

Terms and Conditions

1. Legally binding

- 1.1 These terms and conditions (**Terms and Conditions**) shall:
- (a) be legally binding as between NMS-New Media Solution Limited (NZCN 9188120) (**NMS**) and each person or entity that becomes a subscriber (**Subscriber**) via NMS' website at www.newmediasolution.co.nz (**Website**); and
 - (b) govern the purchase, subscription rights, access and use by the Subscriber of NMS' platform, products and services on the Website (**Platform**).

2. Method of acceptance

- 2.1 Each Subscriber acknowledges and agrees that, where it agrees to these Terms and Conditions via the Website (via a clickbox or clickwrap or other method of indicating its agreement via the Website):
- (a) such method of acceptance is fully effective, accepted and agreed by the Subscriber, including for the purposes of Part 4 of the Contract and Commercial Law Act 2017; and
 - (b) it has read and understood these Terms and Conditions and has had a full opportunity to review, consider, receive advice (including legal advice) and comment on and negotiate amendments to these Terms and Conditions prior to agreeing to and accepting them.

3. Non-agreement

- 3.1 Any Subscriber that does not agree to these Terms and Conditions is not authorised to access and use the Platform and must immediately cease doing so.

4. Use of the Platform

- 4.1 Subscribers may only use the Platform strictly in accordance with these Terms and Conditions.
- 4.2 All rights not expressly granted to Subscribers in these Terms and Conditions are expressly reserved by NMS.

5. One subscription per Subscriber

- 5.1 Each Subscriber shall only be permitted to have a subscription in respect of one website as provided via the Platform. If a Subscriber wishes to use the Platform for another website or multiple websites, a separate subscription for the Platform will be required for each such website.

6. Payment

- 6.1 Each Subscriber must pay (or procure payment of) the applicable fees for its use of the Platform, for the relevant period, via direct debit as specifically required on the Website or as otherwise agreed in writing with NMS (the **Fees**).
- 6.2 Special discounted Fees will apply in respect of the first 20 Subscribers that subscribe with NMS. The Fees may be higher for all subsequent Subscribers that subscribe with NMS, which will be determined in the sole and absolute discretion of NMS.

7. Changes to the Fees

- 7.1 NMS may, at its sole and absolute discretion, adjust the Fees no more than once annually, and any such increase in the Fees must not exceed the percentage increase in the CPI over the year immediately preceding the adjustment.
- 7.2 In this clause 7, **CPI** means the consumer price index published by the New Zealand Government's Department of Statistics, or, if that index is discontinued, any equivalent official index in New Zealand which replaces that index.

8. Cancellation by a Subscriber

- 8.1 Subject to clauses 8.2 and 8.3, if a Subscriber wishes to cancel its subscription with NMS, that Subscriber can do so by providing NMS with not less than 6 months' prior written notice of cancellation (the **Notice Period**).
- 8.2 No Subscriber may exercise its right of cancellation until the 6 month anniversary of the date on which they first obtained their subscription with NMS.
- 8.3 Any Fees already paid by a Subscriber will be non-refundable in the event of a cancellation by the Subscriber (except where agreed otherwise in writing between the Subscriber and NMS). All Fees will be and remain payable during the Notice Period.

9. Cancellation by NMS

- 9.1 NMS shall be entitled to cancel these Terms and Conditions in respect of any Subscriber, with immediate effect by giving written notice to that Subscriber, if that Subscriber breaches any of these Terms and Conditions and that breach:
- (a) cannot be remedied; or
 - (b) is capable of being remedied, but the Subscriber does not remedy that breach within 7 days of being required to do so in writing by NMS.
- 9.2 If a cancellation is effected by NMS under clause 9.1, any Fees already paid by the Subscriber will be non-refundable (except where agreed otherwise in writing between the Subscriber and NMS).

10. Subscriber information

- 10.1 Upon subscribing for NMS's products and/or services, all Subscribers agree to:
- (a) provide true, accurate, current and complete information about themselves as prompted by the Website and/or the Platform (**Subscriber Information**); and
 - (b) promptly notify NMS in writing of any changes to their Subscriber Information in order to ensure that it remains true, accurate, current and complete.

