

Hyra iQ

BLENKTECH PTY LTD ABN 12 620 650 553

TERMS OF SERVICE

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INTRODUCTION

Welcome to Hyra iQ. Blenktech Pty Ltd ABN 12 620 650 553 trading as Hyra iQ (**Company**) operates the Hyra iQ digital contracting platform for parties to produce, negotiate and execute contracts. Use of Hyra iQ is subject to the terms and conditions of these Terms of Service.

DEFINITIONS

The following terms are used regularly throughout these Terms of Service and have a particular meaning:

- (a) **ABN** means Australian Business Number.
- (b) **ACN** means Australian Company Number.
- (c) **Account** means a User's registered account in Hyra iQ.
- (d) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane, Australia.
- (e) **Company** means Blenktech Pty Ltd ABN 12 620 650 553.
- (f) **Contract** means a negotiable document uploaded to Hyra iQ by a Customer.
- (g) **Customer** means a party granted a Customer Licence by the Company to use Hyra iQ.
- (h) **Customer Account** means a Customer's the registered account in Hyra iQ.
- (i) **Customer Licence** has the meaning given in clause 1.2.
- (j) **Deal** means a virtual space in Hyra iQ where Customers may collaborate over one or more Contracts for a single matter.
- (k) **Fees** mean any fees payable to the Company for access to or use of Hyra iQ, as agreed in writing from time-to-time.
- (l) **Force Majeure** means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party:
 - i Act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions;
 - ii Act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
 - iii The effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and
 - iv Embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.
- (m) **Fee** means the either fee charged for access to and use of Hyra iQ.

- (n) **GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (o) **Hyra iQ** means the Company's suite of tools, applications and services, known together as "Hyra iQ", licensed to the Customer and/or Users under these Terms of Service.
- (p) **Insolvency Event** means the occurrence of any of the following:
- i if a party is an individual:
- the individual has a bankruptcy notice issued against it;
 - a receiver or a trustee for creditors or in bankruptcy is appointed to any of the individual's property;
 - the individual proposes or entered into an arrangement, composition or compromise with or for the benefit of creditors or any class of them;
 - the individual stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
 - the individual is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law; or
 - anything analogous or having a substantially similar effect to the events specified above occurs in relation to the person; or
- ii if a party is a body corporate:
- the body corporate is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
 - the body corporate becomes unable to pay its debts as they fall due or is unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth);
 - the body corporate enters into any arrangement with creditors;
 - an application or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator, to the body corporate or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the body corporate otherwise than for the purpose of an amalgamation or reconstruction that has the prior consent of all Shareholders;
 - the body corporate becomes subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001* (Cth), including having a receiver or administrator appointed over all or any part of its assets; or
 - anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified above occurs in relation to a party, including the court appointment of a receiver.

- (q) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property.
- (r) **Intellectual Property Rights** means, for the duration of the rights in any part of the world, any Moral Rights, industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.
- (s) **Moral Rights** means:
 - i Moral rights pursuant to the *Copyright Act 1968* (Cth);
 - ii Or any rights analogous to the rights set out in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works 1886* (as amended from time to time).
- (t) **Playbook** means the Customer-specific, customisable negotiation methodologies relating to certain Contract types, stored in, managed and implemented through Hyra iQ.
- (u) **Privacy Act** means the *Privacy Act 1989* (Cth).
- (v) **Privacy Policy** means the Company's privacy policy as updated from time-to-time, accessible at hyraiq.com/privacy
- (w) **Site** means the website found at hyraiq.com
- (x) **Third Party Data** means any data provided into Hyra iQ through a Third Party Service by the operator of that Third Party Service.
- (y) **Third Party Services** means any of the Customer's third party service account connected to and/or integrated with Hyra iQ.
- (z) **Tax Invoice** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (aa) **User** means any person that uses Hyra iQ and includes the Customer as relevant.
- (bb) **User Content** means all information, data, documents and other such materials inserted, uploaded or created in Hyra iQ, including (without limitation) Contracts and Playbooks, but does not include any ideas, feedback, suggestions, statistical or other usage information or insights drawn by the Company in respect of the Users use of Hyra iQ.
- (cc) **User Licence** has the meaning given in clause 1.1.

1 LICENCE TO USE HYRA IQ

1.1 User Licence

- (a) To use Hyra iQ, a User must register and maintain an Account.
- (b) The Company grants the User a limited, revocable, worldwide, non-exclusive licence to use Hyra iQ in accordance with these Terms of Service (**User Licence**).

- (c) The User agrees:
 - i To use Hyra iQ in accordance with the terms of these Terms of Service; and
 - ii That access to and use of any Contract and/or Deal is subject to these Terms of Services.

