

Schedule 1 – General Terms and Conditions (“General Terms”)



1. Definitions and Interpretation

1.1 **Definitions:** In these General Terms, unless the context indicates otherwise:

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) on which trading banks are open for normal banking business in Auckland.

“**Commencement Date**” means the date set out in the Specific Terms.

“**Confidential Information**” means all information relating to the other party that is or could reasonably be expected to be regarded as confidential including, without limitation, financial information, client or Client information, and technical or operational information.

“**Expiry Date**” means the date set out in the Specific Terms.

“**Fees**” means the fees payable by the Client to Mindhive for the Services, as set out in the Specific Terms.

“**Intellectual Property**” means all rights and interests in and to trade marks, inventions, patents, designs, copyrights, moral rights, plant variety rights, database rights, know-how, data and confidential information, business names, trade names, service marks, trade dress and livery, domain names, layout designs, software (including, without limitation, in source and object code form) and any similar rights in any part of the world (including any registration of such rights and applications for such registrations).

“**Services**” means the services as described in the Specific Terms.

“**Specific Terms**” has the meaning given to that term on the front page of this Statement of Work.

“**Statement of Work**” has the meaning given to it on the front page.

“**Term**” means the term of this Statement of Work as determined in accordance with clause 4.1 of these General Terms.

1.2 **Interpretation:** In this Statement of Work, unless the context indicates otherwise:

- (a) **Clauses, Schedules:** References to clauses and Schedules are to clauses in, and Schedules to, this Statement of Work. Each such Schedule forms part of this Statement of Work;
- (b) **Headings:** All headings in this Statement of Work have been inserted for convenience only and do not limit or govern its construction or interpretation;
- (c) **Plural and Singular:** Words importing the singular are deemed to include the plural and *vice versa*;
- (d) **Gender:** Words importing any gender are deemed to include all other genders; and words importing persons are deemed to include all associations, authorities and bodies, corporate or unincorporated;
- (e) **Legislation:** References to any legislation, or to any section or provision of any legislation, include any statutory modification or re-enactment or any substituted statutory provision and rules, regulations, laws and other statutory instruments issued or promulgated under or pursuant to such legislation; and
- (f) **Inclusive Expressions:** References to the words “including” and “include” are to be construed without limitation.

2. Services

2.1 **Services:** Mindhive shall provide the Services to the Client, and the Client agrees to accept the provision of the Services, on the terms set out in this Statement of Work.

2.2 **Client Deliverables:** The Client acknowledges and agrees that Mindhive may be reliant on the Client delivering up, and complying with its obligations with respect to, the Client Deliverables specified in the Specific Terms (“Client Deliverables”). The Client shall deliver up and comply with its obligations with respect to the Client Deliverables in a timely manner and Mindhive will not be liable for any failure to meet its obligations under this Statement of Work to the extent that the same results from the Client’s failure to deliver up or comply with the Client Deliverables in a timely manner.

3. Fees

3.1 **Fee:** In consideration for the Services performed by Mindhive for the Client, the Client shall pay to Mindhive the Fees. The Fees shall be payable in the amounts and at the times stated in the Statement of Work. If no such times are specified, the Fees shall be payable monthly. All reasonable out of pocket expenses incurred by Mindhive in providing the Services and the Deliverables will be payable by the Client.

3.2 **Invoices:** Mindhive shall provide the Client with a GST invoice for the Fees.

3.3 **Payment terms:** All Fees payable by the Client to Mindhive under this Statement of Work:

- (a) Are stated exclusive of GST. The Client shall pay to Mindhive GST on the Fees, at the then applicable rate, at the same times as it is required to make payment of the Fees;
- (b) Will be paid in full without deduction, withholding, counterclaim or set-off of any kind;
- (c) Are payable in New Zealand dollars to the credit of a bank account designated in writing by Mindhive; and
- (d) Unless specified otherwise in the Statement of Work, will be paid by the Client to Mindhive within 14 days' of receipt of an invoice from Mindhive.

4. Termination

4.1 **Term:** This Statement of Work will commence on the Commencement Date and will continue until the earlier of:

- (a) The Expiry Date (if any);
- (b) The date the Services are completed;
- (c) The date on which this Statement of Work is terminated in accordance with clause 4.2 or clause 4.3; or
- (d) Such other date as the parties may agree in writing.

