

# SaaS Agreement

## 1 APPLICATION OF TERMS

These Terms apply to your use of the SaaS Services (as that term is defined below). By clicking “I agree” or “accept” and accessing and using the SaaS Services you agree to these Terms as “Client” with Beyond Operations Limited, company number 8717366 (“Beyond Operatons” or “we”).

If you do not agree to these Terms, you are not authorised to access and use the Service, and you must immediately stop doing so.

## 2 CHANGES

We may change these Terms at any time by notifying you 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. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the SaaS Service from the date on which the Terms are changed, you agree to be bound by the changed Terms.

## Section A: Agreement and Key Details

### Agreement

Beyond Operations agrees to provide, and the Client agrees to buy, the Beyond Software as a SaaS Service, and Related Services, on the terms of the Agreement. The Agreement comprises:

- Section A (Agreement and Key Details, including this cover page and the signature clause); and
- Section B (General Terms)

## Key Details

Item	Detail
Start Date	The date you accept these Terms and start using the SaaS Service.
End Date	The date this agreement is terminated in accordance with its terms.
SaaS Service	The SaaS service is a software platform for business strategy execution for use by senior leadership team members, including the ability to store actions and projects, strategy documents, meeting minutes and agendas, financial scorecards and internal/external NPS data.

## Related Services

### Facilitation Services

Optional “We Drive” model:  
Beyond Operations will at Client’s request and cost, assist with facilitation of Client’s use of the Beyond Software to meet Client’s requirements.

Optional “We Drive You” model: Beyond Operations will at Client’s request and cost provide you with senior leadership team monthly training, including facilitation of use of Beyond Software.

### Onboarding and User Training

Client will be responsible for onboarding of its own staff in the use of the Beyond Software using the onboarding email, user instructions and demo video provided by Beyond Operations. If Client opts for the “We Drive” or “We Drive You” model, then Beyond Operations will provide a live onboarding demonstration.

## Fees and Payment

### SaaS Service

“You Drive” model: \$99 plus GST per month for the Client per 10 members of the senior leadership team to become Permitted Users

### Related Services - Facilitation

“We Drive” Model: \$100 plus GST per month per 10 members of senior leadership team for the Client to receive “We Drive” facilitation services from Beyond Operations.

“We Drive You Model”: \$4500 plus GST per month, and for the duration of this model the \$99 plus GST monthly charges for use of the SaaS Service are waived.

## Website

<https://www.beyondstrategy.ai/>

## Section B: General Terms

### 1. Interpretation

1.1. **Definitions:** In the Agreement, the following terms have the stated meaning:

Term	Meaning
<b>Beyond Software</b>	the software platform for business strategy execution owned by the Beyond Operations that is used to provide the SaaS Service.
<b>Agreement</b>	Section A (Agreement and Key Details) and Section B (General Terms).
<b>Confidential Information</b>	the terms of the Agreement and any information that is not public Information knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement.  Intellectual Property owned by Beyond Operations, including the Beyond Software, and any customisations to the Beyond Software, will be Beyond Operations' Confidential Information.  The Data is Client's Confidential Information.
<b>Data</b>	all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of the Client that is stored using, or inputted into, or generated by the Services.
<b>End Date</b>	the date this agreement is terminated in accordance with its terms.
<b>Fees</b>	the fees set out in the Key Details, as updated from time to time in accordance with clause 5.4.
<b>Force Majeure</b>	an event that is beyond the reasonable control of a party, excluding: <ol style="list-style-type: none"> <li>an event to the extent that it could have</li> </ol>

- been avoided by a party taking reasonable steps or reasonable care;  
or
- b. a lack of funds for any reason.

<b>Intellectual Property Rights</b>	includes copyright and all worldwide rights conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks 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.
<b>Key Details</b>	the Agreement specific details set out in Section A of the Agreement.
<b>Objectionable</b>	includes being objectionable, defamatory, obscene, harassing, threatening, or unlawful in any way.
<b>Payment Terms</b>	the payment terms set out in the Key Details (if any).
<b>Permitted Users</b>	those personnel of the Client who are senior leadership team members and are authorised to access and use the Services on the Client's behalf in accordance with <b>clause 3.3</b>
<b>Personal Information</b>	has the meaning given in the Privacy Act 2020.
<b>Related Services</b>	any related service described in the Key Details and any further services that Beyond Operations agrees to provide to the Client under the Agreement.
<b>SaaS Service</b>	the service having the core functionality described in the Key Details.
<b>Services</b>	the SaaS Service and any Related Service.
<b>Start Date</b>	the start date set out in the Key Details.
<b>Underlying Systems</b>	Hardware, IT solutions, systems and networks (including software and hardware)

required to provide the Services, including any third party solutions, systems and networks.

