



Geoneon Terms of Service

In these Terms, when we say **you** or **your**, we mean both you and any entity you are authorised to represent (such as your employer). When we say **we**, **us**, or **our**, we mean Geoneon Pty Ltd (ACN 626 203 496). We and you are each a **Party** to these Terms, and together, the **Parties**.

These Terms form our contract with you, and sets out our obligations as a service provider and your obligations as a customer. You cannot use our Services unless you agree to these Terms.

Some capitalised words in these Terms have defined meanings, and each time that word is used in these Terms it has the same meaning. You can find a list of the defined words and their meaning at the end of these Terms.

For questions about these Terms, or to get in touch with us, please email: legal@geoneon.com.

These Terms were last updated on 1 July 2024.

OUR DISCLOSURES

Please read these Terms carefully before you accept. We draw your attention to:

- our privacy policy (on our website) which sets out how we will handle your personal information;
- clause 12 (Liability) which sets out exclusions and limitations to our liability under these Terms; and
- a minimum period may apply to these Terms, during which, you will not be able to terminate these Terms for convenience, and if you do, you are liable to pay us a fee.

These Terms do not intend to limit your rights and remedies at Law, including any of your Consumer Law Rights.

1. Engagement and Term

1.1 These Terms apply from the Effective Date until the date that is the earlier of:

- (a) the date set out in the Quote;
- (b) the date the Services are completed (as reasonably determined by us); or
- (c) the date on which these Terms are terminated,

(Term)

2. Services

- 2.1 In consideration of your payment of the Price, we will provide the Services and products in accordance with these Terms, whether ourselves or through our Personnel.
- 2.2 If these Terms express a time within which the Services are to be supplied, we will use reasonable endeavours to provide the Services by such time, but you agree that such time is an estimate only.
- 2.3 You acknowledge and agree that any information, advice, material or work provided by us as part of the Services does not constitute legal, financial, medical, due diligence or risk management advice.
- 2.4 All variations to the Services must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instructions or directions from you constitute a variation to the scope of the Services or our obligations under these Terms, then we will not be obliged to comply with such instructions or directions unless agreed in accordance with this clause.
- 2.5 Unless otherwise agreed, we will revise any reports we provide to you on one occasion and any further revisions will incur additional charges in accordance with any schedule of rates provided by us.
- 2.6 Notwithstanding clause 2.4, you agree that we may vary the Services or the Price at any time, by providing 30 days' written notice to you (**Variation Notice Period**). If you do not agree to any amendment made to the Services or Price,

you may, before the end of the Variation Notice Period, terminate these Terms by giving us 30 days' notice in writing, in which case, the proposed variation will not come into effect and clause 13.2 will apply.

3.7 **Third Party Integration Products:** You acknowledge and agree that there may be third party services, products, application, data, content or other offering integrated into or made available to you through the Services (Integrated Products). You may be required to accept any terms and conditions of the Integrated Products in order to access our Services. If you do not accept such terms and conditions, you must notify us immediately and this may impact your ability to access the Services.

3. Subscription Services

3.1 If outlined on your Quote, we will provide your users with access to our subscription services as outlined in your Quote (**Subscription Services**) consideration of your payment of the Price.

3.2 You must sign up for an account in order to access and use our Subscription Services (**Account**). If outlined on your Quote, this may entitle you to access our cloud-based platform (**Platform**). We will provide our Subscription Services to you on a subscription basis with recurring payments (**Subscription**).

3.3 While you have an Account, we grant you a right to use our Subscription Services (which may be suspended or revoked in accordance with these Terms). This right cannot be passed on or transferred to any other person.

3.4 The Subscription Fee and Subscription Term will be outlined on your Quote. Your Subscription may be subject to a minimum term during which you will not be able to terminate these Terms for convenience, and if you do, you are liable to pay us a fee and subject to your Consumer Law Rights, you will not receive a refund for any amounts already paid.

3.5 Unless otherwise specified in your Quote, your Subscription will automatically renew for the Subscription Term, unless you provide 30 day's written notice before the end of the Subscription Term. We may suspend your access to the Subscription Services where we reasonably believe there has been any unauthorised access to or use of our Subscription Services (such as the unauthorised sharing of login details for our Platform). If we suspend your access to our Platform, we will let you know within a reasonable time of doing so, and we will work with you to resolve the matter, or if it cannot be resolved, then we may terminate your Account and your access to our Platform will end.

3.6 You agree that we may amend the Platform or our Subscription Services (including any features) from time to time. If any change we make materially affects your use of the Platform, we will provide written notice to you before making the amendments. If you do not agree to any amendments made to the Platform, you may terminate your Account by providing us with 30 days' written notice.

