

# 1Place Terms of Use

These Terms of Use were last updated 14 February 2022

Welcome to 1Place, a cloud based multi-site management system that provides software applications and platforms to subscribers via the internet for the purposes of managing audit and compliance requirements. These Terms of Use, including the Privacy Statement (together the **Terms**) form a legal agreement between you and 1Place that sets out 1Place's, and your, rights and obligations in relation to the Services.

Please read these Terms carefully before subscribing and using the Services. By subscribing to the Services, you agree to follow and be bound by these Terms. If you do not agree to all of these Terms, you must not subscribe to the Services.

These Terms may be varied by 1Place at any time. Unless otherwise stated, amendments to these Terms will be effective upon 1Place notifying you of the changes by email, or by posting the changes on the 1Place website or through the Subscription Services. You must ensure that you have read, understood and agree to these Terms. You agree that your continued use of the Services represents your agreement to be bound by the most recent terms.

## 1. Definitions and Interpretation

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1.1 In these Terms, unless the context otherwise requires or is specified otherwise:

**1Place** means the 1Place entity that has signed the Implementation Proposal submitted to you. If you have not been provided with an Implementation Proposal, the 1Place entity for the purposes of these Terms will be 1Place International Limited;

**Authorised Users** means:

- (a) you; and
- (b) Authorised Users added in accordance with clause 3;

**Business Day** means a day other than a Saturday, Sunday or public holiday in Auckland;

**Customer Data** means the data inputted by Authorised Users, or 1Place on Authorised Users' behalf, for the purpose of using the Subscription Services or facilitating the Authorised Users' use of the Subscription Services. Customer Data may include personal information of an individual;

**Documentation** means the documentation (if any) made available to you by 1Place (whether in hardcopy or electronic form) pursuant to or in relation to the Subscription Services, and includes checklists, processes, forms and documents, and descriptions of the Subscription Services and the user instructions for the Subscription Services;

**Effective Date** means the date that you subscribed to the Subscription Services;

**Fault** means a failure of the Subscription Services to function substantially as described in the Documentation;

**Fault Classification** means the classifications specified in the table below:

<b>Fault Classification</b>	<b>Description</b>
<b>Priority 1</b>	The Subscription Service is down or unavailable. The Subscription Service is inoperable, seriously impacted or data is lost or destroyed.
<b>Priority 2</b>	Performance or availability is critically degraded, with major disruption to operation. A Subscription Service feature is inoperable or the Subscription Service is severely restricted in its use.
<b>Priority 3</b>	Performance or availability is non-critically degraded, with minor disruption to operation.
<b>Priority 4</b>	A minor problem causing minimal disruption to operation.

**Fees** means the Professional Services Fee, the Subscription Fee and any other fees payable to 1Place in accordance with these Terms;

**Implementation Proposal** means the proposal (if one has been provided by 1Place to you) which:

- (a) set out the Fees, Services, initial term and/or other details relating to the Subscription Services; and
- (b) is signed, or will be signed, by 1Place and you;

**Intellectual Property Rights** means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual property rights, whether registered, in the course of being registered or unregistered and any analogous rights worldwide;

**Normal Business Hours** means 8.30 am to 5.30 pm local New Zealand Standard Time, each Business Day;

**Privacy Statement** means the 1Place privacy statement accessible by clicking [here](#)

**Professional Services** means implementation, customisation, training, consultancy and other services, which may include software development, template checklist creation/editing, action category creation, store/department object uploading or updating, user and profile creation, dashboard/automated/Excel reports and reporting design, documentation preparation, phone support, onsite support, online and onsite training, business process re-engineering, workshops, and video preparation, as agreed between the parties;

**Professional Services Fee** means the fee for Professional Services, as agreed between the parties;

**Services** means the Subscription Services, Support Services and Professional Services;

**Subscription Fee** means the subscription fee payable by you to 1Place for the access and use of the Subscription Services by Authorised Users, as agreed between the parties;

