

Terms and Conditions of Service

1. Application of the Terms

- a. These Terms apply to any Service (as that term is defined below) provided by Contract Eagle to The Subscriber.

2. Changes

- a. These Terms may be updated by Contract Eagle from time to time. Contract Eagle will notify The Subscriber of the change by email or by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. The Subscriber is responsible for ensuring it is familiar with the latest Terms. By continuing to access and use the Service from the date on which the Terms are changed, The Subscriber agrees to be bound by the changed Terms.

b. These Terms were last updated on 11 May 2022.

3. Interpretation

- a. In the Agreement, the following terms have the stated meaning:
 - “Agreement” means these Terms, the Subscription Form and the Data Processing Addendum;
 - “Business Day” means Monday to Friday, other than any public holiday in Auckland, New Zealand;
 - “Cloud Service” means the provision of the Service by Contract Eagle as a cloud service;
 - “Confidential Information” has the meaning given to the term in clause 14.a;
 - “Contract Eagle” means Contract Eagle Limited, a New Zealand company, company number 1493783;
 - “Contract Eagle Software” means the software owned by Contract Eagle (and its licensors) that is used to provide the Service;
 - “Data” means all data, content, and information (including personal information) owned, held, used or created by The Subscriber or on The Subscriber’s behalf that is stored using, or inputted into, the Service;
 - “Data Processing Addendum” means the data processing addendum at www.contracteagle.com/data-processing-addendum, including its Schedules;
 - “Fees” the fees set out in the Subscription Form or as agreed otherwise in writing between Contract Eagle and The Subscriber, as may be updated from time to time in accordance with clause 5.c;
 - “Force Majeure” means an event that is beyond the reasonable control of a party, excluding:
 - i. an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
 - ii. a lack of funds for any reason;
 - “Guide” means the Contract Eagle User Guide (the version available from the Help Function of Contract Eagle as of the Installation Date) or any subsequent version of the Guide;
 - “Installation Date” means the installation date set out in the Subscription Form;

“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, circuit layouts, 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;

“Licenced Users” means the number of users specified in the Subscription Form, together with any additional users that Contract Eagle agrees may use the Service, subject to The Subscriber paying the additional user Fees (if any) specified by Contract Eagle;

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

“personal information” means information about an identifiable, living person, and includes personal data, personally identifiable information and equivalent information under applicable privacy and data protection laws;

“Price Guarantee Period” means the price guarantee period set out in the Subscription Form;

“Service” means the service set out in the Subscription Form, as may be updated from time to time in accordance with clause 4.b;

“Subscription Form” means a document entitled “Contract Eagle Subscription Form” that references these Terms and is signed by both parties, for the provision of the Service to The Subscriber;

“Terms” means these terms titled “Terms and Conditions of the Service”;

“The Subscriber” means the subscriber named in the Subscription Form;

“Underlying Systems” means the Contract Eagle Software, IT solutions, systems and networks (including software and hardware) used to provide the Service, including any third party solutions, systems and networks; and

“Website” means the internet site at <https://www.contracteagle.com/>, or such other site notified to The Subscriber by Contract Eagle;

b. In the Agreement:

- i. clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- ii. words in the singular include the plural and vice versa;
- iii. a reference to:
 1. a “party” includes that party’s permitted assigns;
 2. “Personnel” includes officers, employees, contractors and agents, but a reference to The Subscriber’s personnel does not include Contract Eagle;
 3. a “person” includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity; and
 4. “including” and similar words do not imply any limit; and
- iv. if there is any conflict between the documents comprising the Agreement, those documents have the following descending order of precedence:
 1. the special conditions in a Subscription Form (if any);
 2. the Data Processing Addendum;
 3. these Terms; and

4. the Subscription Form (excluding the special conditions, if any).

