

ZYTE SaaS Agreement

TODO ("Client")	
Street address	
Postal address	
Company No.	

Zyte Limited ("Supplier")	
Street address	17 Rawene Road, Ground Level, Rawene Chambers, Birkenhead 0626, New Zealand
Postal address	17 Rawene Road, Ground Level, Rawene Chambers, Birkenhead 0626, New Zealand
Company No.	5640188

The Supplier agrees to perform, and the Client agrees to pay for, the Services during the Term on the terms of this Agreement, which includes this Signing Page, the Specific Terms, General Terms and other documents as itemised in this Agreement.

Important: By signing this Agreement, the Client and the Supplier acknowledge that:

- They have read and understood the terms of this Agreement and the associated documents.
- They have had the opportunity to seek advice about this Agreement before signing it
- The Supplier is satisfied as to the amounts payable for performance of its obligations, and the Client agrees to pay on the terms of this agreement.

Signed under delegated authority for and on behalf of TODO by:	
<hr/> <i>Authorised signatory</i>	
Name:	TODO
Position:	TODO
Date:	_TODO_____

Signed for and on behalf of Zyte Limited by:	
<hr/> <i>Authorised signatory</i>	
Name:	Philip White
Position:	Director
Date:	TODO_____

SPECIFIC TERMS

Clause references are to the General Terms.

Client Representative	
Name	TODO
Phone	TODO
Mobile	
Email	TODO

Supplier Representative	
Name	Philip White
Phone	
Mobile	64 27 923 1651
Email	philip@zyteapp.com

BACKGROUND
The Client seeks to contract the Supplier to provide a SaaS platform for virtual inspections.

DOCUMENTS (cl 1.2)	<p>The documents forming part of this Agreement are:</p> <ul style="list-style-type: none"> • The Signing Page • The Specific Terms • The General Terms • The Service Level Agreement • Zyte Terms of Service as published on zyteapp.com • Zyte Privacy Policy as published on zyteapp.com 	
CONFLICT BETWEEN DOCUMENTS:	<p>In the event of a conflict or inconsistency between the Specific & General Terms in this Agreement and the Zyte Terms of Service or the Zyte Privacy Policy as published on zyteapp.com, the parties agree that the terms of this Agreement shall prevail.</p>	
TERM (cl 2.1)	Commencement Date:	TODO
	Expiry Date:	1 year from commencement date
	Extensions: (number, length, notice)	TODO
SERVICES (cl 3)	<p>The Supplier shall provide SaaS services to the Client. The SaaS service is a means of performing remote inspections, checks, quotes, advice, training, oversight and other services using digital means to avoid physical travel and the attendant monetary, environmental, efficiency and community costs.</p> <p>The Supplier shall:</p> <ul style="list-style-type: none"> • Provide an inspection video tool to allow inspections to be carried out remotely away from the physical site. The contact onsite will be provided access to a secure link allowing them to live feed video and sound directly. • The tool will provide the following key attributes: • Provide live video feed from customer to inspector - in as far as this is possible given various devices and networking conditions. Both parties acknowledge that these factors cannot be completely guaranteed. Both 	

	<p>parties acknowledge that the tool provides usable results even when these factors are an issue, but that there are some circumstances that will reduce or prevent functionality.</p> <ul style="list-style-type: none"> • Ability for inspector to talk to the customer while the video is being streamed • Ability for the inspector to take screen photographs during the inspection. • All photos will have easily extracted metadata showing location, time and dates based on the Client activating geo location at the beginning of the call. (Instructions are available in the Zyte help centre) • Ability to share documents on the call video feed using screen-sharing • Allow the tool to be used in both Wifi and data environments and switch between seamlessly without dropping the call • Dashboard for tracking savings - only available on commencement of site licence.
<p>PRICE, TRUING & ADDITIONAL SERVICES (cl 9)</p>	<p>An initial base of 10 Users will be purchased for 12 months at a total cost of \$139 + GST per User per month.</p> <p>Each License comes with a provision of 5 Gigabytes of Zyte Cloud Storage. Additional storage is available for purchase as detailed on the Zyteapp.com pricing page.</p> <p>Additional Users can be added up to the ceiling which is initially set at a maximum of 20 Users. (cl 4)</p> <p>Each additional Active User will be charged at a cost of \$139 + GST /month by a process of monthly Truing (cl 4) Each additional User comes with 5 gigabytes of Zyte cloud storage.</p> <p>The Supplier will provide to the Client a monthly Truing report with each monthly invoice. (Cl 9.5)</p>
<p>DISPLAY DASHBOARD</p>	<p>The Supplier will provide the Client with a live dashboard feed that shows:</p> <ul style="list-style-type: none"> • Daily usage, last 30 days and annual projected usage showing: • Cost savings, Carbon saving, Round trips avoided and time saved. <p>The Client agrees to display the dashboard within the organisation in as many places as practical to encourage ZYTE users with feedback on the difference they are making for their organisation and the environment.</p> <p>Example of the dashboard can be seen on the Zyteapp.com home page</p>