**Subscription Services** means the modules of the cloud-based software services made available by 1Place to you under these Terms on a software-as-a-service basis via [www.1placeonline.com](http://www.1placeonline.com) or [www.1placechildcare.com](http://www.1placechildcare.com) or any other website notified to you by 1Place from time to time, and include the provision of checklists, processes, methodologies and other documentation;

**Support Services** means:

- (a) advice on:
  - (i) operating the Subscription Services;
  - (ii) rectifying bugs or deficiencies of an inherent nature in the Subscription Services;
- (b) other advice as may be reasonably required by you to obtain the full benefit and use of the Subscription Services;
- (c) the investigation and diagnosis of Faults;
- (d) the repair and correction of Faults,

**Third Party Provider** has the meaning set out in clause 11.6(a);

**Virus** means any thing or device (including any software, code, file or program) which may: (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, trojan horses, malware, viruses and other similar things or devices;

**you** and **your** are a reference to the individual that accesses and / or uses the Subscription Services.

1.2 In these Terms, unless the context requires otherwise:

- (a) words importing one gender include the others;
- (b) words importing the singular or plural number include the plural and singular number respectively;
- (c) headings are inserted for the sake of convenience of reference only and do not affect the interpretation of these Terms; and
- (d) a **person** includes any individual, corporation, unincorporated association, government department or municipal authority.

## 2. Access to Subscription Services

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- 2.1 1Place grants to you a non-exclusive, non-transferable right to permit the Authorised Users to access and use the Subscription Services and the Documentation solely for your internal business operations, all on the terms and conditions set out in these Terms.
- 2.2 You will:
- (a) ensure that only the Authorised Users access and use the Subscription Services and the Documentation;
  - (b) procure that the Authorised Users keep secure logins and passwords for their access and use of the Subscription Services and Documentation and keep such logins and passwords confidential;
  - (c) procure that the Authorised Users comply with these Terms applicable to you in relation to the access and use of the Subscription Services and Documentation;
  - (d) permit 1Place to actively monitor and audit the Subscription Services in order to establish whether the Subscription Services are being used in accordance with these Terms;
  - (e) promptly disable any login account if 1Place discovers (through undertaking the monitoring and audits referred to in clause 2.2(d)) that any login details have been provided to any party that is not an Authorised User; and
  - (f) on demand, pay to 1Place an amount of any underpayment of Subscription Fees discovered by 1Place through undertaking the monitoring and audits referred to in clause 2.2(d).
- 2.3 You agree with and consent to the Privacy Statement. If, at any point, you do not agree with the provisions of the Privacy Statement, 1Place may, without liability to you, suspend or disable your access to the Subscription Services.
- 2.4 You will not access, store, distribute or transmit any Viruses, and 1Place may, without liability to you, disable your access to the Subscription Services if you are in breach of this clause.
- 2.5 You will not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
    - (i) and except to the extent expressly permitted under these Terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Subscription Services and/or Documentation (as applicable) in any form or media or by any means; or
    - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Subscription Services;

- (b) access all or any part of the Subscription Services and Documentation in order to build a product or service which competes with the Subscription Services and/or the Documentation;
  - (c) use the Subscription Services and/or Documentation to provide services to third parties;
  - (d) make the Subscription Services and/or Documentation available to any third party except the Authorised Users; or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Subscription Services and/or Documentation, other than as provided under this clause 2.
- 2.6 You will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify 1Place.

### **3. Additional Authorised Users**

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- 3.1 Subject to clause 3.2 and clause 3.3, you may request that additional Authorised Users be permitted to access and use the Subscription Services and 1Place will grant access to the Subscription Services and the Documentation to such additional Authorised Users in accordance with the provisions of these Terms.
- 3.2 If you wish to add Authorised Users, you will notify 1Place in writing. 1Place will evaluate such request for additional Authorised Users and respond to you with approval or disapproval of the request. If 1Place approves the request it will also specify the additional Subscription Fees (if any) payable for those additional Authorised Users.
- 3.3 If 1Place approves your request to add Authorised Users, you will, within 30 days of the date of 1Place's invoice, pay to 1Place the relevant fees (if any) for such additional Authorised Users specified by 1Place in accordance with clause 3.2.

