

# Working Wise Limited – Terms & Conditions of Trade

1.	<b>Definitions</b>		
1.1	" <b>Consultant</b> " means Working Wise Limited, its successors and assigns.		
1.2	" <b>Contract</b> " means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.		
1.3	" <b>Cookies</b> " means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular Customer and website and can be accessed either by the web server or the Customer's computer. <b>If the Customer does not wish to allow Cookies to operate in the background when using the Consultant's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.</b>	6.2	The Customer acknowledges and accepts that the Fee stated will remain fixed for an initial period of twelve (12) months from the date of this Contract and will then be subject to revision based on sixty percent (60%) of the movement in the Consumer Price Index (CPI) and forty percent (40%) of the movement in the Average Weekly Earnings rate published by Statistics New Zealand.
1.4	" <b>Customer</b> " means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Consultant to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and: (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and (d) includes the Customer's executors, administrators, successors and permitted assigns.	7.	<b>Fee and Payment</b>
1.5	" <b>Customer Data</b> " means all the unprocessed data supplied and inputted by the Customer into the secured access area from time to time in conjunction with the Subscription Services. Such data or information may include but is not limited to, still and moving images, any sound recordings, and personal data.	7.1	At the Consultant's sole discretion, the Fee shall be either: (a) as indicated on any invoice provided by the Consultant to the Customer; or (b) the Fee as at the date of delivery of the Services according to the Consultant's proposal or agreement; or (c) the Consultant's quoted Fee (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. Such quotations may be based on an initial fee, estimated monthly work or monthly fee based on an annual contract plus a software access fee based on user numbers.
1.6	" <b>Fee</b> " means the price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between the Consultant and the Customer in accordance with clause 7 of this Contract.	7.2	The Consultant reserves the right to change the Fee (at an hourly rate): (a) if a variation to the Services originally scheduled is requested (including, but not limited to, any additional work not covered in the initial quote); or (b) where additional Services are required due to unforeseen circumstances (including, but not limited to, limitations to accessing the site, delays in receiving required documentation/information from the Customer, any customisation of the Working Wise software, changes to the consultancy Services and/or training requirements, changes to the number of employees or training dates, change of industry, etc.) which are only discovered on commencement of the Services; or (c) in the event of increases to the Consultant in the cost of labour or materials which are beyond the Consultant's control.
1.7	" <b>Incidental Items</b> " means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Consultant in the course of it conducting, or supplying to the Customer, any Services.	7.3	Variations will be charged for on the basis of the Consultant's quotation, and will be detailed in writing, and shown as variations on the Consultant's invoice. The Customer shall be required to respond to any variation submitted by the Consultant within ten (10) working days. Failure to do so will entitle the Consultant to add the cost of the variation to the Fee. Payment for all variations must be made in full at the time of their completion.
1.8	" <b>Services</b> " means all Services supplied by the Consultant to the Customer at the Customer's request from time to time.	7.4	At the Consultant's sole discretion, a reasonable deposit may be required.
1.9	" <b>Subscription Services</b> " means the provision of the Services by the Consultant to the Customer via the Customer's secured account area on the Consultant's Website.	7.5	Time for payment for the Services being of the essence, the Fee will be payable by the Customer on the date/s determined by the Consultant, which may be: (a) on delivery or completion of the Services; (b) by way of instalments/progress payments in accordance with the Consultant's payment schedule; (c) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices; (d) the date specified on any invoice or other form as being the date for payment; or (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Consultant.
1.10	" <b>Website</b> " means a location which is accessible on the internet through the World Wide Web, and which provides multimedia content via a graphical User Interface.	7.6	Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and the Consultant.
2.	<b>Acceptance</b>	7.7	The Consultant may in its discretion allocate any payment received from the Customer towards any invoice that the Consultant determines and may do so at the time of receipt or at any time afterwards.
2.1	The parties acknowledge and agree that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by the Consultant.	7.8	The Customer shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Customer by the Consultant nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify the Consultant in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Consultant investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Consultant placing the Customer's account into default and subject to default interest in accordance with clause 19.1.
