

# Smarter Drafter Pro: Subscription Terms: Published 21<sup>st</sup> May 2025

## 1 Definitions and interpretation

### 1.1 In this agreement, unless the context otherwise requires, terms have the meaning given to them throughout the Subscription Terms and/or as follows.

**Action** means any claim, suit, action or proceeding.

**Affiliate of a Party** means any other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Party, where control is the direct or indirect ownership of more than 50% of the entity's voting securities, or if there are no voting securities, the ability to control and direct the management of the entity.

**Authorised User** means each of the individuals authorised by the Customer to access and use Smarter Drafter Pro in accordance with the Subscription Scope.

**Confidential Information** means a Party's confidential, proprietary and commercially sensitive information (irrespective of the form or the manner in which the information is disclosed, or the time of such disclosure) including information which:

- (a) is identified as confidential or ought to have been known to be confidential; and
- (b) relates to a Party's business affairs and practices, including financial information, business opportunities, business plans, business processes and methodologies,

but does not include information, which is in, or comes into, the public domain other than by a breach of this agreement, or which is independently known to the other party as evidenced by its written record.

**Customer Data** means data and information that is submitted to, uploaded to, and or created using Smarter Drafter Pro by or on behalf of the Customer or its Authorised Users, including Customer Content, Customer Documents, Customer Field Data.

**Customer Content** means documents that Customer codes and automates using Smarter Drafter Pro and that are loaded into the Customer Instance for access by Authorised Users.

**Customer Documents** means the submission forms and documents created by the Authorised Users in the Customer Instance, using the Customer Content and/or the Preloaded Content.

**Customer Environment** means the Customer's information technology networks, infrastructure, end-user computing environments, systems (including third party systems), equipment, programs, and premises.

**Customer Field Data** means data that is preloaded by the Customer as submission form

field data and/or data that is input into submission forms by Authorised Users and saved by such Authorised User.

**Customer Instance** means the dedicated environment within Smarter Drafter Pro where the Customer accesses, uses, and manages Smarter Drafter Pro and the Customer Data.

**Clause Bank Pro** means the centralised repository of legal clauses with AI-enabled search, provided by Smarter Drafter, integrated within Microsoft Word via an add-in.

**Documentation** means any manuals, instructions or other documents or materials that Tensis provides or makes generally available to customers, and which describe the functionality, components, features or requirements of Smarter Drafter Pro including any aspect of its installation, configuration, integration, operation, use, or support.

**Eligible Data Breach** means a data breach in respect of Personal Information that meets the threshold for mandatory notification under applicable Privacy Laws.

**Fees** means the fees set out in the applicable Order or a SOW.

**Force Majeure Event** means any act, event or cause including earthquakes, cyclones, floods, fires, lightening, storms or other acts of God, strikes or industrial disputes, riots, terrorist acts, civil disturbances, breakages of machinery, or industrial conditions, or arising out of any other unexpected and exceptional cause, delays in transportation and dispositions or orders of governmental authority (including public health orders), which:

- (a) directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under this agreement; and
- (b) is beyond the reasonable control of that party.

**Initial Term** means the initial term set out in an Order.

**Intellectual Property Rights** means existing and future registered and unregistered rights granted, applied for or otherwise in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property Laws, and all similar or equivalent rights or forms of protection, in any part of the world.

**Law** means any applicable statute, law, ordinance, regulation, rule, order, constitution, treaty, common law, judgment, decree, or other requirement having the force of law, of any federal, state, provincial, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction, whether in existence as of the effective date of this agreement or promulgated later, as amended, or superseded.

**Losses** means any losses, damages, liabilities, deficiencies, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees.

**Order** means the separate ordering document(s) under which the Customer subscribes to Smarter Drafter Pro pursuant to this agreement, whether:

- (a) placed by the Customer directly with Tensis; or
- (b) placed by a Partner (on behalf of the Customer) with Tensis, referencing this agreement, with respect to the Customer's subscription to Smarter Drafter Pro.

**Party/Parties** Tensis and the Customer are sometimes referred to individually as a Party and together as the Parties.

**Partner** means an entity that has entered into an agreement with Tensis that, among other things, authorises the entity to resell the Services.

**Personal Information** has the meaning given to that term and/or the term personal data in applicable Privacy Laws.

**Preloaded Content** means any content (e.g. documents, forms, clause banks, and/or other content libraries) that Tensis creates, codes and/or automates and loads into the Customer Instance from time to time for the Authorised Users to access and use as part of the Customer's Subscription Scope for Smarter Drafter Pro (including template forms, documents, and/or clause banks).

**Privacy Laws** means any Laws applicable to the collection, use, disclosure and/or processing of Personal Information under this agreement, including (as applicable) the Privacy Act 1988 (Cth), the General Data Protection Regulation (EU) 2016/679 (GDPR) and the Data Protection Act 2018 (UK), and and/or any other equivalent or similar legislation as applicable in any relevant jurisdiction

**Professional Services** means certain non-recurring consulting, educational, operational, support or professional services that the Customer, at its option, may request from Tensis and that Tensis may agree to provide and which the Parties will agree to under a signed SOW. Professional Services do not include services undertaken by a Partner.

**Professional Services Data** means all data provided to Tensis by or on behalf of the Customer (or that the Customer authorises Tensis to obtain from Smarter Drafter Pro), through an engagement with Tensis to obtain Professional Services or Support Services. Professional Services Data is not Customer Data.

**Renewal Term** means the renewal periods set out in an Order, or if no periods are set out, the default periods are successive 12 month periods.

**Smarter Drafter Pro** means Tensis' cloud-based software-as-a-service application including any software made accessible by Tensis (including but not limited to Standalone Clause Bank Pro) to enable a Customer and/or Authorised Users to use certain features within the Customer's Subscription Scope (such as add-ins), as subscribed to by the Customer under, and described in, an Order.

**Security Fact Sheet** means Tensis' then current fact sheet describing its security practices, available at: <https://smarterdrafter.com.au/resources/security-fact-sheet>, updated from time to time by Tensis.

**Service Level Agreement** or **SLA** means Tensis' then current service level agreement for Smarter Drafter Pro available at: <https://app.rulestar.com>, as updated from time to time by Tensis.

**Service Levels** means the service levels detailed in the SLA.

**SOW** or **Statement of Work** means a statement of work or similar document under which Professional Services are agreed between the Parties.