### **4. Services**

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- 4.1 1Place will provide the Subscription Services and make available the Documentation to you on and subject these Terms.
- 4.2 Where 1Place has agreed to provide an advanced level of support, the terms of that service level agreement shall apply. 1Place will use commercially reasonable endeavours to provide the Subscription Services in accordance with the service levels agreed in a service level agreement.
- 4.3 1Place will, as part of the Subscription Services and at no additional cost to you, provide you with Support Services in accordance with clause 5. You will procure any other Authorised User that requires Support Services to request such services through you. 1Place may change the Support Services in its sole and absolute discretion from time to time.
- 4.4 1Place will provide the Professional Services (if any) in the manner agreed between 1Place and you. So that 1Place can provide the Professional Services, you will co-operate with 1Place and provide 1Place with all relevant information reasonably requested by 1Place. All expenses properly incurred by 1Place in connection with

the Professional Services will be reimbursed as an additional charge, unless incorporated in the Professional Services Fee.

- 4.5 You acknowledge and agree that 1Place may regularly upgrade, update and/or vary the Subscription Services and the Documentation and that the Subscription Services and the Documentation are continually evolving. Some of the changes relating to the Subscription Services will occur automatically, while others may require you to schedule and implement the changes. You will, where required, upgrade your software and/or equipment in order to make efficient use of the Subscription Services. 1Place will provide you with reasonable notice of any such changes.

## 5. Support Services

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- 5.1 1Place will provide the Support Services by e-mail during Normal Business Hours. Fault logging facilities via email will be provided 24 hours each day, seven days a week.

- 5.2 The Support Services do not include services provided by 1Place relating to or resulting from:

- (a) time travelling to your site where the Subscription Services are being used;
- (b) misuse of the Subscription Services or failure to use the Subscription Services in accordance with the Documentation or these Terms;
- (c) unauthorised attempts to repair, replace, modify or maintain the Subscription Services by persons other than 1Place;
- (d) support provided outside Normal Business Hours;
- (e) fluctuations in external power supplies or faults in communications networks;
- (f) failure by you to operate the Subscription Services in accordance with any environmental conditions specified by 1Place.

4. You will:

- (a) promptly report to 1Place all Faults which you discover;
- (b) ensure that:
  - (i) a system administrator is available to be the prime point of contact with 1Place in the event of any Faults or queries;
  - (ii) the system administrator has a good understanding of the Subscription Services and its operation;
- (c) make all reasonable efforts at investigation and diagnosis of Faults before contacting 1Place;
- (d) maintain a list of all Subscription Services problems to assist with the diagnosis and resolution of Faults;

- (e) when notifying 1Place of Faults, correctly classify the nature and severity of the Fault in accordance with the Fault Classifications.

## 6. Customer Data

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- 6.1 1Place acknowledges and agrees that you and the other Authorised Users will own all rights, title and interest in and to all of the Customer Data and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2 Each party will take appropriate technical and organisational measures against unauthorised or unlawful processing of the Customer Data or its accidental loss, destruction or damage and 1Place will, as part of these measures, use reasonable endeavours to back-up Customer Data on a regular basis. You acknowledge that if there is any loss or damage to Customer Data, your sole and exclusive remedy will be for 1Place to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by 1Place. 1Place will not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 6.3 You acknowledge and agree, and you will procure that other Authorised Users acknowledge and agree, that 1Place may use the Customer Data for the purpose of:
  - (a) performing 1Place's obligations under these Terms and you warrant that you (and your other Authorised Users and customers) have granted 1Place the necessary rights, licences and authority to use the Customer Data for the purposes of providing the Subscription Services;
  - (b) ensuring that the Authorised Users are complying with these Terms;
  - (c) improving or enhancing the Subscription Services;
  - (d) assessing the performance of your business, including comparing or benchmarking such performance against the performance of 1Place's other customers' businesses or industry practice;
  - (e) assessing what other services 1Place may provide and promote to you and other Authorised Users, including offering services that may assist in improving performance;
  - (f) performing data analysis on an aggregated and anonymous basis,provided that 1Place complies with its confidentiality obligations under clause 10.
- 6.4 You warrant that all of your Authorised Users and customers that are individuals have consented to their Customer Data being provided to, stored and used by 1Place and disclosed to third parties (including you) in accordance with the Privacy Statement and that you have complied with all laws relating to your collection, storage and use of such Customer Data.
- 6.5 You agree to indemnify and keep indemnified 1Place for any loss suffered or incurred as a result of or in connection to a breach of clauses 6.3(a) or 6.4.

