



Terms and Conditions

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Introduction

These Terms & Conditions contain general provisions that apply to all Services provided to you under the Customer Agreement. The Terms & Conditions form part of the Customer Agreement between you and Managed Hosted Applications Limited (trading as Lucidity).

1. Lucidity Responsibilities

1.1 Services

We will provide the Services to you:

- a. in accordance with any specifications and the Support Policy;
- b. by any time agreed in writing with you or otherwise within a reasonable time;
- c. using reasonable care and skill; and
- d. using people who have the necessary qualifications and/or experience.

1.2 Faults

If a Fault is identified in respect of the Services we must:

- a. promptly investigate the cause of the Fault or material defect (Service Problem);
- b. use best endeavours to meet the Restoration Times in respect of the Service Problem;
- c. take whatever action is reasonably necessary to minimise the impact of the Service Problem and prevent it from recurring.

You may be required to pay our standard charges if:

- a. we agree to work outside the hours agreed in the Support Policy or, if none apply, outside Business Hours;
- b. we find there is no fault; or
- c. we find that you the customer contributed to the fault.
- d. we find that the fault is a result of you not protecting yourself with MFA, anti-virus and anti-malware
- e. we provide assistance for a fault that is not related to Lucidity Services.

1.3 Suspension or Restriction of Services

Provided we give you as much notice as is reasonably practicable in the circumstances, we may at any time (including without notice) suspend all or part of a Service in the following circumstances:

- a. we are required to undertake regular scheduled or urgent maintenance of any part of our infrastructure affecting the Service including infrastructure or services supplied by our suppliers;
- b. we are required to comply with an order, instruction or request of government, the New Zealand Commerce Commission, emergency services or other competent authority and compliance with the order, instruction or request requires the suspension of all or part of the Service;
- c. a Force Majeure Event affects the provision of that Service.
- d. non-payment of services, hardware or support invoices for 30 business days from due date, with no notification from you to reasonably resolve outstanding invoices. (as per clause 4)

2. Customer Responsibilities

2.1 Cooperation

You will provide reasonable cooperation to enable us or our agents to install, repair, replace and maintain our Services.

2.2 Customer Equipment

Unless otherwise agreed in writing, you are responsible for any of your equipment or any item not provided, managed or maintained by us, and must ensure it is:

- a. technically compatible with the Services and will not harm our Services, Infrastructure or another customer's equipment; and
- b. connected to our Infrastructure and used in accordance with any relevant instruction, standard or law.

We may be unable to provide Services if these requirements are not met.

2.3 User of Services

You will:

- a. follow our and any manufacturers, reasonable directions about the use of the Services and connecting anything to our Infrastructure;
- b. adhere to any specific policies and/or terms and conditions described in the Product Specifications for our Services; and
- c. implement processes and procedures to limit the possibility of the Services being affected by any virus, worms or other destructive media.

2.4 Abuse and Fraud

You will use the Services for lawful purposes only and will not use the Services or allow anyone that has access to use them:

- a. for fraudulent or destructive purposes, including unauthorised or attempted unauthorised access, alteration, spamming, abuse or destruction of information; or
- b. in any manner that causes interference with the use of our Services.

2.5 Responsibility for Others

You acknowledge that you are responsible for your staff and any of your customers who access or use the Services, and will ensure that anyone you are responsible for also meets your obligations and responsibilities under the Customer Agreement. We will take reasonable precautions to preserve security although we will not be responsible for ensuring that the Services will not or cannot be misused by you or any third party.

3.0 Obligation of Confidentiality

Subject to clauses 1. and 2. each party must:

- a. take all steps necessary to maintain all Confidential Information of the other party in the strictest confidence;
- b. ensure that proper and secure storage is provided for the Confidential Information of the other party while in the possession or under the control of that party;
- c. take all precautions necessary to prevent accidental or wrongful disclosure of any of the Confidential Information of the other party;
- d. not directly or indirectly disclose any of the Confidential Information of the other party to any person other than those of that party's approved employees or officers who are required to receive and consider the Confidential Information
- e. use the Confidential Information of the other party and any notes solely for the Approved Purposes; not make any notes or allow any notes to be made except as necessary in connection with the Approved Purposes; and keep confidential the fact that Confidential Information has been provided by the other party.
- f. clause a. does not impose obligations on a party concerning Confidential Information which is or becomes part of the public domain (other than through any breach of these Terms and Conditions).
- g. a party may disclose Confidential Information of the other party which it is obliged by law to disclose provided that the party has first notified the other party that it is required to disclose the Confidential Information so that the other party has an opportunity to protect

the confidentiality of the Confidential Information. In such event, the first mentioned party must assist the other party in protecting the confidentiality of the Confidential Information to the maximum extent permitted by law.

