

# **Cake.**

## **Terms of use**

Bake That Cake Pty Ltd trading as 'Cake'

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*February 2021*

## Customer Terms

### Application

The Customer Terms apply to a **Company** using the Platform or Services to maintain its Register or use any other Services on the Platform.

The Customer Terms also apply to a **Professional Advisor** using the Platform or Services on behalf of a client or otherwise.

Terms applicable to a Participant (including an investor, note holder, or an option holder) are available at **Page 23**.

By registering and using the Services or the Platform, the party accepting these Terms ('the **Applicant**', '**you**' or '**your**') agrees to be bound by these Terms from the date of acceptance of these Terms until terminated in accordance with these Terms. The Terms, as amended from time to time, together with any other terms and conditions notified to you, will form the agreement between Bake That Cake ACN 637 502 455 of 5/2 Philippine Parade, Palm Beach 4221 ('**Cake**' or '**we**', '**us**' or '**our**') and you. It is likely these Terms will change over time, and it is your responsibility to ensure that you have read, understood and agreed to the most recent Terms available on the Website [www.cakeequity.com](http://www.cakeequity.com).

Capitalised terms in these Terms are defined below. These Terms are applicable to all Cake customers that otherwise do not have a substitute individual signed agreement with Cake. These Terms may also apply in addition to any other agreement with Cake or its Related Bodies Corporate where applicable. If you do not agree to these terms, do not use the Services.

### DEFINITIONS AND INTERPRETATION

#### Definitions

In these Terms, the following words and phrases have the meanings as set out below unless a contrary intention appears:

'**Account**' means your online account within the Platform through which you can establish and maintain Registers and use the Services;

'**Agreement**' means the Terms, as amended from time to time, together with any other terms and conditions notified to you from time to time;

'**Applicant**' means the party which accepts these Terms;

'**Australian Consumer Law**' means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth);

'**Authorised Signatory**' means a person (other than a representative of Cake) who is listed as a User with 'Admin' privileges in the Account from time to time;

**'Authority'** includes any government or semi-government, statutory, public or other authority or body having jurisdiction over the Company or any matter or thing in relation to it;

**'Business Day'** means a day other than a Saturday or Sunday on which banks are open for business generally in Brisbane, Queensland;

**'Company'** means the entity in which Securities are recorded on a Register established under this Agreement, or in which the Services are provided for;

**'Company Account'** means the Account registered for the Company;

**'Company Data'** means data and information provided to Cake by, or on behalf of, the Company in connection with the provision of the Services or use of the Platform, including any documents executed through Cake and uploaded to the Platform;

**'Confidential Information'** means:

1. confidential information of any kind, including, without limitation, all written communications and the databases, computer programs, screen formats, screen designs, report formats, interactive design techniques, and other related information furnished to a party by the other party, for the purposes of these Terms and the Agreement;
2. does not include information that has been independently created by a party or that has already come into the public domain for any reason other than by virtue of a breach by a party of any obligation of confidentiality imposed in relation to the information; and
3. in respect of a Company, includes Holder information but does not include Holder information that has already come into the public domain for any reason other than by virtue of a breach by Cake of any obligation of confidentiality imposed in relation to the information;

**'Constitution'** means the constituent documents of the Company;

**'Controller'** has the same meaning as the definition of this term in the Corporations Act;

**'Corporations Act'** means the Corporations Act 2001 (Cth) as amended from time to time;

**'Disclosing Party'** has the same meaning given in clause 12.1 of these Terms;

**'Fees'** means the Subscription Fees as agreed between the parties;

**'GST'** means goods and services tax which is or may be levied or become payable in connection with the supply of goods and services under A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other legislation;

**'Holder'** means a person or, as the case may be, persons in whose name Securities are, were or will be inscribed in the Register and **'Holding'** has a corresponding meaning;

**'Insolvent'** in respect of a party means any of the following applying to that party:

1. it is (or states that it is) an “insolvent under administration” or “insolvent” (each as defined in the Corporations Act);
2. it has a Controller appointed, or is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property;
3. it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (other than to carry out a reconstruction or amalgamation while solvent);
4. an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that party, which is preparatory to or could result in any of (a), (b) or (c) above;
5. it is taken (under section 459F(i) of the Corporations Act) to have failed to comply with a statutory demand;
6. it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the other party reasonably deduces it is so subject); or
7. it is otherwise unable to pay its debts when they fall due;

**‘Intellectual Property Rights’** means any registered or unregistered, current or future copyright, trade or service mark, design, patent, trade, business or company name, software or computer program or source code, or other proprietary right, or any right to registration of such rights, both in Australia and throughout the world;

**‘Law’** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, including, but not limited, the Corporations Act and all relevant Australian legal and regulatory requirements, including, without limitation, the Corporations Regulations 2001 (Cth), as applicable and as amended from time to time;

**‘Loss’** has the meaning given in clause 13.1 of these Terms;

**‘Materials’** means the materials, information, and technology of any nature created by Cake in connection with the provision of the Services, including but not limited to documentation and software;

**‘Notice’** means any notice given under or in connection with these Terms;

**‘Participant’** means a user of the Platform in the capacity as an investor, option holder, note holder or otherwise who uses the Platform to receive or view share or option holdings, either in a personal capacity or on behalf of a Company.

**‘Participant Terms’** mean the terms and conditions that apply to Participants, as amended from time to time at the sole discretion of Cake.

**‘Platform’** means the online services software accessible via the Website;

**'Platform User'** means any user of the Platform, including a Company using the Services or a Participant.

**'Privacy Act'** means the Privacy Act 1988 (Cth) and any other applicable privacy legislation, as amended from time to time;

**'Privacy Policy'** means our Privacy Policy available at [www.cakeequity.com](http://www.cakeequity.com) as amended from time to time in our sole discretion;

**'Professional Advisor'** has the meaning as set out in clause 7 of these Terms.

**'Program Documentation'** means, in relation to the Programs, all written information, flow charts, manuals, loading diagrams, listings, drawings, source codes, object codes, drawings and other documents or material contained, reproduced or otherwise incorporated, including any copies, duplicates, extracts or reproductions of such information, charts, manuals, diagrams, listing codes, documents or material forms;

**'Programs'** means computer programs used by Cake for the supply of the Services;

**'Receiving Party'** has the same meaning given in clause 12.1 of these Terms;

**'Register'** means the register and index of Holders of the Company established and maintained via the Services;

**'Related Bodies Corporate'** has the meaning as defined in the Corporations Act;

**'Security'** means a security (as defined in the Corporations Act) issued by the Company which may include, without limitation, a share or unit, an option or right over a share or unit;

**'Services'** means the services provided through the Platform (or otherwise) in accordance with these Terms;

**'Spam Act'** means the Spam Act 2003 (Cth) as amended from time to time;

**'Subscription Fees'** means the fees payable under clause 2.1 ;

**'Term'** means the period commencing on the date on which you agree to these Terms and expiring upon termination of this Agreement in accordance with these Terms;

**'Terms'** means these Customer Terms and Conditions, as amended or superseded from time to time in Cake's sole discretion;

**'User'** means a person who is granted access to your Account to use the Services for, or on behalf of, a Company;

**'User Details'** means a User's login details and password to access your Account;

**'Website'** means the website available at [www.cakeequity.com](http://www.cakeequity.com).

## Interpretation

In these Terms unless the context otherwise requires:

1. Headings have been inserted only for convenience and do not affect the interpretation of these Terms;
2. A reference to any document includes a reference to that document's attachments and schedules, as amended from time to time;
3. A reference to a statute, ordinance, code or other law includes reference to the corresponding regulations, instruments, class orders and policy statements in all instances as amended, consolidated, re-enacted, replaced or re-written;
4. A reference to the parties, where relevant, includes their respective successors or permitted assigns;
5. The singular includes the plural and vice-versa;
6. Words and expressions importing one gender include all other genders;
7. 'Include' and any variation of it means including without limitation and does not exclude a reference to other items, whether of the same class or genus or not;
8. 'Month' and any variation of it means a calendar month (whether or not beginning on the first day of the month);
9. 'Person' includes a natural person, a firm, a body corporate, an unincorporated association or an Authority and vice versa;
10. 'Dollars' or any reference to '\$' in these Terms means Australian dollars unless otherwise expressly stated;
11. Where a word or phrase is given a defined meaning in these Terms, any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning; and
12. If under these Terms the day on or by which any act, matter or thing is required to be done is a day other than a Business Day, such act, matter or thing must be done on the next succeeding Business Day.