4. Your Obligations

4.1 You agree to (and to the extent applicable, ensure that your Personnel agree to):

- (a) comply with these Terms, all applicable Laws, and our reasonable requests;
- (b) provide us with all documentation, information, instructions, cooperation and access reasonably necessary to enable us to provide the Services; and
- (c) not (or not attempt to) disclose, or provide access to, the Services to third parties without our prior written consent.

4.2 You agree to pay our additional costs reasonably incurred as a result of you failing to comply with this clause 4.

5. Orders

5.1 During the Term, you may request us to supply the Services by notifying us in writing or by any other process we specify (**Order Request**).

5.2 If we accept the Order Request, we will provide you with a formal Order, and once the Order is agreed by both Parties in writing it will be binding in accordance with these Terms and the Order.

5.3 Each Order is subject to, and will be governed by, these Terms and any other conditions expressly set out in the Order. To the extent of any ambiguity or discrepancy between an Order and these Terms, the terms of these Terms will prevail.

6. Price and Payment

6.1 In consideration for us providing the Services, you agree to pay all amounts due under these Terms in accordance with the Payment Terms.

6.2 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under these Terms or at Law):

- (a) after a period of 5 Business Days from the relevant due date, cease providing the Services, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs); and/or
 - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms.
- 6.3 When applicable, GST payable will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges. "GST" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

7. Licence

- 7.1 While you have access to our Services (including access to our Platform), we grant you a right to use our Services (and our Platform) (which may be suspended or revoked in accordance with these Terms). This cannot be passed on or transferred to any other person or entity. You must not exploit the Services for any other purpose than contemplated by these Terms.
- 7.2 You must not:
- (a) access or use our Services or our Platform in any way that is improper or breaches any laws, infringes any persons' rights (for example, intellectual property rights and privacy rights), or gives rise to any civil or criminal liability;
 - (b) interfere with or interrupt the supply of our Services or our Platform, or any other person's access to or use of our Services or our Platform;
 - (c) introduce any viruses or other malicious code into our Platform;
 - (d) use any unauthorised or modified version of our Services or our Platform, including but not limited to for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to our Services or our Platform;
 - (e) attempt to access any data or log into any service or account that you are not expressly authorised to access;
 - (f) use our Services or our Platform in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing;
 - (g) circumvent user authentication or security of any of our networks, accounts or hosts or those of any third party; or
 - (h) access or use our Services or our Platform to transmit, publish or communicate material that is, defamatory, offensive, abusive, indecent, menacing, harassing or unwanted.

8. Warranties

- 8.1 You represent, warrant and agree that:
- (a) you will not use our Services, including Our Materials or the New Materials, in any way that competes with our business;
 - (b) there are no legal restrictions preventing you from entering into these Terms;
 - (c) all information and documentation that you provide to us in connection with these Terms is true, correct and complete;
 - (d) you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services is or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms;
 - (e) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and
 - (f) you are not listed on any U.S. Government list of prohibited or restricted parties.

9. Intellectual Property

- 9.1 As between the Parties:
- (a) we own all Intellectual Property Rights in Our Materials;
 - (b) you own all Intellectual Property Rights in Your Materials; and

- (c) nothing in these Terms constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials. All rights not expressly granted are reserved.
- 9.2 As between the Parties, ownership of all Intellectual Property Rights in any New Materials will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials does not automatically vest in us, you hereby assign all such Intellectual Property Rights to us and agree to do all other things necessary to assure our title in such rights.
- 9.3 You must not, without our prior written consent:
- (a) copy, in whole or in part, any of Our Materials or the New Materials;
 - (b) reproduce, separating, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of Our Materials or the New Materials to any third party; or
 - (c) breach any Intellectual Property Rights connected with the Services, including (without limitation) altering or modifying any of Our Materials or the New Materials, causing any of Our Materials or the New Materials to be framed or embedded in another website, or creating derivative works from any of Our Materials or the New Materials.
- 9.4 We grant you a non-exclusive, revocable, royalty-free, worldwide, non-sublicensable and non-transferable right and licence, to use Our Materials that we provide to you and the New Materials, solely for your use and enjoyment of the Services, as contemplated by these Terms.
- 9.5 To the extent that any of Our Materials or the New Materials contains any Intellectual Property Rights licensed to us by a third party (**Licensed Materials**), you acknowledge and agree that the licence provided by us to you under clause 9.4 is further restricted as follows:
- (a) Your use of Restricted Copies in geo-referenced file formats or other source content is restricted to your own internal use solely in accordance with these Terms and any other use or distribution in a geo-referenced file format (including, without limitation, .kmz, geotiff and geojpg) is strictly prohibited; and
 - (b) You may use vector files and screen shots of any Licensed Materials and LMDs created by you from Restricted Copies in .jpeg, bitmap or .png file formats:
 - (i) on your own website, provided you obtain our prior written consent in each instance;
 - (ii) in non-public reports or documents provided to government agencies or regulatory agencies, or as required by Law, in accordance with clause 10;
 - (iii) in a final report in .pdf, .docx, .txt or similar text-document format solely when combined with text and other analysis prepared by you and issued to you by us in accordance with these Terms.

