



SaaS AGREEMENT

DATE [Date]

PARTIES

- 1 **Open Data Model Limited**, New Zealand company number 5706668 (**Supplier**)
- 2 [**Subscriber**] (**Subscriber**)

SECTION A: AGREEMENT AND KEY DETAILS

AGREEMENT

The Supplier agrees to provide, and the Subscriber agrees to buy, the Open Data Model® Software as a Service offering (**ODM**), and related services, on the terms of the Agreement. The Agreement comprises:

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

KEY DETAIL

Item	Detail
Start Date	[]
End Date	Start Date plus 12 months.

Unless terminated in writing by the Subscriber at least one month prior to the End Date, the Agreement will roll over annually on the anniversary of the Start Date for a further period of one year on the same terms.

Item	Detail
SaaS Services	<p data-bbox="454 383 673 409"><i>As at the Start Date:</i></p> <p data-bbox="454 450 903 477">1 PERMITTED MODEL CREATION</p> <p data-bbox="454 504 1409 568">From the Start Date the Subscriber will have the right to create one canonical data model (CDM) within their private Subscriber domain of the ODM.</p> <p data-bbox="454 607 1034 633">2 DESIGNATION OF CDM ADMINISTRATORS</p> <p data-bbox="454 660 1398 725">The Subscriber will be required to assign one or more people as the Administrator of the CDM.</p> <p data-bbox="454 763 936 790">3 PERMITTED USER REGISTRATION</p> <p data-bbox="454 817 1433 1142">The Administrator of the CDM will have the right to invite Registered Members of the ODM to become members of their CDM. The Administrator will have the right to assign user roles to Registered Members they invite to become members of their CDM. These roles give the Registered Members who accept the invitation to join the CDM various rights. These roles may include the right to create and edit content in the CDM, create and edit Business Glossary entries, review and approve content, post and reply to comments on the discussion boards, import database schemas and provide mappings to and from the CDM and Business Glossary. Other rights may be made available to existing or new user roles over time.</p> <p data-bbox="454 1180 1272 1207">4 RESPONSIBILITY FOR MANAGING MEMBERSHIP OF THE CDM</p> <p data-bbox="454 1234 1417 1449">The Administrator of the CDM will be solely responsible for the membership of the CDM. The will have the ability and be required to remove members from the CDM membership that for whatever reason they no longer wish to have access. Removing a member from the CDM membership means they will no longer have access rights to the CDM. However, they will remain as Registered Members of the ODM. Removing a Registered Member from the ODM is the sole right and responsibility of the Supplier.</p> <p data-bbox="454 1487 970 1514">5 CREATION OF ADDITIONAL MODELS</p> <p data-bbox="454 1541 1433 1682">If agreed in writing with the Supplier, the Subscriber may have the right to create additional Data Models within their private Subscriber domain of the ODM. The creation of additional models may incur additional fees. Each additional model will require the same appointment of Administrators and management of membership as noted for the CDM.</p> <p data-bbox="454 1720 652 1747">6 TRAINING</p> <p data-bbox="454 1774 1409 1948">Extensive training materials are available on-line for all functions provided in the ODM. Training material can be viewed on line or downloaded. In the public domain, there are a number of Special Interest Groups (SIGs) that create models around specific areas of interest. The discussion forums in the public domain are a valuable source of information on how to make best use of the ODM functionality.</p>

Item	Detail									
SaaS Services	<p>7 SUPPORT</p> <p>There is a Support SIG manned by Supplier staff and discussion boards available in that SIG that allow any member of the ODM to interact with the Supplier support staff.</p> <p>8 NEW FUNCTIONALITY</p> <p>New functionality is continually being added to the ODM. The ODM does not version non-critical upgrades to the functionality. Periodically a significant new capability will be added. If the use of that capability would not significantly affect the resource consumption by the Subscriber such functionality would be made available under the terms of the Agreement. In the event the use of the new capability would potentially result in significantly increased resource consumption by the Subscriber the ODM will give the Subscriber the option to use or not use that new capability. The choice to use the new capability may be accompanied by an increase in the Fees. As a general principle, the Supplier’s policy is to provide additional functionality at no additional charge to the Subscriber but the Supplier reserves the right to renegotiate fees if the use of the functionality might have a significant impact on resource consumption by the Subscriber.</p>									
Related Services	NA									
Fees and Payment Terms	<p>SaaS Service</p> <table border="1" data-bbox="446 1153 1420 1590"> <thead> <tr> <th data-bbox="446 1153 750 1198">Fees</th> <th data-bbox="750 1153 1085 1198">Invoice date</th> <th data-bbox="1085 1153 1420 1198">Payment date</th> </tr> </thead> <tbody> <tr> <td data-bbox="446 1220 750 1411">*NZD \$2,500 per month (1 year term), payable annually in advance in one sum. This covers up to 25 Permitted Users.</td> <td data-bbox="750 1220 1085 1265">End of month</td> <td data-bbox="1085 1220 1420 1332">Payment is due electronically by 20th of month following invoice</td> </tr> <tr> <td data-bbox="446 1433 750 1579">Each additional Permitted User: NZD100 per month (payable for the balance of the then current term).</td> <td></td> <td></td> </tr> </tbody> </table> <p>Related Services</p> <p>NA</p> <p>Related Services may be requested by the Subscriber during the term of the Agreement and additional Fees will apply to those services.</p>	Fees	Invoice date	Payment date	*NZD \$2,500 per month (1 year term), payable annually in advance in one sum. This covers up to 25 Permitted Users.	End of month	Payment is due electronically by 20 th of month following invoice	Each additional Permitted User: NZD100 per month (payable for the balance of the then current term).		
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Each additional Permitted User: NZD100 per month (payable for the balance of the then current term).										
Website	https://opendatamodel.com/									
Email addresses for	<p>The Supplier: rodger.nixon@opendatamodel.com</p> <p>Subscriber: <i>[Insert email address]</i></p>									

