

# Subscription Agreement for VALISE® Suite (virtual assistant software)

Effective Date: 12 June 2020

## CONTENTS

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1	Our Services to You .....	3
1.1	Term.....	3
1.2	Purpose.....	3
1.2	Downtime .....	3
1.4	Support.....	3
1.5	Performance.....	3
1.6	Service Level Guarantee. ....	3
2	How we Handle the Service Data.....	4
2.1	Service Data.....	4
2.2	Ownership. ....	4
2.3	Your End-Users .....	4
2.4	Protection of your Data.....	4
2.5	Our Access to the Service Data. ....	4
2.6	Sharing the Service Data. ....	4
2.7	Privacy. ....	4
2.8	Cookies. ....	4
2.9	Licences to Service Data in Order to Operate the Services. ....	4
2.10	Termination of Licence. ....	5
3	Intellectual Property .....	5
3.1	Valise Intellectual Property. ....	5
3.2	Sample Files.....	5
3.3	Other Licence Types .....	5
4	User Conduct.....	5
4.1	Responsible Use. ....	5
4.2	No Modifications, Reverse Engineering. ....	6
4.3	Misuse.....	6

5	Account Information .....	6
5.1	Your Account .....	6
5.2	Credit Card Information .....	7
5.3	Payment in Advance.....	7
5.4	Renewal .....	7
6	Indemnification Obligations .....	7
6.1	Indemnification by VALISE .....	7
6.2	Indemnification by Customer .....	7
7	Disclaimers of Warranties .....	7
8	Limitation of Liability.....	8
9	Termination.....	8
9.1	Termination by You. ....	8
9.2	Termination by Us. ....	8
9.3	Termination with Cause.....	8
9.4	Return of the Service Data. ....	9
9.5	Survival.....	9
10	Investigations .....	9
10.1	Screening .....	9
10.2	Disclosure.....	9
11	Trade Control Laws .....	9
12	Australian Consumer Law.....	10
13	Dispute Resolution .....	10
13.1	Process .....	10
13.2	Injunctive Relief. ....	10
14	Updates and Availability .....	10
14.2	Updates to the Services and Software .....	10
14.3	Availability. ....	10
15	Miscellaneous.....	11

This Subscription Agreement between VALISE.TV Pty Ltd (ABN 50 615 474 078), a corporation organised and existing under the laws of Australia with a registered address at Level 29, 66 Goulburn Street, Sydney NSW 2000 (**Valise**) (also referred to as “us”, “we” and “our”) and Customer (also referred to as “you” and “your”) governs your use of the Software, customer support, and other support services as we may agree to provide to you (collectively “**Services**”).

“Software” refers to the VALISE® Suite software which includes the YourXpert™ virtual assistant software and tools for keyword, hashtag and search functionality. By using our Software you are entering into an Agreement with us.

## 1 OUR SERVICES TO YOU

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**1.1 TERM.** This agreement shall be effective as at the date on which you order your first Service and shall continue until terminated in accordance with the terms and conditions set out in Clause 9 of this Agreement.

**1.2 PURPOSE.** We provide access to the Services to you for the purpose of providing a virtual assistant software service to your End-Users. Your End-Users are visitors to your website who interact with the Software. You agree not to sublicense, sell, outsource, rent, transfer, distribute or otherwise commercial exploit or re-sell the Services.

**1.2 DOWNTIME.** Our objective is to provide a continuously operating service that has minimal downtime, which refers to the total duration each month for which the Services are not operating at a reasonable level. Downtime does not include periods for which the Services are not operating as a result of scheduled outages. Uptime is the total percentage of hours each month not affected by downtime. The target uptime for Services is 97% each month.

**1.4 SUPPORT.** All support requests will be handled as soon as possible, where the target time to respond to all support requests is within 24 hours of their lodgement. Support is provided via our support portal.

**1.5 PERFORMANCE.** All Services are continuously monitored to ensure rapid response to any faults which may occur. Monitoring feedback is provided to technical support staff via email 24 hours, 7 days a week.

**1.6 SERVICE LEVEL GUARANTEE.** The service level guarantee will be measured by us and is based on the uptime. If we determine that the Services were unavailable for a period exceeding the maximum allowable under the prescribed uptime target and extending for a continuous duration of 1 hour or more per instance, we will re-perform the affected Services at no cost to you.

