

AUCKLAND

Textile Lofts
Level 4, 1 Kenwyn Street
Parnell, Auckland, 1052

TERMS & CONDITIONS

TERMS OF SERVICE

1. DEFINITIONS AND INTERPRETATION

“Agreement” refers to the Terms and Conditions and the Agreement to Provide Services that governs delivery of the Service to the Client (insert Clients name) by Studio7 Limited.

“Client” refers to the other party to this Agreement.

“Confidential Information” means all know-how, financial information and other commercially valuable or sensitive information in whatever form, including documents, intellectual property, inventions, trade secrets, formulae, graphs, drawings and any other information which the disclosing party has made known to the receiving party as confidential in nature, or which a reasonable person would regard or which in the circumstances should be regarded as confidential.

The following will not be considered confidential information:

- i) Information which is substantially in the public domain prior to its disclosure by the disclosing party to the receiving party;
- ii) Information which is rightfully known by a party prior to the date of disclosure where that party has the lawful power to disclose such information in a non- confidential basis.
- iii) Information that is rightly received from a third party without similar restriction and without breach of this deed;
- iv) Information that is required to be disclosed by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator.

“Intellectual Property” means proprietary rights concerning all original work governed by the Copyright Act 1994, the Patents Act 1953, the Designs Act 1953, the Trade Marks Act 2002, the Layout Designs Act 1994, the Plant Varieties Act 1987 any amendments to these or subsequent acts and any other intellectual property law.

It includes, but is not limited to:

- i) Courses materials except materials and handouts pursuant to Schedule 1.
- ii) Research data and outputs iii) Assessment materials iv) Administrative materials
- v) Computer software, videos and recordings
- vi) Creative, literary works, artwork vii) Discoveries / Innovations / Inventions



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viii) Patents, Copyright, designs, trademarks

ix) Patentable and potentially patentable subject matter and associated know how

x) Plant Variety

xi) Institute/Company data "Party" or "Parties" refer to Studio7 Limited and the Client.

"Service" refers to the Service to be provided by Studio7 Limited to the Client as detailed in the Agreement to Provide Services.

2. TERM

2.1 The Agreement and delivery of Service will commence on the date of the last signature and continue until whichever of the following occurs first:

i) When delivery has been completed as per the Agreement to Provide Services; or

ii) Where the Agreement is terminated for any of the reasons outlined in clause 9 of these Terms and conditions.

3. FEES AND EXPENSES

3.1 In consideration of the delivery of Service by Studio7 Limited, the Client shall pay Studio7 Limited the fees and other associated costs and expenses specified in the Agreement to Provide Services.

3.2 Unless otherwise agreed, all fees must be paid in full prior to the commencement of delivery as set out in the Agreement to Provide Services.

3.3 Where any undisputed fees and other costs and expenses are not paid by the due date as specified in clause 4 of these Terms and Conditions, Studio7 Limited reserves the right to charge default interest on all overdue amounts at a rate of 2% per annum over the official OCR rate in force at that time on the amount of the overdue portion if such invoice from and including the due date of payment until the date on which payment is actually received.

4. PAYMENT

4.1 Studio7 Limited will invoice the Client as per the Agreement to Provide Services.

4.2 The Client shall pay amounts stated on the invoice on the 20th of the month following the date of the invoice.

4.3 If any amount on the invoice is disputed, the Client must give notice to Studio7 Limited of the disputed amount within 14 days of the delivery date as specified in the Agreement to Provide Services.

4.4 For any disputed amount, both parties will resolve the dispute in accordance with the steps outlined in clause 13 (Dispute Resolution) of these Terms and Conditions.

5. DELIVERY OF SERVICE



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5.1 Studio7 Limited will deliver the Service with due diligence and in accordance with the agreed level of quality with the client.

5.2 Studio7 Limited will endeavor to complete the Service by the date specified in the Agreement to Provide Services, if any.

5.3 Notwithstanding clause 5.2 above, the Client acknowledges and agrees that the completion date may be subject to change(s) after commencement of the Service, as mutually agreed between the parties.

5.4 Where the Service is delivered at the Client's premises (including premises nominated or leased by the Client):

- i) The Client shall be responsible for meeting all obligations under the Health and Safety in Employment Act 1992 (as amended or replaced from time to time) including, without limitation, providing a work environment that eliminates or minimises risk to the health and safety of Studio7 Limited's employees/contractors and persons affected by the work carried out by Studio7 Limited's employees/contractors; and
- ii) The Client indemnifies Studio7 Limited from and against all costs, losses, liabilities (including legal expenses), claims, demands, damages, fines and penalties arising directly or indirectly out of any breach of this clause 5.4 by the Client.

6. CANCELLATION

6.1 Where the Client wishes to cancel a Service delivery for a particular date, the cancellation must be notified to Studio7

Limited in writing at least 60 days prior to the commencement of the delivery date.

6.2 Where the Client cancels the Service delivery in accordance with clause 6.1 above, Studio7 Limited reserves the right to charge the Client all costs incurred by Studio7 Limited in the customisation and preparation of the training up to the date of cancellation, including the cost of any binding commitments Studio7 Limited has entered into in order to deliver the Service.

6.3 Where cancellation occurs with less than the required notice specified in clause 6.1 above, Studio7 Limited reserves the right to charge the Client for the entire cost of the service or part thereof.