2.2	In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.	7.9	Unless otherwise stated the Fee does not include GST. In addition to the Fee, the Customer must pay to the Consultant an amount equal to any GST the Consultant must pay for any supply by the Consultant under this or any other agreement for providing the Consultant's Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Fee. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.
2.3	Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.	8.	<b>Provision of the Services</b>
2.4	The Customer acknowledges and accepts that: (a) the supply of Services on credit shall not take effect until the Customer has completed a credit application with the Consultant and it has been approved with a credit limit established for the account. In the event that the supply of Services requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Consultant reserves the right to refuse delivery; and (b) timeliness and a project plan will be developed on the proposal and/or Contract has been signed by both parties. Site and training dates can be adjusted by mutual agreement, but late notice of such changes will result in penalty charges unless otherwise agreed.	8.1	At the Consultant's sole discretion delivery of the Services shall take place when the Services are supplied to the Customer at the Customer's nominated address.
2.5	The Consultant will ask pertinent questions to ascertain the Customer's requirements in the preparation, institution, and management of the plan for the Customer. It is the Customer's responsibility to provide accurate information, without embellishment, in order to ensure an appropriate level of service and protection. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Consultant accepts no responsibility for any loss, damage, or costs, however resulting from the inaccurate information.	8.2	Subject to clause 8.3 it is the Consultant's responsibility to ensure that the Services start as soon as it is reasonably practicable.
2.6	In the event that the Consultant is required to provide the Services urgently, that may require the Consultant's staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then the Consultant reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Consultant and the Customer.	8.3	The Services' commencement date will be extended, and the completion date extended by whatever time is reasonable in the event that the Consultant claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Consultant's control, including but not limited to any failure by the Customer to: (a) make a selection; or (b) have the site ready for the Services; or (c) notify the Consultant that the site is ready;
2.7	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.	8.4	Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Contract.
3.	<b>Authorised Representatives</b>	8.5	The Consultant may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
3.1	The Customer acknowledges that the Consultant shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to the Consultant, that person shall have the full authority of the Customer to order any Incidental Items, Services and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to the Consultant for all additional costs incurred by the Consultant (including the Consultant's profit margin) in providing any Incidental Items, Services or variations requested thereto by the Customer's duly authorised representative.	8.6	Any time specified by the Consultant for delivery of the Services is an estimate only and the Consultant will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Consultant is unable to supply the Services as agreed solely due to any action or inaction of the Customer then the Consultant shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
4.	<b>Errors and Omissions</b>	9.	<b>Support Services</b>
4.1	The Customer acknowledges and accepts that the Consultant shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s): (a) resulting from an inadvertent mistake made by the Consultant in the formation and/or administration of this Contract; and/or (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Consultant in respect of the Services.	9.1	The Customer acknowledges and agrees that: (a) the Consultant does not guarantee the Website's performance or availability of any of its Services; (b) on-line requests may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and (c) there are inherent hazards in electronic distribution and as such the Consultant cannot warrant against delays or errors in transmitting data between the Customer and the Consultant including requests, and that to the maximum extent permitted by law, the Consultant will not be liable for any losses which the Customer suffers as a result of online requests not being available or for delays or errors in transmitting such requests.
4.2	In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of the Consultant; the Customer: (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but (b) shall not be responsible for any additional costs incurred by the Consultant arising from the error or omission.	9.2	The Consultant reserves the right to terminate the Customer's request if the Consultant learns that the Customer have provided false or misleading information, interfered with other users or the administration of the Consultant's Services, or violated these terms and conditions.
