TEMPLATE SAAS AGREEMENT – USER NOTES

This is a simple "supplier friendly" B2B SaaS services agreement for low value/low risk SaaS service supplies.

The terms included in the agreement are not a "one-size-fits-all" solution, and may require customisation to reflect the particular commercial arrangements that apply to your SaaS offering.

The terms are "supplier friendly", but they are not "one-sided" and this template should remove the need for lengthy negotiation.

If the SaaS service is complex, high value/high risk, or requires additional services to be provided (that should be addressed in the SaaS agreement), you should use an agreement that addresses the risk issues for each of those circumstances.

If you have customers in the European Union or the United Kingdom, or your customers use the SaaS service to store or process personal information about individuals that live in the European Union or the United Kingdom, you will need to put in place an agreement that meets the requirements of the European Union General Data Protection Regulation and the equivalent laws of the United Kingdom (together, **GDPR**). You also may have other compliance requirements under those laws. This template does not address GDPR. For more information, see https://www.privacy.org.nz/resources-and-learning/knowledge-base/view/480/.

The agreement assumes the parties will sign the agreement, rather than it being, e.g. online terms that are not negotiated. Template SaaS online terms of use are also available on our website.

USING THIS TEMPLATE

The ***User Notes*** and the statements in the footer (all marked in red) are included to assist you to prepare this document. They are for reference only. You should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- the requested details need to be inserted
- there are different options for you to consider
- the whole clause is optional and you need to consider whether to include it, based on your circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and deleted the brackets.

If you delete any clause or schedule, remember to cross reference check the document.

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SAAS AGREEMENT

DATE

PARTIES

[User note: The Agreement assumes that two companies are entering into the Agreement. Different party identifiers will be required for other entities.]

1 [***INSERT FULL LEGAL NAME***], company number [*insert company number*] (**Supplier**)

2 [***INSERT FULL LEGAL NAME***], company number [*insert company number*] (**Client**)

SECTION A: AGREEMENT AND KEY DETAILS

AGREEMENT

The Supplier agrees to provide, and the Client agrees to buy, the [*insert name*] Software as a Service offering, and related services, on the terms of the Agreement. The Agreement comprises:

- Section A (Agreement and Key Details), including this cover page and the signature clauses; and
- Section B (General Terms).

KEY DETAILS

[User note: This section should include all of the "service specific" details relating to the SaaS service in sufficient detail to provide certainty to both parties.]

ITEM	DETAIL
Start Date	[*On the date both parties sign the Agreement/[Insert date]*]. ***[User note: The Start Date is often the date of the Agreement. However, in some cases the parties may wish to have the Agreement take effect from a future date.]***
End Date	[*Insert date*]. ***[User note: Where no End Date is stated, the default position under clause 10.1b is that the Agreement rolls over periodically until the Agreement is terminated.]***
SaaS Service	The SaaS Service is [*insert a detailed description of the service provided to the Client using the Software*].

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<table>
<tr><th>ITEM</th><th>DETAIL</th></tr>
<tr><td>Related Services</td><td>[NA][As at the Start Date:

• [Insert description]]

[User note: To avoid any dispute as to what is supposed to be provided, this section should set out in detail any service the Supplier is to provide in addition to the SaaS Service itself. Related Services may include any (or all) of the following:

• implementation and integration
• training
• permitted user registration
• consulting
• support.]</td></tr>
<tr><td>Fees and Payment Terms</td><td>[User note: Where no invoice date and payment date is stated in the tables below, the default position in clause 5.2c applies (namely, invoice monthly in arrears and payment on the 20th of the month after date of invoice).]

SaaS Service

FEES | INVOICE DATE | PAYMENT DATE

NZD[Insert the Fees for the standard SaaS service] [User note: Include the base charges and any variable – e.g. are the Fees on a per user basis? Are the fees monthly or annual?] | [Insert date] | [Insert date]

Related Services

FEES | INVOICE DATE | PAYMENT DATE</td></tr>
</table>

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ITEM	DETAIL
	NZD[*Insert the Fees for each Related Service*] [*Insert date*] [*Insert date*] **[*User note: If no Related Services are being provided, simply list "NA" in this section. Where the Fees for Related Services are on a T&M basis, you may wish to include hourly service rates or refer to your standard rate card.*]** To avoid doubt, additional Related Services may be requested by the Client during the term of the Agreement and additional Fees will apply to those services.
Website	[*Insert URL*].
Email addresses for notice	**Supplier** [*Insert email address*] **Client** [*Insert email address*]