**Subscription Scope** means the features, limits, and access entitlements applicable to the Customer's and its Authorised Users' use of Smarter Drafter Pro, as specified in the relevant Order. This includes usage caps (such as limits on submissions and eSignatures), the number of Authorised Users and their access levels, the Customer's integration type (including whether they have access to the free or premium integration and corresponding features), any available add-ins and corresponding features, (including but not limited to the Microsoft Word add-in, Standalone Clause Bank Pro and summarisation feature), and any Preloaded Content made available by Tensis.

**Term** has the meaning given to that term in Section 2.2 Term.

**Tensis** means Tensis Group Pty Ltd (ACN 163 715 428).

**Usage Data** means any data or statistics associated with or generated in connection with use of the Services. Usage Data excludes Customer Data and Professional Services Data.

**1.2** In this agreement unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (d) references to statutes include all statutes amending, consolidating or replacing such statutes;
- (e) \$ or other similar symbol means the currency referred to in the Order, if no currency is stipulated it is Australian Dollars;
- (f) any reference to a party to this document includes its successors and permitted assigns; and
- (g) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it.

## **2 Formation and Term**

### **2.1 Processing of orders**

When the customer identified in the applicable Order (Customer) signs or otherwise accepts an Order, an agreement is formed between the Customer and Tensis that consists of these Subscription Terms, the Order when it is placed directly with Tensis, and any documents or terms stated throughout these Subscription Terms as forming part of such agreement (agreement).

## 2.2 Term

The agreement referred to above will continue for the Initial Term and any applicable Renewal Terms (together, the Term), unless or until terminated earlier, in accordance with these Subscription Terms.

## 2.3 Renewal

Subject to the remainder of this clause, on expiry of the Initial Term and/or a Renewal Term (as applicable), the following will happen.

- (a) This agreement will automatically renew for a Renewal Term unless or until terminated in accordance with these Subscription Terms.
- (b) Tensis will notify you, either directly or via a Partner, [90 days] prior to the expiry of the Initial Term and each Renewal Term that this agreement is going to automatically renew in accordance with the above.
- (c) The Customer must notify Tensis, either directly or via the Partner, at least [60 days] prior to the end of the Initial Term or then current Renewal Term (Cut-Off Date) if it does not want to renew and wants to terminate the agreement. If the notification from the Customer received:
  - (i) prior to the Cut-Off Date the agreement will not renew and will terminate at the end of the then current Renewal Term; or
  - (ii) after the Cut-Off Date:
    - (A) the Customer can request that cancellation is effective immediately, however, to the extent permitted by Law, Tensis is not obliged to provide any pro-rata refund of any Fees pre-paid for a Renewal Term; or
    - (B) where the Customer does not request immediate cancellation the agreement renewed for the next Renewal Term and the cancellation will take effect at the end of that Renewal Term.

## 2.4 Fee increase on renewal

- (a) Where the Order is placed by the Customer directly with Tensis (i.e., not via a Partner), the Fees for each Renewal Term will increase by the percentage set out in the corresponding Order. If no percentage increase is specified in the Order, the Fees will automatically increase by [10]% of the then-current Fees. If the Order specifies that no increase applies, the Fees will remain unchanged.
- (b) Where the Order is placed by a Partner on the Customer's behalf, any fee adjustments on renewal will be determined and applied between the Customer and the Partner, in accordance with the terms agreed between them. Tensis will not be responsible for setting or adjusting renewal pricing in such cases.

## 2.5 Upgrades

During the Initial Term or a Renewal Term the Customer may upgrade its subscription to Smarter Drafter Pro by expanding or increasing its Subscription Scope (including increasing any limitations and/or adding features). Any such upgrade will be documented in a varied Order, will be subject to a corresponding increase in Fees, which will be prorated for the remainder of the then-current Initial Term or Renewal Term unless otherwise agreed, and will take effect on written agreement of the varied Order.

## 2.6 Downgrades

The Customer may only reduce or downgrade its subscription to Smarter Drafter Pro by decreasing or narrowing its Subscription Scope (including downgrading quantity limitations or removing features) prior to the commencement of a Renewal Term. Any such downgrade will be documented in a varied Order and the downgrade, including any decreased in Fees, will take effect at the commencement of the next Renewal Term.

## 3 Services

### 3.1 Services

Tensis will, during the applicable Order Term, provide to the Customer, exercisable by and through Authorised Users, the following services (Services), as applicable:

- (a) access to Smarter Drafter Pro in accordance with the Subscription Scope;
- (b) the Service Levels; and
- (c) any Professional Services under an agreed SOW.

### 3.2 Other Tensis products

These Subscription Terms govern the Customer's access to and use of Smarter Drafter Pro. If the Customer accesses or uses any of Tensis' other products, including but not limited to Smarter Drafter, the LEAP Integration, and/or FLENA, additional terms and conditions apply. The Customer must review and accept those additional terms before using such products.

### 3.3 Updates

- (a) Tensis may undertake and release updates of Smarter Drafter pro from time to time, including:
  - (i) updates for the purposes of bug fixes, defects or errors;
  - (ii) updates to give effect to new functionalities and/or features; and/or
  - (iii) other modifications that Tensis deems necessary for its product, including modifications to the design, layout, and/or UX of Smarter Drafter Pro.
- (b) Tensis will ensure that such updates do not result in a material reduction in the functionality or performance of Smarter Drafter Pro provided to the Customer under this agreement. The Customer may be required to undertake an action, such as a browser refresh, to give effect to an update.
- (c) Access to certain new functionalities or features may require the Customer to pay additional Fees and may require an upgrade in the Customer's Subscription Scope in accordance with Section 2.5. Tensis will inform the Customer accordingly.

## 4 Support

### 4.1 Service Level Agreement

Tensis will provide the Service Levels for Smarter Drafter Pro in accordance with the Service Level Agreement. The Customer acknowledges and agrees that the Service Level Agreement sets out Tensis' sole obligations in respect of support and availability of Smarter Drafter Pro and to the extent that the Customer requires bespoke or additional support or training services, such must be agreed either:

- (a) as Professional Services and set out in a signed SOW; or
- (b) directly between the Customer and a Partner.

### 4.2 Availability

Without limiting Tensis' obligations under the Service Level Agreement, the Customer acknowledges and agrees that Smarter Drafter Pro is provided on an 'as is' basis, service continuity is not assured and Smarter Drafter Pro may be suspended, unavailable or have limited availability including:

- (a) for routine or emergency maintenance;
- (b) to permit upgrades or other development activity to take place;
- (c) due to a Force Majeure Event; and/or
- (d) if it is necessary for reasons of security, interoperability, data protection and/or any other work that is necessary for operational or technical reasons.

