product.

2.2 Rejection of your Application

We reserve the right to reject your Application if:

- (a) you fail to provide any document or information that we have reasonably requested;
- (b) we find that any document or information you have provided to Ardex in connection with your Application is false, misleading or inaccurate;

- (c) we cannot verify the accuracy of any document or information you provide to Ardex in connection with your Application, including any Personal Information; or
- (d) any circumstance arises that, in our sole and absolute discretion, makes the approval of your Application unsuitable.

3. **Licence**

- (a) Ardex hereby grants to you a non-exclusive, revocable, limited licence to use the Product ("**Licence**").
- (b) This Licence is non-transferrable.
- (c) You are prohibited from assigning, selling, renting, sub-licensing, leasing, or transferring in any other way any or all of your rights under this Licence, except with Ardex' prior written consent.
- (d) This clause will survive termination or expiration of these T&Cs.

4. **Deliverables**

After:

- (a) you have completed, signed and submitted an Application Form; and
- (b) you have provided all necessary information reasonably requested by us; and
- (c) we have accepted your Application to subscribe to the Product,

we will provide you with:

- (d) access to the Product;
- (e) any applicable documentation, including user manuals and technical guides;
- (f) training materials and sessions (where available); and
- (g) ongoing technical support.

5. **Your obligations**

You agree:

- (a) to not to use the Product for any unlawful purpose;
- (b) to comply with any reasonable notices, directions, or communications and provide all necessary information as reasonably requested by us, at your own expense, to allow us to fulfill our obligations;
- (c) to follow any relevant manuals or operating guides we provide to you in relation to the Product;
- (d) to provide us with any information, assistance, authority, or consents reasonably required by us;
- (e) to ensure you have the authority to make payments to us;

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- (f) to respond in writing within five (5) Business Days to any reasonable requests from Ardex for information regarding any activities or circumstances relating to your use of the Product; and
- (g) to notify Ardex of any change to your contact or other details in a timely manner.

6. Other general restrictions

- (a) You agree not to use the Product in any way that could damage Ardex' website, products or services, reputation, or the general business of Ardex.
- (b) You further agree to not use the Product to:
 - (1) harass, abuse, or threaten others or otherwise violate any person's legal rights;
 - (2) violate any intellectual property rights of Ardex or any third party;
 - (3) upload or otherwise disseminate any computer viruses or other software that may damage the property of another;
 - (4) perpetrate any fraud;
 - (5) engage in or create any unlawful gambling, sweepstakes, or pyramid scheme;
 - (6) publish or distribute any obscene or defamatory material;
 - (7) publish or distribute any material that incites violence, hate, or discrimination towards any group; or
 - (8) unlawfully gather information about others.
- (c) You are strictly prohibited from using the Product or any of Ardex' products and services for illegal spam activities, including gathering email addresses and Personal Information from others or sending any mass commercial emails.

7. Commencement and term

7.1 Commencement

These T&Cs are effective on the date you either first, or:

- (a) download or install the Product on a computer or mobile device;
- (b) use the Product (as a Customer or as an Invited User);
- (c) click the "sign up" button (if available) or complete and submit the Application Form or initiate a trial, test, or any preliminary use of the Product;
- (d) your continued use of the Product;
- (e) indicate your acceptance of these T&Cs, including when you complete, sign and submit an Application Form; or
- (f) receive an acknowledgement email from Ardex confirming your Product is now live.

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7.2 Term

These T&Cs, and the Licence granted thereunder, continue for as long as you use, retain, or continue paying any Fee for the Product, unless otherwise terminated in accordance with clause 22.

8. Fees

8.1 Overview

- (a) In return for the Licence granted to you under clause 3 of these T&Cs, you agree to pay a Subscription Fee to Ardex based on the pricing of your selected Subscription Plan.
- (b) This clause 8.1 does not apply if you are an Invited User participating in a limited-time no-cost trial of the Product, the terms of which will be separately communicated to the Invited User by Ardex in its sole discretion at or before the time of the free trial.

8.2 Subscription Plans

The Subscription Fee and associated costs for each Subscription Plan are set out in the fee schedule as advised to you from time to time.