4.2 **Termination for cause:** Either party ("First Party") is entitled to terminate this Statement of Work:

- (a) Immediately by notice in writing to the other party if the other party has breached a material term of this Statement of Work and such breach is incapable of remedy (or if it is capable of remedy, the other party has failed to remedy such breach to the First Party's satisfaction within 10 Business Days' written notice from the First Party informing the other party of the breach and requiring it be remedied); or
- (b) Immediately by notice in writing to the other party if an order is made or a resolution is effectively passed for the dissolution of the other party except for the purposes of reconstruction or amalgamation with the consent of the First Party (such consent not to be unreasonably withheld); or
- (c) Immediately by notice in writing if a liquidator, trustee, manager, administrator, administrative receiver, receiver, inspector under any legislation or similar officer is appointed in respect of the other party or the whole or any part of the other party's assets or business; or
- (d) Immediately by notice in writing if the other party is dissolved or makes an assignment for the benefit of or enters into an arrangement, composition or compromise with its creditors or stops payments or is unable to pay its debts as they fall due.

4.3 **Termination without cause:** In addition to the rights of termination under clause 4.2, either party may terminate this Statement of Work for any reason, by notice in writing to the other party of not less than 40 Business Days.

4.4 **Consequences of termination:** On termination or expiry of this Statement of Work for any reason whatsoever:

- (a) The Client will immediately make payment to Mindhive for all Services performed up to and including the date of termination or expiry and for all other Fees and amounts payable by the Client to Mindhive in connection with periods up to and including the date of termination or expiry; and
- (b) Each party shall cease to use all Confidential Information of the other party and shall return to the other party all such Confidential Information and other property of the other party in its possession or under its control, and shall delete all such Confidential Information from any computer system in its possession or under its control.

4.5 **Accrued rights and survival:** Termination or expiry of this Statement of Work will be without prejudice to the rights and remedies of the parties that have accrued prior to termination or expiry, including for any prior breach of this Statement of Work.

4.6 **Liquidated damages:** If this Statement of Work is terminated by Mindhive under clause 4.2, the Client will make payment to Mindhive, by way of liquidated damages, of an amount equal to the greater of:

- (a) If this Statement of Work has a stated Expiry Date, 50% of the Fees which have not been invoiced as at the date of termination but which would have been invoiced and payable by the Client to Mindhive for the Services if this Statement of Work had not been terminated by Mindhive under clause 4.2 and had continued in force until the Expiry Date; or
- (b) Three (3) times the average monthly Fees payable by the Client to Mindhive under this Statement of Work prior to the date of termination.

The Client acknowledges and agrees that the liquidated damages payable by the Client to Mindhive under this clause represent a genuine pre-estimate of the loss that Mindhive will suffer if this Statement of Work is terminated by Mindhive under clause 4.2.

5. Liability and Indemnity

5.1 **Limitation of Liability:** To the maximum extent permitted by law, the aggregate liability of Mindhive and its respective directors, officers, employees and agents for all losses, claims, costs or damages suffered or incurred by the Client or its respective directors, officers, employees and agents arising out of or in connection with this Statement of Work, and the performance or

non-performance of the Services, whether based on an action or claim in contract, tort (including negligence or breach of statutory duty), breach of statute or otherwise, is limited to the amount of Fees received by Mindhive from the Client under this Statement of Work over the previous six completed calendar months of the term of this Statement of Work.

5.2 **Consequential Loss:** Without limitation to clause 4.6, neither party will be liable to the other party, in any way related to this Statement of Work, or the Services, whether that liability arises in contract, tort (including negligence), equity, under statute or otherwise, for:

- (a) Loss of profits or loss of revenue (in each case whether direct or indirect);
- (b) Any indirect, special or consequential loss or damage whatsoever (except in instances of fraud or wilful concealment).

5.3 **Indemnity:** Subject to clause 5.2 but without limitation to clause 4.6, the Client agrees to indemnify and hold Mindhive harmless from and against any and all losses, expenses (including legal costs on a solicitor and own client basis), liabilities, actions, proceedings, claims or demands that they may suffer or incur as a result of any breach or alleged breach by the Client of its obligations under this Statement of Work.

6. Compliance with Laws

6.1 Each party shall comply with all applicable laws and regulations in relation to the performance of its obligations under this Statement of Work.

7. Confidentiality

7.1 **Confidential Information:** Except as permitted under clause 7.2 or 7.3, each party (the "Recipient") will keep confidential all Confidential Information obtained from the other and will not divulge the same to a third party without the written consent of the other party.

7.2 **Disclosure:** The Recipient may divulge Confidential Information to those of its employees, agents and contractors who are directly involved in fulfilling the Recipient's obligations under this Statement of Work and will ensure that such employees, agents and contractors are made aware of and comply with these obligations as to confidentiality. The Recipient shall be responsible for any breach of such obligations of confidentiality by its employees, agents and contractors.