## 2 HOW WE HANDLE THE SERVICE DATA

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**2.1 SERVICE DATA.** Service Data means any electronic data, text, messages, communications or other materials, including but not limited to audio files, video files and images, submitted to by you and your End-Users in connection with the use of the Services.

**2.2 OWNERSHIP.** You retain all rights and ownership of the Service Data including the Service Data you submit or provide and the Service Data that your End-Users provide when they interact with the Software. We do not claim any ownership rights to the Service Data.

**2.3 YOUR END-USERS.** You will be responsible for ensuring that your use of the Services is in compliance with applicable laws and regulations, as well as any privacy policies, agreements, contracts, orders or other obligations you may maintain or enter into with your End-Users. You are responsible for compliance with this Agreement by your End-Users and for any and all activities that occur under Your Account.

**2.4 PROTECTION OF YOUR DATA.** We protect the Service Data and Your Account data by using website security DDoS attacks, SSL encryption and web proxy tools maintained and operated by CloudFlare, Inc. The Service Data and Your Account data may be hosted with authorised third-party service providers located in Australia, the United States and Europe.

**2.5 OUR ACCESS TO THE SERVICE DATA.** We will only access, view, or listen to the Service Data in limited ways. For example, in order to perform the Services, we may need to access, view, or listen to the Service Data to (a) respond to support requests; (b) detect, prevent, or otherwise address fraud, security, unlawful, or technical issues; (c) to improve dialogue models to optimise the Services; and (d) enforce this Agreement. Our automated systems may analyse the Service Data using techniques such as machine-learning. This analysis may occur when the Service Data is sent, received, or stored. From this analysis, we are able to improve the Services we provide to you.

**2.6 SHARING THE SERVICE DATA.** We shall never sell, rent or lease the Service Data to any other third party. We will not share the Service Data with third parties, except to provide the Services.

**2.7 PRIVACY.** To the extent that the Service Data or Your Account contains Personal Information as defined in the Australian Privacy Principles, we will protect such Personal Information in accordance with our Privacy Policy. Our Privacy Policy is published on our website at [valisesuite.com](https://valisesuite.com) and you can download a copy <https://plex-serv.yourwebbuilder.io/agreements/>. Our Privacy Policy is also available to your End-Users when they interact with the Software.

**2.8 COOKIES.** When you or your End-Users interact with our Services, we automatically receive and record information on our server logs from the browser or device which may include IP address, "cookie" information and the type of browser or device being used to access the Services. When we collect this type of information, we only use this data to provide the Services or in aggregate form, and not in a manner that would identify you or your End-Users personally.

**2.9 LICENCES TO SERVICE DATA IN ORDER TO OPERATE THE SERVICES.** We require certain licences from you to the Service Data in order to operate and enable the Services. When you upload Service Data, you grant us a non-exclusive, worldwide, royalty-free, sublicensable, and

transferable licence to use, reproduce, publicly display, distribute and modify (so as to better showcase the Service Data, for example) the Service Data. This licence is only for the purpose of operating or improving the Services and Software.

**2.10 TERMINATION OF LICENCE.** You may revoke this licence to the Service Data and terminate our rights at any time by removing the Service Data from the Software. Some copies of the Service Data may be retained as part of our archives.

## 3 INTELLECTUAL PROPERTY

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**3.1 VALISE INTELLECTUAL PROPERTY.** We (and our licensors) remain the sole owner of all right, title, and interest in the Software. Except as stated in this Agreement, we do not grant you or your End-Users any rights to patents, copyrights, trade secrets, trade marks, or any other rights in respect of the Services. We reserve all rights not granted under the Agreement.

**3.2 SAMPLE FILES.** “Sample Files” means Valise-provided files such as content, text, images, videos, music, text, clip art, stock images, or sounds for use in tutorials, demonstrations, and for other trial purposes, which may be identified as sample files. Sample Files cannot be used for any other purpose than for which they were provided. You cannot distribute Sample Files on a stand-alone basis (i.e. in circumstances in which the Sample Files constitute the primary value of the product being distributed), and you cannot claim any rights in the Sample Files. When you use the Sample Files, you must insert a copyright notice accompanying them in the following format: “© VALISE.TV Pty Ltd”.