1.2 Customer Licence

- (a) The Company grants the Customer a limited, revocable, worldwide, non-exclusive licence to use Hyra iQ in accordance with these Terms of Service, subject to the payment of any agreed Fees (**Customer Licence**).
- (b) The Company and the Customer may agree on any other terms of the Customer Licence in writing from time-to-time.
- (c) Where the User establishes a Customer Account on behalf of Customer, the User warrants that it has the authority to do so.
- (d) The User indemnifies the Company for any liability, damage, loss or expense caused by the User's breach of clause 1.2(c).
- (e) By creating a Customer Account, the Customer agrees:
 - i To pay the Fees in accordance with the pricing on the Site from time-to-time as and when they fall due, and for each User it authorises on its Account (if applicable); and
 - ii That it is responsible for the conduct of each User it authorises, who each must enter into and comply with these Terms of Service.

1.3 Licence Conditions

The Company may offer various features and inclusions based on each licence type as advertised and/or notified to the Customer and/or User.

1.4 Term

- (a) The licences granted under these Terms of Service shall be ongoing until terminated in accordance with the terms of these Terms of Service.
- (b) **User Licences**

A party to the User Licence may terminate these Terms of Service at any time by giving the other party no less than 30 days' written notice.
- (c) **Customer Licences**

A party to the Customer Licence may terminate these Terms of Service (at the end of the agreed fixed-term, if any) by giving no less than 30 days' written notice.
- (d) **Termination for Cause**

Either party may terminate these Terms of Service on immediate written notice where the other party:

 - i Is in breach of these Terms of Service and that breach has not been remedied within 5 Business Days of receiving notice of that breach;

- ii Is in breach of these Terms of Service and that breach is incapable of remedy;
- iii Has wilfully, recklessly and/or repetitiously breached these Terms of Service; or
- iv Suffers an Insolvency Event.

2 USING HYRA IQ

2.1 General

- (a) Customers may produce Contracts and Deals in Hyra iQ.
- (b) The Customer may invite and/or authorise Users to create and access Deals and/or produce, negotiate and/or execute a Contract, which for clarity may include Users internal and external to the Customer (for example representatives of a party to a Contract).
- (c) The Customer is responsible for what level of access or use any User has to a Contract.
- (d) Users are responsible for arranging any obligations of confidentiality in respect of the Contract or Deal if so required. These Terms of Service do not impose any obligations of Confidentiality upon Users in respect of Contracts.
- (e) The Company is not responsible or liable for any Contract or its content.

2.2 Playbooks

- (a) Customers with appropriate Account permissions may be able to create and/or access Playbooks.
- (b) The Customer acknowledges and agrees that:
 - i Any wording contained in a Playbook is established by the Customer, is customisable and within the Customer's absolute control;
 - ii Hyra iQ may display certain Playbook responses as potentially relevant to assist a User to complete Contract negotiations in a Deal;
 - iii Playbook responses displayed by Hyra iQ may not be relevant, appropriate or in the Customer's best interests;
 - iv The Customer's Users make decisions within Hyra iQ on how to conduct a Deal and are solely responsible for those decisions; and
 - v In no circumstances will the Company be liable for a User's use or reliance upon any Playbook.

2.3 Execution

- (a) If a Contract is able to be executed from within Hyra iQ, it is the responsibility of the Users to ensure that it can be legally signed electronically.
- (b) The Company makes no representations or warranties as to the legality of digital signatures.

3 USER CONTENT

3.1 The User acknowledges and agrees that:

- (a) Hyra iQ may enable the User to create User Content, but that by doing so the User shall not acquire an interest to any Intellectual Property owned by the Company which may exist in Hyra iQ.
- (b) User Content is the sole responsibility of the person that provided the User Content to Hyra iQ.
- (c) The User indemnifies the Company for any User Content that is illegal, offensive, indecent or objectionable that the User makes available using Hyra iQ.
- (d) The Company may suspend accessibility to User Content via Hyra iQ that the Company determines is illegal, offensive, indecent or objectionable in its sole discretion.
- (e) To the extent permitted by law, under no circumstances will the Company be liable in any way for User Content.
- (f) The User warrants that it has all necessary Intellectual Property Rights to use User Content and shall indemnify the Company for any infringement the User commits of third-party Intellectual Property Rights by using User Content on Hyra iQ.
- (g) The Company may delete User Content on termination of a User's Account.
- (h) The Customer irrevocably authorises the Company to collect, use, analyse or otherwise use User Content (including the Customer's use of User Content) to maintain and improve Hyra iQ.

4 PAYING FOR HYRA IQ

4.1 Fees

Unless agreed otherwise in writing, Fees shall be payable monthly in advance. The Company shall provide the Customer with a Tax Invoice for the Fees.

4.2 Currency

All Fees are quoted in Australian dollars, however transactions may be processed in an equivalent foreign currency (such as US dollars or British pounds).