8.3 Payment terms

Fees will be billed monthly, generally within the first five (5) Business Days of the month, with the first payment due at the commencement of your Subscription and after any applicable free trial expires.

8.4 Payment methods

You are required to make any payments to us (including Subscription Fees) via a Direct Debit Arrangement. We will contact you separately to arrange for you to complete a Direct Debit Request and enter into a Direct Debit Request Service Agreement, unless we have agreed with you to pay us via an alternate method.

8.5 Invoicing

Tax invoices will be sent to your nominated billing email address on the day that Fees are to be paid using your chosen payment method.

8.6 Late or failed payments

- (a) If your payment fails for whatever reason, we will reattempt the payment within seven (7) calendar days of the initial payment attempt.
- (b) If an outstanding payment remains unpaid for more than fourteen (14) calendar days, your Subscription may be suspended until the outstanding balance is cleared and a Dishonour Fee may apply.

8.7 Commissions

- (a) We may pay a commission or a share of revenue to a third party as a result of that third party introducing you to the Product. This commission or share of revenue is at no additional cost to you.

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- (b) We may receive a commission or a share of revenue from a third party product and/or service provider as a result of us introducing you to that third party, or introducing that third party to you, assuming that you have not chosen to opt out of receiving marketing communications and promotional messages from us.

8.8 Fee increases

Unless otherwise agreed in writing with you, we may increase the amount of the Fees from time to time by providing reasonable notice to you. By continuing to use the Product after having received such notice, you agree to pay such increased Fees.

9. Goods and Services Tax

- (a) Unless otherwise explicitly agreed to by Ardex, the Fees payable under these T&Cs exclude GST.
- (b) In the event that GST is payable on the Fees under these T&Cs, you will pay to Ardex an amount equal to the GST payable on the Fee ("**GST Amount**"), calculated by multiplying the Fee by the prevailing GST rate.
- (c) You must pay the GST Amount to Ardex at the same time and in the same manner as the Fees are payable.
- (d) Any obligation on you to pay the GST Amount under this clause is conditional on Ardex providing you with a valid tax invoice in accordance with the GST Act.

10. Subscriptions

10.1 Subscription period

Your Subscription remains active for the duration covered by the Subscription Fee paid or payable.

10.2 Automatic renewal

At the end of each monthly billing period, your Subscription will automatically renew for an additional period of the same duration provided that you continue to pay the applicable Subscription Fee to us.

10.3 Changing Subscription Plans

You may elect to change your selected Subscription Plan by written notice to us. This change will take effect at the start of the next monthly billing period.

11. Security of your data

11.1 Safeguards

- (a) You agree and acknowledge that while we take reasonable steps to protect and safeguard your data and Personal Information, we cannot guarantee absolute security.
- (b) If we have or develop a reasonable belief that your Product profile has been accessed by someone who is not an authorised user, we will notify you and may restrict your access to all of, or certain parts of, the Product until you verify that the access was authorised.

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11.2 Security features

- (a) We may implement features to enhance the security of the Product, such as multi-factor authentication.
- (b) If we offer optional security features, you assume responsibility for any consequences of not using them. We strongly encourage you to utilise all optional security features.

11.3 Your responsibilities

- (a) You agree to keep your Credentials secure and not share them with anyone and ensure that your own systems have strong security measures.
- (b) If you become aware of any unauthorised use of your Credentials or a security breach involving the Product or your email address linked to the Product, you must notify Ardex immediately via telephone on +61 2 9229 4700 or by email at support@ardex.com.au.
- (c) Except in the case of explicitly designated fields such as 'first name' or 'surname', you agree not to use free-form fields in the Product to store any Personal Information or data including credit card information, tax file number or bank account details, or any third-party credentials.
- (d) You are responsible for managing user access to the Product and you must ensure that only your authorised Personnel have access to your Credentials.

12. Updates

- (a) We may from time to time release software updates, patches, upgrades, bug fixes or other modifications to the Product (hereinafter "**Updates**").
- (b) You may be required to install Updates in order to use the Product.
- (c) You agree to promptly install any Updates that we provide.
- (d) Updates may be installed automatically, without any additional notice being provided to you, and without any additional consent being sought from you.
- (e) By downloading, installing, using, purchasing or paying any Fee for the Product, you also consent to these Updates.

