

1 INTERPRETATION

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

1.2

Term	Meaning
Additional Features	Are those features, services and/or additional Individual User Licences that may be requested by the Client during the term of the Agreement that are in addition to the Related Services and the SaaS Service
Agreement	Agreement and Key Details, including the cover page and signature clauses) and these Standard Terms & Conditions.
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. Intellectual Property owned by the Supplier (or its licensors), including the LawVu Software, is the Supplier's Confidential Information. The Data is the Client's Confidential Information.
Data	all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of the Client (or its Permitted Users) that is stored using, or inputted into, the Services.
Fees	the fees set out in the Key Details, as updated from time to time in accordance with clause 6.4.
Force Majeure	an event that is beyond the reasonable control of a party, excluding: <ul style="list-style-type: none"> ▲ 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 worldwide rights 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.
Individual User Licence	A unique licence granted by the Supplier to the Client as part of the SaaS Service. The licence can only be used by employees of the Client and are not transferable.
Key Details	the Agreement specific details set out in the Agreement.
LawVu Software	the software owned by the Supplier (and its licensors) that is used to provide the SaaS Service.
LawVu Purpose	Is to enable the instruction and engagement of legal providers and generation of certain reports.
Objectionable	includes being objectionable, defamatory, obscene, harassing, threatening, or unlawful in any way.
Payment Terms	the payment terms set out in the Key Details (if any).
Permitted User	has the meaning given in clause 4.1b.
Personal Information	has the meaning given in the New Zealand Privacy Act 1993.
Related Services	any related service described in the Key Details
SaaS Service	the service having the core functionality described in the Key Details which may include any upgrades and/or new releases made available by the Supplier as part of the SaaS Service from time to time. The SaaS Service is described in more detail on the Website, as the Website is updated from time to time
Services	The SaaS Service, any Related Service and any Additional Features.
Start Date	The start date of the Agreement set out in the Key Details.
Trial Period	The length of time following the Start Date as set out in the Key Details.
Underlying Systems	the LawVu 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 starting on the Start Date or the anniversary of that date.

Interpretation: In the Agreement:

- a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- 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 construed against a party because the term was first proposed or drafted by that party; and

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- e if there is any conflict between the Agreement and the Standard Terms and Conditions, then the Standard Terms and Conditions prevail unless expressly stated otherwise in the Agreement.

2 TRIAL PERIOD

- 2.1 **Trial period:** Where the Supplier has agreed to provide, and the Client has agreed to receive, the SaaS Service for an initial trial period, then the Agreement applies to the use of the SaaS Service during that trial period, except to the extent varied in this clause 2.
- 2.2 **Limited period:** The Client may use the SaaS Service during the Trial Period, or such later date as may be agreed in writing by the Supplier, from the Start Date for the Client's purposes of reasonable trial and evaluation.
- 2.3 **Expiry and continuation:** The Client's right to access and use the SaaS Service terminates on expiry of the trial period unless the parties have agreed in writing that the Agreement will continue, and in that case the Agreement will not terminate but will continue, with the exception of this clause 2 which ceases to have effect.
- 2.4 **As is basis:** During the trial period, the SaaS Service is provided on an *as is* basis, and, despite any other provision in the Agreement, all conditions, warranties, guarantees and indemnities in relation to the SaaS Service are excluded by the Supplier to the fullest extent permitted by law.
- 2.5 **No Fees:** No Fees are payable by the Client for the use of the SaaS Service during the trial period.
- 2.6 **Acknowledgement and changes:** Despite any other provision in the Agreement:
- the Client acknowledges that the SaaS Service is continually under development; and
 - the Supplier, as part of that development, may change or remove any feature or part of the SaaS Service at any time and for any reason without liability of any kind.
- 2.7 **Evaluation:** In consideration of the Supplier providing the SaaS Service for the trial period, the Client agrees to inform the Supplier of all problems, defects, bugs, errors, issues, and ideas for improvement, relating to the SaaS Service of which it becomes aware. At the Supplier's request, the Client must meet (which may be via remote means) or provide a written evaluation of the SaaS Service.
- 2.8 **No obligation:** Nothing in the Agreement imposes any obligation:
- on the Client, at the termination or expiry of the trial period, to sign up to the paid-for version of the SaaS Service or any other service provided by the Supplier;
 - on the Supplier, at the termination or expiry of the trial period, to provide the SaaS Service or any other service; or
 - on the Supplier to maintain any feature or part of the SaaS Service in any paid-for version of the SaaS Service or any other service.

