

## INVIOL TERMS AND CONDITIONS

### 1. Acceptance

- 1.1 You accept these Terms by signing our Proposal and instructing us (whether orally or in writing) to proceed with the provision of the Services.
- 1.2 These Terms apply to you for the duration of the Term (including the Initial Term and any Renewal Periods).

### 2. Services

- 2.1 The services (**Services**) are as follows:
  - (a) provision of the SaaS Solution;
  - (b) supply of the Hardware;
  - (c) the Hardware Maintenance Services;
  - (d) the Implementation Services; and
  - (e) the Support Services.
- 2.2 We may perform additional services (which are in addition to the above services), as may be agreed in writing between the Parties in accordance with these Terms.
- 2.3 In consideration of you complying with these Terms, we will provide the Services for the Period in accordance with these Terms, whether ourselves or through our Personnel.
- 2.4 We will not be responsible for any Services unless expressly set out in the inclusions in the Proposal.
- 2.5 If these Terms express a time within which the Services are to be provided, we will use reasonable endeavours to provide the Services by such time, but you agree that such time is an estimate only and creates no obligation on us to provide the Services by that time.
- 2.6 Subject to any other provisions of these Terms, we will commence providing the Services within a reasonable time after the Commencement Date, or as otherwise agreed between the Parties in the Proposal or otherwise.
- 2.7 You may request an expansion to the Services (such as the deployment of the Services in a new, additional location) at any time. Such expansion must be agreed between the Parties and will be further particularised in an additional Service Request Form. To avoid doubt, these Terms will apply to the provision of the services the subject of the Service Request Form.
- 2.8 All variations to the Services (including in accordance with clause 2.7) must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instructions or directions from you constitute a variation to the scope of the Services or our obligations under these Terms or the Proposal, then we will not be obliged to comply with such instructions or directions unless agreed in accordance with this clause.

### 3. SaaS Licence

- 3.1 The SaaS Solution is the access to, and use of our cloud-based software solution known as "Inviol", which allows you to:
  - (a) implement and monitor workplace health and safety practices in relation to your workplace;
  - (b) identify and review high risk events and unsafe practices; and
  - (c) provide coaching and development to your Personnel in relation to health and safety practices.
- 3.2 Subject to these Terms, we will provide you with access to the SaaS Solution on completion of the Implementation Services, or as otherwise agreed between the Parties.
- 3.3 In consideration of your complying with these Terms, we will supply you with the SaaS Solution in accordance with the Proposal.
- 3.4 Subject to your compliance with these Terms, we grant you and your Authorised Users a non-exclusive, non-transferable, non-sublicensable and revocable license to access and use the SaaS Solution solely for your business purposes and as contemplated by these Terms (**SaaS License**).
- 3.5 You agree that the SaaS License permits you to access and use the SaaS Solution in accordance with the SaaS Conditions, as set out in the Proposal.

### 4. Authorised Users

- 4.1 You will ensure each Authorised User complies with the terms of these Terms.
- 4.2 You may request in writing that additional Authorised Users be granted a license to access the SaaS Solution from time to time.

### 5. Account

- 5.1 You will require an Account in order to access and use the SaaS Solution.
- 5.2 Each Authorised User will require a login (which is linked to your Account), to access and use the SaaS Solution.
- 5.3 You must ensure that any information provided to us for any Account or login is accurate and complete, and you warrant that you are authorised to provide this information to us.
- 5.4 You and your Authorised Users must keep your Account and login details secure and confidential. You agree to immediately notify us if you become aware of, or have reason to suspect, any suspicious or unauthorised access to your Account or use of any login details linked to your Account.
- 5.5 We may suspend access to your Account where we reasonably believe there has been any unauthorised use of or access to the SaaS Solution. Where we do so, we will notify you within a reasonable time of the suspension occurring, and the Parties will work together to resolve the matter.