SIGNED

SIGNED for and on behalf of)
Open Data Model Limited by:)

Authorised signatory
Rodger Nixon

SIGNED for and on behalf of)
[INSERT FULL LEGAL NAME] by:)

Authorised signatory

Print full name

SECTION B: GENERAL TERMS

1 INTERPRETATION

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

Term	Meaning
Agreement	Section A (Agreement and Key Details, including the cover page and signature clauses) and Section B (General Terms).
Confidential Information	the terms of the Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement. Intellectual Property owned by the Supplier (or its licensors), including the Open Data Model® Software, is the Supplier's Confidential Information. The Data is the Subscriber's Confidential Information.
Data	all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of the Subscriber that is stored using, or inputted into, the Services.
End Date	the end date set out in the Key Details.
Fees	the fees set out in the Key Details, as updated from time to time in accordance with clause 5.4.
Force Majeure	<p>an event that is beyond the reasonable control of a party, excluding:</p> <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	<p>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.</p>
Key Details	the Agreement specific details set out in Section A of the Agreement.
Objectionable	includes being objectionable, defamatory, obscene, harassing, threatening, or unlawful in any way.

Term	Meaning
Open Data Model® Software	the proprietary software owned by Open Data Model LLC and licensed by the Supplier comprising a comprehensive set of database application design, development and deployment functions to be accessed and used by Registered Members to create, view, update, modify and delete application database design and development artefacts and to collaborate with other Registered Members in carrying out these activities.
Permitted Users	those Registered Members, and personnel of the Subscriber who are authorised to access and use the Services on the Subscriber's behalf in accordance with clause 3.3.
Personal Information	has the meaning given in the Privacy Act 1993.
Related Services	any related service described in the Key Details and any further services that the Supplier agrees to provide to the Subscriber under the Agreement.
Registered Member	any legal entity that has completed the registration process and remains a member in good standing as determined by the Supplier according to its registration agreement set out at opendatamodel.com .
SaaS Service or ODM	the service having the core functionality described in the Key Details. The SaaS Service is described in more detail on the Website, as the Website is updated from time to time.
Services	the SaaS Service and any Related Service.
Start Date	the start date set out in the Key Details.
Underlying Systems	the Open Data Model® 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 Subscriber by the Supplier.
Year	A 12-month period starting on the Start Date or the anniversary of that date.

1.2 Interpretation: In the Agreement:

- a. clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- 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** include officers, employees, contractors and agents, but a reference to the Subscriber'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
- e. if there is any conflict between Section B and Section A of the Agreement, Section B prevails unless expressly stated otherwise in Section A.

2 SERVICES

2.1 **General:** The Supplier must use best efforts to provide the Services:

- a. in accordance with the Agreement and New Zealand law;
- b. exercising reasonable care, skill and diligence; and
- c. using suitably skilled, experienced and qualified personnel.

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

2.3 **Availability:**

- a. The Supplier will use reasonable efforts to ensure the SaaS Service is available on a 24/7 basis. However, it is possible that on occasion the SaaS Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. The Supplier will use reasonable efforts to publish on the Website advance details of any unavailability.

2.4 **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.

2.5 **Additional Related Services:**

- a. The Supplier may, from time to time, make available additional services to supplement the SaaS Service.
- b. At the request of the Subscriber and subject to the Subscriber paying the applicable Fees, the Supplier may agree to provide to the Subscriber an additional Related Service on the terms of the Agreement.

3 SUBSCRIBER OBLIGATIONS

3.1 **General use:** The Subscriber and its personnel must:

- a. use the Services in accordance with the Agreement solely for:
 - i. the Subscriber's own internal business purposes or statutory functions, as the case may be; and
 - ii. lawful purposes (including complying with the Unsolicited Electronic Messaging Act 2007), and
- b. not resell or make available the Services to any third party, or otherwise commercially exploit the Services.