**Website**

the Internet site at the domain set out in the Key Details, or such other site notified to the Client by Beyond Operations.

**Year**

a 12 month period starting on the Start Date or the anniversary of that date.

**1.2. 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 in the singular include the plural and vice versa;
- c. a reference to:
  - i. a **party** to the Agreement includes that party's permitted assigns;
  - ii. **personnel** includes officers, employees, contractors and agents, but a reference to the Client's personnel does not include Beyond Operations;
  - iii. 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;
  - iv. **including** and similar words do not imply any limit; and
  - v. a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- d. no term of the Agreement is to be construed against a party because the term was first proposed or drafted by that party; and
- e. if there is any conflict between Section B and Section A of the Agreement, Section B prevails unless expressly stated otherwise in Section A.

## 2. Services

**2.1. General:** Beyond Operations must use best efforts to provide the Services:

- a. in accordance with the Agreement and New Zealand law;
- b. exercising reasonable care, skill and diligence; and
- c. using suitably skilled, experienced and qualified personnel.

**2.2. Non-exclusive:** Beyond Operations' provision of the Services to the Client is non-exclusive. Nothing in the Agreement prevents the Beyond Operations from providing the Services to any other person.

**2.3. Availability:**

- a. Subject to clause 2.3b, Beyond Operations will use reasonable efforts to ensure the SaaS Service is available during normal business hours in New Zealand. However, it is possible that on occasion the SaaS Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. Beyond Operations will use reasonable efforts to publish on the Website advance details of any unavailability.
- b. Through the use of web services and APIs, the SaaS Service interoperates with a range of third party service features. Beyond Operations 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, Beyond Operations may cease to make available that feature to the Client. To avoid doubt, if Beyond Operations exercises its right to cease the availability of a third party feature, the Client is not entitled to any refund, discount or other compensation.

**2.4. Underlying Systems:** The Client is responsible for procuring all Underlying Systems reasonably required for it to receive the SaaS Service in accordance with the Agreement.

**2.5. Additional Related Services:**

- a. Beyond Operations may, from time to time, make available additional services to supplement the SaaS Service.
- b. At the request of the Client and subject to the Client paying the applicable Fees, Beyond Operations may agree to provide to the Client an additional Related Service on the terms of the Agreement.

### 3. Client Obligations

**3.1. General use:** The Client and its personnel must:

- a. use the Services in accordance with the Agreement solely for:
  - i. the Client's own internal business purposes; and
  - ii. Lawful purposes (including complying with the Unsolicited Electronic Messages Act 2007); and
- b. not resell or make available the Services to any third party, or otherwise commercially exploit the Services; and
- c. use the Beyond Software strictly in accordance with any user instructions issued by Beyond Operations from time to time.

**3.2. Access conditions:** When accessing the SaaS Service, the Client and its personnel must:

- a. not impersonate another person or misrepresent authorisation to act on behalf of others or Beyond Operations;
- b. correctly identify the sender of all electronic transmissions;
- c. not attempt to undermine the security or integrity of the Underlying Systems;
- d. not use, or misuse, the SaaS Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the SaaS Service;
- e. not attempt to view, access or copy any material or data other than that to which the Client is authorised to access;



- f. neither use the SaaS 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; and
- g. comply with any terms of use on the Website, as updated from time to time by Beyond Operations.

**3.3. Personnel:**

- a. Without limiting clause 3.2, no individual other than a Permitted User may access or use the SaaS Service.
- b. The Client may authorise any member of its senior leadership team to be a Permitted User, in which case the Client will provide Beyond Operations with the Permitted User's name and other information that Beyond Operations reasonably requires in relation to the Permitted User.
- c. The Client must procure each Permitted User's compliance with clauses 3.1 and 3.2 and any other reasonable condition notified by Beyond Operations to the Client.
- d. A breach of any term of the Agreement by the Client's personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of the Agreement by the Client.