SUPPLIER INSURANCE (cl 13.6)	Public/Product liability:	\$5,000,000
	Professional Indemnity liability:	\$2,000,000
	Cyber:	\$1,000,000
OTHER TERMS	N/A	

GENERAL TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions: Unless the context otherwise requires, capitalised words have the meanings given to them in this Agreement and as follows:

“Active Permitted User” Is any Permitted User who uses the Zyte SaaS Service at least once in any billing month.

“Administrator” means the person who administers the Zyte subscription and adds or removes Permitted Users to the SaaS Service.

“Administration Interface” is the web or mobile phone portal via which the Administrator manages Permitted User Licenses.

“Base License number” means the minimum number of SaaS Licenses that the Client has purchased under this Agreement. Which also represents the minimum quantity of Licenses that the Client will be invoiced for each month, whether that number of Licenses has been active or not.

“Business Day” means a weekday (Monday to Friday) excluding any New Zealand public holidays and Auckland Anniversary Day.

“Ceiling” refers to Permitted User Licenses and is the maximum number of Permitted Users that the Client can add to the SaaS Service Subscription at any one time.

“Commencement Date” means the date given in the Specific Terms.

“Confidential Information” the terms of this 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 this Agreement. The Supplier’s confidential information includes Intellectual Property owned by the Supplier (or its licensors), including the ZYTE software. The Client’s confidential information includes the Data, Digital Assets, and any information obtained by Customers (whether as video feed, photographs, audio etc).

“Customer” means any customer of the Client that is benefitting from the use of the Zyte Platform. Customer also includes the term, “Guest” and “Guest User” as referred to in other ZYTE documents.

“Contact Address” means, in relation to a party, the physical and postal addresses, and email address (as the case may be) for purposes of communications under this Agreement notified by that party to the other party from time to time;

“Data” all data, content and information (including Personal information) owned, held, used or created by or on behalf of the Client that is stored using, or inputted into the Zyte platform.

“Expiry Date” has the meaning given in the Specific Terms.

“GST” means goods and services tax as provided in the Goods and Services Tax Act 1985.

“Insolvency Event” means, in relation to a person, anything that reasonably indicates that the person is (or that there is a significant risk of the person becoming) insolvent and unable to pay its debts when due, including:

(a) any step being taken to make the person bankrupt, wind up the person’s business or to have a receiver, receiver and manager, administrator, liquidator or statutory manager appointed to or in respect of the person or any of its assets;

(b) any statutory demand being served on the person, or any proceedings being brought or threatened against the person for recovery of a liquidated or undisputed debt;

(c) the person ceasing to carry on its business; or

(d) a meeting of the person’s creditors being called or held or the person entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors.

“Intellectual Property Rights” includes copyright, and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions

(including patents), registered and unregistered trade marks and designs, systems, 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.

“License” A License gives one Permitted User the right to use the Zyte SaaS Services

“Objectionable” includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

“Party Representative” means the Client Representative and Supplier Representative (as the case may be) set out in the Specific Terms, or anyone else who is appointed by a party (and duly notified to the other party) to discharge those roles from time to time.

“Permitted Users” means those personnel of the Client who are authorised to access and use the Services on the Client’s behalf in accordance with clause 5.5.

“Personal Information” has the meaning given in the Privacy Act 1993.

“Price” means the amounts payable for the Services under clause 9.1 as set out in the Specific Terms.

“Related Services” means any related service described in the Specific Terms and any further services that the Supplier agrees to provide to the Client under this agreement.

“SaaS Service” is the service having the core functionality described in the Specific Terms. The SaaS Service is described in more detail on the Zyteapp.com website, as the website is updated from time to time.

“Services” means the services to be performed by the Supplier as set out in the Specific Terms, and includes the SaaS Service and the Related Services.

“Service Level Agreement” means the part of this Agreement which documents the uptime/downtime, response time and fix times, and sets out the criteria and amount of reimbursement to the Client if the Service level negatively affects the Client’s usage of the Zyte SaaS services.

“Subscription” means the number of Licenses that have been provided by the Supplier for the Client’s use and may vary between the base and the ceiling.

“Term” means the term of this Agreement as provided in clause 2.1(a).

