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## Terms and Conditions - Hosting

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v3.5

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## Parties

Marksmen IT Limited, a duly incorporated company having its registered offices at 2 Iberia Place, Lynfield, Auckland, New Zealand ("**Marksmen IT**") agrees to supply Cloud Services as described in the Cloud Agreement to you as the Cloud Customer ("**you**"), subject to the following terms and conditions.

## Agreement

### 1. Cloud Agreement

- 1.1. The Cloud Agreement, consisting of these Terms and Conditions ("**Terms and Conditions**"), the information provided by you or any third party authorised by you as part of the application to become a Cloud Customer, including any Application Form, the Service Terms, the Pricing Schedule, the Privacy Statement and the Acceptable Use Policy, is the terms by which Marksmen IT allows you to access, use, provision, maintain and otherwise consume Cloud Services.
- 1.2. Unless mutually agreed, you acknowledge that the Cloud Agreement sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, memoranda of understanding, understandings or arrangements relating to its subject matter.
- 1.3. The Cloud Agreement may be read in conjunction with any hosting agreement, service level agreement, software as a service agreement, development contract or other contract for services provided by Marksmen IT.
- 1.4. If there is conflict between these Terms and Conditions and any of the other documents comprising the Cloud Agreement, these Terms and Conditions will prevail to the extent of the inconsistency.

### 2. Definitions

- 2.1. In the Cloud Agreement, unless the context otherwise requires:

**"Acceptable Use Policy"** means the policy that specifies the terms governing your access, use, provision, maintenance or other consumption of Cloud Services, as set out on Marksmen IT's website at <https://www.marksmenit.co.nz/hosting-acceptable-use-policy>;

**"API"** means the application programming interface used by Cloud Customers to interact with or consume the Cloud Services;

**"Application Form"** means the sign-up form which is completed by you either as an individual or as an authorised representative of a company, business, association or other entity, containing the information requested on Catalyst's website at <https://www.marksmenit.co.nz/cloud-hosting>;

**"Assigning Party"** means the party assigning or dealing with the Cloud Agreement in accordance with clause 0 (Assignment & Novation) of the Cloud Agreement;

**"Business Day"** means any day of the week other than Saturday, Sunday, or a public holiday or regional holiday in Wellington and Auckland, as defined in section 44(1) of the Holidays Act 2003);

**"Catalyst Cloud"** means the cloud infrastructure including the premises where the cloud is hosted, the hardware, network, and the software to support the provision of Cloud Services;

**"Cloud Agreement"** means the agreement between Marksmen IT and you, which consists of these Terms and Conditions, the Application Form, the applicable Service Terms, the Pricing Schedule, the Privacy Statement and the Acceptable Use Policy;

**"Cloud Customer" mainly referred to in this document as "you"** means the individual or legal entity that applied via the Application Form to become a Catalyst Cloud customer, and has been accepted as such by Marksmen IT;

**"Cloud Data"** means any information, data, files, documents, objects, software, applications, and any other information that you upload into the Catalyst Cloud in accordance with the provision of Cloud Services to you;

**"Cloud Services"** means all or part of the Cloud Services that Marksmen IT has agreed to provide to you and as set out in the Service Terms;

**"Commencement Date"** means the date upon which Marksmen IT accepts your application to become a Cloud Customer;

**"Committed Minimum Expenditure"** has the meaning given in the Pricing Schedule;

**"Committed Term"** has the meaning given in the Pricing Schedule;

**"Confidential Information"** means all information provided to Marksmen IT by you or any third party authorised by you, including any Cloud Data, any

information provided in the Application Form and any and all materials, documentation and records provided to Marksmen IT or created by Marksmen IT that directly relate to you, other than information which:

- (a) is or becomes publicly available through no fault of Marksmen IT; or
- (b) is independently acquired or developed by Marksmen IT without breaching any of its obligations under the Cloud Agreement or at law, and without the benefit or use of any Confidential Information disclosed by you; or
- (c) is lawfully acquired by Marksmen IT from a third party, provided such information is not obtained as a result of a breach by that third party of any confidentiality obligations owing to you;

