

# WeGuide Licence Terms and Conditions

Last updated: 10th March 2024

## BACKGROUND

- (A) The Customer wishes to licence the WeGuide Software for the Application in its business operations.
- (B) WeGuide has agreed to provide, and the Customer has agreed to, take and pay for WeGuide's licence and services subject to the terms and conditions of this agreement.

## OPERATIVE PROVISIONS

The parties agree as follows:

### 1. Definitions and interpretation

#### 1.1 Definitions

Capitalised terms or expressions used in this agreement have the meanings set out in this clause 1.1.

**Acceptable Use Policy:** the acceptable use policy or terms of service or terms of use for the WeGuide Software notified by WeGuide to the Customer from time to time. [The Acceptable Use Policy can be found here.](#)

**Affiliate:** includes in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party, or any business entity from time to time controlling, controlled by, or under common control with, either party.

**Application:** the WeGuide software and any other required software that is used to deliver this License Agreement.

**Business Day:** a day other than a Saturday, Sunday or public holiday in Melbourne.

**Confidential Information:** information of commercial value, in whatever form or medium, disclosed by the party (or any of its Affiliates) to the other party (or any of its Affiliates), including commercial or technical know-how, technology, information pertaining to business operations and strategies.

**Configuration:** any update, modification or change to the WeGuide software as requested by the Customer agreed to by both parties as a Configuration of the WeGuide platform.

**Configuration Agreement:** The agreement that may be entered into by both parties that outlines any configuration work required for the WeGuide platform for the Customer.

#### **Customer Content:**

- (a) all text, information, data, software, executable code, images, audio or video material, in whatever medium or form, inputted by the Customer in using the Application or using the Services or facilitating the Customer's or any End-User's use of the Application or the Services; and
- (b) all End-User Content.

**Customer Software:** this includes software programs that are used by the Customer alongside the WeGuide Software. For example any external reporting tools, APIs or external systems.

**Effective Date:** the date that the Customer is given access to the WeGuide Admin portal.

**End-User:** any person the Customer permits access to use the Application.

**End-User Account:** the account held and maintained with the Customer by any End-User as a prerequisite to accessing and using the Application.

**End-User Content**

- (a) all text, information, data, images, audio or video material, in whatever medium or form, inputted by any End User in relation to the use of the Application or the Services; and
- (b) all information related to any End User that is processed or stored by the

Application, but excluding all authentication information provided in relation to any End

User Account.

**Fees:** the fees payable by the Customer to WeGuide as set out in paragraph 1 of Schedule 1. This may include, but is not limited to, One-off costs, Configuration costs and License Fees.

**Healthcare Legislation:** any laws, regulations or mandatory codes applied or enforced by the Australian healthcare regulatory bodies, including the *Privacy Act 1988* and rules made pursuant to or under it.

**Initial License Term:** 12 months commencing on the Effective Date.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, and Intellectual Property Rights include, without limitation, any Marks.

**Licence Term:** has the meaning given in clause 13.1 (being the Initial Licence Term together with any subsequent Renewal Periods).

**Marks:**

- (a) any trade marks, trade names, service marks, trade dress, logos, URLs and domain names;
- (b) any identifying slogans and symbols;
- (c) any abbreviation, contraction or simulation of any of the items in paragraph (a) or paragraph (b); and
- (d) the "look and feel",

of a party to this agreement, whether or not registered.

**One-off Costs:** These are costs that are incidental to delivering the Services and payable as a one off fee.

**Open-Source Software:** any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (set out at [www.opensource.org](http://www.opensource.org)) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at [www.gnu.org](http://www.gnu.org)), or anything similar, included or used in, or in the development of, the WeGuide Software, the Application or the Services, or with which the WeGuide Software, the Application or the Services is compiled or to which it is linked.

**Proposal:** the proposal that relates to this overall Agreement between the two parties. Wherein particulars of the License are contained, which may include prices, dates, scope of work and deliverables.

**Renewal Period:** Unless otherwise agreed in writing, this is a successive period of 12 months commencing on the day following expiry of the Initial Licence Term.

**Security Event:**

- (a) any unauthorised third party access to the WeGuide Software or the Services; or
- (b) any use of the Service by the Customer or any End-User that is in breach of the Acceptable Use Policy and has the potential to materially impact the WeGuide Software or the Services or use of the WeGuide Software or the Services by any other customer of WeGuide or any of that customer's users.