SIGNED

[*User note: Assumes two companies are entering into the Agreement. Different signature clauses may be required for other persons.*]

SIGNED for and on behalf of **[*INSERT NAME OF COMPANY*] LIMITED** by:)

Signature of authorised signatory

Print full name of authorised signatory

SIGNED for and on behalf of **[*INSERT NAME OF COMPANY*] LIMITED** by:)

Signature of authorised signatory

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Print full name of authorised signatory

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SECTION B: GENERAL TERMS

1 INTERPRETATION

1.1 **Definitions:** In the Agreement, the following terms have the stated meaning:

TERM	MEANING
[*Insert name*] Software [*User note: Move to fit alphabetical order.*]	the software owned by the Supplier (and its licensors) that is used to provide the SaaS Service.
Agreement	Section A (Agreement and Key Details, including the cover page and signature clauses) and Section B (General Terms).
Confidential Information	the terms of the Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement. The Supplier's Confidential Information includes Intellectual Property owned by the Supplier (or its licensors), including the [*insert name*] Software. The Client's Confidential Information includes the Data.
Data	all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of the Client that is stored using, or inputted into, the Services.
End Date	the end date set out in the Key Details.
Fees	the fees set out in the Key Details, as updated from time to time in accordance with clause 4.4.
Force Majeure	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.
Intellectual Property Rights	includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity.

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TERM	MEANING
	Intellectual Property has a consistent meaning and includes any enhancement, modification, or derivative work of the Intellectual Property.
Key Details	the Agreement specific details set out in Section A of the Agreement.
Objectionable	includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.
Payment Terms	the payment terms set out in the Key Details (if any).
[*Permitted Users*]	[*those personnel of the Client who are authorised to access and use the Services on the Client's behalf in accordance with clause 2.3.*] **[*User note: Delete if the concept of "Permitted User" is not used. See user note to clause 2.3.*]**
Personal Information	has the meaning given in the Privacy Act 2020.
Related Services	any related service described in the Key Details and any further services that the Supplier agrees to provide to the Client under the Agreement.
SaaS Service	the service having the core functionality described in the Key Details. [*The SaaS Service is described in more detail on the Website, as the Website is updated from time to time.*]
Services	the SaaS Service and any Related Service.
Start Date	the start date set out in the Key Details.
Underlying Systems	the [*insert name*] Software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks.
Website	the internet site at the domain set out in the Key Details, or such other site notified to the Client by the Supplier.
Year	a 12 month period from the Start Date or the anniversary of that date.

1.2 **Interpretation:** In the Agreement:

a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;

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b words in the singular include the plural and vice versa;

c a reference to:

i a **party** to the Agreement includes that party's permitted assigns;

ii **personnel** includes officers, employees, contractors and agents, but a reference to the Client's personnel does not include the Supplier;

iii 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;

iv **including** and similar words do not imply any limit; and

v 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;

d no term of the Agreement is to be read against a party because the term was first proposed or drafted by that party; and

e if there is any conflict between Section B and Section A of the Agreement, Section B prevails unless expressly stated otherwise in Section A.

1 SERVICES

1.1 **General:** The Supplier must use reasonable efforts to provide the Services:

a in accordance with the Agreement and New Zealand law;

b exercising reasonable care, skill and diligence; and

c using suitably skilled, experienced and qualified personnel.

1.2 **Non-exclusive:** The Supplier's provision of the Services to the Client is non-exclusive. Nothing in the Agreement prevents the Supplier from providing the Services to any other person.

1.3 **Availability:** ***[User note: The clause below places a relatively "low" service level standard on the Supplier. Clients may expect more service levels, e.g. availability (uptime/downtime), response times, fix times, etc., particularly if the Fees are high or the SaaS Service is critical to the Client's operations.]***

a [*Subject to clause 1.3b, t*][*T*]he Supplier will use reasonable efforts to ensure the SaaS Service is available [*during normal business hours in New Zealand/on a 24/7 basis*]. However, it is possible that on occasion the SaaS Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force

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Majeure. The Supplier will use reasonable efforts to publish on the Website [*and/or notify the Client by email*] advance details of any unavailability.

b [*Through the use of web services and APIs, the SaaS Service interoperates with a range of third party service features. The Supplier does 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, the Supplier may cease to make available that feature to the Client. To avoid doubt, if the Supplier exercises its right to cease the availability of a third party feature, the Client is not entitled to any refund, discount or other compensation.*] **[*User note: Include clause 1.3b where your SaaS Service relies on or interoperates with any third party services – e.g. location identification. The clause allows the Supplier to adjust the terms of the SaaS Service if any third party feature or service upon which the SaaS service relies becomes unavailable or is no longer commercially viable.*]**

1.4 **Additional Related Services:**

a The Supplier may, from time to time, make available additional services to supplement the SaaS Service.

b At the request of the Client and subject to the Client paying the applicable Fees, the Supplier may agree to provide to the Client an additional Related Service on the terms of the Agreement.