## INVIOL TERMS AND CONDITIONS

- 5.6 If you choose to cancel these services, your Account will terminate, and we will have no obligation to continue providing the Services to you, unless you enter into a new Proposal with us, in which case the terms of the Proposal will then apply to your Account.
- 6. SaaS Licence – Additional Conditions of Use**
- 6.1 You must not (and you must ensure that each Authorised User does not):
- access or use the SaaS Solution except as permitted by the SaaS Licence, or other than through the interface that is provided by us.
  - access or use the SaaS Solution in any way that is improper or breaches any Laws, infringes any person's rights (including Intellectual Property Rights and privacy rights), or gives rise to any civil or criminal liability.
  - interfere with or interrupt the supply of the SaaS Solution or our System, or any other person's access to or use of the SaaS Solution.
  - introduce any Harmful Code into the SaaS Solution or our System.
  - directly or indirectly use, copy, decompile or reverse engineer the SaaS Solution.
  - allow others to access or use your Account (or in the case of Authorised Users, their login details), including any password or authentication details.
  - use the SaaS Solution to carry out security breaches or disruptions of a network.
  - attempt to access any data or log into any server or account that you are not expressly authorised to access.
  - circumvent user authentication or security of any of our networks, accounts, or hosts or those of any third party; or
  - access or use the SaaS Solution to transmit, publish or communicate material that is, defamatory, offensive, abusive, indecent, menacing, harassing or unwanted.
- 7. Availability**
- 7.1 Once you have been provided access to the SaaS Solution, we will use our best endeavors to make the SaaS Solution available at all times.
- 7.2 From time to time, we may perform such reasonable scheduled and emergency maintenance and updates in relation to the SaaS Solution to continue to supply the SaaS Solution to you and our other customers (**Scheduled or Emergency Maintenance**). You agree that access to, or the functionality of all or part of the SaaS Solution, may need to be suspended for a time for us to perform Scheduled or Emergency Maintenance, and to the maximum extent permitted by law, we will not be liable to you for any interruptions or downtime to the SaaS Solution because of any Scheduled or Emergency Maintenance and all relevant Fees will remain payable during these times.
- 7.3 We will endeavor to provide you with reasonable notice, where possible, of any interruptions to access and availability of the SaaS Solution.
- 8. Fees**
- 8.1 We reserve the right to adjust any of the Fees annually before the commencement of a Renewal Period. We shall give you at least 45 days' notice of any such Fee increase. Any proposed adjustment shall take into account movements in: materials costs, delivery costs, upkeep of the SaaS Solution and relevant movements in the CPI or market, whichever is greater, as measured by the Reserve Bank of New Zealand published index. For the avoidance of doubt, the Fees will not decrease as a result of movements in the aforementioned factors.
- 9. Payment**
- 9.1 In consideration for us providing the Services, you agree to pay us:
- the Fee; and
  - any other amount payable to us under this Agreement,
- in accordance with the Payment Terms as specified within the Proposal.
- 9.2 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):
- immediately cease providing the Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so (including legal fees and debt collector fees); and/or
  - charge interest at a rate equal to the Reserve Bank of New Zealand's cash rate, from time to time, plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms.
- 9.3 You agree that we may set off or deduct from any monies payable to you under this Agreement, any amounts which are payable by you to us (whether under this Agreement or otherwise).
- 9.4 Unless otherwise stated by us in writing, all fees stated are exclusive of any tax imposed by any government, state or local authority on the value of goods and services, and includes goods and services tax, sales tax, use tax, indirect tax, value added tax, excise tax, customs tax, tariffs and duties (Tax), which will be your responsibility to pay. If we are required to pay any Tax in relation to the Services supplied under this Agreement, the applicable Tax will be set out in the invoice provided to you and the fees payable by you under this Agreement must be increased by the applicable Tax. This clause 9.4 does not apply to any taxes imposed on our net income.

## INVIOL TERMS AND CONDITIONS

### 10. Viruses and Defects

10.1 We agree to use reasonable commercial efforts to supply the Services free from defects and viruses. To the extent commercially feasible and reasonable, we further agree to remediate any such defects and viruses (with the exception of Third-Party Inputs) within a reasonable time and as we become aware of them. If you become aware of any issues, please notify us.

### 11. Third Party Inputs

11.1 You acknowledge and agree that the Services may interact with, or be reliant on, certain Third-Party Inputs, including your operating system and web browser.

11.2 You acknowledge and agree that, unless we have expressly agreed to provide the services described in this clause 11.2 in the Proposal:

- (a) you are responsible for obtaining and managing all licenses for the relevant Third-Party Inputs.
- (b) you are responsible for paying all fees related to the Third-Party Inputs; and
- (c) you agree to always comply with terms and conditions applicable to the relevant Third-Party Inputs.

11.3 We do not make any warranty or representation in respect of any Third-Party Inputs.

11.4 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with any Third Party Inputs, subject to clause 11.5.

11.5 Should any unavailability, error or change to a Third-Party Input have a substantial and adverse impact on your use and enjoyment of the Services:

- (a) you agree to notify us in writing within 5 days of the change coming into effect; and
- (b) following receipt of such notice by us, the Parties will use all reasonable endeavours to work together to resolve the matter.

11.6 This clause 11 will survive the termination or expiry of these Terms.

### 12. Implementation Services

12.1 The Implementation Services are as follows:

- (a) the installation and configuration of the Hardware in your nominated premises;
- (b) providing training on the SaaS Solution at a time to be mutually agreed between the Parties;
- (c) carrying out basic configuration of the SaaS Solution to ensure that it operates and can connect with the Hardware; and
- (d) setting up your Account in accordance with our customer onboarding process.

