

1. Definitions

In this Agreement:

- 1.1. "Agreement" means these standard terms and conditions and any associated Engagement Document;
- 1.2. "Business Day" means a day other than a Saturday or Sunday or a public holiday in Auckland, New Zealand;
- 1.3. "Client" means the entity receiving the Services specified in the associated Engagement Document;
- 1.4. "Confidential Information" means any information or know-how relating to the parties or the business carried on by a party from time to time including but not limited to software code, diagrams, trade secrets, inventions, sales and marketing information, customer and price lists, financial and accounting details, processes, formulae, designs, drawings, plans, images, developments, manuals, catalogues, reports, communications, analyses and specifications which are disclosed to the other party whether written, graphic, oral, or recorded by any retrievable means and whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered.
- 1.5. "Engagement Document" means a Proposal, Scope of Work, Statement of Work or other such written document agreed by both Wisely and the Client specifying services to be provided by Wisely.
- 1.6. "GST" refers to the The Goods and Services Tax Act 1985 in New Zealand;
- 1.7. "Intellectual Property Rights" means all intellectual property rights including without limitation all, patents, rights to inventions, design, models, copyright, trademarks, trade, business and domain names, goodwill, moral, software, database right, and any other intellectual property rights, whether registered or not including any applications, renewals or extensions;
- 1.8. "Law" means the New Zealand Companies Act 1993;
- 1.9. "Personnel" means any person or entity engaged by a party whether as an employee, contractor, casual or any other basis;
- 1.10. "Services" means the services to be provided to Client as documented in a Proposal or Scope of Work;
- 1.11. "Wisely" means Wisely Ltd, NZBN 9429049580563, email: accounts@wiselyglobal.tech web: <https://wiselyglobal.tech>

2. Interpretation

In this Agreement, unless the context requires otherwise:

- 2.1. the headings are used for convenience only and shall not affect the interpretation of this Agreement;
- 2.2. the singular includes the plural and vice versa;
- 2.3. any reference to a clause shall be construed as a reference to a clause of this Agreement unless otherwise expressly stated to the contrary;
- 2.4. a reference to a document includes the document as modified from time to time and any document replacing it; and

- 2.5. the word "person" includes a natural person and any body or entity whether incorporated or not.

3. Provision of Services

- 3.1. Client agrees to be bound by this Agreement upon signed acceptance of any Engagement Document or on payment in part or full of any Tax Invoice in relation to an Engagement Document.
- 3.2. Wisely shall provide the Services in accordance with the associated Engagement Document and on the terms and conditions of this Agreement. The Services will comply with all applicable Laws, regulations and industry standards. Wisely will use its best endeavours and due care and skills to deliver the Services and to meet any time frames specified in the associated Engagement Documents.
- 3.3. Wisely shall abide by Client's IT security and Work Health & Safety policies and procedures provided to Wisely, where applicable.
- 3.4. Client shall ensure Wisely has access to or is provided with information and the necessary facilities and personnel as reasonably required by Wisely to provide the Services.
- 3.5. Client acknowledges that any delays in Client executing any reasonable requests for; information, access to facilities, personnel, Client actions, input or decisions may hinder and delay Wisely ability to deliver the Services as specified in the associated Engagement Document.

4. Fees

- 4.1. Wisely will provide Client with a Tax Invoice for any Fees or additional charges and expenses in accordance with the relevant Engagement Document.
- 4.2. All monetary values in this Agreement or Engagement Documents are exclusive of GST and any other taxes which will be added to Tax Invoices and are payable by the Client.

5. Payment

- 5.1. Subject to Wisely providing the Services, Client must, on receipt of a Tax Invoice, pay the Fees and any additional charges to Wisely in accordance with the due date specified on the Tax Invoice. Where payment terms are not specified on the invoice, then payment is due no later than 14 calendar days from the date of invoice.
- 5.2. The Client shall pay all Tax Invoices in full without any set-off or deduction.
- 5.3. Where Client does not pay any Tax Invoice by the due date, Wisely may, without prejudice and at its sole discretion, halt the provision of any Services until payment is received in full including any additional interest charges on the sum outstanding at the RBNZ Business Finance Benchmark Rate + 2% p.a.

