TEMPLATE SAAS TERMS OF USE – USER NOTES

These are simple "supplier friendly" B2B SaaS terms of use for low value/low risk SaaS service supplies to customers in New Zealand who will not use the SaaS service to store or process personal information about individuals that live in the European Union or the United Kingdom. These terms of use are online terms that are not intended to be negotiated.

The terms 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".

The unfair contract terms regime under the Fair Trading Act 1986 applies to all standard form business contracts with a value below $250,000 in the first year. The regime enables the Commerce Commission to seek a declaration from a court that a term of the contract is unfair. If this happens, no person may apply, enforce or rely on that term. These terms have been drafted on the assumption that the unfair contract regime applies.

If the SaaS service is complex, high value/high risk, or requires additional services to be provided, you should put in place terms of use, or an individualised agreement, that addresses the risk issues for each of those circumstances. A template SaaS agreement that can be customised for individual customers is also available on our website (www.kindrik.co.nz).

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 terms of use, or 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/.

ONLINE ACCEPTANCE

For the terms of use to bind the customer, 2 requirements must be met:

- it must be clear to the user that the terms of use exist and apply to the user
- the user's acceptance of the terms of use must be clear.

If you require users to establish an account before using your SaaS service, we suggest you:

- include, in your account sign-up form, a check-box that users must *tick* before an account is set up
- the check-box should not be pre-checked – users should take a positive step to "tick" the box

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- design the sign-up form so that an account cannot be set up if the check-box is not ticked
- next to the check-box, include a clear statement along the following lines "I accept the Terms of Use for [*the name of your SaaS service*]"
- the words "Terms of Use" in this statement should be a hyperlink to the full terms of use
- the hyperlink to the terms should be obvious, e.g. "Terms of Use" should be underlined and have visible colouring
- the terms of use should be easy to find, e.g. include a prominent "Terms of Use" hyperlink on the bottom of every page
- keep records of terms of use versions, dates, and acceptance data.

If a user does not need to establish an account to use your SaaS service, as a minimum, you should require the user to agree to the terms of use. The bullet points above describe how this can be done.

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 TERMS OF USE

1 APPLICATION OF TERMS

1.1 These Terms apply to your use of the Service (as that term is defined below). By [*setting up an account / clicking [I agree] / accessing and using the Service*]: **[*User note: Select your method of user acceptance.*]**

a you agree to these Terms; and

b where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.

1.2 If you do not agree to these Terms, you are not authorised to access and use the Service, and you must immediately stop doing so.

2 CHANGES

2.1 Subject to clause 2.3, we may change these Terms at any time by notifying you of the change by email or by posting a notice on the Website at least [*30*] days before the change takes effect.

2.2 You are responsible for ensuring you are familiar with the latest Terms.

2.3 If a change to these Terms is detrimental to you, you may terminate these Terms and your right to access and use the Service on no less than [*10*] days' notice, provided the notice is received by us before the date that the change takes effect. If you give notice under this clause 2.3, the previous version of the Terms will apply to your access to and use of the Service during the notice period. If you do not exercise your termination right under this clause, and you continue to access and use the Service from the date on which the Terms are changed, you agree to be bound by the changed Terms. **[*User note: We have drafted clauses 2.1 to 2.3 to protect against claims that the Terms are unfair under the unfair contract terms regime in the Fair Trading Act. If your SaaS Service is B2B with a yearly value of $250,000 or more for each customer, clauses 2.1 to 2.3 could be replaced with a right to unilaterally change these terms without a termination right. The notice period you select for clause 2.1 will need to be sufficient to allow the customer to exercise the termination right in this clause 2.3. If a customer pays for its subscription in advance, and termination under this clause could fall partway through a pre-paid subscription period, you should include an obligation to provide a pro rata refund of prepaid fees.*]**

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2.4 These Terms were last updated on **[*insert date*]**.