**“Intellectual Property Rights”** means all intellectual property rights, title to, and interests (including common law rights and interests) in any jurisdiction including, without limitation:

- (a) patents, trademarks, service marks, copyright, registered designs, trade names, domain names, symbols and logos;
- (b) patent applications and applications to register trademarks, service marks and designs; and
- (c) tools, techniques, computer program code, specifications, rights in circuit layouts, ideas, concepts, materials, documentation, know-how, data, inventions, discoveries, developments, trade secrets, information and logical sequences (whether or not reduced to writing or other machine or human readable form).

**“Non-Assigning Party”** means the party not assigning or dealing with the Cloud Agreement in accordance with clause 0 (Assignment & Novation) of the Cloud Agreement;

**“Notices”** means any notice, document, request, demand or other communication given to the other party in accordance with Clause 20 (Notices) of the Cloud Agreement;

**“Open Source Software”** means software which is subject to a licence identified as an open source licence, by the open source initiative as meeting its open source definition;

**“Pricing Schedule”** means the pricing information for the Catalyst Cloud or any and all Cloud Services, as set out on Marksmen IT’s website at <https://www.marksmenit.co.nz/hosting-prices>;

**“Privacy Statement”** means the statement that specifies the privacy policies, practices, rights, duties, obligations, responsibilities and otherwise of personal information in accordance with the Privacy Act 1993, as set out on Marksmen IT’s website at <https://www.marksmenit.co.nz/hosting-privacy-statement>;

**“Service Terms”** means both:

- (a) the standard service terms of use which apply generally to the Catalyst Cloud and are common to all Cloud Customers’ use of Cloud Services; and
- (b) the specific service terms of use which apply to a specific component of Cloud Services and are applicable to those Cloud Customers who have access to, use, provision, maintain or otherwise consume that specific component of Cloud Services,

which set out the service level terms on which Marksmen IT provides Cloud Services to Cloud Customers and on which Cloud Customers access, use, provision, maintain or otherwise consume Cloud Services, as set out on Marksmen IT’s website at <https://www.marksmenit.co.nz/hosting-service-terms>.

### 3. Interpretation

3.1. In the Cloud Agreement, unless the context otherwise requires:

- 3.1.1. A reference to a person includes any other entity or association recognised by law;
- 3.1.2. Words include singular and plural numbers;
- 3.1.3. Any reference to any of the Parties by their defined terms includes that Party’s successors, permitted assigns or duly authorised agents;
- 3.1.4. Every Agreement or undertaking expressed or implied by which more persons than one agree or undertake any obligation and derive any benefit under the Cloud Agreement binds and is for the benefit of such persons jointly and severally;
- 3.1.5. Clause headings are for reference purposes only;
- 3.1.6. Where any word or phrase is given a defined meaning in the Cloud Agreement, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- 3.1.7. A reference to a statute includes all regulations under and amendments to

that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;

- 3.1.8. No benefits under the Contracts (Privity) Act 1982 are intended by the Parties to be created under the Cloud Agreement;
- 3.1.9. All references to currency are to New Zealand currency and exclude GST unless otherwise specified; and
- 3.1.10. The calculations of all periods of time or Notice exclude the day on which the period or the Notice is given and the day on which the period or Notice expires;
- 3.1.11. The word “including” shall not imply limitation; and
- 3.1.12. No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Cloud Agreement, or any part of it.

#### 4. Application to become a Cloud Customer

- 4.1. To make an application to become a Cloud Customer, you must complete the Application Form.
- 4.2. Upon making an application to Marksmen IT to become a Cloud Customer:
  - 4.2.1. You represent to have provided accurate and complete information to Marksmen IT and you undertake to advise Marksmen IT as soon as practicable of any changes to the information provided to Marksmen IT;
  - 4.2.2. If signing up on behalf of a legal entity, you represent that you have legal authority to represent and legally bind that entity to the Cloud Agreement; and
  - 4.2.3. You hereby agree to and accept the provisions of the Cloud Agreement in its entirety.

