

CHUFFED SERVICE TERMS

1 APPLICATION

- 1.1 **Application:** These Terms apply to the provision Services by Chuffed to the Client, unless there is a separate written agreement signed by both parties which excludes these Terms.
- 1.2 **Acceptance:** Subject to clause 1.1, by signing or instructing Chuffed to proceed with a Statement of Work, the Client agrees to these Terms.
- 1.3 **Agreement:**
- a Subject to clause 1.4:
 - i the Agreement between the parties is formed when the Client provides Chuffed with a countersigned copy of the Statement of Work or instructs Chuffed to proceed with the Statement of Work, whichever is the earlier (**SOW Acceptance**); and
 - ii on SOW Acceptance, the Statement of Work forms an Agreement between the parties that is separate to all other agreements under other Statements of Work between the parties.
 - b The Agreement comprises:
 - i these Terms; and
 - ii the Statement of Work.
- 1.4 **Expiry:** A Statement of Work is only valid for SOW Acceptance until the expiry date listed in the Statement of Work or, if none is stated, for 30 days from the date Chuffed issues the Statement of Work.
- 1.5 **Exclusion of Client terms:** The Agreement applies to the exclusion of any standard or other terms the Client may have for the purchase of goods or services, including any terms the Client may have included its request for services or any purchase order issued by the Client.
- 1.6 **Order of precedence:** If there is any conflict between the documents that form part of the Agreement, they will have precedence in the descending order of priority set out below:
- a any terms in the Statement of Work that are labelled as *Special Conditions* or are otherwise expressed to vary these Terms;
 - b these Terms; and
 - c the Statement of Work, excluding the terms referred to in clause 1.6a.
- 1.7 **Changes:**
- a Chuffed may change these Terms at any time by publishing the changed Terms to the Website.
 - b If SOW Acceptance occurs after the Terms have been changed, the Statement of Work is subject to the Terms that are current as at the date of SOW Acceptance.
 - c The Client is responsible for ensuring it is familiar with the latest Terms before countersigning a

Statement of Work or instructing Chuffed to proceed with the Statement of Work.

- d These Terms were last changed on 26th September 2024.

2 INTERPRETATION

- 2.1 **Definitions:** In the Agreement, the following terms have the stated meaning:

Agreement: the Terms and the Statement of Work.

Chuffed: Chuffed Consulting Limited, company number 9204560.

Client: the client named in the Statement of Work.

Fees: the fees set out in the Statement of Work.

Force Majeure: an event that is beyond the reasonable control of a party, excluding an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care.

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 or 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.

Personal information: information about an identifiable individual.

Requirements: the specifications and requirements for the Services set out in the Statement of Work.

Services: the services described in the Statement of Work.

Solution: a tool or software solution developed or configured by Chuffed as part of the Services and provided to the Client as an output of the Services. A Solution may utilise Third Party Tools.

Start Date: the date of SOW Acceptance.

Statement of Work: a statement of work, proposal or quote that is issued by Chuffed and references these Terms.

Terms: these terms titled *Chuffed Service Terms*.

Third Party Tools: tools and services provided by reputable third party suppliers and used by Chuffed to provide the Services and/or Solutions.

Website: the internet site at www.chuffed.nz, or such other site notified to the Client by Chuffed.

- 2.2 **Interpretation:** In the Agreement:

- a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;

- b words importing the singular include the plural and vice versa; and
- c a reference to:
 - i a **party** to the Agreement includes that party's permitted assigns; and
 - ii **including** and similar words do not imply any limit.

3 OBLIGATIONS

- 3.1 **Chuffed:** In addition to its other obligations under the Agreement, Chuffed will provide the Services:
- a in accordance with the Agreement, including the Requirements, and all applicable laws;
 - b exercising reasonable care, skill and diligence;
 - c using reasonable efforts to meet any timetables and estimates set out in the Statement of Work, however, the Client acknowledges that any such timetable or estimate is indicative only; and
 - d using suitably skilled, experienced and qualified staff.
- 3.2 **Client:** In addition to its other obligations under the Agreement, the Client must:
- a perform the functions, tasks and responsibilities and provide the resources set out in the Statement of Work or otherwise agreed with Chuffed in a timely manner; and
 - b promptly make decisions (including approvals) and provide Chuffed with all information reasonably required to provide the Services.
- 3.3 **Third party tools:**
- a The Client acknowledges and agrees that:
 - i Chuffed may utilise Third Party Tools to provide the Services; and
 - ii a Solution may rely on Third Party Tools.
 - b While Chuffed will only use reputable providers of the Third Party Tools, Chuffed makes no warranty or representation on the reliability or availability of the Third Party Tools at any time. Without limiting the previous sentence:
 - i if a Third Party Tool provider ceases to provide the Third Party Tool or ceases to make Third Party Tool available on reasonable terms, Chuffed may cease to make available to the Client the Third Party Tool or any Service, Solution, feature or functionality of a Solution that is reliant on the Third Party Tool. To avoid doubt, if Chuffed exercises its right to cease the availability of a Third Party Tool or any Service, Solution, feature or functionality of a Solution that is reliant on the Third Party Tool, the Client is not entitled to any refund, discount or other compensation; and
 - ii unless otherwise agreed in writing, Chuffed will not back up any content, data or information stored or generated using the Third Party