2 CLIENT OBLIGATIONS

2.1 **General use:** The Client and its personnel must:

a use the Services in accordance with the Agreement solely for:

i the Client's own internal business purposes; and **[*User note: If there is a more specific purpose for which the Services should be used, e.g. "the Client's internal business purposes to assess widget stock numbers", update this subclause to cover that specific purpose. It is important to draft this "purpose of use" clause as narrowly as possible because it will lower your risk of the Services being used in unintended ways. It also provides a good ground for exercising other remedies if the Client is in breach of this subclause.*]**

ii lawful purposes [*(including complying with the Unsolicited Electronic Messages Act 2007)*] **[*User note: The Unsolicited Electronic Messages Act 2007 is designed to stop spamming activities. Include the optional text if the SaaS Service enables users to contact third parties.*]**; and

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b not resell or make available the Services to any third party, or otherwise commercially exploit the Services.

2.2 **Access conditions:** When accessing the SaaS Service, the Client and its personnel must:

a not impersonate another person or misrepresent authorisation to act on behalf of others or the Supplier;

b correctly identify the sender of all electronic transmissions;

c not attempt to undermine the security or integrity of the Underlying Systems;

d not use, or misuse, the SaaS Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the SaaS Service;

e not attempt to view, access or copy any material or data other than:

i that which the Client is authorised to access; and

ii to the extent necessary for the Client and its personnel to use the SaaS Service in accordance with the Agreement;

f neither use the SaaS Service in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and

g comply with any terms of use on the Website, as updated from time to time by the Supplier.

2.3 **Personnel:** [***User note: The drafting of this clause will depend on whether the concept of "Permitted User" is used and, if so, the process by which people become Permitted Users. Clauses 2.3a to 2.3c contemplate the Client being able to add members of their personnel as Permitted Users, provided they advise the Supplier of the name of that Permitted User and any other information the Supplier requires. The clause will need to be modified if, e.g., your product includes admin features that allow the Client to register their own Permitted Users. If the concept of "Permitted Users" does not apply, retain only 2.3d and delete clauses 2.3a, b and c and the references to "Permitted Users".***]

a [*Without limiting clause 2.2, no individual other than a Permitted User may access or use the SaaS Service.*

b *The Client may authorise any member of its personnel to be a Permitted User, in which case the Client will provide the Supplier with the Permitted User's name and other information that the Supplier reasonably requires in relation to the Permitted User.*

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c *The Client must procure each Permitted User's compliance with clauses 2.1 and 2.2 and any other reasonable condition notified by the Supplier to the Client.*]

d A breach of any term of the Agreement by the Client's personnel [*(including, to avoid doubt, a Permitted User)*] is deemed to be a breach of the Agreement by the Client.

2.4 **Authorisations:** The Client is responsible for procuring all licences, authorisations and consents required for it and its personnel to use the Services, including to use, store and input Data into, and process and distribute Data through, the Services.

3 DATA

3.1 **Supplier access to Data:**

a The Client acknowledges that:

i the Supplier may require access to the Data to exercise its rights and perform its obligations under the Agreement; and

ii to the extent that this is necessary but subject to clause 6, the Supplier may authorise a member or members of its personnel to access the Data for this purpose.

b The Client must arrange all consents and approvals that are necessary for the Supplier to access the Data as described in clause 3.1a.

3.2 **Analytical Data**: The Client acknowledges and agrees that:

a the Supplier may:

i use [*Data*] [*and*] [*information about the Client's [and the Client's [Permitted Users' / end users'] use of the Services*] to generate anonymised and aggregated statistical and analytical data (**Analytical Data**); [*and*]

ii use Analytical Data for the Supplier's internal research and product development purposes and to conduct statistical analysis and identify trends and insights; [*and*]

iii [*supply Analytical Data to third parties;*]

b the Supplier's rights under clause[*s*] 3.2aii [*and 3.2aiii*] above will survive termination or expiry of the Agreement; and

c title to, and all Intellectual Property Rights in, Analytical Data is and remains the Supplier's property.