4.0 Charges and Credits

4.1 Our Fees

Fees will be charged as set out in the relevant Customer Agreement(s), unless otherwise agreed, and using the details recorded by us. You will pay all our charges in relation to the Services, plus any applicable goods and services or similar taxes.

4.2 Commencement of Fees

We may begin invoicing you for the Services as agreed in the relevant Customer Agreement. Recurring Fees that are fixed may be billed one month in advance, otherwise Fees are normally billed in arrears.

4.3 Payment

Unless otherwise agreed, you must pay all undisputed Fees by the Due Date, without set-off or deduction. Payment may be made by cash, direct credit or as otherwise agreed with us. Recurring fees are non-refundable. We may request payment in advance for Managed Services, hardware or project work and withhold the Services, hardware or project work until the requested advanced payments have been paid in full.

4.4 Disputed Fees

If you dispute a Fee in good faith, you may withhold payment of that Fee if you:

- a. pay all undisputed Fees by the Due Date;
- b. provide us with a written explanation of the reasons for your dispute of the Fee within 60 days of receiving an invoice of any dispute.;
and
- c. cooperate with us to promptly resolve the disputed Fee;

If both parties are unable to resolve the dispute pursuant to point (c), the parties will attempt to resolve the dispute in accordance with the process set out in clause 9. Where it is resolved that the dispute relates to billing errors, we may credit or debit, as applicable, the net difference between any discovered overcharge or undercharge.

We will not accept a dispute greater than 90 days after the invoice on which that disputed item is charged.

Withholding of payment for hardware supplied will result in us repossessing the hardware supplied at your expense, as per clause 7.5.

4.5 Late Payment

We reserve the right to take the necessary steps to either recover the overdue payments or protect ourselves from incurring additional costs. The following steps may be taken:

- a. all fees which are not subject to a genuine dispute but remain unpaid 10 days after the due date for payment; or
- b. disputed under clause 4.4 but which we have determined does not contain an error and that remains unpaid for 10 days after the date of our notice to you under clause 4.4, are subject to interest charged on a monthly basis from the Due Date for payment until the date on which you make payment in full. Interest is calculated on a daily basis using the following formula: New Zealand Reserve Bank "Official Cash Rate" (as at the due date of the payment) plus 2% per annum. In addition to such interest, you agree to pay any costs that are incurred by anyone (including agents) in recovering the money you owe or in exercising any other rights, including recovery of commissions and legal costs on a solicitor and client basis.
- c. if the unpaid fees remain overdue in excess of 10 days, we reserve the right to withhold services that may incur additional charges.

- d. if the unpaid fees remain overdue in excess of 20 days, we reserve the right to withhold ALL support services to you and/or to the end user for which the payment is overdue.
- e. if the unpaid fees remain overdue in excess of 30 days, we reserve the right to suspend the use of all of our services to the end user for which the fees remain unpaid.

4.6 Credit Approval

In some cases, you may need to pay a deposit or provide a guarantee as security for paying future charges. If you exceed any credit limit applied by us, we may restrict or suspend all or part of the Services without notice to you, however, you will remain liable for all Fees and any unpaid interest accrued pursuant to clause 4.5 incurred in excess of the credit.

4.7 Changes to Fees

We may change the Fees:

- a. if we agree to change the Services at your request; or
- b. if due to a third-party action or omission, our costs to provide the Services to you is increased, provided we give you at least one months' notice of the change in the Fees.
- c. Lucidity reserves the right to change the cost of Services provided to You, provided we give you at least one months' notice of the change in Fees.