## 7. Your Obligations

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### 7.1 You will:

- (a) provide 1Place with all necessary co-operation in relation to these Terms, and all necessary access to such information as may be required by 1Place, so that 1Place can provide the Services including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to your activities under these Terms, including in respect of the collection, use, storage and disclosure of any Customer Data that is personal information;
- (c) carry out all of your responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, 1Place may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Subscription Services and the Documentation in accordance with these Terms and will be responsible for any Authorised User's breach of these Terms;
- (e) be responsible for all acts and omissions of the other Authorised Users as if those acts and omissions are your acts and omissions. You will indemnify 1Place against all costs, losses, damages and expenses arising out of or in connection with the Authorised Users' use of the Subscription Services;
- (f) ensure that your network and systems comply with the relevant specifications as may be specified by 1Place from time to time; and
- (g) be solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to 1Place's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.
- (h) not post any material that is, in the sole and absolute discretion of 1Place, inappropriate, defamatory, false, obscene, violent, infringing the intellectual property rights of anyone, unlawful, or otherwise objectionable (hereinafter, "Prohibited Content"). Posting of any Prohibited Content, in addition to any and all other rights and remedies available to 1Place, may result in account suspension or termination.

## 8. Charges and Payment

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### 8.1 You will pay to 1Place:

- (a) any applicable account set up and joining fee;
  - (b) the Subscription Fees for the Subscription Services; and
  - (c) the Professional Services Fee for the Professional Services (if applicable),
- in accordance with this clause 8.



- 8.2 You will pay to 1Place any applicable account set up or joining fee upon entering into these Terms.
- 8.3 1Place will issue an invoice to you for the relevant Fees. You will pay each invoice by the date set out in the invoice, or if not set out, by the 20<sup>th</sup> of the month following the month of the invoice.
- 8.4 If you fail to pay any invoice when due then without prejudice to any other rights and remedies of 1Place:
- (a) 1Place may, without liability to you:
    - (i) suspend access to all or part of the Subscription Services; and/or
    - (ii) cease to provide any of the Professional Services,and 1Place will be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and/or
  - (b) interest will accrue on such due amounts at an annual rate equal to 2% over the then current base overdraft rate of 1Place's bankers calculated from the due date until the date the amount is paid in full.
- 8.5 All amounts and Fees stated or referred to in these Terms are exclusive of GST and any other taxes, levies and duties (if any), which will be paid for by you.
- 8.6 If you are required by law to deduct or withhold taxes or charges from the amounts due to 1Place under these Terms, you will ensure that the amount due to 1Place is increased so that the payment actually made to 1Place equals the amount due to 1Place as if no such taxes or charges had been imposed.
- 8.7 1Place may vary any of the Fees by giving at least 30 days' prior notice to you.

## **9. Intellectual Property Rights**

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- 9.1 Subject to clause 6.1, you acknowledge and agree that 1Place and/or its licensors own all Intellectual Property Rights:
- (a) in, or created during the performance of, the Services; and
  - (b) in the Documentation.
- Except as expressly stated in these Terms, these Terms do not grant you any rights to, or in, the Intellectual Property Rights, or any other rights or licences in respect of the Services or the Documentation.
- 9.2 1Place confirms that it has all the rights in relation to the Subscription Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these Terms.
- 9.3 In the defence or settlement of any claim, 1Place may procure the right for you to continue using the Subscription Services, replace or modify the Subscription Services so that they become non-infringing or, if such remedies are not reasonably available, terminate these Terms on five Business Days' notice to you without any additional liability.

