

# Terms of Use Tax Team Limited

These terms may be altered as required therefore please read clause 14.7 to see what your rights are if we make changes.

## 1. Accounts

- To access the services, you must set up an account.
  - You agree and acknowledge that:
    - all information you provide Tax Team will be true, accurate, current and complete; and
    - if you create an account on behalf of another person, you are authorised to register to use the services and agree to these Terms of Use on behalf of that person (without limiting your obligations under these Terms of Use). Tax Team may require a statutory declaration or similar sworn declaration to Tax Team to confirm your authority.
  - You are responsible for maintaining the confidentiality of your account and password and for all activity on or through your account (including unauthorised access by third parties) and you must not sell, transfer, license or assign your account, username, or any account rights. Tax Team may charge a fee to reset your password.
  - You must notify Tax Team immediately of any unauthorised use of your account. Tax Team are not liable for any loss or damage arising in connection with any unauthorised use of your account.

## 2. Trial Period

- If you are first time user of the services, Tax Team may provide you with access to the services for a 180 days free of charge (**Trial Period**).
- If you are an existing client of McCullagh & Liu Accountants Limited Tax Team may provide you with access to the services free of charge until you cease to be a client of McCullagh & Liu Accountants Limited or until the agreement with McCullagh & Liu Accountants Limited is amended or terminated.
- During the Trial Period:
  - the services will be provided for evaluation only;
  - to the extent permitted by law and subject to consumer laws applicable to you, the services are provided “as-is” and “as-available”, Tax Team does not make any warranties and exclude all liability arising from your use of the services, including loss of data or your data; and
  - Tax Team may terminate your access to the services at any time in Tax Team’s sole discretion.
- At the end of the Trial Period:
  - you must pay the fees as defined in Section 5.1 to continue using the services;
  - any data entered or collected from the services will be lost unless you purchase a subscription or you export such data by printing reports prior to the expiry of the Trial Period.

## 3. services

- Tax Team grants you a non-exclusive, non-transferable, limited licence to access and use the services in accordance with your subscription, including any new releases and updates of services Tax Team may make available from time to time.
- Tax Team may upgrade or update the services at any time in its sole discretion.

- You acknowledge and agree that:
  - the speed of internet access will vary and may be affected by factors beyond Tax Team’s control; and
  - the services do not constitute advice and you should seek legal, accounting or other relevant independent professional advice before taking any action in reliance on the services.
- You are solely responsible for:
  - determining whether the services are suitable for your needs;
  - protecting your data and taking appropriate measures to protect your data from accidental, unlawful or unauthorised access, use or disclosure;
  - complying with all applicable accounting, tax and other laws. You must check that storage of and access to your data will comply with all laws, including any laws requiring you to retain records.
- You must not:
  - use or access the services in any unlawful way or for any illegal purpose;
  - use the services in a manner that is excessive or unusual or creates an unfair burden on the provision of the services, or similar services, to others (as judged in Tax Team’s reasonable discretion);
  - infringe the intellectual property rights, privacy or confidentiality of any third party;
  - impersonate any third person or attempt to impersonate any person when using the services;
  - use the services to distribute, send or publish any unsolicited electronic messages or other forms of “spam”;
  - knowingly transmit any virus, worm or other disabling or malicious feature, or attempt to interfere with the operation of the services;
  - use, modify or adapt the Service or any third party data in any way that is contrary to these Terms of Use;
  - on-sell, transfer, rent, lease or assign any copy of the Service to any third-party;
  - violate or attempt to violate any aspect of the security of the services; or
  - modify, reverse engineer, disassemble, decompile, copy, or cause damage, disruption, unintended effect to, or interfere with, any portion of the features available through, or software in connection with Tax Team’s provision of the services.
- Use the service as an agent and create multiple entities for your clients using only one user account.

#### **4. Support**

- Tax Team may update and carry out scheduled maintenance of the services, so Tax Team may have to suspend access to, or functionality on, the services from time to time. Tax Team will notify you of any scheduled maintenance that may interrupt the services.
- Tax Team will provide you with online support
- You acknowledge Tax Team may charge you for fault resolution services at Tax Team’s then current rates if Tax Team responds to a request from you that is not caused by the software or service.

#### **5. fees and payment**

- In consideration of Tax Team’s provision of the Service, you agree to pay Tax Team the fees as set out on the website Tax Team may change the fees payable at it's discretion and will give notice to you.

- Your subscription will automatically renew, unless you give Tax Team notice prior to the end of the current term. [We will email you prior to any renewal to remind you that the subscription will renew unless you notify us to expire these Terms of Use].
- Tax Team will invoice you in advance for the provision of the Service. You will not be entitled to a refund of any fees you have paid in advance, except where you terminate these Terms of Use for our breach.
- If you fail to pay an invoice by the due date, or a payment is dishonoured, Tax Team may charge interest on overdue amounts at the rate of 2% per month, or the maximum amount permitted by law (whichever is greater) with interest accruing daily, and/or suspend your account and access to the services until all overdue amounts are paid.