“Truing” means the calculation that is done each month end to establish how many Licenses the Supplier will invoice the Customer for, based on how many Licenses have been utilised in the month finished. Truing establishes a number somewhere between the base and the ceiling. An example and explanation of Truing is available on the Enterprise page of the Website.

“Website” means the internet site at the domain www.zyteapp.com, or such other site notified to the Client by the Supplier.

“Zyte Platform” means the ZYTE software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks.

1.2

References and interpretation: Except where the context otherwise requires, this Agreement shall, be interpreted and applied in accordance with the following principles:

Agreement: references to this “Agreement” include the Signing Page, Specific Terms, General Terms, Service Level Agreement, and the Terms of Service and Privacy Policy as published on the website.

Clauses and schedules: references to clauses and schedules are to clauses in the General Terms and the schedules to this Agreement (unless stated otherwise);

Employees: where the context permits, references to Supplier include Supplier’s employees, agents and officers.

Good faith: an obligation of “good faith” does not prevent a party from acting in its commercial interest provided it communicates fairly with the other party;

GST: all monetary amounts are stated exclusive of GST and in New Zealand dollars unless provided otherwise;

Including: “including” and similar words do not imply any limitation;

Legislation: all references to legislation include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation;

Material Breach: references to “material breach” include any series of breaches of a similar or recurring nature which taken together are material;

Negative obligations: an obligation on the Client or the Supplier not to do something includes a reference to the Client or the Supplier ensuring that its staff, subcontractors and anyone else it is responsible for do not do that thing;

Party: references to any “party” mean a party to this Agreement and include their respective successors and permitted assigns (as the case may be);

Persons: references to a “person” include a natural person, firm, corporation, association or other entity, whether incorporated or not and whether or not having a separate legal personality; and

Singular and plural: where the context permits, the singular includes the plural and vice versa.

1.3

Terms: The Specific Terms prevail over these General Terms to the extent of any inconsistency. The General Terms do not limit additional rights or obligations in the Specific Terms or in any schedules.

In the case of any inconsistency, the 'Specific and General Terms and the Service Level Agreement' prevail over the Zyte Terms of Service and Privacy Policy as published on the Zyte Website.

2 APPOINTMENT & TERM

2.1 Commencement, Term and Renewal:

- (a) This Agreement commences on the Commencement Date and, subject to any extensions under clauses 2.1(b or c), ends on the Expiry Date unless terminated earlier in accordance with this Agreement or at law ("Term").
- (b) If there is an end date on this agreement and the Supplier receives no notification from the Client prior to the end date of the term of this Agreement, this Agreement rolls into the standard monthly subscription payment and notification terms as advertised on the Website for the appropriate number of Licenses after monthly Truing and within the existing base and ceiling License numbers.
- (c) The Client may give notice within 30 days of the end of the Term to increase the Term by another 12 months at an agreed price per License based on the greater of the last annual CPI increase or the percentage increase of the retail price on the website which is based on the feature releases in the last 12 months and the market demand for the SaaS Service.
- (d) **No Expiry Date:**
 - a. Where no Expiry Date is set out in the Specific Terms, this Agreement will automatically roll into another 12 month term with a price increase as specified in clause 2.1c.
 - b. This Agreement can roll for a maximum of 5 years on the terms and conditions herein. After 5 years this Agreement will revert to a monthly subscription as in clause 2.1b unless the Client and the Supplier negotiate a new agreement.
- (e) **Negotiation:** The Client and the Supplier may enter into an updated pricing and supply of services agreement by negotiation at the end of each term which will prevail over clauses 2.1c and 2.1d.
 - a. If the Client or the Supplier wish to enter negotiation the party that wishes to negotiate must give the other party 30 days notice prior to the end of the current term.

3 SERVICES

- 3.1 **General:** The Supplier must use reasonable efforts to provide the Services:

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

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

3.3 **Availability:** The Supplier will use reasonable efforts to ensure the SaaS Service is available during normal business hours in New Zealand/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 and/or notify you by email advance details of any unavailability. For full details on uptime/downtime, response times and fix times refer to the Service Level Agreement.

3.4 **Third Party integrations:** Through the use of web services and APIs, the SaaS Service interoperates with a range of third party service features. The Supplier does not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, the Supplier may cease to make available that feature to the Client. If that feature is critical to the Client's use of the SaaS Service, the Supplier shall find an alternative within the scope of the Service Level Agreement or this Agreement will be in breach and the Client may terminate or suspend this Agreement until such time as the Supplier provides a resolution.