## 5. Acceptance of the Application

- 5.1. Marksmen IT, in its sole and unfettered discretion, reserves the right to accept or reject without reason any application to become a Cloud Customer.

## 6. Description of Services

- 6.1. Subject to the Service Terms, the Acceptable Use Policy and clause 4.1 and 5.1 of these Terms and Conditions, Marksmen IT agrees to provide you with the ability to access, use, provision, maintain and otherwise consume Cloud Services in accordance with the Cloud Agreement.

## 7. Rights and Obligations of Marksmen IT

- 7.1. Marksmen IT reserves the right to make available any new software, service, application, features or other program to you from time to time as Marksmen IT in its sole discretion deems fit.
- 7.2. Marksmen IT reserves the right to change, discontinue or deprecate the Cloud Services, in part or as a whole, including any features or functionality of the Cloud Services, or any APIs, from time to time.
- 7.3. In the event of any material change to the Cloud Services or any features or functionality of the Cloud Services, Marksmen IT will use reasonable efforts to provide you with fourteen (14) business days' notice in accordance with clause 20.
- 7.4. In the event that Marksmen IT changes, discontinues or deprecates any Cloud Service, Marksmen IT will use commercially reasonable efforts to continue supporting the previous version of the Cloud Service changed, discontinued or deprecated for a period of six (6) months after the change, discontinuation or deprecation, except if continuing to support that Cloud Service would pose a security or intellectual property issue, or is proscribed by law.

## 8. Your Rights and Obligations as a Cloud Customer

- 8.1. You agree to use the Cloud Services only for the purposes for which Cloud Services are provided and in accordance with the Cloud Agreement and Marksmen IT's reasonable instructions.
- 8.2. You agree not to (and not to permit any third party to) access, use, provision, maintain or otherwise consume Cloud Services in contravention of the Cloud Agreement.

- 8.3. You accept that having permission to access, use, provision, maintain or otherwise consume Cloud Services does not give you any rights to resell any of the Cloud Services in whole or in part.
- 8.4. You are permitted to sell your services hosted on the Cloud Services.

## Ownership and Intellectual Property

### 9. Ownership

- 9.1. Ownership of the Catalyst Cloud infrastructure, including the computers, hardware, equipment, building, facilities, amenities, materials or any other item used by Marksmen IT in the provision of Cloud Services to any of its Cloud Customers, remains with Marksmen IT at all times and you acknowledge that you have no claim whatsoever in respect of such ownership.
- 9.2. The Parties acknowledge and accept that where Marksmen IT uses open source software that has been released under an open source licence and to the extent that such software has not been customised by Marksmen IT, the ownership of that open source software remains with the copyright owner and that, in accordance with the open source licence terms, Marksmen IT or its duly authorised agent has been granted a suitable licence to use that open source software.
- 9.3. With the exception of open source software to the extent that such software has not been customised by Marksmen IT, you acknowledge and accept that any software licence used by Marksmen IT or its duly authorised agent in the provision of Cloud Services to any of its Cloud Customers, is licensed to Marksmen IT by the licensor, and you acknowledge that you have no claim whatsoever in respect of such software or its licence.
- 9.4. You acknowledge and accept that the ownership and Intellectual Property Rights in any and all software customised by Marksmen IT in the provision of Cloud Services to any of its Cloud Customers, remains with Marksmen IT at all times and you acknowledge that you have no claim whatsoever in respect of such ownership.
- 9.5. With the exception of open source software that has been released under an open source licence to the extent that such software has not been customised by Marksmen IT, you agree not to make any attempts to copy, modify or reverse engineer or reverse assemble any of the Cloud Services in whole or in part.