## 1. SERVICES

### 1.1. Right to use the services

1. By registering an Account, you agree and warrant that:
  - a) You have read, understood and agreed to these Terms;
  - b) That you will use the services, the Platform and the Website in accordance with these Terms.
2. If you do not agree to these Terms, you may not use the Services and must notify us immediately.
3. By registering an Account, subject to these Terms, you may use the Services. You warrant that you have the authority to enter into these Terms, to act on behalf of the Company and to provide all Company Data to us (either directly or via the Platform) without breach of any obligation owed to the Company or any other third party.

4. By registering an Account, you will also be provided access to the Platform as a Participant (separate from the Company Account), and you agree and warrant that:
  - a) you have read and understood the terms specific to use as a Participant; and
  - b) you will use the Platform and Website in accordance with those terms.
5. Subject to your compliance with these Terms, we grant you the non-exclusive, non-sublicensable, non-transferable and limited right to access and use the Services available to you via the Platform from time to time during the Term.

## 1.2. Services Availability

There may be occasions where the Services are unavailable, including due to reasons outside of our control. We will use reasonable endeavours to notify you in advance of any planned outages and will endeavour to remedy any unplanned outages as soon as possible.

## 1.3. Your use of the services

- a) By registering an Account, you acknowledge and agree that we may monitor, suspend or cancel your use of the Services where such use is fraudulent, outside of the intended application of the Services, causes significant congestion, disruption or otherwise adversely affects the performance of the Platform or delivery of the Services or adversely affects any person's use of, or access to, the Platform or the Services.
- b) You are solely responsible for any content you post on or upload to the Platform, including your profile and any Company Data. You may not post, transmit or share:
  - a) information on the Platform that you do not own or have permission to display, publish or post;
  - b) defamatory or obscene material, or any material which may be offensive or insulting to other Platform Users or material which be incite hatred, violence or discrimination;
  - c) executable files (whether benign or malicious); or
  - d) material which may be detrimental to the business or reputation of Cake or any other Platform User.
- c) You agree to indemnify each other Platform User and us from and against any loss, damages or costs arising from or in connection with any content you post on the Platform that breaches these Terms.
- d) You agree that in using the Platform you will not:
  - use the Platform for any unlawful purpose;
  - use the Platform for the purpose of gaining any competitive advantage in a similar service or business, including by creating an Account primarily to evaluate Cake as a competitor of a similar service or business;
  - use the Platform in any way that interrupts, damages, impairs or renders the Platform less efficient;

- access or attempt to access the accounts of other Platform Users or to penetrate or attempt to penetrate the Platform's security measures;
- advertise or promote third party or your own services including by way of the distribution of 'spam' email; or;
- use the Platform for any purpose other than as permitted in accordance with these Terms.

#### 1.4. Security of login details

- a) You agree that you are responsible for the security of your login details and that you will keep your login details confidential.
- b) You agree that the login details constitute your signature for the purpose of approving any actions in this Website. You also acknowledge and accept responsibility for the use of your login details whether or not that use has been authorised by you.

#### 1.5. Third party access

- a) You may give permission to third parties, such as your financial advisor or client, to have access and make changes to your details. You acknowledge and accept that you are responsible for any actions performed by any such third parties and their delegates whether or not that action has been authorised by you.
- b) If you are a third party acting on behalf of a holder, you acknowledge that you have read and understood these terms and have the authority to act on behalf of the holder, in performing any action or transaction on the Platform or in connection with the Services.

#### 1.6. Access to Cake employees

By registering an Account, you grant us permission to provide Cake (and its Related Bodies Corporate) employees and contractors with 'admin' access to your Account for the purpose of fulfilling the Services or managing the Platform, subject to these Terms. Cake will limit the access provided to temporary 'support' periods of 24 hours, and will only use the access where it is necessary to fulfil the Services or manage the Platform.

#### 1.7. Communications

By default, you agree to receive all communications regarding your holding(s), including annual reports, by email to the email address recorded in your registration.

#### 1.8. Share certificates and holding statements

You agree to receive any share certificates and/or holding statements in electronic form.

## 2. PRICING OF SERVICE

### 2.1. Services



You will be liable for all Fees incurred in relation to those managed under your Account. The Fees payable are of the amount agreed between the parties (in accordance with the [Cake pricing plan](#) or otherwise) and are payable in advance. The Fees may be changed at Cake's full discretion, with 30 day's notice.

## 2.2. Additional services

Where you request us to provide additional services from time-to-time during the Term, we may charge you additional Fees for such services, as agreed between the parties. For example, the services may include the provision of assistance to input data into the Platform, or additional training sessions on the Platform.

## 3. PAYMENT

### 3.1. Method of payment

- a) Where you have provided us with credit card or direct debit details, you will be deemed to have authorised us to debit from your credit card or bank account (as applicable) the outstanding amount owed under any Invoice (as defined below), including an Invoice for additional services, during the Term. It is your responsibility to ensure there are sufficient funds available to be drawn upon for any payment.
- b) We will issue an invoice to you around the start of each Month for the relevant Fees applicable to all Companies managed through your Account (**Invoice**). An Invoice must be paid within 7 days of the date of the Invoice (in accordance with clause 3.1(a) above, amounts owed under issued Invoices will be debited from a credit card of which the details were provided to Cake upon sign up). All amounts paid to us are non-refundable, non-cancellable and non-creditable, to the extent allowed by the Australian Consumer Law and any other applicable law. Where a quote for a particular task or service has been provided and the quote accepted, an invoice will be issued and the amount payable in accordance with the invoice (which will typically be prior to commencing the task or service).
- c) Payment will be via direct debit unless otherwise agreed. Direct debit may occur on the day an invoice is issued.

### 3.2. Interest on late payment

We may charge you interest on all outstanding amounts due and payable under these Terms within 30 days of the date of the invoice at an annualised rate of 2% above the Reserve Bank of Australia Cash Rate Target, compounded daily, and an additional amount for any expenses incurred by us in collecting any overdue amounts (including the cost of engaging a debt recovery agent or a lawyer).

### 3.3. Termination on late payment

In addition to any other rights we may have under these Terms, if you do not pay the Fees owed to us in accordance with these Terms, we may, at our sole discretion, either:

- a) terminate the Agreement by written Notice to you; or

- b) suspend the provision of the Services or your access to your Account for as long as any Fees remain outstanding, without being responsible or liable during that period for the Services, including maintaining the integrity of the Register.

### 3.4. GST

The parties agree that all Fees are inclusive of GST.

## 4. RESPONSIBILITY FOR COMPANY DATA

### 4.1. General

You must ensure that your use of the Services and handling of Company Data is at all times compliant with all applicable Laws. Each time you provide Company Data to us (including by uploading that data to the Platform), you represent and warrant that:

- a) you have obtained all necessary rights, releases and permissions to provide the Company Data to us and to grant the rights under these Terms in respect of the Company Data; and
- b) the Company Data and its transfer to and use by us as authorised by you under these Terms do not violate any Laws (including without limitation those relating to export control and electronic communications) or rights of any third party, including without limitation any Intellectual Property Rights, rights of privacy or rights of publicity, and any use, collection and disclosure authorised by the Company under these Terms is not inconsistent with the terms of any privacy policies or privacy laws applicable to the Company Data. We do not assume responsibility or liability for Company Data, and you will be solely responsible for Company Data and the consequences of that Company Data being used, disclosed, stored or transmitted in accordance with these Terms.

### 4.2. Company Permissions

By registering an Account, you grant permission to us to host, back-up and otherwise access and deal with Company Data in accordance with these Terms, including by transferring Company Data to a Related Bodies Corporate of Cake for the purpose of fulfilling the Services or managing the Platform.

### 4.3. Accuracy of information and Services

You acknowledge and agree that:

- a) we have no obligation to verify any of the Company Data provided to us in connection with the Services;
- b) the accuracy, completeness and quality of the Services will be dependent on the accuracy, completeness and quality of the Company Data provided; and
- c) that we will not be liable for any failure of the Services which result in connection with any inaccurate or incomplete Company Data provided to us.

