

## External Examiner Toolbox - Terms and Conditions of Use

These Standard Terms and Conditions are binding on the use of the **External Examination Toolbox** and if applicable, related online External Examination Services – from the time you click confirm and pay for access, to ‘the Service’ or ‘Services’.

The holding company for cabenet Accounting Services (trading as ‘cabenet’, ABN 84 746 217 401) is Digital Tuna Corporation Pty Ltd (ABN 44 156 858 71).

These terms and conditions apply to You as a purchaser / user of the Service ("You") and any other parties that you issue with your EE Toolbox access code and details. Please read these terms and conditions carefully. It is a condition of use of the Service that you comply with all stated terms and conditions.

“We” (cabenet) may change or enhance the ‘Service’ at any time and reserves the right to also change these Terms and condition, effective on posting of the modified terms on this Website. By continuing to use the Service, You are accepting the amended Terms of Use.

### Definitions

In this Agreement:

- “Agreement” means these Terms of Use.
- “Confidential information” means all information exchanges between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information that is, or becomes publicly available other than through unauthorised disclosure by the other party.
- “Client Data” means all information, data, text, logos, images, documents and/or content inputted by you or with your authority that forms part of your Toolbox data file structure.
- “Intellectual Property Right” means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world wherever registered.
- “Service” or “Services’ means all products, resources and services made available (as may be changed or updated from time to time by cabenet) via the EE Toolbox Website.
- “Website’ means the Internet Site at the domain [www.cabenet.com.au/toolbox](http://www.cabenet.com.au/toolbox) .
- “Client or “You” or “you” means the person who registers (signs up online) to use the Service, and where the context permits, includes any entity on whose behalf that person registers to use the Service, and any person or organisations that uses the Service with or without authorisation of that person or entity, “Your” has a corresponding meaning.

### Term of Agreement and Variation of these Terms

- 1.1. The **Term of this Agreement** shall commence as at the date of payment (successful processing of a credit card payment) and **expire at the end of March of the following year** (start of the next examination period).
- 1.2. **These terms and conditions are the terms on which we provide the Service** to You. These terms constitute the agreement in its entirety and supersede prior agreements. We may modify these terms as applying to any agreement, pricing structure for any Service or the terms of the operation by posting on our website ([www.cabenet.co/Toolbox](http://www.cabenet.co/Toolbox) ) and any use of the Service, after that publication will constitute an acceptance of that modification.

### Service

- 2.1. cabenet will issue a **EE Toolbox PIN**, to give access to the Service, in accordance with your online registration. This access is for the term of the Agreement and is non-exclusive, non-transferable, and limited by and subject to this Agreement.
- 2.2. Scheduled Maintenance may be performed to data and programs, from time to time. We will attempt to perform scheduled maintenance at times which will affect the least number of Users.
- 2.3. Unscheduled maintenance may need to be performed – by us or our ISP hosting services. If we become aware of any unscheduled maintenance or other unintended interruption to the Service, we will if feasible post details on the website and OR, advise You by email, using the contact information provided on registration.

### Our Warranties and Liabilities

3.1. We do not warrant that: (a.) the Services provided under this agreement will be uninterrupted or error free; or (b.) the Services will meet your requirements or (c.) the Services will be free from external intruders (hackers) or other persons having unauthorised access to our Services or systems. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

3.2. Except as expressly provided to the contrary in this Agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement, are excluded. Where any statute implies in this Agreement any term, and that statute avoids or prohibits provisions in a contract excluding or modifying the application of or liability under such a term, then the term will be taken to be included in this Agreement. However, our liability for any breach of the term will, if permitted by that statute be limited, at our option, to the resupply of the Services; or payment of the cost of having the Services supplied again (by Us).

3.3. Except under clause 3.2, we will not be liable to You for: (a.) any loss or damage in respect of the provision or use of the Services, (b.) any costs, claims, loss or damage of any kind resulting from your fraudulent, negligent or otherwise unlawful behaviour, (c.) any costs, claims, loss or damage arising from any information, Client Data, other data or material provided to us by You or on your behalf.