- 3.4. Authorisations:** The Client is responsible for procuring all licences, authorisations and consents required for it and its personnel to use the Services.

## 4. Data

**4.1. Beyond Operations access to Data:**

- a. The Client acknowledges that:
  - i. Beyond Operations may require access to the Data to exercise its rights and perform its obligations under the Agreement; and
  - ii. Beyond Operations may use the Data to improve its SaaS Service and may aggregate the Data together with data stored by

other SaaS Services clients to provide benchmarking reports or other commercial services provided that the identity of the Client cannot be ascertained; no Personal Information or Client Confidential Information is disclosed; and any Data belonging to the Client cannot be separately ascertained from the data aggregation.

iii. to the extent that it is necessary but subject to clause 7, Beyond Operations may authorise members of its personnel to access the Data for these purposes.

**4.2. Agent:**

- a. The Client acknowledges and agrees that to the extent Data contains Personal Information, in collecting, holding and processing that information through the Services, Beyond Operations is acting as an agent of the Client for the purposes of the Privacy Act 2020 and any other applicable privacy law.
- b. The Client must obtain all necessary consents from the relevant individual to enable Beyond Operations to collect, use, hold and process that information in accordance with the Agreement.

**4.3. Backups of Data:** While Beyond Operations will take standard industry measures to back up all Data stored using the Services, the Client agrees to keep a separate back-up copy of all Data uploaded by it onto the SaaS Service.

**4.4. International storage of Data:** The Client agrees that Beyond Operations may store Data (including any Personal Information) in secure servers and may access that Data (including any Personal Information) in accordance with Amazon Web Services standard terms and conditions and Beyond Operations may amend this service from time to time.

**4.5. Privacy Policy:** The parties agree that Beyond Operations' Privacy Policy located at Frank Accounting Limited, c/o Icehouse, 125 St Georges Bay Road, Parnell, Auckland 1052, New Zealand, as may be updated by Beyond Operations

from time to time shall apply to the collection, storage, sharing and use of personal information provided by the Client and its Permitted Users.

- 4.6. Indemnity:** The Client indemnifies Beyond Operations against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by Beyond Operations' 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.

## 5. Fees

- 5.1. Fees:** The Client must pay to Beyond Operations the Fees.

**5.2. Invoicing and payment:**

- a. Beyond Operations will provide the Client with valid GST tax invoices on the dates set out in the Payment Terms, or if there are none, monthly in advance for the Fees due in the next month.
- b. The Fees exclude GST, which the Client must pay on taxable supplies under the Agreement.
- c. The Client must pay the Fees:
  - i. by direct debit electronically in cleared funds without any set off or deduction prior to the start of each month.

- 5.3. Suspension of Services:** Beyond Operations may suspend the provision of the Services to the Client in the event the Client does not pay an invoice within the prescribed timeframe.

**5.4. Increases:**

- a. By giving at least 30 days' notice, Beyond Operations may increase the Fees once each Year (but not the first Year). Fees updated under this clause are deemed to be the Fees listed in the Key Details.

- b. If the Client does not wish to pay the increased Fees, it may terminate the Agreement on no less than 10 days' notice, provided the notice is received by Beyond Operations before effective date of the Fee increase. If the Client does not terminate the Agreement in accordance with this clause, it is deemed to have accepted the increased Fees.

## 6. Intellectual Property

### 6.1. Ownership:

- a. Subject to clause 6.1b, title to, and all Intellectual Property Rights in, the Services, the Website, and all Underlying Systems is and remains the property of Beyond Operations (and/or its licensors). The Client must not dispute that ownership during or after the term of this Agreement.
- b. Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the Client. The Client grants Beyond Operations 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 its rights and performance of its obligations in accordance with this Agreement.
- c. Neither party will use any trade mark owned by the other party, except as provided in this agreement, without first obtaining the other party's written consent.

### 6.2. **Feedback:** If the Client provides Beyond Operations with ideas, comments or suggestions relating to the Services or Underlying Systems (together **feedback**):

- a. 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 Beyond Operations; and
- b. Beyond Operations may use or disclose the feedback for any purpose.