12.2 The Implementation Services are subject to the system management by you of discovered concerns relating to your operations.

12.3 In consideration of your payment of the Fees, we will supply you with the Implementation Services in accordance with the Proposal.

12.4 Prior to us supplying the Implementation Services, you agree to:

- (a) Allow us to access remotely your Systems (if required) for the purposes of providing the Implementation Services.
- (b) Properly ground lightning arrestors following antenna installation, per local code for Wi-Fi installations.
- (c) Provide proper lift equipment needed to mount wireless access point and antennas to specified location (if applicable).
- (d) Perform the tasks we reasonably request s to prepare the site(s) for installation of the Hardware.
- (e) Verify Hardware functionality on the site(s) the Hardware has been installed on through wireless components to our systems.
- (f) Provide our Personnel with a safe, designated installation area protected from environmental hazards and any required safety equipment.

12.5 You acknowledge and agree that not undertaking your obligations under clause 12.4 may result in a delay in the SaaS Solution being made available to you and may impact on the results or the performance of the Services, and we will not be liable to you for any Liability to the extent caused or contributed to by your failure to comply with clause 12.4.

12.6 Unless purchased from us, you will be responsible for providing identical or equivalent equipment necessary for the Implementation Services as specified by us.

### 13. Support Services

13.1 The Support Services are as follows:

- (a) access to the Inviol technical support telephone number (+64 21 055 2329) and email (hi@inviol.com) on Business Days between the hours of 7am - 6pm NZT;
- (b) a messenger widget, which uses the Intercom system (**Intercom**), which allows for:
  - a. real-time support communication;
  - b. product updates;
  - c. streamlined ticket submission and tracking.

Intercom is an essential component of our Support Services, and is necessary for the performance of our Support Services under these Terms. Intercom requires cookies to function, including for session management, user identification and system integrity protection, which enable the delivery of our Support Services. We

## INVIOL TERMS AND CONDITIONS

only use necessary cookies for Intercom, which are placed solely after user authentication and are strictly limited to support and training functionality, with no advertising or cross-site tracking purposes.

13.2 We will not be obligated to provide Support Services if the programming error in the SaaS Solution is not reproducible or is caused by:

- (a) your failure to implement all updates to the SaaS Solution provided by us;
- (b) your (or your Personnel's) use of a superseded version of the SaaS Solution;
- (c) your negligence or misuse.
- (d) where the SaaS Solution has been installed or maintained by you or your Personnel, failure to properly, install, maintain or use the SaaS Solution;
- (e) alterations made by anyone other than us or our representatives to the SaaS Solution or the Hardware or software that interfaces with the SaaS Solution after installation;
- (f) combination of the SaaS Solution with any accessory, equipment, software or part not approved by or not supplied by us; or
- (g) third party software, equipment or materials not approved in writing or supplied by us.

13.3 In consideration of your complying with these Terms, we will supply you with the Support Services in accordance with the Proposal.

13.4 For you to receive the Support Services, you or your Authorised Users must place a request over the phone or via email using the phone number or email address specified in the Proposal. You must promptly notify us of any problems with the Services as soon as you become aware of them, and you agree to provide us with all information and access necessary to allow us to provide the Support Services.

13.5 We will use our best endeavors to make the Support Services available to you during the times as set out in the Proposal.

13.6 Unless otherwise agreed, support under these Terms is not to be used to support any other products or services and does not include training, installation of software or hardware, software development or the modification, deletion or recovery of data or any on-site services.

### 14. Hardware

#### Where you lease the Hardware from us:

14.1 In consideration of your complying with these Terms, we will lease the Hardware to you for the duration of this contract.