11. Responsibility and liability

- 11.1 Each Subscriber will be solely responsible and liable for:
- (a) all activity that occurs through its use of the Platform; and
 - (b) any and all content that it publishes (or authorises for publication) using the Platform or via the products and services made available by the Platform (whether directly or indirectly).
- 11.2 NMS shall not be liable in any respect for any content, warranties, representations, statements, services, products or other information or data that is posted, published (or authorised for

publication) by the Subscriber using Platform or via the products and services made available by the Platform (whether directly or indirectly).

12. No illegal use

- 12.1 No Subscriber may use the Website and/or the Platform for any illegal purpose or any purpose not expressly authorised in writing by NMS, or post any information or data that is in breach of any confidentiality obligation, copyright, trade mark or other intellectual property, proprietary or legal rights of any person or entity.

13. App publishing agreement

- 13.1 Where requested in writing by NMS, the Subscriber must sign and deliver to an App Publishing Agreement in NMS' standard form.

14. Compliance

- 14.1 In using the Website and the Platform, each Subscriber will comply with all applicable laws and regulations, including with respect to the marketing and sale of any of its products and/or services.

15. No malicious use

- 15.1 Subscribers must not use the Website and/or the Platform for any malicious means or abuse, harass, threaten, intimidate or impersonate any other Subscriber.

16. Interference

- 16.1 Subscribers must not introduce (or cause the introduction of) any virus, spyware or other similar feature that in any way compromises or may compromise the Website and/or the Platform.

17. Access

- 17.1 Subscribers may only access the Website and Platform through standard means as approved in writing by NMS, and not via methods such as scraping, data mining, the use of a robot or spider, automation or any similar method of extraction or monitoring.

18. Use by other persons and entities

- 18.1 Any person or entity that accesses and uses the Website and/or the Platform on behalf of or via another Subscriber, including all directors, officers, employees, independent contractors, agents and/or representatives of any Subscriber that have been granted access by that Subscriber, irrevocably confirms that he, she or it is fully authorised to do so by that Subscriber and agrees to these Terms and Conditions in all respects.

19. Intellectual property

- 19.1 All Subscribers agree that NMS solely owns all of the intellectual property existing in the Website and the Platform (and any and all improvements to the same).

20. Warranties

- 20.1 The Website and Platform is provided on an “as is where is” basis, and accordingly all implied warranties and representations (whether under statute, common law or otherwise) that might apply to or otherwise arise out of these Terms and Conditions are hereby expressly excluded by NMS to the fullest extent permitted by law.
- 20.2 Each Subscriber hereby warrants and represents that:
- (a) it has full power and authority to enter into these Terms and Conditions;
 - (b) all authorisations and approvals that are necessary or required in connection with the Subscriber’s entry into these Terms and Conditions, and the assumption of rights and obligations under these Terms and Conditions, have been obtained or effected; and
 - (c) the entry into and performance of these Terms and Conditions by the Subscriber does not constitute a breach of any law or obligation and will not cause or result in any default or breach under any other agreement or arrangement by which it is bound and which would prevent the Subscriber from entering into or performing its obligations under these Terms and Conditions.

21. Indemnity

- 21.1 Each Subscriber hereby indemnifies, and will keep indemnified, NMS against all forms of liability, actions, proceedings, demands, costs, charges and expenses which NMS may incur or be subject to or suffer as a result of:
- (a) any breach of these Terms and Conditions by the Subscriber; and
 - (b) that Subscriber's use of the Website and Platform.

