

Engage Solutions Terms and Conditions

1. Definitions "Agreement"

means these Terms of Use.

"Confidential Information"

includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

"Data"

"Fee Schedule"

means the information relating to subscriptions and billing as advised by your Engage Solutions Ltd. representative. This fee schedule may be updated or amended by Engage Solutions Ltd. from time to time.

"Intellectual Property Right"

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

"Service"

means the Engage Employment HR and Health and Safety application made available via the Website.

"Subscription Fee"

means the monthly fee (excluding any taxes and duties) payable in accordance with the Fee Schedule.

means any data inputted by You or with Your authority into the Website.

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"User"

means any person or entity, other than the Subscriber, that uses the Service with the

authorisation of the Subscriber.

"Website"

means the Internet site at the domain www.engagesolutions.co.nz or any other subdomain(s) operated by Engage Solutions Ltd.

"Subscriber"

means the person who registers to use the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

"You"

means the main Subscriber to the Service. "Your" has a corresponding meaning.

2. Use of Software

Engage Solutions Ltd. grants the right to access and use the Service via the Website with the particular user roles available to You. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement. You acknowledge and agree that, subject to any applicable written agreement between the Subscriber and the Users, or any other applicable laws:

- a. the Subscriber determines who is a User and what level of user role access to the relevant functions of the Service that User has;
- b. the Subscriber is responsible for all Users' use of the Service;
- c. the Subscriber controls each User's level of access to the relevant functions and Service at all times and can revoke or change a User's access, or level of access, at any time.

3. Your Obligations

1. Payment

An invoice for the Subscription Fee will be issued on the 7th of each month in accordance with the details agreed.

All Engage Solutions Ltd. invoices will be sent to You, or to a specified Billing Contact whose details are provided by You, by email. Payment of all amounts specified in an invoice must be paid. You are responsible for payment of all taxes and duties in addition to the Subscription Fee.

2. General

You must only use the Service and Website for Your own lawful internal business purposes, in accordance with these Terms and any notice sent by Engage Solutions Ltd. or condition posted on the Website. You may use the Service and Website on behalf of others or in order to provide services to others but if You do so you must ensure that You are authorized to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to You.

3. Access

1. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify Engage Solutions Ltd. of any unauthorized use of Your passwords or any other breach of security. You must ensure that you take all necessary steps to ensure, maintain or enhance the security of Engage Solutions Ltd. computing systems and networks and Your access to the Services.

2. As a condition of these Terms, when accessing and using the Services, You must:

- a. not attempt to undermine the security or integrity of Engage Solutions Ltd. computing systems or networks or, where the Services are hosted by a third party, that third party's computing systems and networks;
- b. not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website;
- c. not attempt to gain unauthorized access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted;
- d. not transmit, or input into the Website, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
- e. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as is strictly necessary to use either of them for normal operation.

3. Communication Tools

As a condition of these Terms, if You use any communication tools available through the Website (such as any forum, chat room or message centre), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Services, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mail, files that may damage any other person's computing devices or software, content that may be offensive to any other users of the Services or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).

When You make any communication on the Website, You represent that You are permitted to make such communication. Engage Solutions Ltd. is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Services. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. However, Engage Solutions Ltd. does reserve the right to remove any communication at any time in its sole discretion.

4. Indemnity

You indemnify Engage Solutions Ltd. against all claims, costs, damage and losses arising from Your breach of any of these Terms or any obligation You may have to Engage Solutions Ltd., including (but not limited to) any costs relating to the recovery of any Subscription Fees that are due but have not been paid by You.

4. Confidentiality

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

- a. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
- b. Each party's obligations under this clause will survive termination of these Terms. c. The provisions of clauses 4.1.a and 4.1.b shall not apply to any information which:

- i. is or becomes public knowledge other than by a breach of this clause;
- ii. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- iii. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- iv. is independently developed without access to the Confidential Information.

5. Privacy

Engage Solutions Ltd. maintains a Privacy Policy that sets out the parties' obligations in respect of personal information. See separate Privacy Policy document for details.

6. Intellectual Property

1. General:

Title to, and all Intellectual Property Rights in the Service, the Website and any documentation relating to the Service remain the property of Engage Solutions Ltd.

2. Ownership of Data:

Title to, and all Intellectual Property Rights in, the Data remain Your property however, Your access to the Data is contingent on full payment of the Engage Solutions Ltd. Subscription Fee when due. You grant Engage Solutions Ltd. a licence to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Services and for any other purpose related to provision of services to You.

3. Backup of Data:

Engage Solutions Ltd. adheres to best practice policies and procedures to prevent data loss, including a daily back-up regime, but does not make any guarantees that there will be no loss of Data. Engage Solutions Ltd. expressly excludes liability for any loss of Data no matter how caused.

4. Third-party applications and your Data.

If You enable third-party applications for use in conjunction with the Services, You acknowledge that Engage Solutions Ltd. may allow the providers of those third-party applications to access Your Data as required for the interoperation of such third-party applications with the Services. Engage Solutions Ltd. shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.

7. Warranties and Acknowledgements

1. Authority:

You warrant that where You have registered to use the Service on behalf of another person, You have the authority to agree to these Terms on behalf of that person and agree that by registering to use the Service You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.

