

DRAWBOARD

Terms and Conditions of Use

You should review our Privacy Policy and these Terms carefully and immediately cease using our websites, products and services if you do not agree to these Terms. By using our websites, products and services, you agree to these Terms.

Last Updated: 3rd of October 2016

1. Definitions

1.1 In this Agreement:

- 1.1.1 **Agreement** means these Terms and Conditions of Use (also called 'Terms' in this agreement), together with the Invoice and any other terms as referenced in these terms and conditions of use;
- 1.1.2 **Approved Purpose** means any approved purpose specified in the Invoice;
- 1.1.3 **Australian Consumer Law** means schedule 2 to the *Competition and Consumer Act 2010* (Cth);
- 1.1.4 **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment made;
- 1.1.5 **Commencement Date** means the commencement date specified in the Invoice;
- 1.1.6 **Copyright Act** means the *Copyright Act 1968* (Cth);
- 1.1.7 **Corporations Act** means the *Corporations Act 2001* (Cth);
- 1.1.8 **Customer** means the party entering into agreement with Drawboard under these Terms. Also referred to as 'you' in these Terms;
- 1.1.9 **Drawboard** means Drawboard Pty Ltd ACN 156 607 028, also referred to as 'us', 'our' and 'we' under these terms;
- 1.1.10 **Fee** means the fee specified in the Invoice or ;
- 1.1.11 **Insolvency Event** means the happening of any of these events in relation to a party (**Defaulting Party**):
 - (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$50,000 upon any of the Defaulting Party's property and is not satisfied, set aside or withdrawn within 7 days of its issue;
 - (b) an order for payment is made or judgment for an amount exceeding \$50,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
 - (c) the Defaulting Party suspends payment of its debts;
 - (d) where the Defaulting Party is a body corporate:
 - (i) the Defaulting Party becomes an externally-administered body corporate under the Corporations Act;
 - (ii) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
 - (iii) a controller (as defined in section 9 of the Corporations Act) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days); or

- (iv) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act; and
 - (e) where the Defaulting Party is a natural person:
 - (i) the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (ii) a person holding a security interest in assets of the Defaulting Party enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
 - (iii) the Defaulting Party commits an act of bankruptcy;
- 1.1.12 **Intellectual Property** means:
- (a) all Intellectual Property Rights subsisting in:
 - (i) the Software, the Trade Marks and any advertising and promotional materials provided to the Customer;
 - (ii) any modified, additional or substituted Intellectual Property; and
 - (iii) any other materials provided to the Customer by Drawboard during the Term, including but not limited to instructional materials, scripts and related documentation;
 - (b) anything created during the development of the things listed in clause 1.1.12(a) including software, HTML codes, CSS style sheets, Java Script Code, Adobe Flash Objects, source and object codes, scripts, records, documents, specifications, plans, program listings, designs, calculations and drawings; and
- 1.1.13 **Intellectual Property Goodwill** means all goodwill in or pertaining to the Intellectual Property as at the Commencement Date, and as developed or accumulated by the Customer subsequent to the Commencement Date;
- 1.1.14 **Intellectual Property Rights** means any:
- (a) copyright;
 - (b) design, patent, trademark, semiconductor, or circuit layout rights (whether registered, unregistered or applied for);
 - (c) trade, business, company or domain name; and
 - (d) know-how, inventions, processes, confidential information (whether in writing or recorded in any form);
- and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;
- 1.1.15 **Invoice** means the invoice provided by Drawboard to the Customer in respect of the licence of the Intellectual Property as set out in this Agreement;
- 1.1.16 **Non-Excludable Guarantee** means a non-excludable guarantee implied into this Agreement by the Australian Consumer Law;
- 1.1.17 **party** means a party to this Agreement;
- 1.1.18 **Related Entity** means a related entity as defined by the Corporations Act;
- 1.1.19 **Software** means any software owned or used under licence by Drawboard and licensed to the Customer under the terms of this Agreement, including both physical software and software accessed via a web application, and any website owned and operated by Drawboard;
- 1.1.20 **Term** means term specified in the Invoice, or communication from Drawboard pertaining to a trial of the Software, unless terminated earlier in accordance with this Agreement;
- 1.1.21 **Territory** means any territory specified in the Invoice; and

- 1.1.22 **Trade Marks** means the trade marks, logos, business names and trade names that may be registered or over which Drawboard claims common law protection or are otherwise used or adopted by Drawboard.
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2. Interpretation

2.1 In this Agreement:

2.1.1 reference to:

- (a) one gender includes the others;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a body corporate;
- (d) a party includes the party's executors, administrators, successors and permitted assigns;
- (e) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - (i) that Statutory Provision as amended or re-enacted from time to time;
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - (iii) another regulation or other statutory instrument made or issued under that Statutory Provision;
- (f) money is to US dollars, unless otherwise stated;

2.1.2 **including** and similar expressions are not words of limitation;

2.1.3 where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;

2.1.4 headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation;

2.1.5 a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement; and

2.1.6 if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

2.2 If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.

2.3 An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

2.4 A party which is a trustee is bound both personally and in its capacity as a trustee.

3. Grant

3.1 Drawboard grants to the Customer, and the Customer accepts, a royalty-free licence to use the Intellectual Property for any Approved Purpose within any specified Territory for the Term, on the terms set out in this Agreement.

3.2 The licence granted by clause 3.1 is not exclusive to the Customer and Drawboard may use the Intellectual Property in any manner it considers appropriate. This may include, but is not limited to, operating businesses using the Intellectual Property and licensing others to use the Intellectual Property inside and outside of any specified Territory.

4. Fee

In consideration for the licence granted by Drawboard to the Customer pursuant to clause 3, the Customer must pay the Fee.

5. Term

This Agreement commences on the first date of the Term period and continues for the Term.

6. Customer's general obligations

6.1 The Customer must:

- 6.1.1 only use the Intellectual Property for any Approved Purpose, and in accordance with the terms and conditions of this Agreement;
 - 6.1.2 not use the Intellectual Property outside of any specified Territory, or licence others to use the Intellectual Property inside or outside of any specified Territory;
 - 6.1.3 not sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Intellectual Property in any way or reverse engineer or access the Intellectual Property to:
 - (a) build a competitive product or service to the Software;
 - (b) build a product using similar ideas, features, functions or graphics of the Software; or
 - (c) copy any ideas, features, functions or graphics of the Software;
 - 6.1.4 use the Intellectual Property in a competent and professional manner in order to protect and increase the Intellectual Property Goodwill;
 - 6.1.5 not incur any liability on behalf of Drawboard, in any way pledge Drawboard's credit, accept any order, or make any contract binding upon Drawboard, without Drawboard's prior written approval;
 - 6.1.6 not modify or alter any of the Intellectual Property without the prior written consent of Drawboard;
 - 6.1.7 not cause the Intellectual Property to be prejudicially affected or contested;
 - 6.1.8 not use the Intellectual Property improperly;
 - 6.1.9 follow any reasonable directions of Drawboard in relation to the Intellectual Property; and
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7. Registration and ownership of Intellectual Property

- 7.1 The Customer agrees and acknowledges that all rights in and to the Intellectual Property and the Intellectual Property Goodwill remain under the control, and are the property, of Drawboard. The Customer does not acquire any right, title or interest in the Intellectual Property or the Intellectual Property Goodwill, except a bare licence as provided in this Agreement.
 - 7.2 The Customer must not register or record, or attempt to register or record, the Trade Marks or any trade marks, business or domain names, or designs derived from or similar to the Trade Marks or any other Intellectual Property (either alone or in combination with any word, name, symbol, device or character or aid) or aid anyone else in doing so, other than as expressly permitted by this Agreement or with the prior written consent of Drawboard.
 - 7.3 The Customer must immediately provide to Drawboard particulars of any use, of which the Customer is aware, by any other person of any of the Intellectual Property that may constitute passing off or may otherwise be an infringement of Drawboard's rights.
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8. Ownership of goodwill

The Customer will not obtain or accumulate any right, title or interest in the Intellectual Property Goodwill, other than the ability to use the Intellectual Property Goodwill on the terms set out in this Agreement for the Term. All Intellectual Property Goodwill remains the exclusive property of Drawboard and any change in the value of the Intellectual Property Goodwill during the Term remains exclusively with Drawboard.

9. Software modification

Drawboard reserves its right to modify, update or discontinue the Software (including any part or feature thereof) or its Fees at any time and at its sole discretion, without liability to the Customer or anyone else.