**6.3. Third party sites and material:** The Client acknowledges that the SaaS Service may link to third party websites, IT systems or feeds that are connected or relevant to the SaaS Service. Any link from the SaaS Service does not imply any Beyond Operations endorsement, approval or recommendation of, or responsibility for, those websites, systems or feeds or their content or operators. To the maximum extent permitted by law, Beyond Operations excludes all responsibility or liability for those websites, systems or feeds.

**6.4. Third Party Intellectual Property Rights indemnity:**

- a. Beyond Operations indemnifies the Client against any claim or proceeding brought against the Client within New Zealand to the extent that claim or proceeding alleges that the Client's use of the SaaS 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 Client:
  - i. promptly notifying Beyond Operations in writing of the IP Claim;
  - ii. making no admission of liability and not otherwise prejudicing or settling the IP Claim, without Beyond Operations' prior written consent; and
  - iii. giving Beyond Operations complete authority and information required for Beyond Operations to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for Beyond Operations' account.
  
- b. The indemnity in clause 6.5a does not apply to the extent that an IP Claim arises from or in connection with:
  - i. the Client's breach of the Agreement;
  - ii. use of the SaaS Service in a manner or for a purpose not reasonably contemplated by the Agreement or otherwise not authorised in writing by Beyond Operations; or
  - iii. any third party data or any Data.

- c. If at any time an IP Claim is made, or in Beyond Operations' reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, Beyond Operations may (at Beyond Operations' option):
  - i. obtain for the Client 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; or
  - iii. terminate this Agreement by notice in writing.

## 7. Confidentiality

**7.1. Security:** Each party must, unless it has the prior written consent of the other party:

- a. keep confidential at all times the Confidential Information of the other party;
- b. effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- c. disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 7.1a and 7.1b; and
- d. Not copy or reproduce any of the Confidential Material in any way, unless the copying or reproduction is required to enable use of the Confidential Material for the reason for which it was provided; and
- e. If either party is unsure of the confidentiality of any information or material, it must treat it as Confidential Material until the disclosing party advises in writing that it is not.

**7.2. Permitted disclosure:** The obligation of confidentiality in clause 7.1a does not apply to any disclosure or use of Confidential Information:

- 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. which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- d. which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or
- e. by Beyond Operations 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 Beyond Operations enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 7.

## 8. Warranties

- 8.1. Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, when signed, will constitute binding obligations on the warranting party.
- 8.2. No implied warranties:** To the maximum extent permitted by law:
- a. Beyond Operations' 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 under the Contract and Commercial Law Act 2017) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to \$1,000 NZD; and
  - b. Beyond Operations makes no representation concerning the quality of the Services and does not promise that the Services will:
    - i. meet the Client's requirements or be suitable for a particular purpose; or

- ii. be secure, free of viruses or other harmful code, uninterrupted or error free.

**8.3. Consumer Guarantees Act:** The Client agrees and represents that it is acquiring the Services, and entering the Agreement, for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of the Services or the Agreement.

**8.4. Limitation of remedies:** Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, the liability of Beyond Operations for any breach of that condition or warranty is limited, at Beyond Operations' option, to:

- a. supplying the Services again; and/or
- b. paying the costs of having the Services supplied again.

## 9. Liability

**9.1. Maximum liability:** The maximum aggregate liability of Beyond Operations under or in connection with the Agreement or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed \$20,000 NZD. The cap in this clause 9.1 includes the cap set out in clause 8.2a.

**9.2. Unrecoverable loss:** Neither party is liable to the other under or in connection with the Agreement or the Services for any:

- a. loss of profit, revenue, savings, business, data (including Data), and/or goodwill; or
- b. consequential, indirect, incidental or special damage or loss of any kind.

**9.3. Unlimited liability:**



- a. Clauses 9.1 and 9.2 do not apply to limit Beyond Operations' liability:
  - i. under the indemnity in clause 6.4a; or
  - ii. under or in connection with the Agreement for:
    - ▲ personal injury or death;
    - ▲ fraud or wilful misconduct; or
    - ▲ a breach of clause 7.
- b. Clause 9.2 does not apply to limit the Client's liability:
  - i. to pay the Fees;
  - ii. under the indemnity in clause 4.6; or
  - iii. under or in connection with the Agreement for:
    - ▲ personal injury or death;
    - ▲ fraud or wilful misconduct; or
    - ▲ a breach of clause 7.

