

# Communications and Technology Terms and Conditions

## BCL Technology Terms

Thank you for accessing the BCL Services. Barristers' Chambers Limited (**BCL**) operates the BCL Services. We acknowledge and agree with you that barristers, as independent Australian professionals, operate individual practices that are subject to obligations of confidentiality, including in respect of material held in the BCL Network. By accessing and/or using the BCL Services, you agree to all the terms of the Agreement (including the AUP) and you acknowledge that our Privacy Policy (available at <http://www.bcl.net.au/privacy-policy>) applies to our collection and use of Personal Information collected through the use of the BCL Services. You should review all the below terms carefully and if you do not agree to any term of the Agreement, you should immediately cease using the BCL Services and contact the BCL Service Desk. We may update or amend the Terms in accordance with clause 25 of the Terms.

In the Terms (including the above paragraph):

- 'ACL' has the meaning given to that term in clause 22 of the Terms;
- 'Agreement' means all the terms referred to in clause 2.1 of the Terms;
- 'AI tools' means software applications, services and platforms that utilise artificial intelligence algorithms;
- 'AUP' means the 'Acceptable Use Policy' attached to the Terms;
- 'authorised user' means any of your clerks, research assistants, receptionists, employees, independent contractors and any other person, including guests, whom you have in any way authorised to use the BCL Services;
- 'BCL Indemnified Parties' has the meaning given to that term in clause 23.2 of the Terms;
- 'BCL Network' means the local area network software, hardware, computer networks, and other technology (whether owned by BCL or not) used for the provision of, or contained in, the BCL Services.
- 'BCL Service(s)' has the meaning given to that term in clause 4.1 of the Terms;
- 'BCL Service Desk' is our centralised service contact desk, contactable at +61 (03) 9225 8888 or by email at [servicedesk@vicbar.com.au](mailto:servicedesk@vicbar.com.au);
- 'Chamber Rules' means the terms of the 'Chamber Rules of Occupancy' accessible at <https://www.bcl.net.au/wp-content/uploads/Chamber-Rules-of-Occupancy.pdf>;
- 'Data' has the meaning given to that term in clause 21.5(a) of the Terms;
- 'Device' has the meaning given to that term in clause 5.1 of the Terms;
- 'guest' means a person aged 18 years or over, accompanying you, who:
  - you have invited, allowed or authorised to use BCL Services on a short term or temporary basis;
  - has registered their identity credentials with the BCL Service Desk as described in clause 6.4 of the Terms; and
  - has not, themselves, submitted a request to the BCL Service Desk to use the BCL Services;

- 'Intellectual Property Rights' means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:
  - patents, inventions, designs, copyright, trademarks, brand names, product names, domain names, database rights, rights in circuit layouts, plant breeder's rights, know how, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
  - any application or right to apply for registration of any of these rights;
  - any registration of any of those rights or any registration of any application referred to in the immediately preceding point; and
  - all renewals, divisions and extensions of these rights;
- 'Microsoft Products' has the meaning given to that term in clause 9.4(e) of the Terms;
- 'Notice of Change to Fees and Payment Terms' has the meaning given to that term in clause 12.2 of the Terms;
- 'Payment Terms' means the conditions used to specify the timing and methods of payment for BCL Services;
- 'Personal Information' has the meaning given to that term in the Privacy Act;
- Privacy Act means the *Privacy Act* 1988 (Cth);
- 'Privacy Policy' means the terms our privacy policy accessible via the hyperlink in the opening paragraph of the Terms;
- 'Regulatory Obligation' means the lawful directions or other requirements of any regulator, law enforcement authority, court of competent jurisdiction, properly constituted commission of inquiry, or other body of inquiry established under lawful terms;
- 'related body corporate' has the meaning given to that term in section 50 of the *Corporations Act* 2001 (Cth);
- Schedule means an attachment to the Terms that is identified as a Schedule;
- 'Security Testing' has the meaning given to that term in clause 18.2(a) of the Terms;
- 'SLA' means any service level agreement published by us from time to time on our website and expressed to be applicable to your BCL Service;
- 'Terms' means:
  - the opening paragraph;
  - clauses 1 to 27 below;
  - AUP; and
  - any Schedule(s);
- 'us', 'we' and 'our' means BCL and any related body corporate of BCL;

- 'you' and 'your' means the person (you) who:
  - submits a request to the BCL Service Desk to use BCL Services for yourself or for an authorised user; and
  - we name on an invoice as the person responsible for paying us for BCL Services; and
- 'Your Content' has the meaning given to that term in clause 14.1(a) of the Terms.

## **1. Your acceptance of the Agreement**

1.1 Please carefully read the Terms, including AUP and Schedule 1, because if you:

- (a) either:
- (i) click the 'I Accept' button;
  - (ii) receive the Terms from us and acknowledge to us in writing your acceptance of the terms; or
  - (iii) access or use any of the BCL Services or any other products or services provided by BCL,

then:

- (b) you agree to be bound by the terms of the Agreement when you access, use, or acquire BCL Services.

1.2 Subject to clause 18.8(b) and 18.8(c), we acknowledge and agree with you that nothing allows us, requires us, or authorises us, to access your emails except as requested by you or as required by law.

## **2. What is included in the Agreement?**

2.1 The following documents (including any changes that we notify you about in accordance with clause 25 of the Terms), comprise the Agreement:

- (a) the Terms;
- (b) our policies and procedures for BCL Services;
- (c) any requests from you for BCL Services, including via online forms and service requests, that are accepted by us; and
- (d) an SLA.

2.2 If there is an inconsistency between any of the terms of the Agreement listed or referred to in clause 2.1, then, to the extent of the inconsistency, the order of precedence is the order of the terms listed from the beginning to the end of clause 2.1.

## **3. Who is covered by the Agreement?**

3.1 When you use BCL Services, you must comply with the Agreement, whether you are in chambers or elsewhere, and whether you are using equipment provided by BCL or otherwise.

