

This End User Licence Agreement (**EULA**) is a legal agreement between you and us, Burnology Pty Ltd. Please review the terms carefully.

EULA

1. Acceptance of EULA

- 1.1 By installing, copying, registering to or using Burnology | Unite, you agree to be bound by the full terms of this EULA.
- 1.2 You must not use Burnology | Unite if you do not agree to the EULA.

2. Registration

- 2.1 You must apply for registration to access and use Burnology | Unite.
- 2.2 When you apply for registration, you must:
 - (a) pay the Fee for the Term;
 - (b) provide correct details for registration; and
 - (c) only register for yourself or someone you have the authority to consent to the EULA on their behalf.
- 2.3 You are responsible for all activity that occurs via your account and you have the sole responsibility to keep your username and password safe.
- 2.4 We may refuse your registration application without providing any reason.

3. Fees

- 3.1 We will only grant you the Licence (as defined in clause 5.1) if you pay us the Fee at or before the commencement of the Term.
- 3.2 We reserve the right to increase the Fee if costs outside of our control increase (including any taxes, government charges, licence fees and third party costs).
- 3.3 All prices are exclusive of GST unless otherwise indicated.

4. Recurring Charges

- 4.1 This clause only applies if you agreed to automatically renew your Licence.
- 4.2 You agree:
 - (a) that we may continue to automatically renew your Licence every Renewal Term until you terminate it; and
 - (b) to authorise us to charge the Fee at the commencement of every Renewal Term.

Fees May Change for Recurring Charges

- 4.3 We reserve the right to increase the Fee before your Licence is renewed.
- 4.4 You agree to pay and authorise us to charge the increased Fee for the next Renewal Term if we notify you of the increased Fee at least 14 days in advance of the next Renewal Term.

Discontinuation of Recurring Subscription

- 4.5 You may notify us before the end of the Term to discontinue automatically renewing your Licence.

4.6 If you discontinue your automatic Licence renewal, your Licence terminates at the end of the Term.

5. General Use

5.1 We grant you a non-exclusive, non-transferable, non-sublicensable, revocable and limited licence to use Burnology | Unite during the Term (**Licence**).

5.2 You must not sub-licence, assign or novate your rights and obligations of the Licence or this EULA to a third party without our written agreement.

Conditions of Licence

5.3 Your Licence is limited:

- (a) to the agreed number of simultaneous Active Incident Hubs; and
- (b) for use with the agreed number of other users.

5.4 You must not use Burnology | Unite:

- (a) in excess of the permitted number of simultaneous Active Incident Hubs; or
- (b) share or transfer your account or Licence to another person without our written permission.

Compliance with the Licence

5.5 We may inspect your records, systems and facilities to verify that your use of the Licence is compliant with this EULA. You agree that:

- (a) we may inspect by providing you 7 days' notice;
- (b) you will provide us with all relevant records and information within 14 days from the date that we request to verify your compliance with the Licence and this EULA; and
- (c) if the verification reveals that you are in breach of the Licence or the EULA, you must pay our reasonable costs of conducting the verification and any additional Fees we are entitled to.

Unacceptable use

5.6 In accessing and using Burnology | Unite, you must not:

- (a) cause damage or interfere with accessibility to Burnology | Unite;
 - (b) use it in connection with illegal, fraudulent or harmful purposes or activities;
 - (c) alter, digitise, merge, modify, adapt, reproduce, replicate, translate, decompile, reverse engineer or disassemble Burnology | Unite; or
 - (d) store, transmit or distribute any Malicious Computer Program.
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6. Alterations to Burnology

6.1 We may modify, update, or discontinue a part or whole of the Services or Burnology | Unite at any time without Liability to you or anyone else. We will make reasonable endeavours to notify you before we make the change.

6.2 If we discontinue Burnology | Unite in its entirety, then we will provide you with a pro rata refund for any unused Fees for that Service that you may have prepaid, less our reasonable administration costs.