## 10. Intellectual Property

- 10.1. You agree all title to and property (including all Intellectual Property Rights) in any aspect of Cloud Services shall remain the property of Marksmen IT, including but not limited to:
  - 10.1.1. any infrastructure, including the computers, hardware, software, equipment, building, facilities, amenities, materials or any other item used by Marksmen IT in the provision of Cloud Services to any of its Cloud Customers;
  - 10.1.2. any information, including documentation, data, materials, process, procedures, systems, manuals, or any other information produced or derived from or obtained in any manner whatsoever in the provision of Cloud Services.
- 10.2. Marksmen IT grants to you a non-transferable, non-exclusive, revocable licence to access and use Cloud Services for the duration of the term of the Cloud Agreement in accordance with clause 16 (Term) of the Cloud Agreement and solely for the purposes and in accordance with the Cloud Agreement and any other terms which Marksmen IT deems appropriate or notifies you of.
- 10.3. Nothing in the Cloud Agreement shall operate to transfer, assign, novate, or grant a licence, or sub-licence to the Intellectual Property Rights of Marksmen IT, except as provided for in clause 10.2 of the Cloud Agreement.
- 10.4. The parties agree that:
  - 10.4.1. Each party's use of the Intellectual Property Rights pursuant to the Cloud Agreement will not create any independent right of that party to such Intellectual Property Rights; and
  - 10.4.2. Neither party will do anything to adversely affect the other party's rights to the Intellectual Property Rights.

## Payment and Default

### 11. Pricing

11.1. You acknowledge and accept that:

11.1.1. The charges and the basis of those charges are set out in the Pricing Schedule or as is otherwise notified to you in writing;

11.1.2. The Pricing Schedule is in New Zealand dollars; and

11.1.3. Goods and Services Tax is charged in addition to all prices contained in the Pricing Schedule.

### 12. Charges

12.1. You agree to pay any and all charges for the Cloud Services used in connection with the Cloud Customer's Cloud Services account.

12.2. You accept that the charges apply from the Commencement Date of the Cloud Agreement.

12.3. Marksmen IT reserves the right to apply a surcharge for any payments made by credit card.

### 13. Invoicing

13.1. Marksmen IT will invoice you in advance on a monthly basis at the end of each month.

13.2. You agree to pay in full any and all charges in accordance with each and every invoice issued to you.

13.3. Invoices are due and payable by the 7th calendar day of the following month.

13.4. Overdue invoices will accrue interest at a rate of 24% per annum calculated from the due date.

13.5. You are liable for all costs of collection of overdue accounts, including legal costs on a solicitor-client basis.

## 14. Provision of Services

- 14.1. You acknowledge and accept that Marksmen IT is not obliged to provide you with Cloud Services and that Cloud Services will not be provided if Marksmen IT has not satisfied itself that you will be able to pay any or all of the charges or likely charges.
- 14.2. Marksmen IT reserves the right to request, access and use information about you from, and reserve the right to disclose information about you to, third party agencies including credit reference agencies and debt collection agencies, prior to Marksmen IT either accepting or declining your application to become a Cloud Customer or at any time during the Cloud Agreement or thereafter.
- 14.3. You acknowledge that Marksmen IT is entitled to make decisions affecting you based on the information provided to it by third party agencies including credit reference agencies and debt collection agencies.
- 14.4. You acknowledge that at any time Marksmen IT is entitled to restrict or place a cap on Cloud Services used by you or any other restriction that Marksmen IT considers appropriate.

## 15. Default and Disputed Accounts

- 15.1. If any charge remains unpaid after the Payment Date, Marksmen IT reserves the right to charge you a late payment administration charge of \$300 plus GST, which the parties agree is a genuine pre-estimate of the cost to Marksmen IT of managing the late payment process.  
  