3.2 You:

- (a) must ensure your authorised users are aware of and abide by the Agreement; and

- (b) are responsible for adherence to, and any breach of, the Agreement by your authorised users and any guests.

#### **4. What are BCL Services?**

##### **4.1 BCL Services** means:

- (a) the BCL Network;
- (b) internet access services;
- (c) email services, including:
  - (i) the '@vicbar.com.au' domain;
  - (ii) other domain names that we have consented to in writing for you or authorised users to use; and
  - (iii) use of Microsoft Exchange Online licences using:
    - (A) the vicbar.com.au domain; and
    - (B) other domain names that we have consented to in writing for you or authorised users to use;
- (d) third-party (including SaaS and cloud) applications and services provided by or resold by BCL including but not limited to Microsoft 365 subscriptions, video conferencing subscriptions, and BCL-provided AI Tools;
- (e) data hosting (storing data on servers);
- (f) authorised internal resource access via the BCL Network (e.g. managed printing);
- (g) fixed-line (including 'voice over IP' and mobility solutions) telephone services (including handsets);
- (h) facsimile lines;
- (i) audio and/or audio/visual conferencing services;
- (j) managed printing services;
- (k) optional AI tools where expressly approved and made available by BCL;
- (l) BCL Service Desk; and
- (m) such other services as BCL nominates from time to time as a BCL Service, which you or an authorised user (other than a guest) may 'opt in' to acquire from us by notifying the BCL Service Desk.

- 4.2 BCL reserves the right to not support products attained outside of its technology offering including but not limited to Devices, personal subscriptions, network devices, and peripherals.

#### **5. Devices**

- 5.1 We do not provide end-user computers, mobile phones, or tablets (**Device(s)**) to anyone except our employees and directors. You and each authorised user must bring a Device in order to access BCL Services. You remain solely responsible for your Device(s) and the Device(s) of authorised users at all times, including ensuring your Device(s) are adequately updated/patched

and protected against threats and theft. BCL Services do not support the use of third-party network equipment, such as routers, switches or wireless access points, and if you or authorised users install or use such equipment in connection with BCL Services, then we may require you to remove the equipment. If you need assistance in selecting suitable Devices for use with a BCL Service, then contact the BCL Service Desk.

- 5.2 You, and each authorised user, may use any Microsoft or Apple Device to access BCL Services provided the Device is supported by Microsoft or Apple, as applicable. We may choose to support Devices that do not have specific vendor support on a reasonable-efforts basis, and there may be technical and security limitations with our support of these Devices. Such instances may also incur additional fees for service.

## **6. Who may access and use BCL Services?**

- 6.1 In order to access BCL Services, you and each authorised user (other than a guest, whose method of accessing BCL Services is described in clause 6.4) must submit a request to the BCL Service Desk for BCL Services. We may then accept or reject a request for access to the BCL Services.
- 6.2 If at the time the Agreement first comes into effect as between you and us, you already acquire BCL Services, then you shall be deemed to have submitted a request to acquire any BCL Services that you acquire from us on and from that time under the Agreement. You will similarly be deemed to have approved the use of BCL Services by each authorised user in accordance with the Agreement.
- 6.3 You, and each authorised user, may access and use BCL Services only if we issue you or them an '@vicbar.com.au' account or another email account domain name that we approve the use of in writing.
- 6.4 If you acquire network and support services from us with your BCL Services, then you:
- (a) may allow guests to obtain access to BCL Services;
  - (b) acknowledge that:
    - (i) a guest must first submit their name and email address to us via a registration or splash page as nominated by us for identity verification purposes;
    - (ii) you may allow up to ten (10) guests to use BCL Services at any time;
    - (iii) each guest can use BCL Services for up to one (1) week;
    - (iv) a guest may have restricted access to BCL Services - for example, BCL Services may be limited in terms of the speed, capacity, access, and elapsed access time of BCL Services.

- 6.5 Authorised users including guests are not intended third-party beneficiaries of this Agreement and have no rights against us under or in connection with the Agreement.

## **7. What are the password and other requirements for the BCL Services?**

- 7.1 In order to use BCL Services, you, and each authorised user (other than guests, whose method of accessing the BCL Services is described in clause 6.4), must, without limiting clause 7.4:
- (a) have an individualised username;
  - (b) have a password or any other form of authentication that we may reasonably require;

- (c) take the appropriate steps to properly protect and keep confidential your or their username, password or other authentication credentials; and
  - (d) not share a username, password or other form of identification with any other person.
- 7.2 All passwords must meet the standards determined and applied by BCL, as amended or updated from time to time. These will be enforced by technical means and you will be notified of the then-current specific requirements at the time of setting or changing your password.
- 7.3 You and each authorised user are each responsible for selecting, respectively, your or their password, and you, and they, must:
- (a) change the password when prompted by us; and
  - (b) set a password that is unique from previous passwords. Passwords should not:
    - (i) include numbers or letters in sequences or multiples (such as '1234' or 'bbbb').
    - (ii) be names of family, pets, friends, birthdays and other Personal Information such as addresses and phone numbers.
    - (iii) be inserted into email messages or other forms of electronic communication; or
    - (iv) be written down or stored online.
- 7.4 You, and each authorised user, must treat all passwords as sensitive, confidential information. You will be held responsible for all actions which occur using your account, except to the extent caused by our gross negligence or wilful misconduct.
- 7.5 We may require you to periodically reset or change your password.
- 7.6 If you suspect that your password or access code may have been disclosed to another person or that your BCL Service account may have been compromised, then you should immediately change your password and report the incident to the BCL Service Desk. Although we are under no obligation to do so, if we reasonably believe that your password or access code credentials may have been compromised, then we reserve the right to reset, suspend or disable your username, password or access code. Where reasonably practicable for us, we will notify you before doing so.
- 7.7 We may use different kinds of security measures in connection with BCL Services (including multi-factor authentication). In some circumstances, we may require you to use a second form of identification in order for you to make changes to your account credentials.