**SLA or Service Level Agreement:** the service level agreement set out in Schedule 1.

**Services:**

- (a) the provision of the WeGuide Software;
- (b) the provision of support under the Service Level Agreement; and
- (c) such updates or other services or features as WeGuide may decide, at its discretion (but in consultation with the Customer to the extent relevant), to configure or integrate into the WeGuide Software from time to time.

**WeGuide Software:** this includes the WeGuide Platform in its entirety, including any WeGuide APIs and incorporated Open Source Software.

## 1.2 Interpretation

- (a) Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- (b) A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- (c) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (d) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (e) A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- (f) A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- (g) A reference to writing or written includes faxes but not email.
- (h) References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.
- (i) If there is an inconsistency between any of the provisions of this agreement and the terms and conditions located at any URL, the provisions of this agreement shall prevail. If there is an inconsistency between any of the provisions in the main body of this agreement and the terms and conditions set out in any schedule to this agreement, the provisions in the main body of this agreement shall prevail.

- (j) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (k) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this agreement.

## 2. License

2.1 WeGuide grants to the Customer a non-exclusive, non-transferable right during the Licence Term:

- (a) to permit End-Users to subscribe for access to, and use of, the Application and to use in accordance with this agreement such of the Services as have been integrated into the Application; and
- (b) to promote any part of the WeGuide Software integrated into the Application to prospective and actual End-Users, subject to clause 10.5.

2.2 The Customer shall:

- (a) comply with the Acceptable Use Policy in relation to the Application and Customer Content;
- (b) ensure, by agreement between the Customer and End-Users, that End-Users comply with the Acceptable Use Policy in relation to the Application and End-User Content.

2.3 If the Customer becomes aware that the Application or an End-User's use of the Application, or End-User Content breaches the Acceptable Use Policy, the Customer shall

- (a) remove the relevant End-User Content; and
- (b) if relevant, suspend the relevant End-User Account and that End-User's access to the Application.

2.4 Notwithstanding any other provision in this agreement, if there is a Security Event, WeGuide may, without liability or prejudice to its other rights and without prior notice to the Customer or any End-User, take any action determined by it to address that Security Event, including removing relevant End-User Content, disabling any End-User Account and suspending Services until the relevant Security Event has been resolved. WeGuide shall give the Customer written notice as soon as is reasonably practicable of the nature of the relevant Security Event.

2.5 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
  - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the WeGuide Software and/or the Services (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the WeGuide Software;
- (b) access, use or take advantage of all or any part of the Services in order to build a product or service which competes with the WeGuide Software and/or the Services;
- (c) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Application available to any third party except the End-Users; or
- (d) attempt to obtain, or assist third parties in obtaining, access to the WeGuide Software and/or the Services, other than as provided under this clause 2

- 2.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Application and/or the Services and, in the event of any such unauthorised access or use, promptly notify WeGuide.
- 2.7 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 2.8 Any Open-Source Software provided by WeGuide may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 12.2(d). Such terms and conditions shall govern such use to the extent that they expressly supersede this agreement. Please see Appendix 1 for a list of Open Source Softwares utilised by WeGuide.
- 2.9 This agreement shall not prevent WeGuide from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement. For the avoidance of doubt, this does not extend to offering the Application to third parties unless the Customer provides written consent.

### 3. Services

- 3.1 WeGuide shall provide the Services and access to the WeGuide Software on and subject to the terms of this agreement, during the Licence Term.
- 3.2 WeGuide will provide support services in accordance with the Service Level Agreement. This is set out in Schedule 1 below.
- 3.3 If required, WeGuide will configure the platform in accordance with the terms laid out in the Proposal.
- 3.4 Notwithstanding any other term in this agreement or the Service Level Agreement, the Customer acknowledges and agrees that it will be the first contact for support requests from End-Users for the Application.
- 3.5 From time to time WeGuide may:
- (a) modify the Services by issuing updates; and
  - (b) make new features, functionality, applications or tools available in respect of the Services,
- and shall give the Customer prompt written notice of material modifications to the Services and any such new features, functionality, applications or tools that directly affects the Application.