#### **4.3 Partner-provided support**

Tensis is not liable or responsible for, and make no representations or warranties in respect of, any support, training or other similar support or services agreed directly between the Customer and a Partner in respect of Smarter Drafter Pro.

### **5 Professional Services**

#### **5.1 Professional services**

From time to time the Customer may request, and Tensis may agree to provide, Professional Services.

- (a) Upon the Customer's request for such services and where Tensis agrees to provide such services, Tensis will provide the Customer with a SOW setting out the details of the Professional Services and any terms specific to such Professional Services.
- (b) On the Customer's written acceptance of such SOW:
  - (i) the SOW forms part of this agreement and will remain in effect for the full duration set out in the SOW, or if there no duration set out, until the Professional Services have been completed;
  - (ii) Tensis will provide Professional Services to the Customer in accordance with the SOW;
  - (iii) in the event of any inconsistencies between this agreement and a SOW, the terms of the SOW will take precedence solely in respect of the Professional Services that are the subject of the SOW (other than an exception expressly set forth as such in the SOW); and
  - (iv) to the extent payment terms are not specified in the SOW, the payment terms in this agreement will apply.

### **6 Customer obligations**



## 6.1 Authorisation

During the applicable Order Term, Tensis authorises the Customer (on a non-exclusive basis) to:

- (a) access and use Smarter Drafter Pro in accordance with its Subscription Scope; and
- (b) access, use, and print the Documentation; in each case, solely for the Customer's internal business purposes (which internal business purposes may include services that Customer provides to its clients) and in accordance with this agreement and the Documentation.

## 6.2 Authorised Users

Customer is responsible for

- (a) determining its Authorised Users within the Subscription Scope;
- (b) ensuring its Authorised Users comply with these Subscription Terms;
- (c) ensuring that its Authorised Users have the necessary skills, training, and qualifications to use Smarter Drafter Pro, for example, legal training;
- (d) all activity within the Customer Instance and Smarter Drafter Pro by the Customer, its Authorised Users, and/or any unauthorised third parties who gain access because of the Customer's breach of this agreement; and
- (e) contacting Tensis immediately if the Customer believes that there has been any unauthorised access or use of the Customer Instance.

## 6.3 Acceptable use, limitations and restrictions.

- (a) Neither the Customer nor its Authorised Users may use Smarter Drafter Pro:
  - (i) in a way that exceeds the Subscription Scope;
  - (ii) in a way prohibited by Law;
  - (iii) to violate the rights of others;
  - (iv) to try to gain unauthorised access to or disrupt Smarter Drafter Pro, or any other service, device, data, account, or network;
  - (v) to spam or distribute any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to permit unauthorised access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any way Smarter Drafter Pro; or
  - (vi) in a way that could harm or otherwise impair Smarter Drafter Pro, or anyone else's use of them.

- (b) Neither the Customer nor its Authorised Users may:
- (i) resell or redistribute Smarter Drafter Pro;
  - (ii) permit direct or indirect access to, or use of, any part of Smarter Drafter Pro in a way that circumvents any Subscription Scope;
  - (iii) access or use Smarter Drafter Pro to build a competitive product or service;
  - (iv) reverse engineer Smarter Drafter Pro (unless permitted by law without possibility of contractual waiver);
  - (v) attempt to probe, scan, or test the vulnerability of Smarter Drafter Pro, or attempt to otherwise breach the security or authentication measures; or
  - (vi) perform load testing;
- (c) Without limiting any of Tensis' other rights under this agreement, an Authorised User's actual or suspected violation of the terms in this Section 6.2 may result in suspension of such Authorised User's use of Smarter Drafter Pro to the extent, and for the time period, necessary to address said violation. Unless Tensis believes an immediate suspension is required, Tensis will provide reasonable notice before suspending the Authorised User's use. Tensis may seek all reasonable legal remedies available to it if a violation of this Section 6.2 occurs. For the avoidance of doubt, the suspension rights in this Section only apply to those Authorised Users whom Tensis knows, or reasonably suspects, have violated this Section 6.2 (and not to the Customer, or all of the Authorised Users, generally).

## **7 Fees and payment terms**

### **7.1 Direct Orders or Orders placed by a Partner**

- (a) Where the Order is placed by the Customer directly with Tensis, Tensis will set the Customer's pricing and payment terms in that Order and payment of the Fees by the Customer is in accordance with Sections 7.2 – 7.6.
- (b) Where a Partner places an Order with Tensis on the Customer's behalf, the following applies.
- (i) The Partner will set the Customer's pricing and payment terms in that Order, and the Customer will either, as agreed between the Customer and the Partner:

- (A) be invoiced by the Partner for, and pay the Partner directly, the Fees due under the Order; or
  - (B) be invoiced by Tensis for, and pay Tensis directly, the Fees due under the Order in accordance with and subject to Sections 7.2 – 7.6.
- (ii) In both instances, Section 7.8 will apply to the Customer.

## **7.2 Fees**

The Customer must pay Tensis the Fees in accordance with this Section 7. Payment details, including frequency of payments, due date, and currency shall be detailed in the Order or applicable SOW.

## **7.3 Taxes**

All Fees are exclusive of any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, goods and services taxes and/or any value-added, sales, use or withholding taxes, assessable by any jurisdiction unless otherwise stated (Taxes). Customer will be responsible for paying all Taxes associated with its subscription to Smarter Drafter Pro. Should any payment for such subscription be subject to withholding tax by any government, the Customer will reimburse Tensis for such withholding tax.

## **7.4 Disputed fees**

If the Customer disputes any portion of Fees set forth on any invoice, the Customer will within 30 days of the date of the applicable invoice:

- (a) pay the undisputed portion of Fees on said invoice; and
- (b) notify Tensis, in writing, of its basis for contesting the disputed Fees.

The Parties agree to discuss any dispute within 10 days of Tensis' receipt of such notification. If necessary, Tensis will provide an amended invoice to the Customer after the discussion and the Customer will pay such an invoice within the time period in the Order or applicable SOW.

## **7.5 Late payment**

If the Customer fails to make an undisputed payment when due and such failure continues for 30 days following written notice of such failure (including notice that the Customer's access to Smarter Drafter Pro may be suspended), Tensis may, on written notice to the Customer, suspend the Customer's access to Smarter Drafter Pro until all past due undisputed amounts have been paid, without incurring any obligation or liability to the Customer because of such suspension. At Tensis' discretion, past due undisputed amounts may accrue a late fee equal to the lesser of 1.5% per month or the maximum amount

allowed by applicable Law.