4.3 GST

For Customers in Australia, GST is applicable to any Fees charged by the Company. Unless expressed otherwise, all Fees shall be deemed inclusive of GST. The Company will provide the Customer with a Tax Invoice for any payments.

4.4 Refunds

- (a) No refunds of Fees are offered other than as required by law or as set out in these Terms of Service.

- (b) Where the Company terminates a Customer Account for convenience, then the Company shall provide the Customer with a pro-rata refund of any Fees paid in advance.
- (c) Where the Customer terminates its Customer Account for convenience, or the Company terminates it for breach under clause 1.4(d), then no refunds shall be provided for Fees paid in advance.

4.5 Late Payment.

- (a) If the Customer does not pay the full Fees as required, the Company may suspend all User access to Hyra iQ for that Customer Account.
- (b) For clarity, failure to pay Fees shall constitute a breach of these Terms of Service for which the Company may terminate the Customer's Account in Hyra iQ pursuant to 1.4(d).
- (c) The User agrees that the Company shall not be responsible or liable in any way for:
 - i Interruptions to the availability of Hyra iQ in the event of (a);
 - ii Loss of User Content in the event of (b).
- (d) Overdue payment shall incur penalty interest at 1.5% per month.

4.6 Suspension

- (a) The Company may suspend a Customer Account (and the Accounts of any of its Users) should any Fees be outstanding to the Company at any time, which shall prevent any User having access to any Contracts, Deals or User Content under that Customer Account.
- (b) Each User agrees that the Company shall not be liable in any way for any valid termination or suspension of a Customer Account in Hyra iQ.

5 GENERAL CONDITIONS

5.1 Misuse of Hyra iQ

- (a) The Company may revoke or suspend User Licence for any misuse of Hyra iQ, including for breach of the terms and conditions in these Terms of Service by the User.
- (b) The Company is not liable to any User for enforcing its rights under clause (a).

5.2 Modification of Terms

- (a) The terms of these Terms of Service may be updated by the Company from time-to-time by giving Users reasonable written notice.
- (b) Users will be required to accept the modified terms in order to continue using Hyra iQ.

5.3 Software-as-a-Service

- (a) The User acknowledges and agrees that Hyra iQ is:

- i Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and
 - ii Managed and supported exclusively by the Company from the Company servers and that no 'back-end' access to Hyra iQ is available to the User unless expressly agreed in writing.
- (b) As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter Hyra iQ.

5.4 Support

- (a) The Company provides User support for Hyra iQ via the email address support@hyraiq.com.
- (b) The Company shall endeavour to respond to all support requests within 1 Business Day.

5.5 Use & Availability

- (a) The User agrees that it shall only use Hyra iQ for legal purposes and shall not use it to engage in any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its absolute discretion.
- (b) The User is solely responsible for the security of its username and password for access to Hyra iQ. The User shall notify the Company as soon as it becomes aware of any unauthorised access of its Hyra iQ account.
- (c) The User agrees that the Company shall provide access to Hyra iQ to the best of its abilities, however:
 - i Access to Hyra iQ may be prevented by issues outside of the Company's control; and
 - ii The Company accepts no responsibility for ongoing access to Hyra iQ.

5.6 Privacy

- (a) The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and other customers.
- (b) The Privacy Policy does not apply to how the Customer or User handles personal information. If necessary under the Privacy Act, it is the Customer's responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.
- (c) Hyra iQ may use cookies (a small electronic file) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.

5.7 Data

- (a) **Security.** The Company takes the security of Hyra iQ and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.

- (b) **Transmission.** The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.
- (c) **Storage.** Data that is stored by the Company shall be stored according to accepted industry standards.
- (d) **Backup.** The Company shall perform backups of its entire systems in such manner, at such times and intervals as is reasonable for its business purposes. The Company does not warrant that it is able to backup or recover specific User Content from any period of time unless so agreed in writing by the Company.

5.8 Intellectual Property

- (a) **Trademarks.** The Company has moral and registered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- (b) **Proprietary Information.** The Company may use software, other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third party rights through the use of Hyra iQ.
- (c) **Hyra iQ.** The User agrees and accepts that Hyra iQ is the Intellectual Property of the Company and the User further warrants that by using Hyra iQ the User will not:
 - i Copy Hyra iQ or the services that it provides for the User's own commercial purposes; and
 - ii Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in Hyra iQ or any documentation associated with it.
- (d) **Content.** All content (excluding User Content) submitted to the Company, whether via Hyra iQ or directly by other means, becomes and remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to Hyra iQ.

5.9 Disclaimer of Third Party Services & Information

- (a) The User acknowledges that the Company relies on certain Third Party Services in order to operate Hyra iQ.
- (b) The User agrees that the Company shall not be responsible or liable in any way for:
 - i Interruptions to the availability of Hyra iQ due to Third Party Services; or
 - ii Information contained on any linked third party website.

