



AGREEMENT SOFTWARE SUBSCRIPTION SERVICES

Acume Financial Suite

Current as at 16 May 2022

Acume Financial Suite, a brand of Streamline Business NZ Limited (“Acume”, “we”)	
Street address	Refer Order Form
Postal address	Refer Order Form

{Customer} (“Customer”, “you”) Refer Order form	
Street address	Refer Order Form
Postal address	Refer Order Form

We agree to provide the Services and you agree to pay us for the Services in accordance with the following contract documents, which together form the “**Agreement**”:

- a) This cover page;
- b) Terms of Service - Master Subscription Agreement (“**MSA**”) (Annex A,);
- c) Statements of Work, including any initial Statement of Work attached as Annex B;
- d) Order Forms, including the initial Order Form attached as Annex C;
- e) Any other attachments.

In the case of any conflict or inconsistency between:

- a) A Statement of Work and the MSA, the MSA shall prevail;
- b) An Order Form and the MSA, the MSA shall prevail;
- c) Any of the Agreement documents (other than as listed in a) and b)), the priority of documents shall be as listed above, with each item listed prevailing over any other item (s) appearing lower in the list.

START DATE: As per the order form.

Important: Once the order form is signed, you are authorised to access and use the Services.

Executed as an Agreement

Signed for and on behalf of Streamline Business NZ Limited by:	
<i>Authorised signatory</i>	
Name:	Craig Anthony Pellett
Position:	Group CEO
Date:	_____

Refer: order form for your signature detail.	

<i>Authorised signatory</i>	
Name:	[Full Legal Name]
Position:	[Job Title]
Date:	_____



ANNEX A

TERMS OF SERVICE

MASTER SUBSCRIPTION AGREEMENT

1 APPLICATION OF THIS AGREEMENT

- 1.1 This Agreement applies to your use of the Services (as that term is defined below).
- 1.2 This Agreement applies to the exclusion of any standard terms you may have for the purchase of goods or services and any terms included, or incorporated by reference, in any request for a quote, purchase order or other correspondence between us.
- 1.3 Statements of Work agreed between the parties from time to time set out the initial deployment or project Services to be provided by us. The initial Statement of Work attached as Annex B does not need to be separately signed.
- 1.4 Order Forms agreed by the parties from time to time record day-to-day Services, and Fees, as those Services come online and/or are utilised by you. The initial Order Form attached as Annex C needs to be separately signed.
- 1.5 Future Statements of Work and Order Forms need to be agreed by both parties in writing.

2 CHANGES

- 2.1 We may change the terms in this Master Subscription Agreement at any time by notifying you of the change by email and by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. By continuing to access and use the Services from the date on which the Terms are changed, you agree to be bound by the changed Master Subscription Agreement.
- 2.2 Our Terms of Service in this Master Subscription Agreement **was last updated on 16th May 2022**

3 INTERPRETATION

In this Agreement:

Agreement means this Master Subscription Agreement, including any Order Forms or Statements of Work.

Confidential Information means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the Services. Our Confidential Information includes Intellectual Property owned by us (or our



licensors), including the Underlying Systems. Your Confidential Information includes the Content.

Content means all data, content, and information (including personal information) owned, held, used or created by you or on your behalf that is stored or processed using, or inputted into, the Platform Services.

Fees means the fees for Paid Services (including any feature of Paid Services that you subsequently subscribe to), as set out in the Order Form, Statement of Work, or as agreed otherwise in writing with us, and as may be updated from time to time in accordance with clause 9.6.

Force Majeure means an event that is beyond the reasonable control of a party, excluding:

- an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
- a lack of funds for any reason.

Free Services means Platform Services provided to you under a free trial or other non-paying plan (which may include services or functionality made available to you to try at your option at no additional charge which are designated as beta, pilot, limited release, developer preview, non-production, evaluation, or similar).

including and similar words do not imply any limit.

Intellectual Property Rights includes copyright and all rights anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. *Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Objectionable includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

Order Form means an ordering document or online order specifying the Services to be provided under this Agreement that is entered into between you and us, including any documents attached to that document or order. *Overage Charges* means the applicable Fees for use of the Services in excess of the limits stated in the Order Form.