6. Confidentiality

- 6.1. Client and Wisely may during the course of this Agreement and in relation to an Engagement Document, obtain Confidential Information relating to the other party. Both Client and Wisely agree to restrict the use of Confidential Information to only those persons or entities who need access to the Confidential Information for the sole purposes of providing or receiving the Services and who have given an undertaking of confidentiality to that party in terms similar to this clause.
- 6.2. Both parties agree to
 - 6.2.a. treat as secret and confidential all Confidential Information;
 - 6.2.b. not use or disclose Confidential Information to any person or entity, other than to the extent required by law; and For the purposes of this clause, Confidential Information does not include Confidential Information that:
 - 6.2.c. is approved for release by written authorisation from the disclosing party;
 - 6.2.d. is required to be disclosed by law; or
 - 6.2.e. is or becomes part of the public domain other than by a breach of confidentiality.

7. Intellectual Property

- 7.1. Each party remains the exclusive owner of all right, title and interest in all Intellectual Property Rights in which it or their licensors have any pre-existing interest.
- 7.2. The other party shall be entitled to use such pre-existing Intellectual Property Rights to enable that party to provide or receive the benefit of the Services.
- 7.3. All Intellectual Property Rights that are created during or from the provision of the Services shall be the sole property of Wisely. The Client shall have a royalty free licence to use Wisely Intellectual Property Rights for use within the Client's own business for as long as the Client continues to use the software.

8. Privacy & Data Protection

- 1.1. Both Client and Wisely agree to comply with the requirements and obligations of both the New Zealand Privacy Act 2020 and Australian Privacy Act (Privacy Act 1988). Client will ensure that it has the appropriate consents to allow the lawful transfer of any personal data to Wisely for the purposes of this Agreement.
- 8.1. Wisely may obtain from Client or a third-party, personal information about Client for the purposes:
 - 8.1.a. of providing the Services;
 - 8.1.b. disclosed to or authorised by the Client; or
 - 8.1.c. required or authorised by Law. That information may be of a personal and/or sensitive nature. Wisely will take reasonable steps to ensure that personal information about a Client it obtains, uses or discloses is accurate, complete and up-to-date to the best of its knowledge. Clients may access their personal information held by Wisely by written request in accordance with the Privacy Act.
- 8.2. If the Client provides Wisely with personal or sensitive information about a third party, Client represents and warrants they:
 - 8.2.a. have the appropriate authority and consent to disclose that information.

- 8.3. Client acknowledges and agrees that Wisely may use and disclose the personal information provided by Client to Wisely for any of the following purposes:
 - 8.3.a. to provide the Services for the Client;
 - 8.3.b. a purpose where the Client would reasonably expect Wisely to use or disclose the information;
 - 8.3.c. obtaining or retaining insurance;
 - 8.3.d. as required by Law; or
 - 8.3.e. in seeking a remedy against the Client.
- 8.4. Wisely is not liable for the lawful use of personal information once it is properly disclosed to another party.

9. Promotion

Client approves Wisely to generally reference the engagement covered in any Engagement Documents or this Agreement, the use of Client's name and logo including and Client testimonials, quotes or related images, for the purpose of promoting Wisely through its sales and marketing activities.

10. Liability & Indemnity

Both Wisely & Client agree that:

- 10.1. To the extent permitted by law, the maximum aggregate liability of each party for any claims arising under or relating to this Agreement whether in contract, tort (including without limitation negligence), in equity, under statute, indemnities or any other basis shall not exceed the amount payable by the Client under this Agreement in the 12 months prior to the date of the claim or \$1,000,000, whichever is the lower.
- 10.2. The foregoing limitation does not apply to either party's liability for damage to, theft of, or loss of tangible property, personal injury, sickness or death.
- 10.3. Neither party shall be liable to the other party for any indirect, incidental, special, punitive or consequential loss or damage, whether arising from or in relation to breach or termination of this Agreement, negligence or any other tort, in equity, under an indemnity or otherwise, including without limitation loss of revenue, loss of profits, loss of goodwill, loss of business opportunities, loss of business reputation or publicity, damage to credit rating and loss or corruption of data from any cause.
- 10.4. The Client agrees to indemnify Wisely against all liabilities, claims, actions, demands, expenses, damages, losses or any other proceedings, all collectively referred to as "Loss" incurred by Wisely in respect of any claim by a third party which is related to, arises out of, or is in any way associated with this Agreement including Loss from any liabilities Wisely may have to the Client or any third party resulting from Wisely reliance on any information provided by the Client or Client's representatives, which is false, misleading, omitted, incorrect, or incomplete. However, the indemnity does not apply to any Loss in respect of any matters which are finally determined to have resulted from Wisely negligent, unlawful or wilful acts or omissions.

11. Restraint

- 11.1. Client agrees it will not at any time during the term of this Agreement and for a period of 6 months following its expiry or termination, engage any member of Wisely personnel for the purposes to employ, solicit to employ, retain or contract whether as an employee, contractor, casual or on any other basis.
- 11.2. Client acknowledges and agrees that Client breaching clause 11 will damage Wisely and agrees to pay Wisely liquidated damages to the sum equivalent to 12 months total salary compensation of the Wisely Personnel relating the breach.

12. Termination

- 12.1. Either party may terminate this Agreement in writing in the event of material breach by the other party of its obligations under this Agreement, where such breach has not been remedied within twenty (20) Business Days of written notice requiring the breach to be remedied.
- 12.2. In addition to clause 12.1, Wisely may terminate this Agreement in the event of a) monies payable to Wisely by Client being outstanding for more than 20 Business Days from the due date of an issued Tax Invoice; or b) upon giving the Client twenty (20) Business Days written notice of termination.
- 12.3. In the event of termination by either party in accordance with this clause 12, Wisely shall be entitled to be paid for Services rendered up to and including the date of termination.

13. Assignment

Neither party may assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other party which such consent shall not be unreasonably withheld.

14. Severability

If any provision of this Agreement offends any law applicable to it and is, as a consequence illegal, invalid or unenforceable then:

- 14.1. where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
- 14.2. in any other case the offending provision must be severed from this Agreement in which event the remaining provisions of the Agreement operate as if the severed provision had not been included.

15. No Waiver

A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of that power or right or the exercise of any other power or right under this Agreement. A waiver of a breach does not operate as a waiver of any other breach.

16. Governing Law and Jurisdiction

This Agreement is governed by and must be construed in accordance with the laws of New Zealand. The parties submit to the exclusive jurisdiction of the courts of that Country in respect of all matters or things arising out of this Agreement.

17. Contract Dispute Process

In the event of a dispute arising under or in connection with this Agreement, the parties shall follow the process outlined below:

17.1. Initial Resolution

In the first instance, the parties will use their best efforts to resolve any disputes amicably through good faith negotiations. A party claiming a dispute must notify the other party in writing, providing sufficient detail of the nature of the dispute. Within 10 Business Days of this notification, the parties will meet (whether in person or virtually) to attempt to resolve the dispute.

17.2. Escalation to Senior Management

If the dispute cannot be resolved by the individuals involved in the initial resolution, it shall be escalated to the senior management of each party. The senior managers must meet within 10 Business Days of the escalation to attempt to resolve the matter.

17.3. Mediation

If the dispute remains unresolved after escalation to senior management, the parties agree to refer the matter to mediation before commencing any litigation or arbitration. The mediation will be conducted in accordance with the rules of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ). If the parties cannot agree on a mediator, one will be appointed by the President of AMINZ. The costs of the mediation will be shared equally by the parties.

17.4. Litigation

If the dispute remains unresolved after mediation, either party may then refer the matter to the courts of New Zealand for resolution. Each party submits to the exclusive jurisdiction of the courts of New Zealand.

17.5. Continued Performance

Notwithstanding the existence of a dispute, both parties must continue to perform their respective obligations under this Agreement unless agreed otherwise in writing.