4.8 Estimates

All prices stated in the Customer Agreement are the correct prices unless it is stated that they are estimates. Where it is stated that an amount is an estimate, you acknowledge that an estimate does not foresee every circumstance. We will advise you in writing if we believe an estimate will be exceeded.

4.9 Quotes

Where we give you a quote in relation to Services the quote will remain valid for 30 Days from the date it is given, unless stated otherwise in the quote. However, we may vary or withdraw a quote at any time before you accept it by notice in writing.

5.0 Transition out services

5.1 Our Obligations

On request by you and at your expense (to be agreed with us in advance pursuant to clause 5.3), we will:

- a. provide you or your nominee with cooperation, assistance, advice, explanations and information reasonably requested by You;
- b. comply with reasonable directions, to ensure the completion and orderly cessation of Services up to the termination or expiry date of the relevant Customer Agreement.

5.2 Scope

Without limiting the generality of clause 5.1, the Transition Out Services may include:

- a. developing or modifying, together with you, a plan for the continuity and orderly transition of responsibility for the Services to you or another service provider;

- b. continuing to provide Services, for a reasonable period (as agreed between the parties) of up to six months following expiry or termination of the Customer Agreement, any or all of the Services or the terminated Service on the same terms as applied to those Services under the relevant Customer Agreement. The Fees payable in respect of the Services during that period shall be agreed between the parties if not provided for in the relevant Customer Agreement(s) or, failing such agreement, shall be those Fees described in our Recommended Retail Pricing;
- c. we may request advanced payment for Managed Services, hardware or project work as per Clause 4.2
- d. providing all documentation, details of data formats and fields (including database schema), reasonably necessary or desirable to ensure the efficient continuity and transition; and
- e. providing data, documentation and records to you or your nominee.

5.3 Fees

Transition out services and effort are not part of the normal Customer Agreement. The cost of providing Transition Out services will be subject to reasonable additional charges.

6. Property Rights

6.1 Intellectual Property

We either own, or are licensed to use, the copyright in any software, manuals or other literary works that we may provide to you and that are utilised in the provision of the Services.

6.2 Title to Software, Equipment and Numbers

Unless specifically stated in any agreement to which we are a party, we or our suppliers retain title and all property rights. You do not own and will not acquire any right of ownership to any Service, intellectual property or software provided by us. This includes any copies of or improvements, developments, modifications or changes to them, or to any patents, copyrights, trademarks, Internet Protocol or other electronic addresses, numbers or codes allocated to you. You may not sell, license or provide any of these to anyone else without our permission.

6.3 Changes to Addresses, Numbers or Codes

After giving you not less than 1 months' notice, we may change any electronic address, number or other code allocated by us to you, but only if it is reasonably necessary to do so.

6.4 Software License

We grant you a non-exclusive and non-transferable license (or in the case of software licensed to us, a sublicense) to use software provided with the Services, including any related documentation during the term of the Customer Agreement. These licenses or sublicense are solely for your own internal business use and for the purposes for which it is provided, and otherwise in accordance with the applicable licensing requirements. The terms and conditions of the software licenses or sublicenses may be provided to you through click or shrink-wrap agreements. We may suspend, block or terminate your use of any software if you fail to comply with any applicable licensing requirement.

Any software services provided to you, from Microsoft, via Lucidity are governed by the Microsoft Customer Agreement latest terms and conditions. These can be found at <https://www.microsoft.com/licensing/docs/customeragreement>

6.5 Upgrades

We may provide upgrades or new versions of software, charged or at no additional charge to you upon our discretion. We may review the Services provided to you and at our discretion may require you to migrate to a new version of the Services.

6.6 Restrictions

Unless expressly permitted under the applicable licensing terms and conditions, you are not granted any right to:

- a. use software or Services provided by us for or on behalf of third parties or for time share or service bureau activities;
- b. any source code, and you must not reverse engineer, decompile, modify, enhance, or copy software provided by us, or prepare any derivative works from such software; or
- c. modify Services or combine Services with any other goods or services not provided by us without our prior consent.