4. The Service

- a. The Subscriber and its Personnel must:
 - i. use the Service in accordance with the Agreement solely for:
 1. its own internal business purposes; and
 2. lawful purposes (including complying any applicable unsolicited law regulating unsolicited electronic messages); and
 - ii. not resell or make available the Service to any third party, or otherwise commercially exploit the Service.
- b. The Subscriber's initial Service selection is specified in the Subscription Form, but The Subscriber may give Contract Eagle notice at any time that it wishes to change its selection. Following receipt of a notice, Contract Eagle and The Subscriber will work together to agree a project timetable (including any additional one-time costs) to effect the change of selection, and an updated Subscription Form.
- c. The Subscriber must ensure that no more than the number of Licensed Users utilise the Service. Additional users may be added or removed at any time on the basis set out in the Subscription Form. Users must be employees of, or contractors to, The Subscriber.
- d. When accessing the Service, The Subscriber and its Personnel must:
 - i. not copy all or any part of the Service or any related documentation other than as agreed for backup purposes;
 - ii. not attempt to reverse engineer or decompile the Service;
 - iii. ensure the Service is protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
 - iv. maintain all proprietary notices on the Service;
 - v. not transfer, assign or otherwise deal with or grant a security interest in the Service;
 - vi. notify Contract Eagle in writing immediately after The Subscriber becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Service;
 - vii. provide backup and disaster recovery services for the Service and any infrastructure on which the Service is dependent in accordance with accepted industry practice;
 - viii. not impersonate another person or misrepresent authorisation to act on behalf of others or Contract Eagle;
 - ix. correctly identify the sender of all electronic transmissions;
 - x. not attempt to undermine the security or integrity of the Underlying Systems;
 - xi. not use, or misuse, the Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Service;
 - xii. not attempt to view, access or copy any material or data other than:
 1. that which The Subscriber is authorised to access; and
 2. to the extent necessary for The Subscriber to use the Service in accordance with the Agreement; and

- xiii. neither use the 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.
- e. A breach of any of the Agreement by The Subscriber's Personnel is deemed to be a breach of the Agreement by The Subscriber.
- f. The Subscriber is responsible for procuring all licences, authorisations and consents required for The Subscriber and its Personnel to use the Service, including to use, store and input Data into, and process and distribute Data through, the Service.
- g. Through the use of web services and APIs, the Service interoperates with a range of third party service features. Contract Eagle 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, Contract Eagle may cease to make available that feature to The Subscriber. To avoid doubt, if Contract Eagle exercises its right to cease the availability of a third party feature, The Subscriber is not entitled to any refund, discount or other compensation.

5. Fees

- a. Unless otherwise specified in the Subscription Form, the Fees must be paid to Contract Eagle by The Subscriber no later than 30 days after receipt of an invoice from Contract Eagle.
- b. The Fees exclude any applicable goods and services, value-added, sales or other similar tax, which The Subscriber must pay where applicable.
- c. The subscription Fees may be adjusted for inflation at or about the anniversary of the Installation Date to reflect any percentage increase in the New Zealand Consumers Price Index (all groups) over the most recently reported 12 month period. No adjustment will be made during the Price Guarantee Period.
- d. If The Subscriber does not make any payment by the due date, it will, on demand, pay Contract Eagle interest on the overdue amount calculated at the rate of 10% per annum, calculated from the due date until the payment is made in full.

6. Intellectual Property

- a. Subject to clause 6b, title to, and all Intellectual Property Rights in, the Service, the Website, and all Underlying Systems is and remains Contract Eagle's property (and its licensors' property). The Subscriber must not contest or dispute that ownership, or the validity of, or undertake any act that infringes or may infringe, those Intellectual Property Rights.
- b. Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains The Subscriber's property. Subject to the Data Processing Addendum, The Subscriber grants Contract Eagle 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 Contract Eagle's rights and performance of Contract Eagle's obligations in accordance with the Agreement.
- c. To the extent not owned by Contract Eagle, The Subscriber grants Contract Eagle a royalty-free, transferable, irrevocable and perpetual licence to use for its own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by Contract Eagle in the provision of the Service.