## **8. What can I access using BCL Services?**

- 8.1 You, and each authorised user (other than guests), may use the BCL Services for which we have approved your, or their, access, in accordance with:
- (a) a written request to the BCL Service Desk; and
  - (b) without limiting clause 8.1(a), an additional online request (such as for a Zoom licence), for some BCL Services.
- 8.2 You should not assume that, because you may technically be able to access or use a BCL Service, you are authorised to access or use BCL Services. If you are unsure about whether you are authorised to access any BCL Service, then you should contact the BCL Service Desk to seek clarification.

8.3 If you would like to change BCL Services that you acquire from us, or you wish to acquire a new BCL Service, then you must contact the BCL Service Desk.

**9. What are the conditions of accessing BCL Services? Is there anything I must not do?**

9.1 You must comply with all reasonable directions of ours that we give you from time to time in connection with your use of the BCL Services.

9.2 You must not use BCL Services for any illegal purpose or, any purpose that could bring members of the Victorian Bar, us, or any user of BCL Services, into disrepute.

9.3 Without limiting your obligations to comply with the AUP, you and your authorised users (including guests) must:

- (a) not use any BCL Services:
  - (i) to gain access to, download, save, store or transmit illegal content;
  - (ii) for the creation, storage or dissemination of destructive computer programs (e.g., viruses or self-replicating codes);
  - (iii) in any way that damages or interferes (or threatens to damage or interfere with) the performance and/or operation of any BCL Service;
  - (iv) to send a communication in someone else's name without their express authority; or
  - (v) to access, download, save, store, send or display from the internet (or any other source), or compose an email message or other communication containing material that would result in you or us being in breach of any law or rule of professional conduct applicable to you or us; and
- (b) in connection with your use of BCL Services, comply with all applicable laws, including laws that apply to the access and use of a computer system or the data contained in, or accessed through, a computer system.

9.4 In addition to your obligations in clause 9.3, you and your authorised users (including guests) must:

- (a) not copy, install, download, modify, adapt, reverse engineer, disassemble or decompile any software used in, or in the provision of, BCL Services;
- (b) only use the BCL Services in support of your internal business operations and not re-sell or re-supply the BCL Services or provide access to the BCL Services to any other person in any other manner including without limitation as a time-sharing or bureau service;
- (c) not alter, tamper, reverse engineer, repair or attempt to repair any feature or component of BCL Services, or any hardware used to provide BCL Services, or cause or allow a third party to do any of these acts;
- (d) not tamper with, misuse, abuse, vandalise, wilfully or intentionally damage or otherwise negligently operate any equipment belonging to or managed by BCL or its service providers; and

- (e) comply with:
  - (i) Schedule 1 to the extent you use Microsoft software or other Microsoft products (**Microsoft Products**) to access or use BCL Services, or as part of your receipt and use of BCL Services including (if applicable) any Microsoft applications or services as contemplated by clause 4.1(d) of the Terms, and you agree to indemnify us and keep us indemnified from and against any loss, cost, damage or expense we incur or sustain arising out of or in connection with your breach of the terms and obligations in Schedule 1; and
  - (ii) any terms and conditions that we notify you about, in accordance with clause 25 of the Terms in the form of a new or amended Schedule, when a supplier to us of software or products requires us to 'flow down' their terms to our users of BCL Services.

## 10. Testing of BCL Services

- 10.1 In order to protect all users of BCL Services, we reserve the right to, without obligation, test the integrity, functionality, and performance of BCL Services.
- 10.2 We reserve the right to disconnect any Device or equipment if we reasonably believe the Device or equipment is a risk to the safe or efficient operation of any BCL Service.
- 10.3 The testing referred to in clause 10.1 does not allow us to access the content of your emails or other documents stored within the BCL Network.

## 11. When can BCL suspend or cancel a BCL Service?

- 11.1 We may suspend or cancel the provision of any or all BCL Services where a third-party service provider has suspended, cancelled or otherwise affected our ability to continue providing the relevant BCL Services.
- 11.2 If you or any of your authorised users fail to comply with any part of the Agreement, then we may:
  - (a) suspend or cancel your or the authorised users' access to BCL Services; or
  - (b) if the breach is material including without limitation if you breach a material provision, terminate your Agreement in accordance with clause 21.1(b) of the Terms.
- 11.3 If we suspend or cancel the provision to you or authorised users of any or all BCL Services as is contemplated by clause 11.1 or 11.2, then we will provide you with as much notice as reasonably practicable in the circumstances.
- 11.4 If we decide, or are required to modify or exit a BCL Service (or a part of it), then we may:
  - (a) migrate you to the modified BCL Service, or an alternative BCL Service (and if requested by us, you will provide reasonable assistance to enable us to do so); or
  - (b) subject to our obligations to you under clause 11.6, cancel the BCL Service.
- 11.5 Unless security, legal, system performance or third-party licence considerations or obligations require us to migrate, modify or exit a BCL Service in less than thirty (30) days, we will give you thirty (30) days notice of any modification or termination of a BCL Service. Where we migrate or cancel a BCL Service progressively, we will give you prior notice on a progressive basis.
- 11.6 If our suspension, cancellation or modification of BCL Services materially affects what we have agreed to provide to you under the Agreement, then you can terminate the Agreement on ten (10) days' notice to us and you can request a refund from us for any unused prepaid services.

11.7 You reserve the right to cancel any BCL Service at any time upon thirty (30) days written notice to the BCL Service Desk. Paid fees are not refundable for cancelled services under this clause 11.7.

## 12. Customer Fees

12.1 You agree to pay the fees for your use of BCL Services. If you fail to pay all applicable fees by their due date, we may, upon seven (7) days' notice to you by email, suspend your access to any or all BCL Services.