- 9.4 In no event will 1Place, its employees, agents and sub-contractors be liable to you to the extent that the alleged infringement is based on:
- (a) a modification of the Subscription Services or Documentation by anyone other than 1Place; or
  - (b) your use of the Subscription Services or Documentation in a manner contrary to the instructions given to you by 1Place; or
  - (c) your use of the Subscription Services or Documentation after notice of the alleged or actual infringement from 1Place or any appropriate authority.
- 9.5 The foregoing states your sole and exclusive rights and remedies, and 1Place's entire obligations and liability, for infringement of the copyright of any third party.
- 9.6 Anyone believing that any material in the application is infringing their copyright interest or otherwise violating any of their rights should provide written notice to 1Place describing in detail the basis for their concern and their legal interest in the material at issue as follows. 1Place's registered DMCA agent, Compliance Manager , can be reached at [compliance@1placeonline.com](mailto:compliance@1placeonline.com).

Upon receipt of such notice, 1Place will investigate and remove material if necessary. The complaining party will be notified of the results of such investigation.

## 10. Confidentiality

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- 10.1 Each party will treat as confidential all information obtained from the other pursuant to these Terms. Neither party will divulge such information to any persons (except to their employees (for whom that party will be responsible) and then only to those employees who need to know) without the other party's prior written consent.
- 10.2 In relation to either party, confidential information means any information relating to the business or affairs of that party and includes, without limitation, its designs, drawings, manufacturing know how, object codes, source codes, planned modifications to hardware or software, planned enhancements to hardware or software, product knowledge, quality standards, research and development, unpublished specifications, technical information, pricing, manipulated data, business plans, business processes, methodologies, techniques, general know-how, costs and margins, customer lists, financial data, internal price information, market research, marketing plans, sales forecasts and trade secrets.
- 10.3 Clauses 10.1 and 10.2 do not extend to information which:
- (a) can be established by written records to be already known to the recipient at the time of disclosure; or
  - (b) which is in or enters the public domain through no fault of the recipient.
- 10.4 If the recipient of any confidential information is required by any applicable law, court or authority to disclose such confidential information to any person, it will:
- (a) give the disclosing party prompt written notice of the disclosure, where practicable before it occurs, so that the disclosing party has sufficient opportunity to prevent the disclosure through appropriate legal means;

- (b) disclose only that part of the confidential information which the recipient's legal advisers consider is legally required to be disclosed; and
  - (c) use all reasonable endeavours to obtain an assurance that the confidential information disclosed will be treated confidentially by the recipient.
- 10.5 Each party will on demand and, in any event, on termination of these Terms, deliver to the other party all confidential information and any other document supplied by or obtained from the other party.
- 10.6 This clause 10 will survive termination of these Terms.

## 11. Disclaimers, Warranties and Liability

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11.1 1Place makes the following disclaimers:

- (a) While we believe that we have taken reasonable care in preparing the Documentation and in providing the Subscription Services, 1Place does not represent that they meet all the health and safety or other legal requirements or guidelines in any jurisdiction and is not providing any sort of professional advice. WE DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY LOSS, DAMAGE OR HARM RELATING TO OR ASSOCIATED WITH THE DOCUMENTATION AND THE SUBSCRIPTION SERVICES OR THEIR USE. USE AT YOUR OWN RISK.
- (b) You are urged to take your own legal and other advice from those qualified in your jurisdiction(s) to ensure that you comply with the obligations that apply to you and that you assume full responsibility to ensure the Documentation and Services meet your responsibilities under and comply with applicable laws.

11.2 1Place warrants that:

- (a) the Subscription Services will function substantially as described in the Documentation;
- (b) the Services will be provided with reasonable skill and care;
- (c) to the best of its knowledge and belief, the Subscription Services do not infringe the copyright of any third party.

