

Brancher

BRANCHER PTY LTD
ABN 25 635 137 030

TERMS OF SERVICE

INTRODUCTION

The Company provides the "Brancher" digital platform for mentoring. Use of Brancher is subject to these Terms of Service.

DEFINITIONS

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

- (a) **ABN** means Australia Business Number.
- (b) **Account** means a registered account with the Platform.
- (c) **Admin Portal** means the online dashboard accessible by the Administrator to monitor the Customer Account.
- (d) **Administrator** means a representative of the Customer that manages the Customer Account, as nominated by the Customer from time-to-time.
- (e) **Agreement** means the agreement formed between the Users and the Company under, and on the terms of, these Terms of Service.
- (f) **Application Form** means the online form to be completed by Mentors and Mentees as part of Account set up.
- (g) **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.
- (h) **Commercial Terms** means the terms and conditions agreed with the Customer with respect to the Customer's licence for the Platform, and includes any written proposal or quotation accepted by the Customer.
- (i) **Company** means Brancher Pty Ltd ABN 25 635 137 030.
- (j) **Confidential Information** means any written or verbal information that:
 - i Any information deemed as confidential under this Agreement;
 - ii A party informs the other party that it considers it confidential and/or proprietary;
 - iii A party would reasonably consider to be confidential in the circumstances; and
 - iv Is personal information within the meaning of the Privacy Act and GDPR.but does not include information that a party can establish:
 - v Was in the public domain at the time it was given to that party;
 - vi Became part of the public domain, without that party's involvement in any way, after being given to the party;

- vii Was in party's possession when it was given to the party, without having been acquired (directly or indirectly) from the disclosing party; or
 - viii Was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.
- (k) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (l) **Customer** means the customer organisation that engages the Company under the Commercial Terms and authorises access to the Platform by select Mentors and Mentees.
- (m) **Fee** means a fee charged by the Company for use of the Platform.
- (n) **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.
- (o) **Matching Algorithm** means the Company's science-based algorithm used to match Mentees with Mentors.
- (p) **Mentee** means a registered user of the Platform that creates an Account to receive mentoring from a Mentor.
- (q) **Mentor** means a registered user of the Platform that creates an Account to provide mentoring to a Mentee.
- (r) **Personal Information** has the same meaning as in the Privacy Act.
- (s) **Platform** means the "Brancher" digital mentoring platform owned and operated by the Company, and accessible from the Site.
- (t) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (u) **Privacy Policy** means the Company's privacy policy as updated from time-to-time, which can be found at the Site.
- (v) **Site** means <https://brancher.com.au/> and any other URL where the Company makes the Platform available from time-to-time.
- (w) **Terms of Service** means the terms and conditions of using the Platform, as updated from time-to-time, which can be found at the Site.
- (x) **Training Resources** means any surveys, quizzes, modules, materials, and other resources made available to Users via the Platform.
- (y) **User** means any registered user of the Platform and includes Mentors, Mentees and Administrators.
- (z) **User Content** means images, information, documents, or other data that is uploaded or input into the Platform by the User or that forms part of the User's Intellectual Property.

1 AGREEMENT

- 1.1** The licence granted under these Terms of Service shall be ongoing until terminated in accordance with the terms of these Terms of Service.
- 1.2** The User agrees that all use of the Platform is subject to these Terms of Service and must immediately cease to use the Platform if the User can no longer adhere to these Terms of Service.
- 1.3** The Company may suspend the account or restrict the access of any User that breaches these Terms of Service.

2 USING THE PLATFORM

2.1 General

- (a) The Platform is made available on an organisational basis under which the Customer is authorised to permit access to the Platform for a defined number of Mentors and Mentees in accordance with the Commercial Terms.
- (b) For clarity:
- i Mentors and Mentees must each set up their own individual Account;
 - ii Mentor Accounts and Mentee Accounts are authorised under a Customer Account;
 - iii Subject to any limit on the number of authorised end users agreed to in the Commercial Terms, the Customer may permit access to the Platform under their Customer Account by select Mentors and Mentees in their discretion;
 - iv If the Customer Account is terminated in accordance with the Commercial Terms, then those Mentor Accounts and Mentee Accounts linked to that Customer Account will lose access to the Platform; and
 - v The Company's legal relationship with the Customer is governed under the Commercial Terms.
- (c) The Platform may be made available on a "Structured Program" or "On Demand" basis, as agreed between the Customer and the Company in the Commercial Terms.
- (d) For clarity:
- i With a Structured Program, Mentors and Mentees are paired by the Administrator and generally required to participate in the mentoring activities in accordance with a set structure and timeline; and
 - ii With On Demand, Mentors and Mentees can choose their own mentoring partner and are generally given flexibility on how they participate in the mentoring activities including how frequently and for how long they meet with each other.

