



## SAAS TERMS OF SERVICE

### 1 APPLICATION OF TERMS

- 1.1 **Application and agreement:** These Terms apply to your use of the Service (as that term is defined below). By *clicking [I accept]*
- a you agree to these Terms; and
  - b where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.
- 1.2 **If you do not agree:** If you do not agree to these Terms, you are not authorised to access and use the Service, and you must immediately stop doing so.

### 2 CHANGES

- 2.1 **Changes to Terms:** We may change these Terms at any time by notifying you of the change by email or by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the Service from the date that the Terms are changed, you agree to be bound by the changed Terms.
- 2.2 **Terms last updated:** These Terms were last updated on 22 August 2016.

### 3 INTERPRETATION

- 3.1 **Definitions:** In these Terms, the following terms have the stated meaning:

Term	Meaning
Confidential Information	any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the Service. Our Confidential Information includes Intellectual Property owned by us (or our licensors), including the [insert name] Software. Your Confidential Information includes the Data.



Term	Meaning
Data	all data, content, and information (including Personal Information) owned, held, used or created by you or on your behalf that is stored using, or inputted into, the Service.
Fees	the applicable fees set out on our pricing page on the Website at <a href="http://www.bullrush.io/pricing/">www.bullrush.io/pricing/</a> or as agreed otherwise in writing between you and us, as may be updated from time to time in accordance with clause 7.4.
Force Majeure	<p>an event that is beyond the reasonable control of a party, excluding:</p> <ul style="list-style-type: none"> <li>▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or</li> <li>▲ a lack of funds for any reason.</li> </ul>
Intellectual Property Rights	includes copyright and all rights anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. <b>Intellectual Property</b> has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.
MicroManager and or BullRush Software	the software owned by us (and our licensors) that is used to provide the Service
Objectionable	includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.
<i>Permitted Users</i>	<i>your personnel who are authorised to access and use the Service on your behalf in accordance with clause 5.3</i>
Personal Information	has the meaning given in the Privacy Act 1993.
Service	the service having the functionality described on the Website, as the Website is updated from time to time.



Term	Meaning
Start Date	the date that you <i>set up an account</i> .
Terms	these terms titled SaaS Terms of Service.
Underlying Systems	the MicroManager and or BullRush Software, IT solutions, systems and networks (including software and hardware) used to provide the Service, including any third-party solutions, systems and networks.
we, us or our	means the company described in clause 13.10 and includes, where appropriate in the context, all current and future related companies.
Website	the internet site at <a href="http://www.bullrush.io">www.bullrush.io</a> , or such other site notified to you by us.
Year	a 12-month period starting on the Start Date or the anniversary of that date.
you or your	you or, if clause 1.1b applies, both you and the other person on whose behalf you are acting.

### 3.2 Interpretation: In these Terms:

- a clause and other headings are for ease of reference only and do not affect the interpretation of these Terms;
- b words in the singular include the plural and vice versa; and
- c a reference to:
  - i a **party** includes that party's permitted assigns;
  - ii **personnel** includes officers, employees, contractors and agents, but a reference to your personnel does not include us;
  - iii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
  - iv **including** and similar words do not imply any limit; and



- v a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

## 4 PROVISION OF THE SERVICE

4.1 **General:** We will use best efforts to provide the Service:

- a in accordance with these Terms and New Zealand law;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

4.2 **Non-exclusive:** Our provision of the Service to you is non-exclusive. Nothing in these Terms prevents us from providing the Service to any other person.

4.3 **Availability:**

- a [*Subject to clause 4.3b,*] We will use reasonable efforts to ensure the Service is available on a 24/7 basis. However, it is possible that on occasion the Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. We will use reasonable efforts to publish on the Website *and notify you by email* advance details of any unavailability.
- b *Through the use of web services and APIs, the Service interoperates with a range of third party service features. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third-party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of a third-party feature, you are not entitled to any refund, discount or other compensation.*

## 5 YOUR OBLIGATIONS

5.1 **General use:** You and your personnel must:

- a use the Service in accordance with these Terms solely for:
  - i your own internal business purposes; and
  - ii lawful purposes and



- b not resell or make available the Service to any third party, or otherwise commercially exploit the Service.

**5.2 Access conditions:** When accessing the Service, you and your personnel must:

- a not impersonate another person or misrepresent authorisation to act on behalf of others or us;
- b correctly identify the sender of all electronic transmissions;
- c not attempt to undermine the security or integrity of the Underlying Systems;
- d not use, or misuse, the Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Service;
- e not attempt to view, access or copy any material or data other than:
  - i that which you are authorised to access; and
  - ii to the extent necessary for you to use the Service in accordance with these Terms; and
- f neither use the Service in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading.

**5.3 Personnel:**

- a A breach of any of these Terms by your personnel (*including, to avoid doubt, a Permitted User*) is deemed to be a breach of these Terms by you.

**5.4 Authorisations:** You are responsible for procuring all licences, authorisations and consents required for you and your personnel to use the Service, including to use, store and input Data into, and process and distribute Data through, the Service.