## 5. SECURITY & DATA SERVICES

## 5.1. Data back-up

You are responsible for backing-up all Company Data. We adhere to our policies and procedures to prevent data loss, but we do not guarantee that there will be no loss of Company Data or that any Company Data we back-up will be complete or accurate.

## 5.2. Use of third party service providers

In performing the Services, we may appoint and use third party service providers to assist us in carrying out our obligations under these Terms (for example, hosting and cloud server providers or engaging other service providers to assist in the management of the Company Data). In engaging such third party service providers, we remain responsible for ensuring that such service providers comply with the Privacy Policy (as amended from time to time) and the confidentiality provisions set out in clause 12 of these Terms.

## 5.3. Security

- a) The use of the Services necessarily involves transmission of Company Data over networks that are not owned, operated or controlled us. Whilst we will take all reasonable precautions to implement security procedures to help protect Company Data from security attacks, we disclaim all responsibility for any Company Data that is lost, altered, intercepted or stored across such networks. We cannot guarantee that our security procedures will be error-free, or that transmissions of Company Data will be secure or that unauthorised third parties will not be able to defeat our security measures or those of our third party service providers.
- b) Our security practices are constantly evaluated and improved. Our platform uses HTTP Strict Transport Security, which forces all connections to use HTTPS.
- c) Authentication of users is handled by Auth0 ([www.auth0.com](http://www.auth0.com)) which ensures a higher degree of security and allows users the choice of using MFA. It also means we don't store any authentication data like passwords on our servers. Developer access to our AWS environment and integration providers are locked down using MFA. Sensitive data like API keys are encrypted.
- d) Our platform is deployed in AWS allowing us to take advantage of AWS security infrastructure like VPCs to isolate traffic to particular resources, e.g. database instances cannot be accessed via the internet. Customer data in AWS is encrypted at rest using the industry-standard AES-256 algorithm.
- e) Reliability: All customer data is stored in AWS RDS which is backed up nightly and has Multi-AZ enabled. All customer documents are stored in AWS S3, which is designed for 99.999999999% of durability, with versioning enabled ensuring a higher degree of protection.

## 5.4. Data Storage

- a) We may retain Company Data for at least seven years following termination of the Agreement, or such longer time frame as required by law or for audit and compliance purposes.
- b) You may request that the Company Data be deleted by notice to the company, and we will delete that Company Data within 30 days of that notice, subject to any requirement to retain the data under any applicable law or court order.

## 6. AUTHORISED SIGNATORIES

### 6.1. Credentials

You must ensure that all Authorised Signatories keep their User Details strictly confidential and not share such information with any unauthorised person. User Details are granted to individual, named persons nominated by an Authorised Signatory with the relevant privileges and may not be shared. You are responsible for any and all actions taken on the Account.

### 6.2. Authorised Signatories

You acknowledge that Authorised Signatories are authorised to give directions and instructions to us on behalf of any Company for the purposes of these Terms and to sign on behalf of a Company all notices, communications, instructions, directions confirmations and other documents required by or contemplated under these Terms.

### 6.3. Cake entitled to rely

We are entitled to rely on the authenticity of the Notices, signatures or instructions given, or purported to be given, by an Authorised Signatory (including by email or electronically via the Platform) and we will not be liable for any claim, damage, cost, expense, loss liability or demand arising from that reliance.

### 6.4. Date variation takes effect

Any variation to the list of Authorised Signatories in your Account takes effect on the date on which the list of Authorised Signatories is updated.

## 7. PROFESSIONAL ADVISORS

- a) You may join the Platform as a professional advisor, for example a solicitor, accountant or financial advisor ("Professional Advisor") for use with one or more of your clients which satisfy the definition of a Company (each, a "Client"). If you are a Professional Advisor, the terms of this paragraph 7 shall apply to you. In the event you have been granted 'Admin' access to a Company account, you will be deemed an Authorised Signatory. In the event of any conflict or inconsistency between this paragraph and the rest of these terms, the terms of this paragraph 7 shall take precedence to the extent of such conflict or inconsistency.
- b) If you act on behalf of a Client, you must ensure that the Client in question becomes a User by accepting these terms separately. You may act on behalf of an unlimited number of Clients via the Platform as a Professional Advisor.

- c) If your Cake Account is terminated in accordance with these terms this shall not affect the membership status of any Clients you are acting on behalf of, provided that they have become Users by accepting these terms separately.
- d) Your authority to act on behalf of a Client is a matter between you and the Client, and Cake accepts no liability in the event of any dispute relating to the same.

## 8. ACTING AS REGISTERED AGENT

- a) If you request that we act as your Registered Agent, or if in providing any product or Service purchased we are required to carry out any task which would usually be carried out by a Registered Agent, we may outsource some or all the relevant Registered Agent tasks to a third party service provider. In any event, Cake or the third party provider's scope (as applicable) in acting in this capacity will be limited to:
  - downloading and corresponding with the Company directors on all Company information from the ASIC database records; and
  - preparation and lodgment of company forms required to notify ASIC of all changes to company officeholders, members and company information.
- b) Despite these Terms and the provision of the Services and the Platform (including any additional services) by Cake, all Company directors and officers (including Company secretaries) will remain fully liable for applicable duties under the Corporations Act, the common law and any other applicable law (**Director and Officer Duties**).
- c) Despite offering services which assist the directors and officers to fulfil their duties, Cake and its Related Bodies Corporates in no way accept liability for any Director and Officer Duties owed.
- d) Cake and its Related Bodies Corporate will not be involved in the day-to-day management of any Company, and will not be acting as a 'de facto' or 'shadow' director for any Company.
- e) The directors are required to advise our office within 14 days from the date of change of any changes to officeholders, members and their shareholding, business or residential addresses. This obligation similarly will apply with respect to updates which have occurred prior to the Company having an account with Cake.
- f) By accepting these Terms, the directors agree that any ASIC fees or penalties will be payable by the Company should the directors not fulfil their obligations to Cake under this Agreement.
- g) By accepting these Terms the directors will be taken to have agreed that the performance of our services is dependent on the performance of their obligations.

## 9. CAKE IS NOT A LEGAL OR FINANCIAL ADVISOR

- a) Cake is not a legal or financial advisor, nor does it act as a legal or financial advisor, nor is it competent or qualified to act in, or in conjunction with, the carrying out of the functions of a legal or financial advisor. Cake recommends that all parties seek independent advice in relation to any financial investments made or transactions entered into.
- b) Cake has no responsibility whatsoever in respect of any taxes which may arise as a consequence of your use of the Platform, Services or the Account, nor does it have any responsibility to notify a Participant or a Company of any obligations that it have or may have arisen as a consequence of using the Services.

## 10. REFER TO PROFESSIONALS

- a) We may refer you to one of our professional service partners who is qualified to carry out the functions of a professional advisor in respect of the assistance required (legal, accounting or otherwise) **(Professional Service Partner)**.
- b) Members of our team, including our internal legal counsel staff, may speak with you prior to making the referral, to ensure you are introduced to the best suited partner to gain your own independent advice. These discussions do not constitute legal or accounting advice, and are conducted solely for the purpose of referring you to the most appropriate Professional Service Partner.
- c) Where the professional services required are in addition to the Services or product which you have purchased, the professional services will be governed by a separate terms of engagement, which will also specify the fees chargeable by that Professional Service Partner.
- d) Cake may receive a commission from the Professional Service Partner in return for the referral of that matter. While Cake seeks to only refer Companies to quality advisors, Cake does not guarantee the quality or accuracy of any advice or assistance provided by the Professional Service Partner, and accepts no responsibility for any loss incurred by way of the engagement.
- e) You have the ongoing right to appoint any independent advisor instead of engaging the Professional Service Partner, at your full discretion.

## 11. TERMINATION

### 11.1 Termination for convenience

- a) You may terminate this Agreement at any time by providing us with written Notice.
- b) Where you terminate, you will be liable for the remainder of the Fees owing for the calendar month in which you terminate, and you will be responsible for the export of your Company Data prior to termination.
- c) We may terminate these Terms, without cause, at any time by giving at least 72 hours written Notice to you.