1 INTERPRETATION

In these Terms:

[*Insert name*] Software means the software owned by us (and our licensors) that is used to provide the Service. **[*User note: Move to fit alphabetical order.*]**

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 Service. Our Confidential Information includes Intellectual Property owned by us (or our licensors), including the [*insert name*] Software. Your Confidential Information includes the Data.

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

Fees means the applicable fees set out on our pricing page on the Website at [*insert link*] or as agreed otherwise in writing between you and us, as may be updated from time to time in accordance with clause 5.6.

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.

including and similar words do not imply any limit.

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. "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.

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

[***Permitted Users*** *means your personnel who are authorised to access and use the Service on your behalf in accordance with clause 3.3.*] **[*User note: Delete if the concept of***

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"Permitted User" is not used. See user note to clause 3.3.]

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

Service means the service having the core functionality described on the Website, as the Website is updated from time to time.

Start Date means the date that you [*set up an account / first access or use the Service*].

Terms means these terms titled SaaS terms of use.

Underlying Systems means the [*insert name*] Software, IT solutions, systems and networks (including software and hardware) used to provide the Service, including any third party solutions, systems and networks.

We, **us** or **our** means [*insert company name*], company number [*insert company number*].

Website means the internet site at [*insert URL*], 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.

2 PROVISION OF THE SERVICE

2.1 We must use reasonable efforts to provide the Service:

a in accordance with these Terms and New Zealand law;

b exercising reasonable care, skill and diligence; and

c using suitably skilled, experienced and qualified personnel.

2.2 Our provision of the Service to you is non-exclusive. Nothing in these Terms prevents us from providing the Service to any other person.

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2.3 [*Subject to clause 2.4, w*][*W*]e must use reasonable efforts to ensure the Service is available [*during normal business hours in New Zealand/on a 24/7 basis*]. However, it is possible that on occasion the Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. We must use reasonable efforts to publish on the Website [*and/or notify you by email*] advance details of any unavailability. **[*User note: This clause places a relatively "low" service level standard on you. Customers may expect more service levels, e.g. availability (uptime/downtime), response times, fix times, etc., particularly if the Fees are high or the Service is critical to the customer's operations.*]**

2.4 [*Through the use of web services and APIs, the Service interoperates 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.*] **[*User note: Include clause 2.4 where your Service relies on or interoperates with any third party service. The clause allows you to adjust the terms of the Service if any third party feature or service upon which the Service relies becomes unavailable or is no longer commercially viable.*]**

3 YOUR OBLIGATIONS

3.1 You and your personnel must:

a use the Service in accordance with these Terms solely for:

i your own internal business purposes; and **[*User note: If there is a more specific purpose for which the Service should be used, e.g. "your 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 Service being used in unintended ways. It also provides a good ground for exercising other remedies if the user 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 Service enables users to contact third parties.*]**; and

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

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3.2 When accessing the Service, you and your personnel must:

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

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 Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Service;

e 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 Service in accordance with these Terms; and

f neither use the 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.

3.3 [*Without limiting clause 3.2, no individual other than a Permitted User may access or use the Service. 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 3.1 and 3.2 and any other reasonable condition notified by us to you.*]
[*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. Clause 3.3 contemplates the customer being able to add members of their personnel as Permitted Users, provided they advise you of the name of that Permitted User and any other information you require. The clause will need to be modified if, e.g., your product includes admin features that allow the customer to register their own Permitted Users. If the concept of "Permitted Users" does not apply, delete all references to "Permitted Users".*]

3.4 A breach of any of these Terms by your personnel [*(including, to avoid doubt, a Permitted User)*] is deemed to be a breach of these Terms by you.

3.5 You are responsible for procuring all licences, authorisations and consents required for you and your personnel to use the Service, including to use, store and input Data into, and process and distribute Data through, the Service.