6.7 Indemnity by Us

Subject to Clause 6.6, We indemnify you and your representatives against any direct losses, damages, liabilities, claims and expenses (including but not limited to legal costs) reasonably incurred by you arising out of:

- a. any injury (including illness) to or death of any person, and any loss of or damage to your or a third party's property, real or personal, caused by any negligent act or omission by us or our Representatives; and
- b. the fraudulent or willful misconduct (whether by act or omission) or dishonest conduct by us or our Representatives in relation to the Customer Agreement or the Services; and
- c. a claim by a third party against You that the Services or any material provided by us under the Customer Agreement infringes the intellectual property rights of the third party, provided that You immediately notify us of any such claim and, at our request, allows us to defend and settle the claim at our own expense and in our own name.
- d. You acknowledge that all internet, backup, cloud and hosted Services are provided on an "as is, as available" basis. We give no warranty, expressed or implied, for the Services, including any reimbursement for losses of income due to disruption of Services by Us or our providers and you irrevocably, waive all right to claim for lost business income because of interruptions to Services provided by Us.
- e. To the extent permitted by law the respective aggregated liability per event giving rise to a claim will be limited to \$50,000.

6.8 Indemnity by You

Subject to the Customer Agreement, you indemnify Us and our Representatives against all losses, damages, liabilities, claims and expenses (including but not limited to legal costs) incurred by us and our Representatives arising out of or in connection with:

- a. any act or omission by You, or your Representatives.
- b. any injury to (including illness) or death of any person, and any loss of or damage to our or a third party's property, real or personal, caused by any act or omission of Yours or your Representatives;
- c. the fraudulent or willful misconduct (whether by act or omission) or dishonest conduct by you or your Representatives in relation to these Terms and Conditions or the Services; and
- d. any claim by a third party alleging damage or loss to that third party, or infringement of that third party's intellectual property due, to:
 - i. use of the Services in combination by any means and in any form with software or equipment not specifically approved by us or in a manner or for a purpose not reasonably contemplated or authorised by us;
 - ii. modification or alteration of any part of the Services by any person other than us without our prior written consent; or
 - iii. use of any Third-Party Materials.

6.9 Notification of Infringement

You will notify us as soon as possible of any actual, threatened or suspected infringement of our intellectual property rights and of any claim that use of the Service infringes the rights of any other entity.

In the event of any claim under this clause, we must at our own expense and with the written consent of you, use our best endeavours to:

- a. procure for you, on reasonable commercial terms, the right to continue to use the whole, or the relevant part, of the Services; or

- b. replace or modify the Services in a manner acceptable to you such that the quality, performance or usefulness of the Services is not degraded and so that the infringement or alleged infringement ceases.

7. Termination

7.1 Termination by Default

Either party may terminate the Customer Agreement without liability immediately by written notice to the other if:

- a. the other party is affected by an Insolvency Event;
- b. any of the representations or warranties in the Customer Agreement by the other party proves to be inaccurate or untrue in any material respect; or
- c. the other party commits a material breach of the Customer Agreement and (if the breach is capable of remedy) fails to rectify that breach within 10 Business Days after receiving written notice.

7.2 Termination by You

You may terminate a Service without liability immediately by written notice to us if we:

- a. register a Severity One for a Service for a period of 3 or more consecutive months; or
- b. register a Severity One for a Service for 3 months in any 6-month period commencing on the date of first non-compliance,
- c. register a Severity Two for a Service for a period of 6 or more consecutive months

Provided that the registering of any Severity Level(s) is not the result of Extraordinary Circumstances, a Force Majeure Event or outages scheduled by us and notified to you in advance.

Termination of a Service by you under this clause will not affect the continuation of the Customer Agreement in respect of any other Service.

7.3 Termination at Any Time

Any Customer Agreements may be terminated in full or in part:

- a. at any time by you on 3 months' written notice to us subject to Clause 7.4.
- b. at any time after the Service Term for that Service, by us on 3 months' written notice to you
- c. where notice given in accordance with clause 7.1 results in the last remaining Customer Agreement being terminated, these Terms and Conditions will automatically terminate on the same date the Customer Agreement terminates

7.4 Termination Charges

If you cease taking all or any part of our Services from us before the end of the Service Term for the relevant Services, then for the purposes of this clause, you will be deemed to have terminated such Services from the date on which you last obtained such Services and we will become entitled to claim Termination Charges in respect of them.