10. Termination

- 10.1 Drawboard may immediately terminate this Agreement by notice in writing to the Customer if:
 - 10.1.1 an Insolvency Event occurs in relation to the Customer; or
 - 10.1.2 the Customer breaches any provision of this Agreement, and fails to remedy that breach within 14 days of being provided with written notice of the breach by Drawboard.
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- 10.2 This Agreement may otherwise be terminated by written agreement between Drawboard and the Customer.
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11. Action upon Termination

- 11.1 Upon the termination or expiration of this Agreement:
- 11.1.1 all rights and licences of the Customer to use any of the Intellectual Property (including the Trade Marks and the Software) revert to Drawboard without the need for anything else to be done; and
- 11.1.2 the Customer must immediately:
- (a) stop:
 - (i) using and displaying in any manner, any of the Trade Marks or anything which imitates or is deceptively similar to these things; and
 - (ii) using the Software;
 - (b) at its own cost take down, destroy or deliver to Drawboard (at Drawboard's election) all:
 - (i) copies of the Software (contained in any medium) and once delivered to Drawboard, uninstall and destroy any copies of the Software electronically stored by the Customer; and
 - (ii) other things incorporating the Intellectual Property; and
 - (c) do everything necessary to cancel or transfer to Drawboard or its nominee all registrations relating to the Customer's use of the Intellectual Property and the Trade Marks, including providing all necessary keys and codes.
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12. Transfer by Drawboard

- 12.1 Drawboard may assign all or any part of its rights, interests, obligations or liabilities under this Agreement by assignment or novation.
- 12.2 The Customer consents to Drawboard at any time assigning or novating any of its rights, interests, obligations or liabilities under this Agreement and waives any requirement for prior notice of such assignment or novation.
- 12.3 If Drawboard elects to assign all or any part of its rights, interests, obligations or liabilities under this Agreement, the Customer will execute any deed, agreement or notice of assignment acknowledging and agreeing to such assignment by Drawboard.
- 12.4 If Drawboard elects to transfer all or any part of its rights, interests, obligations or liabilities under this Agreement by novation, the Customer will execute a deed or agreement of novation, in a form prepared by Drawboard, substituting in place of Drawboard a third party as being entitled and responsible for the rights, obligations and liabilities of Drawboard under this Agreement.
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13. Transfer by the Customer

- 13.1 The Customer may not assign or novate or sublicense to a third party any of the Customer's rights, interests, obligations or liabilities under this Agreement.
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14. Liability

- 14.1 Except in respect of any Non-Excludable Guarantee, neither party is liable to the other party for any indirect, special or consequential loss or damage incurred by the other party, including liability for loss of profits, loss of business opportunity, loss of savings, or loss of data howsoever incurred in relation to the Customer's use or inability to use the Software.
- 14.2 Except in respect of any Non-Excludable Guarantee, to the maximum extent permitted by law (and if permitted by law), Drawboard will not have any liability to the Customer for any loss or damage howsoever incurred in relation to the Customer's use or inability to use the Software.
- 14.3 To the extent that the licence of Intellectual Property by Drawboard to the Customer constitutes the supply of goods or services, those goods or services may come with implied non-excludable guarantees which are regulated by the Australian Consumer Law. The extent of the implied guarantees depend on whether the Customer is a 'consumer' of goods or services within the meaning of that term pursuant to the Australian Consumer Law as amended. Where the Customer is a 'consumer' for the purposes of the Australian Consumer
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Law, Drawboard is required to provide the following mandatory statement to the Customer: *“Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.”*

- 14.4 If any goods or services supplied by Drawboard to the Customer are supplied to the Customer in its capacity as a ‘consumer’ of goods or services within the meaning of that term in the Australian Consumer Law as amended the Customer will have the benefit of certain non-excludable rights and remedies in respect of the goods or services and nothing in this Agreement excludes or restricts or modifies any condition, warranty, guarantee, right or remedy which pursuant to the *Competition and Consumer Act 2010* (Cth) is so conferred. However, if the goods or services are subject to a non-excludable condition, warranty, guarantee, right or remedy implied by the Australian Consumer Law and the goods or services are not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to s 64A of the Australian Consumer Law, Drawboard limits its liability for breach of any such non-excludable warranty, guarantee, right or remedy implied by the Australian Consumer Law or expressly given by Drawboard to the Customer, in respect of each of the goods and services, where it is fair and reasonable to do so, at Drawboard’s option, to one or more of the following:
- 14.4.1 if the breach relates to goods:
- (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of such goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (d) the payment of the cost of having the goods repaired; and
- 14.4.2 if the breach relates to services:
- (a) the supplying of the services again; or
 - (b) the payment of the cost of having the services supplied again.
- 14.5 In order for the Customer to claim against Drawboard under a non-excludable warranty, guarantee, right or remedy provided by the Australian Consumer Law, or under an express warranty given in respect of the goods or services provided under this Agreement, the Customer must provide written notice to Drawboard with documentary evidence substantiating the claim, for Drawboard’s review.
- 14.6 Upon receipt of a valid claim from the Customer under an implied warranty, guarantee, right or remedy provided by the Australian Consumer Law, Drawboard will contact the Customer to arrange a suitable remedy. The Customer may claim reasonable expenses incurred in making a valid claim under such a warranty, guarantee, right or remedy by providing documentary evidence of the expenses to Drawboard. The Customer will be responsible for any expenses incurred in relation to an invalid claim.
- 14.7 Any warranty against defects provided by Drawboard to the Customer in its capacity as a ‘consumer’ under the Australian Consumer Law is in addition to the Customer’s other rights and remedies under a law in relation to the goods or services to which the warranty relates.
- 14.8 Except with respect to any Non-Excludable Guarantees, all conditions, warranties and guarantees implied in this Agreement are excluded, to the extent possible by law.