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4 DATA

4.1 You acknowledge that:

a we may require access to the Data to exercise our rights and perform our obligations under these Terms; and

b to the extent that this is necessary but subject to clause 7, we may authorise a member or members of our personnel to access the Data for this purpose.

4.2 You must arrange all consents and approvals that are necessary for us to access the Data as described in clause 4.1.

4.3 You acknowledge and agree that:

a we may:

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

ii use Analytical Data for our 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 our rights under clause 4.3aii [*and 4.3aiii*] will survive termination or expiry of these Terms; and

c title to, and all Intellectual Property Rights in, Analytical Data is and remains our property.

4.4 You acknowledge and agree that to the extent Data contains personal information, in collecting, holding and processing that information through the Service, we are acting as your agent for the purposes of the Privacy Act 2020 and any other applicable privacy law. You must obtain all necessary consents from, and give all necessary notices to, the relevant individual to enable us to collect, use, hold and process that information in accordance with these Terms.

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

4.6 [*You agree that we 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***

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clause 4.6 if Data will (or may) be stored offshore. If you include clause 4.6, ensure each relevant jurisdiction is included.]

4.7 You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our 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.

5 FEES

5.1 You must pay us the Fees.

5.2 We will provide you with valid GST tax invoices on a [*insert e.g. monthly*] basis prior to the due date for payment. ***[User note: Typically, services that are priced on a monthly subscription basis are invoiced and paid for in advance. Services that are priced on some form of usage basis are sometimes invoiced and paid for in arrears, but other options include requiring customers to pre-purchase a specified number of "credits" that must be topped up once they are used.]***

5.3 The Fees exclude GST, which you must pay on taxable supplies.

5.4 You must pay the Fees:

a [*by the 20th of the month following the date of invoice / in accordance with the payment terms set out on our pricing page on the Website / [insert payment terms]*]; and

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

5.5 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. ***[User note: Delete if Fees are paid in advance.]***

5.6 We may increase the Fees by giving at least [*30*] days' notice. If you do not wish to pay the increased Fees, you may terminate these Terms and your right to access and use the Service 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 these Terms and your right to access and use the Service in accordance with this clause, you are deemed to have accepted the increased Fees. ***[User note: This clause allows the customer to exit the arrangement if they don't***

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wish to pay increased Fees. If the customer 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.]

6 INTELLECTUAL PROPERTY

6.1 Subject to clause 6.2, title to, and all Intellectual Property Rights in, the Service, the Website, and all Underlying Systems is and remains our property (and our licensors' property). You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

6.2 Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains your property. You grant us 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 our rights and performance of our obligations in accordance with these Terms.

6.3 We may use for our own business purposes, both during and after the duration of these Terms, any general idea, concept, know-how, technique, methodology, and similar Intellectual Property gained or developed by us while providing the Service [*provided that we do not breach our confidentiality obligations under these Terms or infringe your Intellectual Property Rights*].

6.4 If you provide us with ideas, comments or suggestions relating to the Service 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.

6.5 [*You acknowledge that the Service may link to third party websites or feeds that are connected or relevant to the Service. Any link from the Service 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.*] ***[User note: Delete clause 6.5 if there are no links to third party websites or feeds.]***

7 CONFIDENTIALITY

7.1 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;

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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 7.1a and 7.1b.

7.2 The obligation of confidentiality in clause 7.1 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 these Terms;

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 7.

8 WARRANTIES

8.1 Each party warrants that it has full power and authority to enter into, and perform its obligations under, these Terms.

8.2 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 (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 we make no representation concerning the quality of the Service and do not promise that the Service will:

i meet your requirements or be suitable for a particular purpose[*, including that the use of the Service will fulfil or meet any statutory role or responsibility you may have*]; or **[*User note: Include square bracketed text if customers may be public authorities or have statutory/public functions.*]**

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

8.3 You agree and represent that you are acquiring the Service, and accepting these Terms, for the purpose 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 Service or these Terms; and

b it is fair and reasonable that the parties are bound by this clause 8.3.