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3.3 **Agent:**

a The Client acknowledges and agrees that to the extent Data contains Personal Information, in collecting, holding and processing that information through the Services, the Supplier is acting as an agent of the Client for the purposes of the Privacy Act 2020 and any other applicable privacy law.

b The Client must obtain all necessary consents from, and give all necessary notices to, the relevant individual to enable the Supplier to collect, use, hold and process that information in accordance with the Agreement.

3.4 **Backups of Data:** While the Supplier will take standard industry measures to back up all Data stored using the Services, the Client agrees to keep a separate back-up copy of all Data uploaded by it onto the SaaS Service.

3.5 **[*International storage of Data:*** *The Client agrees that the Supplier may store Data (including any Personal Information) in secure servers in [insert overseas territory/ies] and may access that Data (including any Personal Information) in [insert overseas territory/ies] and New Zealand from time to time.*] **[*User note: Include clause 3.5 if Data will (or may) be stored offshore. If you include clause 3.5, ensure each relevant jurisdiction is included.*]**

3.6 **Indemnity:** The Client indemnifies the Supplier against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by the Supplier's solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

4 FEES

4.1 **Fees:** The Client must pay the Supplier the Fees.

4.2 **Invoicing and payment:**

a The Supplier will provide the Client with valid GST tax invoices on the dates set out in the Payment Terms, or if there are none, monthly in arrears for the Fees due in the previous month.

b The Fees exclude GST, which the Client must pay on taxable supplies under the Agreement.

c The Client must pay the Fees:

i on the dates set out in the Payment Terms, or if there are none, by the 20th of the month following the date of invoice; and

ii electronically in cleared funds without any set off or deduction.

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4.3 **Overdue amounts:** The Supplier 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 the Supplier's primary trading bank as at the due date (or, if the Supplier's 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.

4.4 **Increases:** [***User note: Clause 4.4 contemplates an annual Fee increase in line with the New Zealand Consumer Price Index and allows the Client to exit the arrangement if it doesn't wish to pay the increased Fees. If the Client pays for its subscription in advance, and termination under this clause could fall partway through a pre-paid subscription period, you should either include an obligation to provide a pro rata refund of prepaid fees, or amend this clause so that the increase only takes effect on subscription rollover.***]

a By giving at least [*30*] days' notice, the Supplier may increase the Fees once each Year (but not the first Year) by the percentage change in the New Zealand Consumer Price Index (or similar or equivalent index if that index ceases to be published) over the 12 months preceding the last quarterly publication of that index issued by Statistics New Zealand prior to the date of the notice. Fees updated under this clause are deemed to be the Fees listed in the Key Details.

b If the Client does not wish to pay the increased Fees, it may terminate the Agreement on no less than [*10*] days' notice, provided the notice is received by the Supplier before the effective date of the Fee increase. If the Client does not terminate the Agreement in accordance with this clause, it is deemed to have accepted the increased Fees.

5 INTELLECTUAL PROPERTY

5.1 **Ownership:**

a Subject to clause 5.1b, title to, and all Intellectual Property Rights in, the Services, the Website, and all Underlying Systems is and remains the property of the Supplier (and its licensors). The Client must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

b Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the Client. The Client grants the Supplier a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of its rights and performance of its obligations in accordance with the Agreement.

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5.2 **Know-how:** The Supplier may use for its own business purposes, both during and after the term of the Agreement, any general idea, concept, know-how, technique, methodology, and similar Intellectual Property gained or developed by the Supplier while providing the Services [*provided the Supplier does not breach its confidentiality obligations under the Agreement or infringe the Client's Intellectual Property Rights*].

5.3 **Feedback:** If the Client provides the Supplier 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 the Supplier; and

b the Supplier may use or disclose the feedback for any purpose.

5.4 **[*Third party sites and material:*** *The Client acknowledges that the SaaS Service may link to third party websites or feeds that are connected or relevant to the SaaS Service. Any link from the SaaS Service does not imply any Supplier endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, the Supplier excludes all responsibility or liability for those websites or feeds.*] ***[User note: Delete clause 5.4 if there are no links to third party websites or feeds.]***

5.5 **Third party Intellectual Property Rights indemnity:** ***[User note: This is the only indemnity provided by the Supplier. The indemnity protects the Client against claims by third parties that the SaaS Service infringes those third parties' Intellectual Property Rights. While providing an indemnity is optional, most customers will insist on an indemnity of this nature. The scope of the indemnity will depend on the negotiating power of the parties.]***

a The Supplier indemnifies the Client against any claim or proceeding brought against the Client to the extent that claim or proceeding alleges that the Client's use of the SaaS Service in accordance with the Agreement constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**). The indemnity is subject to the Client:

i promptly notifying the Supplier in writing of the IP Claim;

ii making no admission of liability and not otherwise prejudicing or settling the IP Claim, without the Supplier's prior written consent; and

iii giving the Supplier complete authority and information required for the Supplier to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for the Supplier's account.