If you use a payment method which may dishonour, Marksmen IT reserves the right to charge a dishonour fee of \$450 plus GST in addition to a late fee if dishonour occurs, which the parties agree is a genuine pre-estimate of the cost to Marksmen IT of managing the dishonour process.
- 15.2. You accept that you are solely responsible for and liable to make full payment of any and all charges without set-off, counter-claim or deduction.
- 15.3. If, within 60 days from the date of the invoice, you believe an invoice contains a mistake, you agree to contact Marksmen IT immediately and submit in writing as soon as practicable the nature of the dispute, and Marksmen IT will investigate the dispute and:
  - 15.3.1. Where Marksmen IT agrees the invoice contains a mistake, Marksmen IT or its duly authorised agent will correct the mistake and reissue the invoice as soon as practicable; or

- 15.3.2. Where Marksmen IT considers that the invoice does not contain a mistake, Marksmen IT will advise you as soon as practicable and you agree to pay the charge in full immediately upon being notified of Marksmen IT's decision or before the payment date as set out on the invoice, whichever is later.
- 15.4. If the dispute arises after 60 days from the date of the invoice, you acknowledge that Marksmen IT or its duly authorised agent will not accept the dispute and you agree to make full payment of the charge regardless of the nature of the dispute.
- 15.5. If your provision of Cloud Services has been suspended, and Marksmen IT determines it appropriate to recommence provision of services, then Marksmen IT may charge and you agree to pay a reconnection fee of \$250 excluding GST, payable prior to Cloud Services being reconnected.

## Term, Termination and Dispute Resolution

### 16. Term

- 16.1. The Cloud Agreement commences on the Commencement Date and will continue in full force and effect until such time as it is terminated in accordance with any of the provisions of clause 18 (Termination) in the Cloud Agreement.
- 16.2. Unless it is otherwise agreed in writing, the Cloud Agreement will automatically continue on a calendar month by calendar month basis on each subsequent first of the month until such time as the Cloud Agreement is terminated in accordance with Clause 18.

### 17. Suspension

- 17.1. Marksmen IT or its duly authorised agent reserve the right to suspend any and all provision of Cloud Services to you at any time if Marksmen IT, at Marksmen IT's sole discretion, has reason to believe or suspect you are in material breach of the Cloud Agreement.
- 17.2. Where Marksmen IT has reason to believe or suspect you of committing a material breach of the Cloud Agreement which is capable of being rectified, Marksmen IT will give you twenty-four (24) hours' notice to provide you with an opportunity to remedy the breach.

- 17.3. Upon suspension of Cloud Services, where you have paid any and all fees and charges owing, Marksmen IT will preserve your right to retrieve your data for five (5) Business Days following suspension.

## 18. Termination

- 18.1. The Cloud Agreement continues until termination by mutual agreement between the parties or unless earlier terminated by operation of any of the provisions of clauses 18.2, 18.3 or 18.4.
- 18.2. You may terminate the Cloud Agreement for any reason by giving Marksmen IT five (5) Business Days' prior written notice.
- 18.3. Marksmen IT may terminate the Cloud Agreement for any reason by giving you fifteen (15) Business Days' prior written notice, provided that this right may not be exercised while a term discount is in effect.
- 18.4. Either party may terminate the Cloud Agreement immediately without notice:
- 18.4.1. Where the other party has committed a material breach of the Cloud Agreement which is incapable of being rectified;
  - 18.4.2. Where the other party has committed a material breach of the Cloud Agreement which is capable of being rectified, and which is not rectified within fifteen (15) Business Days of written notice of that breach;
  - 18.4.3. Where the other party has committed three or more material breaches of the Cloud Agreement occurring within a twelve (12) month period, regardless of whether any of the breaches are capable of being rectified;
  - 18.4.4. Where it reasonably believes that the other party, its directors or principals are in liquidation, bankruptcy or receivership, or are likely to be so;
  - 18.4.5. Where the other party is removed from the Companies Register;
  - 18.4.6. If it reasonably believes that providing or purchasing the Cloud Services is creating a substantial economic, technical or other burden, or a material security risk; or
  - 18.4.7. In order to comply with the law.
- 18.5. Upon termination of the Cloud Agreement:
- 18.5.1. If terminated by you, Marksmen IT will delete your Cloud Data immediately.