## 11.2 Termination for cause

- a) In addition to any other terms of these Terms giving a right of termination, we may terminate these Terms with immediate effect and without further notice to you if:
- you breach a material provision of these Terms and fail to remedy that breach within 14 days after receiving written Notice specifying the breach;
  - you breach a provision of these Terms that is not capable of being remedied;
  - we reasonably suspect you have created an Account for a non-permitted purpose under these Terms, including for the purpose of evaluating Cake as a competitor to a similar service or business; or
  - you are, or become, Insolvent.
- b) If we terminate these Terms in accordance with clause this 11.2, you will be able to request an export of the Company Data contained in the Register for a period of 72 hours:
- you have breached a material provision of these Terms (including failure to pay your Subscription Fees);
  - doing so would cause us legal liability or compromise our ability to provide the Services to other clients; or
  - we are prohibited from doing so by law.

## 11.3. Obligations surviving Termination

Notwithstanding any other provision of these Terms, the Company will remain liable for any accrued charges and amounts occurred by us, whether or not these amounts were due for payment prior to termination.

11.4. Cake does not make any assurance of the ability to restore your Company Data following termination in accordance with this clause 11, and has no obligation to attempt to do so.

## 12. CONFIDENTIALITY

### 12.1. Confidential Information

Each party:

- a) agrees that it will take all reasonable steps to keep and treat as confidential all Confidential Information disclosed to a party (**Receiving Party**) by the other party (**Disclosing Party**) and the Receiving Party acknowledges the Confidential Information is passed to and received by it in the strictest confidence;
- b) must use the Confidential Information only for the purposes set out in these Terms;
- c) must not disclose the Confidential Information to any person except as permitted by these Terms;

- d) must use reasonable endeavours to ensure that any person who has access to Confidential Information does not make any unauthorised use, modification, reproduction or disclosure of that information and acknowledges and agrees that it remains responsible for that person such that any breach of these Terms by this person will be treated as a breach by the Receiving Party;
- e) must notify the Disclosing Party as soon as practicable after it becomes aware of a breach by it or its representatives of its obligations under this clause 12; and
- f) must co-operate with the Disclosing Party in any reasonable action which it may take to protect the confidentiality of its Confidential Information.

12.2. Cake shall not be liable for any breach of confidence between a Company and a Participant.

#### 12.3. Permitted Disclosures

The Receiving Party may disclose Confidential Information otherwise than in relation to the provision of Services in accordance with these Terms:

- a) on a need to know basis to any of its representatives or agents (including legal advisors) for the purposes set out in these Terms if the Receiving Party ensures that the representative or agent is made fully aware of the nature and extent of the Confidential Information and the representative or agent agrees to be bound and abide by the applicable terms of these Terms;
- b) where required by Law, if the Receiving Party provides notice to the Disclosing Party prior to any disclosure to provide the Disclosing Party with the opportunity to address any potential disclosure of its Confidential Information (to the extent permitted under any applicable Law); or
- c) with the prior written consent of the Disclosing Party.

## 13. INDEMNITY AND LIABILITY

### 13.1. Indemnity

By registering for an Account and using the Platform or Services, you agree to defend, indemnify and hold harmless Cake from and against any loss, cost, expense, liability or damage, including legal costs, (collectively, **Loss**) for which we become, or may become, liable arising from or relating to your use of the Services or the Platform or the Company Data, including but not limited to any claim brought by a third party alleging that Company Data, or any use of the Services or the Platform by you, a User or a Company in breach of these Terms, infringes or misappropriates the rights or Intellectual Property Rights of a third party or violates applicable Laws, except to the extent that any Loss is caused by our fraudulent or wilful misconduct. You acknowledge and agree that we do not need to incur expenses or make payment before enforcing our right of indemnity under these Terms.



## 13.2. Limitation of liability

- a) Despite any other provision of these Terms, to the maximum extent permitted by law, we exclude all liability and responsibility to you or any Company (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of Company Data, profits and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, the Services.
- b) If you or a Company suffers loss or damage arising as a direct result of our negligence, our liability will be limited, at our option, to supplying the Services again or paying for the cost of having the Services supplied again, and in any case, will not exceed the amount of Fees paid or payable to Cake under these Terms during the previous calendar year immediately prior to the event giving rise to the liability (or pro-rata where the agreement has been in place for less than a year).
- c) Unless otherwise required by Law, if you are not satisfied with the Services, your sole and exclusive remedy is to terminate these Terms.
- d) The limitation of liability described in this clause 13.2 will not apply to any loss that the Company suffers as a result of our fraudulent or willful misconduct.
- e) You agree to release us from all claims arising in connection with the Services to the extent that our liability in respect of such claims would exceed our liability as determined under clause 13.2.
- f) You acknowledge that our ability to comply with our obligations under these Terms will depend on your compliance with the respective obligations under these Terms and we will have no responsibility for any failure to provide the Services to the extent that such failure is caused directly or indirectly by your failure to comply with your obligations under these Terms.
- g) You acknowledge that we do not provide any services to either you or the Company in the capacity of any professional advisor. Accordingly, we do not accept any responsibility for the accuracy or completeness of any forms, templates, lodgments or notices generated by the Platform. It is your responsibility to obtain the appropriate professional advice in respect of those documents and to the extent that you authorise us to transmit those documents to regulatory bodies or third parties, we do so only as your agent.

## 13.3. No liability to Holders

You acknowledge and agree that we are not liable in any way to any Holder or any person who holds a lien, charge or any other legal or equitable interest over a Security.

## 14. COMPLAINTS AND DISPUTES

- a) We will do our best to resolve any complaints in relation to your use of the Platform or Services. If you have a complaint with respect to any aspect of the Platform, you should report it to us

immediately by sending an email, with the word "complaint" in the subject line, from the email address in which your Account is registered to hello@cakeequity.com. We will send an initial response to your email as soon as practicable.

- b) Cake is under no obligation to investigate or in any way resolve disputes between Participants and Companies. Resolution of such disputes is the responsibility of the parties in question.

## 15. REPRESENTATIONS AND WARRANTIES

### 15.1. Your Representations and Warranties

You represent and warrant to us as at the date of your acceptance of these Terms and each time you use the Services, that you:

- a) have all the power to enter into and perform these Terms and have obtained all necessary consents and corporate authorisations to enable you to do so;
- b) will only use the Services and the Platform for a lawful business purpose, and in accordance with these Terms, all applicable Laws, any notice sent by us to you or any condition posted on within the Platform or on the Website;
- c) will comply in a timely, proper and efficient manner with your obligations under these Terms;
- d) will provide to us, on request, any documents, information, instructions or directions reasonably required by us to enable us to perform our obligations, provide the Services or do any other thing in accordance with these Terms or as required by Law; and
- e) will notify us in writing as soon as practicable after you become aware that you have or may become Insolvent.

### 15.2. Warranty Disclaimer

All Services are provided on an "as is" and "as available" basis, and we expressly disclaim any and all warranties and representations of any kind, including any warranty of non-infringement, title, fitness for a particular purpose, functionality, or merchantability, whether express, implied, or statutory. We will not be liable for delays, interruptions, service failures and other problems inherent in the use of the internet and electronic communications or other systems outside of our reasonable control. To the maximum extent permitted by law, we make no representations, warranties or guarantees as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of any Services, Materials or any associated content, or that:

- a) the use of any Services will be secure, timely, uninterrupted or free of errors or omissions;
- b) the Services will operate in combination with any other hardware, software, system or data;

- c) the Services will meet your requirements or expectations;
- d) any stored Company Data will be accurate or reliable or that any stored Company Data will not be lost or corrupted; or
- e) errors or defects will be corrected.

## 16. PUBLICITY RIGHTS

By registering an Account, you authorise us to identify you as our client in our promotional materials and warrant that you have the authority to grant us this right. You may request that we stop referring to you in our promotional materials by submitting an email to [hello@cakeequity.com](mailto:hello@cakeequity.com) at any time detailing such request. It may take us up to 30 days to process this request, however we will undertake to process the request as soon as possible.

We may provide your details onto our affiliates in exchange for a fee. We may also provide commissions to Referrers in exchange for your contact details and introduction.

## 17. CHANGES TO THIS AGREEMENT

Cake may, in its sole discretion, amend these Terms from time to time. Amendments will be effective immediately upon their publication on the Cake official website, or as otherwise notified to you. Your use of the Cake website or continuation of your registration with this website following the publication will constitute an agreement by you to be bound by the Terms, as amended.

## 18. COMMUNICATION

Where an email address is recorded on the Platform for a party, any communication to that party will, by default, be sent electronically (including the distribution of share certificates and holding statements).