Paid Service means a Platform Service offered under a fees-based plan.

a *party* includes that party's permitted assigns.

Permitted Users means your personnel who are authorised to access and use the Platform Services.



a *person* includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

personal information means information about an identifiable, living person.

personnel include officers, employees, contractors and agents, but a reference to your personnel does not include us.

Plan means the plan you have selected for your access and use of the Platform Services.

Platform Services means the products and services that are ordered by you under an Order Form or provided to you as Free Services, and that are made available online by us, including associated offline or mobile components, but excluding Support Services.

Sales Tax means sales tax, value added tax, goods and services tax, or equivalent tax payable under any applicable law.

Services means the Platform Services and the Support Services.

Statement of Work or *SOW* means a document that defines project-specific activities, deliverables, costs, and timelines for us to provide additional services to you.

Support Services means non-automated services that are provided to support and maintain the Platform Services and to assist you in your use of the Platform Services.

Platform Services means services that are automated computer based services.

Start Date means the date recorded on the signed order form.

Underlying Systems means the IT solutions, systems and networks (including software and hardware) used to provide the Platform Services, including any third party solutions, systems and networks.

User ID means a unique name and/or password allocated to you or a Permitted User to allow you or that Permitted User to access certain parts of the Platform Services.

We, us or *our* means Acume Financial Suite a brand of Streamline Business NZ Limited a New Zealand company (company number 5866349).

Website means the internet site at Acumelimited.com or such other site notified to you by us.

Year means a 12-month period starting on the Start Date or the anniversary of that date.

You or *your* means you or, if clause 1.1b applies, both you and the other person on whose behalf you are acting.

Words in the singular include the plural and vice versa.



A reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

4 SERVICES

4.1 We must provide the Services:

- a in accordance with this Agreement and applicable laws;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

4.2 Our provision of the Services to you is non-exclusive. Nothing in this Agreement prevents us from providing the Services to any other person.

4.3 Subject to clause 4.4, we must use all reasonable efforts to ensure the Platform Services are available on a 24/7 basis. However, it is possible that on occasion the Platform Services may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. We must publish on the Website or notify you by email advance details of any unavailability when the same is due to planned maintenance or development activity.

4.4 Through the use of web services and APIs (Applications and programming interfaces), the Platform Services interoperate with a range of third-party service features. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.

5 FREE SERVICES

Where you use Free Services:

- a The Free Services are provided to you on an *as is* basis, and, despite any other provision in this Agreement, all liability, conditions, warranties and guarantees in relation to the Free Services are excluded by us to the maximum extent permitted by law.
- b No Fees are payable for your right to access and use the Free Services.
- c Your right to access and use the Free Services will end at the end of the advertised trial or availability period (if applicable).
- d Either party may terminate your right to access and use the Free Services at any time by giving notice to the other party.



- e Nothing in this Agreement requires:
 - i you, on termination of the Free Services, to subscribe to Paid Services or any other service provided by us; or
 - ii us, on termination of the Free Services, to provide you with access and use of the Services or any other service, unless you have subscribed to Paid Services.
- f Except as set out in this clause 5, this Agreement applies to your access and use of the Free Services.

6 SUPPORT

- 6.1 Where you require Support Services, you may place a request for Support Services in accordance with clause 6.5c (**Support Request**). Subject to the remainder of this clause 6, on receipt of a Support Request, we will:
 - a provide support ticket, email support and telephone support in the form of consultation, assistance and advice; and
 - b assist in the resolution of the issue (taking into account the nature and severity of the issue). Resolution may include providing a work around.
- 6.2 We will provide the Support Services between 8am and 5pm on working days in Auckland, New Zealand.
- 6.3 The number of hours of Support Services to be provided to you each month will be as set out in the Order Form. Unused hours will expire at the end of the relevant month and will not roll over.
- 6.4 If we agree to provide Support Services outside of the hours set out in clause 6.2 or in excess of the number of hours set out in clause 6.3, we will invoice you for (and you must pay for) those Support Services at the rates set out in the Order Form.
- 6.5 Our provision of Support Services is conditional on you:
 - a being up to date with all Fees due and not otherwise in breach of any of this Agreement;
 - b first using reasonable efforts to resolve the issue using any documentation or other information made available by us (including on the Website) to enable you to use the Platform Services;
 - c logging a request for support via one of the following methods:
Support Ticket, Email, Telephone, or other method as supplied by us
 - d providing us with all information and access reasonably required to enable us to provide the requested Support Services.