13. Service interruptions

- (a) You acknowledge and agree that Ardex may need to interrupt access to the Product to perform maintenance or emergency services on a scheduled or unscheduled basis.
- (b) You acknowledge and agree that your access to the Product may be affected by unanticipated or unscheduled downtime, for any reason, but that Ardex shall have no liability for any damage or loss caused as a result of such downtime.

14. Client Data

14.1 Ownership of Client Data

- (a) You retain all right, title and interest in and to Client Data.

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- (b) We retain all rights to our proprietary software, algorithms and data that is not derived from Client Data.

14.2 Use of Client Data

We will only use Client Data for the purpose of providing, maintaining, and improving the Product.

14.3 Anonymised Data

- (a) Any aggregated data or information that is not reasonably capable of being associated with or linked to you or another person ("**Anonymised Data**") is not Client Data.
- (b) We may use Anonymised Data for internal analytics, research and development purposes and may sell, share or otherwise make available Anonymised Data to third parties for commercial use.

14.4 Retention and deletion of Client Data

- (a) We will retain Client Data for the duration of the Subscription and for at least six (6) months after a Subscription Plan is cancelled by either you or us.
- (b) Upon cancellation of the Subscription, we may delete Client Data from our systems after six (6) months have passed, unless we are legally required to retain the Client Data.
- (c) You acknowledge and agree that:
 - (1) you are solely responsible for retaining a copy of Client Data for your own record-keeping purposes; and
 - (2) if we suspend your access to the Product, or your Subscription is cancelled by either you or us, we are not liable for any loss of Client Data if you failed to retain a copy of the Client Data before your access to the Product is suspended or the cancellation of your Subscription becomes effective.

15. Privacy

- (a) Through using the Product, or otherwise during the course of your dealings with us, you may provide Ardex with Personal Information. By using the Product, you authorise Ardex to use your Personal Information in Australia and in any other country where Ardex operates.
- (b) Ardex takes its privacy obligations seriously. Please refer to Ardex' Privacy Policy available at www.ardex.com.au/privacy for further information about the kinds of information Ardex collects, how that information is used and held, and your rights in relation to it.

16. User warranties

- (a) You hereby provide the following warranties:
 - (1) That you have the full legal authority and capacity to enter these T&Cs.

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- (2) That you are of sufficient legal age to enter these T&Cs under the laws of New South Wales, Australia.
 - (3) That you will only use the Product in accordance with the Licence granted under these T&Cs.
 - (4) That you have obtained all consents required to authorise Ardex to collect Fees or payments;
 - (5) That you have secured all necessary permissions to share Personal Information with Ardex as needed.
 - (6) That you have not relied on any representations outside these T&Cs in entering into these T&Cs.
 - (7) That you will comply with all applicable laws and industry codes in exercising your rights and fulfilling your obligations under these T&Cs.
 - (8) That all information you have provided to us is accurate, current, and complete and that if any information becomes or is discovered to be false or misleading, you agree to promptly provide Ardex with updated or correct information.
- (b) If you are a company or other organisation, the person who downloads, installs, uses, purchases or pays any Fee for the Product on behalf of your company or organisation, or who otherwise agrees to these T&Cs on behalf of your company or organisation, hereby represents and warrants that they have the right, authority and capacity to accept and agree to these T&Cs on their own behalf and on behalf of your company or organisation.

17. Warranties regarding legal advice

- (a) Each Party, (which for the purposes of this clause shall be referred to as the "**Warranting Party**" as the context requires) hereby respectively warrants:
- (1) That the Warranting Party fully understands the terms of these T&Cs.
 - (2) That the Warranting Party has had the opportunity to obtain independent legal advice in relation to the matters addressed by these T&Cs and the Warranting Party has either:
 - (A) taken such independent legal advice; or
 - (B) elected not to take such independent legal advice.
 - (3) That the Warranting Party has not been induced to enter these T&Cs by any representation(s) made by the other Party or by any officer, employee, director, agent, contractor, assignee, successor or other representative of the other Party, except as provided in these T&Cs.
- (b) This clause will survive termination or expiration of these T&Cs.