### 4. Customer Content, End-User Content and Marks

- 4.1 The Customer hereby grants to WeGuide a non-exclusive, non-transferable right during the Licence Term to carry out any acts that would otherwise be restricted by any of the Customer's Intellectual Property Rights in the Application for the purpose of enabling WeGuide to provide the Services to the Customer in accordance with this agreement.
- 4.2 The Customer acknowledges and agrees that, (only with the Customer's express permission):
- (a) WeGuide may include the Customer's name or the Customer's Marks in a list of WeGuide's customers in any medium or in any link from the WeGuide Software to the Customer's website; and
  - (b) WeGuide may refer to the Customer, orally or in writing, as a customer of the Services for promotional, marketing and financial reporting purposes.

- 4.3 WeGuide shall not be responsible for any loss, destruction, alteration or disclosure of Customer Content or End-User Content caused by any third party, the Customer or the Customer Software.
- 4.4 The Customer acknowledges that Customer Content or End User Content shall be stored in WeGuide's AWS servers based in Australia.
- 4.5 WeGuide will take all reasonable and appropriate technical and administrative measures to ensure that Personal Information held in connection with this Agreement is protected against loss, unauthorised access or use, modification or disclosure, such measures to include:
- (a) ensure all data is encrypted at-rest and in transit;
  - (b) store all data and Applications on secure web servers in Australia;
  - (c) ensuring that all data is stored on servers utilising current best practice security measures for health information;
  - (d) to take all reasonable measures to ensure that as soon as Personal Information held in connection with this Agreement is no longer required to be held for the purposes of this Agreement, that it will be returned to the Customer or securely destroyed, except in relation to copies retained as part of WeGuide's routine backups;
  - (e) not to do any act, or engage in any practice, that would breach an Australian Privacy Principle (under the Privacy Act 1988);
  - (f) not to disclose Personal Information obtained during the course of this Agreement to any person or entity not a party to this Agreement, except with the express written permission of the subject of the Personal Information, or the express written permission of the Customer, or as otherwise required or permitted by law or court order.

## 5. Third Party Providers

- 5.1 The Customer acknowledges that the Services may enable or assist it or any of the End-Users to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does, and the End-Users do, so solely at its own risk. WeGuide makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer or any End-User (as the case may be), with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer or the relevant End-User (as the case may be) and the relevant third party, and not WeGuide. WeGuide recommends that the Customer and End-Users refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. WeGuide does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## 6. WeGuide's obligations

- 6.1 Without limiting WeGuide's other obligations in this agreement, WeGuide shall to the extent relevant, consult with the Customer in relation to updates or other services or features as WeGuide decides, at its discretion, to integrate into the WeGuide Software from time to time.
- 6.2 With regards to privacy and risk management, WeGuide agrees:
- (a) to notify the Customer immediately upon becoming aware of a data breach or suspected data breach by WeGuide, its personnel, agents or sub-contractors, in relation to Personal Information held in connection with this Agreement; and
  - (b) to comply with all reasonable directions of the Privacy Commissioner or the Customer in relation to the care and protection of Personal Information held in connection with this Agreement; and
  - (c) to conduct regular independent penetration testing of the WeGuide Software to ensure that all measures and best practices are in place to protect against a data breach to the fullest extent possible.

## 7. Customer's obligations

The Customer shall:

(a) provide WeGuide with:

- (i) all necessary cooperation in relation to this agreement; and
- (ii) all necessary access to such information as may be required by WeGuide,

in order to provide the Services, including Customer Content, security access information and configuration services;

- (b) ensure that the End-Users use the Application in accordance with the terms and conditions of this agreement and shall be responsible for breach of this agreement caused or contributed to by any acts or omissions on the part of any End-User;
- (c) ensure that its network and systems comply with the relevant specifications provided by WeGuide from time to time;
- (d) as between the parties, be responsible for responding to all third party requests concerning the use of the Services by the Customer or any End-User;
- (e) not access the Services or use the Application, or permit End-Users to do so, in a manner that avoids incurring Fees; and
- (f) if the Application is reliant on Customer Software to operate, inform WeGuide at least 6 months in advance of deprecating application program interfaces or changes in the Customer Software and, if a party reasonably determines that any change will adversely affect the Application, the WeGuide Software or the Services, the parties will discuss in good faith the scope of the changes required to the Application, the WeGuide Software or the Services and the fees payable by the Customer to WeGuide for implementing and deploying such changes, and the parties shall do all things necessary to document this.