Tools, including configuration information inputted into the Third Party Tools.

3.4 Personal information:

- a The Client must not enter any personal information (including name, address, date of birth, passport or credit card details) into a Solution other than into fields that prompt for entry of the information in question.
- b Chuffed has no responsibility or liability for any personal information entered into a Solution in breach of clause 3.4a, including for any privacy breach that may occur.

4 WARRANTIES

- 4.1 **General:** Chuffed warrants that the Services will, at the time they are provided, materially conform to the Requirements.
- 4.2 **Breach of warranty:** If the Services do not meet a warranty, at the Client's request and at Chuffed's cost, Chuffed will reperform the Services so that they meet or satisfy that warranty. Chuffed's obligation under this clause 4.2 is the Client's sole remedy against Chuffed for breach of warranty.
- 4.3 **Exclusions:**
- a The Client acknowledges and agrees that:
 - i the Services and Solutions may rely on tools that use generative artificial intelligence (**AI**);
 - ii AI can produce outputs that are factually incorrect, irrelevant or nonsensical (**AI Hallucinations**); and
 - iii Chuffed has no responsibility or liability for any outputs of the AI, including any AI Hallucinations.
 - b To the maximum extent permitted by law, Chuffed's warranties are limited to those stated in clause 4.1. Any implied condition or warranty (including any warranty under Part 3 of the New Zealand Contract and Commercial Law Act 2017) is excluded.
 - c The Client agrees and represents that it is acquiring the Services and Solutions for the purposes of trade. The parties agree that:
 - i to the maximum extent permissible by law, the New Zealand Consumer Guarantees Act 1993 does not apply to the supply of the Services or Solutions or the Agreement; and
 - ii it is fair and reasonable that the parties are bound by the Agreement, including this clause 4.3.

5 INTELLECTUAL PROPERTY

- 5.1 **Retained Intellectual Property:** The following Intellectual Property (including any modification, enhancement or derivative work of that Intellectual Property) remains the property of the current owner, regardless of its use in the Services or Solutions:
- a Intellectual Property that existed prior to the date of the Agreement; and

- b Intellectual Property that was developed independently of the Agreement.
- 5.2 **Know-how:** To the extent not owned by Chuffed, the Client grants Chuffed a royalty-free, transferable, irrevocable and perpetual licence to use for Chuffed's own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by Chuffed in the provision of the Services.

5.3 **Ownership going forward:**

- a Subject to clause 5.1, all new Intellectual Property created or developed by Chuffed in providing the Services and Solutions is owned by Chuffed.
- b If any deliverable provided by Chuffed to the Client incorporates Chuffed Intellectual Property that is not otherwise licensed to the Client, Chuffed grants for the Client an irrevocable, perpetual, non-transferable and fully paid licence to use that Intellectual Property within New Zealand for the Client's internal business purposes.

6 **FEES**

6.1 **Fees:** The Client must pay the Fees to Chuffed for providing the Services.

6.2 **Invoicing:**

- a Chuffed will provide the Client with valid GST tax invoices on the dates set out in the Statement of Work, or if there are none, monthly for Services provided in the previous month.
- b The Fees exclude GST, which the Client must pay on taxable supplies under the Agreement.
- c The Client must pay Chuffed's invoice:
 - i on the dates set out in the Statement of Work, or if there are none, by the 20th of the month following the date of invoice; and
 - ii electronically in cleared funds without any set off or deduction.

6.3 **Overdue amounts:** Chuffed may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by Chuffed's primary trading bank as at the due date (or if Chuffed's primary trading bank ceases to quote such a rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.

7 **CONFIDENTIALITY**

7.1 **Security:** Each party agrees that, unless it has the prior written consent of the other party, it will:

- a keep confidential at all times the Confidential Information of the other party; and
- b ensure that any personnel or professional advisor to whom a party discloses the other party's Confidential Information is aware of, and complies with, this clause 7.1.