3.5 Related Services:

- a) **Zyte Cloud Storage.** 5 gigabytes of Zyte cloud storage comes with each License. Extra storage is available at the prices published on the website.
- b) **Training.** Zyte provides a comprehensive help centre on the Website. On site or virtual training is available at the prices published on the website.

3.6 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 Client and subject to the Client paying the applicable Fees, the Supplier may agree to provide to the Client an additional Related Service on the terms of this Agreement.

4 LICENSES AND MONTHLY TRUING

4.1 Base Licenses: The initial base number of Licenses is specified in the Specific Terms.

- a) The base number of Licenses is the minimum number of Licenses the Client will be invoiced for in any given month.

4.2 License Ceiling: The License ceiling can be up to double the base number and is set by the Client by logging into Manage Subscription on the website.

- a) Should the Client increase the License ceiling above double the base then the base will increase to 50% of the ceiling for the next three months of the term of this Agreement and remain at that base until the month in which the Client reduces the ceiling if they choose to do so.
- b) The Client may increase the ceiling to any number of Licensees at their discretion.

4.3 Truing: At the end of each month the Supplier will generate a report which shows how many Permitted Users have used the SaaS Service during the month.

- a) If the number Permitted Users who have used the Zyte SaaS Service has increased above the base, that increased number of Users will be charged on the next invoice in arrears and in advance for the next month.
- b) If the number of Permitted Users who have used the Zyte SaaS Service has decreased since the previous month, that decreased number of Users will be credited on the next invoice and a correspondingly lower number of Licenses will be invoiced for the next month.
- c) **Active Permitted Users exceeds Ceiling:** As the Administrator is able to add and remove Permitted Users during the month it is possible that the number of Permitted Users active on Zyte SaaS service during the month could exceed the ceiling. Should this be the case the Client will be invoiced for the full number of Active Permitted Users.
- d) **Administrator use:** If the Administrator has only used the Administration Interface for the purpose of adding and/or removing Permitted Users and has not used the Zyte SaaS Service there will be no charge for the administrator's License.

5 CLIENT OBLIGATIONS

5.1 The Client and its personnel must use the Services in accordance with this Agreement solely:

- a) for the Client's own business purposes.
- b) for lawful purposes, including complying with the Unsolicited Electronic Messages Act 2007)

5.2 The Client must not resell or make available the Services to any third party, or otherwise commercially exploit the Services.

5.3 The Client is responsible for ensuring that the Supplier's software is able to operate without feature-

hindering restriction on the Client's Internet, Internal network, and phone systems including using the Chrome browser. To function properly the Supplier's software may have certain environmental requirements. These are to be provided for by the Client. It is expressly the responsibility of the Client to ensure interoperability with the IT infrastructure of all relevant sites and devices - including home office networks and BYOD (bring your own device) devices.

5.4 Access conditions: When accessing the Zyte SaaS Service, the Client and its personnel 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:
 - i) that which the Client is authorised to access; and
 - ii) to the extent necessary for the Client and its personnel to use the SaaS Service in accordance with this Agreement;
- 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 unless they are contradictory to this agreement, in which case this agreement will prevail.

5.5 Permitted Users:

- a) Without limiting clause 5.4, no individual other than a Permitted User may access or use the SaaS Service.
- b) The Client may authorise any member of its personnel to be a Permitted User, in which case the Client will provide the Supplier, via the Zyte administration interface, with the Permitted User's name, mobile phone number, and other information that the Supplier reasonably requires in relation to the Permitted User.
- c) The Client must procure each Permitted User's compliance with clauses 5.1; 5.2 and 5.4 and any other reasonable condition notified by the Supplier

to the Client.

- d) A breach of any term of this Agreement by the Client's personnel, (including, to avoid doubt, a Permitted User) is deemed to be a breach of this Agreement by the Client.
- e) The number of Permitted Users cannot exceed the ceiling at any one time.
- f) Personnel cannot share a License. They must be registered as a Permitted User via the Administration interface.

5.6 Authorisations

The Client is responsible for procuring all licences, authorisations and consents required for it and its personnel to use the Services, including to use, store and input Data into, and process and distribute Data through the Services.

6 SUPPLIER'S OBLIGATIONS

6.1 The Supplier shall perform the Services and its obligations under this Agreement "in full, on time, within the scope of the "Service Level Agreement" and including:

- a) promptly and efficiently, and in accordance with any agreed timetable;
- b) with the level of care, skill, diligence and judgement that would be reasonably expected from an experienced Supplier in the relevant field;
- c) by only using appropriately qualified, skilled, and experienced personnel who hold all required licences and consents; and
- d) in accordance with:
 - i) all laws, regulations, bylaws, industry codes of practice, ethical and professional standards, and licensing and consent requirements that are applicable to the Supplier, performance of the Services, and performance of Supplier's obligations under this Agreement; and
 - ii) all specific requirements for the Services and the Client's reasonable directions; and
 - iii) where possible, in a manner best likely to further the Client's Objectives for the Services (to the extent described in the Background of this Agreement). Notwithstanding that future features or feature requests from the Client may incur additional costs to the Client and will be supplied by the Supplier only after agreement of costs and time frames for delivery is made between the Client and the Supplier.