3.2 **Access conditions:** When accessing the SaaS Service, the Subscriber and the Permitted Users must:

- a. not impersonate another person or misrepresent authorisation to act on behalf of others or the Supplier;
- b. correctly identify the sender of all electronic transmissions;
- c. not attempt to undermine the security or integrity of the Underlying Systems;
- d. not use, or misuse, the SaaS Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the SaaS Service;

- e. not attempt to view, access or copy any material or data other than that which the Subscriber is authorised to access;
- f. neither use the SaaS Service in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and
- g. comply with any terms of use on the Website, as updated from time to time by the Supplier.

3.3 **Personnel:**

- a. Without limiting clause 3.2, no individual other than a Permitted User may access or use the SaaS Service.
- b. The Subscriber may authorise any Registered Member to be a Permitted User.
- c. The Subscriber must procure each Permitted User's compliance with clauses 3.1 and 3.2
- d. A breach of any term of the Agreement by the Subscriber's personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of the Agreement by the Subscriber.

- 3.4 **Authorisations:** The Subscriber is responsible for procuring all licences, authorisations and consents required for it and the Permitted Users to use the Services, including to use, store and input Data into, and process and distribute Data through, the Services.

4 **DATA**

4.1 **Supplier access to Data:**

- a. The Subscriber acknowledges that:
 - i. the Supplier may require access to the Data to exercise its rights and perform its obligations under the Agreement; and
 - ii. to the extent that this is necessary but subject to clause 7, the Supplier may authorise a member or members of its personnel to access the Data for this purpose.
- b. The Subscriber must arrange all consents and approvals that are necessary for the Supplier to access the Data as described in clause 4.1a.
- c. The Subscriber warrants that no Data infringes the rights of any third party (including Intellectual Property Rights and privacy rights) and that the Data is not Objectionable, incorrect or misleading.

4.2 **Agent:**

- a. The Subscriber acknowledges and agrees that to the extent Data contains Personal Information, in collecting, holding and processing that information through the Services, the Supplier is acting as an agent of the Subscriber for the purposes of the Privacy Act 1993 and any other applicable privacy law.
- b. The Subscriber 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.

- 4.3 **Backups of Data:** The Supplier will take standard industry measures to back up all Data stored using the Services.

- 4.4 **International storage of Data:** The Subscriber 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 FEES

- 5.1 **Fees:** The Subscriber must pay to the Supplier the Fees. Fees are not refundable if Registered Members or Permitted Users leave a CDM or the ODM.
- 5.2 **Invoicing and payment:**
- a. The Supplier will provide the Subscriber with valid GST tax invoices on the dates set out in the Payment Terms, or if there are none, monthly in arrears for the Fees due in the previous month.
 - b. The Fees exclude GST, which the Subscriber must pay on taxable supplies under the Agreement.
 - c. The Subscriber 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 a manner reasonably required by the Supplier, in cleared funds without any set off or deduction.
- 5.3 **Overdue amounts:** The Supplier may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by the Supplier's primary trading bank as at the due date (or, if the Supplier's primary trading bank ceases to quote that rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.
- 5.4 **Increases:**
- a. By giving at least 30 days' notice, the Supplier may increase the Fees once each Year (but not the first Year) by the percentage change in the New Zealand Consumer Price Index (or similar or equivalent index if that index ceases to be published) over the 12 months preceding the last quarterly publication of that index issued by Statistics New Zealand prior to the date of the notice. Fees updated under this clause are deemed to be the Fees listed in the Key Details.
 - b. If the Subscriber does not wish to pay the increased Fees, it may terminate the Agreement on no less than 10 days' notice, provided the notice is received by the Supplier before the effective date of the Fee increase. If the Subscriber does not terminate the Agreement in accordance with this clause, it is deemed to have accepted the increased Fees.

6 INTELLECTUAL PROPERTY

- 6.1 **Ownership:**
- a. Subject to clause 6.1b, title to, and all Intellectual Property Rights in, the Services, the Website, and all Underlying Systems is and remains the property of the Supplier (and its licensors). The Subscriber must not dispute that ownership.
 - b. Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the Subscriber. The Subscriber 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.
- 6.2 **Know how:** To the extent not owned by the Supplier, the Subscriber grants the Supplier a royalty-free, transferable, irrevocable and perpetual licence to use for the Supplier's own business purposes any know how, techniques, ideas, methodologies, and similar Intellectual Property used by the Supplier in the provision of the Services.
- 6.3 **Feedback:** If the Subscriber provides the Supplier with ideas, comments or suggestions relating to the Services or Underlying Systems (together **feedback**):

- a. all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by the Supplier; and
- b. the Supplier may use or disclose the feedback for any purpose.