14.2 Title in the Hardware will at all times remain with us, and you will take the Hardware as a bare bailee only.

14.3 Risk in the Hardware will pass from us to you on delivery of the Hardware in accordance with these Terms.

14.4 You agree:

- (a) to ensure that you have any necessary permissions or consents to use the Hardware.
- (b) to comply with our reasonable instructions in relation to the Hardware, including any user manuals or directions for use that we provide to you.
- (c) to not allow anyone to interfere or otherwise tamper with the functioning of the Hardware.
- (d) to protect and maintain the Hardware and keep it in good order and condition.
- (e) to ensure that only trained Authorised Users use the Hardware.
- (f) to not conduct, or commission a third party to conduct, any repairs or maintenance or otherwise tamper with the Hardware, without our prior consent.
- (g) that we have no obligation to provide any Services for, and we provide no warranties in respect to, the Hardware, or any part of the Hardware, to the extent it has been repaired, modified, or tampered with by a person other than with our prior consent.
- (h) that you are responsible for any loss, cost, theft, damage, vandalism, or destruction of or to the Hardware.
- (i) that no such loss, cost, theft, damage, or destruction of or to the Hardware will impair or frustrate any of your obligations under these Terms.
- (j) unless otherwise agreed between the Parties, on expiry or termination of these Terms, you are responsible for returning all Hardware to us in good working condition, free from damage and clean.
- (k) to ensure that the Hardware is protected from power surges and is in a suitable physical environment for the operation of the Hardware; and
- (l) we may take such steps as may be reasonably necessary to protect or enforce our rights under this clause 14 (including giving us and our Personnel the right to enter your premises) and you agree to sign such documents and do such things as we may reasonably require in such regard.

#### Where you purchase the Hardware from us:

14.5 In consideration of your complying with these Terms, we will sell the Hardware to you.

## INVIOL TERMS AND CONDITIONS

- 14.6 Title in the Hardware will vest in you upon your payment of the Fee's payable for the purchase of the Hardware in full.
- 14.7 Risk in the Hardware will pass from us to you on delivery of the Hardware in accordance with these Terms.
- 14.8 You agree that we are not responsible for any maintenance or warranty for the Hardware and you are responsible for ensuring the Hardware is only operated and otherwise kept in a manner which does not void any manufacturer warranty.
- 14.9 We agree to the extent permissible under consumer law and the manufacturer or suppliers' terms, pass any manufacturer or supplier warranty on to you in full contemporaneously with the transfer of title as per clause 13.6.
- 14.10 You agree that your failure to maintain functioning access to the Hardware shall not constitute frustration of the obligations conferred under these Terms. If the Hardware becomes damaged or unusable for any reason, you agree to, at your sole cost if necessary, replace or repair the Hardware.
- 15. Delivery of Hardware**
- 15.1 We will deliver the Hardware to you at our cost, in accordance with the terms as specified in the Proposal. We will not be liable for any loss suffered by you arising out of any delay to deliver the Hardware.
- 16. Security Interest**
- Where you lease the Hardware from us:
- 16.1 You agree to not create an encumbrance, lien, charge, or other interest on or over the Hardware.
- 16.2 You agree that we hold a general lien over the Hardware, for the satisfactory performance by you of your obligations under these Terms.
- 16.3 In this clause 16, PPSA means Personal Property Securities Act 1999 and, unless otherwise defined in these Terms, capitalised terms in this clause 16 have the meanings given to them in the PPSA.
- 16.4 You acknowledge and agree that:
- our interest in the Hardware and all proceeds is a Security Interest and these Terms is a Security Agreement.
  - you consent to us registering our Security Interest on the Personal Property Securities Register (including as a purchase money security interest) and you agree to provide all assistance reasonably required by us to facilitate registration and create a perfected security interest; and
  - you waive your right to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 16.5 You acknowledge and agree that these Terms is intended to create a Security Interest in the Hardware in the names of the respective title holders of the Hardware.
- 16.6 This clause 16 will survive termination or expiry of these Terms.
- 17. Hardware Maintenance Services**
- 17.1 In consideration of your complying with these Terms, we will supply you with the Hardware Maintenance Services in accordance with the Proposal.
- 17.2 We will provide you with the following maintenance and support for the Hardware on Business Days:
- consultation on the troubleshooting, maintenance, replacement, and repair of defective or damaged Hardware or components (where the Hardware and components are provided by us).
- 17.3 We shall not be obligated to provide Hardware Maintenance Services if the Hardware malfunction is not reproducible or is caused by:
- your negligence or misuse, accident, fire, variation or interruption of electricity;
  - where the Hardware has been installed or maintained by your or your Personnel, failure to properly install, maintain or use the Hardware;
  - alterations made by anyone other than us or our representatives to the Hardware or the hardware or software that interfaces with the Hardware after installation;
  - any attempt to service the Hardware other than by us or our service representatives (including the addition or removal of any third-party hardware, peripherals or software); or
  - any software, equipment, or materials not approved or supplied by us.
- 18. Security**
- 18.1 Subject to the terms of these Terms, we will establish and maintain appropriate, reasonable technical and organisational security measures in accordance with good industry practice to keep Your Data secure.
- 19. Security Incidents**
- 19.1 If either Party becomes aware of or reasonably suspects that a security incident has occurred arising from our provision of the Services, such that Your Data has or may have been compromised (for example, unauthorised access) (each a **Security Incident**), that Party must promptly notify the other Party and we agree to, within a reasonable time:
- investigate to determine whether a Security Incident has occurred, and where one has, the cause and impact of it on Your Data; and
  - where a Security Incident is deemed to have occurred, remediate the Security Incident to the extent that this is operationally, commercially, and technically feasible.
- 19.2 You agree that we may suspend the Services where a Security Incident has or may have occurred and this is

## INVIOL TERMS AND CONDITIONS

considered necessary or prudent (as determined by us, at our reasonable discretion) to address or deal with the Security Incident.