6.2 Responsibility:

The Supplier is solely responsible for the due and proper performance of the Services, and for meeting

all its own costs and expenses necessary to do so (except as expressly provided in the Specific Terms).

- 6.3 The Supplier shall not, nor shall it permit, the SaaS Service to be delivered in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights pursuant to the Privacy Act 1993) or which is Objectionable, incorrect or misleading.

7 PARTIES' RELATIONSHIP

7.1 **Good faith:** The parties shall act in good faith with respect to their mutual rights and obligations under this Agreement, and to progress effective implementation of the purposes of this Agreement.

7.2 **Representatives:** The Party Representatives are the first and primary contact persons in relation to this Agreement, except to the extent otherwise provided in this Agreement or agreed by the parties.

7.3 **No surprises:** The Supplier and the Client shall communicate regularly with each other about performance of the Services, including promptly raising and escalating any issues relating to the Services, this Agreement or of likely concern to the Client or the Supplier.

7.4 **Independent Supplier:** Supplier acknowledges that it is an independent Supplier and neither it nor any subcontractor is by virtue of this Agreement an employee, agent, partner, joint venturer or subsidiary of the Client. Supplier shall not represent or do anything to the contrary, nor pledge the credit of the Client or make any representation on its behalf, except as expressly authorised under this Agreement.

8 DATA

8.1 Supplier access to Data:

- a) The Client acknowledges that:
 - i) the Supplier may require access to the Data to exercise its rights and perform its obligations under this Agreement; and
 - ii) to the extent that this is necessary but subject to clause 10, the Supplier may authorise a member or members of its personnel to access the Data for this purpose.
- b) The Client must arrange all consents and approvals that are necessary for the Supplier to access the Data as described in clause 6.1a.

8.2 Analytical Data:

The Client acknowledges and agrees that:

- a) the Supplier may:

i) use Data and information about the Client's and the Client's end Users' use of the Services to generate anonymised and aggregated statistical and analytical data (Analytical Data); [and]

ii) use Analytical Data for the Supplier's internal research and product development purposes and to conduct statistical analysis and identify trends and insights; [and]

iii) supply Analytical Data to third parties;

b) the Supplier's rights under clause 6.2a above will survive termination of expiry of this Agreement; and

c) title to, and all Intellectual Property Rights in, Analytical Data is and remains the Supplier's property.

8.3 Agent:

a) The Client 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 Client for the purposes of the Privacy Act 1993 and any other applicable privacy law.

b) The Client must obtain all necessary consents from the relevant individual to enable the Supplier to collect, use, hold and process that information in accordance with this Agreement.

8.4 Backups of Data:

While the Supplier will take standard industry measures to back up all Data stored using the Services, the Client agrees to keep a separate back-up copy of all Data uploaded by it onto the SaaS Service.

8.5 International storage of Data:

The Client 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.

8.6 Indemnity:

The Client indemnifies the Supplier against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by the Supplier's solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

9 PRICE AND PAYMENT

9.1 Price: In consideration of performing the Services, the Client shall pay the Supplier the Price at the rates

and/or amounts and at the times set out in Specific Terms and otherwise on the terms of this Agreement. Unless provided otherwise in the Specific Terms, payments shall be made monthly in advance with 7 days payment terms.

9.2 GST: The Price is exclusive of GST (unless provided otherwise in the Specific Terms). If the Supplier is obliged to account for GST in respect of the Services, Supplier must submit valid GST invoices, and the Client will pay the applicable GST.

9.3 Invoicing: Supplier shall punctually raise and submit tax invoices to the Client at the billing email address supplied by the Client specifying:

(a) the Client's purchase order number for the Services under this Agreement if the Client uses a Purchase Order system and relays that Purchase Order number to the Client;

(b) the amount payable by the Client;

(c) the Services supplied and dates of supply;

(d) a breakdown the basis for calculating the payment amount, including (if applicable) the amounts and rates charged for specific Licenses, Truing of License numbers and additional services;

(e) all information required for a valid GST tax invoice (subject to clause 9.2).