- 6.6 Our Support Services do not include the development or provision of new features or functionality. At your request, we may from time to time agree to develop or provide new features or functionality, subject to:
- a you and us agreeing the terms and conditions that are to apply to the development and/or provision of such features or functionality. In such cases, a statement of work will need to be entered into to govern the development and/or provision of such features or functionality.
 - b you paying the applicable fees.
- 6.7 Nothing in this Agreement requires us to provide Support Services where support is required as a result of:
- a a breach of this Agreement by you or a Permitted User; or
 - b the use of the Platform Services in a manner or for a purpose not reasonably contemplated by this Agreement and not otherwise authorised in writing by us.
- 6.8 Any response and/or resolution times provided by us (in this Agreement or otherwise) are targets only and we will have no liability to you for any failure to meet those response and/or resolution times.
- 6.9 Our liability for any failure to provide Support Services in accordance with this Agreement is limited to resupplying the Support Services to the extent required to remedy the failure. This obligation sets out your sole remedy under this Agreement for any failure to provide Support Services in accordance with this Agreement.

7 YOUR OBLIGATIONS

- 7.1 You and your personnel must:
- a use the Services in accordance with this Agreement solely for:
 - i the Paid Services;
 - ii your own internal business purposes; and
 - iii lawful purposes (including complying with any anti-spam laws and regulations);
and
 - b except expressly as set out in this Agreement, not resell or make available the Services to any third party, or otherwise commercially exploit the Services.



- 7.2 When accessing the Platform Services, you and your personnel must:
- a keep your User ID secure including not disclosing it or permitting any third party to use it, and notify us immediately on becoming aware that any person has unauthorised access or use of your User ID;
 - b not impersonate another person or misrepresent authorisation to act on behalf of others or us;
 - c correctly identify the sender of all electronic transmissions;
 - d not attempt to undermine the security or integrity of the Platform Services or the Underlying Systems;
 - e not use, or misuse, the Platform Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Platform Services;
 - f not attempt to view, access or copy any material or data other than:
 - i that which you are authorised to access; and
 - ii to the extent necessary for you to use the Services in accordance with this Agreement;
 - g neither use the Platform Services in a manner, nor transmit, input or store any Content, that breaches any third party right (including Intellectual Property Rights and rights of privacy or publicity) or is Objectionable, incorrect or misleading;
 - h not remove any copyright notice, trade mark or other proprietary indication appearing on or in relation to the Platform Services; and
 - i not decompile, disassemble, reverse engineer or otherwise attempt to derive the source code of any software from object code except to the extent expressly permitted by applicable law or treaty despite this limitation.
- 7.3 You must have a published privacy policy that sets out how you collect, use, hold and process personal information obtained by you.
- 7.4 Without limiting clause 7.2, no individual other than a Permitted User may access or use the Platform Services. You may authorise any member of your personnel to be a Permitted User, in which case you must provide us with the Permitted User's name and other information that we reasonably require in relation to the Permitted User. You must procure each Permitted User's compliance with clauses 7.1 and 7.2 and any other reasonable condition notified by us to you.
- 7.5 A breach of any of this Agreement by your personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of this Agreement by you.



7.6 You are responsible for ensuring you have:

- a all equipment, facilities and services (including internet access) required to enable you to access and use the Platform Services; and
- b all licenses, authorisations and consents required for you and your personnel to use the Platform Services, including to use, store and input Content Data into, and process and distribute Content Data through, the Platform Services.

8 CONTENT

8.1 You acknowledge that we (including our personnel) may collect, use, hold and process Content Data to perform our obligations and exercise our rights under this Agreement;

8.2 To the extent permitted by law the parties acknowledge and agree that, where the Content Data contains personal information in collecting, holding and processing that information through the Services for the purpose of performing our obligations and exercising our rights under this Agreement, we are acting as your agent for the purposes of the Privacy Act 2020 and any other applicable privacy law. We will comply with reasonable instructions in relation to ensuring Privacy Act requirements are met in relation to the Content Data.