22. Dispute resolution

- 22.1 The following provisions shall apply to any dispute arising under or relating to these Terms and Conditions (a **Dispute**) between a Subscriber and NMS (together, the **Disputing Parties** and each a **Disputing Party**):
- (a) The Disputing Parties must use reasonable endeavours to resolve any and all Disputes by negotiation at first instance.
 - (b) If the Disputing Parties cannot resolve their Dispute by negotiations within 30 calendar days a Disputing Party may, by written notice to the other, require that the Dispute be dealt with by mediation under the following Terms and Conditions:
 - (i) The mediation shall be conducted in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Incorporated (**AMINZ**) then in force (or any protocol or mediation agreement which replaces it).
 - (ii) The mediation shall be conducted by a mediator and at a fee agreed in writing by the Disputing Parties. Failing agreement between the Disputing Parties within 14 calendar days of the giving of the notice requiring mediation, the mediator will be selected and his or her fee determined by the chairperson for the time being of AMINZ (or his or her nominee).
 - (iii) The mediation shall take place in Auckland, New Zealand at such address as determined by the mediator, provided that any Disputing Party may, if permitted by the mediator, attend via telephone conference, video conference or any similar means of electronic, audio or audio-visual communication.
 - (iv) The costs of the mediation, excluding the Disputing Parties' own legal and preparation costs, will be shared equally by the Disputing Parties.

- (c) No Disputing Party may initiate or commence court or arbitration proceedings relating to a Dispute unless it has complied with the procedure set out in this clause 22, provided that application may still be made to the courts:
 - (i) for interlocutory relief; or
 - (ii) to recover a debt payable.

23. Amendments

- 23.1 NMS reserves the right to amend these Terms and Conditions at any time by giving written notice to each Subscriber. Any Subscriber who continues to use the Website and/or the Platform after any amendments will be deemed to have agreed to such amendments.
- 23.2 If a Subscriber does not agree with the amendments effected by NMS it may, within 7 calendar days of the amendments being notified by NMS and only if those changes prejudice that Subscriber, cancel these Terms and Conditions in respect of that Subscriber by giving written notice to NMS.
- 23.3 On a cancellation under clause 23, any Fees already paid by the Subscriber will be non-refundable (except where agreed otherwise in writing between the Subscriber and NMS).

24. Changes to the Website and Platform

- 24.1 NMS is permitted (in its sole and absolute discretion) to alter the Website and/or the Platform, including all content, format, features and functionality, with or without notice to Subscribers and shall incur no liability for doing so.

25. Branding

- 25.1 No Subscriber may publish or use NMS's trade marks, brand, branding or logos except with NMS's prior written consent and directions as to such publication and use (which may be given or withheld at its sole and absolute discretion).

26. Suspension of accounts

- 26.1 Without limiting its rights under clause 9 of these Terms and Conditions, if a Subscriber does not comply with these Terms and Conditions (including, for the avoidance of doubt, the obligation to pay the Fees) NMS may suspend that Subscriber's account with NMS and refuse to provide its products and/or services to that Subscriber (including access to the Platform).

27. Breakdown and malfunctions

- 27.1 NMS will try to promptly address (during normal business hours) all technical issues that arise on the Website and Platform. However, NMS will not be liable for any loss or damage suffered as a result of any partial or total breakdown of the Website and/or the Platform or any technical malfunctions on it, the Website and/or the Platform being unavailable or performing slowly, or any viruses or other forms of interference that may damage any Subscriber's computer system.

28. Privacy policy

NMS's privacy policy (which can be viewed by clicking [here](#)) shall apply to all information, data or other content which is generated through each Subscriber's use of the Website and Platform.

29. Links

- 29.1 Unless expressly stated otherwise in writing by NMS, any link on the Website and/or the Platform to other websites or Platforms does not imply any endorsement, approval and/or recommendation of those sites, their operators or their products and/or services.

30. Foreign use

- 30.1 NMS makes no representation or warranty that the Website and/or the Platform is appropriate or available for use in all countries or that the content satisfies the laws of all countries. All Subscribers are responsible for ensuring that their access to and use of the Website and Platform, and the marketing of the Subscriber's products and services, is not illegal or prohibited in their relevant country.

31. No waiver

- 31.1 NMS will not be deemed to have waived any right under these Terms and Conditions unless the waiver is in writing and signed by NMS. A failure to exercise or delay in exercising any right by NMS under these Terms and Conditions will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in these Terms and Conditions.

32. Assignment

- 32.1 No Subscriber shall be permitted to assign or transfer any of their rights or obligations under these Terms and Conditions without NMS's prior written consent. NMS shall be entitled (in its sole and absolute discretion) to assign and transfer any of its rights or obligations under these Terms and Conditions, and the consent of Subscribers shall not be required for any such assignment or transfer.