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b The indemnity in clause 5.5a does not apply to the extent that an IP Claim arises from or in connection with:

i the Client's breach of the Agreement;

ii use of the SaaS Service in a manner or for a purpose not reasonably contemplated by the Agreement or otherwise not authorised in writing by the Supplier; or

iii any third party data or any Data.

c If at any time an IP Claim is made, or in the Supplier's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, the Supplier may (at the Supplier's option):

i obtain for the Client the right to continue using the items which are the subject of the IP Claim; or

ii modify, re-perform or replace the items which are the subject of the IP Claim so they become non-infringing.

6 CONFIDENTIALITY

6.1 **Security:** 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 the personnel or professional advisor is aware of, and complies with, clauses 6.1a and 6.1b.

6.2 **Permitted disclosure:** The obligation of confidentiality in clause 6.1 does not apply to any disclosure or use of Confidential Information:

a for the purpose of performing the Agreement or exercising a party's rights under the 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 to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or

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e by the Supplier if required as part of a "bona fide" sale of its business (assets or shares, whether in whole or in part) to a third party, provided that the Supplier enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 6.

7 WARRANTIES

7.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, when signed, will constitute binding obligations on the warranting party.

7.2 **No implied warranties:** To the maximum extent permitted by law:

a the Supplier's warranties are limited to those set out in the Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to NZD[*1,000.00*]; and

b the Supplier makes no representation concerning the quality of the Services and does not promise that the Services will:

i meet the Client's requirements or be suitable for a particular purpose[*, including that the use of the Services will fulfil or meet any statutory role or responsibility of the Client*]; or **[*User note: Include square bracketed text if the Client is a public authority or has a statutory/public function.*]**

ii be secure, free of viruses or other harmful code, uninterrupted or error free.

7.3 **Consumer Guarantees Act:** The Client agrees and represents that it is acquiring the Services, and entering the Agreement, for the purposes of trade. The parties agree that:

a to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Services or the Agreement; and

b it is fair and reasonable that the parties are bound by this clause 7.3.

7.4 **Limitation of remedies:** Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, the liability of the Supplier for any breach of that condition or warranty is limited, at the Supplier's option, to:

a supplying the Services again; and/or

b paying the costs of having the Services supplied again.

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8 LIABILITY

8.1 **Maximum liability:** The maximum aggregate liability of the Supplier under or in connection with the Agreement or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed [*insert cap e.g. an amount equal to the Fees paid by the Client under the Agreement in the previous Year (which in the first Year is deemed to be the total Fees paid by the Client from the Start Date to the date of the first event giving rise to liability)*]. The cap in this clause 8.1 includes the cap set out in clause 7.2a.

8.2 **Unrecoverable loss:** Neither party is liable to the other under or in connection with the Agreement or the Services for any:

a loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or

b consequential, indirect, incidental or special damage or loss of any kind.

8.3 **Unlimited liability:**

a Clauses 8.1 and 8.2 do not apply to limit the Supplier's liability:

i under the indemnity in clause 5.5a; or

ii under or in connection with the Agreement for:

- personal injury or death;
- fraud or wilful misconduct; or
- a breach of clause 6.

b Clause 8.2 does not apply to limit the Client's liability:

i to pay the Fees;

ii under the indemnity in clause 3.6; or

iii for those matters stated in clause 8.3aii.

8.4 **No liability for the other's failure:** Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

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8.5 **Mitigation:** 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 the Agreement.

9 TERM, TERMINATION, AND SUSPENSION

9.1 **Duration:** Unless terminated under this clause 9, the Agreement:

a starts on the Start Date and ends on the End Date; but

b where there is no End Date set out in the Key Details, continues for successive terms of [*insert period, e.g. 12 months*] from the Start Date unless a party gives at least [*insert period, e.g. 30 days'*] notice that the Agreement will terminate on the expiry of the then-current term.