9.4 Invoice accuracy:

The Supplier must ensure invoices and invoice information are accurate in respect of the Services performed, and the amounts payable are correctly calculated including with respect to service levels or other Price-relevant criteria.

9.5 Monthly Activity Report: The Supplier will provide a copy of the monthly activity report with the monthly invoice to verify Truing.

9.6 Payment:

(a) Subject to clauses 9.3; 9.4; and 9.5 and there not being manifest errors or discrepancies, invoices must be paid within 7 days of the date of the invoice.

(b) The Client must pay the invoice electronically in cleared funds without any offset or deduction.

9.7 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.

9.8 Increases:

a) By giving at least [30] days' notice, the Supplier may increase the Fees once each Year (but not the first Year) by:

i) either, at least 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.

ii) or by the equivalent percentage increase of the retail price on the website which is based on the feature releases in the last 12 months and the market demand for the SaaS Service.

b) If the Client does not wish to pay the increased Fees, it may terminate this 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 Client does not terminate this Agreement in accordance with this clause, it is deemed to have accepted the increased Fees.

10 CONFIDENTIALITY

10.1 Confidential information: This clause applies to each party in respect of the other party's "Confidential Information" (however it comes known to a party), namely information which is marked or indicated as confidential or which would reasonably be considered confidential:

- (a) Confidentiality: Each party must keep confidential the Confidential Information, however it comes in the party's knowledge, and not copy, use or disclose it to any person except as reasonably required for purposes of this Agreement.
- (b) Security: Each party must maintain effective security measures to protect the Confidential Information, and ensure all persons having access to the Confidential Information comply with the party's confidentiality obligations (and sign any non-disclosure agreement reasonably requested by either party).
- (c) Disclosure: Each party may use or disclose Confidential Information to the extent necessary to comply with any law or court order (subject to escalating the matter to the other party first), or obtain professional advice in relation to this Agreement.
- (d) Records: Each party may keep copies of Confidential Information necessary for internal record keeping and audit purposes.

Information relating to the Services, including any data or information generated from or as part of the Services, is the Confidential Information of the Client. This clause 10.1 does not limit a party's rights or

obligations at law or equity with regard to confidential information.

11 INTELLECTUAL PROPERTY:

11.1 Ownership

- a) Subject to clause 11.1b, 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 Client must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- b) Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the Client. The Client 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 this Agreement.

11.2 Know-how: To the extent not owned by the Supplier, the Client 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.

11.3 Feedback: If the Client 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.

11.4 Third party sites and material: The Client acknowledges that the SaaS Service may link to third party websites or feeds that are connected or relevant to the SaaS Service. Any link from the SaaS Service does not imply any Supplier endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, the Supplier excludes all responsibility or liability for those websites or feeds.

11.5 Third party Intellectual Property Rights indemnity:

- (a) The Supplier indemnifies the Client against any claim or proceeding brought against the Client to the extent that claim or proceeding alleges that the Client's use of the SaaS Service in accordance with this Agreement constitutes an infringement of a third party's Intellectual Property Rights (IP Claim). The indemnity is subject to the Client:

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 11.5a does not apply to the extent that an IP Claim arises from or in connection with:

i) the Client's breach of this Agreement;

ii) use of the SaaS Service in a manner or for a purpose not reasonably contemplated by this 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 Client 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.

12 WARRANTIES

12.1 General warranties: The Supplier and the Client represents and warrants and undertakes on a continuing basis that:

(a) Enforceable: this Agreement is valid, binding and enforceable and they have taken all necessary action to authorise the execution and performance of this Agreement;

(b) Solvency: no Insolvency Event has occurred in respect of either the Supplier or the Client;

(c) No inducements: no form of inducement or reward has been or will be directly or indirectly provided or offered by the Supplier or the Client to any of the Supplier's or Client's employees, agents, officers or representatives in connection with this Agreement or the Services.

12.2 No implied warranties: To the maximum extent permitted by law:

a) the Supplier's warranties are limited to those set out in this Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of 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 NZD[1,000.00]; and

b) the Supplier makes no representation concerning the quality of the Services other than documented in the Service Level Agreement and does not promise that the Services will:

i) meet the Client'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 Client; or

ii) be secure, free of viruses or other harmful code, uninterrupted or error free.

12.3 Performance of the Services: Supplier represents, warrants and undertakes on a continuing basis that:

(a) No breach: performance of the Services by Supplier, and use of the Services by the Client, will not cause Supplier or Client to be in breach of any law or third party rights, including intellectual property laws; and

(b) Correct information: all information and representations made by the Supplier (prior to or after the date of this Agreement, including in any contestable procurement process leading to this Agreement) are true, complete and correct and not misleading through non-disclosure.