Each time you use any communication tools available through the Platform or the Services, either directly or indirectly (such as through system generated communications), you represent and warrant that:

- a) such communication is for a legitimate purpose and in accordance with all applicable Laws, including the Privacy Act and the Spam Act; and
- b) you are authorised to publish all content comprised in the communication, including in respect of any applicable Intellectual Property Rights.

## 19. PRIVACY

- a) You must ensure that your use of the Services, including the provision of any Data to us, complies with the Privacy Act, Spam Act and all applicable Laws. By registering an Account and continuing to use the Services, you will be deemed to have accepted the terms of our Privacy Policy (as amended from time to time). The Privacy Policy is considered to be part of these Terms.

- b) You accept that Cake has no liability under the Privacy Act or the Spam Act in connection with your use of the Services.

## 20. INTELLECTUAL PROPERTY

### 20.1. Intellectual Property Rights

- a) Cake owns all existing and future Intellectual Property Rights in the Platform, Services, Program Documentation and any Materials. Subject to clause 13.2, we will defend, indemnify, and hold you harmless from and against any claim that your use of the Platform, Services or Materials in accordance with these Terms infringes the Intellectual Property Rights of any third party.
- b) The Services and your access to the Platform are made available on a limited license basis, and no ownership or other interest is conveyed to you under these Terms. Cake has and retains all right, title and interest, including all Intellectual Property Rights, in and to the Services, and any and all related or underlying technology.
- c) We agree that we will not acquire any interest in the Company Data, other than under the license granted under clause 19.1(4)
- d) You grant Cake a non-exclusive, non-transferable, sub-licensable, royalty-free, perpetual license to use the Company Data for the sole purpose of performing its obligations under these Terms.
- e) Nothing in these Terms is intended to grant you any Intellectual Property Rights, or any other rights, in or arising from the Materials, including but not limited to any trademarks, business names, logos, know-how, processes or methodologies of Cake.

### 20.2. Restrictions

Except as otherwise expressly permitted by these Terms, you will not:

- a) reproduce, modify, adapt, create derivative works of the Platform or rent, lease, distribute, sell, sublicense, transfer or provide access to the Platform to a third party;
- b) interfere with any license key mechanism in the Platform or otherwise circumvent mechanisms in the Platform intended to limit use;
- c) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public application programming interfaces to any Platform, except as permitted by law;
- d) undermine the security or integrity of our computing systems or networks or, where the Platform is hosted by a third party, that third party's computing systems or networks;

- e) use, or misuse, the Platform or the Services in any way which may impair the functionality of the Platform, or impair the ability of any other user to use the Services or the Platform;
- f) transmit, or input into the Platform, any files that may damage any other person's computing devices or software or any content that may be offensive;
- g) remove or obscure any proprietary or other notices contained in the Platform; or
- h) publicly disseminate information regarding the performance of the Platform.

## 21. NOTICES

a) Any Notice to be given to us under these Terms must be:

- sent by an Authorised Signatory by email to [hello@cakeequity.com](mailto:hello@cakeequity.com), including 'urgent' in the subject line, and addressed to the attention of CEO; or
- in writing and signed by an Authorised Signatory or Officer, and addressed or delivered to Cake's postal address by prepaid post.

b) Any Notice to be given by us under these Terms may be:

- sent by email to the email address listed for any Authorised Signatory of your Account;
- posted on our Website or within the Platform; or
- addressed or delivered to your postal address by prepaid post.

c) Any Notice given under this clause 20 is taken to be given and made:

- in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- in the case of an email, on the day and at the time that the sender receives a delivery confirmation report (or similar) confirming that the email was delivered to the specified address.

## 22. SEVERABILITY

If a word or provision in these Terms:

a) is or becomes void, voidable, illegal or unenforceable in its terms; and

b) would not be void, voidable or unenforceable if:

- where the word or provision is capable of being read down, it were read down; or
- some words were omitted,

- c) then those words are severed and that provision will be read down accordingly (as applicable) and the rest of the Agreement will continue in full force and effect.

## 23. CUMULATIVE RIGHTS

The rights and remedies in these Terms are in addition to other rights and remedies given by Law independently of these Terms.

## 24. GOVERNING LAW

This Agreement is governed by and must be construed in accordance with the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals from those courts in respect of any proceedings in connection with these Terms.

## 25. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the parties and supersedes any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of these Terms, whether orally or in writing.

## 26. RELATIONSHIP BETWEEN THE PARTIES

Except as expressly provided, nothing in these Terms constitutes a partnership between the parties or makes a party an agent of the other party of any purposes and a party cannot in any way or for any purpose bind the other party or contract in the name of the other party.

## 27. ASSIGNMENT

You may not assign, transfer or in any other manner deal with its rights under these Terms without Cake's prior written consent (which may be withheld at Cake's absolute discretion). We may at any time assign, transfer or in any other manner deal with our rights under these Terms without your consent.

## Participant Terms

### Application

The Participant Terms apply to an individual who registers for a Cake Account to view share holdings, note holdings or option holdings in a Company, either in a personal capacity or on behalf of a company.

By registering and using the Services or the Platform, the party accepting these Terms ('the **Applicant**', '**you**' or '**your**') agrees to be bound by these Terms from the date of acceptance of these Terms until terminated in accordance with these Terms. The Terms, as amended from time to time, together with any other terms and conditions notified to you, will form the agreement between Bake That Cake ACN 637 502 455 of 5/2 Philippine Parade, Palm Beach 4221 ('**Cake**' or '**we**', '**us**' or '**our**') and you. It is likely these Terms will change over time, and it is your responsibility to ensure that you have read, understood and agreed to the most recent Terms available on the Website [www.cakeequity.com](http://www.cakeequity.com).

Capitalised terms in these Terms are defined below. These Terms are applicable to all Cake clients that otherwise do not have a substitute individual signed agreement with Cake. These Terms may also apply in addition to any other agreement with Cake or its Related Bodies Corporate where applicable. If you do not agree to these terms, do not use the Services.

### DEFINITIONS AND INTERPRETATION

#### Definitions

In these Terms, the following words and phrases have the meanings as set out below unless a contrary intention appears:

'**Account**' means your online account within the Platform through which you can view your share, option or note holdings, store and view related documents and update your details;

'**Agreement**' means the Terms, as amended from time to time, together with any other terms and conditions notified to you from time to time;

'**Applicant**' means the party which accepts these Terms;

'**Australian Consumer Law**' means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth);

'**Authority**' includes any government or semi-government, statutory, public or other authority or body having jurisdiction over the Company or any matter or thing in relation to it;

'**Business Day**' means a day other than a Saturday or Sunday on which banks are open for business generally in Brisbane, Queensland;

'**Company**' means the entity in which Securities are recorded on a Register on Cake or in which the Services are provided for;

**'Confidential Information'** means:

1. confidential information of any kind, including, without limitation, all written communications and the databases, computer programs, screen formats, screen designs, report formats, interactive design techniques, and other related information furnished to a party by the other party, for the purposes of these Terms and the Agreement;
2. does not include information that has been independently created by a party or that has already come into the public domain for any reason other than by virtue of a breach by a party of any obligation of confidentiality imposed in relation to the information; and
3. in respect of a Company, includes Holder information but does not include Holder information that has already come into the public domain for any reason other than by virtue of a breach by Cake of any obligation of confidentiality imposed in relation to the information;

**'Corporations Act'** means the Corporations Act 2001 (Cth) as amended from time to time;

**'Disclosing Party'** has the same meaning given in clause 12.1 of these Terms;

**'Holder'** means a person or, as the case may be, persons in whose name Securities are, were or will be inscribed in the Register and **'Holding'** has a corresponding meaning;

**'Intellectual Property Rights'** means any registered or unregistered, current or future copyright, trade or service mark, design, patent, trade, business or company name, software or computer program or source code, or other proprietary right, or any right to registration of such rights, both in Australia and throughout the world;

**'Law'** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, including, but not limited, the Corporations Act and all relevant Australian legal and regulatory requirements, including, without limitation, the Corporations Regulations 2001 (Cth), as applicable and as amended from time to time;

**'Loss'** has the meaning given in clause 13.1 of these Terms;

**'Materials'** means the materials, information, and technology of any nature created by Cake in connection with the provision of the Services, including but not limited to documentation and software;

**'Notice'** means any notice given under or in connection with these Terms;

**'Participant'** means a user of the Platform in the capacity as an investor, option holder, note holder or otherwise who uses the Platform to receive or view share or option holdings, either in a personal capacity or on behalf of a Company.