You acknowledge and agree that our Termination Charges in these circumstances are a genuine pre-estimate of our loss arising from early termination of all or part of the Customer Agreement during the relevant Service Term. Termination Charges are payable in the same manner as Fees under clause 4.

7.5 Return of Software/Hardware

Upon termination or expiry of the Customer Agreement, you will surrender and immediately return to us any software/hardware provided by us, including all copies. If you fail to do this within 10 Business Days of our request for the return of our software/hardware, you agree that we may either:

- a. charge you a reasonable amount for rental of the software/hardware from the date on which we first requested the return of the software/hardware until the date that you return it to us; or
- b. act (or send our agents to act) as your agent to enter any premises we reasonably believe contains that software/hardware to recover it, without incurring any liability to you or anyone else, and in that case, you must pay our costs, including legal costs on a solicitor and client basis, in exercising this right.

7.6 Security of Interest

You acknowledge that we have a security interest in any goods as the term is defined in the Personal Property Securities Act 1999 provided by us under the Customer Agreement until you have paid for the goods in full. You acknowledge that any agreed goods purchased or requested constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999.

7.7 Continuing Rights and Responsibilities

Termination of the Customer Agreement does not affect any rights and responsibilities under the Customer Agreement which are intended to continue or come into force after the Customer Agreement ends.

8. Liability

8.1 Warranties Excluded

Unless otherwise expressly stated in the Customer Agreement, all warranties, representations or conditions relating to Services (whether expressed, implied or whenever arising) whether originating in statute, law, trade, custom, or otherwise that would (but for this clause) apply, are expressly excluded to the fullest extent permitted by law.

8.2 Exclusions and Limitations

Neither Party (or any of its Related Companies or Representatives) will be liable to the other Party (or its Related Companies) under or in relation to the Customer Agreement or otherwise, and whether arising out of a claim in tort (including negligence), contract or statute, for any indirect or consequential loss or damages or for any loss or corruption of data, loss of business, loss of revenue, loss of profit, loss of goodwill, or loss of savings or anticipated savings. Additionally, if you have not procured backup services from Lucidity, you will hold Lucidity harmless against all liability related to any business arising from failure to provide the backup services.

Unless otherwise expressly stated in any Customer Agreement, the maximum liability of us under or in relation to these Terms and Conditions, or otherwise, and whether arising out of a claim in tort (including negligence), contract or statute is limited to an amount equal to the total Fees for the affected Services in the 3 month period preceding the month in which the relevant cause of action arose, but in any event not more than an aggregate total of 20% of the total Fees for the affected Services in any 12 month period for all causes of action arising in that period.

Neither we nor our Representatives will be liable to you for any failure of, defects in, or damage caused to you or any other person by, any Third-Party or Third-Party Materials.

8.3 Transmission Over Our Network

You will indemnify and exempt Us and our Related Companies harmless from and against all loss, liability, damage and expense, including solicitor's fees on a solicitor and own client basis, that is suffered by us and/or our Related Companies as a result of any illegal use by yourself, actual or threatened claim by a third party (including a claim in defamation, infringement of property rights, invasion of privacy or access to or alteration of private records and data) arising from the transmission of information, data, or messages transmitted over Our Network by you, or by your customers or agents using Services provided to you.

8.4 Force Majeure

Neither Party will be liable for any failure or delay in complying with any obligation under the Customer Agreement (excluding any payment obligation) if:

- a. the failure or delay arises from a Force Majeure Event;
- b. the affected Party, on becoming aware of the Force Majeure Event, promptly notifies the other Party in writing of the nature of, the expected duration of, the obligation(s) affected by, and the steps being taken by that Party to mitigate, avoid or remedy, the Force Majeure Event; and
- c. the affected Party uses its best endeavours to:
 - i. mitigate the effects of the Force Majeure Event on that Party's obligations under these Terms and Conditions;
 - ii. perform that Party's obligations which are not affected by the Force Majeure Event; and
 - iii. Perform that party's obligations under these Terms and Conditions on time despite the Force Majeure Event.