- 19.3 We will bear our costs in conducting any investigation or remediation required under this clause, unless the incident triggering the Security Incident was caused or contributed to by you (or any Authorised User), in which case, you will be liable for those costs reasonably and necessarily incurred by us arising from the Security Incident.

### 20. Your Obligations and Representations

20.1 You agree:

- (a) to comply with these Terms and all applicable Laws.
- (b) to provide all assistance, information, documentation, access, facilities, and other things reasonably necessary to enable us to comply with our obligations under these Terms or at Law.
- (c) to provide us and our Personnel with reasonable, convenient, and safe access to your premises and Systems to the extent reasonably necessary for us to supply the Services, and at the times agreed between the Parties.
- (d) to ensure all information provided to us is kept up-to-date and the email address you provide is valid and regularly checked.
- (e) to make any changes to your Systems, such as System upgrades, that may be required to support the delivery and operation of any Services.
- (f) to ensure that any Systems used in connection with the Services have all necessary approvals and comply with all Laws.
- (g) that you have reviewed and understand the terms of these Terms (including our Privacy Policy), and that you (and Authorised Users) will use the Services in accordance with them.
- (h) to obtain all necessary consents from your relevant Personnel for video recordings to be made of them as part of our supply of the Services, prior to commencement of the Services;
- (i) to notify us of any breach or suspected breach of these Terms by you (or an Authorised User), within 48 hours of becoming aware of any such breach or suspected breach; and
- (j) that you are responsible for all Authorised Users and other users within your organisation or within your control using the Services, including your Personnel.

20.2 You acknowledge and agree that:

- (a) the technical processing and transmission of the Services, including Your Data, may be transferred unencrypted and involves transmissions over various networks; and changes to conform and

adapt to technical requirements of connecting networks or devices.

- (b) the Services are provided to you and your Authorised Users, solely for you and your Authorised Users' benefit and you will not (or you will not attempt to) disclose, or provide access to, our Services to third parties without our prior written consent.
- (c) any information, advice, material, work and services (including the Services) provided by us under these Terms does not constitute legal, financial, merger, due diligence or risk management advice.
- (d) The SaaS Solution is a tool to help you manage your workplace health & safety, but is not a replacement platform for your responsibilities under the *Health and Safety at Work Act 2015*. We take no responsibility for injuries or deaths on your site.
- (e) you will be responsible for the use of any part of the Services by your Authorised Users and any other person you provide with access to the Services, and you must ensure that no person uses any part of the Services:
  - (1) to break any Law or infringe any person's rights (including Intellectual Property Rights).
  - (2) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing, or unwanted; or
  - (3) in any way that damages, interferes with, or interrupts the supply of the Services; and
- (f) you will not alter or modify the Services in any way that is not contemplated by the purposes of the Services.

### 21. Intellectual Property

#### Our Intellectual Property Rights

21.1 As between the Parties, you acknowledge and agree that we own all Intellectual Property Rights in:

- (a) Our Materials;
- (b) New Materials or Improvements; and
- (c) any Feedback,

and as between the Parties, these Intellectual Property Rights will at all times vest, or remain vested, in us, and nothing in these Terms constitutes an assignment or transfer of such Intellectual Property Rights. To the extent that ownership of these Intellectual Property Rights does not automatically vest in us, you agree to do all acts necessary or desirable to assure our title to such rights.

21.2 In the use of any Intellectual Property Rights in connection with these Terms, you agree that you must not (and you must ensure that your Personnel and your

## INVIOL TERMS AND CONDITIONS

Authorised Users do not) commit any Intellectual Property Breach. Where you reasonably suspect that such a breach may have occurred, you must notify us immediately.

21.3 You also agree that:

- (a) we may use Feedback in any manner which we see fit (including to develop new features) and no benefit will be due to you as a result of any use by us of any Feedback;
- (b) you must not whether directly or indirectly, without our prior written consent:
  - (1) copy, modify, adapt, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble or decompile any part of the Services or otherwise attempt to discover any part of the source code of the SaaS Solution;
  - (2) use any unauthorised, modified version of the Services, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the SaaS Solution;
  - (3) unless authorised under these Terms, use the Services in a web-enabled form for the purposes of third-party analysis or view via the internet or other external network access method;
  - (4) rent or sublicense the use of the Services to any third parties, without our prior written consent or as otherwise permitted under these Terms;
  - (5) take any action that may compromise or jeopardise our Intellectual Property Rights in the Services or otherwise;
  - (6) remove or deface any confidentiality, copyright or other proprietary notice placed on the Services; or
  - (7) use the Services in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing.