## **6. Third Party Products**

- The services may contain features that interface with Third Party Products. If Third Party Products form part of your subscription or services, the following will apply:
  - your use of, and access to, any Third Party Products is subject to separate terms and conditions issued by the third party supplier of those products from time to time;
  - if requested, Tax Team will liaise with the third party supplier of the Third Party Products on your behalf;
  - Tax Team makes no representations or warranties in relation to any Third Party Products;
  - Tax Team may suspend your use of, or access to the Third Party Products if you breach the terms and conditions applicable to the Third Party Products or if Tax Team no longer uses such Third Party Products.
- You acknowledge and agree Tax Team will make your data available to the providers of the Third Party Products.

## **7. Intellectual property rights**

- Nothing in these Terms of Use transfers ownership of any Pre-Existing Materials or services. Tax Team reserves all rights in and to the Pre-Existing Materials and services not expressly granted to you under these Terms of Use.
- You grant Tax Team a non-exclusive licence to use your data for the purpose of performing Tax Team's obligations under these Terms of Use.
- You consent to Tax Team naming you as a client and reproducing your business name and logos for marketing and publicity purposes.

## **8. Confidentiality and privacy**

- Each party must comply with applicable privacy law in connection with the collection, use, handling, disclosure, quality, security of and access to personal information that the party holds.
- Both parties must keep all Confidential Information confidential and use such information for the sole purpose of performing the obligations under these Terms of Use.
- Neither party may use or disclose the Confidential Information except:
  - to that party's employees or advisers on a need-to-know basis and that party must ensure that such persons understand and comply with the obligations imposed by this clause 8;
  - as required by law, subject to that party notifying the other party immediately if that party becomes aware that such disclosure may be required; or
  - with the other party's prior written consent.

## **9. Liability**

- Subject to clause (c) and to the fullest extent permitted by law:

- the services are provided “as-is” without warranty of any kind or representations regarding the use, performance or results of the use, of the services;
- in no event shall Tax Team be liable, whether such liability is based on breach of contract, tort (including negligence), statute or otherwise:
  - for any Third Party Products;
  - for any consequential loss, indirect, incidental, punitive or special losses of any kind, nor for any loss of data, profit, business interruption or a security breach); and
  - any loss arising from activity on your account, including additional usage fees, loss of data or downtime caused by deliberate, inadvertent or unauthorised access by any party, or files that you upload, transmit, install or otherwise use in connection with the services; and
- Tax Team’s total aggregate liability in connection with all claims arising in relation to these Terms of Use whether in contract, tort (including negligence), statute or otherwise will not exceed an amount equal to the fees paid by you to Tax Team in the preceding 12 months prior to the date the claim is made;
- To the fullest extent permitted by law, where a mandatory term or statutory right cannot be waived, Tax Team’s liability is limited, at Tax Team’s option, to:
  - if the breach relates to goods:
    - the replacement of the goods or the supply of equivalent goods;
    - the repair of the goods;
    - the payment of the cost of replacing the goods; or
    - the payment of the cost of having the goods repaired; or
  - if the breach relates to services:
    - the supplying of the services again; or
    - the payment of the cost of having the services supplied again.

#### 10. **Security and Data**

- Tax Team will use reasonable precautions to prevent unauthorised disclosure of your data, but Tax Team shall not be responsible for any breach of its systems by any unauthorised third party unless such breach arises as a result of Tax Team’s gross negligence.
- Tax Team does not represent or warrant that the services are entirely secure, uninterrupted or error-free. You acknowledge that the public internet is an inherently insecure environment and that Tax Team has no control over the privacy of any communications or the security of any data outside of Tax Team’s internal systems.

#### 11. **Suspension and termination**

- You may terminate the services at any time by electronic notice via the website.
- Tax Team may terminate these Terms of Use on notice to you if you:
  - fail to remedy a breach within 7 days’ notice from Tax Team requesting the breach be remedied;
  - breach these Terms of Use and that breach is not capable of remedy; or
  - becomes insolvent or enter into liquidation to the extent permitted by law.
- Upon the expiry or termination of these Terms of Use for any reason:
  - you must pay all outstanding fees to Tax Team
  - you must pay any reasonable costs incurred by Tax Team as a result of the termination (including third party cancellation fees and administrative costs), except where you have terminated for our breach;

- on Tax Team's request you must securely destroy Tax Team's Confidential Information; and
- You must download any data or reports prior to termination as Tax Team will not store your data once the account is closed.

12. **Force Majeure Event**

- If a Force Majeure Event occurs, the affected party must notify the other party and the obligations of the party will be suspended to the extent that they are affected by the relevant Force Majeure Event until that Force Majeure Event has ceased.
- If a Force Majeure Event continues for more than 60 days, either party may terminate these Terms of Use.