12.2 We reserve the right to change our fees and payment terms for BCL Services, in our sole discretion, from time to time. We will provide you with a minimum of thirty (30) days notice of any change in fees and payment terms applicable to your BCL Services (**Notice of Change to Fees and Payment Terms**).

12.3 Payment terms include the required transfer of funds through electronic means such as EFT, bank transfer, or direct debit payment. If you do not have chambers with BCL, direct debit is the only payment method accepted for technology services.

12.4 All technology fees are payable on receipt of your BCL invoice and are payable in advance.

12.5 If you disagree with any change to the fees or payment terms that are described in a Notice of Change to Fees and Payment Terms, and you wish to terminate your use of BCL Services, then:

- (a) you must provide us with written notice of any such request to terminate within 14 days of the date you receive the Notice of Change to Fees and Payment Terms; and
- (b) the termination will be effective thirty (30) days after the date of the Notice of Change to Fees and Payment Terms.

12.6 If, in our discretion, we permit you to pay any of your monthly fees in advance, then this will be deemed a payment on account, and it does not change the nature of your agreement with us from a monthly contract to an annual or longer term.

## 13. Privacy

13.1 You agree, represent and warrant that, with respect to your and each authorised users' access to, or use of, BCL Services, you:

- (a) have read our Privacy Policy and understand its contents;
- (b) will not provide us with any Personal Information of an authorised user, or any other person, unless you first make the other person aware of our Privacy Policy, and obtain the person's consent (wherever required by law) to provide us with such Personal Information;
- (c) have provided the appropriate notifications, and have obtained any consents or authorisations required by law, to allow us to collect and use the Personal Information that you supply to us, of any other person, as contemplated by this Agreement; and
- (d) are authorised to supply any Personal Information that you supply to us and that your supply of such Personal Information to us does not cause us to breach the Privacy Act or any similar law of a local, state, or federal jurisdiction, which relates to or affects privacy or data protection rights.

## 14. Your Content

14.1 You agree and acknowledge that you:

- (a) are solely responsible for any content created on, uploaded to, or used in connection with, BCL Services by you or authorised users (**Your Content**); and
- (b) will ensure that Your Content, and the use of and any distribution or dissemination of Your Content on or via BCL Services complies with the Agreement, and any applicable laws, including but not limited to the Privacy Act and the *Spam Act 2003* (Cth).

14.2 Without limiting clause 14.1 or any other provision of this Agreement, you agree and acknowledge that you are responsible for Your Content and any other information you or your authorised users create, and for your respective actions including for any decision to distribute or share such information with any person or third-party software or service through your use of the BCL Services. Before sharing any of Your Content or other information you should always carefully consider the nature of the information and whether it is appropriate to do so, including the appropriateness of the particular method(s) through which you choose to share that information.

## 15. Third party dependency

15.1 You agree and acknowledge that BCL Services are dependent on third party messaging, communications, processing and other third-party systems which can be subject to breakdown or interruption due to events outside our control. Should such a breakdown or interruption occur, we will take all commercially reasonable steps to reduce the duration of the breakdown or interruption. Except as expressly set out in any applicable SLA, we will not otherwise be liable for any failure, delay or other matter resulting from such breakdown or interruption of a third-party system, whether that third party system relates to electricity, telecommunications, internet, other utilities or any other third party service.

## 16. Confidential information

16.1 You must treat and handle all information stored in or accessed through BCL Services as confidential.

16.2 You should notify the BCL Service Desk if you become aware of any misuse or potential misuse of information accessed in connection with BCL Services. You should also be aware that confidential information is always at risk of accidental disclosure. Always consider carefully what information you are sharing and whether it is appropriate to do so.

## 17. Intellectual property

17.1 For the term of this Agreement:

- (a) you grant us a royalty free, world-wide licence to use and/or exercise all of the Intellectual Property Rights in everything created and owned by you that passes over or is stored by, or in, BCL Services, but only for the purpose of providing those services and exercising the rights and obligations of this Agreement; and
- (b) conditional upon your timely payment of the fees, we grant you a world-wide licence to use the BCL Services but only for the purpose of receiving those services and exercising the rights and obligations of this Agreement.

17.2 You agree that other than as provided in this clause 17, nothing in the Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of one of us to the other.

## 18. Data security

- 18.1 We use technical measures to protect BCL Services from unauthorised access to information that is on, or contained in, BCL Services. However, it may not always be possible for us to ensure the security and protection of confidential information and/or Personal Information when you are using or accessing BCL Services. Accordingly, without limiting your obligations under the Agreement, you should use your professional judgment when using BCL Services in relation to Personal Information or information that is, or may be, confidential or sensitive information. You should, in particular, consider whether or not using other, non-electronic means of communicating such information to your intended recipient is a more appropriate or more secure method of communication. To the extent permitted by law, we accept no responsibility for any loss, cost, damage or expense incurred by you or any third party in relation to any loss of, access to, or use of, any data, in connection with BCL Services, except to the extent caused by our gross negligence or wilful misconduct.
- 18.2 Without limiting clause 10, to the extent permitted by law, you authorise us to:
- (a) conduct network and security checks (including network and server penetration testing) in association with a BCL Service that you acquire from us, and with any Device connected to or associated with such a BCL Service (**Security Testing**);
  - (b) test technical controls, authentication mechanisms, and permissions settings associated with all BCL Services without accessing or reviewing the substantive content of, or parties to, emails, documents, or communications, except where required by law; and
  - (c) implement technical measures to restrict access from devices, individuals, locations, countries, organisations, or any other resource at the discretion of BCL.
- 18.3 Without limiting clause 10.2, if our testing detects vulnerabilities in a Device and the vulnerabilities must, in our reasonable opinion, be addressed to avoid or mitigate a material risk to BCL Services, then we may notify any affected individuals and require them to take additional security measures, such as changing passwords, using increased security features, installing and maintaining virus-checking software, and patching or updating software programmes. We reserve the right to suspend your, and each authorised users', access to BCL Services, or access through a particular Device (including disconnecting a Device), if you or authorised users do not comply with BCL's reasonable directions.
- 18.4 If you purchase a licence to use Microsoft Exchange Online or Microsoft 365 (including Microsoft OneDrive for Business) from BCL, your data will be stored at rest in Australia in accordance with Microsoft's relevant Product Terms (a copy of which is available at <https://www.microsoft.com/en-us/licensing/product-licensing/products>), but your data may be processed overseas.
- 18.5 We will notify you of any data storage arrangements for BCL Services by other software service providers. It is your responsibility to ensure any specific software and services you are using are appropriate having regard to the nature of, and any specific requirements (including privacy and data sovereignty requirements) relating to, Your Content that you store or process using such software and services.
- 18.6 You agree and acknowledge that, if:
- (a) we must produce or furnish data that we acquire from you or authorised users in connection with BCL Services so that we can comply with a Regulatory Obligation; then
  - (b) we will, in connection with any data that we must produce or furnish under a Regulatory Obligation:
    - (i) where permitted by law, endeavour to give you reasonable prior notice of any obligation to produce or furnish the relevant data; and