8.3 You must arrange all consents and approvals (including, in respect of any personal information, all necessary consents from the relevant individual) that are necessary for us to collect, use, hold and process the Content Data as described in clause 1.1.

8.4 While we will take standard industry measures to back up all Content Data stored using the Platform Services, you agree to keep a separate back-up copy of all Content Data uploaded by you onto the Platform Services.

8.5 You agree that we may store Content Data (including any personal information) in secure servers in Australia and may access that Content Data (including any personal information) in Australia from time to time.

8.6 You agree that we may delete, edit or remove Data and other personal information if we reasonably consider that we are required to do so in accordance with applicable law.

9 FEES

9.1 You must pay us the Fees. If you dispute any amount in an invoice, clauses 9.7 to 9.15 shall apply. The balance of the invoice which is not in dispute must be paid by the due date. Fees for Platform Services may be based on the size of the Instances that you are using from time to time as set out in the Order Form.

9.2 The Fees exclude sales tax, (GST), which you must pay on taxable supplies.

9.3 Unless otherwise set out in the Order Form, we will invoice you for the Fees monthly in arrears, together with any Support Services provided under clause 6.4.



- 9.4 You must pay the Fees:
- a electronically in cleared funds without any set-off or deduction.
- 9.5 We may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by our primary trading bank as at the due date (or, if our primary trading bank ceases to quote that rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.
- 9.6 We may increase the Fees by giving at least 30 days' notice, provided that any Fees increase will not take effect until the expiry of the initial term set out in clause 15.1a or otherwise set out in the Order Form or SOW. If you do not wish to pay the increased Fees, you may terminate this Agreement on no less than 10 days' notice, provided the notice is received by us before the effective date of the Fee increase. If you do not terminate this Agreement in accordance with this clause, you are deemed to have accepted the increased Fees.
- 9.7 If you dispute any amount in an invoice you must notify us within 10 days of the date of the invoice, identifying the amount in dispute and the reason for the dispute (**dispute notice**).
- 9.8 The parties will then endeavour in good faith to resolve the dispute between themselves within five (5) working days of the receipt of the dispute notice, failing which the dispute will be resolved by an expert in accordance with this clause 9.
- 9.9 The expert will be a suitable qualified person agreed by the parties, but if within two (2) working days they cannot agree on the expert, the President for the time being of the Auckland District Law Society Incorporated will do so on the application of either party.
- 9.10 The expert may determine the manner in which the determination proceeds and may, at their discretion, accept written and/or oral submissions from a party.
- 9.11 The expert will act as an expert and not as an arbitrator.
- 9.12 The expert must give his or her determination in writing, with reasons.
- 9.13 The parties will bear their own costs and expenses in respect of the determination. The expert's costs will be shared equally by the parties.
- 9.14 The expert determination will be final and binding on the parties.
- 9.15 Nothing in this clause shall prevent a party to this agreement from seeking urgent interlocutory relief from any court of competent jurisdiction.



10 INTELLECTUAL PROPERTY

- 10.1 Subject to clauses 10.2 and 10.3, title to, and all Intellectual Property Rights in, the Services, the Website, and all Underlying Systems is and remains our property (and the property of our licensors). You must not dispute that ownership.
- 10.2 Title to, and all Intellectual Property Rights in, the Content (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable license to use, store, copy, modify, make available and communicate the Content in connection with the performance of our obligations in accordance with this Agreement.
- 10.3 To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual licence to use for our own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by us in the provision of the Services.
- 10.4 If you provide us with ideas, comments or suggestions relating to the Services or Underlying Systems (together **feedback**):
- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
 - b we may use or disclose the feedback for any purpose.
- 10.5 You acknowledge that the Platform Services may link to third party websites or feeds that are connected or relevant to the Platform Services. Any link from the Platform Services does not imply that we endorse, approve or recommend, or have responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.