## **7.6 No deductions or setoffs**

Except as expressly set out in this agreement, all amounts payable to Tensis under this agreement will be paid by the Customer to Tensis in full without any setoff, deduction or withholding for any reason.

## **7.7 Purchase orders**

If the Customer requires the use of a purchase order or purchase order number, the Customer:

- (a) must provide the purchase order number at the time of purchase; and
- (b) agrees that any terms on any such purchase order are null and void, are rejected by Tensis, and will not apply to the Customer's procurement of the Services or any other subject matter of this agreement.

## **7.8 Purchases through Partners**

The Customer may authorise a Partner to place an Order with Tensis on the Customer's behalf and in such instances, the following clauses apply.

- (a) Partners are not agents of Tensis and cannot enter into any agreement with the Customer on behalf of Tensis. Partners are not authorised to make any promises or commitments on Tensis' behalf, and Tensis will have no obligation to the Customer other than those obligations specifically set forth and agreed to by Tensis and the Customer in this agreement.
- (b) The Customer consents to Tensis and its Affiliates providing the Partner with the information the Customer provides to Tensis or its Affiliates during sign-up, purchase, or administration of the Services (Administrator Data) to provision, administer, and support (if applicable) the Services.
- (c) The Customer agrees that Tensis is entitled to suspend or terminate the Customer's subscription to Smarter Drafter Pro, the Customer's rights to access and use Smarter Drafter Pro, and remove and discard any Customer Data (pursuant to the terms of this clause), if Partner notifies Tensis that the Customer has failed to pay amounts due to Partner with respect to the Customer's subscription to Smarter Drafter Pro; provided that, so long as the Customer properly pays Partner and is not otherwise in breach of this agreement, Tensis will not suspend or terminate the Customer's subscription to Smarter Drafter Pro, even if Partner fails to make any requisite payments to Tensis. Tensis shall have no liability to the Customer of any kind with respect to any such suspension or termination. The Customer's sole recourse with respect to any such suspension or termination shall be against the Partner.

## **8 Third party products and integrations**

## 8.1 Third party suppliers

Some aspects and features of Smarter Drafter Pro are provided, hosted, and/or facilitated by third party suppliers (for example, infrastructure suppliers, but excluding Third Party Integrations which are subject to the remaining provisions of this clause). Tensis remains responsible for its relationship with such third party suppliers and for such and features to the extent they form part of Smarter Drafter Pro.

## 8.2 Azure OpenAI

The Customer acknowledges that certain features and functionalities of Smarter Drafter Pro that may be made available to the Customer as part of its Subscription Scope leverage AI programs, large language learning models, software and services provided by Azure OpenAI (or its affiliates or licensors).

- (a) The Customer is solely responsible for reviewing and verifying the accuracy, appropriateness, and fitness for purpose of any outputs generated through these features and the Customer should not rely on such outputs as a sole source of truth or factual information, or as a substitute for professional advice.
- (b) Customer Data utilised with such features is not used to train Azure OpenAI.
- (c) To the extent permitted by Law, Tensis does not make any warranties, representations, and/or guarantees that the output is accurate, complete, or fit for the Customer's intended use and/or will result in any particular outcome.

## 8.3 Customer-licensed non-Tensis applications and services

- (a) If it is part of the Customer's Subscription Scope, Tensis may enable access to certain Smarter Drafter Pro features and functionalities within third-party applications, services, or products, which are licensed by their provider to the Customer or Authorised User(s) (eg Microsoft Word) (Customer-licensed Third Party Products). Such integrations may rely on APIs provided by the third party, which are subject to the third party's terms and conditions.
- (b) Any exchange or other transfer of any information between the Customer and any third-party provider (Third Party Data Transfer) is solely between the Customer and the applicable third-party provider. If the Customer chooses to use a Customer-licensed Third Party Product with Smarter Drafter Pro, the Customer grants Tensis permission to allow the Customer-licensed Third Party Product and its provider to access Customer Data for the interoperation of that Customer-licensed Third Party Product with Smarter Drafter Pro.
- (c) To the extent permitted by Law, Tensis makes no warranties of any kind and assumes no liability for:
  - (i) such Customer-licensed Third Party Products and/or the Customer's or Authorised Users' use of the same (including in respect of any API provided to facilitate an integration and/or any availability, security and/or functionality);
  - (ii) any such Third Party Data Transfer.

## 8.4 Tensis-integrated Third Party Products

Tensis may also integrate third party and/or Affiliate-provided products Affiliates into Smarter Drafter Pro for the Customer to access and use as part of Smarter Drafter Pro (Tensis-facilitated Third Party Product).

- (a) Access and use of such Tensis-facilitated Third Party Product is at the Customer's option and Tensis won't give the Customer access without the Customer first opting in to use. However, the Customer acknowledges that where it opts not to use some Tensis-facilitated Third Party Product, there may be aspects of Smarter Drafter Pro that are consequently not available to the Customer.
- (b) Where the Customer opts to use and/or access such Tensis-facilitated Third Party Product, the Customer acknowledges that:
  - (i) its use of, and access to, such Tensis-facilitated Third Party Product may be subject to additional fees and separate terms that are either:
    - (A) payable to and issued by either the supplier of such product or by Tensis, in which case the Customer will form a separate agreement with the third party supplier; or
    - (B) payable to and issued by Tensis, in which case such terms will form part of this agreement;
  - (ii) to the extent permitted by Law, Tensis makes no representations or warranties in relation to, any such Tensis-facilitated Third Party Products except as expressly set out in this agreement;
  - (iii) Tensis may suspend the Customer's use of, or access to, the Tensis-facilitated Third Party Products on request from the supplier.

## 9 Intellectual Property Rights and Preloaded Content

### 9.1 Services and Documentation

All rights (including Intellectual Property Rights), title, and interest in and to the Services, Smarter Drafter Pro (including any underlying software), the Usage Data, and Documentation are and will remain with Tensis. The Customer has no right, license, or authorisation with respect to any of the Services or Documentation except as expressly set forth in this agreement and subject to the terms of this agreement. All other rights in and to the Services, Smarter Drafter Pro, and Documentation are expressly reserved by Tensis.