TERMS AND CONDITIONS

7. INTELLECTUAL PROPERTY

7.1 Where either party agrees to provide or provides Intellectual Property ("Provider") whether owned by the Provider or not, for use by the other Party ("User") under the Agreement, the Provider shall ensure that it has all necessary rights to use and provide the Intellectual Property to the User.

7.2 The User shall only use the Intellectual Property for the reasons provided in this Agreement or for any other reasons agreed by the Provider.



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7.3 At the expiry or termination of this Agreement for whatever reason, the User shall return all Intellectual Property to the Provider, or destroy the Intellectual Property as required by the Provider.

7.4 For the avoidance of doubt, the following ownership arrangements of Intellectual Property shall apply to the Agreement:

- i) Existing Intellectual Property that is not developed under the Agreement but is used for the purpose of undertaking the Services pursuant to this Agreement shall remain the property of its current owner.
- ii) Any Intellectual Property specifically developed by Studio7 Limited for the purpose of delivering the Services will be owned by Studio7 Limited, exclusively.

8. WARRANTY, WARRANTY CLAIMS AND LIMITATION OF DAMAGES

8.1 The Consumer Guarantees Act 1993 and/or the Fair Trading Act 1986 may imply warranties or conditions or impose obligations upon Studio7 Limited which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such legally mandatory terms or conditions imposed on Studio7 Limited, Studio7 Limited's liability shall only apply to the minimum extent required by that statute or provision and those legal obligations shall be restricted and modified so that only the legally essential obligations contained in the statute apply to the Services carried out by Studio7 Limited under the Agreement.

8.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires the Services from Studio7 Limited for the purposes of a business in terms of Section 2 and 43 of that Act.

8.3 The Client warrants that anything it gives Studio7 Limited for use to undertake the Services (for example, company information to enable Studio7 Limited to customise training materials) is legally owned or licensed to the Client. The Client agrees to indemnify Studio7 Limited from any and all claims brought by any third party relating to any aspect of the Services, including, but without limitation, any and all demands, liabilities, losses, costs and claims arising out of injury caused by anything supplied by the Client to Studio7 Limited or the aforementioned purposes.

9. TERMINATION

9.1 Either party may terminate immediately the Agreement by notice in writing to the party on the following grounds:

- i) Where the other party commits a material breach of the Agreement that is incapable of being rectified;
- ii) Where the other party commits any breach of the Agreement that is not rectified within seven (7) days of written notice of the breach having been given to the other party;
- iii) If the other party becomes insolvent;
- iv) If the ownership or effective control of the other party is transferred or the nature of the business of the other party is materially altered, where such transfer or alteration substantially affects the other party's ability to perform its obligations under the Agreement.

9.2 Termination of the Agreement will be without prejudice to any rights or obligations accrued as at the date of



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termination. This includes the obligation of the Client to pay to Studio7 Limited all amounts payable (whether or not they have fallen due for payment) immediately.

10. CONFIDENTIALITY

10.1 Both parties agree that all Confidential Information shall be held in strict confidence both during the term of the Agreement and after its conclusion.

11. NO REPRESENTATION

11.1 Neither party will use the other's name, logo, or the fact that there is a business relationship between the parties for advertising or other promotional purposes outside the terms of the Agreement without first obtaining the written consent of the other party.

12. NO ASSIGNMENT OR SUB-CONTRACT

12.1 Neither party may assign or transfer any rights under the Agreement without the prior written approval of the other party.

12.2 Studio7 Limited may subcontract the performance of any of its obligations under the Agreement, but will not thereby be relieved from any liability under it.

13. DISPUTE RESOLUTION

13.1 In the unlikely event of a dispute arising between Studio7 Limited and the Client, the parties, via their nominated contacts, will use all reasonable endeavors to amicably resolve any difference.

13.2 If the parties cannot amicably settle the dispute or difference within 14 days, either party may seek to have it mediated. Both parties will agree to attend mediation and will agree upon a mediator, or failing agreement, the President of the New Zealand Law Society or his/her nominee will nominate a mediator on the application of either party.

13.3 If the dispute cannot be settled through mediation, it will be determined in accordance with the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule to that Act).

13.4 Each party will be responsible for meeting its own costs with regard to dispute resolution.

14. NOTICES

14.1 Any notice shall be deemed to be given or made if delivered personally, posted or successfully transmitted to the intended recipient either by facsimile or electronic mail (email).

15. FORCE MAJEURE

15.1 Neither party shall be responsible for any failure or delay in complying with the terms and requirements set out in this document where such failure or delay results from events beyond its reasonable control.



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16. VARIATION

16.1 Any variation to the Agreement will only be effective if in writing and signed by both parties.

17. GOVERNING LAW

17.1 This Agreement shall be subject to and must be interpreted in accordance with the laws of New Zealand.

17.2 However, any patents, trademark or copyright which affect this Agreement will be subject to or governed by the laws of the country granting the patent, trademark or copyright.

18. COUNTERPARTS

18.1 This Agreement may be executed in counterparts, all of which, when taken together, constitute one document.

19. ENTIRE AGREEMENT

19.1 This Agreement constitutes the entire Agreement between the parties and supersedes all prior discussions and agreements covering the subject matter of this Agreement.