2. Acknowledgement You acknowledge that:

a. You are authorized to use the Services and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person you have authorized to use the Service. You are also authorized to access the processed information and Data that is made available to You through Your use of the Website and the Services (whether that information and Data is Your own or that of anyone else).

b. Engage Solutions Ltd. has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Services or access the Website on behalf of or for the benefit of anyone other than yourself you agree that:

i. You are responsible for ensuring that You have the right to do so;

ii. You are responsible for authorizing any person who is given access to information or Data, and you agree that Engage Solutions Ltd. has no obligation to provide any person access to such information or Data without Your authorization and may refer any requests for information to You to address; and

iii. You will indemnify Engage Solutions Ltd. against any claims or loss relating to:

i. Engage Solutions Ltd. refusal to provide any person access to Your information or Data in accordance with these Terms,

ii. Engage Solutions Ltd. making available information or Data to any person with Your authorization.

c. The provision of, access to, and use of the Services is on an "as is" basis and at Your own risk.

d. Engage Solutions Ltd. does not warrant that the use of the Service will be uninterrupted or issue free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. Engage Solutions Ltd. is not in any way responsible for any such interference or prevention of Your access or use of the Services.

e. It is Your sole responsibility to determine that the Services meet the needs of Your business and are suitable for the purposes for which they are used.

3. No warranties:

Engage Solutions Ltd. gives no warranty about the Services. Without limiting the foregoing, Engage Solutions Ltd. does not warrant that the Services will meet Your requirements or that it will be suitable for any particular

purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

4. Consumer guarantees:

You warrant and represent that You are acquiring the right to access and use the Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services, the Website or these Terms.

8. Limitation of Liability

1. Engage Solutions Limited's maximum liability to You (or any other person) in contract, tort (including negligence), or otherwise for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website, shall be limited the lesser of the actual direct loss suffered by You or to the amount of the policy limits of Engage's insurance cover.

2. The limitation of liability in clause 8.1 does not limit Engage's liability:

- a. in relation to any loss suffered by a third party as a result of a breach by Engage of Data Protection Laws (as defined in the Data Processing Agreement);
- b. in relation to a third-party claim that Engage has infringed that third party's intellectual property rights (for which Engage indemnifies You); or
- c. under or in connection with the Agreement for personal injury or death, fraud or a breach of the confidentiality provisions of Engage's Terms and Conditions.

3. Neither party is liable to the other under or in connection with the Service or the Website for consequential, indirect, incidental or special damage or loss of any kind.

4. During the Term of the Agreement, and for a period of 24 months thereafter, Engage will hold insurance cover as follows:

- a. public and product liability insurance for a sum of not less than NZD 1.5 million; and
- b. professional indemnity insurance for a sum of not less than NZD 1.5 million.

9. Termination

1. Prepaid Subscriptions

Engage Solutions Ltd. will not provide any refund for any remaining prepaid period for a prepaid Subscription Fee subscription.

2. No-fault termination

These Terms will continue for the period covered by the Subscription Fee paid or payable under clause 3.1. At the end of each billing period these Terms will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Subscription Fee in accordance with Your Fee Schedule, unless either party terminates these Terms by giving at least one month's advance written notice. If You elect to terminate these Terms by providing one month's advance written notice, You shall be liable to pay all relevant Subscription Fees up to and including the day of termination of these Terms.

3. Breach If You:

1. breach any of these Terms and do not remedy the breach within 7 days after receiving notice of the breach if the breach is capable of being remedied;
2. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.4 or any payment of Subscription Fees that are not paid in full in accordance with the requirements set out in Your Fee Schedule); or
3. You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,

Engage Solutions Ltd. may take any or all of the following actions, at its sole discretion: 4. Terminate this Agreement and Your use of the Services and the Website;

5. Suspend for any definite or indefinite period of time, Your use of the Services and the Website;

6. Suspend or terminate access to all or any Data.

For the avoidance of doubt, if payment of any invoice for Subscription Fees due in relation to any of Your Billing Contacts, Billing Plans or any of Your Organizations (as defined at clause 3) is not made in accordance with the requirements set out in Your Fee Schedule, Engage Solutions Ltd. may: suspend or terminate Your use of the Service, the authority for all or any of Your Organizations to use the Service, or Your rights of access to all or any Data.

4. Accrued Rights

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10. Help Desk

Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

1. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
2. immediately cease to use the Services and the Website.

In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting Engage Solutions Ltd. or any of our Partners. If You still need technical help, please check the support provided online by Engage Solutions Ltd. on the Website or email us at support@engagesolutions.co.nz

11. Service availability

Engage Solutions Ltd. intends that the Services should be available 24 hours a day, seven days a week however it is possible that on occasions the Services or Website may be unavailable to permit maintenance or other development activity to take place.

If for any reason Engage Solutions Ltd. has to interrupt the Services for longer periods Engage Solutions Ltd. will use reasonable endeavours to publish in advance details of such activity on the Website.

12. General

1. Entire agreement

These Terms, together with the Engage Solutions Ltd. Privacy Policy and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Engage Solutions Ltd. relating to the Services and the other matters dealt with in these Terms.

2. Waiver

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

3. Delays

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

4. Transfer of Rights

You may not assign or transfer any rights to any other person without Engage Solutions Ltd. prior consent.

5. Governing law and jurisdiction

If the information or Data You are accessing using the Services and the Website is solely that of a person who is a tax resident in New Zealand at the time that You accept these terms then New Zealand law governs this Agreement and You submit to the exclusive jurisdiction of the courts of New Zealand for all disputes arising out of or in connection with this Agreement. If the information or Data You are accessing using the Services and the Website is solely that of a person who is a tax resident in Australia at the time that You accept these terms then Australian law governs this Agreement and You submit to the exclusive jurisdiction of the courts of Australia for all disputes arising out of or in connection with this Agreement. In all other situations this Agreement is governed by the laws of England, Wales and Ireland, You hereby submit to the exclusive jurisdiction of the courts of England, Wales and Ireland for all disputes arising out of or in connection with this Agreement.

6. Severability

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

7. Notice

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Engage Solutions Ltd. must be sent to



support@engagesolutions.co.nz. Notices to You will be sent to the email address which You provided when setting up Your access to the Service.

8. Rights of Third Parties

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.