### Your Intellectual Property Rights

- 21.4 As between the Parties, you will continue to own all Intellectual Property Rights in Your Materials.
- 21.5 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Your Materials, solely for the purposes for which they were developed and for the performance of our obligations under these Terms, and as otherwise contemplated by these Terms.
- 21.6 If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with these Terms, you agree to (and agree to ensure that your Personnel) consent to our use or infringement of

those Moral Rights.

### Your Data

- 21.7 As between the Parties:
  - (a) Your Data is and will remain your property; and
  - (b) you retain any and all rights, title and interest in and to Your Data, including all copies, modifications, extensions and derivative works.
- 21.8 You grant us a limited licence to copy, transmit, store, backup and/or otherwise access or use Your Data while this contract is active, (and for a reasonable period), to:
  - (a) supply the Services to you and your Authorised Users (including to enable you and your Personnel to access and use the Services), and otherwise perform our obligations under these Terms;
  - (b) diagnose problems with the Services;
  - (c) enhance and otherwise modify the Services;
  - (d) perform Analytics;
  - (e) develop other services, provided we de-identify Your Data; and
  - (f) as reasonably required to perform our obligations under these Terms.
- 21.9 You acknowledge and agree that:
  - (a) we are not responsible for the integrity or existence of any data on the Computing Environment, network or any device controlled by you, your Authorised Users or your Personnel; and
  - (b) we assume no responsibility or Liability for Your Data. You are solely responsible for Your Data and the consequences of using, disclosing, storing, or transmitting it. It is your responsibility to back up Your Data.
- 21.10 You represent, warrant, acknowledge and agree that:
  - (a) you have obtained all necessary rights, releases and permissions to provide or have Your Data provided to us and to grant the rights granted to us in these Terms;
  - (b) Your Data (and its transfer to and/or use, collection, storage or disclosure by us as contemplated by these Terms) does not and will not violate any Laws (including those relating to export control and electronic communications) or the rights of any third party, including any Intellectual Property Rights, rights of privacy, or rights of publicity; and
  - (c) the operation of the Services is reliant on the accuracy and completeness of Your Data, and the provision by you of Your Data that is inaccurate or incomplete may affect the use, output and operation of the Services.
- 21.11 This clause 21 will survive termination or expiry of these Terms.

## INVIOL TERMS AND CONDITIONS

### 22. Analytics

22.1 You acknowledge and agree that we may monitor, analyse, and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymised format (**Analytics**). You agree that we may make such Analytics publicly available, provided that it:

- (a) does not contain any identifying information; and
- (b) is not compiled using a sample size small enough to make underlying portions of Your Data identifiable.

22.2 We, and our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content used or provided in connection with the Analytics, including all Intellectual Property Rights in the foregoing.

22.3 We may use and disclose to our service providers anonymous data about your access and use of the SaaS Solution for the purpose of helping us improve the SaaS Solution. Any such disclosure will not include details of you, or any Authorised User's, identity or personal information.

### 23. Confidential Information

23.1 Subject to clause 23.2, each Party must (and must ensure that its Personnel do) keep confidential, and not use or permit any unauthorised use of, confidential information provided by the other Party.

23.2 Clause 23.1 does not apply where the disclosure is required by Law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the disclosing Party ensures the adviser complies with the terms of clause 23.1.

23.3 This clause 23 will survive the termination of this Agreement.

### 24. Privacy

24.1 For the purposes of this clause, **Personal Information** and has the meaning given in the Privacy Act 2020, and includes any similar terms as defined in any other privacy law applicable to you.

24.2 You must ensure that your Personnel and your Authorised Users, at all times comply with the Privacy Principles as set out in the Privacy Act 2020 and any privacy or other Laws applicable to you in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with these Terms (**Privacy Laws**).

24.3 Without limiting this clause 24, you must ensure that:

- (a) you have collected, used, stored and otherwise dealt with Your Data in accordance with all Privacy Laws; and
- (b) we are capable of collecting, using, storing and otherwise dealing with Your Data, in the manner contemplated by these Terms, without infringing

any third party rights or violating any Privacy Laws.

24.4 Without limiting this clause 24, you agree to only disclose Your Data, to the extent it contains Personal Information if:

- (a) you are authorised by Privacy Laws to collect the Personal Information and to use or disclose it in the manner required by these Terms; and
- (b) you have informed the individual to whom the Personal Information relates, that it might be necessary to disclose the Personal Information to third parties.