18. Limitation of liability

- (a) You may have certain rights under the Australian Consumer Law, or under other similar or related consumer protection laws.

- (b) The Australian Consumer Law (or any other similar or related consumer protection laws) may give you certain rights, warranties, guarantees and remedies regarding the provision of goods or services by Ardex, which cannot be excluded, modified or restricted by Ardex ("**Statutory Rights**").
- (c) Your liability to Ardex is governed solely by the Australian Consumer Law if applicable (and any other similar or related consumer protection laws) and by these T&Cs.
- (d) Unless otherwise expressly provided in writing by Ardex, all guarantees, warranties, representations and conditions are expressly excluded except for any Statutory Rights which are required by law.
- (e) To the maximum extent permitted by law, Ardex excludes all conditions and warranties implied by custom, law or statute, except for your Statutory Rights, and Ardex expressly disclaims all warranties of any kind including but not limited to implied warranties of merchantability, fitness for a particular purpose, or non-infringement of third party rights.
- (f) You hereby acknowledge and agree that you use the Product at your sole risk.
- (g) You hereby acknowledge and agree that the Product is provided to you "as-is".
- (h) You hereby acknowledge and agree that you are solely responsible for evaluating and for determining whether the Product is fit for your purpose.
- (i) When your Statutory Rights apply, to the maximum extent possible, Ardex' liability in respect of any claim is limited to, at your option:
 - (1) in the case of goods:
 - (A) a replacement of the goods;
 - (B) the supply of equivalent goods;
 - (C) a repair of the goods;
 - (D) the payment of the cost of replacing the goods;
 - (E) the payment of the cost of acquiring equivalent goods or of having the goods supplied again; or
 - (F) the payment of the cost of having the goods repaired; and
 - (2) in the case of services:
 - (A) the supply of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (j) To the maximum extent permitted by law, except as otherwise provided in these T&Cs, and except in cases of death or personal injury caused by Ardex' gross negligence, wilful misconduct or bad faith, Ardex' liability in contract, tort or otherwise arising through or in connection with these T&Cs or through or in connection with the fulfilment of obligations under these T&Cs, liability shall be limited to the total of any Fees paid by you to Ardex.

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- (k) To the maximum extent permitted by law, and except as otherwise provided in these T&Cs, Ardex shall not be liable to you in contract, tort, negligence, breach of statutory duty or otherwise for any indirect, consequential, incidental, special, punitive or exemplary loss, damages, costs or expenses of any nature whatsoever including without limitation any economic loss, data loss, loss of goodwill or other loss of turnover, profits or business.
- (l) For the sake of clarity, in no event will Ardex be liable for any consequential, indirect, incidental or special damages of any kind including any damages for loss of revenue, profits, interruption of business, or loss of data, even if the possibility of such loss was made known to Ardex.
- (m) To the maximum extent permitted by law, and except as otherwise expressly provided in these T&Cs, Ardex hereby disclaims any and all warranties of quality, whether express or implied, including but not limited to any warranties of merchantability and fitness for a particular purpose. You acknowledge that you are relying solely on your own investigations, inspections and/or examinations and have not been induced by Ardex making any statements as to the quality or condition of the Product.
- (n) Nothing in these T&Cs restricts your Statutory Rights. In the event that the Australian Consumer Law applies, and there is a conflict between this clause and the Australian Consumer Law, the Australian Consumer Law shall prevail.
- (o) This limitation is cumulative. Ardex' liability will not be increased by the existence of more than one incident or Claim.
- (p) This clause will survive the termination or expiration of these T&Cs.