11 INDEMNITIES

- 11.1 We indemnify you from and against any claim or proceeding brought against you to the extent that claim or proceeding alleges that your use of the Platform Services in accordance with this Agreement constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**). The indemnity is subject to you:
- a promptly notifying us in writing of any IP Claim;
 - b making no admission of liability and not otherwise prejudicing or settling the IP Claim, without our prior written consent; and
 - c giving us complete authority and information required for us to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for our account.



11.2 The indemnity in clause 11.1 does not apply to the extent that an IP Claim arises from or in connection with:

- a a breach of this Agreement by you or a Permitted User;
- b the use of the Platform Services in a manner or for a purpose not reasonably contemplated by this Agreement and not otherwise authorised in writing by us;
- c any Content Data; or
- d the combination or use of the Platform Services with any other device, service, software or system not provided by us if such infringement would not have arisen but for that combination or use.

11.3 If at any time an IP Claim is made, or in our reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, we may (at our option):

- a obtain for you the right to continue using the items that are the subject of the IP Claim;
- b modify, re-perform or replace the items that are the subject of the IP Claim so they become non-infringing; or
- c terminate this Agreement.

11.4 You indemnify us and hold us harmless against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our attorneys) and loss of any kind arising from:

- a any actual or alleged claim by a third party that any Content Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Content Data is objectionable, incorrect or misleading;
- b warranty, representation or indemnity given by you relating to the Platform Services which is inconsistent with the terms of this Agreement, unless you have our prior approval in writing.

12 CONFIDENTIALITY

12.1 Each party must, unless it has the prior written consent of the other party:

- a keep confidential at all times the Confidential Information of the other party;
- b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- c disclose the other party's Confidential Information to its personnel or professional advisors on a *need-to-know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, clauses 12.1a and 12.1b.



- 12.2 The obligation of confidentiality in clause 12.1 does not apply to any disclosure or use of Confidential Information:
- a for the purpose of performing a party's obligations, or exercising a party's rights, under this Agreement;
 - b required by law (including under the rules of any stock exchange);
 - c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - d which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
 - e by us if required as part of a *bona fide* sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 11.4a
- 12.3 We may use your name and logo on the Website and in any other marketing or publicity material for the purpose of identifying that you are or have been our customer.

13 WARRANTIES

- 13.1 Each party warrants that it has full power and authority to enter into, and perform its obligations, under this Agreement.
- 13.2 To the maximum extent permitted by law:
- a our warranties are limited to those set out in these terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded; and
 - b we do not promise that the Services (including information generated through your use of the Services) will:
 - i meet your requirements or be suitable for a particular purpose, including that the use of the Services will fulfil or meet any statutory role or responsibility you may have; or
 - ii be secure, free of viruses or other harmful code, uninterrupted or error free.
- 13.3 You agree and represent that you are acquiring the Services, and accepting this Agreement, for the purpose of a business and that no consumer protection legislation applies to the supply of the Services to you or this Agreement.
- 13.4 Where legislation or rule of law implies into this Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in this



Agreement. However, our liability for any breach of that condition or warranty is limited, at our option, to:

- a supplying the Services again; and/or
- b subject to clause 14.1, paying the costs of having the Services supplied again.

14 LIABILITY

14.1 Our maximum aggregate liability under or in connection with this Agreement or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed an amount equal to the Fees paid by you relating to the Services in the 3 month period prior to the date of the first event giving rise to liability.

14.2 Neither party is liable to the other under or in connection with this Agreement or the Services for any:

- a loss of profit, revenue, savings, business, use, content data and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

14.3 Clauses 14.1 and 14.2 do not apply to exclude or limit our liability:

- a under the indemnity in clause 11;
- b under or in connection with this Agreement for:
 - i fraud or wilful misconduct; or
 - ii breach of clause 12; or
- c that cannot be excluded or limited at law.

14.4 Clause 14.2 does not apply to limit your liability:

- a to pay the Fees;
- b under the indemnities in clause 11.4;

14.5 Neither party will be responsible, liable, or held to be in breach of this Agreement for any failure to perform its obligations under this Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under this Agreement, or by the negligence or misconduct of the other party or its personnel.