### Your Obligations and Guarantees

4.1. You must only use the Service for your own lawful business purposes, in accordance with these Terms and Conditions and any notice sent by Us or condition posted on our Website. You may use the Service on behalf of others or to provide services to others, but if you do so You must ensure that You are authorised to do so, and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to You.

4.2. You warrant that: (a.) at the time of entering into this Agreement You are not relying on any representation made by Us which has not been stated expressly in this agreement, or on any descriptions or specifications contained in any other document, including our website, any catalogues or publicity material which we have produced; (b.) You will conduct such tests and computer virus scanning as may be necessary to ensure that Client Data uploaded by you onto or downloaded by you from the server, does not contain any computer virus and will not, in any way, corrupt the data or systems of any person; (c.) You will keep secure all access codes used to upload Client Data to the Server and (d.) You hold and will continue to hold the copyright in the Client Data or that You are licensed and will continue to be licensed to use the Client Data.

4.3. You accept responsibility for all Client Data, information and material You input to the Service, and indemnify us and hold us harmless against any liability in relation thereto. In particular, You undertake that You shall not upload, publish or issue any Client Data or information which is illegal or defamatory. You also acknowledge that we do not vet or approve any Client Data, information or material available through the Service and that we do not accept any liability. You access and use such Client Data, information and material at Your own risk.

4.4 You will ensure that all information used to access the Service is kept secure and confidential. You must immediately notify Us ([support@cabenet.com.au](mailto:support@cabenet.com.au)) of any unauthorised use or any other breach of security.

4.5 You must ensure that Web browser and virus protection software on all devices used to access the Service is up-to-date. You must take all other actions that We deem necessary or advisable to maintain the security of Our computing systems and networks and your access to the Service.

4.6 You must not attempt to:

4.6.1 undermine the security and integrity of Our computing systems or networks or where the Services are hosted by or linked with a third party, that third party's computing systems and networks;

4.6.2. gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted;

4.6.3. transmit or input to the Service, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which you do not have the rights to use);

4.6.4. modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as strictly necessary for normal business operation.

4.7. You are solely responsible for dealing with persons who access or use the Client Data and must not refer complaints or inquiries in relation to such data to us.

4.8. You indemnify us against all costs, expenses, loss or liability that we may suffer (directly or indirectly) resulting from: (a.) your breach of these terms, (b.) Your use or misuse of the Service and (c.) the use or misuse of the Service by any person using your account, (d.) publication of defamatory, offensive or otherwise unlawful material on any website forming part of Your Service.

4.9 You warrant and represent that You are acquiring the right to access and use the Services for, in relation to the operation of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the Supply of the Services, the Website or these Terms.

4.10. You are solely responsible for ensuring that You comply with all laws (and relevant industry related professional rules and regulations) relating to the application of the software and systems in that business, including without limitation to trust accounting, taxation, business document retention and privacy requirements.

### Confidentiality and Privacy

5.1. Unless the relevant party has the prior written consent of the other or unless required by law; each party will preserve the confidentiality of Confidential Information of the other, in connection with these Terms. Neither party will, without prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.

5.2. each party's obligations under this clause will survive termination of these Terms.

5.3. the provisions of clauses 5.1 shall not apply to any information which;

5.3.1. is or becomes public knowledge other than by breach of this clause;

5.3.2. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

5.3.3. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or

5.3.4. is independently developed without access to the Confidential Information.

7.8 Personal information you provide to Us may be used to provide additional information to assist Your use and or promote our Services to You (including but not limited to email, postal mail, telemarketing, SMS and MMS messages).

7.9 We may disclose your personal and business information to: Your authorised representatives or legal and business advisers (e.g. when requested by You to do so); our own professional advisers, including accountants, auditors and lawyers; and government and industry regulatory authorities and other organisations, as required or authorised by law.

7.10 When You visit the website ([www.cabonet.co/toolbox](http://www.cabonet.co/toolbox)) our hosting servers may record information, such as the user login, time, date and IP address.