18.2 Indemnification

- (a) You agree to indemnify Ardex for all losses, costs (including legal costs), expenses, demands, or liabilities incurred by Ardex due to Claims arising from your use of the Product or any third-party product, except where due to:
 - (1) a breach of these T&Cs by Ardex, our employees, contractors, or agents; or
 - (2) any gross negligence, wilful misconduct, fraud, or material error solely attributable to Ardex, our employees, contractors, or agents.
- (b) You irrevocably and unconditionally indemnify Ardex and our Personnel against all liabilities, losses, damages, costs, expenses, Claims, or suits, arising directly or indirectly as a result of:
 - (1) your use of the Product;
 - (2) Claims brought by your clients;
 - (3) fraud, negligence, or wilful misconduct by your Personnel;
 - (4) your failure to pay Fees, or other amounts due under these T&Cs;
 - (5) any violation of the law, including Privacy Laws, by you;
 - (6) false or misleading statements by your Personnel related to your application, clients, or the Product unless caused solely by our material error;

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- (7) breach of your obligations under these T&Cs;
- (8) third-party Claims that intellectual property you provided infringes their rights;
- (9) infringement Claims related to our use of your trademarks, as permitted under these T&Cs; and
- (10) any viruses, security breaches, or code errors related to the Product.

19. Intellectual property

19.1 Ardex IP

- (a) You agree that the Product, Ardex ' website and all products and services provided by Ardex are the property of Ardex, including all Ardex IP.
- (b) You agree that Ardex owns all right, title, and interest in and to Ardex IP and that you will not use Ardex IP for any unlawful or infringing purpose.
- (c) You agree not to reproduce or distribute Ardex IP in any way, including electronically or via registration of any new trademarks, trade names, service marks or URLs, without express written permission from Ardex.
- (d) These T&Cs do not grant you any intellectual property rights or any other rights over:
 - (1) our software, documents, templates, marketing materials, trademarks, business names, logos, trading names, trade dress, processes, or methodologies; and
 - (2) any other intellectual property of ours, except for those rights expressly licenced to you under these T&Cs.
- (e) If any intellectual property rights arise from your use of the Product, including any systems, processes, or methodologies developed, you agree to:
 - (1) assign all such rights to Ardex upon request; and
 - (2) appoint Ardex and our Personnel as your agent and attorney to sign and complete any actions on your behalf necessary to ensure these rights are assigned to us.

19.2 No replication

The Licence does not permit you to replicate or copy (or permit any other user to replicate or copy) the Product (whether in part or in full). You are prohibited from replicating, copying or permitting any other user to replicate or copy the Product or any part of the Product, except:

- (a) in the event that your legitimate use of the Product requires a temporary copy to be stored in computer memory; or
- (b) with Ardex' prior written consent.

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19.3 No modification or alteration

You may not modify or alter the Product (including any files or any other parts of the Product) in any way, except with Ardex' prior written consent.

19.4 No derivative works

You may not create, develop, or attempt to create or develop any derivative works based on the Product or any works serving the same purpose or providing the same features as the Product.

19.5 Reverse engineering and security

You may not undertake any of the following actions:

- (a) attempting to derive the source code for the Product, for example by reverse engineering, deconstructing, decompiling or disassembling the Product or Ardex' website;
- (b) violating the security of the Product through any unauthorised access, circumvention of encryption or other security tools, data mining or interference to any host, user or network; or
- (c) copying or otherwise distributing copies of the Product unlawfully, such as through any peer-to-peer network or other intellectual property circumvention tool.

19.6 No release of performance data

Except with the prior written consent of Ardex, you may not release or communicate results from any functional evaluation or performance evaluation of the Product to any third party or third parties.

19.7 Publicity

- (a) You consent to Ardex making media releases, public announcements, and disclosures regarding your use of the Product, including the use of your name, trademarks, service marks, or logos in promotional and marketing materials.
- (b) We will ensure that any publicity materials referencing you remain current and accurate.
- (c) You may provide written notice to Ardex to update or remove any such publicity, and we agree to comply with your request in a timely manner.

20. Image and Content rights

20.1 Grant of rights to Ardex

- (a) By providing Images and Content as a result of uploading them to the Products, you grant Ardex a worldwide, non-exclusive/exclusive, transferable, perpetual, royalty-free license to use, reproduce, modify, distribute, display, and create derivative works from the Images or Content for any lawful purpose, including but not limited to advertising, marketing, editorial, and promotional activities, across all media and formats (digital, print, and others as developed).