14.6 Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with this Agreement or the Services.



15 TERM, TERMINATION AND SUSPENSION

- 15.1 Unless terminated earlier in accordance with this Agreement and unless otherwise set out in the Order Form, this Agreement:
- a starts on the Start Date and continues for an initial term of 36 months; and
 - b at the end of the initial term or any subsequent term, continues for successive terms of 12 months unless a party gives 30 days' notice that this Agreement will terminate on the expiry of the then current term.
- 15.2 Either party may, by notice to the other party, immediately terminate this Agreement if the other party:
- a breaches any material provision of this Agreement and the breach is not:
 - i remedied within 30 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - ii capable of being remedied; or
 - b becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or charge's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.
- 15.3 You may terminate this Agreement in accordance with clause 9.6.
- 15.4 In addition to our other rights of termination, we may terminate this Agreement immediately on notice if required to enable us to comply with any applicable laws or regulations.
- 15.5 Termination of this Agreement does not affect either party's rights and obligations that accrued before that termination.
- 15.6 On termination of this Agreement, you must pay all Fees for the provision of the Services prior to that termination.
- 15.7 No compensation is payable by us to you as a result of termination of this Agreement for whatever reason, and you will not be entitled to a refund of any Fees that you have already paid except as required by law.
- 15.8 Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of this Agreement, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.



- 15.9 Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of the Platform Services and/or delete, edit or remove the relevant Content Data if we consider that you or any of your personnel have:
- a undermined, or attempted to undermine, the security or integrity of the Platform Services or any Underlying Systems;
 - b used, or attempted to use, the Platform Services:
 - i for improper purposes; or
 - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Platform Services;
 - c transmitted, inputted or stored any Content Data that breaches or may breach this Agreement or any third party right (including Intellectual Property Rights and rights of privacy or publicity), or that is or may be Objectionable, incorrect or misleading; or
 - d otherwise materially breached this Agreement.

16 GENERAL

- 16.1 Neither party is liable to the other for any failure to perform its obligations under this Agreement to the extent caused by Force Majeure.
- 16.2 Neither party will, during the term of this Agreement and for 6 months after its expiry or termination (**Restraint Period**), without the prior written consent of the other party, directly or indirectly solicit or offer employment or any contract for services to any of the other party's personnel, or solicit or entice any member of the other party's personnel to terminate their position, employment or relationship with the other party. This clause does not restrict a party from hiring any person who has responded to a genuine published advertisement of a position with that party that is not targeted at the particular individual and without any other solicitation.
- 16.3 No person other than you and us has any right to a benefit under, or to enforce, this Agreement.
- 16.4 For us to waive a right under this Agreement, that waiver must be in writing and signed by us.
- 16.5 Subject to clause 16.2, we are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under this Agreement.
- 16.6 If we need to contact you, we may do so by email or by posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications.
- 16.7 This Agreement, and any dispute relating to this Agreement or the Services, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the



non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute connected with this Agreement or the Services.

- 16.8 Clauses which, by their nature, are intended to survive termination of this Agreement, including clauses 1.1, 10, 11, 12, 13, 14, 15.1 to 15.8 and 16.7, continue in force.
- 16.9 If any part or provision of this Agreement is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from this Agreement. The remainder of this Agreement will be binding on you and us.
- 16.10 Except as expressly set out otherwise in this Agreement, any variation to this Agreement must be in writing and signed by both parties.
- 16.11 This Agreement sets out everything agreed by the parties relating to the Services, and supersede and cancel anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the Services that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect from the Start Date.
- 16.12 You may not assign, novate, subcontract or transfer any right or obligation under this Agreement without our prior written consent. You remain liable for your obligations under this Agreement despite any approved assignment, subcontracting or transfer. Any change of control of you is deemed to be an assignment for which our prior written consent is required under this clause. In this clause, **change of control** means any transfer of shares or other arrangement affecting you or any member of your group which results in a change in the effective control of you.
- 16.13 We may assign, novate, subcontract and/or or transfer any right or obligation under this Agreement without any need for your consent.



ANNEX B

STATEMENT OF WORK



ANNEX C

ORDER FORM