- d. If The Subscriber provides Contract Eagle with ideas, comments or suggestions relating to the Service or Underlying Systems (together “feedback”):
 - i. 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 Contract Eagle; and
 - ii. Contract Eagle may use or disclose the feedback for any purpose.
- e. Contract Eagle will indemnify The Subscriber against any third party claim or proceeding brought against The Subscriber to the extent that claim or proceeding alleges that The Subscriber’s use of the Service in accordance with the Agreement constitutes an infringement of a third party’s Intellectual Property Rights (“IP Claim”). The indemnity is subject to The Subscriber:
 - i. promptly notifying Contract Eagle in writing of the IP Claim;
 - ii. making no admission of liability and not otherwise prejudicing or settling the IP Claim, without Contract Eagle’s prior written consent; and
 - iii. providing all reasonable co-operation with Contract Eagle’s defence of any such IP Claim, including giving Contract Eagle complete authority and information required for Contract Eagle to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for Contract Eagle’s account.
- f. The indemnity provided for in clause 6.e will not apply to the extent that an IP Claim arises from or in connection with:
 - i. The Subscriber’s breach of the Agreement;
 - ii. the use of the Service in a manner or for a purpose not reasonably contemplated by the Agreement or otherwise not authorised in writing by The Subscriber;
 - iii. any modification or alteration of the Service by anyone other than Contract Eagle;
 - iv. any third party data or any Data; or
 - v. the use or incorporation of the Service in, or in combination with, another product or item, where, but for such use or incorporation, the Service would not have given rise to a claim for infringement of the third party’s rights.
- g. If at any time an IP Claim is made, or in Contract Eagle’s reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, Contract Eagle may (at Contract Eagle’s option):
 - i. obtain for The Subscriber 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.
- h. The Subscriber acknowledges that the Service may link to third party websites or feeds that are connected or relevant to the Service. Any link from the Service does not imply that Contract Eagle endorses, approves or recommends, or has responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, Contract Eagle excludes all responsibility or liability for those websites or feeds.

7. Warranties

- a. Each party warrants to the other that it has all necessary rights and is entitled to enter into, and perform its obligations under, the Agreement.

- b. Contract Eagle warrants that the Service:
 - i. exhibits all features represented in the Guide;
 - ii. complies with all representations contained in the Guide; and
 - iii. otherwise operates in accordance with the Guide.
- c. Any failure of the Service to comply with the warranty in clause 7.b is considered a defect for the purposes of the Agreement.
- d. Contract Eagle will at its cost and as soon as reasonably practical rectify any defect in the Service which The Subscriber brings to Contract Eagle's attention so long as The Subscriber has paid the most recently billed subscription Fees.
- e. To the maximum extent permitted by law:
 - i. Contract Eagle's warranties are limited to those set out in the Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty of merchantability or fitness for purpose) is excluded; and
 - ii. Contract Eagle make no representation concerning the quality of the Service and do not promise that the Service will:
 - 1. meet The Subscriber's requirements or be suitable for a particular purpose, including that the use of the Service will fulfil or meet any statutory role or responsibility The Subscriber may have; or
 - 2. be secure, free of viruses or other harmful code, uninterrupted or error free.
- f. The Subscriber agrees and represents that it is acquiring the Service, and accepting the Agreement, for the purpose of trade. The parties agree that:
 - i. to the maximum extent permissible by law, no consumer protection laws apply to the supply of the Service or the Agreement; and
 - ii. it is fair and reasonable that the parties are bound by this clause 7.f.

8. Cloud Service Availability and Security

- a. This clause 8 applies where the Subscription Form states that the Service is provided as a Cloud Service.
- b. Contract Eagle has processes in place to ensure a high level of Service availability and security as set out in clause 8.c and will adapt its processes to respond to new threats to Service availability and security.
- c. As at the date of the Agreement, Contract Eagle maintains the following practices relating to Cloud Service availability and security:
 - i. system monitoring is in place to automatically notify Contract Eagle support of any outage of the Service;
 - ii. database backups are taken hourly and sent to a secondary geographical location in an encrypted format;
 - iii. all outages to the Service are documented via Contract Eagle's Cloud Service Notifications forum within Contract Eagle's support portal;
 - iv. regular external application penetration testing is performed by a third party;
 - v. access to the Data is limited to Contract Eagle Personnel who have passed an internal approval process, and signed a non-disclosure agreement and security declaration; and
 - vi. security patching is performed on the Cloud Service infrastructure as new patches are released by Microsoft.