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## 8. Charges and payments

- 8.1 The Customer shall pay the Fees to WeGuide in accordance with this clause 8, and the attached Proposal.
- 8.2 Without prejudice to any other rights and remedies of WeGuide, if WeGuide has not received payment:
- (a) within 60 days after the due date, WeGuide may, without liability, disable the End-User Accounts and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services and the WeGuide Software while the amounts concerned remain unpaid; and
- 8.3 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in AUD, unless otherwise agreed in writing;
  - (b) are, subject to clause 12, non-cancellable and non-refundable;
  - (c) are exclusive of tax, which shall be added to WeGuide's invoice(s) at the appropriate rate if applicable.

## 9. Proprietary rights

- 9.1 The parties agree that, except as expressly provided to the contrary, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in WeGuide Software or in the Customer Software.
- 9.2 WeGuide reserves the right to grant a licence to use the WeGuide Platform to any other party.
- 9.3 If Configuration work is completed as part of this agreement, this agreement does not transfer, or create any licences (implied or otherwise), in any Intellectual Property Rights in the Configurations. The Configurations remain the sole ownership of WeGuide. If the Application includes Customer Software, the Customer grants WeGuide an unlimited, paid up, non-exclusive licence, inclusive of sub-licensing rights, to use the Customer Software to carry out its obligations under this agreement.

## 10. Confidentiality

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence;
  - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.



- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents (and also, in the case of the Customer only, by the End-Users) in breach of the terms of this agreement.
- 10.4 The above provisions of this clause 10 shall survive termination of this agreement, however arising.
- 10.5 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

## 11. Indemnity

- 11.1 The Customer shall defend, indemnify and hold harmless WeGuide against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with any End-User's use of the Application and/or the Services.
- 11.2 WeGuide shall defend the Customer, its officers, directors and employees against any claim that the use of any of the Services infringes any copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that this indemnity does not apply to the extent that any such claim is based on the use of any Open-Source Software.
- 11.3 The obligations of the Customer and WeGuide under clause 11.1 and clause 11.2 respectively are conditional on:
- (a) the indemnifying party being given prompt notice of any relevant claim
  - (b) the indemnified party providing reasonable co-operation to the indemnifying party in the defence and settlement of such claim, at the indemnifying party expense; and
  - (c) the indemnifying party being given sole authority to defend or settle such claim.
- 11.4 The foregoing and clause 12.6 state the Customer's sole and exclusive rights and remedies, and WeGuide's (including WeGuide's employees', agents' and subcontractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 12. Limitation of liability

- 12.1 This clause 12 sets out the entire financial liability of WeGuide (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer or any End-User:
- (a) arising under or in connection with this agreement;
  - (b) in respect of any use made by the Customer or any End-User of the Services; and
  - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 12.2 Except as expressly and specifically provided in this agreement (and Subject to clauses 12.3 and 12.7):
- (a) WeGuide shall have no liability for results obtained from the use of the Application and Services by the Customer or any End-User, and for conclusions drawn from such use;

- (b) all other warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement;
- (c) the Services are provided to the Customer and the End-Users on an "as is" basis;
- (d) WeGuide does not warrant that the Customer's use of the Services will be uninterrupted or error-free;
- (e) WeGuide does not warrant that the Services and/or the information obtained by the Customer or any End-User through the Services will meet the Customer's or any End-User's requirements except those agreed between the Customer and WeGuide in writing; and
- (f) WeGuide is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- (g) WeGuide warrants that it will only collect, use, access, retain or disclose Personal Information obtained during the course of this Agreement only for the purpose of meeting obligations under this Agreement

12.3 Neither party excludes or limits liability to the other party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence; or
- (c) any matter for which it would be unlawful for the parties to exclude liability,

and, in the case of WeGuide, nothing in this agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) (**ACL**), or the exercise of a right conferred by such a provision, or any liability of WeGuide in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

12.4 Subject to clauses 12.3 and 12.7, WeGuide shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (c) any loss or liability (whether direct or indirect) under or in relation to any other contract.

12.5 Clause 12.4 shall not prevent claims, which fall within the scope of clause 12.6 direct financial loss that are not excluded under any of the categories set out in clause 12.4(a) to clause 12.4(d).