7. Intellectual Property Rights

Our Intellectual Property

7.1 We retain ownership of all Intellectual Property in Burnology | Unite or are otherwise licensed to use such Intellectual Property.

7.2 Subject to clause 7.3, we grant you a limited, non-exclusive, revocable licence to use the Intellectual Property in Burnology

| Unite during your subscription for purposes reasonably related to the Services.

- 7.3 You must not, without our express consent:
- (a) republish;
 - (b) present in public;
 - (c) reproduce or exploit for commercial purposes; or
 - (d) redistribute,
- any of our Intellectual Property.

We own all Intellectual Property created

- 7.4 You absolutely and unconditionally assign to us all right, title and interest in all Intellectual Property rights in any Data you upload to or create via Burnology | Unite from time to time, and you agree to:
- (a) waive any moral rights in such Intellectual Property; and
 - (b) execute all necessary documents to effect the assignment of the Intellectual Property rights to us.
- 7.5 You:
- (a) irrevocably agree to transfer any Intellectual Property to us that have not been fully assigned in accordance with this EULA; and
 - (b) until the assignments are fully effected, grant us worldwide, royalty-free, sub-licensable, sole and exclusive licence to use such Intellectual Property for any use.
- 7.6 We grant you a limited, non-exclusive, revocable licence to use the Data you provide us for purposes reasonably related to the Services during the Term.
- 7.7 By uploading to or creating any Data, you warrant that:
- (a) you have the right to provide the Data in the manner it is uploaded or created;
 - (b) the Data is correct, accurate and complete to the best of your knowledge; and
 - (c) have the right to assign or license copyright and other Intellectual Property to us in accordance with the EULA.
- 7.8 You irrevocably and forever indemnify us against all Claims by a third party for Liability arising out of or in relation to your Data uploaded or created in Burnology | Unite.
- 7.9 We are not responsible or liable in any way for loss of the Data uploaded or created in Burnology | Unite.

8. Third Party Material

- 8.1 In this clause, **Third Party Material** means any Data that a third party provides within Burnology | Unite.
- 8.2 We do not verify, endorse or approve Third Party Material.
- 8.3 We provide no warranty or representation about Third Party Material:
- (a) regarding the quality, accuracy, merchantability or fitness for purpose of Third Party Material or products or services available from Third Party Website; or
 - (b) as to whether they infringe any intellectual property rights.
- 8.4 We disclaim all Liability arising out of or in relation to all Claims regarding your use or reliance on the Third Party Material.

9. Security

- 9.1 For credit card transactions we use a third party processor and/or payment gateway so that:
- (a) payments are processed in real time; and
 - (b) we do not have access to your credit card numbers.

- 9.2 We use database management systems to store any personal information we collect and it contains security features, such as encryption, firewall and anti-virus, to ensure the protection and integrity of our data.

10. Termination

- 10.1 This EULA is effective until it is terminated in accordance with its terms.

Termination at the end of the Term

- 10.2 The EULA terminates at the end of the Term unless you renew or extend the Term.

Our termination

- 10.3 We may, at our discretion, suspend or terminate your subscription and your access to Burnology | Unite immediately at anytime if you:

- (a) breach any condition of the EULA including unacceptable use in clause 5;
- (b) use Burnology | Unite in excess of your permitted number of simultaneous Active Incident Hubs or users;
- (c) transfer your account to a third party or share your account with a third party;
- (d) cause damage or interfere with accessibility of Burnology | Unite or our business;
- (e) store, transmit or distribute Malicious Computer Programs;
- (f) breach our Intellectual Property Rights; or
- (g) upload any information or Data on Burnology | Unite that:
 - (i) is unlawful or promotes illegal behaviour;
 - (ii) is harmful, threatening, abusive or harassing;
 - (iii) incites violence or is graphical of violence;
 - (iv) is pornographic or exploits people in a sexual manner;
 - (v) is defamatory or libellous;
 - (vi) relates to gambling;
 - (vii) relates to alcohol;
 - (viii) promotes racism, bigotry, hatred, physical harm or any other discriminatory behaviour;
 - (ix) is false, misleading or fraudulent;
 - (x) consists of Malicious Computer Program;
 - (xi) impersonates any person or entity or falsely misrepresents your affiliation with a person or entity;
 - (xii) violates or encourages violation of this EULA;
 - (xiii) infringes or violates another's rights including copyrights or intellectual property rights;
 - (xiv) invades another's privacy;
 - (xv) includes any photograph or image of another person or another person's property without their consent;
 - (xvi) reveals anyone's identification documents or sensitive financial information;
 - (xvii) is posted to disrupt the operation of Burnology | Unite; or
 - (xviii) advertises any company or their goods or services other than ours.