- d. The Hosting Location and Offsite Backup location of The Subscriber's Cloud Service are as specified in the Subscription Form. Such location will only change:
 - i. if requested in writing by The Subscriber; or
 - ii. if Contract Eagle (at its sole discretion) believes that Data is at risk of being lost, corrupted, leaked or tampered with and needs to be moved or relocated immediately to remove or mitigate this risk.

9. Support

- a. The Fees include the following support services:
 - i. all remote telephone support as required from time to time by The Subscriber;
 - ii. any patches or bug fixes; and
 - iii. any new minor enhancements to the Service which provide substantially the same functionality.
- b. The Fees do not cover:
 - i. any on-site support, which will be charged at Contract Eagle's then-current rates;
 - ii. any major enhancements which provide substantially different functionality to the then existing release; or
 - iii. Data entry, which is the responsibility of The Subscriber.
- c. Contract Eagle warrants that the support services will be:
 - i. provided with all due care and skill;
 - ii. provided in a reasonable time frame having regard to the nature of the support services, being:
 - 1. for urgent priority requests which must be raised by telephone to the number listed on Contract Eagle's support website or as a high priority ticket via Contract Eagle's support portal, response within 3 hours of receipt of a request from The Subscriber; and
 - 2. for medium priority requests which must be raised as a medium priority ticket via Contract Eagle's support portal, response within 6 hours of receipt of a request from The Subscriber; and
 - 3. for all other requests, response within 1 Business Day of receipt, in each case, except where Contract Eagle reasonably determines that the support service requires more time to be rendered;
 - iii. reasonably fit for any purpose The Subscriber specifies in writing when requesting the support services; and
 - iv. of such a nature and quality that the support services might reasonably be expected to achieve any result The Subscriber specifies in writing when requesting the support services.
- d. In the event of any breach by Contract Eagle of the warranty set out in clause 9.c, Contract Eagle will perform the support services again. Contract Eagle will have no other liability to The Subscriber in respect of that warranty.

10. The Subscriber's Obligations relating to the Cloud Service

- a. This clause 10 applies where the Subscription Form states the Service is provided as a Cloud Service.
- b. The Subscriber will access the Cloud Service, upload and download Data through its browser. The Subscriber may access and use the Cloud Service only through the login protocols provided to The Subscriber by Contract Eagle.

- c. The Subscriber must provide and maintain all necessary terminal equipment, telecommunications services and software required to access or to use the Cloud Service.
- d. The Subscriber may not permit or sub-licence any person to use the Cloud Service except as permitted by the Agreement, or with the written consent of Contract Eagle which consent may be given or withheld at Contract Eagle's sole discretion.
- e. The Subscriber must not use or access the Cloud Service in a manner which, in the opinion of Contract Eagle, may adversely affect the efficiency, security or use by third parties of the Cloud Service offered by Contract Eagle.
- f. The Subscriber is responsible for maintaining the confidentiality of its login protocols, and any additional information that Contract Eagle may provide regarding accessing the Cloud Service. The Subscriber agrees to immediately notify Contract Eagle of any unauthorised use of The Subscriber's login protocols or any other breach of security. The Subscriber must take all reasonable measures to prevent unauthorised access to the Cloud Service.
- g. The Subscriber must ensure that any Data stored or accessed does not infringe any third party rights (including Intellectual Property Rights and privacy rights), complies with all laws and relates solely to The Subscriber and its business or the businesses carried on by The Subscriber.