12.6 Subject to clauses 12.3 and 12.7, WeGuide's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to 200% of the Fees paid during the 12 months immediately preceding the date on which the claim arose.

12.7 If WeGuide is liable to the Customer in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, WeGuide's total liability to the Customer for that failure is limited to, at the option of the WeGuide:

- (a) in the case of services, the resupply of the services or the payment of the cost of resupply; and

- (b) in the case of goods, the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.

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## 13. Term and termination

- 13.1 This agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Licence Term and, thereafter, this agreement shall be automatically renewed after each Renewal Period, unless:
- (a) either party notifies the other party of termination, in writing, at least 2 months before the end of the Initial Licence Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Licence Term or Renewal Period; or
  - (b) otherwise terminated in accordance with the provisions of this agreement.

The Initial Licence Term together with any subsequent Renewal Periods shall constitute the Licence Term.

- 13.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (b) a receiver, trustee, or liquidator of the other party is appointed for any of its properties or assets;
  - (c) the other party admits in writing its inability to pay its debts as they mature;
  - (d) the other party is adjudicated as bankrupt or insolvent;
  - (e) a petition for the reorganisation of the other party or an arrangement with its creditors, or readjustment of its debts, or its dissolution or liquidation is filed under any law or statute.
- 13.3 On termination of this agreement for any reason:
- (a) all licences granted under this agreement shall immediately terminate;
  - (b) each party shall return and make no further use of any Confidential Information, equipment, property, documentation and other items (and all copies of them) belonging to the other party;
  - (c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced;
  - (d) any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement, including clause 1 (Interpretation), clause 10 (Confidentiality), clause 11 (Indemnity), clause 12 (Limitation of liability) and clause 13 (Term and termination), shall remain in full force and effect; and
  - (e) any outstanding Fee becomes immediately due and payable.

## 14. Force Majeure

WeGuide shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of WeGuide or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, provided that the Customer is notified of such an event and its expected duration.

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## 15. Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

## 16. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 17. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 18. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## 19. Severance

19.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## 20. Entire Agreement

20.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

20.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

## 21. Assignment

21.1 Subject to clause 21.2, this agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

21.2 WeGuide may at any time subcontract or delegate any or all of its obligations under this agreement.

21.3 Each party confirms it is acting on its own behalf and not for the benefit of or as trustee for any other person.

21.4 Notwithstanding clause 10, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 21.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.

## 22. No partnership or agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 23. Notices

23.1 A notice or other communication to a party under this guarantee (**Notice**) must be:

- (a) signed by the sender or a person authorised to sign on behalf of the sender (unless sent by email, in which case the signature section or the email sign-off will be deemed to be the signature of the sender);
- (b) addressed to that party in accordance with the details shown in the *Parties* section of this agreement (or any alternative details given in writing to the sending party):

23.2 A Notice must be given by one of the methods set out in the table below.

23.3 A Notice is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00 am and 5.00 pm (AEST time) on a Business Day (**Business Hours Period**), then the Notice will instead be regarded as given and received at the start of the following Business Hours Period.

Notice delivery method	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By pre-paid post to the nominated address	At 9.00 am (addressee's time) on the second Business Day after the date of posting.
By fax to the nominated fax number	<p>At the time indicated by the sending party's transmission equipment as the time that the fax was sent in its entirety.</p> <p>However, if the recipient party informs the sending party within four hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this four-hour period, only time within a Business Hours Period is to be included.</p>

By email to the nominated email address	3 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
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23.4 A Notice must not be given by electronic means of communication (other than fax or email as permitted).

## 24. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Victoria (Australia).

## 25. Jurisdiction

Each party irrevocably agrees that the courts of Victoria shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

*This agreement has been entered into on the date stated at the beginning of it.*

# Schedule 1 Service Level Agreement

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## OVERVIEW

This document gives an overview of the WeGuide Support process, otherwise known as the WeGuide Service Level Agreement (SLA).

## 1. Definitions

- **Business Hour:** means each hour during a Business Day.
- **Business Day:** means 9:00 a.m. and 7:00 p.m. (Australian Eastern Standard Time - AEST) on a Monday through a Friday, excluding weekends & local public holidays.
- **Error:** means any Severity Level S1 error, Severity Level S2 error, Severity Level S3, and Severity Level S4 error each as defined in the Error Severity Definition Table below.