- (ii) to the full extent permitted by law, seek to protect the confidentiality of the data.
- 18.7 You agree and acknowledge that, to the extent permitted by law, we may examine and review systems and any methods of processing, control, storage, and retention of data associated with:
  - (a) our supply of BCL Services to you and authorised users; and
  - (b) the third parties who support us with supplying BCL Services to you and authorised users.
- 18.8 Notwithstanding any other provision of these Terms, BCL will:
  - (a) monitor the use of BCL Services (including system and internet activity) in accordance with these Terms, including clause 3 of the AUP;
  - (b) only access content of email and documents, and metadata of communications including the sender and addressee to the extent strictly necessary:
    - (i) for the specific purpose of securing the BCL Services and systems used to provide the BCL Services, ensuring material is being correctly blocked or let through by software such as spam filters and virus checking tools;
    - (ii) as requested by you in relation to your and your authorised users' material; or
    - (iii) as required by applicable law; and
  - (c) for the purpose in clause 18.8(b)(i), BCL will only access content of emails where BCL's logs, filters, or patterns of executed blocking and allowing rules indicate that there is an issue relating to the content of that communication (and/or similar communications), and not as random sampling of content or reviewing what you or an authorised user has communicated to any other person (unless required by law).

## **19. Data and Artificial Intelligence (AI)**

- 19.1 BCL may use a range of technologies as part of its general operations or to deliver services. Such technologies may include the use of artificial intelligence. BCL warrants that our use of such tools will comply with BCL's Privacy Policy.
- 19.2 BCL guarantees that all data and technology products stored within the BCL infrastructure (i.e. any BCL server or BCL network and all cloud products used by BCL to deliver services such as Microsoft 365, Dropbox, Zoom and others) shall be hosted exclusively within data centres located in Australia when at rest unless explicitly stated otherwise.
- 19.3 While data storage remains onshore, users acknowledge that specific real-time services, particularly generative AI processing, may require transient data processing in offshore data centres. BCL ensures that such processing occurs within an encrypted boundary where the service provider has no standing access to the data, and data is not retained offshore after processing is complete. If these arrangements are not appropriate for any of Your Content, you must not use such services in respect of that part of Your Content.

## **20. Upgrades, maintenance and enhancements**

- 20.1 We may introduce adaptations, developments or enhancements to BCL Services, or may make changes to the tools and features of any part of BCL Services including the availability of various BCL Services. Subject to clauses 11.3 to 11.6, we are not required to provide you with notice of these adaptations, developments or enhancements unless, in our reasonable opinion, they are likely to be materially detrimental to the majority of our authorised users (including authorised users of our other barrister customers).

- 20.2 Without limiting either our rights under clause 10.1 or 18.2 or our obligations under clause 11.6, we may conduct maintenance, testing, relocation or replacement of equipment that supports BCL Services.
- 20.3 During the maintenance and testing periods that are referred to in clause 20.2, you may not be able to access some or all of BCL Services, and, if so, you are not entitled to a refund of any fees. We will endeavour to provide you with prior notice of such maintenance and testing periods, but we do not warrant that we will always be able to do so. We accept no liability for any loss, cost, damage or expense incurred by you or any third party in relation to loss of or access to any BCL Services during maintenance and testing periods. This clause does not, however, limit our obligations to you under clause 11.6.

## 21. Termination

- 21.1 We may immediately terminate your or your authorised users' access to, or use of, BCL Services and/or our Agreement on written notice to you if you:
- (a) fail to pay any amount due under this Agreement, and fail to remedy that breach within fourteen (14) days after receiving notice requiring you to do so;
  - (b) are in material breach of the Agreement including without limitation if you breach any material provision of the Agreement; or
  - (c) assign, or attempt to assign, any right under this Agreement otherwise than in accordance with this Agreement.
- 21.2 We may also terminate this Agreement in whole or in part without cause by giving you at least thirty (30) days' prior written notice.
- 21.3 BCL reserves the right to terminate BCL Services at any time under instruction from relevant authorities or the Victorian Bar.
- 21.4 Upon termination of any BCL Services or this Agreement:
- (a) you shall cease all use of such BCL Services, and, subject to clause 21.5, we reserve the right to delete any data we may have in relation to your use of BCL Services; and
  - (b) if you have paid all fees owing to us, then we may make your archived email data accessible to you for a period of up to twelve (12) months after termination. After this period, we reserve the right to permanently delete this data. We may delete other data types sooner than this.
- 21.5 Notwithstanding clause 21.4, at any time prior to, or on expiry, or termination of the Agreement, subject to you paying us the fees and charges for carrying out your instructions, you may request in writing that we perform the following actions within twenty-one (21) days of your request:
- (a) promptly returning to you all data stored in your account (**Data**); and
  - (b) if requested by you, destroying or deleting all or any specified part of the Data, subject to BCL's retention of any copies: (i) as required by law; (ii) as required by the policies of our professional indemnity insurers from time to time; and (iii) in our backup or archival systems, provided such Data will continue to be treated by us in accordance with the terms of this Agreement.
- 21.6 Termination of BCL Services and/or the Agreement will be without prejudice to all accrued rights and remedies that may have arisen prior to that termination.