Performance of an obligation affected by a Force Majeure Event will be resumed as soon as practicable after the termination or abatement of the Force Majeure Event.

9. Dispute Resolution

Each Party will immediately notify the other to the Notices address of the existence of any dispute relating to these Terms and Conditions and will attempt to resolve the dispute through good faith discussions between your account manager as assigned by us, and your designated contact person to us as assigned by you. If the dispute is not resolved at that level within 14 days, the dispute may be referred by either Party to the senior management or executives of the Parties and both Parties will then use their respective best endeavours to resolve the dispute within a further 14 Business Days.

If the dispute is unable to be resolved by the senior management or executives of the Parties, it will be referred to an independent mediator appointed by agreement between both parties.

If both parties cannot agree on an independent mediator within 5 Business Days of the time lapsing for the senior management or executives of both Parties to resolve the dispute (unless we agree to a longer period), then an independent mediator will be appointed by the President for the time being, or his or her nominee, of the New Zealand Law Society to mediate the dispute. The independent mediator so appointed shall be a member of Lawyers Engaged in Alternative Dispute Resolution.

The Parties agree that the outcome of the mediation will not be binding on the Parties unless the parties execute a written mediated settlement agreement. While following the above procedures to resolve the dispute, neither Party is relieved from its obligations under the Customer Agreement and the Customer Agreement remains in full force and effect.

In the event mediation fails to resolve the dispute within 14 Business Days of the mediator's appointment, either party may refer the dispute to final and binding arbitration, by a single arbitrator appointed by agreement of the parties, and failing said agreement, to be appointed by the President for the time being, or his or her nominee, of the New Zealand Law Society. The arbitration shall be heard in Auckland in accordance with the Arbitration Act 1996 or any re-enactment of it. There shall be no appeal from or review of the arbitrator's award. The arbitrator shall have discretion to make such costs awards as he or she deems appropriate.

For the avoidance of doubt, nothing in this clause will prevent either Party from seeking urgent injunctive relief where damages would be an inadequate remedy.

10. General

10.1 Safety and Security

Each Party will meet the other's notified safety and security requirements when on the other Party's premises.

Each Party will also be responsible for complying with all applicable laws for maintaining safe premises, and will comply with the Health and Safety At Work Act 2015 and all regulations and codes of practice made under that Act.

10.2 Password for Online Access

You will keep any passwords or codes ("Access Codes") used to access online information maintained by us confidential and will only disclose them to those of your employees and agents who need them to access the information for you. You will ensure that the online information is accessed only for your own business use and for the purposes for which it is provided. Where Administrator access has been agreed you will ensure that MFA authentication access is always on against these accounts.

10.3 Your Information

During your relationship with us, we may collect information about you or your customers. We may:

- a. hold the information and share it with our employees, Related Companies, suppliers, contractors and other agents, but only where this is necessary to enable us to offer or provide you the Services, send you invoices, check that your responsibilities are being met, or otherwise to administer and enforce the Customer Agreement;
- b. obtain the information by monitoring telephone calls between us and you for training purposes or other communications with us;
- c. share with network operators or relevant third parties any information needed to provide services to you or your customers;
- d. share information with Internet service providers and law enforcement agencies if we reasonably consider that unlawful activity is taking place using Our Network or there is a risk of any kind to Our Network, or to other parties using Our Network;
- e. use any information about you for statistical purposes, so long as you are not identified;
- f. share information to the extent appropriate with credit reference and debt collection agencies;
- g. use any information about you or your customers and their use of the Services to develop and provide better products or services to customers and end users; and
- h. use any information to ensure continuity of supply of the Services to end users in the event you are in breach of the Customer Agreement and the Customer Agreement is terminated.

10.4 Benefit to our Suppliers and Related Companies

You acknowledge and agree that the benefit of the limitations and exclusions of liability and your confidentiality obligations under the Customer Agreement extend to our Related Companies and suppliers of any services, equipment or software provided in connection with the Services, under the Contract and Commercial Law Act 2017.

10.5 Supply by Our Related Companies

Services may be provided to you by us or any of our Related Companies. Any Service Level Agreements of Related Companies will be honored as per their published Terms and Conditions.