33. Consumer Guarantees Act 1993

- 33.1 Each Subscriber agrees that it is using the Website and Platform for the purposes of a business and that, accordingly, the Consumer Guarantees Act 1993 does not apply to these Terms and Conditions.

34. Limitation of liability

- 34.1 To the extent that NMS is liable for any reason for any loss suffered or liability incurred by a Subscriber arising from any breach of these Terms and Conditions, or for any other reason (including a Subscriber's use of or reliance on the Website and/or the Platform), NMS liability's (whether arising in contract, tort (including negligence) or otherwise) is limited to the maximum aggregate amount of the total Fees paid by that Subscriber.

35. Exclusion

- 35.1 NMS shall not be liable in connection with these Terms and Conditions for any indirect, consequential or special loss or damage, loss of revenue, economic loss or damage, loss of business or profits (including lost contracts with customers) or anticipated business or profits, loss of goodwill, loss of anticipated savings or for any business interruption or that is otherwise too remote to be recoverable as damages for breach of contract at law.

36. Further assurances

- 36.1 Each Subscriber will sign all documents, and do all things, as may reasonably be required in order to give effect to the provisions of these Terms and Conditions.

37. Severability

- 37.1 If any provision in these Terms and Conditions becomes invalid or unenforceable, the remainder of these Terms and Conditions will remain valid and enforceable to the fullest extent permitted by law.

38. No contractual privity

- 38.1 Nothing in these Terms and Conditions creates any contractual privity rights or third party beneficiary rights in any third party under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 or otherwise.
- 38.2 Each Subscriber acknowledges and agrees that:
- (a) NMS is not the provider of the Subscriber's products or services and nor is it an agent of any Subscriber;
 - (b) any purchase of products or services by any customer of the Subscriber shall be and remain between that customer and the Subscriber, and not NMS; and
 - (c) it must take full responsibility and liability for its sales of its products and services to its customers.

39. Governing law and jurisdiction

- 39.1 These Terms and Conditions will be governed by and construed in accordance with the laws of New Zealand.
- 39.2 All Subscribers and NMS irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to these Terms and Conditions.

40. Interpretation

- 40.1 In these Terms and Conditions, the following rules of interpretation apply:
- (a) References to **persons** include natural persons, companies and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
 - (b) **Headings** have been inserted for convenience only and will not affect the interpretation of these Terms and Conditions.
 - (c) References to **clauses** are to those in these Terms and Conditions, except where specified otherwise.
 - (d) References to the words **including**, **include** or similar words do not imply any limitation and are deemed to have the words **without limitation** following them.
 - (e) References to a **statute** or **statutory provision** means a New Zealand statute or statutory provision as amended, consolidated and/or replaced from time to time.
 - (f) A **gender** includes each other gender and the **singular** includes the plural and vice versa.
 - (g) An obligation **not to do anything** includes an obligation not to suffer, permit or cause that thing to be done.

- (h) References to **intellectual property** means all intellectual property, proprietary and industrial rights of any nature (whether existing in statute, at common law or in equity), including all copyright and trade marks.
- (i) References to any **content, warranties, representations, statements, information, facts, data** and **details** of or from the Subscriber include its oral or written form of presentation.
- (j) **Derivations** of any defined word or term shall have a corresponding meaning.
- (k) No **rule of construction** (including the contra proferentem rule) applies to the disadvantage of a party because that party (or its relevant advisor) was responsible for the drafting of these Terms and Conditions.

Terms and Conditions

Dated:

Parties

NMS-New Media Solution Limited (company number 9188120) (**NMS**)

[Person/Entity] [(company number [])] (the **Subscriber**)

Confirmation of agreement

The Subscriber and NMS hereby agree to be bound by the Terms and Conditions **attached** in the schedule to this agreement.

Execution

**Signed by NMS-New Media
Solution Limited**

Signature

Name

Position

**Signed by
the Subscriber**

Signature

Name (if a company):

Position (if a company):

Schedule | Terms and Conditions

(attached)