**'Participant Data'** means data and information provided to Cake by, or on behalf of, a Participant in connection with the provision of the Services or use of the Platform, including any document signed by a Participant and added to the Participant Account;



**'Platform'** means the online services software accessible via the Website;

**'Platform User'** means any user of the Platform, including a Company using the Services or a Participant.

**'Privacy Act'** means the Privacy Act 1988 (Cth) and any other applicable privacy legislation, as amended from time to time;

**'Privacy Policy'** means our Privacy Policy available at [www.cakeequity.com](http://www.cakeequity.com) as amended from time to time in our sole discretion;

**'Program Documentation'** means, in relation to the Programs, all written information, flow charts, manuals, loading diagrams, listings, drawings, source codes, object codes, drawings and other documents or material contained, reproduced or otherwise incorporated, including any copies, duplicates, extracts or reproductions of such information, charts, manuals, diagrams, listing codes, documents or material forms;

**'Programs'** means computer programs used by Cake for the supply of the Services;

**'Receiving Party'** has the same meaning given in clause 12.1 of these Terms;

**'Register'** means the register and index of Holders of the Company established and maintained via the Services;

**'Related Bodies Corporate'** has the meaning as defined in the Corporations Act;

**'Security'** means a security (as defined in the Corporations Act) issued by the Company which may include, without limitation, a share or unit, an option or right over a share or unit;

**'Services'** means

- a) for a Participant, the services provided through the Platform (or otherwise) in accordance with these Terms, including the ability to view share, option or note holdings, sign documents, and communicate with Companies; or
- b) for a Company, the services provided to that Company including maintaining its Register or using any other feature available to the Company on the Platform ;

**'Spam Act'** means the Spam Act 2003 (Cth) as amended from time to time;

**'Term'** means the period commencing on the date on which you agree to these Terms and expiring upon termination of this Agreement in accordance with these Terms;

**'Terms'** means these terms and conditions, as amended or superseded from time to time in Cake's sole discretion;

**'Website'** means the website available at [www.cakeequity.com](http://www.cakeequity.com).

Interpretation

In these Terms unless the context otherwise requires:

1. Headings have been inserted only for convenience and do not affect the interpretation of these Terms;
2. A reference to any document includes a reference to that document's attachments and schedules, as amended from time to time;
3. A reference to a statute, ordinance, code or other law includes reference to the corresponding regulations, instruments, class orders and policy statements in all instances as amended, consolidated, re-enacted, replaced or re-written;
4. A reference to the parties, where relevant, includes their respective successors or permitted assigns;
5. The singular includes the plural and vice-versa;
6. Words and expressions importing one gender include all other genders;
7. 'Include' and any variation of it means including without limitation and does not exclude a reference to other items, whether of the same class or genus or not;
8. 'Month' and any variation of it means a calendar month (whether or not beginning on the first day of the month);
9. 'Person' includes a natural person, a firm, a body corporate, an unincorporated association or an Authority and vice versa;
10. 'Dollars' or any reference to '\$' in these Terms means Australian dollars unless otherwise expressly stated;
11. Where a word or phrase is given a defined meaning in these Terms, any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning; and
12. If under these Terms the day on or by which any act, matter or thing is required to be done is a day other than a Business Day, such act, matter or thing must be done on the next succeeding Business Day.

## 1. SERVICES

### 1.1. Right to use the Services

1. By registering an Account, you agree and warrant that:
  - a) you have read, understood and agreed to these Terms;
  - b) that you will use the Services, the Platform and the Website in accordance with these Terms.
2. If you do not agree to these Terms, you may not use the Services and must notify us immediately.

3. By registering an Account, subject to these Terms, you may use the Services. You warrant that you have the authority to enter into these Terms, and if you are accepting these terms on behalf of another person or Company, you have disclosed that you are duly authorised by that person or company to accept these terms on their behalf and may act on behalf of the Company and to provide all relevant information to us (either directly or via the Platform) without breach of any obligation owed to the Company or any other third party. Subject to your compliance with these Terms, we grant you the non-exclusive, non-sublicensable, non-transferable and limited right to access and use the Services available to you via the Platform from time to time during the Term.

## 1.2. Services Availability

There may be occasions where the Services are unavailable, including due to reasons outside of our control. We will use reasonable endeavours to notify you in advance of any planned outages and will endeavour to remedy any unplanned outages as soon as possible.

## 1.3. Your use of the Services

1. By registering an Account, you acknowledge and agree that we may monitor or suspend your use of the Services where such use is fraudulent or outside of the intended application of the Services, causes significant congestion, disruption or otherwise adversely affects the performance of the Platform or delivery of the Services or adversely affects any person's use of, or access to, the Platform or the Services.
2. You are solely responsible for any content you post on or upload to the Platform, including your profile and any Participant Data. You may not post, transmit or share:
  - a) information on the Platform that you do not own or have permission to display, publish or post;
  - b) defamatory or obscene material, or any material which may be offensive or insulting to other Platform Users or material which be incite hatred, violence or discrimination;
  - c) executable files (whether benign or malicious); or
  - d) material which may be detrimental to the business or reputation of Cake or any other Platform User.

You agree to indemnify each other Platform User and us from and against any loss, damages or costs arising from or in connection with any content you post on the Platform that breaches these Terms.

3. You agree that in using the Platform you will not:
  - a) use the Platform for any unlawful purpose;
  - b) use the Platform for the purpose of gaining any competitive advantage in a similar service or business, including by creating an Account primarily to evaluate Cake as a competitor of a similar service or business;
  - c) use the Platform in any way that interrupts, damages, impairs or renders the Platform less efficient;

- d) access or attempt to access the accounts of other Platform User or to penetrate or attempt to penetrate the Platform's security measures;
- e) advertise or promote third party or your own services including by way of the distribution of 'spam' email; or;
- f) use the Platform for any purpose other than as permitted in accordance with these Terms.

#### 1.4. Security of login details

- a) You agree that you are responsible for the security of your login details and that you will keep your login details confidential
- b) You agree that the login details constitute your signature for the purpose of approving any actions in this Website. You also acknowledge and accept responsibility for the use of your login details whether or not that use has been authorised by you.

#### 1.5. Third party access

- a) You may give permission to third parties, such as your financial advisor, to have access and make changes to your details. You acknowledge and accept that you are responsible for any actions performed by any such third parties and their delegates whether or not that action has been authorised by you.
- b) If you are a third party acting on behalf of a holder, you acknowledge that you have read and understood these terms and have the authority to act on behalf of the holder, in performing any action or transaction on the Platform or in connection with the Services.

#### 1.6. Access to Cake employees

By registering an Account, you grant us permission to provide Cake (and Related Bodies Corporate) employees and contractors with access to your Account for the purpose of fulfilling the Services or managing the Platform, subject to these Terms.

#### 1.7. Communications

By default, you agree to receive all communications regarding your Holding(s), including annual reports, by email to the email address recorded in your registration.

#### 1.8. Share certificates and holding statements

You agree to receive any share certificates and/or holding statements in electronic form.

## 2. PRICING OF SERVICES

### 2.1. Services

No payment is required to use the Services as a Participant.

## 3. RESPONSIBILITY FOR PARTICIPANT DATA

## 3.1 General

You must ensure that your use of the Services and handling of Participant Data is at all times compliant with all applicable Laws. Each time you provide Participant Data to us (including by uploading that data to the Platform), you represent and warrant that:

- a) you have obtained all necessary rights, releases and permissions to provide the Participant Data to us and to grant the rights under these Terms in respect of the Participant Data; and
- b) the Participant Data and its transfer to and use by us as authorised by you under these Terms do not violate any Laws (including without limitation those relating to export control and electronic communications) or rights of any third party, including without limitation any Intellectual Property Rights, rights of privacy or rights of publicity, and any use, collection and disclosure authorised by the Participant under these Terms is not inconsistent with the terms of any privacy policies or privacy laws applicable to the Participant Data. We do not assume responsibility or liability for Participant Data, and you will be solely responsible for Participant Data and the consequences of that Participant Data being used, disclosed, stored or transmitted in accordance with these Terms.