- 21.7 BCL may permanently delete Data of ceased user accounts as directed by the Victorian Bar from time to time, including through any policy provided to BCL by the Victorian Bar for such purpose.
- 21.8 You acknowledge that you are solely responsible for complying with all professional, regulatory, and record-keeping obligations applicable to you. BCL does not assume responsibility for your compliance with those obligations.

## 22. Warranties and disclaimers

- 22.1 Other than as set out in any applicable SLA, to the maximum extent permitted by law, including under the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**ACL**), we make no warranties or representations as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of BCL Services, or that:
- (a) the use of BCL Services will be secure, timely, uninterrupted or error-free;
  - (b) BCL Services or any component or feature of BCL Services, will operate in combination with any other hardware, software, system, or data;
  - (c) BCL Services will meet your particular requirements or expectations (BCL Services are, instead, a standard service for all users);
  - (d) any stored data will be accurate or reliable or that any stored data will not be lost or corrupted. BCL will use reasonable endeavours to recover any such lost or corrupted data from its most recent available service backup. Nevertheless, you acknowledge responsibility to perform your own regular service backups to mitigate the consequences of lost and corrupted data;
  - (e) all errors or defects will be corrected; or
  - (f) BCL Services (or any server(s) that make a hosted service available) are free of viruses or other harmful components; or
  - (g) any output generated by AI tools provided as part of BCL Services will be accurate, complete, current, reliable, free from error or bias, or fit for any particular purpose. You acknowledge that outputs generated by AI tools are provided on an "as is" basis and that BCL has no control over, and accepts no responsibility for, the quality, accuracy, or suitability of such outputs.
- 22.2 To the extent permitted by law (including the ACL if applicable), subject to any applicable SLA, we:
- (a) supply BCL Services as described in our service description; and
  - (b) 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.
- 22.3 We shall not be liable for delays, interruptions, service failures and other problems inherent in using the network, internet and electronic communications or other systems outside our reasonable control. You are solely responsible for making appropriate, timely, complete and uncorrupted backups of your system software and data that resides on, or is accessible through, your (and/or your authorised users') Device(s).

## 23. Indemnities

- 23.1 We shall defend, hold harmless and indemnify you from and against any loss suffered or incurred by you arising out of or in connection with any claim that BCL Services infringe any

Intellectual Property Right or other right of any third party, except to the extent that such loss is caused or contributed to by your, or an authorised user's, act or omission.

23.2 You shall defend, hold harmless and indemnify us and our related bodies corporate and our personnel (the **BCL Indemnified Parties**) from and against any loss suffered or incurred by the BCL Indemnified Parties arising out of or in connection with:

- (a) any breach by you or any authorised user of clause 9, 13, 16 or 17;
- (b) Your Content used or disclosed by you or an authorised user in connection with the Terms, including any claim by any person that Your Content infringes any Intellectual Property Right or other right of any third party;
- (c) the receipt or use of BCL Services by you or an authorised user, except to the extent that our act or omission caused or contributed to the loss; or
- (d) any loss or damage to property arising out of or otherwise in connection with any wrongful act or omission of yours, or an authorised user.
- (e) any reliance by you, an authorised user or any other person on outputs generated by AI tools provided to you or an authorised user as part of the BCL Services, or any use or distribution of such outputs, including any claim arising from the submission of AI-generated content to a court, tribunal, regulatory body, or other third party.

## 24. Limitation on liability

24.1 Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on by the ACL or any other applicable law that cannot lawfully be excluded, restricted or modified by agreement.

24.2 To the fullest extent permitted by law, our liability for a breach of a warranty or guarantee that cannot be excluded by law is limited, at BCL's option, to:

- (a) in the case of goods supplied or offered by us, any one or more of the following:
  - (i) the replacement of the goods or the supply of equivalent goods.
  - (ii) the repair of the goods.
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;  
or
  - (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services supplied or offered by us:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

24.3 To the extent permitted by law, including under the ACL, and subject to clause 24.1, we:

- (a) are not liable to you for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data, loss of reputation or loss of revenue (irrespective of whether the loss or damage is caused by or relates to breach of contract, tort (including negligence), statute or otherwise) arising out of or in connection with BCL Services and/or the information or materials contained in BCL Services; or as a result of the inaccessibility of BCL Services

and/or the fact that certain information or materials contained on it are incorrect, incomplete or not up-to-date; and

- (b) limit our liability to you to liability for proven losses and claims arising out of or in connection with the Terms, for breach of the Terms, or negligence, or for any other common law, equitable or other statutory cause of action, to the fees paid by you to us for the affected Services for the month in which the claim or loss arises.

## **25. Amendment to the Agreement**

- 25.1 We may update or modify the Terms from time to time. We will notify you of any amendment to the Terms in writing via your registered email address no sooner than thirty (30) days before any amendment takes effect.
- 25.2 If any amendment materially and adversely affects your rights or obligations under the Agreement, you may terminate the affected BCL Services without penalty by giving written notice to us before the amendment takes effect and you can request a refund from us for any unused prepaid services.
- 25.3 If you do not notify us and continue to use BCL Services after the amendment takes effect, you will be taken to have accepted the amended Terms.
- 25.4 Any amendment will not apply retrospectively to prepaid services already supplied prior to the amendment taking effect.