7.3 **Limits:** The obligations of confidentiality in clause 7.1 will not apply to information that:

- (a) The Recipient can clearly show was independently available to it from a third party having the right to disclose it; or
- (b) At the time of execution of this Statement of Work is in the public domain, or subsequently enters the public domain, through no fault of the Recipient or any other person to whom it discloses the information; or
- (c) The Recipient is obliged to disclose by law, court order or order of any governmental or regulatory body having the power to compel disclosure, provided that, to the extent practicable and permissible, the Recipient has first (i) advised the other party of this obligation, (ii) allowed the other party reasonable time to avoid the disclosure having to be made, and (iii) given the other party such assistance (at the other party's cost) as the other party reasonably requests to avoid the disclosure.

7.4 **Survival of Termination:** The obligations of the parties to ensure non-disclosure and confidentiality under this clause 7 will survive termination or expiry of this Statement of Work.

8. Intellectual Property

8.1 **Pre-existing IP:** Each party shall retain ownership of all of its Intellectual Property in existence as at the date of this Statement of Work. Nothing in this Statement of Work confers on either party any ownership, usage or other rights in respect of any pre-existing Intellectual Property owned by or licensed to the other party.

8.2 **Created IP:** All Intellectual Property developed or generated by Mindhive in the performance of the Services ("Developed IP") shall vest in and be owned by Mindhive, and the Client hereby irrevocable and unconditionally assigns to Mindhive all of its rights at law in such Developed IP.

8.3 **Use of Intellectual Property:** Each party agrees not to use or permit to be used by any other person, any Intellectual Property that belongs to the other party except in connection with providing, or receiving the benefit of, the Services and in particular, neither party will use any of the other party's Intellectual Property for its own purposes or for any purpose which is adverse to the interests of the other party.

9. Notices

9.1 **Notice:** Any notice or other communication to be given to or by a party under this Statement of Work by or to the other party:

- (a) May be given by post, personal service or email;
- (b) Must be in writing, legible and addressed to the person at the address or email address (as applicable) stated in the Specific Terms or to such other person and/or address (if any) as the addressee may notify to the sender by notice given in accordance with this clause;

- (c) Must be signed by the sender or an officer or authorised representative of the sender; and
- (d) Will be deemed to be given by the sender and received by the addressee: (i) if delivered in person, when delivered to the addressee; or (ii) if sent by post, 5 Business Days after the notice is placed in the post with postage prepaid in full; or (iii) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purpose of this clause 9.1),

but if the delivery or receipt is on a day which is not a working day in the place of intended receipt or is after 5.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next working day in that place.

10. General

- 10.1 **Force Majeure:** If a party ("Affected Party") is prevented from performing any of its obligations under this Statement of Work by reason of: (i) flood, storm, earthquake, fire, explosion, or other event of nature, (ii) act or restraint of any local Authority, government department, court order or any order or restraint issued or imposed by any other regulatory or quasi-regulatory body, (iii) strike, lockout or other industrial action, or (iv) any other event outside the reasonable control of the Affected Party (each, a "force majeure event"), then performance of that obligation shall be suspended to the extent required until the cause of force majeure ceases to prevent performance of that obligation. Nothing in this clause will operate to suspend any obligation of the Client to make payment of Fees or other monies under this Statement of Work when the same become due. If a force majeure event prevents a party from performing their obligations under this Statement of Work for a period of more than 30 consecutive days the other party may terminate this Statement of Work on notice in writing to the Affected Party.
- 10.2 **Assignment:** The Client shall not assign any of its interest in, or rights and obligations under, this Statement of Work without Mindhive's prior written consent.
- 10.3 **Entire Arrangement:** This Statement of Work records the entire understanding and agreement of the parties relating to the matters dealt with in this Statement of Work. This Statement of Work supersedes all previous understandings or agreements (whether written, oral or both) relating to such matters.
- 10.4 **Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this Statement of Work.
- 10.5 **Amendment:** This Statement of Work may only be amended by written agreement, signed by a duly authorised representative of each party.
- 10.6 **Governing Law and Jurisdiction:** This Statement of Work is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Statement of Work.
- 10.7 **Non Solicitation:** During the term of this Statement of Work and for six months after its termination or expiry no party will solicit for employment, either directly or indirectly, any person who is employed or contracted by the other party who is involved in the provision of the Services, provided that a party may employ or contract any such person who responds to a public advertisement for a role with that party or is provided to that party by a recruitment agency.