### 3.3 OTHER LICENCE TYPES

**Trial Version.** We may designate the Software as “trial,” “evaluation,” or other similar designation (“**Trial Version**”). You may install and use the Trial Version only for the period and purposes stated when we provide the Trial Version. You must not use any materials you produce with the Trial Version for any commercial purposes.

**Beta Version.** We may designate the Software, or a feature of the Software, as a pre-release or beta version (“**Beta Version**”). A Beta Version does not represent the final product and may contain bugs that may cause system or other failure and data loss. We may choose not to commercially release the Beta Version. You must promptly cease using the Beta Version and destroy all copies of the Beta Version if we request you to do so, or if we release a commercial version of the Beta Version. Any separate agreement we enter into with you governing the Beta Version will supersede these provisions.

## 4 USER CONDUCT

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**4.1 RESPONSIBLE USE.** You and your End-Users must use the Services and Software responsibly.

**4.2 NO MODIFICATIONS, REVERSE ENGINEERING.** You and your End-Users may not (a) modify, adapt or translate any portion of the Software; or (b) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or any portion of the Software.

**4.3 MISUSE.** You must not misuse the Software, which includes unlawful, illegal or inappropriate use that may jeopardise our products, services, technology infrastructure or ability to operate, or expose us to liability. For example, you must not:

- (a) copy, modify, host, stream, sublicense, or resell the Software;
- (b) enable or allow others to use the Software using Your Account;
- (c) use the Software to construct any kind of database;
- (d) access or attempt to access the Software by any means other than the interface we provide or authorise;
- (e) circumvent any access or use restrictions put into place to prevent certain uses of the Software;
- (f) engage in behaviour that violates anyone's intellectual property rights ("**Intellectual Property Rights**" means copyright, moral rights, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, and any other proprietary rights);
- (g) upload or share any material that is unlawful, harmful, threatening, abusive, tortious, defamatory, libellous, vulgar, lewd, profane, invasive of another's privacy, or hateful;
- (h) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (i) attempt to disable, impair, or destroy the Software;
- (j) upload, transmit, store, or make available any code or other material that contains any viruses, malicious code, malware, or any components designed to harm or limit the functionality of the Software;
- (k) disrupt, interfere with, or inhibit any other user from using the Software (such as stalking, intimidating, or harassing others, inciting others to commit violence, or harming minors in any way);
- (l) engage in chain letters, junk mails, pyramid schemes, phishing, spamming, or other unsolicited messages;
- (n) use any data mining or similar data gathering and extraction methods in connection with the Software; or
- (o) violate applicable law.

## 5 ACCOUNT INFORMATION

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**5.1 YOUR ACCOUNT.** When you access the Services, you will be asked to set up an account (Your Account). You are responsible for all activity that occurs via Your Account. Please notify us immediately if you become aware of any unauthorised use of Your Account. You may not (a) Share Your Account information (except with an authorised account administrator); or (b)

use another person's account. Your Account administrator may use Your Account information to manage your use and access to the Services and Software.

**5.2 CREDIT CARD INFORMATION.** We do not store your credit card information as we use secure service providers to facilitate the processing of your payments. You must notify us of updates to your payment method, to avoid interruption of the Services.

**5.3 PAYMENT IN ADVANCE.** Payment for our Services is in advance. You are required to pay the full amount of fees for the initial term and any applicable taxes.

**5.4 RENEWAL.** Your subscription will renew for a term equivalent in length to the initial subscription. When your subscription renews, you are required to pay the full amount of fees for the renewal term and any applicable taxes. A subscription renews when it has not been terminated by you providing notice thirty (30) days prior to the last date of the initial term or any renewal term for which you have paid.

## 6 INDEMNIFICATION OBLIGATIONS

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**6.1 INDEMNIFICATION BY VALISE.** We will indemnify, defend and hold you harmless from any claim, demand, loss, or damage, including reasonable attorneys' fees, alleging that the Services infringe a third party's intellectual property rights.

**6.2 INDEMNIFICATION BY CUSTOMER.** You will indemnify, defend and hold Valise harmless from any claim, demand, loss or damage, including reasonable attorneys' fees: a) arising from a breach of this Agreement by you or your End-User; and b) alleging that the Service Data infringes a third party's intellectual property rights.