## 3.2. Participant Permissions

By registering an Account, you grant permission to us to host, back-up and otherwise access and deal with Participant Data in accordance with these Terms, including by transferring Participant Data to a Related Bodies Corporate of Cake or to Companies in which you hold securities in for the purpose of fulfilling the Services or managing the Platform,

## 3.3. Accuracy of information and Services

You acknowledge and agree that:

- a) we have no obligation to verify any of the Participant Data provided to us in connection with the Services;
- b) the accuracy, completeness and quality of the Services will be dependent on the accuracy, completeness and quality of the Participant Data provided; and
- c) that we will not be liable for any failure of the Services which result in connection with any inaccurate or incomplete Participant Data provided to us.

## 4. SECURITY & DATA SERVICES

### 4.1. Data back-up

You are responsible for backing-up all Participant Data. We adhere to our policies and procedures to prevent data loss, but we do not guarantee that there will be no loss of Participant Data or that any Participant Data we back-up will be complete or accurate.

### 4.2. Use of third party service providers

In performing the Services, we may appoint and use third party service providers to assist us in carrying out our obligations under these Terms (for example, hosting and cloud server

providers or engaging other service providers to assist in the management of the Participant Data). In engaging such third party service providers, we remain responsible for ensuring that such service providers comply with the Privacy Policy (as amended from time to time) and the confidentiality provisions set out in clause 12 of these Terms.

#### 4.3. Security

- a) The use of the Services necessarily involves transmission of Participant Data over networks that are not owned, operated or controlled us. Whilst we will take all reasonable precautions to implement security procedures to help protect Participant Data from security attacks, we disclaim all responsibility for any Participant Data that is lost, altered, intercepted or stored across such networks. We cannot guarantee that our security procedures will be error-free, or that transmissions of Participant Data will be secure or that unauthorised third parties will not be able to defeat our security measures or those of our third party service providers.
- b) Our security practices are constantly evaluated and improved. Our platform uses HTTP Strict Transport Security, which forces all connections to use HTTPS.
- c) Authentication of Platform Users is handled by Auth0 ([www.auth0.com](http://www.auth0.com)) which ensures a higher degree of security and allows users the choice of using MFA. It also means we don't store any authentication data like passwords on our servers. Developer access to our AWS environment and integration providers are locked down using MFA. Sensitive data like API keys are encrypted.
- d) Our platform is deployed in AWS allowing us to take advantage of AWS security infrastructure like VPCs to isolate traffic to particular resources, e.g. database instances cannot be accessed via the internet. Customer data in AWS is encrypted at rest using the industry-standard AES-256 algorithm.
- e) Reliability: All customer data is stored in AWS RDS which is backed up nightly and has Multi-AZ enabled. All customer documents are stored in AWS S3, which is designed for 99.999999999% of durability, with versioning enabled ensuring a higher degree of protection.

#### 4.4. Data Storage

- a) We may retain Participant Data for at least seven years following termination of the Agreement, or such longer time frame as required by law or for audit and compliance purposes.
- b) You may request that the Participant Data be deleted by notice to the company (including the deletion of your whole Account), and we will delete that Participant Data within 30 days of that notice, subject to any requirement to retain the data under any applicable law or court order. For clarity, any Participant Data stored on the account of a Company in which you have Holdings will not be deleted, unless that Company approves in writing by notice to Cake that the data can be deleted from its Company account.

## 5. CAKE IS NOT A LEGAL OR FINANCIAL ADVISOR

- a) Cake is not a legal or financial advisor, nor does it act as a legal or financial advisor, nor is it competent or qualified to act in, or in conjunction with, the carrying out of the functions of a legal or financial advisor. Cake recommends that all parties seek independent advice in relation to any financial investments made or transactions entered into.
- b) Cake has no responsibility whatsoever in respect of any taxes which may arise as a consequence of your use of the Platform, Services or the Account, including notifying a Participant or a Company of any obligations that have or may have arisen.
- c) You acknowledge that the listing of a Company on the Platform does not serve as any form of indication, recommendation, sanction or approval by us of a Company's business or its future financial prospects.
- d) You acknowledge the following general risks in relation to any investments you make:
  - Many businesses fail, and it is possible that the value of any securities you view through the Platform (to the extent that they have any value) may decrease.
  - Any securities you view through the Platform may be diluted by the issuance of further shares in the Company.

## 6. TERMINATION

### 6.1. Termination for convenience

You may terminate this Agreement at any time by providing us with written Notice. We may terminate these Terms, without cause, at any time by giving at least 72 hours written Notice to you. Where you terminate this Agreement, you will be responsible for the export of your Company Data prior to termination. Where Cake terminates, we will provide you a reasonable period to export your company data.

### 6.2. Termination for cause

- a) In addition to any other terms of these Terms giving a right of termination, we may terminate these Terms with immediate effect and without further notice to you if:
  - you breach a material provision of these Terms and fail to remedy that breach within 14 days after receiving written Notice specifying the breach;
  - you breach a provision of these Terms that is not capable of being remedied; or
  - we reasonably suspect you have created an Account for a non-permitted purpose under these Terms, including for the purpose of evaluating Cake as a competitor to a similar service or business.
- b) If we terminate these Terms in accordance with this clause 6, you will be able to export the Participant Data contained in the Account for a period of 72 hours unless:
  - you have breached a material provision of these Terms

- doing so would cause us legal liability or compromise our ability to provide the Services to other clients; or
- we are prohibited from doing so by law.

## 7. CONFIDENTIALITY

### 7.1. Confidential Information

Each party:

- a) agrees that it will take all reasonable steps to keep and treat as confidential all Confidential Information disclosed to a party (Receiving Party) by the other party (Disclosing Party) and the Receiving Party acknowledges the Confidential Information is passed to and received by it in the strictest confidence;
- b) must use the Confidential Information only for the purposes set out in these Terms;
- c) must not disclose the Confidential Information to any person except as permitted by these Terms;
- d) must use reasonable endeavours to ensure that any person who has access to Confidential Information does not make any unauthorised use, modification, reproduction or disclosure of that information and acknowledges and agrees that it remains responsible for that person such that any breach of these Terms by this person will be treated as a breach by the Receiving Party;
- e) must notify the Disclosing Party as soon as practicable after it becomes aware of a breach by it or its representatives of its obligations under this clause 12; and
- f) must co-operate with the Disclosing Party in any reasonable action which it may take to protect the confidentiality of its Confidential Information.

7.2. Cake shall not be liable for any breach of confidence between a Company and a Participant.

### 7.3. Permitted Disclosures

The Receiving Party may disclose Confidential Information otherwise than in relation to the provision of Services in accordance with these Terms:

- a) on a need to know basis to any of its representatives or agents (including legal advisors) for the purposes set out in these Terms if the Receiving Party ensures that the representative or agent is made fully aware of the nature and extent of the Confidential Information and the representative or agent agrees to be bound and abide by the applicable terms of these Terms;
- b) where required by Law, if the Receiving Party provides notice to the Disclosing Party prior to any disclosure to provide the Disclosing Party with the opportunity to address any potential disclosure of its Confidential Information (to the extent permitted under any applicable Law); or
- c) with the prior written consent of the Disclosing Party.

## 8. INDEMNITY AND LIABILITY

### 8.1. Indemnity



By registering for an Account and using the Platform or Services, you agree to defend, indemnify and hold harmless Cake from and against any loss, cost, expense, liability or damage, including legal costs, (collectively, **Loss**) for which we become, or may become, liable arising from or relating to your use of the Services or the Platform or the Participant Data, including but not limited to any claim brought by a third party alleging that Participant Data, or any use of the Services or the Platform by you in breach of these Terms, infringes or misappropriates the rights or Intellectual Property Rights of a third party or violates applicable Laws, except to the extent that any Loss is caused by our fraudulent or wilful misconduct. You acknowledge and agree that we do not need to incur expenses or make payment before enforcing our right of indemnity under these Terms.