15. Confidentiality

- 15.1 The parties acknowledge that the terms of this Agreement are strictly confidential (**Private Information**).
- 15.2 Except as stated in this Agreement, each party must not and must not permit any of its officers, employees, agents, contractors or Related Entities to disclose any Private Information to any person, other than its professional advisers or as required by law, without the prior written consent of the party to whom the Private Information relates.
- 15.3 This clause 15 operates for the benefit of all parties and continues despite the termination of this Agreement.

16. Power of Attorney

- 16.1 The Customer irrevocably appoints Drawboard and each of its officers jointly and each of them severally to be the Customer's attorney (**Attorney**) to exercise the powers described in this clause 16.
- 16.2 The Attorney may, in the name of the Customer, do anything required to be done by the Customer which the Customer has not done or has not done promptly or properly. This includes the execution and delivery of documents, transfers, assignments, deeds, forms, notices or other instruments.
- 16.3 The powers granted under this clause 16 commence when this Agreement is executed and continue despite the expiration or earlier termination of this Agreement.
- 16.4 The Customer ratifies and confirms anything an Attorney lawfully does under this clause 16 and must pay on demand all the costs or other liabilities incurred by or on behalf of Drawboard under this clause 16.
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17. Goods and Services Tax

- 17.1 In this clause 17:
- 17.1.1 **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation or regulations;
- 17.1.2 words used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- 17.1.3 any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
- 17.1.4 if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- 17.2 Regardless of any other provision of this Agreement, if GST is imposed on any supply made to the Customer under this Agreement the amount which the Customer must pay for that supply is increased by the amount of that GST.
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18. Notices

- 18.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
- 18.2 In addition to any other method of service provided by law, the Notice may be:
- 18.2.1 sent by prepaid post to the address of the addressee set out in this Agreement or subsequently notified;
- 18.2.2 sent by facsimile to the facsimile number of the addressee;
- 18.2.3 sent by email to the email address of the addressee; or
- 18.2.4 delivered at the address of the addressee set out in this Agreement or subsequently notified.
- 18.3 If the Notice is sent or delivered in a manner provided by clause 18.2, it must be treated as given to and received by the party to which it is addressed:
- 18.3.1 if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
- 18.3.2 if sent by facsimile or email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- 18.3.3 if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 18.4 Despite clause 18.3.2:
- 18.4.1 a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
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- 18.4.2 an email message is not treated as given or received if the sender's computer reports that the message has not been delivered; and
 - 18.4.3 a facsimile or email message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.
- 18.5 A Notice sent or delivered in a manner provided by clause 18.2 must be treated as validly given to and received by the party to which it is addressed even if:
- 18.5.1 the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent;
 - 18.5.2 the Notice is returned unclaimed; or
 - 18.5.3 in the case of a Notice sent by email, the email message is not delivered or opened (unless the sender's computer reports that it has not been delivered).
- 18.6 Any Notice by a party may be given and may be signed by its solicitor.
- 18.7 Any Notice to a party may be given to its solicitor by any of the means listed in clause 18.2 to the solicitor's business address or facsimile number.
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19. General clauses

- 19.1 Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.
- 19.2 This Agreement is the entire agreement and understanding between the parties on everything connected with its subject matter, and supersedes any prior agreement or understanding on anything connected with that subject matter.
- 19.3 Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.
- 19.4 An amendment or variation to this Agreement is not effective unless it is in writing and executed by the parties.
- 19.5 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 19.6 The law of Victoria governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and the Federal Court of Australia (sitting in Melbourne) and agree that any lawsuit must be heard in those courts.
- 19.7 Time is of the essence of this Agreement. If the parties agree to vary a time requirement, the time requirement so varied is of the essence of this Agreement. An agreement to vary a time requirement must be in writing.
- 19.8 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force. If anything in this Agreement is unenforceable, illegal or void in one jurisdiction but not in another jurisdiction, it is severed only in respect of the operation of this Agreement in the jurisdiction where it is unenforceable, illegal or void.
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20. Registration and eligibility

You may need to be a registered member to make orders, access our products or access certain features of the Software.