5.	<b>Change in Control</b>	9.3	<b>Support Requests</b>
5.1	The Customer shall give the Consultant not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Consultant as a result of the Customer's failure to comply with this clause.		The Customer acknowledges and accepts that: (a) if the Customer requires support during the Consultant's normal business hours then the Customer may either call the Consultant directly, make enquiries via the "Let's Chat" icon that is displayed on the Consultant's Website or by leaving a detailed message on the Consultant's contact page outlining the issue in respect of which they require support and the name and contact details of the person to whom the Consultant should respond or contact for further clarification of the support request. The Consultant will make all reasonable efforts to respond to a support request and to provide a resolution to the issue in question within a timeframe reflective of the severity of the issue; and (b) any day that is a Saturday, Sunday or public holiday in New Zealand is regarded as being outside of the support hours, unless otherwise stated.
6.	<b>Fixed Term Contract for the Subscription Services (Software Programmes only)</b>		<b>After-Hours Support</b>
6.1	The commencement date shall be the date of the first delivery of the Services and shall continue for an annual term ("initial term") and, upon expiration of this term,		The Customer acknowledges and accepts that: (a) subject to any confirmed after-hours support in accordance with the Consultant's proposal, the Consultant will provide the Customer with after-hours support when necessary; and (b) the provision of support outside of the Consultant's normal business hours will be entirely at the Consultant's discretion, acting reasonably, on the basis of the: (i) information provided to the Consultant as part of the support request; (ii) Consultant has the available resources to provide the support as requested; and (iii) Consultant believes that the requested support could be supplied the next day with a minimum of disruption and inconvenience to the Customer.
		10.	<b>Risk</b>
		10.1	Irrespective of whether the Consultant retains ownership of any Incidental Items at risk for such items shall pass to the Customer as soon as such items are delivered to the Customer and shall remain with the Customer until such time as the Consultant may repossess the Incidental Items. The Customer must insure all Incidental Items on or before delivery.
		10.2	The Consultant reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Customer's failure to insure in accordance with clause 10.1.
		10.3	Where the Customer purchases the documentation and/or software access and does not engage the Consultant to provide ongoing consultation Services, the Customer indemnifies the Consultant from any damages, losses or costs arising from misapplication of the processes and/or documentation.
		10.4	The Consultant shall be entitled to rely on the accuracy of any data and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Consultant accepts no responsibility for any loss, damages, or costs however resulting from the inaccurate data or other information.
		10.5	The Customer acknowledges and accepts that: (a) any recommendations or programs provided by the Consultant is based on the Customer's data and any other data or information provided by the Customer in any form (including that which the Customer enters online); (b) it shall be the Customer's responsibility to ensure the security and integrity of their computer servers and systems; and (c) the Consultant shall not be held liable for any damages, costs or losses where the Customer visits any third-party Website that may have a link on the software provided by the Consultant that may interfere with the application provided by the Consultant. In addition, the Customer is to ensure that any information or data provided to the Consultant online shall be free of viruses, Trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the Consultant's computer system.
		11.	<b>Title</b>
		11.1	The Consultant and the Customer agree that where it is intended that the ownership of Incidental Items is to pass to the Customer that such ownership shall not pass until: (a) the Customer has paid the Consultant all amounts owing for the Services; and (b) the Customer has met all other obligations due by the Customer to the Consultant in respect of all Contracts between the Consultant and the Customer.
		11.2	Receipt by the Consultant of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Consultant's ownership in the Incidental Items or rights in respect of the Services shall continue.
		11.3	It is further agreed that: (a) the Customer is only a bailee of the Incidental Items and must return the Incidental Items to the Consultant immediately upon request by the Consultant; (b) the Customer holds the benefit of the Customer's insurance of the Incidental Items on trust for the Consultant and must pay to the Consultant the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed; (c) the Customer must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Customer sells, disposes or parts with possession of the Incidental Items then the Customer must hold the proceeds of sale of the Incidental Items on trust for the Consultant and must pay or deliver the proceeds to the Consultant on demand; (d) the Customer should not convert or process the Incidental Items or intermix them with other goods, but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Consultant and must dispose of or return the resulting product to the Consultant as the Consultant so directs; (e) the Customer shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of the Consultant; and (f) the Customer irrevocably authorises the Consultant to enter any premises where the Consultant believes the Incidental Items are kept and recover possession of the Incidental Items.