## 7 DISCLAIMERS OF WARRANTIES

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**7.1** The Services are provided "as-is." To the maximum extent permitted by law, we disclaim all warranties, express or implied, including the implied warranties of merchantability, and fitness for a particular purpose. We further disclaim any warranty that (a) the Software will meet your requirements or will be constantly available, uninterrupted, timely, secure, or error-free, except as provided in this Agreement; (b) the results obtained from the use of the Services will be effective, accurate, or reliable; or (c) any errors or defects in the Services or Software will be corrected.

**7.2** We specifically disclaim all liability for any actions resulting from your use of the Services. You may use and access the Software at your own discretion and risk.

## 8 LIMITATION OF LIABILITY

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**8.1** We are not liable to you or anyone else for any loss of goodwill or profits, whatsoever, and any special, incidental, indirect, consequential, or punitive damages whatsoever, regardless of cause (even if we have been advised of the possibility of the loss or damages), including losses and damages (a) resulting from loss of use or data; (b) based on any theory of liability, including breach of contract or warranty, negligence or other tortious action; or (c) arising from any other claim arising out of or in connection with your use of or access to the Services.

**8.2** Our total liability in any matter arising out of or related to this Agreement is limited to the aggregate amount that you paid for access to the Services during the twelve (12) month period preceding the event giving rise to the liability. This limitation will apply regardless of the form or source of claim or loss, whether the claim or loss was foreseeable, and whether a party has been advised of the possibility of the claim or loss.

**8.3** The limitations and exclusions in this clause 8 apply to the maximum extent permitted by law.

## 9 TERMINATION

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**9.1 TERMINATION BY YOU.** You may choose to terminate your subscription to the Services at the end of your current subscription term by providing thirty (30) days notice prior to the end of such subscription term. If this Agreement is terminated by you, we will refund you any pre-paid fees covering the remainder of the subscription term after the effective date of termination.

**9.2 TERMINATION BY US.** If we terminate this Agreement, or your use of the Service(s) for reasons other than for cause, we will make reasonable efforts to notify you at least ninety (90) days prior to termination via the email address you provide to us with instructions on how to retrieve the Service Data. If this Agreement is terminated by us, we will refund you any pre-paid fees covering the remainder of the subscription term after the effective date of termination.

**9.3 TERMINATION WITH CAUSE.** We may, at any time, suspend, terminate or modify your right or your End-User's right to use and access the Services or Software if:

(a) you breach any provision of this Agreement (or act in a manner that clearly shows you do not intend to, or are unable to, comply with the Agreement);

(b) your End-User misuses the Software as described in Clause 4.3 above.

(b) you fail to make the timely payment of fees for the Services;

(c) you materially breach any provision of this Agreement, and (i) the breach cannot be corrected; or (ii) we notify you of the breach and you fail to correct it within fourteen (14) days of the notice;

(d) you physically, verbally, or through other means abuse, threaten, bully, or harass us or our personnel (in such circumstances, we may alternatively suspend or restrict your access to the Software);



(e) we are required to do so by law (for example, where the provision of the Services or Software to you is, or becomes, unlawful); or

(f) we elect to discontinue the Services or Software, in whole or in part (such as if it becomes impractical for us to continue offering Services in your region due to change of law).

We will use reasonable efforts to notify you before we suspend, terminate or modify your right to use and access the Services. However, we shall not be liable to you or your End-Users for any such suspension, termination or modification if it is for the reasons contained in this clause.

**9.4 RETURN OF THE SERVICE DATA.** Upon termination we will discontinue your access to the Services and we will make the Service Data available for you to export or download for a period of thirty (30) days from the effective date of termination. You will be responsible for the payment of any costs associated with the return of the Service Data.

**9.5 SURVIVAL.** Your indemnification obligations, our warranty disclaimers and limitations of liabilities, and the dispute resolution provisions will survive termination of this Agreement.