### 9.2 Preloaded Content

- (a) The availability of Preloaded Content to Customers by Tensis will be in accordance with the Customer's Subscription Scope and, where applicable, will be made available in the Customer Instance.
- (b) Tensis owns all rights (including Intellectual Property Rights), title, and interests in and to the Preloaded Content. The Customer is granted a non-exclusive, non-transferable right to use, modify, edit, delete, and manage the Preloaded Content made available in its Customer Instance.
- (c) Once the Preloaded Content is made available in the Customer Instance, that specific copy of the relevant Preloaded Content and any modifications, customisations, or derivative works it creates using the Preloaded Content becomes Customer Content and is owned by the Customer. However, this does not transfer any rights (including Intellectual Property Rights), title, and interests in or to the original Preloaded Content, which remains the exclusive property of Tensis.
- (d) Preloaded Content is subject to Section 14.5 and Tensis is not responsible for tracking or maintaining a record of any changes made by the Customer to any Preloaded Content, and any updates or amendments to any Preloaded Content after it is loaded into the Customer Instance are the Customer's responsibility.

### **9.3 Customer Data**

As between the Parties, the Customer is and will remain the sole owner of all rights (including Intellectual Property Rights), title, and interest in and to all Customer Data. Tensis will not be responsible for the quality or the accuracy of the Customer Data in any way and is not responsible for any errors, omissions, Losses, Consequential Losses, or damages of any kind resulting directly or indirectly from any issues with quality, or inaccuracies, in respect of Customer Data or any failure by the Customer to ensure the integrity, completeness, or accuracy of Customer Data before providing it to Tensis or inputting it into Smarter Drafter Pro.

### **9.4 Professional Services Data**

Professional Services Data will be used only to provide Professional Services. As between the Parties, the Customer retains all rights (including Intellectual Property Rights), title, and interest in and to Professional Services Data.

### **9.5 Usage data**

Tensis may collect and use Usage Data, including to analyse the Customer performance and usage in order to provide, benchmark, and/or improve the Services. Tensis owns all rights (including Intellectual Property Rights) in and to such Usage Data. Tensis may use anonymised and/or aggregated Usage Data for benchmarking or other business purposes, including generating reports regarding usage and customer data trends related to Smarter Drafter Pro or any parts of it.

### **9.6 Licence to Customer Data and Professional Services Data**

- (a) Customer grants Tensis a royalty-free, non-exclusive licence during the Term, to use its Customer Data and Professional Services Data to the extent necessary to perform its obligations under this agreement, including making Smarter Drafter Pro available to the Customer and its Authorised Users, providing the Service Levels and/or any agreed Professional Services.
- (b) The Customer acknowledges Tensis may be required to grant third party partners with access to Customer Data and Professional Services Data to assist Tensis provide Smarter Drafter Pro to the Customer and/or any Professional Services. Any such access will be limited to a need to know basis and will be subject to appropriate confidentiality and security obligations. Tensis remains responsible for ensuring that any such access complies with applicable Laws, including data protection laws these Subscription Terms.

## **10 Hosting, deletion of Customer Data, and security**

### **10.1 Hosting**

- (a) Smarter Drafter Pro and the Customer Instance is hosted on Tensis' third-party cloud infrastructure.
- (b) Customer Content, Customer Field Data and Professional Services Data are hosted and stored within the Customer Instance for the duration of the Customer's subscription, subject to the remainder of this clause.
- (c) Usage Data is stored in Smarter Drafter Pro.
- (d) Customer Documents are hosted and stored in the Customer's Environment. A copy of each Customer Document is also created and hosted and stored in the Customer Instance.

### **10.2 Deletion by Customer**

The Customer may delete Customer Documents and Customer Field Data from the Customer Instance at its discretion during its subscription.

### **10.3 Deletion by Tensis**

Tensis will:

- (a) retain Customer Data stored and hosted in the Customer Instance unless or until:
  - (i) the Customer deletes it;
  - (ii) the Customer directs Tensis to delete it;
  - (iii) it is required to delete it in accordance with any applicable Laws;
  - (iv) and/or this agreement terminates (in which case, Section 13.4 applies)



- (b) retain and use Professional Services Data as required for the purposes set out in Section 9.6; and
- (c) retain or delete Usage Data in its sole discretion.

#### **10.4 Deletion on termination**

Upon expiry or termination of the Customer's subscription, retrieval and deletion of Customer Data will be in accordance with Section 13.4 .

#### **10.5 Liability for deletion**

The Customer acknowledges and agrees that Tensis is not liable to the Customer for any Loss or Consequential Loss in connection with deletion of Customer Data in accordance with this Section 10 and/or Section 13.4.

#### **10.6 Backups**

- (a) Tensis will ensure that any Customer Data hosted or stored in the Customer's Instance are routinely backed up.
- (b) Customer is solely responsible for backing up any Customer Data hosted or stored in its Customer Environment. To the fullest extent permitted by Law, Tensis will not be liable for any Loss or Consequential Loss arising out of or in connection with, any failure of the Customer to undertake such backups.

### **11 Privacy and security**

#### **11.1 Privacy**

- (a) Each party will comply with all applicable Privacy Laws when collecting, handling, storing, disclosing, or otherwise using any Personal Information in connection with this agreement.
- (b) Without limiting the Section above, the Customer agrees that Tensis may collect, handle, store, and/or disclose Personal Information in accordance with its Privacy Policy.
- (c) It is the Customer's responsibility to ensure that it has all necessary consents from, and make all necessary disclosures to, any person in respect of whose Personal Information is included in any Customer Data to permit such use and to permit disclosure of such information to Tensis for the purpose of the provision of Smarter Drafter Pro.

#### **11.2 Tensis security obligations**

Tensis will maintain commercially reasonable technical and organisational measures, including disaster recovery and business continuity procedures in accordance with Tensis' then current Security Fact Sheet and designed to:

- (a) ensure the security and integrity of Smarter Drafter Pro, the Customer Instance, and any Customer Data or Professional Data stored and/or hosted on Smarter Drafter Pro; and
- (b) protect against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Smarter Drafter Pro, the Customer Instance, and any Customer Data or Professional Services Data stored and/or hosted on Smarter Drafter Pro.

The Customer is solely responsible for making an independent determination about whether the technical and organisational measures meet the Customer's requirements.