9.2 **[*No fault termination:*** *Either party may terminate the Agreement on [at least [insert period e.g. 3 months'] prior notice to the other party][the anniversary of the Start Date by giving at least [insert period e.g. 3 months'] notice prior to that anniversary date].*] **[*User note: Include clause 9.2 where it would be useful to terminate the agreement "at will", and amend as necessary to reflect the commercial terms agreed with the Client. If this clause is retained, clause* Error! Reference source not found. *should be titled "Other termination rights".*]**

9.3 **[*Other t*][*T*]ermination rights:**

a Either party may, by notice to the other party, immediately terminate the Agreement if the other party:

i breaches any material provision of the Agreement and the breach is not:

- remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
- capable of being remedied;

ii becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or

iii is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.

b If the remedies in clause 5.5c are exhausted without remedying or settling the IP Claim, the Supplier may, by notice to the Client, immediately terminate the Agreement.

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9.4 **Consequences of termination or expiry:**

a Termination or expiry of the Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.

b On termination or expiry of the Agreement, the Client must pay all Fees for Services provided prior to that termination or expiry.

c Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination or expiry of the Agreement and subject to clause 9.4d, 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.

d At any time prior to one month after the date of termination or expiry, the Client may request:

i a copy of any Data stored using the SaaS Service, provided that the Client pays the Supplier's reasonable costs of providing that copy. On receipt of that request, the Supplier must provide a copy of the Data in a common electronic form. The Supplier does not warrant that the format of the Data will be compatible with any software; and/or

ii deletion of the Data stored using the SaaS Service, in which case the Supplier must use reasonable efforts to promptly delete that Data.

To avoid doubt, the Supplier is not required to comply with clause 9.4di to the extent that the Client previously requested deletion of the Data.

9.5 **Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 3.6, 5, 6, 8, 9.4, 9.5 and 10, continue in force.

9.6 **Rights to suspend:** Without limiting any other right or remedy available to the Supplier, the Supplier may restrict or suspend the Client's access to the SaaS Service and/or delete, edit or remove the relevant Data if the Supplier considers that the Client (including any of its personnel) has:

a undermined, or attempted to undermine, the security or integrity of the SaaS Service or any Underlying Systems;

b used, or attempted to use, the SaaS Service:

i for improper purposes; or

ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the SaaS Service;

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c transmitted, inputted or stored any Data that breaches or may breach the Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or

d otherwise materially breached the Agreement.

9.7 **Process:**

a The Supplier must notify the Client where it restricts or suspends the Client's access, or deletes, edits or removes Data, under clause 9.6.

b Clause 9.4di will not apply to the extent that it relates to Data deleted or removed under clause 9.6.

10 DISPUTES

10.1 **Good faith negotiations:** Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.

10.2 **Obligations continue:** Each party must, to the extent practicable, continue to perform its obligations under the Agreement even if there is a dispute.

10.3 **Right to seek relief:** This clause 11 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

11 GENERAL

11.1 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:

a promptly notifies the other party and provides full information about the Force Majeure;

b uses best efforts to overcome the Force Majeure; and

c continues to perform its obligations to the extent practicable.

11.2 **Rights of third parties:** No person other than the Supplier and the Client has any right to a benefit under, or to enforce, the Agreement.

11.3 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.

11.4 **Independent contractor:** Subject to clause 3.3, the Supplier is an independent contractor of the Client, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.

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11.5 **Notices:** A notice given by a party under the Agreement must be delivered to the other party via email using the email address set out in the Key Details or otherwise notified by the other party for this purpose. If the notice is a notice of termination, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive or equivalent officer of the other party at the other party's last known physical address.

11.6 **Severability:**

a If any provision of the Agreement is, or becomes, illegal, unenforceable or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity.

b If modification under clause 11.6a is not possible, the provision must be treated for all purposes as severed from the Agreement without affecting the legality, enforceability or validity of the remaining provisions of the Agreement.

11.7 **Variation:** Subject to clause 4.4, any variation to the Agreement must be in writing and signed by both parties.

11.8 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to the Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 11.8.

11.9 **Subcontracting and assignment:**

a The Client may not assign, novate, subcontract or transfer any right or obligation under the Agreement without the prior written consent of the Supplier, that consent not to be unreasonably withheld. The Client remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.

b Any change of control of the Client is deemed to be an assignment for which the Supplier's prior written consent is required under clause 11.9. In this clause **change of control** means any transfer of shares or other arrangement affecting the Client or any member of its group which results in a change in the effective control of the Client.

11.10 **Law:** The Agreement is 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 the Agreement.

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11.11 **Counterparts:** The Agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the Agreement by signing and emailing a counterpart copy to the other party.

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