7.2 **Disclosure required:** The obligations of confidentiality in clause 7.1 do not apply to any disclosure:

- a for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
- b required by law (including under the rules of any stock exchange);
- c of Confidential Information which:
 - i is publicly available through no fault of the recipient of the Confidential Information or its personnel; or
 - ii was rightfully received from a third party without restriction and without breach of any obligation of confidentiality; or
- d by Chuffed if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that Chuffed enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 7.

7.3 **Return of information:** Except to the extent that a party has ongoing rights to use Confidential Information, a party must, at the request of the other party following the expiry or termination of the Agreement, promptly return to the other party or destroy all Confidential Information of the other party in the recipient party's possession or control.

8 **LIABILITY**

8.1 **Maximum liability:** The maximum aggregate liability of Chuffed under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed the Fees paid and/or payable by the Client under the Agreement in the previous Year (which in the first Year is deemed to be the total Fees paid by the Client from the Start Date to the date of the first event giving rise to liability). In this clause, **Year** means any 12 month period commencing on the Start Date or any anniversary of that date.

8.2 **Unrecoverable loss:** Except for the Client's liability to pay the Fees, neither party is liable to the other under or in connection with the Agreement for any loss of profit, data, savings, business, revenue, and/or goodwill, or other indirect, consequential or incidental or special loss or damage of any kind.

8.3 **Unlimited liability:**

- a Clauses 8.1 and 8.2 do not apply to limit Chuffed's liability for:
 - i personal injury or death;
 - ii fraud or wilful misconduct; or
 - iii breach of clause 7.
- b Clause 8.2 does not apply to limit the Client's liability for those matters stated in clauses 8.3ai to 8.3aiii.

8.4 **No liability for the other's failure:** 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 the failure is directly 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.

- 8.5 **Mitigation:** 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.

9 TERMINATION

- 9.1 **Duration:** Unless otherwise terminated under this clause 9, the Agreement starts on the Start Date and ends on the end date specified in the Statement of Work, or no end date is specified, on completion of the Services.

- 9.2 **Termination rights:** Either party may, by notice to the other party, immediately terminate the Agreement:

- a if the other party:
 - i breaches any material provision of the Agreement and the breach is not:
 - ▲ remedied within 10 days of the receipt of the notice from the first party requiring it to remedy the breach; or
 - ▲ capable of being remedied;
 - ii has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of external administration, or ceases to continue business for any reason; or
 - iii is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure; or
- b in accordance with any additional rights to terminate set out in the Statement of Work.

- 9.3 **Consequences of expiry or termination:**

- a Expiry or termination of the Agreement does not affect each party's rights and obligations accrued before the expiry or termination date.
- b The Client must pay for Services provided before the expiry or termination date.

- 9.4 **Obligations continuing:** Clauses which, by their nature are intended to survive expiry or termination, including clauses 5, 7, 8, 9.3 and 9.4 continue in force.

10 DISPUTES

- 10.1 **Good faith negotiations:** Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.

- 10.2 **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.

- 10.3 **Right to seek relief:** This clause 10 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

11 GENERAL PROVISIONS

- 11.1 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement

to the extent caused by Force Majeure, provided that the affected party:

- a immediately notifies the other party and provides full information about the Force Majeure;
- b uses best endeavours to overcome the Force Majeure; and
- c continues to perform its obligations as far as practicable.

- 11.2 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.

- 11.3 **Independent contractor:** Chuffed is an independent contractor of the Client. No other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.

- 11.4 **Notices:** A notice given by a party under the Agreement must be delivered via email to an email address notified by the other party for this purpose. If the notice is given under clause 9, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive or equivalent officer of the other party at the other party's last known physical address.

- 11.5 **Severability:** Any illegality, unenforceability or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.

- 11.6 **Variation:** Any variation to the Agreement must be in writing and signed by both parties.

- 11.7 **Entire Agreement:** The Agreement sets out everything agreed by the parties relating to the Services and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A, and 13 of the Fair Trading Act 1986, and it is fair and reasonable that the parties are bound by this clause 11.7.

- 11.8 **Assignment:** Neither party may assign or transfer any right or obligation under the Agreement without the prior written approval of the other (not to be unreasonably withheld). The first party remains liable for its obligations under the Agreement despite any approved assignment or transfer.

- 11.9 **Law:** The Agreement is 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.

- 11.10 **Counterparts:** The Agreement (including the Statement of Work) may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the Agreement (including the Statement of Work) by signing and sending (including by email) a counterpart copy to the other party.