## 10 INVESTIGATIONS

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**10.1 SCREENING.** We do not review the Service Data uploaded to the Software, but we may use available technologies, vendors, or processes to screen for certain types of illegal content (e.g. child pornography) or other abusive content or behaviour (e.g. patterns of activity that indicate spam or phishing). Although we are not obligated to monitor the Service Data and assume no responsibility for your Service Data or the Service Data of your End-Users, we reserve the right, subject to all applicable laws, to investigate the Service Data and may block access to, refuse to host, or remove any information or material that we deem to be illegal or abusive.

**10.2 DISCLOSURE.** We may access or disclose information about you or your use of the Services or Software: (a) when it is required by law (such as when we receive a valid subpoena or search warrant); (b) to respond to your requests for customer service support; or (c) when we, in our discretion, think it is necessary to protect the rights, property, or personal safety of us, our users, or the public.

## 11 TRADE CONTROL LAWS

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The Services and your use of the Services are subject to Australian and international laws, restrictions, and regulations that may govern the import, export, and use of the Services and Software. You agree to comply with all the laws, restrictions, and regulations.

## 12 AUSTRALIAN CONSUMER LAW

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Nothing in this Agreement is intended to exclude, restrict, or modify any consumer rights under the *Competition and Consumer Act 2010* (Cth) (“**CCA**”) or any other legislation which may not be excluded, restricted, or modified by agreement. If the CCA or any other legislation implies a condition, warranty, or term into this Agreement or provides statutory guarantees in connection with this Agreement, in respect of services supplied (if any), our liability for breach of such a condition, warranty, other term or guarantee is limited (at our election), to the extent it is able to do so: (i) supplying the services again; or (ii) paying the cost of having the services supplied again.

## 13 DISPUTE RESOLUTION

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**13.1 PROCESS.** If you have any concern or dispute, you agree to first try to resolve the dispute informally by contacting us. If a dispute is not resolved within thirty (30) days of submission, the parties agree to refer the dispute to an independent third person who either has the power to intervene and direct some form of resolution, in which case the parties will be bound by that resolution, or the power to mediate and recommend some form of non-binding resolution. If the dispute is still not resolved within a further thirty (30) days, any resulting legal actions must be resolved through a small claims court if your claims qualify.

**13.2 INJUNCTIVE RELIEF.** Notwithstanding the foregoing, in the event of your or others’ unauthorised access to or use of the Services in violation of this Agreement, you agree that we are entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

## 14 UPDATES AND AVAILABILITY

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**14.2 UPDATES TO THE SERVICES AND SOFTWARE.** We may modify, update, or discontinue part of the Services (including any portions or features) at any time, without liability to you or anyone else. If we decide to discontinue part of the Services, we will make reasonable efforts to notify you of the discontinuation. If we discontinue the Services in its entirety, we will also allow you a reasonable time to download the Service Data and we will provide you with a pro rata refund for any unused fees for the Services that you prepaid.

**14.3 AVAILABILITY.** Webpages describing the Services are accessible worldwide, but this does not mean all Services are available in your country. Access to certain Services (or certain features, such as Sample Files) in certain countries may be blocked by us or foreign governments. It is your responsibility to make sure your use of the Services is legal or available where you use them.

## 15 MISCELLANEOUS

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**15.1 CHOICE OF LAW AND CONTRACTING ENTITY.** The law of New South Wales, Australia applies to this Agreement.

**15.2 NOTICE TO YOU.** We may notify you by email using the email address you provide to us when you open Your Account.

**15.3 NON-ASSIGNMENT.** You may not assign or otherwise transfer this Agreement or your rights and obligations under this Agreement, in whole or in part, without our written consent, and any such attempt will be void. We may transfer our rights under this Agreement to a third party.

**15.4 HEADINGS.** Headings used in this Agreement are provided for convenience only and will not be used to construe meaning or intent.

**15.5 SEVERABILITY.** If any provision of this Agreement is held invalid or unenforceable for any reason, the other provisions of the Agreement will continue in full force and effect.

**15.6 NO WAIVER.** Our failure to enforce or exercise any provision of this Agreement is not a waiver of that provision.

**15.7 JURISDICTION.** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia.

**15.8 COUNTERPARTS.** By using our Software, you are entering into an agreement with us, VALISE.TV Pty Limited (ABN 50 615 474 078) ("VALISE"). You may also download a copy this Agreement on our website <https://plex-serv.yourwebbuilder.io/agreements/>.