12.4 Service Level Agreement:

a) A Service Level Agreement forms part of this agreement, which details the Supplier's commitment to uptime/downtime, response times, fix times and recompense to the Client should service fall below those agreed levels and affect the Client's use of the Zyte Software for their business purposes.

b) It is the Client's responsibility to report to the Supplier any lost productivity due to breaches of the Service Level Agreement.

12.5 Consumer Guarantees Act

The Client agrees and represents that it is acquiring the Services, and entering this Agreement, for the purposes of trade. The parties agree that:

a) to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Services or this Agreement; and

b) it is fair and reasonable that the parties are bound by this clause 12.4

12.6 Limitation of remedies:

Where legislation or rule of law implies into this Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in this 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.

13 LIABILITY AND INSURANCE

13.1 Maximum liability: The maximum aggregate liability of the Supplier under or in connection with this Agreement or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise must not exceed the amount equal to any insurance able to be claimed for the Client's benefit under the Supplier's insurance policy as set out in the Specific Terms of this Agreement.

13.2 Unrecoverable loss: Neither party is liable to the other under or in connection with this 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.

13.3 Unlimited liability:

- a) Clauses 13.1 and 13.2 do not apply to limit the Supplier's liability:
 - i) under the indemnity in clause 11.5a; or
 - ii) under or in connection with this Agreement for:
 - ▲ personal injury or death;
 - ▲ fraud or wilful misconduct; or
 - ▲ a breach of clause 10.
- b) Clause 9.2 does not apply to limit the Client's liability:
 - i) to pay the Fees;
 - ii) under the indemnity in clause 8.6; or
 - iii) for those matters stated in clause 13.3aii.

13.4 No liability for Other's failure:

Neither party will be responsible, liable, or held to be in breach of this Agreement for any failure to perform its obligations under this Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under this Agreement, or by the negligence or misconduct of the other party or its personnel.

13.5 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 this Agreement.

13.6 Insurance

- a) The Supplier must effect and maintain insurance of the types and amounts (for any single occurrence and in aggregate) set out in the Specific Terms during the Term.
- b) The Client acknowledges that any claim against the Supplier's insurance policy is subject to the terms and acceptance of the Supplier's insurer and the Client accepts no liability beyond what is actionable from the Insurer.

14 TERMINATION AND EXPIRY

14.1 Duration: Unless terminated under this clause 14, this Agreement:

- a) starts on the Start Date and ends on the End Date; but
- b) where no End Date is set out in the Specific Terms, continues for successive terms of 12 months from the Start Date unless a party gives 60 days' notice that this Agreement will terminate on the expiry of the then-current term.

14.2 No Termination at will: no termination at will without cause or expiry as specified in this document

14.3 Suspension/Termination by Client: The Client may immediately terminate (or suspend Supplier's performance of) this Agreement in whole or in part by written notice to Supplier if any of the following applies:

- (a) Supplier commits a material breach of this Agreement and fails to remedy the breach within ten (10) Business Days of written notice of the breach from the Client. Breach of any of clauses 6.1(d)(i) or 13.6a is a material breach for purposes of this clause 14.3(a); or
- (b) the Supplier suffers an Insolvency Event;

14.4 Termination by Supplier: Supplier may immediately terminate this Agreement by written notice to the Client if:

The Client commits a material breach of this Agreement and fails to remedy the breach within ten (10) Business Days of written notice of the breach from Supplier. Breach of any of the clauses 5.1a; 5.1b; 5.2; 5.4a; 5.4c; 5.4c; 5.4d; 5.4f; 5.5a; 5.5c; 5.5d; 5.5f; 9.5a; 10.1a; 10.1b; is a material breach for the purposes of this clause 14.4

14.5 Suspension or restriction by Supplier: Without limiting any other right or remedy available to the Supplier, the Supplier may restrict or suspend the Client's access to the SaaS Service and/or delete, edit or remove the relevant Data if the Supplier considers that the Client (including any of its personnel) has:

- a) undermined, or attempted to undermine, the security or integrity of the SaaS Service or any Underlying Systems;
- b) used, or attempted 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;
- c) transmitted, inputted or stored any Data that breaches or may breach this Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
- d) otherwise materially breached this Agreement.

14.6 Process:

- a) The Supplier must notify the Client where it restricts or suspends the Client's access, or deletes, edits or removes Data, under clause 14.5.
- b) Clause 114.8a will not apply to the extent that it relates to Data deleted or removed under clause 14.5.

14.7 Consequences of termination or expiry: On termination or expiry of this Agreement:

- (a) The Client must pay the Supplier for Services validly performed to the date of expiry or termination;
- (b) 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 this 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.