2.2 No Fees

- (a) Fees shall be paid by the Customer as agreed in the Commercial Terms.
- (b) No Fees shall be payable to the Company by Mentors or Mentees who are authorised access under a Customer Account.
- (c) Despite paragraph (b) above, the Customer may charge a fee for Mentees or Mentors to access and use the Platform at its discretion and outside the control of the Company.

2.3 Account

- (a) To access the Platform, the User must have set up an Account.
- (b) The User must ensure that all information entered into the Platform is complete, accurate and up to date at all times. Users can update their information at any time within their Account.
- (c) The Company may permit or deny the User an Account in its absolute discretion, though the User may generally obtain an Account by completing registration and accepting these Terms of Service.
- (d) Where required, the User may be required to complete the Application Form as part of setting up an Account.
- (e) The User acknowledges that the Matching Algorithm will be based substantially on the information submitted as part of the Account set up process and its accuracy in finding a suitable match for mentoring relies on the truthfulness of this information.

2.4 Admin Portal

- (a) The Administrator shall be responsible for managing the Customer Account and managing the permissions of Users.
- (b) The Administrator shall have access to the Admin Portal to view analytics, insights, and other metrics for the Customer Account, and includes the ability to track the progress of authorised Mentors and Mentors linked to the Customer Account.
- (c) For "Structured Program" access, the Administrator may be required to approve the matching of Mentors and Mentee.
- (d) For "On Demand" access, the Administrator shall not be involved in the matching of Mentors and Mentees who may pair with each other without Administrator approval.

2.5 Features

- (a) The Company shall provide the User with access to and use of the features as made available within the Platform from time-to-time.
- (b) The User accepts that the Company may send notifications including emails, alerts, or other communications in relation to their use of the Platform.

2.6 Training Resources

- (a) The User may be required to access and/or complete Training Resources by certain deadlines as part of their access to the Platform, in particular for a Structured Program.
- (b) The User acknowledges that Training Resources are the Intellectual Property of the Company and agrees that they shall not share or provide access to a third party without the Company's prior consent.

2.7 Conduct

The User acknowledges and agrees that:

- (a) The Company accepts no responsibility for the conduct of any User;
- (b) The Company accepts no responsibility for any interaction between Users as a result of using the Platform (whether online or in-person);
- (c) The Company makes no warranty or representation as to the accuracy of any information provided by any User; and
- (d) The Company makes no warranty as to the character or credentials of any User.

3 USER CONTENT

3.1 The User acknowledges and agrees that:

- (a) The Platform 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 the Platform or Training Resources;
- (b) User Content is the sole responsibility of the individual that uploaded the User Content to the Platform;
- (c) The User indemnifies the Company for any User Content that is illegal, offensive, indecent or objectionable that the User makes available using the Platform;
- (d) The Company may suspend accessibility to User Content via the Platform 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; and
- (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 the Platform.

4 GENERAL CONDITIONS

4.1 Licence

- (a) By accepting the terms and conditions of these Terms of Service, the User is granted a limited, non-exclusive, and revocable licence to access and use the

Platform for the duration of these Terms of Service, in accordance with the terms and conditions of these Terms of Service.

- (b) The Company may issue the licence to the User on the further terms or limitations as it sees fit.
- (c) The Company may revoke or suspend the User's licence(s) in its absolute discretion for any reason that it sees fit, including for breach of these Terms of Service by the User.

4.2 Modification of Terms

- (a) The Company may, in its sole discretion, modify or update these Terms of Service from time-to-time.
- (b) When the Company changes these Terms of Service in a material manner, it will update the 'last modified' date at the top of these Terms of Service and notify the User that material changes have been made to these Terms.
- (c) The User should review this page periodically for notice of any changes to these Terms of Service.
- (d) The modified terms shall come into effect the next time the User accesses the Platform following the update to the Terms of Service.
- (e) If the User does not accept any changes to the terms of these Terms of Service, the User must immediately cease using the Platform.

4.3 Software-as-a-Service

- (a) The User agrees and accepts that the Platform is:
 - i Hosted on servers managed 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 servers managed by the Company and that no 'back-end' access to the Platform 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 the Platform.

4.4 Support

- (a) The Company provides the User support for the Platform via the email address hello@brancher.com.au.
- (b) The User should notify the Company of any difficulties or problems they may experience with the Platform as soon as practicable.