- **Product:** means WeGuide or Whitelabel Software, as applicable to Customer's Subscription.

## 2. Error Severity Definition Table

Severity Level	Description
<b>S1</b>	<p><b>System Outage</b></p> <p>Production system outage</p> <p>This includes the following scenarios:</p> <ul style="list-style-type: none"> <li>• Product in a production environment is unusable and is severely impacting other critical business functions, and no workaround is available.</li> <li>• An outage of the WeGuide application leading to service interruptions</li> </ul>
<b>S2</b>	<p><b>Key Functionality Impaired; No Workaround</b></p> <p>The reported issue affects key functionality and/or causes some performance degradation, and no workaround is available. Other product features are still functional.</p>
<b>S3</b>	<p><b>Moderate Impact with Workaround</b></p> <p>The issue has a moderate or minor impact on usage, and the product remains functional. This category may include enhancement requests, common how-to questions, and any product issues with a viable workaround.</p>
<b>S4</b>	<p><b>Minor Impact or change</b></p> <p>Includes minor, cosmetic, or documentation-related issues, and enhancement requests that are not time-sensitive. There is no impact on the product's existing features.</p>

## 3. Service levels

During the Subscription Term, WeGuide shall provide Customer with Service Levels consisting of the mail and via service desk regarding (i) use and deployment of the Product in accordance with the table below;

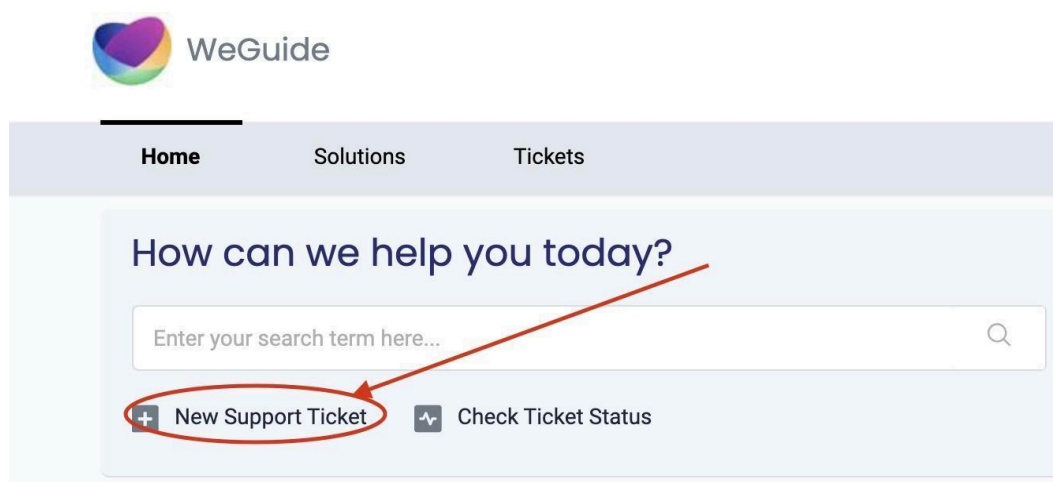
(ii) **Major and Minor releases** of the same Products licensed by Customer during the subscription (“Maintenance”) and support with respect to Errors as set forth below.

In order to access support, the Customer must be able to access the Support Portal located [here](#).

*Please note, support is available only in English*

### 3.1 Guide to using Service Desk

- If Users encounter any issues/questions on production, Click on WeGuide Service Desk [via this link](#).
- To create a new support ticket, click the **New Support Ticket** button.



- Fill in the Mandatory fields in the Ticket's section as shown below and click on Submit.

**Submit a ticket**

Your company email \*  Email Id

Add cc

Brief Summary of Error or Request \*  Summary title

Detailed description of Error or Request (Please attach a screenshot or video where possible) \* 