**9.4. No liability for 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 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.

**9.5. 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.

## 10. Term, Termination and Suspension

**10.1. Duration:** Unless terminated under this clause 10, the Agreement:

- a. starts on the Start Date and ends on the End Date; but
- b. where no End Date is set out in the Key Details, continues for successive terms of 12 months from the Start Date unless a party gives 30 days notice that the Agreement will terminate on the expiry of the then current term.

- c. the Agreement shall continue on a monthly basis at the monthly fee (and otherwise on the same Terms as set out in this Agreement) and is terminable on one calendar month's written notice by email.

**10.2. Other Termination rights:**

- a. Either party may, by notice to the other party, immediately terminate the Agreement 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 a notice from the first party requiring it to remedy the breach; or
    - ▲ capable of being remedied;
  - ii. 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; or
  - iii. is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.

**10.3. Consequences of termination or expiry:**

- a. Termination or expiry of the Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
- b. On termination or expiry of the Agreement, the Client must pay all Fees for Services provided prior to that termination or expiry.
- c. Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination or expiry of the Agreement, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.

- d. At any time prior to one month after the date of termination or expiry, the Client may request:
  - i. a copy of any Data stored using the SaaS Service, provided that the Client pays Beyond Operations' fee for providing that copy. On receipt of that request, Beyond Operations must provide a copy of the Data in a common electronic form. Beyond Operations does not warrant that the format of the Data will be compatible with any software; and/or
  - ii. deletion of the Data stored using the SaaS Service, in which case Beyond Operations must use reasonable efforts to promptly delete that Data.

To avoid doubt, Beyond Operations is not required to comply with clause 10.4di to the extent that the Client previously requested deletion of the Data.

**10.4. Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 4.5, 6, 7, 8.4, 9, 10.4, 10.5 and 11, continue in force.

**10.5. Suspending access:** Without limiting any other right or remedy available to Beyond Operations, Beyond Operations may restrict or suspend the Client's access to the SaaS Service where the Client (including any of its personnel):

- a. undermines, or attempts to undermine, the security or integrity of the SaaS Service or any Underlying Systems;
- b. uses, or attempts to use, the SaaS Service:
  - i. for improper purposes; or
  - ii. in a manner, other than for normal operational purposes, that materially reduces the operational performance of the SaaS Service; or
- c. has otherwise materially breached the Agreement (in the Beyond Operations' reasonable opinion).

- 10.6. Notice:** Beyond Operations must notify the Client where it restricts or suspends the Client's access under clause 10.6.

## 11. Disputes

- 11.1. 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.
- 11.2. Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.
- 11.3. Right to seek relief:** This clause 11 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

## 12. General

- 12.1. 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 efforts to overcome the Force Majeure; and
- c. continues to perform its obligations to the extent practicable; and

the contract will be automatically terminated without liability 10 business days after notification of the Force Majeure if that Force Majeure persists.

- 12.2. Rights of third parties:** No person other than Beyond Operations and the Client has any right to a benefit under, or to enforce, the Agreement.
- 12.3. Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.

- 12.4. Independent contractor:** Subject to clause 4.2, Beyond Operations is an independent contracting party, and no other relationship with the Client (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- 12.5. Notices:** A notice given by a party under the Agreement must be delivered to the other party via email using the email address notified by the other party for this purpose.
- 12.6. 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.
- 12.7. Variation:** Any variation to the Agreement must be in writing and signed by both parties.
- 12.8. 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.
- 12.9. Subcontracting and assignment:**
- a. The Client may not assign, novate, subcontract or transfer any right or obligation under the Agreement without the prior written consent of Beyond Operations, that consent not to be unreasonably withheld. The Client remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.

- b. Any change of control of the Client is deemed to be an assignment for which Beyond Operations' prior written consent is required under clause 12.9a. In this clause **change of control** means any transfer of shares or other arrangement affecting the Client or any member of its group which results in a change in the effective control of the Client.

**12.10. 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.

**12.11. Counterparts:** The Agreement 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 by signing and emailing a counterpart copy to the other party.