11.3 If the Subscription Services do not function substantially in accordance with the Documentation, 1Place will, at its option, either:

- (a) modify the Subscription Services to conform to the Documentation; or
- (b) provide a workaround solution that will reasonably meet your requirements.

If neither of the options in paragraphs (a) or (b) is commercially feasible, either party may terminate these Terms by giving written notice to the other party, in which case 1Place will refund to you all Subscription Fees pre-paid to 1Place for unused Subscription Services. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the warranty set out in clause 11.2.

11.4 1Place will not be liable for a breach of the warranty in clause 11.2 to the extent of any non-conformance which is caused by use of the Subscription Services contrary to the Documentation and any other 1Place instructions, or modification or alteration

of the Subscription Services by any party other than 1Place or 1Place's duly authorised contractors or agents.

11.5 Notwithstanding clause 11.3, 1Place does not warrant:

- (a) that your use of the Subscription Services will be uninterrupted or error-free;
- (b) that the Subscription Services, Documentation and/or the information obtained by you through the Subscription Services will meet your requirements; and
- (c) the accuracy, correctness, reliability and completeness of any information, formulae, or calculation provided through the use of the Subscription Services (together referred to as **Calculations**). You acknowledge the results from any Calculations are for informational purposes only, and that the assumptions used and figures generated are for purposes of illustration and reference only, and are subject to change depending on a variety of factors, which may not have been taken into account in the computation. To the maximum extent permitted by law, 1Place will not be liable for any form of loss or damage, arising out of or in connection with your reliance on and use of the Subscription Services. You agree that you will not rely solely on the Calculations and will carry out your own calculations (other than by using the Subscription Services) to verify the accuracy, correctness, reliability and completeness of the Calculations.

11.6 You acknowledge that:

- (a) 1Place may rely on the provision of services by third parties (including data centre, telecommunications and outsourcing providers) in order to provide the Services (**Third Party Providers**) and that the Services may be subject to limitations, delays and other problems inherent in the use of such services provided by Third Party Providers. 1Place, will where commercially feasible and practically available, use reputable Third Party Providers to provide such services; and
- (b) 1Place will not be responsible for any delays, delivery failures, or any other loss or damage arising out of or in connection with any services provided by Third Party Providers, including any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

11.7 Except as expressly set out in these Terms, the Services and the Documentation are provided on an "as is" basis and all representations, conditions or warranties (whether express or implied, statutory or otherwise, and including warranties of merchantability and fitness for a particular purpose) in respect of the Services are expressly excluded.

11.8 You will indemnify 1Place against all costs, losses, expenses and damages incurred through any claims against 1Place resulting from the use of the Services and the Documentation by you and other Authorised Users.

11.9 Except for a breach by either party of its confidentiality obligations:

- (a) neither party will be liable to the other party for loss of profits, loss of revenue, loss of data, or any indirect, consequential or special loss or damage suffered or incurred by the other party as a result of anything done by the first party under these Terms; and

- (b) 1Place's liability arising out of all claims for loss or damage under these Terms will not exceed in aggregate an amount equal to the Fees actually paid by you to 1Place in the six months prior to time the liability arises.
- 11.10 You acknowledge and agree that no Authorised User (other than you) may make a claim in relation to these Terms provided that where any Authorised User suffers any loss or damage which, if suffered by you, would be recoverable from 1Place then you may make that claim on the Authorised User's behalf. You will indemnify 1Place against any claims made by any Authorised User in relation to these Terms.
- 11.11 You represent and warrant that you are not a "Covered Entity" as defined by the Health Insurance Portability and Accountability Act of 1996 and implementing regulations, as amended (collectively, "HIPAA")
- 11.12 You shall defend 1Place against and indemnify it from any loss, cost, liability or damage (including reasonable attorneys' fees and disbursements) arising from or associated with any breach of any of these Terms including your representations.
- 11.13 This clause 11 will survive termination of these Terms.