13. **Notices**

- All notices and consents relating to these Terms of Use must be in writing. A notice is deemed to have been received:
  - if posted by Tax Team on the website, within 6 hours of the time of the post; or
  - if sent by email or by electronic message sent via the services, when the sender receives an automated message confirming delivery or within 24 hours of that message being sent (as recorded on the device from which the sender sent the message).
- If Tax Team needs to provide you with notice, consent or other communication under these Terms of Use, Tax Team will do so by sending a message to you via your account, sending an email and/or text message to the email address and/or mobile phone number specified on your account, posting a notice on Tax Team's website or through push notifications.
- If you want to contact Tax Team you may do so by using the Contact Us screen on our website.

14. **General terms**

- Nothing in these Terms of Use will be taken as giving rise to a relationship of employment, agency, partnership or joint venture.
- Tax Team may sub-contract the performance of any part of the services to any third party or assign these Terms of Use or any of Tax Team's rights or obligations under these Terms of Use.
- These Terms of Use contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications.
- The failure of either party to enforce any provisions under these Terms of Use will not waive the right of such party thereafter to enforce any such provisions.
- If any term or provision of these Terms of Use is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from these Terms of Use and the remaining terms and conditions will be unaffected.
- These Terms of Use is governed by, and construed in accordance with the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand. These Terms of Use shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- Tax Team may change these Terms of Use and will use reasonable endeavours to notify you, including by posting the changes on the website. If the changes to the Terms of Use have a material adverse impact on you, you must notify us within 30 days of receiving notice of the change. If we consider that the change does have a material adverse impact on you, (determined in our sole discretion) we may allow you to continue to operate under the Terms of Use in effect immediately prior to the

change. If we do not offer you this option, you may terminate on notice to us.

- You may not assign, transfer or otherwise deal with these Terms of Use or any right under these Terms of Use without our prior written consent, which must not be unreasonably withheld. We may assign, transfer or otherwise deal with these Terms of Use or any right under these Terms of Use where it is reasonable to do so, including for example where our business is acquired by someone.
- Any warranty, indemnity, or obligation of confidentiality in these Terms of Use will survive termination. Any other term which by its nature is intended to survive termination of these Terms of Use survives termination of these Terms of Use.

## 15. **Definitions and interpretation**

- In these Terms of Use:
  - **Confidential Information** means confidential, proprietary and commercially-sensitive information (irrespective of the form or the manner in which the information is disclosed, or the time of such disclosure) including information which:
    - is identified as confidential or ought to have been known to be confidential; and
    - relates to the business affairs and practices, including financial information, business opportunities, business plans, business processes and methodologies,
  - but does not include information which is in, or comes into, the public domain other than by a breach of these Terms of Use, or which is independently known to the other party as evidenced by its written record.
  - **Consequential Loss** means any loss that does not arise naturally in the ordinary course of things from the event or circumstance giving rise to the Loss.
  - **Force Majeure Event** means any act, event or cause including earthquakes, cyclones, floods, fires, lightning, storms or other acts of God, strikes or industrial disputes, riots, terrorist acts, civil disturbances, breakages of machinery or industrial conditions or arising out of any other unexpected and exceptional cause, delays in transportation and dispositions or orders of governmental authority, which:
    - directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under these Terms of Use; and
    - is beyond the reasonable control of that party.
  - **Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, confidential information, trade secrets, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable.
  - **Pre-Existing Materials** mean any of materials existing at the date of these Terms of Use, including all trademarks, designs, design specifications, software, hardware or other documentation and materials used in Tax Team's business or operations, including software, source code, scripts, materials, reports, diagrams, code, processes, methods, specifications and other works.
  - **Tax Team** means Tax Team Limited.
  - **services** means the online accounting software available on the website.
  - **subscription** means the subscription type selected by you on the website.
  - **Third Party Products** means any third party products and/or services,

including band data feeds.

- **your data** means the data, content, software, documents, files, information and materials you store, develop, host or publish on Tax Team’s infrastructure using the services.
- **website** means Tax Team’s websites, including [taxteam.co.nz](http://taxteam.co.nz)
- In these Terms of Use:
  - a reference to a person includes a natural person, corporation, unincorporated association or partnership;
  - a reference to a party to these Terms of Use includes its executors, administrators, substitutes, successors and permitted assigns;
  - the headings in these Terms of Use are for convenience only and have no legal effect;
  - the singular includes the plural and vice versa;
  - other grammatical forms of a defined word or expression have a corresponding meaning;
  - “including” and similar words do not imply any limitation;
  - a reference to any agreement or document is a reference to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time; and
  - a reference to a statute includes a reference to that statute as amended or replaced from time to time.