4.5 Use & Availability

- (a) The User agrees that it shall only use the Platform 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 discretion.
- (b) The User is solely responsible for the security of its username and password for access to the Platform. The User shall notify the Company as soon as it becomes aware of any unauthorised access to their Account.
- (c) The User agrees that the Company shall provide access to the Platform to the best of its abilities, however:
 - i Access to the Platform may be prevented by issues outside of its control; and
 - ii It accepts no responsibility for ongoing access to the Platform.

4.6 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.
- (b) The Privacy Policy does not apply to how the User handles personal information. If necessary under the Privacy Act, it is the User's responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.
- (c) The Platform may use cookies (a small electronic tracking code) 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.

4.7 Data

- (a) **Security.** The Company takes the security of the Platform 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) **Backup.** The Company shall perform backups of its entire systems in as reasonable 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 Data from any period of time unless so stated in writing by the Company.

4.8 Analytics

The Company may use User Content and other information collected via the Platform for research, developmental, statistical, and analytical purposes, subject to and in accordance with the Privacy Policy.

4.9 Intellectual Property

- (a) **Trade marks.** 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 and 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 the Platform.
- (c) **The Platform.** The User agrees and accepts that the Platform is the Intellectual Property of the Company and the User further warrants that by using the Platform the User will not:
 - i Copy the Platform 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 the Platform or any documentation associated with it.
- (d) **Content.** All content (excluding User Content) submitted to the Company, whether via the Platform 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 the Platform.

4.10 Third Party Dependencies

The User agrees and acknowledges that the Platform has third party dependencies which may affect its availability, including (without limitation) internet service providers and hosting services, and that the Company has no means of controlling the availability of such dependencies and shall not be liable for any interruptions to such.

4.11 Confidentiality

- (a) 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.
- (b) Each party acknowledges and agrees that:
 - i the Confidential Information is secret, confidential and valuable to the disclosing party (**Discloser**);
 - ii it owes an obligation of confidence to the Discloser concerning the Confidential Information;
 - iii it must not disclose the Confidential Information to a third party except as permitted in these Terms of Service;
 - iv all Intellectual Property rights remain vested in the Discloser, but disclosure of Confidential Information does not in any way transfer or

assign any rights or interests in the Intellectual Property to the receiving party; and

- v any breach or threatened breach by the receiving party of an obligation under these Terms of Service may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.
- (c) A party must notify the Discloser in writing, giving full details known to it immediately, when it becomes aware of:
- i any actual, suspected, likely or threatened breach by it of any obligations it has in relation to the Confidential Information.
 - ii any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or
 - iii any actual, suspected, likely or threatened theft, loss, damage, or unauthorized access, use or disclosure of or to any Confidential Information.
- (d) The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:
- i any actual, suspected, likely or threatened breach of a term of these Terms of Service; or
 - ii any theft, loss, damage or unauthorized access, use or disclosure of or to any Confidential Information that is or was in its possession or control.

4.12 Liability & Indemnity

- (a) The User agrees that it uses the Platform 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 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 the Platform, including any breach by the User of these Terms of Service.
- (d) The Company make no representations, warranties, or guarantees, whether express or implied, as to the success of the Platform in finding a suitable mentoring match.
- (e) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, damage to property, injury, illness, 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, or use of, or inability to use the Platform,

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, injury, illness or business interruption of any type, whether in tort, contract or otherwise.

- (f) 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.

4.13 Termination

- (a) The User may terminate this Agreement by giving the Company written notice via hello@brancher.com.au
- (b) The Company may terminate these Terms of Service by giving the User no less than 5 Business Days' notice where:
 - i The other party has been notified in writing of a breach and has not remedied that breach within 2 Business Days;
 - ii The other party commits a breach which is incapable of remedy; and/or
 - iii The other party repetitiously, wilfully or recklessly commits a breach.
- (c) The User acknowledges and accepts that termination of Customer Accounts is governed by the Commercial Terms, and this may in turn have the effect of terminating any Mentor Accounts or Mentee Accounts linked to the Customer Account.
- (d) 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.

4.14 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 of each party with the authority to resolve the dispute, 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 this document and any related agreements.

4.15 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.

4.16 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 is in conflict with, or inconsistent with any Special Conditions made under these Terms of Service, the terms of those Special Conditions shall prevail.
- (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, agency 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.
- (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.
- (i) **Interpretation.** The following rules apply unless the context requires otherwise:
 - i Headings are only for convenience and do not affect interpretation.
 - ii The singular includes the plural and the opposite also applies.
 - iii If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - iv A reference to a clause refers to clauses in these Terms of Service.
 - v A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
 - vi Mentioning anything after *includes, including,* or similar expressions, does not limit anything else that might be included.
 - vii A reference to a *party* to these Terms of Service or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
 - viii A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
 - ix A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

END TERMS OF SERVICE