		12.	<b>Personal Property Securities Act 1999 ("PPSA")</b>
		12.1	In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
		12.2	Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in: (a) all Incidental Items previously supplied by the Consultant to the Customer; (b) all Incidental Items that will be supplied in the future by the Consultant to the Customer and the proceeds from such Incidental Items as listed by the Consultant to the Customer in invoices rendered from time to time; and (c) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to the Consultant for Services – that have previously been provided and that will be provided in the future by the Consultant to the Customer.
		12.3	The Customer undertakes to: (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Consultant may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; indemnify, and upon demand reimburse, the Consultant for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby; (b) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items or the proceeds of such

# Working Wise Limited – Terms & Conditions of Trade

<p>12.4 Incidental Items in favour of a third party without the prior written consent of the Consultant.</p> <p>12.5 Unless otherwise agreed to in writing by the Consultant, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA. The Customer shall unconditionally ratify any actions taken by the Consultant under clauses 12.1 to 12.4.</p> <p>12.6 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>13. <b>Security and Charge</b></p> <p>13.1 In consideration of the Consultant agreeing to supply Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.</p> <p>13.2 The Customer indemnifies the Consultant from and against all the Consultant's costs and disbursements including legal costs of a solicitor and own Customer basis incurred in exercising the Consultant's rights under this clause.</p> <p>13.3 The Customer irrevocably appoints the Consultant and each director of the Consultant as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.</p> <p>14. <b>Defective Services</b></p> <p>14.1 The Customer shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Consultant of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Customer shall afford the Consultant an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.</p> <p>14.2 For defective Services, which the Consultant has agreed in writing that the Customer is entitled to reject, the Consultant's liability is limited to either (at the Consultant's discretion) replacing the Services or rectifying the Services provided that the Customer has complied with the provisions of clause 14.1.</p> <p>15. <b>Consumer Guarantees Act 1993 and the Fair Trading Act 1986</b></p> <p>15.1 If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Services by the Consultant to the Customer.</p> <p>15.2 The Consultant agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").</p> <p>16. <b>Use of Reports and Advice</b></p> <p>16.1 Any advice that the Consultant gives to the Customer, its employees or agents is for the Customer's exclusive use and must be used only for the purpose described in the letter of engagement.</p> <p>16.2 Unless the Consultant gives the Customer prior written consent, the advice:</p> <p>(a) must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except the Customer's lawyers or other professional advisor assisting in the Services; and</p> <p>(b) may not be relied upon by any other party other than the Customer.</p> <p>16.3 The Consultant is not responsible to any other party other than the Customer, who is provided with or obtains a copy of the Consultant's advice.</p> <p>16.4 The Consultant's advice may, on occasion, be given to the Customer in draft form or orally only on the basis that the Customer may not rely on advice in that form. Accordingly, the Consultant shall not be responsible if the Customer or any other party relies on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.</p> <p>16.5 The Customer acknowledges and accepts that:</p> <p>(a) the signed copy of the Consultant's final advice is the definitive version; and</p> <p>(b) sometimes circumstances may change after the Consultant has provided their final advice to the Customer. If this happens the Consultant will not update any final advice it has provided to the Customer under these terms and conditions. If the Customer would like the Consultant to update their final advice, they must contact the Consultant and both parties can discuss a suitable term of engagement.</p> <p>17. <b>Intellectual Property and Confidentiality</b></p> <p>17.1 Where the Consultant has designed, drawn, Processed Data or developed Incidental Items for the Customer, then the copyright in any Incidental Items shall remain the property of the Consultant. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Consultant.</p> <p>17.2 The Customer may download one copy of any document on any computer and/or portable computer device for non-commercial use and may print hard copies for non-commercial use.</p> <p>17.3 The Customer warrants that all designs, specifications or instructions given to the Consultant will not cause the Consultant to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Consultant against any action taken by a third party against the Consultant in respect of any such infringement.</p> <p>17.4 The Customer agrees that the Consultant may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which the Consultant has created for the Customer.