## **26. Survival of Terms**

- 26.1 Clauses 13, 14, 16, 17, 19, 20, 21, 22, 23, 24, 26 and 27 inclusive survive expiration or termination of the Agreement.

## **27. General**

- 27.1 You must not sub-license, assign, or attempt to sub-license or assign, any right arising out of the Terms, or the Terms, without our prior written approval which we may withhold at our sole discretion. We may assign or subcontract all or part of the Terms to any other party.
- 27.2 Each party must take all steps as may be reasonably required by the other party to give effect to the Terms and transactions contemplated by them.
- 27.3 The Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes any prior oral or written agreement, representation or understanding relating to the Agreement.
- 27.4 You and we may execute the Agreement:
  - (a) in multiple counterparts and by electronic means; or
  - (b) otherwise in accordance with clause 1 of the Terms.
- 27.5 You acknowledge that in entering into this Agreement, you have not relied on any representation or warranties about its subject matter except as expressly provided in the Agreement.
- 27.6 If any provision of the Agreement is held to be invalid, illegal or unenforceable, the Agreement will continue otherwise in full force and effect apart from such provision which will be taken to be deleted.
- 27.7 The Agreement is governed by the laws of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in that state.

## Acceptable Use Policy

By accessing and/or using the BCL Services, you agree to comply with this AUP.

### 1. What must I not do when using BCL Services?

You must not in connection with the BCL Services:

- (a) use the BCL Services for any unlawful purpose, including fraud, or to harass, threaten, incite, or promote violence or terrorism;
- (b) illegally copy or reverse engineer any communication system, software (including any software manual), data compilation, computer program or digital download;
- (c) without limiting clause 1(b) above, infringe any person's Intellectual Property Rights; or
- (d) intentionally, deliberately, or wantonly, interfere with any other party's use or enjoyment of BCL Services.

### 2. Can I use BCL Services for personal use?

2.1 We do not distinguish between your use of BCL Services for personal or business use. Any personal use of BCL Services must also be in accordance with this AUP. Excessive use is not permitted.

2.2 Examples of excessive use may include:

- (a) sending mass mailing or chain letters, attachments or files;
- (b) downloading or streaming large non-business files (such as movie files);
- (c) replicating large amounts of data from your Device(s) to cloud services;
- (d) distributing messages, advertisements, campaigns, promotions, new products, or technologies, of a commercial or political nature;
- (e) using the BCL Services to access, or to provide, peer-to-peer file transfer services; or
- (f) otherwise creating unnecessary network traffic affecting the performance of BCL Services.

### 3. When and how do we monitor use of BCL Services?

3.1 Subject to clause 18.8 of the Terms, we may monitor your and authorised users' use of BCL Services, including, without limitation, any content, metadata and system activity from the use of the BCL Services and internet activity for security, performance, compliance, and integrity purposes:

- (a) in accordance with the Agreement; and
- (b) as required or authorised by law or a Court or Tribunal Order.

3.2 Subject to clause 18.8 of the Terms, we monitor metadata from BCL Services for security and performance reasons. By using BCL Services, you consent to us conducting such monitoring activity as it relates to your use of BCL Services.

3.3 BCL may use contracted third parties to monitor BCL Services for the purpose of security, performance, reliability, support, or enhancements to the Service.

#### **4. Information we collect**

4.1 To the extent that you use BCL Services to send or receive Personal Information, we may collect that Personal Information as part of our routine system monitoring processes detailed above in clause 3 of the AUP and as otherwise set out in the Agreement.

4.2 Subject to clause 18.8 of the Terms, Personal Information collected in the manner described in clause 4.1 of the AUP may be used to protect, maintain and improve BCL Services. We may disclose this Personal Information to service providers, agents and contractors, and as otherwise set out in the Agreement to help us do this. This may involve us sending or disclosing Personal Information overseas.

#### **5. What are our guidelines for emails?**

5.1 Email messages are exchanged between email servers using a variety of open and public computer networks. Exchanging information using an email service involves risks such as:

- (a) once an email is sent, it is impossible to control what happens next;
- (b) it is not possible to guarantee the integrity of an email, even with the use of additional encryption or security techniques, as it is relatively easy to alter the text in a manner undetectable to the recipient's eye; and
- (c) it is possible to reverse-engineer attachments to emails which may reveal information you do not wish to reveal.

5.2 Email creates a permanent record. Emails and user data are backed up regularly for system integrity purposes and may be retrievable as evidence for subsequent proceedings even after you have deleted them.

#### **6. Do we block emails, access to the internet or any other part of BCL Services?**

6.1 We employ security software systems which restrict or block delivery of certain electronic communications, both in-bound and out-bound. For example, our security software may block an email if it identifies, that the relevant email (or its attachment):

- (a) is spam;
- (b) potentially contains viruses or might otherwise result in interference with or damage to BCL Services;
- (c) is or may be in breach of the Agreement;
- (d) is over a certain size;
- (e) cannot be deemed safe or complete for processing; or
- (f) is deemed risky by BCL's systems.

6.2 The fact that an electronic communication or internet site is not blocked by our systems does not necessarily indicate that we deem that the email or the site is safe to view, virus- free, or that the content is appropriate or suitable for viewing or use over BCL Services.