### 11.3 Customer Environment access and obligations

- (a) The Customer is solely responsible for:
  - (i) the security, including the administrative, physical, and technical safeguards, of the Customer Environment;
  - (ii) the security of Customer Data stored and/or hosted on the Customer Environment; and
  - (iii) ensuring that the Customer Environment used to access Smarter Drafter Pro is compatible with any technical requirements set out in any Documentation and/or advised to the Customer by Tensis or a Partner, including that the builder functionality is only available on a Windows machine or a Windows Remote Desktop on a Macintosh.
- (b) From time to time, the Customer may grant Tensis remote access to the Customer Environment for Tensis to provide assistance under the Service Level Agreement, Professional Services and/or as otherwise agreed between the Parties. In respect of such access, Tensis:
  - (i) acknowledges that it is responsible for safe custody of any such part of the Customer Environment while in its possession, custody or control;
  - (ii) will comply with the Customer's reasonable instructions, policies, and requirements in respect of such access;
  - (iii) will not knowingly introduce any malware, virus, trap door, trojan horse, worm, self-destruction, disabling, lock out, metering device or any other

malicious code as such terms are understood in the computer industry to the Customer Environment;

- (iv) will not disclose to any other person any passwords or other access mechanisms supplied by you; and
  - (v) not access or attempt to access, including by way of connection (including wirelessly) any device or equipment to the Customer Environment without the Customer's prior written consent.
- (c) Except where caused by Tensis' breach of this agreement or negligent act or omission, the Customer is solely responsible for, and to the fullest extent permitted by Law, Tensis will not be liable for any Loss or Consequential Loss arising out of or in connection with, the Customer Environment and/or any inability of the Customer or its Authorised Users to access or use Smarter Drafter Pro and/or any features of it because of the Customer Environment.

#### **11.4 Data Breach notification**

Tensis will notify the Customer without undue delay, and in any event within 48 hours, upon becoming aware of any confirmed unauthorised access, use, disclosure, loss, alteration, or destruction of Customer Data hosted in the Customer Instance and/or any Eligible Data Breach in respect of any Personal Information (together, a Data Breach). The notification will include:

- (a) a description of the nature of the Data Breach, including the categories and approximate number of affected records and individuals (if known);
- (b) the likely consequences of the Data Breach; and
- (c) any remedial actions taken or proposed by Tensis to address the breach and mitigate any potential harm.

#### **11.5 Data Breach cooperation**

Tensis will cooperate with the Customer and provide reasonable assistance in investigating, mitigating, and remediating the Data Breach, including assisting with any notifications to regulators or affected individuals, where required by applicable Law including any applicable Privacy Laws.

#### **11.6 Data breaches within Customer Environment**

Except where caused by Tensis' breach of this agreement or negligent act or omission, the Customer is solely responsible for, and to the fullest extent permitted by Law, Tensis will not be liable for any Loss or Consequential Loss arising out of or in connection with, any Data Breach within the Customer Environment.

### **12 Confidentiality**

#### **12.1 Confidentiality obligations**

Each Party must keep all of the other Party's Confidential Information confidential and only use such information in accordance with this agreement.

## 12.2 Security

Each Party must have appropriate security measures in place that are designed to protect the other Party's Confidential Information against unauthorised access, disclosure or use.

## 12.3 Disclosure

A Party must not use or disclose the Confidential Information of the other Party except:

- (a) for the reasonable purposes of fulfilling its obligations under this agreement or as otherwise permitted by this agreement;
- (b) to its employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors, and professional advisors on a need-to-know basis, subject to ensuring that such persons understand and comply with the confidentiality obligations under this clause;
- (c) as required by law, subject to notifying the other party immediately if it becomes aware that such disclosure may be required; or
- (d) with the other party's prior written consent.

## 12.4 Unauthorised access

If a Party becomes aware of any unauthorised use or disclosure of the other Party's Confidential Information, that Party must:

- (a) immediately notify the other Party in writing;
- (b) take all steps which the other Party may reasonably require to remedy or prevent or stop the breach; and
- (c) provide assistance reasonably requested by the other Party in relation to any proceedings the other Party may take, or threaten to take, against any person for unauthorised use, copying or disclosure of Confidential Information.

A Party's obligation to take steps and/or provide assistance in accordance with the above will only be at its expense where the unauthorised use or disclosure to which such steps and/or assistance relates is a result of the Party's breach of this Section.

## 13 Termination

### 13.1 Mutual termination rights

In addition to any other express termination right set forth elsewhere in this agreement, either Party may terminate this agreement effective on written notice to the other Party, if the other Party:

- (a) materially breaches this agreement, and such breach:
  - (i) is incapable of cure; or
  - (ii) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach with specific reference to the non-breaching Party's right of termination under this Section 13.1.
- (b) ceases to operate, becomes insolvent, enters liquidation, file for bankruptcy, makes an assignment for the benefit of creditors, appoints a receiver, or is subject to any similar action.

### 13.2 Additional Customer termination right

In addition to the above, the Customer may terminate this agreement where Tensis gives you a notice under Section 1.1(a)(i) and the Customer does not agree to such proposed change to these Subscription Terms. If Tensis does not receive a notice in accordance with this clause, and the Customer continues, then the Customer agrees that it is deemed to have consented to the proposed change and the amended Subscription Terms.

### 13.3 Effect of expiration or termination

Upon any expiration or termination of this agreement (except as expressly otherwise provided in this agreement), the following will apply.

- (a) All rights, licenses, consents, and authorisations granted by either Party to the other under this agreement will immediately terminate.
- (b) Tensis will revoke the Customer's access to, and the Customer must cease all use of, any Services, Smarter Drafter Pro, and Documentation.
- (c) Each Party must return or securely destroy (at the other Party's option) the other Party's Confidential Information in its possession or control, except to the extent that it is:
  - (i) stored pursuant to a routine data back-up so long as the Confidential Information cannot be accessed by any persons; or
  - (ii) required to be kept by Party for the purpose of any legal or regulatory requirements, board minutes, investor reports, investment committee papers or because of an order from a court or an administrative or regulatory agency having competent jurisdiction or a recognised stock exchange, in which case such Confidential Information will remain subject

to all confidentiality, security, and other applicable requirements of this agreement.

- (d) Where the Order is placed by the Customer directly with Tensis (i.e., not via a Partner) and/or placed by a Partner on the Customer's behalf but the Fees are invoiced by, and paid directly to, Tensis as set out in Section 1.1(a)(i)(B), Tensis will invoice the Customer for, and the Customer must promptly pay, all outstanding Fees owing as at the date of expiry or termination. However, If the Customer terminates this agreement in accordance with Section 13.1 Tensis will refund to the Customer all pre-paid Fees for Services that Tensis has not performed as of the effective date of termination.
- (e) Where the Order is placed by a Partner on the Customer's behalf and the Fees are invoiced by, and paid directly to, the Partner, any fees payable or refundable on termination will be determined between the Customer, the Partner and Tensis on the same basis, being that Fees owing will be invoiced and pre-paid Fees for Services not performed will be refunded by the Partner.