- 10.4 We may record and monitor all communications, electronic or otherwise, on Burnology | Unite to ensure your compliance with the EULA.

- 10.5 If we suspend or terminate your subscription and your access to Burnology | Unite, you:

- (a) will be notified that your account has been terminated, or suspended for a specified period of time;
- (b) will not be able to access Burnology | Unite; and
- (c) will forfeit your right to all payments pre-paid prior to termination.

Your termination

- 10.6 You may terminate the EULA and your subscription to Burnology | Unite at anytime by providing written notice to us.

- 10.7 If you terminate this EULA, you will forfeit your right to all payments pre-paid prior to termination.

11. Refund Policy

- 11.1 We will refund the Fees for any breach of the guarantee under the Australian Consumer Law, or as set out in these EULA.
- 11.2 We will refund Fees for Services if under the Australian Consumer Law:
- (a) our service is not provided with due care and skill;
 - (b) our service is not fit for any specified purpose;
 - (c) Service is not provided within reasonable amount of time for Service that has no specified delivery date; or
 - (d) there is a breach of any other warranties or rights you have under any legislation.
- 11.3 You must provide us with necessary information to process your request for refund including the reason you are requesting the refund.
- 11.4 We may need to conduct an assessment of your request and our Service to:
- (a) in case of minor failure – at our discretion, either provide repair, refund or pay you the difference in the service you received and what you paid for; or
 - (b) in case of major failure – at your discretion, provide repair, refund or pay you the difference in the service you received and what you paid for.

12. Disclaimer of warranty

No Warranty

- 12.1 Burnology | Unite and the Services are provided 'as is'.
- 12.2 To the fullest extent permitted by law, we exclude all express or implied representation, warranties or terms and we do not in any way warrant:
- (a) hours of availability of Burnology | Unite;
 - (b) uninterrupted access to Burnology | Unite;
 - (c) that Burnology | Unite will be free from errors or defects, or that they will be corrected;
 - (d) merchantability, fitness for a particular purpose and non-infringement;
 - (e) accuracy or validity of any Data on Burnology | Unite including those provided by users of Burnology | Unite; and
 - (f) that any data will be free from Malicious Computer Programs.
- 12.3 We disclaim any Liability for any actions resulting from your use of any Services or Burnology | Unite. You may use and access the Services or Burnology | Unite at your risk, and you are solely responsible for any damage to your computer system or loss of any Data that results from the use and access of any Service or Burnology | Unite.
- 12.4 No information on Burnology | Unite constitutes professional advice of any kind.

Implied Terms

- 12.5 This Agreement includes, by implication, only those warranties, conditions and terms that:
- (a) law or legislation implies into this Agreement; and
 - (b) law or legislation prohibits the parties from modifying, excluding or contracting away.

13. Limitation of Liability

- 13.1 Unless otherwise agreed in writing, we are not liable for any Liability to you or any third party for any:
- (a) loss of use, Data, goodwill or profits;
 - (b) special, incidental, indirect, consequential, or punitive Liability whatsoever, whether or not you informed us of the possibility.
- 13.2 To the fullest extent permitted by law, our aggregate Liability in any way, whether under this contract or negligence, to you

must not exceed the amount of the Fee you paid in the last 3 months immediately prior to the date of the claim.