3 SERVICES

- 3.1 **General:** The Supplier must use best efforts to provide the Services:
- in accordance with the Agreement and New Zealand law;
 - exercising reasonable care, skill and diligence; and
 - using suitably skilled, experienced and qualified personnel.
- 3.2 **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.
- 3.3 **Availability:**
- Subject to clause 3.3b, the Supplier will use reasonable efforts to ensure the SaaS Service is available during normal business hours in New Zealand. 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 Majeure. The Supplier will use reasonable efforts to publish on the Website and to notify by email advance details of any unavailability. Best efforts will be made to undertake any major updates to the SaaS Service outside of normal business hours.
 - 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.
- 3.4 **Underlying Systems:** The Supplier is responsible for procuring all Underlying Systems reasonably required for it to provide the SaaS Service in accordance with the Agreement.
- 3.5 **Additional Related Services:**
- The Supplier may, from time to time, make available additional related services to supplement the SaaS Service.
 - 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 or other such agreement as may be required.

4 CLIENT OBLIGATIONS

- 4.1 **General use:** The Client and its personnel must:
- use the Services in accordance with the Agreement solely for:
 - the Client's own internal business purposes; and
 - lawful purposes (including complying with the Unsolicited Electronic Messaging Act 2007);
 - not resell or make available the Services to any third party, or otherwise commercially exploit the Services, provided that the Client may, subject to clause 4.1c, permit third party users to access the SaaS Service in connection with, and for the purpose of enabling the Client to obtain the benefit of, the Client's use of the SaaS Service (**Permitted Users**); and
 - ensure that each Permitted User complies with terms equivalent to those in the Agreement.
- 4.2 **Access conditions:** When accessing the SaaS Service, the Client, its personnel and Permitted Users must:
- not impersonate another person or misrepresent authorisation to act on behalf of others or the Supplier;
 - correctly identify the sender of all electronic transmissions;
 - not attempt to undermine the security or integrity of the Underlying Systems;
 - 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;
 - not attempt to view, access or copy any material or data other than that to which the Client is authorised to access;
 - 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;

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- g not copy, translate, modify, make derivative works of, communicate, distribute or otherwise make available all or any part of the SaaS Service except as is expressly permitted under the Agreement or as is necessary for the technical operation in the ordinary course of the Client and its personnel using the SaaS Service for the contemplated purposes;
- h not decompile, reverse-engineer, or otherwise attempt to derive the source code of, any software comprising any part of the SaaS Service or the Underlying Systems except as is expressly permitted by any applicable law which cannot be excluded by the Agreement; and
- i comply with any terms of use on the Website, as updated from time to time by the Supplier.

4.3 **Personnel:** A breach of any term of the Agreement by the Client's personnel or Permitted User is deemed to be a breach of the Agreement by the Client.

4.4 **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.

5 DATA

5.1 Supplier access to Data:

- a The Client acknowledges and agrees that:
 - i the Supplier may use the Data to conduct research and statistical analysis (including aggregating Data with data from other clients), and to generate and/or publish reports based on that research and analysis, provided that the Supplier will either:
 - ▲ not use the Data in a form in which any individual or Client is identified; or
 - ▲ not publish the Data (or results of the research and analysis) in a form in which any individual or Client is identified;
 - ii the Supplier may access the Data to exercise its rights and perform its obligations under the Agreement; and
 - iii to the extent that this is necessary but subject to clause 8, 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 and use the Data as described in clause 5.1a.

5.2 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 for the Client's purposes, the Supplier is acting as an agent of the Client for the purposes of the Privacy Act 1993 and any other applicable privacy law.
- b The Client must obtain all necessary consents from the relevant individual to enable the Supplier to collect, use, hold and process that information in accordance with the Agreement.

5.3 **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.

5.4 **International storage of Data:** The Client agrees that the Supplier may store Data (including any Personal Information) in secure servers in Australia and may access that Data (including any Personal Information) in Australia and New Zealand from time to time.

5.5 **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.

6 FEES

6.1 **Fees:** The Client must pay to the Supplier the Fees.

6.2 Invoicing and payment:

- a The Supplier will provide the Client with valid GST tax invoices on the dates set out in the Payment Terms.
- 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.

6.3 **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 5% per annum.

6.4 Change in Fees:

By giving 30 days' notice, the Supplier may change the Fees once each Year (but not before the 1st anniversary of the Start Date) by an amount determined by the Supplier, acting reasonably.

Fees updated under this clause are deemed to be the Fees listed in the Key Details.

If the Client does not wish to pay the changed Fees, it may terminate the Agreement in accordance with clause 11.

7 INTELLECTUAL PROPERTY

7.1 Ownership:

- a Subject to clause 7.1b, title to, and all Intellectual Property Rights in, the Services, the Website, the results of any research, analysis and reports generated by the Supplier under clause 5.1ai, and all Underlying Systems is and remains the property of the Supplier (and its licensors). The Client must not 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.

7.2 **Know how:** To the extent not owned by the Supplier, the Client grants the Supplier a royalty-free, transferable, irrevocable and perpetual licence to use any know how, techniques, ideas, methodologies, and similar Intellectual Property used by the Supplier in the provision of the Services.