#### **13.4 Customer Data on termination**

Upon termination or expiry of this agreement, the Customer will have 90 days to extract its Customer Data from the Customer Instance. After this period, Tensis may delete or archive the Customer Data at its discretion, subject to any Customer Data that Tensis reasonably determines it is required to retain for compliance, audit, and/or legal obligations.

#### **13.5 Surviving terms**

Sections 7.12, 13.3, 13.4, 13.5, 14.4, 14.5, 15, 16, and 19 of this agreement, as well as any other terms which are intended to survive termination or expiry, will survive any termination or expiration of this agreement.

### **14 Representations and warranties**

#### **14.1 Mutual representations and warranties**

Each Party represents and warrants to the other Party that:

- (a) it is duly organised, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organisation;
- (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorisations it grants or is required to grant under this agreement;
- (c) it will comply with all Laws applicable to its obligations under this agreement;
- (d) the formation of this agreement by its representative has been duly authorised by all necessary corporate or organisational action of such Party; and
- (e) this agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

#### **14.2 Additional Tensis representations, warranties and covenants**

Tensis represents, warrants and covenants to the Customer (and for the Customer's benefit only), during the Term, that:

- (a) Tensis will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognised industry standards for similar services and will devote adequate resources to meet its obligations under this agreement; and
- (b) Smarter Drafter Pro will perform substantially in accordance with the functions specified in the Documentation when under use by Authorised Users in a manner that conforms to the terms of this agreement and the Documentation.

#### **14.3 Additional customer representations, warranties and covenants**

The Customer represents, warrants and covenants to Tensis, during the agreement Term, that:

- (a) the Customer is responsible for use of the Services by Authorised Users, and for ensuring that Authorised Users comply with the terms of this agreement;
- (b) the Customer owns or otherwise has and will have the necessary rights and consents in and relating to Administrator Data, Customer Data, and Professional Services Data as necessary to grant the rights to Tensis contemplated by this agreement; and
- (c) Tensis' use of Administrator Data, Customer Data, and Professional Services Data under this agreement does not, and will not, cause Tensis to suffer any liability for violation of a third party's rights, or violation of any applicable Law.

#### **14.4 Disclaimer of warranties**

Except for the express warranties set forth in this agreement, all Services, Smarter Drafter Pro, Preloaded Content, APIs, and Documentation are provided "as is" and Tensis disclaims all warranties, whether express, implied, statutory or other, and Tensis specifically disclaims all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and all warranties arising from course of dealing, usage or trade practice. Without limiting the foregoing, Tensis makes no warranty of any kind that the Services, Smarter Drafter Pro, Preloaded Content, and Documentation, or any products or results of the use thereof, will operate without interruption, be compatible or work with any software, system or other services except if and to the extent expressly set forth in the Documentation, or be error free.

#### **14.5 Preloaded Content disclaimer**

At the time of upload into the Customer Instance, Tensis will use best endeavours to ensure that the Preloaded Content is accurate and aligned with then-current and applicable Laws. However, Tensis does not guarantee that the Preloaded Content will remain current, complete, or suitable for the Customer's specific needs. The Customer is responsible for determining whether the Preloaded Content is appropriate for its intended use and for making any necessary updates. Tensis may, from time to time, provide email notifications of

changes to court forms or other materials, but it remains the Customer's responsibility to monitor and implement any required updates once the Preloaded Content is uploaded into its Customer Instance.

## **15 Indemnification**

### **15.1 Tensis indemnification**

Tensis will indemnify, defend, and hold harmless the Customer from and against Losses incurred by the Customer arising out of or relating to any Action by a third party (other than an Affiliate of the Customer) to the extent that such Losses arise from use of the Services, Smarter Drafter Pro, Preloaded Content, and Documentation in compliance with this agreement that infringes an Intellectual Property Right of such third party. The foregoing obligation does not apply to the extent that any Action or Losses arise out of or relate to any:

- (a) access to or use of the Services, Smarter Drafter Pro, Preloaded Content, or Documentation in combination with any hardware, system, software, network or other materials or service not provided or authorised in the Documentation or otherwise in writing by Tensis;
- (b) modification of the Services, Smarter Drafter Pro (or any part of it), Preloaded Content, or Documentation other than:
  - (i) by or on behalf of Tensis; or
  - (ii) with Tensis' written approval in accordance with Tensis' written specification; or
- (c) any act or omission, and/or breach of this agreement, by the Customer.

### **15.2 Customer indemnification**

The Customer will indemnify, defend and hold harmless Tensis and its Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, an "Tensis Indemnitee") from and against Losses incurred by such Tensis Indemnitee in connection with any Action by a third party that arises out of or relates to Administrator Data, Customer Data, or Professional Services Data infringing the rights, including Intellectual Property Rights, of such third party.

### **15.3 Indemnification procedure**

The Party seeking indemnification (Indemnitee) will promptly notify the other Party (Indemnitor) in writing of any Action for which such Party believes it is entitled to be indemnified under Section 15.1 or Section 15.2. The Indemnitor will immediately take control of the defence and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee will cooperate with the Indemnitor, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 15.3 will not relieve the Indemnitor of its



obligations under this Section 15 unless the Indemnitor can demonstrate that it has been prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

#### **15.4 Mitigation**

At its option and sole cost and expense, Tensis is entitled to mitigate the risk or Losses of any actual or threatened infringement of any third party's Intellectual Property Right by:

- (a) obtaining the right for the Customer to continue to use the Services, Smarter Drafter Pro, Preloaded Content, and Documentation materially as contemplated by this agreement;
- (b) modifying or replacing the Services, Smarter Drafter Pro, Preloaded Content and Documentation, in whole or in part, to make the Services, Smarter Drafter Pro, Preloaded Content and Documentation (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services, Smarter Drafter Pro, Preloaded Content, and Documentation, as applicable, under this agreement; or
- (c) if options (a) or (b) are not commercially reasonable, by written notice to the Customer, terminating this agreement with respect to all or part of the Services, Smarter Drafter Pro, Preloaded Content and Documentation, requiring the Customer immediately to cease any use of the same, adjusting Fees going forward, and issuing the Customer a refund equal to the balance of any prepaid amount.

**15.5** This Section 15 sets forth the Customer's sole remedies and Tensis' sole liability and obligation for any actual, threatened, or alleged claims that this agreement or any subject matter of this agreement (including the Services, Smarter Drafter Pro, Preloaded Content, and Documentation) infringes, misappropriates or otherwise violates any third-party Intellectual Property Rights.