13.3 To the fullest extent permitted by law, our Liability for any breach of any condition, warranty or guarantee (including any condition, warranty or guarantee implied, including those under sub-clause 12.5) is limited to:

- (a) if the breach relates to goods:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or acquiring equivalent goods;
 - (iv) the payment of having goods repaired; or
 - (v) a refund of the Purchase Price you have paid to us in respect of any damaged Goods; or
- (b) if the breach relates to services:
 - (i) re-supplying services;
 - (ii) paying the reasonable costs of re-supplying the services; or
 - (iii) refunding the portion of the Purchase Price that you have paid to us in respect of any services.

13.4 Nothing in this agreement will exclude or limit our ability in respect of any:

- (a) fraud or fraudulent misrepresentation;
- (b) matter which it would be illegal or unlawful for us to exclude or limit, or attempt to or purport to exclude or limit, its liability.

14. Indemnity

14.1 You indemnify us against any and all Liability (including negligence) arising out of or in connection with:

- (a) any third party Claims against us arising out of or in relation to your use of Burnology | Unite except to the extent of our negligence;
- (b) your use of Burnology | Unite to supply service to a third party, or your supply of Burnology | Unite to a third party;
- (c) your use of the Services contrary to any of our instructions or directions; and
- (d) a breach of this EULA by you or your directors, employees, agents or subcontractors.

15. Resolution of Disputes

15.1 Subject to sub-clause 15.2, the Parties must not file any initiating process with any court in respect of any dispute arising out of this Agreement (**Dispute**) until:

- (a) they have complied with sub-clause 15.4; or
- (b) if the Dispute has been referred to mediation in accordance with sub-clause 15.5, those mediation proceedings end.

15.2 Sub-clause 15.1 does not apply to applications for urgent injunctive, declaratory or other interlocutory or equitable relief before an appropriate court.

15.3 If a Party believes that there is a Dispute, that Party may notify the other Party, in writing, of the nature and substance of the Dispute.

15.4 The Parties must attempt to resolve any Dispute notified under sub-clause 15.3 through good faith negotiations.

15.5 If any Party believes that the Dispute has not been resolved in accordance with sub-clause 15.4 within 20 Business Days of notice being given in accordance with sub-clause 15.3, they may give the other Party a written notice requiring that the Dispute be referred to mediation.

15.6 If the Dispute is referred to mediation in accordance with sub-clause 15.5, the mediator will be as agreed between the Parties or such other person as appointed by the President of the Law Society of the Jurisdiction specified in subclause 17.1.

15.7 Each Party in the Dispute must pay an equal share of the costs of mediation.

16. No Waiver

Method of Waiver

16.1 A Party waives a right under this Agreement only by giving written notice that it waives that right.

Limitation of Waiver

16.2 A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past instances).

No deemed Waiver

16.3 A right is not impaired or waived by:

- (a) a failure to exercise that right;
 - (b) a delay in exercising that right;
 - (c) a partial exercise of that right;
 - (d) a previous exercise of that right; or
 - (e) negotiations between the Parties.
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17. Jurisdiction

17.1 This Agreement is governed by the laws of the Australian Capital Territory of Australia.

17.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of the Australian Capital Territory of Australia.

17.3 No Party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

18. Severability

18.1 If all or any part of any provision of this Agreement is invalid or unenforceable, then:

- (a) that provision is severed from this Agreement to the extent necessary to remove the invalidity or illegality; and
 - (b) the remaining provision of this Agreement remains valid and enforceable.
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19. Survival of Certain Terms

19.1 The terms of this Agreement which are capable of having effect after this Agreement ends continue to have full effect, including clauses in relation to:

- (a) protection of intellectual property;
 - (b) post-agreement restraints; and
 - (c) guarantees, warranties, indemnities and limitation of liability.
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20. Interpretation

20.1 In this Agreement, unless the contrary intention appears:

- (a) a reference to this Agreement or any instrument includes any variation or replacement of any of them;
- (b) a reference to a person includes a body corporate, joint venture, association, government body, firm and any other entity;
- (c) a reference to legislation includes any amendments to it, any legislation substituted for it, and any subordinate legislation made under it;
- (d) the singular includes the plural and vice versa;
- (e) words of one gender include any gender;