7.11 We may use 'cookies' on the website and in other online services. Cookies are an industry standard and many websites use them. A cookie is a small text file that websites may place on your computer. Usually, cookies are used as a means for the website to remember your preferences.

In some cases, cookies may collect and store personal information about You as a user of the Service. cabonet extends the same privacy protection to your personal information, whether gathered via cookies or from other sources. You can adjust your Internet browser to disable cookies or to warn you when cookies are being used. However, if you disable cookies, you may not be able to access specific function and areas of the website or take advantage of improved website experiences that cookies offer.

7.12 Legal Profession regulatory bodies with authority in your state of operation, may issue a notice to us requiring access to documents and other information related to a legal practice using the Service. We will be required to comply with any such notice legally issued, in relation to granting access to practice records stored on a Toolbox account.

### Intellectual Property

8.1. General. Title to, and all Intellectual Property Rights to the Service, the Website and any documentation relating to the Service remain the property of Digital Tuna Corporation P/L (or its licensors).

8.2. Ownership of Data. Title to, and all Intellectual Property Rights in the Data remain Your property. However, Your access to the Data on the Service is contingent on the payment of the applicable annual Toolbox registration fee and the stated Term of this Agreement.

## 9. Data Backup

9.1. cabenet adheres to comprehensive processes for backup of systems, programs and Client data; including offsite backup to commercial grade cloud servers but does not make any guarantee that there will be no loss of data. cabenet expressly excludes liability for any loss of Data, no matter how caused.

9.2 Our hosting services will archive your Data onto backup mechanisms on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, they will use all reasonable endeavours to restore your Data from the last available, good archive. You acknowledge that any of your Data that is not accessible by us at the time that a backup is carried out, will not be backed up. We do not warrant that backups will:

- (a) occur on every scheduled occasion,
- (b) be complete; or
- (c) be uncorrupted.

We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient Data recovered from our backups where we have acted with reasonable care.

## Suspension or Termination of Service

11.1. We may without notice suspend the Service or disconnect or deny Your access to the Service: (a.) during any technical failure, modification or maintenance involved in the Service provided that we will use reasonable endeavours to procure the resumption of the Services as soon as reasonably practicable; or (b.) if You fail to comply with any agreement (including failure to pay all fees when due) until the breach (if capable of remedy) is remedied, or do, or allow to be done, anything which in our opinion may have the effect of jeopardising the operation of the Service.

11.2. We may, without notice to You, remove, amend or alter Client Data upon being made aware of: (a.) any claim or allegation; or (b.) any court order, judgment, determination or other finding of a court or other competent body, that the Client Data is illegal, defamatory, offensive or in breach of a third party's rights.

## Fees and Termination

12.1. These Terms will continue for the period covered by the Fees paid and the stated Terms of Agreement.

12.2. cabenet will not refund the EE Toolbox Registration fee, after the Service has been access by You, whether or not data has been entered, or on request for termination or for any reason, including change of mind.

## General

14.1. These Terms and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and cabenet relating to the Services and the other matters dealt with in these Terms.

14.2. You grant to us a license to use and reproduce all Client Data to fulfil our obligations under this agreement.

14.4. A provision of, or a right created under this agreement, may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.

14.6. You may not assign Your rights and obligations under this agreement without our prior written consent.

14.7. Any notice given under these terms by either Party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Us must be sent to [support@cabenet.com.au](mailto:support@cabenet.com.au). Notices to You will be sent to the contact email address registered for Your Toolbox account.

14.8. A person who is not a party to these terms has no right to benefit under or to enforce any term of these Terms.

#### Jurisdiction

15.1. Your use of the service and these Terms of Use are governed by the laws of the State of New South Wales in the Commonwealth of Australia and You agree to submit to the exclusive jurisdiction of the courts in NSW, Australia.

15.2. We do not represent or warrant that the Services will meet the profession standards or other requirements for use by legal practitioners in all jurisdictions, where the Service may be viewed or used. You must ensure that your use of the Service is in accordance with the laws and professional standards of your jurisdiction.

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