11. Data

- a. This clause 11 applies where the Subscription Form states the Service is provided as a Cloud Service.
- b. The Subscriber acknowledges that:
 - i. Contract Eagle may require access to the Data to exercise its rights and perform its obligations under the Agreement; and
 - ii. to the extent that this is necessary but subject to clause 14, Contract Eagle may authorise a member or members of its Personnel to access the Data for this purpose.
- c. The Subscriber must arrange all consents and approvals that are necessary for Contract Eagle to access the Data as described in clause 11.b.
- d. The Subscriber acknowledges and agrees that:
 - i. Contract Eagle may:
 - 1. use Data to generate anonymised and aggregated statistical and analytical data ("Analytical Data"); and
 - ii. use Analytical Data for its internal research and product development purposes; Contract Eagle's rights under clause[s] 11.d.i.2 [and 11.d.i.3] above will survive termination or expiry of the Agreement; and
 - iii. title to, and all Intellectual Property Rights in, Analytical Data is and remains Contract Eagle's property.
- e. The Subscriber acknowledges and agrees that to the extent Data contains personal information:
 - i. in collecting, holding and processing that information through the Service, Contract Eagle is acting as The Subscriber's agent and/or as a data processor and/or as a service provider for the purposes of applicable privacy and data protection laws;
 - ii. the Data Processing Addendum applies to that information; and

- iii. The Subscriber must obtain all necessary consents from the relevant individual to enable Contract Eagle to collect, use, hold and process that information in accordance with the Agreement and the Data Processing Addendum.
- f. The Subscriber indemnifies Contract Eagle against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by Contract Eagle'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.

12. Liability

- a. Except as stated in clause 6.e, Contract Eagle will not be liable to The Subscriber for any direct or indirect losses, costs, expenses or liability in connection with the Agreement or The Subscriber's use of, or its inability to use, the Service, including any:
 - i. loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
 - ii. consequential, indirect, incidental or special damage or loss of any kind.
- b. If notwithstanding clause 12.a, Contract Eagle is held to be liable to The Subscriber (other than in respect of clause 6.e) under or in connection with the Agreement or relating to the Service, whether in contract, tort (including negligence), breach of statutory duty or otherwise, then Contract Eagle's total maximum liability in any 12 month period starting on the date the Subscription Form is signed by both parties, or any anniversary of that date ("Year") is limited to the amount of the subscription Fees paid by The Subscriber in the previous Year (which in the first Year is deemed to be the total subscription Fees paid by The Subscriber from the date the Subscription Form is signed by both parties to the date of the first event giving rise to liability).
- c. The parties agree that Contract Eagle will not, under any circumstances, be held responsible or liable for situations: (i) where Data or transmissions are accessed by third parties through illegal or illicit means; or (ii) where the Data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to Contract Eagle at the time. Contract Eagle will promptly report to The Subscriber any unauthorised access to the Data promptly upon discovery by Contract Eagle, and Contract Eagle will use diligent efforts to promptly remedy any breach of security that permitted such unauthorised access. In the event notification to persons included in the Data is required, The Subscriber will be solely responsible for any and all such notifications at The Subscriber's expense.
- d. Clauses 12.a and 12.b do not apply to limit Contract Eagle's liability:
 - i. under the indemnity in clause 6.e; or
 - ii. under or in connection with the Agreement for:
 - 1. personal injury or death;
 - 2. fraud or wilful misconduct; or
 - 3. a breach of clause 14.
- e. Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its

obligations under the Agreement, or by the negligence or misconduct of the other party or its Personnel.

- f. 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 the Agreement or the Service.