- 18.5.2. If terminated by Marksmen IT, Marksmen IT will preserve your right to retrieve your Cloud Data for a period of three (3) Business Days following termination.
  - 18.5.3. You are solely responsible for any and all extraction of the Cloud Data; and
  - 18.5.4. Your access to use Cloud Services will be removed and your account closed; and
  - 18.5.5. Marksmen IT will destroy or erase any and all copies of the Cloud Data uploaded by you to the Cloud Services during the term of the Cloud Agreement.
- 18.6. If the Cloud Agreement is terminated by you under clause 18.2 or 18.4 prior to the end of any Committed Term, you agree to pay an amount equal to the remaining Committed Minimum Expenditure for the period from the date of termination until the end of the Committed Term.
- 18.7. If the Cloud Agreement is terminated by Marksmen IT under clauses 18.4.1, 18.4.2, or 18.4.3 prior to the expiry of any Committed Term, you agree to pay the lesser of the remaining Committed Minimum Expenditure for the period from the date of termination until the end of the Committed Term, and an amount equal to the sum of the Term Discount Amounts accrued since the Commencement Date.

## Dispute Resolution

### 19. Disputes

- 19.1. The parties undertake to use good faith when endeavouring to resolve any dispute relating to this Cloud Agreement.
- 19.2. If such dispute cannot be resolved within ten (10) Business Days, it is to be referred to the Chief Executives, Directors or equivalent of the respective parties who must endeavour to resolve such dispute in the spirit of achieving broad equity in respect of the Cloud Agreement and its purposes.

- 19.3. Failing agreement between them, but only if such agreement is not possible, the matter in dispute is to be referred to an accredited Mediator of the Arbitrators and Mediators Institute of New Zealand Inc (AMINZ). The mediation will be conducted in Auckland, and the parties shall bear the mediator's fees equally. If the parties do not agree on a mediator (or the mediator's fees) within five (5) Business Days of referral of the dispute to mediation, the mediator shall be appointed or the fees set by the chair of AMINZ or his or her nominee.
- 19.4. If the Dispute is not resolved within fifteen (15) Business Days of the appointment of the mediator, either party may by notice to the other party refer the dispute to arbitration. Such arbitration will be conducted in Wellington by a single arbitrator under the Arbitration Act 1996. If the parties do not agree on an arbitrator within five (5) Business Days of receipt of the notice of arbitration, the arbitrator shall be appointed by the President of the New Zealand Law Society or his or her nominee.

## 20. Notices

- 20.1. Notices from you are to be in writing and sent to Marksmen IT's address and delivered by hand, by prepaid registered post or sent by email to the address listed as Marksmen IT's address on its website ([www.marksmenit.co.nz](http://www.marksmenit.co.nz)).
- 20.2. Notices from Marksmen IT are to be in writing and sent to your physical or email address as set out in the information provided to Marksmen IT as part of the application to become a Cloud Customer or to any updated address as advised in writing to Marksmen IT by you or any third party authorised by you.

## Warranties, Liabilities, Indemnities and Insurance

### 21. Warranties

- 21.1. To the maximum extent permitted by law, Marksmen IT neither warrants nor represents that:
- 21.1.1. The Cloud Services will be uninterrupted, error-free, or free of any harmful components; or
  - 21.1.2. Cloud Data will be secure or not otherwise lost or damaged. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy and Cloud Data.

- 21.2. Marksmen IT disclaims any and all warranties not expressly stated in this Cloud Agreement, including the implied warranties of merchantability, fitness for a particular purpose, satisfactory quality, and non-infringement of intellectual property rights, to the fullest extent permitted by law.
- 21.3. To the maximum extent permitted by law, Marksmen IT accepts no responsibility and will not be held liable for any loss, damages, costs, or other liability as a direct or indirect consequence of any unavailability of Cloud Services.