8.4 Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, our liability for any breach of that condition or warranty is limited, at our option, to:

a supplying the Service again; and/or

b paying the costs of having the Service supplied again.

9 LIABILITY

9.1 Our maximum aggregate liability under or in connection with these Terms or relating to the Service, 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 you relating to the Service in the previous Year (which in the first Year is deemed to be the total Fees paid by you from the Start Date to the date of the first event giving rise to liability)*]. The cap in this clause 9.1 includes the cap set out in clause 8.2a.

9.2 Neither party is liable to the other under or in connection with these Terms or the Service 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.

9.3 Clauses 9.1 and 9.2 do not apply to limit our liability under or in connection with these Terms for:

a personal injury or death;

b fraud or wilful misconduct; or

c a breach of clause 7.

9.4 Clause 9.2 does not apply to limit your liability:

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a to pay the Fees;

b under the indemnity in clause 4.7; or

c for those matters stated in clause 9.3a to 9.3c.

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

9.6 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 these Terms or the Service.

10 TERM, TERMINATION AND SUSPENSION

10.1 Unless terminated under this clause 10, these Terms and your right to access and use the Service:

a starts on the Start Date; and

b continues until a party gives at least [*insert period, e.g. 30 days'*] notice that these Terms and your access to and use of the Service will terminate on the expiry of that notice.

10.2 [*Subject to clauses 2.3 and 5.6, if the subscription option you have selected includes a minimum initial term, the earliest date for termination under clause 10.1 will be the expiry of that initial term.*] **[*User note: Include clause 10.2 if you have subscription options with minimum initial terms.*]**

10.3 Either party may, by notice to the other party, immediately terminate these Terms and your right to access and use the Service if the other party:

a breaches any material provision of these Terms and the breach is not:

i remedied within 10 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 chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.

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10.4 You may terminate these Terms and your right to access and use the Service in accordance with clauses 2.3 and 5.6.

10.5 Termination of these Terms does not affect either party's rights and obligations that accrued before that termination.

10.6 On termination of these Terms, you must pay all Fees for the provision of the Service prior to that termination.

10.7 No compensation is payable by us to you as a result of termination of these Terms for whatever reason, and you will not be entitled to a refund of any Fees that you have already paid.

10.8 Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of these Terms but subject to clause 10.9, 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.

10.9 At any time prior to one month after the date of termination, you may request:

a a copy of any Data stored using the Service, provided that you pay our reasonable costs of providing that copy. On receipt of that request, we must provide a copy of the Data in a common electronic form. We do not warrant that the format of the Data will be compatible with any software; and/or

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

To avoid doubt, we are not required to comply with clause 10.9a to the extent that you have previously requested deletion of the Data.

10.10 Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of the Service and/or delete, edit or remove the relevant Data if we consider that you or any of your personnel have:

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

b used, or attempted to use, the Service:

i for improper purposes; or

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

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c transmitted, inputted or stored any Data that breaches or may breach these Terms 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 these Terms.

11 GENERAL

11.1 Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure.

11.2 No person other than you and us has any right to a benefit under, or to enforce, these Terms.

11.3 For us to waive a right under these Terms, that waiver must be in writing and signed by us.

11.4 Subject to clause 4.4, we are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.

11.5 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. You may give notice to us under or in connection with these Terms by emailing [*insert email address*].

11.6 These Terms, and any dispute relating to these Terms or the Service, 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 these Terms or the Service.

11.7 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 4.7, 6, 7, 9, 10.5 to 10.9 and 11.6, continue in force.

11.8 If any part or provision of these Terms 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 modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.

11.9 Subject to clauses 2.1 and 5.6, any variation to these Terms must be in writing and signed by both parties.

11.10 These Terms set out everything agreed by the parties relating to the Service, 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 Service that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to

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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 11.10.

11.11 You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent, that consent not to be unreasonably withheld. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer.

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