24.5 We agree to handle any Personal Information you provide to us, solely for the purpose of performing our obligations under these Terms, and in accordance with any applicable Laws and our Privacy Policy.

### 25. Exclusions to liability

25.1 To the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:

- (a) any interruptions or downtime to the SaaS Solution as a result of any Scheduled or Emergency Maintenance;
- (b) your Computing Environment;
- (c) your, your Authorised Users, or your Personnel's acts or omissions;
- (d) any use or application of the Services by a person or entity other than you, or other than as reasonably contemplated by these Terms;
- (e) any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with any breach of clause 20.1(h);
- (f) any works, services, goods, materials or items which do not form part of the Services (as expressed in these Terms), or which have not been provided by us;
- (g) any Third Party Inputs; and/or
- (h) any event outside of our reasonable control (including a Force Majeure Event, and a fault, defect, error or omission in the Computing Environment or Your Data).

25.2 This clause 25 will survive the termination or expiry of these Terms.

### 26. Limitations on liability

26.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) neither Party will be liable for Consequential Loss;
- (b) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or

## INVIOL TERMS AND CONDITIONS

contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by the other Party to mitigate its loss; and

- (c) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to us resupplying the Services to you respect of the supply of the relevant Services to which the Liability relates, or, where this is not applicable, the total monetary value of the Services as paid to us by you, at our discretion.

26.2 This clause 26 will survive the termination or expiry of these Terms.

### 27. Termination

27.1 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party is unable to pay its debts as they fall due.

27.2 Upon expiry or termination of these Terms:

- (a) we will immediately cease providing the Services;
- (b) we will provide you with a copy of all Your Data in our possession. After we provide such copy of Your Data, we may, at our sole discretion, delete or destroy Your Data;
- (c) you agree to promptly, return all Hardware to us or allow us unfettered access to your premises to collect the Hardware;
- (d) you agree that any failure to return any Hardware, or allow us unfettered access to your premises to collect the Hardware within 30 days of the date of termination or expiry of these Terms or to return the Hardware to us in good working condition, other than usual wear and tear, will require you pay to us, as a debt due and immediately payable, our reasonable costs in replacing or repairing the Hardware (as applicable); and
- (e) upon request by us, you agree to promptly return (where possible), or delete or destroy (where not possible to return), any information, documentation or Intellectual Property owned by us that is in your possession or control, subject to clause 21.

27.3 We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of these Terms.

27.4 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

27.5 This clause 27 will survive the termination or expiry of these Terms.

### 28. General

28.1 **Access:** The Services may be accessed in New Zealand and overseas. We make no representation that the Services comply with the Laws (including Intellectual Property Laws) of any country outside of New Zealand. If you access the Services from outside New Zealand, you do so at your own risk and you are responsible for complying with the Laws in the place you access the Services.

28.2 **Amendment:** These Terms may only be amended by written instrument executed by the Parties.

28.3 **Assignment:** A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

28.4 **Assignment on Sale or Acquisition:** In the event of a sale, merger, acquisition, or other transfer of all or substantially all of our business or assets, we may assign or transfer this Agreement and all rights and obligations hereunder to the acquiring entity or successor in interest. You hereby consent to such assignment or transfer, and agree that the terms and conditions of this Agreement shall be binding upon and inure to the benefit of any such assignee or successor.

28.5 **Consumer Law:** The Parties agree that:

- (a) they are supplying and acquiring the Services for the purpose of trade;
- (b) to the maximum extent permitted by law, the provisions of the Consumer Guarantees Act 1993 do not apply to these Terms; and
- (c) it is fair and reasonable that the Parties are bound by this clause.

28.6 **Counterparts:** These Terms may be executed in any number of counterparts that together will form one instrument.

28.7 **Disputes:** You agree to notify us should you have concerns relating to our performance of the Services. A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the New Zealand Law Society to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

## INVIOL TERMS AND CONDITIONS

- 28.8 **Entire agreement:** Subject to your Consumer Law Rights, these Terms contains the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter. 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.
- 28.9 **Force Majeure:** A Party will not be liable for any delay or failure to perform its obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under these Terms.
- 28.10 **Further assurance:** Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to these Terms and their obligations under it.
- 28.11 **Governing law:** These Terms is governed by the laws of New Zealand. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New Zealand and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 28.12 **Illegal Requests:** We reserve the right to refuse any request for or in relation to any Services that we deem inappropriate, unethical, unreasonable, illegal or otherwise non-compliant with these Terms.
- 28.13 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 28.14 **Online execution:** These Terms may be executed by means of such third party online document execution service as we nominate subject to such execution being in accordance with the applicable terms and conditions of that document execution service.
- 28.15 **Publicity:** With your prior written consent, you agree that we may advertise or publicise the broad nature of our provision of the Services to you, including on our website or in our promotional material.
- 28.16 **Relationship of Parties:** These Terms is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 28.17 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms

without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

### 29. Definitions

In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Proposal, and:

**Account** means an account accessible to you and/or your Authorised Users to use the Services, including, the SaaS Solution.