## 22. Liabilities

- 22.1. Subject to clause 22.3 neither party shall be liable for any indirect or consequential loss or damages, including loss of profits, business interruption, loss of business information, data, goodwill or other non-pecuniary loss arising out of or in connection with the Cloud Agreement, whether arising from negligence, breach of contract or otherwise.
- 22.2. Subject to clause 22.3, the maximum aggregate liability of either party under or in connection with this Agreement shall be an amount equal to the total charges payable by you under the Cloud Agreement in the 12 months before the cause of action arose.
- 22.3. The limitations on liability contained in clauses 22.1 and 22.2 shall not apply to claims relating to:
  - 22.3.1. Your obligation to pay the charges for Cloud Services in accordance with the Cloud Agreement; and
  - 22.3.2. Your indemnity obligations under clause 23.1.
- 22.4. You acknowledge that Marksmen IT may have particular obligations towards third parties, including software suppliers. Those third parties will not be held liable to you or any other third party for any loss of profits, revenue, reputation, business opportunity, anticipated savings or anticipated gains, any business interruption, loss or corruption of data, any special or punitive damages, any indirect or consequential loss, or any other loss or liability of any kind arising from the provision of Cloud Services.

## 23. Indemnities

23.1. You will indemnify Marksmen IT, and its duly authorised agent against any losses, costs, claims, expenses, liabilities, legal action, proceedings or demands, settlement costs, reasonable defence and dispute resolution costs, fines and penalties, damages or other compensation awarded or reasonable settlement payments which Marksmen IT or its duly authorised agent may incur or suffer as a result of a breach of the Acceptable Use Policy.

## 24. Agreements with Third Parties

24.1. Marksmen IT accepts that you may enter into an agreement with a third party to provide services relating to software, applications systems or other programmes that operate within the Catalyst Cloud;

24.2. For the avoidance of doubt, you are solely responsible for and Marksmen IT will not be held responsible or liable for any responsibilities, duties or liabilities under any agreement you have entered into with any third party.

## General Provisions

### 25. Non Waiver

25.1. No failure or delay by a party to exercise a right, power or privilege under the Cloud Agreement will operate as a waiver of that right, power or privilege, nor will any single or partial exercise preclude any other or further exercise of any right, power or privilege under the Cloud Agreement.

### 26. Variation

26.1. You acknowledge that these Terms and Conditions may be amended from time to time by Marksmen IT. When this occurs, an email notification will be sent to you.

26.2. By using or accessing the cloud services after these Terms and Conditions have been amended, you are deemed to have accepted and agreed to that amendment as legally binding on you and any third party authorised by you.

## 27. Assignment and Novation

27.1. You acknowledge and agree that you must not assign or transfer the Cloud Agreement or any rights or obligations contained within it, without the prior written consent of Marksmen IT.

## 28. Severability

28.1. If any part of the Cloud Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the validity and enforceability of the remaining parts of the Cloud Agreement.

## 29. Force Majeure

29.1. Neither party is in breach of this Cloud Agreement if its breach is caused by an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of either Party.

29.2. If either party is unable to perform its duties and obligations under this Cloud Agreement as a direct result of any such reasons, that party must give immediate written notice to the other of such inability stating the reason.

29.3. The operation of this Cloud Agreement will be suspended during the period (and only during the period) in which the reason continues. Immediately upon the reason ceasing to exist the Party relying upon it must give written advice to the other of this fact. If the suspension continues for more than ten (10) Business Days, either party may terminate this Cloud Agreement immediately by giving written notice to the other party.

## 30. Governing Law

30.1. The Cloud Agreement is governed by and construed in accordance with the laws of New Zealand for the time being in force, and the parties agree to submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

## 31. Survival

- 31.1. Any provision of the Cloud Agreement that contemplates performance or observance subsequent to termination or expiration of the Cloud Agreement shall survive termination or expiration of the Cloud Agreement and continue in full force and effect, including clauses 9 (Ownership), 11 (Intellectual Property), 15 (Default and Disputed Accounts), 18 (Termination), 19 (Disputes), 21 (Warranties), 22 (Liabilities), and 0 (Indemnities) of these Terms and Conditions, clause 7 (Confidentiality) of the Service Terms, and clauses 1 to 8 of the Privacy Statement.