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- (b) We reserve the right to sublicense these rights to our Affiliates, subsidiaries, agents, and any third parties engaged in our business operations.
- (c) Any use by Ardex of the Images and Content made before the termination or expiry of these T&Cs will remain licenced to Ardex in perpetuity.

20.2 Copyright and moral rights

- (a) You retain ownership of the copyright in the Images and Content.
- (b) These T&Cs do not transfer ownership of the Images or Content to Ardex but rather grants specific usage rights as outlined.
- (c) To the maximum extent permitted by law, you agree not to assert any moral rights over the Images or Content in connection with any authorised use by us.

20.3 Warranty and indemnity

- (a) You warrant that:
 - (1) you are the sole creator and owner of the Images and Content or have obtained all necessary permissions and rights to licence the Images and Content; and
 - (2) the Images and Content do not infringe any copyright, trademark, privacy, publicity, or other legal rights of any third party.
- (b) You indemnify and hold Ardex harmless from any Claims, damages, losses, or expenses, including legal fees, arising from a breach of the above warranties.

20.4 Attribution

We may use the Images and Content without attribution unless required by law or as specifically requested by you.

20.5 Modifications

We reserve the right to edit, crop, or modify the Images as needed, provided such modifications do not infringe upon any agreed-upon terms.

21. Feedback and beta testing

21.1 Feedback

- (a) While you are a Customer or an Invited User, we may solicit feedback from you regarding the Product, including comments or suggestions for potential creation, modification, improvement, or enhancement (collectively referred to as “**Feedback**”).
- (b) You agree that any information disclosed by Ardex during these discussions will be considered our confidential information.
- (c) Any Feedback incorporated into the Product will be irrevocably assigned to Ardex, including any modifications or extensions thereof, whenever, or wherever developed.

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21.2 Beta testing

- (a) During the term of these T&Cs, we may offer you the opportunity and you may elect to test new products and services before they are generally available.
- (b) Your use of beta functionality is at your own risk, and we expressly disclaim any liability or Claims arising from your use.
- (c) Any information you provide during a beta trial or similar testing will be considered Feedback.

22. Termination

22.1 Your right to terminate these T&Cs without reason

You may terminate these T&Cs for any reason by providing Ardex with thirty (30) days' written notice ("**Notice Period**"). During this Notice Period, you must authorise and ensure the payment of any Fees.

22.2 Our right to suspend your Subscription and/or terminate these T&Cs

You acknowledge and agree that we may suspend your access to the Product and/or immediately terminate these T&Cs without notice if:

- (a) Your Direct Debit Arrangement is cancelled or withdrawn.
- (b) Any of the following changes occur without you providing Ardex with reasonable prior written notice:
 - (1) a change in control of your business;
 - (2) a change in your business activity; and/or
 - (3) a change in the type of goods or services you provide.
- (c) Fees cannot be paid using your chosen payment method for any reason.
- (d) You enter liquidation, take steps toward liquidation, or we have reasonable concerns regarding your creditworthiness.
- (e) You breach any of your material obligations under these T&Cs (including non-payment of Fees) and fail to remedy the breach, if capable of remedy, within five (5) Business Days of notice.
- (f) Regulatory actions render the ongoing operation of the Product commercially unfeasible, or we believe it is necessary to protect our interests or the integrity of the Product.
- (g) There is any change in your business, assets, or financial condition that may adversely affect your ability to meet your obligations under these T&Cs.
- (h) You discontinue using the Product.
- (i) If you become aware of any circumstances that would allow Ardex to suspend your access to the Product under this clause 22.2, you must immediately inform Ardex in writing.

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22.3 Following suspension or termination

- (a) We will notify you in writing following the suspension of your access to the Product or our termination of these T&Cs.
- (b) We retain the discretion to lift a suspension at any time.
- (c) Upon suspension of your access to the Product:
 - (1) you must comply with any reasonable directions we give to facilitate an orderly suspension; and
 - (2) we may impose conditions in relation to any future Applications you submit for the Product.
- (d) Upon termination of these T&Cs:
 - (1) you must immediately cease using any materials containing our intellectual property rights granted to you in relation to the Product;
 - (2) you must comply with any reasonable directions we provide to ensure an orderly termination; and
 - (3) you will be liable for payment for services already provided and no refunds will be issued.