**B** *I* U

Detailed description

+ Attach a file Add Screenshots/References

Please select what your Error or Request relates to \*  Error Category

Occurrence \*  Frequency of Occurrence

Impact \*  Impact level

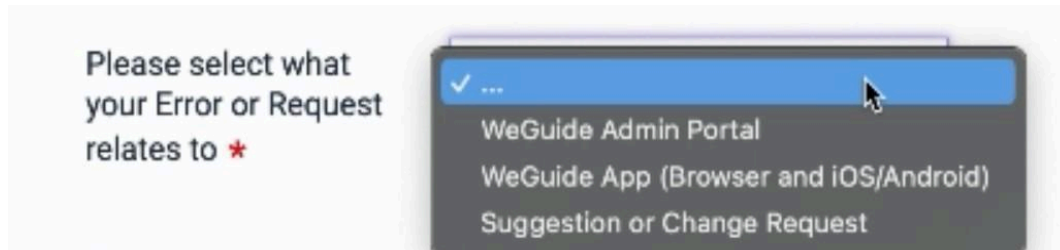
### Fields Description:

1. **Your company email**- this field captures your email address. Please use your company email address.
2. **Brief Summary of Error or Request**- Please provide a brief description of the issue, this is a title for your issue.
3. **Detailed description of Error or Request (Please attach a screenshot or video where possible)**- Outline the problem and include any supporting documents or screenshots. Please provide as much detail as possible. The more detail you provide, the better our ability to provide support.
4. **Please select what your Error or Request is** - Categorize the error by selecting the appropriate option from

the dropdown menu. The three options are

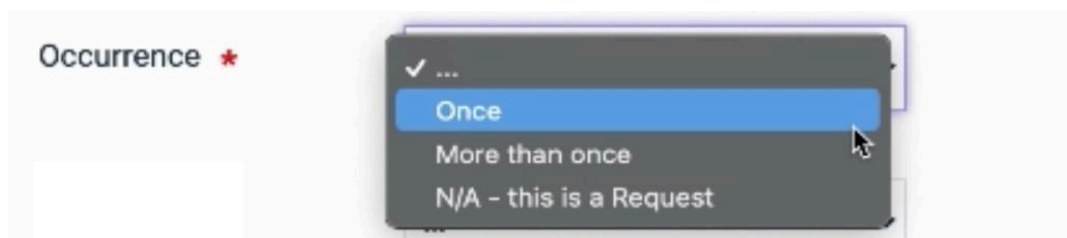
- **Admin portal** - this relates to the WeGuide Administration portal, which is used to create programs, surveys and manage Participants.
- **WeGuide App** - this refers to the application that Participants use to complete engagements and surveys, ie the WeGuide Native App or PWA
- **Suggestion or Change request** - Use this section to submit a product request or suggestion.

Below is a screenshot of the available options.

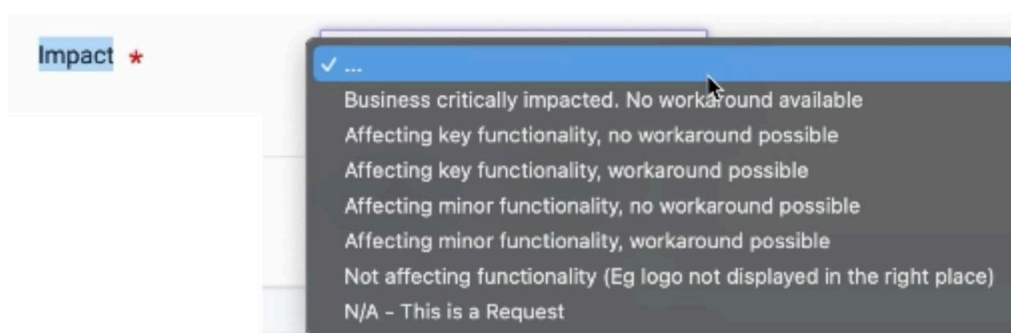


5. **Occurrence:** In this section, we can determine how often an error occurs. (If you have selected Suggestion or Change Request for above section, you can choose N/A.)

Below is a screenshot of the available options.



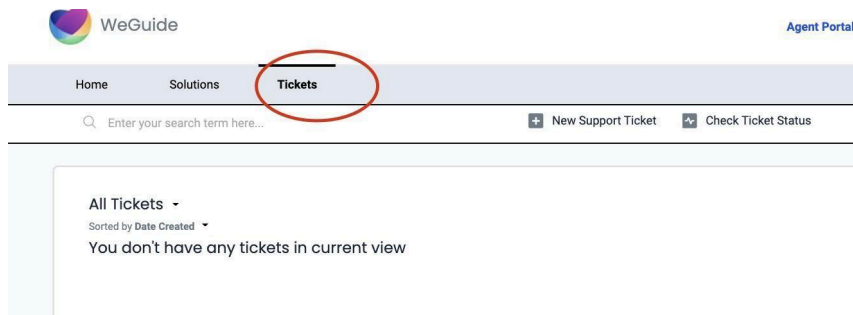
6. **Impact:** This section indicates what level of business this issue has impacted. Below



is a screenshot of the available options.