## 8.2. Limitation of liability

- a) Despite any other provision of these Terms, to the maximum extent permitted by law, we exclude all liability and responsibility to you or any Company (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of Participant Data, profits and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, the Services.
- b) If you or a Company suffers loss or damage arising as a direct result of our negligence, our liability will be limited, at our option, to supplying the Services again or paying for the cost of having the Services supplied again.
- c) Unless otherwise required by Law, if you are not satisfied with the Services, your sole and exclusive remedy is to terminate these Terms.
- d) The limitation of liability described in this clause 8.2 will not apply to any loss that the Participant suffers as a result of our fraudulent or willful misconduct.
- e) You agree to release us from all claims arising in connection with the Services to the extent that our liability in respect of such claims would exceed our liability as determined under clause 8.2.
- f) You acknowledge that our ability to comply with our obligations under these Terms will depend on your compliance with the respective obligations under these Terms and we will have no responsibility for any failure to provide the Services to the extent that such failure is caused directly or indirectly by your failure to comply with your obligations under these Terms.
- g) You acknowledge that we do not provide any services to either you or the Company in which you have Securities in the capacity of any professional advisor. Accordingly, we do not accept any responsibility for the accuracy or completeness of any forms, templates lodgments or notices generated by the Platform. It is your responsibility to obtain the appropriate professional advice in respect of those documents.

## 9. COMPLAINTS AND DISPUTES

- a) We will do our best to resolve any complaints in relation to your use of the Platform or Services. If you have a complaint with respect to any aspect of the Platform, you should report it to us immediately by sending an email, with the word "complaint" in the subject line, from the email address in which your Account is registered to [hello@cakeequity.com](mailto:hello@cakeequity.com). We will send an initial response to your email as soon as practicable.
- b) Cake is under no obligation to investigate or in any way resolve disputes between Participants and Companies. Resolution of such disputes is the responsibility of the parties in question.

## 10. REPRESENTATIONS AND WARRANTIES

### 10.1 Your Representations and Warranties

You represent and warrant to us as at the date of your acceptance of these Terms and each time you use the Services, that you:

- a) have all the power to enter into and perform these Terms and have obtained all necessary consents and corporate authorisations to enable you to do so;
- b) will only use the Services and the Platform for a lawful business purpose, and in accordance with these Terms, all applicable Laws, any notice sent by us to you or any condition posted on within the Platform or on the Website;
- c) will comply in a timely, proper and efficient manner with your obligations under these Terms; and
- d) will provide to us, on request, any documents, information, instructions or directions reasonably required by us to enable us to perform our obligations, provide the Services or do any other thing in accordance with these Terms or as required by Law.

### 10.2. Warranty Disclaimer

All Services are provided on an "as is" and "as available" basis, and we expressly disclaim any and all warranties and representations of any kind, including any warranty of non-infringement, title, fitness for a particular purpose, functionality, or merchantability, whether express, implied, or statutory. We will not be liable for delays, interruptions, service failures and other problems inherent in the use of the internet and electronic communications or other systems outside of our reasonable control. To the maximum extent permitted by law, we make no representations, warranties or guarantees as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of any Services, Materials or any associated content, or that:

- a) the use of any Services will be secure, timely, uninterrupted or free of errors or omissions;
- b) the Services will operate in combination with any other hardware, software, system or data;
- c) the Services will meet your requirements or expectations;
- d) any stored Participant Data will be accurate or reliable or that any stored Participant Data will not be lost or corrupted; or

- e) errors or defects will be corrected.

## 11. CHANGES TO THIS AGREEMENT

Cake may, in its sole discretion, amend these Terms from time to time. Amendments will be effective immediately upon their publication on the Cake official website, or as otherwise notified to you. Your use of the Cake website or continuation of your registration with this website following the publication will constitute an agreement by you to be bound by the Terms, as amended.

## 12. COMMUNICATION

Where an email address is recorded on the Platform for a party, any communication to that party will, by default, be sent electronically (including the distribution of share certificates and holding statements). Each time you use any communication tools available through the Platform or the Services, either directly or indirectly (such as through system generated communications), you represent and warrant that:

- a) such communication is for a legitimate purpose and in accordance with all applicable Laws, including the Privacy Act and the Spam Act; and
- b) you are authorised to publish all content comprised in the communication, including in respect of any applicable Intellectual Property Rights.

## 13. PRIVACY

- a) You must ensure that your use of the Services, including the provision of any Data to us, complies with the Privacy Act, Spam Act and all applicable Laws. By registering an Account and continuing to use the Services, you will be deemed to have accepted the terms of our Privacy Policy (as amended from time to time). The Privacy Policy is considered to be part of these Terms.
- b) You accept that Cake has no liability under the Privacy Act or the Spam Act in connection with your use of the Services.

## 14. INTELLECTUAL PROPERTY

### 14.1. Intellectual Property Rights

- a) Cake owns all existing and future Intellectual Property Rights in the Platform, Services, Program Documentation and any Materials. Subject to clause 13.2, we will defend, indemnify, and hold you harmless from and against any claim that your use of the Platform, Services or Materials in accordance with these Terms infringes the Intellectual Property Rights of any third party.
- b) The Services and your access to the Platform are made available on a limited license basis, and no ownership or other interest is conveyed to you under these Terms. Cake has and retains all right, title and interest, including all Intellectual Property Rights, in and to the Services, and any and all related or underlying technology.
- c) We agree that we will not acquire any interest in the Data, other than under the license granted under clause 14.1(4)

- d) You grant Cake a non-exclusive, non-transferable, sub-licensable, royalty-free, perpetual license to use the Participant Data for the sole purpose of performing its obligations under these Terms.
- e) Nothing in these Terms is intended to grant you any Intellectual Property Rights, or any other rights, in or arising from the Materials, including but not limited to any trademarks, business names, logos, know-how, processes or methodologies of Cake.

## 14.2. Restrictions

Except as otherwise expressly permitted by these Terms, you will not:

- a) reproduce, modify, adapt, create derivative works of the Platform or rent, lease, distribute, sell, sublicense, transfer or provide access to the Platform to a third party;
- b) interfere with any license key mechanism in the Platform or otherwise circumvent mechanisms in the Platform intended to limit use;
- c) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public application programming interfaces to any Platform, except as permitted by law;
- d) undermine the security or integrity of our computing systems or networks or, where the Platform is hosted by a third party, that third party's computing systems or networks;
- e) use, or misuse, the Platform or the Services in any way which may impair the functionality of the Platform, or impair the ability of any other user to use the Services or the Platform;
- f) transmit, or input into the Platform, any files that may damage any other person's computing devices or software or any content that may be offensive;
- g) remove or obscure any proprietary or other notices contained in the Platform; or
- h) publicly disseminate information regarding the performance of the Platform.

## 15. NOTICES

- a) Any Notice to be given to us under these Terms must be:
  - sent by email to [hello@cakeequity.com](mailto:hello@cakeequity.com), including 'urgent' in the subject line, and addressed to the attention of CEO; or
  - in writing and signed, and addressed or delivered to Cake's postal address by prepaid post.
- b) Any Notice to be given by us under these Terms may be:
  - sent by email to the email address listed for your Account;
  - posted on our Website or within the Platform including through the chat feature; or
  - addressed or delivered to your postal address by prepaid post.
- c) Any Notice given under this clause 15 is taken to be given and made:

- in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- in the case of an email, on the day and at the time that the sender receives a delivery confirmation report (or similar) confirming that the email was delivered to the specified address.

## 16. SEVERABILITY

If a word or provision in these Terms:

- a) is or becomes void, voidable, illegal or unenforceable in its terms; and
- b) would not be void, voidable or unenforceable if:
  - where the word or provision is capable of being read down, it were read down; or
  - some words were omitted,
- c) then those words are severed and that provision will be read down accordingly (as applicable) and the rest of the Agreement will continue in full force and effect.

## 17. CUMULATIVE RIGHTS

The rights and remedies in these Terms are in addition to other rights and remedies given by Law independently of these Terms.

## 18. GOVERNING LAW

This Agreement is governed by and must be construed in accordance with the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals from those courts in respect of any proceedings in connection with these Terms.

## 19. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the parties and supersedes any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of these Terms, whether orally or in writing.

## 20. RELATIONSHIP BETWEEN THE PARTIES

Except as expressly provided, nothing in these Terms constitutes a partnership between the parties or makes a party an agent of the other party of any purposes and a party cannot in any way or for any purpose bind the other party or contract in the name of the other party.

## 21. ASSIGNMENT

You may not assign, transfer or in any other manner deal with its rights under these Terms without Cake's prior written consent (which may be withheld at Cake's absolute discretion). We may at any time assign, transfer or in any other manner deal with our rights under these Terms without your consent.