23. Notices

23.1 Form of notice

Any notice required under these T&Cs must be in writing and sent via email to the email address set out in clause 23.2 or such other address notified in writing by either Party to the other from time to time.

23.2 Email address for notices

- (a) Ardex: support@ardex.com.au
- (b) You: the email address stated on your Application Form or as otherwise notified to us.

23.3 Deemed receipt

Any notice sent to a nominated email address will be deemed received upon completion of transmission.

24. General

24.1 Governing law and jurisdiction

These T&Cs shall be governed in all respects by the laws in force in New South Wales, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia and the courts of appeal from them.

24.2 Language

All communications made or notices given pursuant to these T&Cs shall be in the English language.

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24.3 Rights, remedies and powers

Unless expressly provided in these T&Cs, any rights, remedies or powers which a Party acquires under these T&Cs are cumulative and apply in addition to any rights, remedies or powers which that Party may otherwise have. Unless expressly provided in these T&Cs, nothing in these T&Cs shall in any way reduce, extinguish, postpone, restrict or otherwise limit any right, remedy or power which that Party may have.

24.4 Survival

Notwithstanding any other provisions of these T&Cs, at the termination, expiration or completion of these T&Cs, any provisions of these T&Cs which would by their nature be expected to survive termination, expiration or completion shall remain in full force and effect, including but not limited to any provisions which are explicitly stated to survive termination, expiration or completion.

24.5 Waiver

None of the powers or rights created under the terms of these T&Cs shall be deemed to have been waived by any act or acquiescence of either Party. A power or right under the terms of these T&Cs may only be waived in writing, signed by the Party that is waiving the said power or right. No waiver of any power or right under a term of these T&Cs shall constitute a waiver of any other power or right or of the same power or right on a future date. Failure of either Party to enforce any term of these T&Cs shall not constitute waiver of such term or any other term.

24.6 Severability

If any provision of these T&Cs is found to be illegal, prohibited, void, or unenforceable, that provision will be ineffective only to the extent of such illegality, prohibition, voidness, or unenforceability, without affecting the validity and enforceability of the remaining provisions.

24.7 Force majeure

Neither Party is liable to the other for any failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, acts of civil authorities, acts of military authorities, riots, embargoes, acts of nature and natural disasters, labour or transportation disputes, and other acts which may be due to unforeseen circumstances.

24.8 Further acts

Each Party must do all things reasonably required in order to give effect to these T&Cs and to the rights and obligations of the Parties created under these T&Cs.

24.9 Entire agreement

These T&Cs, together with our Privacy Policy, constitute the complete and exclusive understanding between the Parties regarding the Product. These T&Cs supersede and cancel all prior written, electronic, and oral agreements, communications, and understandings relating to the subject matter of these T&Cs.

24.10 Relationship

- (a) Nothing in these T&Cs or the performance of these T&Cs shall create a fiduciary relationship, agency, joint venture, partnership, or trust between the Parties.

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- (b) Neither Party has the authority to bind the other Party.
- (c) You shall not represent yourself as our agents and you shall procure your Personnel to do the same.
- (d) You agree that you are not authorised to make any representations regarding the Product on our behalf.

24.11 No third-party rights

Nothing in these T&Cs, whether express or implied, is intended to confer any rights, benefits, or remedies upon any third party.

24.12 Assignment

- (a) You may not assign, novate, transfer, or otherwise deal with any rights or obligations under these T&Cs without our prior written consent. Any unauthorised assignment or novation will be null and void.
- (b) We may assign, novate, or transfer any of our rights and obligations under these T&Cs without your consent. You agree to sign any documents and take necessary actions we may request to facilitate such dealings. We may disclose your information and details of these T&Cs to any parties involved in actual or proposed assignments or dealings.

Created 1st May 2025



ARDEX

TECHNOLOGY

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