When you register and activate your account, you will provide Drawboard with personal information such as your name and email address. You must ensure that this information is accurate and current. We will handle all personal information we collect in accordance with our Privacy Policy.

When you register and activate your account, you will nominate an email account and password (Credentials). You are responsible for keeping these credentials secure and are responsible for all use and activity carried out under your account.

To create an account, you must be:

- at least 18 years of age;
- possess the legal right and ability to enter into a legally binding agreement with us; and
- agree and warrant to use the website, products and services in accordance with these Terms.

21. Collection Notice

Drawboard collects personal information about you in order to provide you access to our Products, communicate with you, and for purposes otherwise set out in our Privacy Policy.

We may disclose that information to third parties that help us deliver our Products (including parties such as information technology suppliers, communication suppliers and our business partners) or as required by law. If you do not provide this information, we may not be able to provide all of our Products to you. We may also disclose your personal information to recipients that are located outside of Australia, including to technology partners and vendors.

Our Privacy Policy explains: (i) how we store and use, and how you may access and correct your personal information; (ii) how you can lodge a complaint regarding the handling of your personal information; and (iii) how we will handle any complaint and (iv) other information. If you would like any further information about our privacy policies or practices, please contact us at privacy@drawboard.com.

By providing your personal information to us, you consent to the collection, use, storage and disclosure of that information as described in the Privacy Policy and these Terms.

22. Privacy

By agreeing to these Terms, you also agree and consent to all terms and policy in Drawboard's Privacy Policy (www.drawboard.com/terms). The Privacy Policy governs all personal information you provide to us.

23. Accuracy, completeness and timeliness of information

The information on our website is not comprehensive and is intended to provide a summary of the subject matter covered. While we use all reasonable attempts to ensure the accuracy and completeness of the information on our website, to the extent permitted by law, including the Australian Consumer Law, we make no warranty regarding the information on this website. You should monitor any changes to the information contained on this website.

We are not liable to you or anyone else if interference with or damage to your computer systems occurs in connection with the use of Drawboard Software or a linked website. You must take your own precautions to ensure that whatever you select for your use from our Software is free of viruses or anything else (such as worms or Trojan horses) that may interfere with or damage the operations of your computer systems.

We may, from time to time and without notice, change or add to the website (including these Terms) or the information, Software, products or services described in it. However, we do not undertake to keep the website updated. We are not liable to you or anyone else if errors occur in the information on the website or if that information is not up-to-date.

24. Promotions and competitions

For certain campaigns, promotions or contests, additional terms and conditions may apply. If you want to participate in such a campaign, promotion or contest, you need to agree to the relevant terms and conditions applicable to that campaign, promotion or contest. In case of

any inconsistency between such terms and conditions and these Terms, those terms and conditions will prevail.

25. Linked sites

Our websites and Software may contain links to websites operated by third parties. Those links are provided for convenience and may not remain current or be maintained. Unless expressly stated otherwise, we do not endorse and are not responsible for the content on those linked websites and have no control over or rights in those linked websites.

26. Unacceptable activity

You must not do any act that we would deem to be inappropriate, is unlawful or is prohibited by any laws applicable to our Software, including but not limited to:

- any act that would constitute a breach of either the privacy (including uploading private or personal information without an individual's consent) or any other of the legal rights of individuals;
- any act that would constitute a breach of copyright or intellectual property laws;
- using the Software to defame or libel us, our employees or other individuals;
- uploading files that contain viruses that may cause damage to our property or the property of other individuals;
- posting or transmitting to the Software any non-authorized material including, but not limited to, material that is, in our opinion, likely to cause annoyance, or which is defamatory, racist, obscene, threatening, pornographic or otherwise or which is detrimental to or in violation of our systems or a third party's systems or network security.

If we allow you to post or upload or send any information, files or data to our Software, we have the right to take down this information and delete it at our sole discretion and without notice.