5.10 Confidentiality

The Company agrees to keep all User Content in the strictest confidence, and to the extent User Content is accessed and/or received by the Company it shall be deemed as Confidential Information for the purposes of these Terms of Service.

5.11 Marketing

- (a) Unless the Customer notifies the Company in writing that it does not want its name used in the Company's marketing, the Company may identify the Customer as a Hyra iQ customer in the Company's marketing materials.
- (b) If a notice is received under clause 5.11(a):
 - i the Company shall not include the Customer in any future printed customer lists, provided the Company will not be required to modify any existing printed materials; and
 - ii the Company will remove Customer's name from any online materials within a reasonable period, not exceeding 30 days.

5.12 Liability & Indemnity

- (a) The User agrees that it uses Hyra iQ at its own risk.
- (b) The User acknowledges that the Company is not responsible for the conduct or activities of any User and that the Company is not liable for such under any circumstances.
- (c) The Company makes no warranty in respect of:
 - i Any Contract, Deal or User Content;
 - ii The suitability of Hyra iQ for purpose so used by the User;
 - iii The proper use of any Contract by any User.
- (d) The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with Hyra iQ, including any breach by the User of these Terms of Service.
- (e) Where the User is authorised by the Customer, the Customer and User agree they are jointly and severally liable for the indemnity under clause (d).
- (f) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, personal injury, death, damage to property, loss of property, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, use of, or inability to use Hyra iQ, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, loss, personal injury or death, or business interruption of any type, whether in tort, contract or otherwise.
- (g) Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:
 - i The re-supply of services or payment of the cost of re-supply of services; or

- ii The replacement or repair of goods or payment of the cost of replacement or repair.

5.13 Force Majeure

- (a) If a party is prevented in whole or in part from carrying out its obligations under these Terms of Service as a result of Force Majeure, it will promptly notify the other party accordingly. The notice must:
 - i Specify the obligations and the extent to which it cannot perform those obligations;
 - ii Fully describe the event of Force Majeure;
 - iii Estimate the time during which the Force Majeure will continue; and
 - iv Specify the measures proposed to be adapted to remedy or abate the Force Majeure.
- (b) Following a notice of Force Majeure in accordance with clause 5.13 and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended, other than obligations to pay money that is due and payable
- (c) The party that is prevented from carrying out its obligations under these Terms of Service as a result of Force Majeure must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- (d) The party that is prevented from carrying out its obligations under these Terms of Service as a result of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by the other party as a result of the party's failure to carry out its obligations under these Terms of Service.
- (e) The term of these Terms of Service will not be extended by the period of Force Majeure

5.14 Effect of Termination

- (a) Termination of these Terms of Service is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of these Terms of Service up to the date of expiry or termination.
- (b) Termination does not affect any of the rights accrued by a party prior to termination, and the rights and obligations under clauses 5.9, 5.10, 5.12, 5.15 and 5.16 survive termination of these Terms of Service.

5.15 Dispute Resolution

- (a) If any dispute arises between the parties in connection with these Terms of Service (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:
 - i Includes or is accompanied by full and detailed particulars of the Dispute; and
 - ii Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.

- (b) Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) parties must meet (virtually or otherwise) and seek to resolve the Dispute.
- (c) Subject to clause (d), a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- (d) Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- (e) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under these Terms of Service and any related agreements.

5.16 Electronic Communication, Amendment & Assignment

- (a) The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- (b) The User can direct notices, enquiries, complaints and so forth to the Company as set out in these Terms of Service. The Company will notify the User of a change of details from time-to-time.
- (c) The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.
- (d) A consent, notice or communication under these Terms of Service is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- (e) Notices must be sent to the parties' most recent known contact details.
- (f) The User may not assign or otherwise create an interest in these Terms of Service.
- (g) The Company may assign or otherwise create an interest in its rights under these Terms of Service by giving written notice to the User.

5.17 General

- (a) **Special Conditions.** The parties may agree to any Special Conditions to these Terms of Service in writing.
- (b) **Prevalence.** To the extent these Terms of Service are in conflict with, or inconsistent with, the terms of a Master Services Agreement, or any Special Conditions made under these Terms of Service, as relevant, the terms of the Master Services Agreement or Special Conditions shall prevail (as the case may be).
- (c) **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in these Terms of Service.
- (d) **Relationship.** The relationship of the parties to these Terms of Service does not form a joint venture or partnership.
- (e) **Waiver.** No clause of these Terms of Service will be deemed waived and no breach excused unless such waiver or consent is provided in writing.

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- (f) **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to these Terms of Service and the transaction facilitated by it.
- (g) **Governing Law.** These Terms of Service is governed by the laws of Queensland Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- (h) **Severability.** Any clause of these Terms of Service, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of these Terms of Service.

END TERMS OF SERVICE