7.3 **Feedback:** If the Client provides the Supplier with ideas, comments or suggestions relating to the Services or Underlying Systems, including as part of any evaluation under clause 2.7, (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.

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- 7.4 **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.
- 7.5 **Third party Intellectual Property Rights indemnity:**
- 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.
 - b The indemnity in clause 7.5a 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.

8 CONFIDENTIALITY

- 8.1 **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 any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 8.1a and 8.1b.
- 8.2 **Permitted disclosure:** The obligation of confidentiality in clause 8.1a 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
 - 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 8.

9 WARRANTIES

- 9.1 **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.
- 9.2 **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 the Sale of Goods Act 1908) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to NZD1,000.00; 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
 - ii be secure, free of viruses or other harmful code, uninterrupted or error free.
- 9.3 **Consumer Guarantees Act:** The Client agrees and represents that it is acquiring the Services, and entering the Agreement, for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of the Services or the Agreement.
- 9.4 **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.

10 LIABILITY

- 10.1 **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 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 10.1 includes the cap set out in clause 9.2a.
- 10.2 **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.
- 10.3 **Unlimited liability:**
- a Clauses 10.1 and 10.2 do not apply to limit the Supplier's liability:
 - i under the indemnity in clause 7.5a; or

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- ii under or in connection with the Agreement for:
 - ▲ personal injury or death;
 - ▲ fraud or wilful misconduct; or
 - ▲ a breach of clause 8.
 - b Clause 10.2 does not apply to limit the Client's liability:
 - i to pay the Fees;
 - ii under the indemnity in clause 5.5;
 - iii for infringement of any Intellectual Property Rights of the Supplier; or
 - iv for those matters stated in clause 10.3aii.
- 10.4 **No liability for 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.
- 10.5 **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.

11 TERM, TERMINATION AND SUSPENSION

- 11.1 **Duration:** Unless terminated under this clause 11, the Agreement starts on the Start Date and ends on the 12 month anniversary of the Start Date;
- 11.2 **Renewal:** before each anniversary of the Start Date, the Supplier shall invoice the Client for the Fee. Should the Client pay the invoice on or around the due date, such payment is deemed by both parties to be:
 - a Agreement as to any changed Fee set out in the invoice; and,
 - b Renewal of this Agreement for a further 12 month period from the anniversary of the Start Date on the terms of this Agreement and the Standard Terms and Conditions as may be updated from time to time
- 11.3 **No fault termination:** If the Client does not wish to renew the Agreement, it will give notice to the Supplier within 10 days of receiving the invoice. If notice is given then the Agreement will be at an end and the Invoice will not be payable. If the Supplier does not wish to renew the Agreement, it will give the Client 30 days' notice prior that it will not be renewing the Agreement.
- 11.4 **Other termination 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 7.5c are exhausted without remedying or settling the IP Claim, the Supplier may, by notice to the Client, immediately terminate the Agreement.
- 11.5 **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, 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 11.5di to the extent that the Client previously requested deletion of the Data.
- 11.6 **Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 5.5, 7, 8, 10, 11.5, 11.6 and 12, continue in force.
- 11.7 **Suspending access:** 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 where the Client (including any of its personnel) or one or more of its Permitted Users:
 - a undermines, or attempts to undermine, the security or integrity of the SaaS Service or any Underlying Systems;
 - b uses, or attempts 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; or
 - c has otherwise materially breached the Agreement (in the Supplier's reasonable opinion).
- 11.8 **Notice:** The Supplier must notify the Client where it restricts or suspends the Client's access under clause 11.7.

12 DISPUTES

- 12.1 **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.
- 12.2 **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.
- 12.3 **Right to seek relief:** This clause 12 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

13 GENERAL

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- 13.1 **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 immediately 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.
- 13.2 **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.
- 13.3 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.
- 13.4 **Independent contractor:** Subject to clause 5.2, 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.
- 13.5 **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.
- 13.6 **Severability:** Any illegality, unenforceability or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.
- 13.7 **Variation:** Any variation to the Agreement must be in writing and signed by both parties.
- 13.8 **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.
- 13.9 **Standard Terms and Conditions:** The Standard Terms and Conditions may be updated from time to time. The updated Standard Terms and Conditions will be available on the Supplier's website or by emailing the Supplier. In the event the Standard Terms and Conditions are updated, you will be notified either by email or on accessing the SaaS application where you will be asked for your consent to the change in these Standard Terms and Conditions. Continued use of the SaaS Service following a notified change in the Standard Terms and Conditions will be taken as acceptance of the updated Standard Terms and Conditions.
- 13.10 **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 13.10a. 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.
- 13.11 **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.
- 13.12 **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.