### **16 Limitations of liability**

#### **16.1 Exclusion of damages**

Except as otherwise provided in Section 16.4 and to the fullest extent permitted by Law, in no event will either party be liable for any Consequential Loss, indirect, incidental, special, or punitive Losses, loss of profits, business, business opportunities, reputation, turnover or revenue, loss of anticipated savings or wasted expenditure (including management time), loss, or liability under or in relation to any other contract, or loss of goodwill, in each case, whether direct or indirect, however caused, under any theory of liability, including, without limitation, contract, tort, warranty, negligence or otherwise, even if such Party has been advised as to the possibility of such damages. Some jurisdictions do not allow the limitation of incidental, consequential, or other damages.

#### **16.2 Exclusion of liability for Partners**

To the fullest extent permitted by law, the Customer acknowledges and agrees that:

- (a) Tensis is not responsible for, and will have no liability to the Customer in connection with, any act or omission of a Partner (including a Partner's failure to provide any support or professional services and/or failure to refund any Fees on termination); and
- (b) it releases Tensis from any claims, demands, liabilities, or damages arising out of or in connection with, will not seek any refund, compensation, or other remedies Tensis for, any act or omission of the Partner,

and any such matters must be directed solely to the Partner.

### **16.3 Cap on monetary liability**

Except as otherwise provided in Section 16.4 and to the fullest extent permitted by Law in no event will the aggregate liability of either Party under or in connection with this agreement or its subject matter, under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability and otherwise, exceed the value of all Fees paid by the Customer to Tensis or to a Partner (as applicable) under this agreement in respect of the Customer's subscription to Smarter Drafter Pro (excluding any Fees for Professional Services) during the 12 months preceding the act or omission alleged to give rise to such liability; and

### **16.4 Exceptions**

The exclusions and limitations in Section 16.1 and Section 16.2 do not apply to:

- (a) fraud or fraudulent misrepresentation of either Party;
- (b) the Customer obligations to pay any Fees under this agreement, including under Section 7 (Fees; Payment Terms); or
- (c) negligence of either Party causing death or personal injury.

## **17 Force majeure**

### **17.1 No breach or default**

In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached this agreement, for any failure or delay in fulfilling or performing this agreement, except for any payment obligation, when and to the extent such failure or delay is caused by a Force Majeure Event.

### **17.2 Affected party obligations**

In the event of any failure or delay caused by a Force Majeure Event, the affected Party shall give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimise the effects of such Force Majeure Event.

### **17.3 Termination**

Either Party may terminate this agreement if a Force Majeure Event continues uninterrupted for 90 consecutive days or more.

## **18 Variations**

### **18.1 Variations by Tensis**

The Customer acknowledges and agrees as follows.

- (a) Tensis may vary these Subscription Terms by giving you notice via email as follows.
  - (i) Where the variation relates to or impacts the Customer's ability to access and use Smarter Drafter Pro, the Customer's subscription, and/or either Party's warranties or liabilities under this agreement, Tensis will provide the Customer with 14 days' notice prior to such change taking effect.
  - (ii) All other changes will be effective from the date of notification.
- (b) Subject to Section 13.2, the Customer's continued use of Smarter Drafter Pro after the relevant effective date of notification will constitute acceptance of the amended Subscription Terms.
- (c) The date set out at the start of Subscription Terms will reflect the date that they were last updated.

## **19 Miscellaneous**

### **19.1 Further assurances**

Upon a Party's reasonable request, the other Party will, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions necessary to give full effect to this agreement.

### **19.2 Contractual relationship**

The Parties are entering into this agreement as independent contracting parties. Neither Party will have, or hold itself out as having, any right or authority to incur any obligation on behalf of the other Party. This agreement will not be construed to create an association, joint venture, or partnership between the Parties or to impose any partnership liability upon either Party.

### **19.3 Marketing**

The Customer agrees that Tensis may include the Customer's name and logo on Tensis' website and in Tensis' list of customers, press releases and other promotional materials subject to first obtaining the Customer's written consent (which may be obtained via email).

#### 19.4 Notices

- (a) A notice, consent or other communication under this agreement is only effective if it is in writing, and it is received in full and legible form at the addressee's email address set out in the Order.
- (b) Copies of notices sent by the Customer must also be sent to legal@tensis.com
- (c) A notice is deemed to have been received the earlier of when the sender receives an automated message confirming delivery or within 24 hours after the message has been sent (as recorded on the device from which the sender sent the message).

#### 19.5 Entire agreement

This agreement contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications.

#### 19.6 Assignment

This agreement may not be assigned, sublicensed or otherwise transferred by either Party, whether by operation of law or otherwise, without the other Party's prior written consent or as otherwise set out in this agreement, such consent not to be unreasonably withheld or delayed. Tensis may assign this agreement to an Affiliate on written notice to the Customer.

#### 19.7 No third-party beneficiaries

This agreement is for the sole benefit of the Parties and their respective permitted successors and permitted assigns and nothing, express, or implied, is intended to or shall confer upon any other entity or natural person any legal or equitable right, benefit, or remedy of any nature under or because of this agreement.

#### 19.8 Modification, amendment and waiver

Except as otherwise provided, no modification, amendment, or waiver of any provision of this agreement will be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is to be asserted.

#### 19.9 Severability

If any provision of this agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this agreement to affect the original intent of the Parties as closely as possible in a mutually acceptable manner so that the transactions contemplated may be consummated as originally contemplated to the greatest extent possible.

#### 19.10 Anti-corruption

Each Party agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other Party's employees, agents, or subcontractors in connection with this agreement. Each Party will use reasonable efforts promptly to notify the other Party should such Party learn of any violation of this restriction.

#### **19.11 Feedback**

Tensis welcomes suggestions, comments, and other feedback on the Services (Feedback) from all of its customers, as it helps Tensis to improve its products and services. If the Customer provides Tensis with Feedback, the Customer agrees that:

- (a) Tensis is not subject to any confidentiality obligations in respect to the Feedback;
- (b) the Feedback is not confidential or proprietary information belonging to the Customer or any third party and the Customer has all of the necessary rights to disclose the Feedback to Tensis;
- (c) Tensis may freely use Feedback without any restrictions; and
- (d) the Customer is not entitled to receive any compensation or reimbursement of any kind for Feedback.

#### **19.12 Governing law**

This agreement is governed by, and construed in accordance with, the laws of New South Wales, Australia.

#### **19.13 Jurisdiction**

- (a) Where the Customer has a registered address in, or is incorporated in, Australia, the Parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (b) Where the Customer is an individual or entity with a registered address in, or is incorporated in, a country other than Australia, the Parties agree that any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.