10.6 Subcontracting

We may subcontract any of our responsibilities, in which case we will remain liable to you for meeting all those responsibilities.

10.7 Consumer Guarantees Act

You confirm that you are acquiring all the Services for the purposes of a business as defined in the Consumer Guarantees Act 1993. The provisions of that Act do not apply to Services we provide under the Customer Agreement.

10.8 Notices

Notices required under these Terms and Conditions must be in writing and sent to the address provided below. If sent by post to that contact address, it will be assumed delivered 5 Business Days after it has been posted. If a notice is sent by email to that contact address, the notice will only be assumed delivered once a correct transmission confirmation slip or acknowledgement is received. Notifications concerning termination, breach or default of the Customer Agreement may be sent by email but must also be sent in writing and addressed to us as follows:

Lucidity

PO Box 112321, Penrose 1642, Auckland, New Zealand

Attn: General Manager

Email: notifications@lucidity.co.nz

10.9 Changes to the Agreement

Subject to any other variation process that the Parties have agreed under the Customer Agreement, no variation to the Customer Agreement will be effective unless it is requested by your designated representative.

10.10 Changes to these Terms and Conditions

These terms and conditions are subject to change without notice. From time to time in our sole discretion, we will notify you of any amendments to these terms and conditions by posting them to Our website.

10.11 Independent Contractor

We provide our Services under the Customer Agreement as an independent contractor. The Customer Agreement does not create or evidence a legal partnership, employer/employee, principal/agent or joint venture relationship.

10.12 Governance Law

The Customer Agreement is governed by, and will be construed in accordance with the laws of New Zealand. Both Parties submit to the non-exclusive jurisdiction of the NZ courts.

10.13 Invalidity

Any provision of the Customer Agreement that is invalid or unenforceable, will be deemed deleted from the Customer Agreement and this invalidity will not affect the other provisions of the Customer Agreement, all of which remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

10.14 Entire Agreements

These Terms and Conditions supersede any arrangements, understandings, promises or agreements made or existing between the parties prior to or simultaneously with the Customer Agreement and constitutes the entire understanding between the parties.

11. Definitions and Interpretation

"Customer Agreement" means our agreement to provide Services to you which contains the key details of our relationship and which has been signed by You. Customer Agreements are represented by and includes any of the following documents:

- a. Your Customer Agreement
- b. Your Service Agreements & Service Level Agreements
- c. Statements of Work
- d. Proposals
- e. Related Product Specifications
- f. Our Support Policy
- g. Accepted Quote
- h. Signed Contract
- i. Application Form
- j. Terms and Conditions

"Billing Cycle" means the Lucidity billing cycle. This runs from the 25th of the month to the 24th of the following month.

"Business Days" means Monday to Friday inclusive, excluding national public holidays and the provincial anniversary day applicable to Us.

"Business Hours" means 8:00am to 5:30pm on Business Days.

"Commencement Date" means the date on which the Customer Agreement is signed by both parties.

"Confidential Information" regardless of the form of disclosure or the medium used to store it, means any information received by a Party relating to the other Party or its Related Companies, or their business (current and future). It includes information provided before the date of the Customer Agreement and any copies of the above information or material derived from that information and includes the terms of the Customer Agreement.

"Customer", "you" or "your" means the customer identified in the Agreement.

"Due Date" means the date specified on the relevant invoice or, if no date is specified, 30 days from the date of the invoice.

"Extraordinary Circumstances" means the circumstances described in clause 1.3

"Fault" means a defect, fault or impairment in a Service, which causes an interruption in the provision of that Service.

"Fees" means all our charges in relation to the Services, plus any applicable goods and services or similar taxes.

"Force Majeure Event" means anything outside the reasonable control of a Party, including without limitation:

- a. acts of God, strikes by employees of a third party, acts or omissions (including laws, regulations, disapprovals or failures to approve) of any government or government agency
- b. unavoidable accident, explosion, public mains electrical supply failure, water supply failure, widespread Internet failure, or nuclear accident;
- c. sabotage, hacking, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
- d. computer virus or worm not capable of being detected by a generally accepted reasonable standard of anti-virus protection system at the time of infection;
- e. failure of third party network infrastructure beyond the reasonable control of the Party concerned;
- f. requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity; or
- g. any other similar cause beyond the reasonable control of the Party concerned.