## 7. Acceptable Use of Artificial Intelligence

- 7.1 **Approved Tools.** The only Generative AI tools sanctioned for use with data stored by BCL or client information are products issued by BCL as part of the BCL Services. The use of public, consumer-grade AI tools (including but not limited to public ChatGPT, Google Gemini, or Claude) for data stored by BCL is strictly prohibited.
- 7.2 **Sensitive Data Restrictions.** Even when using BCL-sanctioned AI tools, and without limiting any other provision of the Agreement, as between you and BCL you and your authorised users accept sole and express responsibility for assessing the appropriateness and security of the AI tool(s) you use for the input, storage and processing of any information you input into those AI tools, including without limitation any: (a) health information or sensitive information (as defined in the Privacy Act 1988 (Cth)); (b) information relating to children or vulnerable persons; (c) information subject to a suppression order, non-publication order, or statutory secrecy provision; or (d) national security classified information.
- 7.3 **Professional Responsibility (Human Verification).** AI tools are support mechanisms, not substitutes for professional judgment. Users acknowledge that AI-generated content may be inaccurate, biased, or incomplete ("hallucinations"). You and your authorised users must not rely on AI tools for the accuracy or completeness of their outputs, and users are solely responsible for reviewing, verifying, and validating the accuracy, completeness, appropriateness and freedom from unintended bias of all AI-generated outputs before incorporating them into advice, pleadings, or correspondence.
- 7.4 **Compliance with Laws and Professional Obligations.** You and your authorised users must ensure that any AI-generated output is compliant with all applicable laws, regulations, professional conduct rules, court rules, and practice directions before incorporating such output into any work product, advice, submission, or communication. Without limiting the foregoing, you and your authorised users must not submit AI-generated content to any court, tribunal, or regulatory body without first independently verifying its accuracy and completeness, including the existence and correctness of any legal authorities cited therein.
- 7.5 **Activity Logging.** To ensure the security and integrity of BCL systems, BCL retains logs of interactions with BCL-sanctioned AI tools. These logs may include user prompts, metadata (time/date), and generated outputs.
- 7.6 **Purpose of AI Data Retention.** Unless otherwise expressly notified to you by BCL at the time of you opting in to receive BCL-sanctioned AI tools, these logs are retained strictly for the purposes of:
- Security auditing and threat detection;
  - Compliance with legal and regulatory obligations; and
  - Technical troubleshooting.

AI interaction logs are retained to fulfill the purposes set out, unless a longer retention period is required by law.

- 7.7 **Access and Privacy:** Audit logs are encrypted and accessible only by authorised BCL personnel. They are not monitored proactively for general surveillance but may be reviewed in the event of a security incident or reported incident. AI interaction logs constitute Personal Information where applicable and are handled by us in accordance with the BCL Privacy Policy and the Privacy Act 1988 (Cth).
- 7.8 **Model Training:** BCL confirms that under our commercial agreements, user prompts and data processed through BCL-sanctioned AI tools are not used to train the vendors' models.
- 7.9 **Modification or Withdrawal of AI Tools.** BCL reserves the right to modify, suspend, or withdraw any AI tool provided as part of the BCL Services at any time, without liability to you, including where BCL determines (in its sole discretion) that continued provision of an AI tool poses an unacceptable

risk to security, compliance, or the integrity of the BCL Services, or where a third-party provider modifies, suspends, or discontinues the underlying service. BCL will use reasonable endeavours to provide prior notice of any such modification, suspension, or withdrawal, but is not obliged to do so where immediate action is required.

- 7.10 Data security when using BCL-sanctioned AI tools: If you opt-in to receive BCL-sanctioned AI tools, additional security measures will be placed upon your Data (including as such Data is used in the BCL Services outside of such AI tools) in order to reduce the risks inherent in use of AI tools. Such security measures may be adjusted by BCL over time. BCL will take reasonable steps to inform you of such measures when they are applied and when they are adjusted from time to time.

## **8. What happens if you do not comply with this AUP?**

If you breach the AUP, or we reasonably suspect that you have breached the AUP, then:

- (a) you must cooperate with us to investigate and/or remedy the breach or suspected breach; and/or
- (b) we may disable your access to or use of BCL Services.

## **9. How often does this AUP change?**

The AUP may change from time to time. Any update to this AUP will follow the same process as an update to the Terms as set out in clause 25 of the Terms.

## **10. Who should I contact?**

- 10.1 If, in connection with the BCL Services, you are aware of, or become aware of, any data breaches or misuses of Personal Information, then you must let us know of this information as soon as possible, by contacting us using the contact details in our Privacy Policy.
- 10.2 If you are aware of, or become aware of, any breach of the AUP, then you must let us know of this information as soon as possible, by contacting the BCL Service Desk.
- 10.3 If you require more information about this AUP, then please contact the BCL Service Desk.

## Schedule 1 – Microsoft Software End User Licence Terms

*BCL supplies Microsoft products as an intermediary only, even where used as a component of the BCL Services. Microsoft products are provided by Microsoft under the Microsoft Services Agreement. Subject to the ACL, BCL is not responsible for Microsoft's acts or omissions.*

The Microsoft Services Agreement is an agreement between you and Microsoft (or one of its affiliates) that governs your use of Microsoft consumer online products and services, including those incorporated in the BCL Services.

You can read the entire Microsoft Services Agreement at <https://www.microsoft.com/en-au/servicesagreement/upcoming.aspx>. You can also learn more about updates to the Microsoft Services Agreement on Microsoft's FAQs page at <https://www.microsoft.com/en-au/servicesagreement/upcoming-faq.aspx>, including a summary of the most notable changes. If you use Microsoft's products and services on or after 15 February 2023, then you are agreeing to the terms of the most recent updated Microsoft Services Agreement.

If you do not agree to the terms of the Microsoft Services Agreement, then you can choose to discontinue using the products and services, in which case you must notify BCL and close your Microsoft account before these terms become effective. If you do so, you will not have the right to use of any of the BCL Services. If you are a parent or guardian and your child or teenager is an authorised user of the BCL Services, you are responsible for your child's or teenager's use of Microsoft products and services, including purchases.

Microsoft Services Agreement

<https://www.microsoft.com/en-au/servicesagreement/upcoming.aspx>

Microsoft Privacy Statement <https://privacy.microsoft.com/en-ca/privacystatement>

Frequently Asked Questions

<https://www.microsoft.com/en-au/servicesagreement/upcoming-faq.aspx>