All other uses, including but not limited to copying, separation, unbundling, extraction, isolation, removal or other use or distribution of the Licensed Materials, LMD and/or Restricted Copies are prohibited.

- 9.6 You acknowledge and agree to retain any copyright notice included in any part of the Services, including in relation to clause 9.5.
- 9.7 You grant us a non-exclusive, irrevocable, royalty-free, worldwide, non-sublicensable (other than to our related bodies corporate, as that term is defined in the *Corporations Act 2001* (Cth)) and non-transferable right and licence to use Your Materials that you provide to us solely for the purpose of performing of our obligations or exercising our rights under these Terms.
- 9.8 If you (if you are an individual) or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with these Terms, you agree to (and will procure that your Personnel) consent to our use or infringement of those Moral Rights.
- 9.9 This clause 9 will survive termination or expiry of these Terms.

10. Confidential Information

- 10.1 Each Receiving Party agrees:
- (a) not to disclose the Confidential Information of the Disclosing Party to any third party (subject to subclause 10.1(c));
 - (b) to protect the Confidential Information of the Disclosing Party from any loss, damage or unauthorised disclosure;

- (c) to only disclose the Confidential Information to those of its Personnel who need to know the Confidential Information in connection with these Terms, provided those Personnel keep the Confidential Information confidential in accordance with this clause 10; and
 - (d) to only use the Confidential Information of the Disclosing Party for the purpose of performing obligations, or exercising rights or remedies, under these Terms.
- 10.2 The obligations in clause 10.1 do not apply to Confidential Information that:
- (a) is required to be disclosed for the Parties to comply with their obligations under these Terms;
 - (b) is authorised in writing to be disclosed by the Disclosing Party;
 - (c) is in the public domain or is no longer confidential, except as a result of a breach of these Terms or other duty of confidence; or
 - (d) must be disclosed by Law or by a regulatory authority, including under subpoena, provided that (to the extent permitted by Law) the Receiving Party has given the Disclosing Party notice prior to disclosure.
- 10.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 10. A Party is entitled to seek an injunction, or any other remedy available at Law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 10.
- 10.4 This clause 10 will survive the termination of these Terms.

11. Australian Consumer Law

- 11.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the supply of the Services by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at Law, nothing in these Terms excludes those Consumer Law Rights.
- 11.2 Subject to your Consumer Law Rights, we provide all material, work and services (including the Services) to you without conditions or warranties of any kind, implied or otherwise, whether in statute, at Law or on any other basis, except where expressly set out in these Terms.
- 11.3 This clause 11 will survive the termination or expiry of these Terms.

12. Liability

- 12.1 Despite anything to the contrary but subject to your Consumer Law Rights, to the maximum extent permitted by Law:
- (a) neither Party will be liable for Consequential Loss;
 - (b) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
 - (c) (where our Services are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again; and
 - (d) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to the Price paid by you to us in respect of the supply of the relevant Services to which the Liability relates.
- 12.2 This clause 12 will survive the termination or expiry of these Terms.

13. Termination

- 13.1 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:
- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
 - (b) the Defaulting Party goes bankrupt, insolvent or is otherwise unable to pay its debts as they fall due.
- 13.2 Upon expiry or termination of these Terms:
- (a) without limiting and subject to your Consumer Law Rights, any payments made by you to us for Services already performed are not refundable to you;

- (b) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms;
- (c) by us pursuant to clause 13.1, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees); and
- (d) we may retain your documents and information (including copies) to the extent required by Law or pursuant to any information technology back-up procedure, provided that we handle your information in accordance with clause 10.

13.3 Unless otherwise agreed between the Parties, if these Terms are terminated:

- (a) by us, then any current Order will also terminate on the date of termination and we will immediately cease providing the Services; or
- (b) by you, then any outstanding Orders will continue in accordance with the terms of the Order (and these Terms) until such time as the Order is complete or the Order is otherwise terminated in accordance with its terms.

13.4 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

13.5 This clause 13 will survive the termination or expiry of these Terms.

14. General

14.1 **Amendment:** Subject to clauses 2.4 and 2.6, these Terms may only be amended by written instrument executed by the Parties.

14.2 **Assignment:** Subject to clauses 14.3 and 14.10, a Party must not assign, novate or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

14.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.