A Force Majeure Event does not include:

- a. any event which the affected party could have avoided or overcome by exercising a standard of reasonable care at a reasonable cost;
- b. a lack of funds for any reason or any other inability to pay; or

- c. strike, lockout, work stoppage or other labour hindrance by employees of a Party or its Related Companies unless the strike is part of an industry wide campaign which does not arise out of a dispute between that Party or Related Company and its employee.

“Insolvent” means, in relation to a Party, that:

- a. is, becomes, or is deemed to be, insolvent or bankrupt and is incapable of performing its obligations;
- b. makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors; or
- c. goes into receivership or has a receiver, trustee and manager (or either of them) (including a statutory manager) appointed in respect of all or any of its property;
- d. any resolution is passed, or any proceeding is commenced, for the winding up or liquidation of a Party; or
- e. directly or indirectly assigns or transfers, or attempts to assign or transfer, any obligation, liability or interest of that Party under the Customer Agreement in breach of the Customer Agreement, and “Insolvency” has a corresponding meaning.

“Lucidity”, “we” or “us” or “our” means Managed Hosted Applications Limited trading as Lucidity (or any of our related Companies).

“Move, Add or Change” means when users or applications or services are added to, removed from, or a change is made to them.

“Our Network” means all network connections and computer equipment utilised by Us or any of Our Related Companies to provide services to You.

“Party” means Us or You, or both Us and You, as the context requires.

“Product Specification” means any product specification or service specification for the Services, and includes any written or electronic document incorporated by reference into any product specification or service specification.

“Related Company” has the meaning given in the Companies Act 1993 read as if the expression includes any body corporate and any company incorporated under the law of any jurisdiction.

“Representative” means any officer, employee, agent, contractor or sub-contractor of a party.

“Restoration Time” means the standard length of time taken to resolve our Service Problem as per our Service Level Agreement.

“Services” means all products and services that we (or any of our Related Companies) may agree to provide to you pursuant to any Customer Agreement.

“Service Commencement Date” means the date We are to commence providing a Service, as specified in the relevant Customer Agreement.

“Service Levels” means the service levels or targets expressly identified in the Customer Agreement (if any) which are, unless expressly stated otherwise in the Customer Agreement, targets which we will use all reasonable endeavours to ensure, but do not guarantee, will be achieved.

“Service Agreement” means any Service Agreement signed by Us (or any of our Related Companies) and You.

“Service Problem” means a fault with any Lucidity provided Service.

“Service Term” means the initial term defined in each Customer Agreement between Us (or any of our Related Companies) and You.

“Severity Level” means the severity designation assigned to incidents based on the business impact and urgency.

“Severity One” means an incident or failure with the Lucidity Infrastructure that directly interrupts the production workflow of the business. A business's functionality is severely hampered or prevented, or a situation has arisen that requires immediate attention to prevent loss or damage to the business. There is no workaround available and immediate action is required.

“Severity Two” means a Business's functionality is impeded by the Lucidity Infrastructure. The incident does not affect the core business and/or a temporary workaround solution is available and/or the business can wait a limited time for a permanent solution. If the issue persists it could result in downtime to the business.

“Statement of Work” means any Statement of Work signed by Us (or any of our Related Companies) and You.

“Support Policy” means the Lucidity Support Policy that can be accessed on the Lucidity Website [here](#).

“Termination Charges” means those fees that may be defined in the Customer Agreement.

“Terms & Conditions” means these Terms & Conditions which apply to all Services which We provide to You pursuant to the Customer Agreement.

“Third Party Materials” means any materials, equipment, services or software provided by any person other than us.

In these Terms and Conditions, unless the context otherwise requires:

- a. headings are for convenience only and do not affect interpretation;
- b. the singular includes the plural and vice versa;
- c. unless otherwise stated, all references to dollars, value and price are to the New Zealand currency and exclude goods and services tax;
- d. a reference to any statute includes any amendments, re-enactments or replacements to that statute from time to time; and
- e. the use of the words “includes” or “including” is not to be taken as implying any form of limitation.