6.4 **Third party Intellectual Property Rights indemnity:**

- a. The Supplier indemnifies the Subscriber against any claim or proceeding brought against the Subscriber to the extent that claim or proceeding alleges that the Subscriber'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 Subscriber:
 - 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 6.4a does not apply to the extent that an IP Claim arises from or in connection with:
 - i. the Subscriber'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 Subscriber 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.

7 **CONFIDENTIALITY**

7.1 **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 7.1a and 7.1b.

7.2 **Permitted disclosure:** The obligation of confidentiality in clause 7.1a 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 Official Information Act 1982 or 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 7.

8 WARRANTIES

- 8.1 **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.
- 8.2 **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 Contract and Commercial Law Act 2017) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to \$1,000.00; and
 - b. the Supplier makes no representation concerning the quality of the Services and does not promise that the Services will:
 - i. meet the Subscriber'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 Subscriber; or
 - ii. be secure, free of viruses or other harmful code, uninterrupted or error free.
- 8.3 **Consumer Guarantees Act:** The Subscriber agrees and represents that it is acquiring the Services, and entering the Agreement, in trade 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. The parties agree that it is fair and reasonable that the Consumer Guarantees Act 1993 does not apply to the supply of the Services or the Agreement.
- 8.4 **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.

9 LIABILITY

- 9.1 **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 Subscriber under the Agreement in the previous Year (which in the first Year is deemed to be the total Fees paid by the Subscriber from the Start Date to the date of the first event giving rise to liability). The cap in this clause 9.1 includes the cap set out in clause 8.2a.
- 9.2 **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.

9.3 **Unlimited liability:**

- a. Clauses 9.1 and 9.2 do not apply to limit the Supplier's liability:
 - i. under the indemnity in clause 6.4a; or
 - ii. under or in connection with the Agreement for:
 - iii. personal injury or death;
 - iv. fraud or wilful misconduct; or
 - v. a breach of clause 7.
- b. Clause 9.2 does not apply to limit the Subscriber's liability:
 - i. to pay the Fees;
 - ii. for breach of the warranty in clause 4.1c; or
 - iii. for those matters stated in clause 9.3aii.

9.4 **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.

9.5 **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.

10 **TERM, TERMINATION AND SUSPENSION**

10.1 **Duration:** Unless terminated under this clause 10, the Agreement:

- a. starts on the Start Date and ends on the End Date; but
- b. continues for successive terms of 12 months from the End Date unless a party gives at least 30 days' notice that the Agreement will terminate on the expiry of the then current term.

10.2 **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:
 - ii. remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - iii. capable of being remedied;
 - iv. 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
 - v. 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 6.4c are exhausted without remedying or settling the IP Claim, the Supplier may, by notice to the Subscriber, immediately terminate the Agreement.

10.3 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 Subscriber 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 Subscriber may request:
 - i. a copy of any Data stored using the SaaS Service, provided that the Subscriber 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.
 - iii. To avoid doubt, the Supplier is not required to comply with clause 10.3di to the extent that the Subscriber previously requested deletion of the Data.

10.4 **Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 1, 6, 7, 9, 10.3, 10.4 and 11, continue in force.

10.5 **Suspending access:** Without limiting any other right or remedy available to the Supplier, the Supplier may restrict or suspend the Subscriber's access to the SaaS Service where the Subscriber (including any of its personnel):

- 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).

10.6 **Notice:** The Supplier must notify the Subscriber where it restricts or suspends the Subscriber's access under clause 10.5.

11 DISPUTES

11.1 **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.

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

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

12 GENERAL

- 12.1 **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:
- immediately notifies the other party and provides full information about the Force Majeure;
 - uses best efforts to overcome the Force Majeure; and
 - continues to perform its obligations to the extent practicable.
- 12.2 **Rights of third parties:** No person other than the Supplier and the Subscriber has any right to a benefit under, or to enforce, the Agreement.
- 12.3 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.
- 12.4 **Independent contractor:** Subject to clause 4.2, the Supplier is an independent contractor of the Subscriber, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- 12.5 **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.
- 12.6 **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.
- 12.7 **Variation:** Any variation to the Agreement must be in writing and signed by both parties.
- 12.8 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to the Services, and supercedes 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.
- 12.9 **Subcontracting and assignment:**
- The Subscriber 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 Subscriber 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.
 - Any change of control of the Subscriber is deemed to be an assignment for which the Supplier's prior written consent is required under clause 12.9a. In this clause **change of control** means any transfer of shares or other arrangement affecting the Subscriber or any member of its group which results in a change in the effective control of the Subscriber.
- 12.10 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement.
- 12.11 **Counterparts:** The Agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the Agreement by signing and emailing a counterpart copy to the other party.