13. Default and Termination

- a. The Subscriber may terminate the Agreement immediately by giving written notice at any time during the first thirty days of its subscription for any or no reason.
- b. The Subscriber may terminate the Agreement immediately by giving one month's written notice for any or no reason.
- c. Contract Eagle may terminate the Agreement immediately by giving three month's written notice for any or no reason.
- d. Without limiting any other right or remedy available to Contract Eagle, Contract Eagle may restrict or suspend The Subscriber's access to and use of the Service and/or delete, edit or remove the relevant Data if:
 - i. Contract Eagle considers that The Subscriber or any of its Personnel have:
 - 1. undermined, or attempted to undermine, the security or integrity of the Service or any Underlying Systems;
 - 2. used, or attempted to use, the Service:
 - A. for improper purposes; or
 - B. in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Service;
 - ii. transmitted, inputted or stored any Data that breaches or may breach the Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
 - iii. otherwise materially breached the Agreement; or
- ii. The Subscriber fails to make payment on the due date of invoice or fails to comply with any of its obligations under the Agreement, provided Contract Eagle has given The Subscriber not less than 7 days' notice of the failure and The Subscriber has failed to remedy the failure within those 7 days.
- e. Either party may terminate the Agreement immediately by giving 14 days' written notice of termination to the other party if the other party:
 - i. commits any material breach of the Agreement which is incapable of being remedied;
 - ii. commits any material breach of the Agreement which is capable of being remedied, but fails to remedy the breach within 14 days of the receipt of written notice of the breach; or
 - iii. becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.
- f. Termination of the Agreement will terminate The Subscriber's right to use the Service but The Subscriber will be given ninety (90) days to migrate any Data held on the Service to another platform. Contract Eagle will upon request confirm destruction or deletion from its system of all Data. In the event The Subscriber does

not migrate the Data after the 90 day migration period or mutually agreed time, all Data will be destroyed or deleted.

- g. Termination of the Agreement does not affect either party's rights and obligations that accrued before that termination.
- h. On termination of the Agreement, The Subscriber must pay all Fees that relate to the period prior to that termination.
- i. No compensation is payable by Contract Eagle to The Subscriber as a result of termination of the Agreement for whatever reason, and The Subscriber will not be entitled to a refund of any Fees that it has already paid.

14. Confidential Information

- a. "Confidential Information" means:
 - i. all information, whether in written or any other form, which by its nature is, or would reasonably be expected to be, confidential; and trade secrets, already communicated or subsequently communicated:
 - 1. under or in connection with the Agreement;
 - 2. with respect to the Services; or
 - 3. otherwise with respect to the subject matter of the Agreement, including any information obtained:
 - 4. in the course of negotiations leading to the conclusion of the Agreement;
 - or
 - 5. in the performance of the Agreement;
 - ii. any information about the business or property of either party including any information:
 - 1. relating to the financial position of that party;
 - 2. concerning that party's suppliers and customers or its agents or brokers;
 - 3. relating to that party's internal management, structure, personnel or strategies; or
 - 4. comprising the terms of the Agreement; or
 - iii. information in respect of any materials in which that party has Intellectual Property Rights under the terms of the Agreement, and which in the case of The Subscriber, includes any of Data, and provided that, where information relates exclusively to one party, nothing in the Agreement will require that party to maintain confidentiality in respect of that information.
- b. Each of the parties will keep confidential and will not disclose to any person any Confidential Information which has been or may be disclosed to it (the "Recipient") by or on behalf of the other party (the "Disclosing Party") except to the extent the Confidential Information:
 - i. is required by the Recipient's Personnel or professional advisors in connection with the proper performance of the Agreement, including to Microsoft Azure in its capacity as the provider of the Cloud infrastructure for the purposes of the Agreement; or
 - ii. is required to be disclosed by law by the Recipient, provided that the Recipient must notify the Disclosing Party of the information to be disclosed and the circumstances in which the disclosure is alleged to be required as

early as reasonably possible before such disclosure must be made and must take all reasonable action to avoid and limit such disclosure.