## How do I check the status of my ticket?

- You can track your ticket status by clicking on the Ticket tab.



### 3.2 Below is the status you will see on Ticket Status.

- 1) **OPEN** - When Ticket is logged in the support portal
- 2) **Being Processed** - The ticket is in Progress with the WeGuide support team.
- 3) **Resolved** - Ticket is Resolved and it's waiting for deployment.
- 4) **Closed** - Fix is deployed in production

In case of any escalation/queries, you can alternatively, you can reach out to us by email by clicking [here](#).

## 4. Error Designation

We guide support personnel shall

- (a) Verify Customer detected Errors, provided that the Errors can be recreated with an unmodified version of the Software and
- (b) The severity of the support request and whether the support request is a Severity Level S1 error, a Severity Level S2 error, a Severity Level S3 error, a Severity Level S4 error, or not an error.

## 5. Error Response

Upon receipt of notice of an Error, WeGuide support personnel shall be assigned to the issue and provide the Customer with the acknowledgment that it has received such Error notice (such actions together, a "Response").

WeGuide will provide the Customer with a response to each incident in accordance with the table below.

WeGuide will use commercially reasonable efforts to promptly resolve each incident.

Actual resolution time will depend on the nature of the incident and the resolution. A resolution may consist of a fix, workaround, or other solution in WeGuide's reasonable determination.

## 6. Response & Resolution Time

6.1 Response Time after first Ticket Login ( SLA shall start once User submits Ticket on support portal )

<b>Max Response Time</b>	S1: Within 1 Business Day  S2: Within 2 Business Days
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6.2 Maximum Resolution Time Critical Functionality

<b>Max Time to Resolution</b>	S1: Within 3 Business Days  S2: Within 10 Business Days
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## 7. Conditions for Providing Support

**WeGuide's obligation to provide Support is conditioned upon the following:**

- (a) Customer makes reasonable efforts to correct the Error after consulting with WeGuide
- (b) Customer provides WeGuide with sufficient information and resources to correct the Error while raising the Service desk ticket.
- (c) Customer procures, installs, and updates interfaces and other hardware necessary to operate the Product as recommended by WeGuide.
- (d) WeGuide is able to reproduce the error and the Customer takes all necessary efforts to help WeGuide reproduce. If reproduction is not possible, then the SLA does not apply

(e) Errors caused by 3rd parties and any Open Source Software used by WeGuide in providing the Services are outside the scope of this SLA

## **8. WeGuide Support exclusions.**

The following are excluded from WeGuide Support and Maintenance obligations:



1. Software that is used on or in conjunction with hardware or software other than as agreed to by WeGuide and Customer;
2. Altered or modified Software, unless altered or modified by WeGuide;
3. Defects in the Software due to accident, hardware malfunction, abuse, or improper use;
4. Any version of the Software for which Support and Maintenance services have been discontinued by WeGuide;
5. Any Error caused by third-party software.

## **9. WeGuide Responsibilities**

WeGuide will use commercially reasonable efforts to make the Software available 24 hours a day, 7 days a week, except for (a) scheduled downtime of the management console or (b) any unavailability caused by Force Majeure.

In the event of scheduled downtime, WeGuide shall give the Customer at least 24 hours notice of any downtime.

# Appendix 1 Open Source Softwares

In the delivery of the WeGuide Software, WeGuide utilises Open Source Softwares. WeGuide undergoes a thorough review and analysis of each Open Source Software used. The current list of WeGuide Open Source Softwares is:

- (a) External software:
  - (i) -Metabase
  - (ii) -Firebase Analytics
  - (iii) -Firebase Crashlytics
  - (iv) -Firebase Cloud Messaging
  - (v) -Ionic Live Update
  
- (b) Development:
  - (i) -Ruby on Rails
  - (ii) -Angular
  - (iii) -Ionic
  - (iv) -Several Ruby on Rails gems
  - (v) -Several Angular/Ionic plugins

WeGuide reserves the right to remove, update or add Open Source Softwares to the WeGuide Software