**5.5 Consequences of unauthorised use:** Without limiting any other right or remedy available to us, if we consider that you or your personnel have used the Service in a manner, or transmitted, input or stored any Data, that breaches or may breach these Terms or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading, we may:

- a limit or suspend your and/or your personnel's access to the Service; and/or
- b delete, edit or remove the relevant Data.



## 6 DATA

### 6.1 Our access to Data:

- a You grant us a worldwide, non-exclusive, royalty-free, perpetual, irrevocable licence to access, use, copy, modify, anonymise, make available or otherwise deal with the Data for the purpose of:
  - i the exercise of our rights and performance of our obligations under these Terms; or
  - ii any analytical or data aggregation services we provide, provided that where we make the Data available to any third party it will be on an anonymised and aggregated basis.
- b You must arrange all consents and approvals that are necessary for us to access the Data as described in clause 6.1a.

### 6.2 Agent:

- a You acknowledge and agree that to the extent Data contains Personal Information, in collecting, holding and processing that information through the Service, we are acting as your agent for the purposes of the Privacy Act 1993 and any other applicable privacy law.
- b You must obtain all necessary consents from the relevant individual to enable us to collect, use, hold and process that information in accordance with these Terms.

**6.3 Data Downloads:** While we will take standard industry measures to back up all Data stored using the Service, you agree to regularly to export or download a copy of all Data stored using the Service.

**6.4 International storage of Data:** *You agree that we may store Data (including any Personal Information) in secure servers in New Zealand, United States of America, Canada, Brazil, Ireland, Germany, Singapore, Japan, Australia, South Korea, China & India and may access that Data (including any Personal Information) in United States of America, Canada, Brazil, Ireland, Germany, Singapore, Japan, Australia, South Korea, China & India and New Zealand from time to time.*

**6.5 Indemnity:** You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.



## 7 FEES

7.1 **Fees:** You must pay us the Fees.

### 7.2 Invoicing and payment:

- a We will provide you with valid tax invoices on a *monthly* basis 10 days prior to the due date for payment.
- b The Fees exclude GST, which you must pay on taxable supplies.
- c You must pay the Fees:
  - i in accordance with the payment terms set out on our pricing page on the Website / *[Payment Terms: BullRush invoices will be sent to the administration contact you specified and whose details you provided on sign up. Clients are required to make payment via Credit Card, or AP. You will receive the invoice 10 days prior to being charged. In all instances you must make payment or arrange payment of all amounts specified in any invoice by the due date for payment. ]*; and
  - ii electronically in cleared funds without any set-off or deduction.

7.3 **Overdue amounts:** We may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by our primary trading bank as at the due date (or, if our primary trading bank ceases to quote that rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.

### 7.4 Increases:

- a We may increase the Fees by giving at least 30 days' notice.
- b If you do not wish to pay the increased Fees, you may terminate your right to access and use the Service on no less than 10 days' notice, provided the notice is received by us before the effective date of the Fee increase. If you do not terminate your right to access and use the Service in accordance with this clause, you are deemed to have accepted the increased Fees.



## 8 INTELLECTUAL PROPERTY

### 8.1 Ownership:

- a Subject to clause 8.1b, title to, and all Intellectual Property Rights in, the Service, the Website, and all Underlying Systems is and remains the property of us (and our licensors). You must not dispute that ownership.
- b Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with these Terms.

8.2 **Know-how:** You grant us a royalty-free, transferable, irrevocable and perpetual licence to use any know-how, techniques, ideas, methodologies, and similar Intellectual Property that you provide to us for the purpose of providing the Service to you.

8.3 **Feedback:** If you provide us with ideas, comments or suggestions relating to the Service or Underlying Systems (together **feedback**):

- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
- b we may use or disclose the feedback for any purpose.

8.4 **[Third party sites and material:** *You acknowledge that the Service may link to third party websites or feeds that are connected or relevant to the Service. Any link from the Service does not imply that we endorse, approve or recommend, or have responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.*

## 9 CONFIDENTIALITY

9.1 **Security:** Each party must, unless it has the prior written consent of the other party:

- a keep confidential at all times the Confidential Information of the other party;
- b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 9.1a and 9.1b.



- 9.2 **Permitted disclosure:** The obligation of confidentiality in clause 9.1a does not apply to any disclosure or use of Confidential Information:
- a for the purpose of performing a party's obligations, or exercising a party's rights, under these Terms;
  - b required by law (including under the rules of any stock exchange);
  - c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
  - d which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
  - e by us if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

## 10 WARRANTIES

- 10.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into, and perform its obligations, under these Terms.
- 10.2 **No implied warranties:** To the maximum extent permitted by law:
- a we make no representation concerning the quality of the Service and do not promise that the Service will:
    - i meet your requirements or be suitable for a particular purpose, *including that the use of the Service will fulfil or meet any statutory role or responsibility you may have;* or
    - ii be secure, free of viruses or other harmful code, uninterrupted or error free.
- 10.3 **Consumer Guarantees Act:** You agree:
- a and represent that you are acquiring the Service, and accepting these Terms, for the purpose of a business; and
  - b that the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Service or these Terms.
- 10.4 **Limitation of remedies:** Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is



deemed to be included in these Terms. However, our liability for any breach of that condition or warranty is limited, at our option, to:

- a supplying the Service again; and/or
- b paying the costs of having the Service supplied again.