- c. Any disclosure of Confidential Information permitted under clause 14.b.i must be in confidence, must only be to the extent that any persons to whom the information is disclosed need to know the same for the performance of their duties and the Recipient must procure that all such persons are aware of the obligation of confidentiality and undertake to comply with it.
- d. Each party undertakes to the other to use the Confidential Information disclosed to it by or on behalf of the other party solely in connection with the performance of the Agreement and not otherwise for its own benefit or the benefit of any third party.
- e. Clause 14.b does not preclude the Recipient from disclosing Confidential Information:
 - i. if that information was known, or becomes known, to the public through no act or default of the Recipient;
 - ii. that the Recipient is required by law to disclose so long as the Recipient provides written notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by law);
 - iii. that was lawfully known to the Recipient prior to the date it was received;
 - iv. that becomes available to the Recipient from a source other than a party to the Agreement provided that the Recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;
 - v. that has been or is independently developed by the Recipient;
 - vi. to any professional advisor for the purposes of rendering professional services to a party and in relation to the Agreement;
 - vii. to the extent that such disclosure is authorised by the Agreement; or
 - viii. if such disclosure is approved for release with the prior written consent of the Disclosing Party.
- f. Without prejudice to any other rights or remedies that the Disclosing Party may have, the Recipient acknowledges and agrees that the Disclosing Party will, without proof of special damage, be entitled to an injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this clause, in addition to any damages or other remedy to which it may be entitled. The Subscriber agrees that Contract Eagle will not be liable for any breach of confidentiality under the Agreement to the extent arising from any attack on Microsoft Azure (being the provider of the Cloud infrastructure) or any other act or omission of Microsoft Azure (or any of its Personnel).
- g. The Disclosing Party warrants that it has the right to disclose the Confidential Information to the Recipient and the right to authorise the Recipient to use the same in accordance with the terms of the Agreement.
- h. All Confidential Information which is in possession, power or control of the Recipient must, at the Disclosing Party's option, be returned to the Disclosing Party or destroyed by the Recipient, as and when requested by the Disclosing Party. In the event of the destruction of the Confidential Information, the Recipient must certify in writing to the Disclosing Party within 30 days that such destruction has been accomplished. The Recipient must make no further use of nor retain such

Confidential Information in any form whatsoever. Nothing in this clause 14.h will apply to Confidential Information that the recipient is required to be retained by law.

15. General

- a. Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure.
- b. No person other than The Subscriber and Contract Eagle has any right to a benefit under, or to enforce, the Agreement.
- c. The Subscriber must not assign, novate, subcontract or otherwise transfer any of its rights or obligations under the Agreement, except with the consent in writing of Contract Eagle, which consent must not be unreasonably withheld. The Subscriber remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer.
- d. Clauses which, by their nature, are intended to survive termination of the Agreement, continue in force.
- e. Subject to clauses 2.a, 5.c and 8.d, no amendment to the Agreement will be effective unless it is in writing and signed by both parties.
- f. A waiver will only be effective if given in writing. No waiver of any breach or failure to perform will be a waiver of any future breach or failure to perform or of any other provision of the Agreement.
- g. Subject to clause 11.e.i, Contract Eagle is The Subscriber's independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- h. If Contract Eagle needs to contact The Subscriber, it may do so by email or by posting a notice on the Website. The Subscriber agrees that this satisfies all legal requirements in relation to written communications. The Subscriber may give notice to Contract Eagle under or in connection with the Agreement by emailing info@contracteagle.com.
- i. If any provision in the Agreement is held to be invalid, void or unenforceable, then the remainder of the Agreement, or the application of such provision to the parties or to the circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby and will be enforced to the fullest extent permitted by law. The parties agree to renegotiate any such invalid, void or unenforceable provision in good faith in order to provide a reasonably acceptable alternative consistent with the basic purposes of the Agreement.
- j. The Agreement, and any dispute relating to the Agreement or the Service, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement or the Service.
- k. The Agreement constitutes the entire agreement between the parties as to its subject matter, and in relation to that subject matter, supersedes all previous agreements, arrangements and representations between the parties in relation to that subject matter. The parties have not relied on any representation, warranty or agreement relating to the Service that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the date the Subscription Form is signed by both parties. The parties agree that it is fair and reasonable that the parties are bound by this clause 15