14.8 Handover and transition:

- (a) Data migration: At the Client's request any time during or up to 2 months after the Term, the Supplier will fully and promptly cooperate to export the Client's stored digital assets to the Client's computer system within the format in which it is stored on the Zyte cloud.

14.9 Accrued rights: Termination or expiry of this Agreement is without prejudice to the accrued rights of the parties, and any express rights under this Agreement are additional to any other right or remedy a party may have.

14.10 Survival: Any provisions intended to survive expiry or termination including clauses 10 and 11, together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses) will remain in full force and effect following expiry or termination.

15 DISPUTE RESOLUTION

15.1 Process: If any dispute arises in connection with this Agreement or its subject matter, either party may trigger the provisions of this clause 15.1 by giving written notice of the dispute ("**Dispute Notice**") to the other party, and the following shall apply:

- (a) Negotiation: The parties shall endeavour to resolve the dispute within ten (10) Business Days of the Dispute Notice through negotiations between the Party Representatives and senior managers if required.
- (b) Mediation: If the dispute is not so resolved, either party may within twelve (12) Business Days of the Dispute Notice request mediation which shall be conducted in Auckland on the following basis:
 - (i) If the parties cannot agree on a time, place and mediator, then the President of the New Zealand Law Society (or his or her nominee) shall decide.
 - (ii) The mediator will determine the procedure and timetable for the mediation.
 - (iii) The costs of the mediation will be shared equally by the parties, with each party meeting its own costs.
 - (iv) All proceedings and disclosures in the course of the mediation will be conducted and made without prejudice to the rights and position of the parties in any subsequent legal proceedings.

15.2 Supplier to continue: Supplier must continue to perform the Services during any dispute until it is resolved, unless the Client directs otherwise, and the Client shall continue to pay for the Services.

15.3 Legal proceedings: Neither party may commence any legal proceedings in relation to a dispute until the process in clause 15.1 is exhausted, provided that nothing in this clause 13 restricts or limits the right of either party to seek urgent injunctive relief.

16 UNFORESEEN CIRCUMSTANCES

A party is not liable for any act, omission or failure under this Agreement (except failure to meet an obligation to pay money) if that act, omission or failure arises directly from circumstances beyond the reasonable control of that party, including extreme weather conditions, civil disruption or industry-wide industrial action, provided that the party seeking to rely on this clause 16 will:

- (a) notify the other party in writing, including reasons and perceived impacts, that such an event has or is likely to occur; and
- (b) take all reasonably practicable steps to limit the effects of that event on the performance of its obligations under this Agreement and continue to carry out its obligations under this Agreement to the extent possible.

If normal performance of this Agreement cannot be resumed within three (3) months, the Client may in its discretion require an appropriate variation or terminate this Agreement.

17 GENERAL

- 17.1 Counterparts:** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Agreement.
- 17.2 Electronic Signatures and Notices:** The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by PDF, or other email transmission), which signature shall, be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original or scanned signed Agreement upon request.
- 17.3** Express acknowledgement by the relevant Party Representative that it has received an email of the notice constitutes delivery.
- 17.4** Notices delivered after 5pm on a Business Day, or on a non-Business Day, will be deemed received on the next Business Day.
- 17.5 Further acts:** Each party must sign all documents and do all things reasonably requested by the other party necessary or convenient to give effect to this Agreement according to its true intent and spirit.
- 17.6 Rights, benefits and obligations:**
 - (a) **Benefits:** Except as expressly provided, this Agreement is not intended to confer benefits or

enforceable rights on subcontractors or any persons other than the parties.

- (b) **Joint liability:** If Supplier is more than one person or entity (whether or not trustees) then this Agreement binds them jointly and severally.

- 17.7 Rights of Third parties:** No person other than the Supplier and the Client has any right to a benefit under, or to enforce, this Agreement.
- 17.8 Severability:** If any provision of this Agreement is or becomes unlawful or unenforceable it shall be treated as severable from the other provisions of this Agreement which shall remain in full force and effect.
- 17.9 Variation and waiver:** The provisions of this Agreement may only be varied or waived by written agreement signed by the parties. Any delay or failure to exercise any remedy is not a waiver.
- 17.10 Entire agreement:** This Agreement constitutes the entire agreement between the parties in relation to its subject-matter, and supersedes all prior oral and written representations, understandings, arrangement and agreements except to the extent expressly retained under the terms of this Agreement.
- 17.11 Governing law and jurisdiction:** This Agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts, and shall not object to the exercise of jurisdiction by those courts.

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