</p> <p>17.5 Each party agrees to treat all Confidential Information and ideas communicated to it by the other confidentially and agrees not to divulge it to a third-party, without the other party's written consent. The parties will not copy any such information supplied and will either return it or destroy it (together with any copies thereof) on request of the other party as per clause 17.</p> <p>17.6 The obligations of this clause 17 shall survive termination or cancellation of this Contract.</p> <p>18. <b>Customer Data</b></p> <p>18.1 The Customer warrants that:</p> <p>(a) they have the legal right to supply the "Customer Data" to the Consultant in connection with the Subscription Services or Services (and that there are no circumstances likely to give rise to breach of any privacy); and</p> <p>(b) the Customer Data contains nothing that is defamatory.</p> <p>18.2 The Consultant will:</p> <p>(a) only make copies of the Customer Data to the extent reasonably necessary for the Subscription Services or Services (which includes, but is not limited to, back-up security, disaster recovery and testing of the Customer Data);</p> <p>(b) not use, exploit, redistribute, re-disseminate, copy, or store the Customer Data other than for the purposes of the Subscription Services or Services; and</p> <p>(c) take reasonable steps to protect the Customer Data.</p> <p>18.3 The Customer Data shall at all times remain the property of the Customer.</p> <p>18.4 On the termination of the Contract or the expiry of the Subscription Services the following shall apply:</p> <p>(a) the Customer shall immediately cease using the Consultant's intellectual property and the Subscription Services;</p> <p>(b) where the Customer elects for the destruction of the Customer Data, the Consultant will as soon as reasonably practicable, ensure that all the Customer Data is deleted from the secured access area of the Website; and where the Customer elects for the return of the Customer Data, the Customer must make a written request to the Consultant within ten (10) working days after the date of the termination or expiry of the Contract ("the Request").</p>	<p>The Consultant shall use reasonable efforts to fulfil such a Request within twenty (20) working days of the request provided that:</p> <p>(i) the Customer has paid all monthly Subscription Fees and any other monies owed to the Consultant as at the date of the Request; and</p> <p>(ii) the Customer shall pay all the costs and expenses (including, but not limited to, the costs for data extraction, transfer and migration and any compatibility issues with both parties' technology platforms, hardware or software incurred by the Consultant in return the Customer Data.</p> <p>18.5 Where the Customer fails to stipulate either return or destruction of the Customer Data within ten (10) working days, the Consultant may destroy or otherwise dispose of any of the Customer Data in the Consultant's possession, and the Customer shall not have any claim whatsoever after this time.</p> <p>19. <b>Default and Consequences of Default</b></p> <p>19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Consultant's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>19.2 If the Customer owes the Consultant any money the Customer shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Consultant's collection agency costs, and bank dishonour fees).</p> <p>19.3 Further to any other rights or remedies the Consultant may have under this Contract, if a Customer has made payment to the Consultant, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Consultant under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.</p> <p>19.4 Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by the Consultant;</p> <p>(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>20. <b>Cancellation</b></p> <p>20.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services to the other party. The Consultant may suspend, restrict access to software or cloud based/online Services or terminate the provision of Services to the Customer, (this includes, but is not restricted to, withholding domain codes, passwords and/or blocking or restricting public and Customer access to the Website, or removing the Website from the web completely) and any of its other obligations under the terms and conditions. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.</p> <p>20.2 If the Consultant, due to reasons beyond the Consultant's reasonable control, is unable to deliver any Services to the Customer, the Consultant may cancel any Contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice the Consultant shall repay to the Customer any money paid by the Customer for the Services. The Consultant shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>20.3 The Customer may cancel delivery of the Services by written notice served within forty-eight (48) hours of placement of the order. Failure by the Customer to otherwise accept delivery of the Services shall place the Customer in breach of this Contract.</p> <p>20.4 <b>Fixed Term Contract- Subscription Services</b> Notwithstanding clause 20.1, in the event of the premature termination of this Contract (including by notification from the Customer, (at least sixty (60) days prior to the expiration date of the Contract term), or as a result of default, but excluding any breach or termination of this Contract by the Consultant):</p> <p>(a) the Customer shall be responsible for the immediate payment of the following sums:</p> <p>(i) all monies due and payable up to the date of termination, noting applicable rates may change if the fixed term Contract is shorter than that noted in the quotation; and</p> <p>(ii) all other sums owing by the Customer under this Contract (or any other Contract with the Customer) as a result of the default and termination of this Contract, including consequential damages and any and all loss of profits, costs, charges and expenses incurred by the Consultant in connection with (and resulting from) the premature termination of this Contract, which shall be calculated at a minimum of thirty percent (30%) of the remainder of the Fee under this Contract where a fixed term applies.