## 11 LIABILITY

**11.1 Maximum liability:** Our maximum aggregate liability under or in connection with these Terms or relating to the Service, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed *an amount equal to the Fees paid by you relating to the Service in the previous Year (which in the first Year is deemed to be the total Fees paid by you from the Start Date to the date of the first event giving rise to liability)*.

**11.2 Unrecoverable loss:** Neither party is liable to the other under or in connection with these Terms or the Service for any:

- a loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

**11.3 Unlimited liability:**

- a Clauses 11.1 and 11.2 do not apply to limit our liability under or in connection with these Terms for:
  - i personal injury or death;
  - ii fraud or wilful misconduct; or
  - iii a breach of clause 9.
- b Clause 11.2 does not apply to limit your liability:
  - i to pay the Fees;
  - ii under the indemnity in clause 6.5; or
  - iii for those matters stated in clause 11.3ai to 11.3aiii.

**11.4 No liability for other's failure:** Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.



11.5 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms or the Service.

## 12 TERM, TERMINATION AND SUSPENSION

12.1 **Duration:** Unless terminated under this clause 12, your right to access and use the Service:

- a starts on the Start Date; and
- b continues until a party gives [*insert period, e.g. 30 days*] notice that your access to and use of the Service will terminate on the expiry of that notice.

12.2 [**Minimum Term:** *If the subscription option you have selected includes a minimum initial term, the earliest date for termination will be the expiry of that initial term.*]

12.3 **Other termination rights:** Either party may, by notice to the other party, immediately terminate your right to access and use the Service if the other party:

- a breaches any material provision of these Terms and the breach is not:
  - i remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
  - ii capable of being remedied; or
- b becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.

12.4 **Consequences of termination:**

- a Termination of your right to access and use the Service does not affect either party's other rights and obligations that accrued before that termination.
- b On termination of your right to access and use the Service, you must pay all Fees for the provision of the Service prior to that termination.
- c No compensation is payable by us to you as a result of termination of your access to and use of the Service for whatever reason, and you will not be entitled to a refund of any Fees that you have already paid.
- d Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of your right to access and use the Service, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.



- e At any time prior to one month after the date of termination, you may request:
  - i a copy of any Data stored using the Service, provided that you pay our reasonable costs of providing that copy. On receipt of that request, we will provide a copy of the Data in a common electronic form. We do not warrant that the format of the Data will be compatible with any software; and/or
  - ii deletion of the Data stored using the Service, in which case we must use reasonable efforts to promptly delete that Data.

To avoid doubt, we are not required to comply with clause 12.4ei to the extent that you previously requested deletion of the Data or that any of the Data falls within one of the categories set out in clauses 9.2c and 9.2d.

**12.5 Obligations continuing:** Clauses which, by their nature, are intended to survive termination of your right to access and use the Service, including clauses 6.5, 8, 9, 11, 12.4 and 12.5 , continue in force.

**12.6 Suspending access:** Without limiting any other right or remedy available to us, we may restrict or suspend your access to the Service where you (including any of your personnel):

- a undermine, or attempt to undermine, the security or integrity of the Service or any Underlying Systems;
- b use, or attempt to use, the Service:
  - i for improper purposes; or
  - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Service; or
- c Have failed to pay any amount due to us or have otherwise materially breached these Terms (in our reasonable opinion).

## 13 GENERAL

**13.1 Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure.

**13.2 Rights of third parties:** No person other than us and you has any right to a benefit under, or to enforce, these Terms.

**13.3 Waiver:** For us to waive a right under these Terms, that waiver must be in writing and signed by us.

**13.4 Independent contractor:** Subject to clause 6.2, we are an independent contractor of yours, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.



- 13.5 Notices:** If we need to contact you, we may do so by email or by posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications.
- 13.6 Severability:** Any illegality, unenforceability or invalidity of a provision of these Terms does not affect the legality, enforceability or validity of the remaining provisions of these Terms.
- 13.7 Variation:** Subject to clauses 2.1 and 7.4a, any variation to these Terms must be in writing and signed by both parties.
- 13.8 Entire agreement:** These Terms set out everything agreed by the parties relating to the Service, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the Service that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986.
- 13.9 Subcontracting and assignment:** You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent, that consent not to be unreasonably withheld. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer.
- 13.10 Law:** The company that you are contracting with under these Terms is stated below. These Terms are governed and will be construed in accordance with law stated below. You submit to the exclusive jurisdiction of the courts stated below for any matter or dispute arising in relation to these Terms.

If you are domiciled in:	you are contracting with:	the governing law is the law of:	and we and you submit to the non-exclusive jurisdiction of the courts of:
The United States of America	MicroManager Inc, a Delaware corporation	Delaware	Delaware
Any other country other than the United States of America.	Micro Manager Apps Limited, a New Zealand company, company number 4101539	New Zealand	New Zealand