- (f) headings do not affect the interpretation of this Agreement;
- (g) reference to a Party includes that Party's personal representatives, successors and permitted assigns;
- (h) reference to a thing (including a right) includes a part of that thing;
- (i) if a Party comprises two or more persons:
 - (i) reference to a Party means each of the persons individually and any two or more of them jointly;
 - (ii) a promise by that Party binds each of them individually and all of them jointly;
 - (iii) a right given to that Party is given to each of them individually; and
 - (iv) a representative, warranty or undertaking by that Party is made by each of them individually;
- (j) a provision must not be construed against a Party only because that Party prepared it;
- (k) a provision must be read down to the extent necessary to be valid and if it cannot be read down to that extent, it must be severed;
- (l) if a thing is to be done on a day which is not a Business Day, it must be done on the Business Day before that day;
- (m) another grammatical form of a defined expression has a corresponding meaning;
- (n) the word "include" is used without any limitation;
- (o) the rights, duties and remedies in this Agreement operate to the extent that they are not excluded by law; and
- (p) examples are descriptive only and not exhaustive.

21. Definitions

21.1 Unless the context otherwise requires:

- (a) **Active Incident Hub** means the data storage structure in Burnology | Unite that users may store data and information regarding an incident or an emergency.
- (b) **Agreement** means this EULA and any schedules and annexures to it, as amended and substituted from time to time.
- (c) **Australian Consumer Law** means Schedule 2 of *Competition and Consumer Act 2010* (Cth).
- (d) **Business Day** means a day except a Saturday or Sunday or other public holiday.
- (e) **Burnology | Unite** means the software provisionally titled Burnology | Unite as developed from time to time, and includes its related services and products.
- (f) **Claim** means any claim, suit, action, demand, or right.
- (g) **Data** means any material uploaded to or created via Burnology | Unite including any location information, data, image, photo, writing, information, or any other form.
- (h) **Consequential Loss** includes all forms of indirect loss including loss of revenue, loss of profits, failure to recognise profits or savings and any other commercial and economic loss, howsoever caused.
- (i) **Fee** means the money and other consideration as we determine from time to time that you are obligated to pay to us for the right to use our Service.
- (j) **GST** has the meaning given in the GST Act.
- (k) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (l) **Intellectual Property** means all existing or future species of industrial and intellectual property, whether registered or unregistered, registrable or not:
 - (i) as defined in Article 2 of the World Intellectual Property Organisation (WIPO) Convention; or
 - (ii) recognised by any statute or any principle of law or equity, including copyrights, patents, designs, trade marks, circuit layout rights, confidential information, trade secrets and the right to register all such intellectual or industrial property rights.
- (m) **Malicious Computer Program** includes programs that contain viruses, Trojan horses, worms or any other computer programming that may damage, modify, delete, detrimentally interfere with, access without authority or expropriate any system, data or personal information.
- (n) **Liability** means responsibility for any loss (either direct or indirect), damage, or expense and includes liability for Consequential Loss.
- (o) **Licence** means the licence defined in subclause 5.1.
- (p) **Party** means a person or entity who executes this Agreement.
- (q) **Parties** mean all the persons or entities who execute this Agreement.
- (r) **Renewal Term** means the length of period that you agree to renew your Licence.
- (s) **Term** means the period that we agree to licence you to use Burnology | Unite in consideration for payment of the

- Fee.
- (t) **Third Party Material** has the meaning defined in subclause 8.1.
 - (u) **EULA** means the EULA set out in this document as amended from time to time.
 - (v) **Service** means the goods and services we provide to users under this EULA including the Licence.
 - (w) **We** (with capitals or not) means Burnology Pty Ltd and its related corporations, successors and assigns and the words "us" and "our" have corresponding meanings.
 - (x) **You** (with capitals or not) means the user of this Burnology | Unite and the words "your" and "yours" have the corresponding meaning.