</p> <p>21. <b>Privacy Policy</b></p> <p>21.1 All emails, documents, images, or other recorded information held or used by the Consultant is "Personal Information" as defined and referred to in clause 21.3 and therefore considered confidential. The Consultant acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Consultant acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Consultant that may result in serious harm to the Customer, the Consultant will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.</p> <p>21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Consultant in respect of Cookies where the Customer utilises the Consultant's website to make enquiries. The Consultant agrees to display preference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:</p> <p>(a) IP address, browser, email Customer type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to the Consultant when the Consultant sends an email to the Customer, so the Consultant may collect and review that information ("collectively Personal Information").</p> <p>If the Customer consents to the Consultant's use of Cookies on the Consultant's website and later wishes to withdraw that consent, the Customer may manage and control the Consultant's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the website.</p> <p>21.3 The Customer authorises the Consultant or the Consultant's agent to:</p> <p>(a) access, collect, retain and use any information about the Customer;</p> <p>(i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any</p>	<p>overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or</p> <p>(ii) for the purpose of marketing products and services to the Customer.</p> <p>(b) disclose information about the Customer, whether collected by the Consultant from the Customer directly or obtained by the Consultant from any other source to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.</p> <p>21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.</p> <p>21.5 The Customer shall have the right to request (by e-mail) from the Consultant, a copy of the Personal Information about the Customer retained by the Consultant and the right to request that the Consultant correct any incorrect Personal Information.</p> <p>21.6 The Consultant will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>21.7 The Customer can make a privacy complaint by contacting the Consultant via e-mail. The Consultant will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <a href="http://www.privacy.org.nz">http://www.privacy.org.nz</a>.</p> <p>22. <b>Liability Limitations</b></p> <p>22.1 The Customer agrees that Consultant shall not be liable for any damage or loss (including, but not limited to, personal injury, death, property loss, delay, strike, terrorism, bankruptcy, war, inconvenience, or expense occasioned by any act or omission of the Consultant providing the Services in the event that the Customer fails to follow the Consultant's instructions and/or recommendations.</p> <p>22.2 The Customer agrees to indemnify the Consultant, its licensees, area licensed provider, partners, associates, employees, contractors and any other person who may be sought to be made liable in excess of the limit of liability described in clause 22.1 in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by the Consultant.</p> <p>23. <b>Service of Notices</b></p> <p>23.1 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>24. <b>Trusts</b></p> <p>24.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Consultant may have notice of the Trust, the Customer covenants with the Consultant as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund, the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust, the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;</p> <p>(c) the Customer will not during the term of the Contract without consent in writing of the Consultant (the Consultant will not unreasonably withhold consent) cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Customer as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust fund or trust property.</p> <p>25. <b>General</b></p> <p>25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.</p> <p>25.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>25.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Wellington Courts of New Zealand.</p> <p>25.4 Subject to the CGA, the liability of the Consultant and the Customer under this Contract shall be limited to the Fee.</p> <p>25.5 The Consultant may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.</p> <p>25.6 The Customer cannot licence or assign without the written approval of the Consultant.</p> <p>25.7 The Consultant may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Consultant's sub-contractors without the authority of the Consultant.</p> <p>25.8 The Customer agrees that the Consultant may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Consultant to provide Services to the Customer.</p> <p>25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargos, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Consultant, following cessation of a Force Majeure.</p> <p>25.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.</p>
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