14.4 **Disputes:** A Party may not commence court proceedings relating to any dispute arising from, or in connection with, these Terms (**Dispute**) without first meeting a representative of the other Party within 10 Business Days of notifying that other Party of the Dispute. If the Parties cannot resolve the Dispute at that meeting, either Party may refer the Dispute to mediation administered by the Australian Disputes Centre.

14.5 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:

- (a) as soon as reasonably practical, notifies the other Party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and
- (b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

Where the Force Majeure Event prevents a Party from performing a material obligation under these Terms for a period in excess of 60 days, then the other Party may by notice terminate these Terms, which will be effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under these Terms.

14.6 **Governing Law:** These Terms are governed by the laws of Tasmania. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Tasmania and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

14.7 **Notices:** Any notice given under these Terms must be in writing addressed to the addresses set out in these Terms, or the relevant address last notified by the recipient to the Parties in accordance with this clause. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

14.8 **Publicity:** Despite clause 10, with your prior written consent, you agree that we may advertise or publicise the broad nature of our supply of the Services to you, including on our website or in our promotional material.

14.9 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

14.10 **Subcontracting:** We may subcontract the provision of any part of the Services without your prior written consent. We agree that any subcontracting does not discharge us from any liability under these Terms and that we are liable for the acts and omissions of our subcontractor.

14.11 **Support, Maintenance and Product Issues:** For any maintenance, support or product claim issues in connection with the Services, please contact us directly at support@geoneon.com or via any other means we provide to you from time to time.

15. Definitions

In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Quote, and:

ACL or Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*, as amended, from time to time.

Business Day means a day on which banks are open for general banking business in Hobart, Tasmania, excluding Saturdays, Sundays and public holidays.

Effective Date means the date that is the earlier of:

- (a) the date that you accept the Quote;
- (b) the date that you ask us to begin supplying the Services; or
- (c) the date that you make part or full payment of the Price.

Confidential Information means information which:

- (a) is disclosed to the Receiving Party in connection with these Terms at any time;
- (b) relates to the Disclosing Party's business, assets or affairs; or
- (c) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us the Price and any Expenses will not constitute "Consequential Loss".

Consumer Law Rights has the meaning given in clause 11.1.

Deliverables means any materials, goods, items or other deliverables forming part of the Services, as particularised in the Quote or any Order.

Disclosing Party means the Party disclosing Confidential Information to the Receiving Party.

Download or Downloaded means an electronic transmission of digital data resulting in the creation of a copy of any content, including the Licensed Materials, in a digital format.

Expenses means any third party costs or disbursements, reasonably and directly incurred by us for the purpose of the supply of the Services.

Force Majeure Event means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Intellectual Property Rights or Intellectual Property means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, moral rights, contract rights, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

Law means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with these Terms or the supply of the Services.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise.

Licensed Materials has the meaning as set out in clause 9.5.

LMD means any addition, improvement, update, modification, transformation, adaption or derivative work of or to the Licensed Materials, including, without limitation, reformatting of the Licensed Materials into a different format or media from which it is delivered to you, any addition or extraction of data, information or other content to or from the Licensed Materials, or any copy or reproduction of the Licensed Materials.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth) and includes any similar rights in any jurisdiction in the world.

New Materials means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with these Terms or the supply of the Services, whether before or after the Effective Date and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and Your Materials.

Order means an order for the supply of Services, placed in accordance with clause 5.

Our Materials means all Intellectual Property which is owned by or licensed to us and any improvements, modifications or enhancements of such Intellectual Property, including our Platform, but excludes New Materials and Your Materials.

Payment Terms means the timings for payment of the Price and any Expenses, as set out in the Quote.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Price means the price set out in the Quote or any Order, as adjusted in accordance with these Terms.

Quote means the document to which these Terms are attached or incorporated, which you agree to in order to receive our Services.

Receiving Party means the Party receiving Confidential Information from or on behalf of the Disclosing Party.

Restricted Copy means a Downloaded copy of Licensed Materials and/or LMD distributed to you through the Services that is subject to the restrictions in clause 9.5.

Services means the services set out in the Quote or any Order, as adjusted in accordance with these Terms, and includes consulting services, products and Subscription Services.

Special Conditions means any special terms and conditions as set out in the Quote or any Order, as adjusted in accordance with these Terms.

Subscription Fee means the fee for your Subscription as outlined in your Quote or in your Account.

Subscription Services means the complete suite of web-based applications, tools and platforms to which you have subscribed, as outlined in your Quote.

Subscription Term means the initial term of a Subscription and each subsequent renewal term (if any), as outlined in your Quote or in your Account.

Terms means these terms and conditions and any agreed Order issued under it and any documents attached to, or referred to in, each of them.

Your Materials means all Intellectual Property owned or licensed by you or your Personnel before the Effective Date (which is not connected to these Terms) and/or developed by or on behalf of you or your Personnel independently of these Terms and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and New Materials.