**Agreement** means these terms and conditions, the Proposal and any documents attached to, or referred to in, each of them.

**Authorised User**, if applicable, means a user permitted to access and use the Services under your Account.

**Business Day** means a day on which banks are open for general banking business in Auckland, New Zealand, excluding Saturdays, Sundays and public holidays.

**Computing Environment** means your computing environment including all hardware, software, information technology and telecommunications services and Systems.

**Confidential Information** includes information which:

- (a) is disclosed to the Receiving Party in connection with these Terms at any time;
- (b) is prepared or produced under or in connection with these Terms at any time;
- (c) relates to the Disclosing Party's business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

**Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. The Parties acknowledge and agree that your obligation to pay us the Fees under these Terms will not constitute "Consequential Loss" for the purposes of this definition.

**Disclosing Party** means the party disclosing Confidential Information to the Receiving Party.

**Feedback** means any idea, suggestion, recommendation or request by you or any of your Personnel and your Authorised Users, your customers, whether made verbally, in writing, directly or indirectly, in connection with the Services.

## INVIOL TERMS AND CONDITIONS

**Fees** means the fees payable by you to us in consideration for us providing the Services, as set out in the Proposal.

**Force Majeure Event** means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

**Harmful Code** means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alternation, denial of service, unauthorised access to or disclosure, destruction or corruption of information or data.

**Improvements** means any development, modification, adaptation or improvement of Our Materials or any New Materials made by or on behalf of either Party (or any of their respective Personnel), or in respect of which Intellectual Property Rights are acquired by, either Party during the Term.

**Insolvency Event** means any of the following events or any analogous event:

- (a) a Party disposes of the whole or any part of the Party's assets, operations or business other than in the ordinary course of business;
- (b) a Party ceases, or threatens to cease, carrying on business;
- (c) a Party is unable to pay the Party's debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Party's assets, operations or business;
- (e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a Party's creditors or any class of a Party's creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of a Party's assets, operations or business.

**Intellectual Property** means any copyright, registered or unregistered designs, patents or trade mark rights, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for

registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Breach** means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third-party rights, including any Intellectual Property Rights of third parties), including using or exploiting our Intellectual Property for purposes other than as expressly stated in these Terms (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties).

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Laws** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with these Terms or the provision of the Services.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise.

**Moral Rights** has the meaning given in the Copyright Act 1994.

**New Materials** means all Intellectual Property developed, adapted, modified or created by either Party or their respective Personnel in the provision of the Services, but excludes Our Materials and Your Materials.

**Our Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services that we may provide to you under these Terms, and which may contain material which is owned by or licensed to us, and is protected by New Zealand and international laws.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

**Proposal** means the proposal accepted and signed by you which further particularises our provision of the Services to you and the lease or purchase of the Hardware by you for the Fees specified.

**Premises** means any premises the subject of the Services.

**Privacy Policy** means any privacy policy set out on our Site.

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party.

## INVIOL TERMS AND CONDITIONS

**Services** means the services that we agree to perform under these Terms, as further particularised in the Proposal.

**Service Request Form** means a form which sets out the provision of our services which are beyond those Services specified in our Proposal.

**System** means all hardware, software, networks, telecommunications and other IT systems used by a Party from time to time, including a network.

**Third Party Inputs** means third parties or any goods and services provided by third parties, including customers, end users, suppliers, transportation or logistics providers or other subcontractors which the provision of the Services may be contingent on, or impacted by.

**Your Data** means the information, materials, logos, documents, qualifications and other Intellectual Property or data inputted by you, your Personnel and your Authorised Users into the Services or stored by or generated by your use of the Services, including any Personal Information collected, used, disclosed, stored or otherwise handled in connection with these Terms. Your Data does not include the Analytics, or any data or information that is generated as a result of your usage of the Services that is a back-end or internal output or an output otherwise generally not available to users of the Services.

**Your Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned or licensed by you or your Personnel before the Commencement Date and/or developed by or on behalf of you or your Personnel independently of these Terms.

- (f) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (g) words like including and for example are not words of limitation;
- (h) a reference to time is to local time in New Zealand; and
- (i) a reference to \$ or dollars refers to the currency of New Zealand from time to time.

### 30. Interpretation

In these Terms, unless the context otherwise requires:

- (a) a reference to these Terms or any other document includes the document, all Proposals and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (d) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (e) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;