## **12. Termination**

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- 12.1 Either party may terminate the agreement governed by these Terms with effect from the end of the period for which the Authorised User's fees have been paid:
  - (a) by giving the other party written notice provided that such notice may not be given during any minimum subscription term set out in the Implementation Proposal or otherwise agreed between the parties;
  - (b) if the other party is in material breach of these Terms and fails to remedy such breach after receiving notice from the other party specifying the breach and requiring it to be remedied; or
  - (c) if the other party goes into liquidation or has a receiver or statutory manager appointed of any of its assets, becomes insolvent or makes any arrangement with creditors.
- 12.2 On termination of these Terms for any reason:
  - (a) all licences granted under these Terms will immediately terminate;
  - (b) each party will return, and make no further use of, any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - (c) 1Place may destroy or otherwise dispose of any of the Customer Data in its possession unless 1Place receives, no later than ten days after the effective date of the termination of these Terms, a written request for the delivery to you of the then most recent back-up of the Customer Data. 1Place will use reasonable commercial endeavours to deliver the back-up to you within 30 days of its receipt of such a written request, provided that you have, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You will pay all reasonable expenses incurred by 1Place in returning or disposing of Customer Data; and

- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, will not be affected or prejudiced.

## 13. Sub-contracting

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- 13.1 1Place may sub-contract any of its obligations under these Terms without obtaining your prior written consent.
- 13.2 If 1Place uses a sub-contractor, 1Place is not relieved of any of its liabilities or obligations under these Terms.

## 14. Disputes

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- 14.1 If a dispute arises out of or relates to these Terms (**Dispute**), a party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause, except where the party seeks urgent interlocutory relief.
- 14.2 A party claiming the Dispute has arisen must give written notice to the other party specifying the nature of the Dispute.
- 14.3 On receipt of that notice, the parties will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means.
- 14.4 If the Dispute is not resolved within 15 Business Days of the notice being given pursuant to clause 14.2 (or within such further period agreed in writing by the parties), either party may, by giving written notice to the other party, require the Dispute to be determined by the arbitration of a single arbitrator. The arbitrator will be appointed by the parties or, failing agreement within five Business Days of the notice requiring arbitration, by the President of the New Zealand Law Society on application of either party. The arbitration will be conducted as soon as possible and in accordance with the provisions of the Arbitration Act 1996.

## 15. Force Majeure

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- 15.1 1Place will have no liability to you under these Terms if it is prevented from or delayed in performing its obligations under these Terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of 1Place or any other party), failure of a utility service or transport or telecommunications network or service of a Third Party Provider, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that you are notified of such an event and its expected duration.

## 16. General

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- 16.1 Unless otherwise agreed between the parties in writing, these Terms constitute the entire agreement of the parties about its subject matter and supersedes any previous understanding or agreements on that subject matter.

- 16.2 These Terms will not be deemed to create a partnership, joint venture or agency relationship of any kind between the parties.
- 16.3 If any part or a provision of these Terms is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of these Terms will continue to operate.
- 16.4 A provision or a right under these Terms may not be waived except in writing signed by the party granting the waiver.
- 16.5 A party may exercise a right, power or remedy under these Terms at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party under these Terms does not prevent a further exercise of that or of any other right, power or remedy.
- 16.6 You will not, and will procure that other Authorised Users will not, assign, transfer or otherwise deal with these Terms or any of its rights or obligations under these Terms, whether in whole or in part, without the prior written consent of 1Place.
- 16.7 Notices and other communications under these Terms are to be given in writing by email, personal delivery or by post and must be:
- (a) sent to the correct email or address designated in writing by each party for that purpose from time to time; and
  - (b) marked for the attention of the designated person or office holder (if any).
- 16.8 A notice or communication in relation to these Terms will be deemed to be received:
- (a) in the case of a letter, on the third Business Day after posting;
  - (b) in the case of email, on the Business Day on which the email is successfully delivered; and
  - (c) in the case of personal delivery, when delivered.
- 16.9 These Terms will be governed by and construed in accordance with the laws of New Zealand.