

SuiteFiles

Terms & Conditions.

Applicable from 12 December 2020

1. Application of Terms

1.1. These Terms apply to customers that purchase SaaS which is the software-as-a-service supplied by SuiteFiles (or on whose behalf SaaS is purchased) and if there is a trial period available, these Terms also apply to that trial period.

1.2. The SaaS is available from SuiteFiles directly and from Authorised Partners and is available at various Purchase Locations. Regardless of where the purchase is made, these Terms apply as between SuiteFiles and the Customer.

1.3. The Customer accepts SuiteFiles current Terms applicable to the use of SaaS (and where applicable, the Connect Service and/or Digital Signing Service under the Customer's Selected Subscription Plan) and the Customer's ongoing access and use of the Service is subject to the Terms.

1.4. Where a third party other than the Customer purchases SaaS on behalf of the Customer, the third party is deemed to have authority to accept these Terms for the Customer.

1.5. If the Terms are not acceptable to the Customer, the Customer should not register to the use of SaaS, or the Customer should cease using the SaaS supplied by SuiteFiles.

1.6. Changes to these terms:

a. Generally, SuiteFiles will endeavour to provide the Customer with 30 days' notice of material changes before they become effective, unless SuiteFiles need to make immediate changes for reasons outside SuiteFiles' control or where a Fixed Term applies, the Terms in place at the time that the Customer made that selection will continue to apply until any term renewal at which time the then current Terms will apply;

b. When SuiteFiles notifies the Customer, SuiteFiles will do it by email or by posting a visible notice on its Site;

c. Where it is not a material change, SuiteFiles may not notify the Customer;

d. The Customer can keep track of changes to SuiteFiles' Terms by referring to the version and the date last updated at the top of the Terms; and

e. Any changes made by SuiteFiles to these Terms will not be applied retrospectively;

1.7. If the Customer finds a modified term unacceptable, the Customer may terminate the subscription by giving the standard advance notice provided under clause 21.1 to SuiteFiles.

1.8. The Customer's continued use of the SaaS confirms the Customer's acceptance to be bound by the latest Terms applicable at the time of the Customer's access and use.

2. Definitions

All defined (bold) terms used in these Terms have the meaning given as follows:

2.1. The Agreement:

a. Comprises the Customer Information, Selected Subscription Plan, Relevant Pricing, and these Terms (as updated from time to time under clause 1.6); and
b. Constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of the Agreement.

Audit Log means the auditable actions relating to a record made available for a Source File, through use of the Digital Signing Service;

Authorised Partner means a third party that has been Authorised by SuiteFiles to sell the SaaS;

Beta Service means a service or functionality that is identified as beta or with a description that identifies the Service or functionality as not yet in general release to SuiteFiles customers;

Commencement Date means the date that the Customer purchases the SaaS by providing SuiteFiles with its billing and credit card details for the Customer's Selected Subscription Plan;

Confidential Information means any proprietary information, know-how and data disclosed or made available by one party to the other party but does not include any information which:

- Is in the public domain without any breach of the Agreement;
- On receipt by the other party is already known by that party;
- Is at any time after the date of receipt by the other party, received in good faith by that party from a third party; or
- Required by law to be disclosed by the other party;

Connect End-User means a user other than a Permitted User that the Customer permits to access the SaaS using the Connect Service;

Connect Service means the Connect and customer-sharing service provided by SuiteFiles that allows the Customer to permit third parties, other than Permitted Users, to access the SaaS;

Customer means the business or individual names that has registered to use the Service or on whose behalf that registration was made or the customer named in the Customer Information;

Customer Information means the customer's name, email address and any other contact information submitted by or on behalf of a customer to SuiteFiles or Authorised Partner in the course of purchasing a Selected Subscription Plan (or agreeing to a Trial) for the SaaS;

Customer's Integrated Services and Products means services or products (including third party services or products) which are integrated (in any way) by or for the Customer with the Primary Microsoft Product (or with the SaaS), regardless of who undertakes that integration work or how it is undertaken;

Data means the Customer's data that is entered by the Customer (including by any Permitted User or Connect End-User) and processed in the course of provision of

the SaaS and includes where the context permits, the Personal Data (as defined in the GDPR and Data Protection Schedule);

Data Security Breach means access or disclosure of the Data to or by anyone other than the Permitted Users or Connect End-Users where the access or disclosure occurs through bypassing the security mechanisms of the SaaS Systems;

Digital Signing Service means the provision of a service which enables the Customer and the Customer's Recipients to digitally sign documents;

Fixed Term means the fixed term for supply of the SaaS, agreed in writing between SuiteFiles or relevant Authorised Partner and the Customer

Force Majeure Event means any war, riot, third party strike, natural disaster or other circumstance of a similar nature that is outside of the control of the affected party;

GDPR means EU General Data Protection Regulation 2016/679;

Intellectual Property includes all copyright, trademarks, designs, patents, domain names, concepts, know-how, trade secrets, logos and all other similar property and rights whether registered or unregistered;

Permitted Users means the Customer and any employee or contractor of the Customer that the Customer authorises to have access to the Service by setting up and providing login details to that person (and excludes bots or access by other non-manual means except as expressly permitted);

Planned Maintenance means maintenance on all or any part of the SaaS Systems and if applicable to the Agreement will be undertaken at times notified to the Customer in writing;

Primary Microsoft Product means the Microsoft product or products for which the SaaS is an add-on, as notified in writing by SuiteFiles or an Authorised Partner or at the Purchase Location prior to purchase of the SaaS by the Customer (or prior to a Trial, where applicable);

Purchase Location means any internet Site from which the SaaS is available for purchase;

Recipient means the recipient of a Service Document transmitted by the Customer using the Digital Signing Service;

Relevant Pricing means the pricing for the Selected Subscription Plan;

SaaS means the software-as-a-service supplied by SuiteFiles and selected by the Customer by agreement with SuiteFiles or an Authorised Partner or at the Purchase Location, as modified from time to time by SuiteFiles;

SaaS Systems means, as the context permits, the software used by SuiteFiles to provide the SaaS and/or the equipment on which that software is installed (whether this is SuiteFiles software or equipment or is third party software or equipment);

Selected Subscription Plan means the options for provision of the SaaS selected by the Customer by agreement with SuiteFiles, an Authorised Partner or at the Purchase Location;

Service means the SaaS service (and where applicable, the Connect Service and/or Digital Signing Service under the Customer's Selected Subscription Plan) and related service features provided by SuiteFiles to the Customer;

Service Document means a Source File together with the Audit Log for that Source File;

Signed File means a pdf that has been digitally signed;

Source File means any agreement or other document uploaded to the Service by the Customer;

Trial means use of the SaaS, free of charge;

Trial Period means the trial period notified to the Customer in writing by SuiteFiles, Authorised Partner or at the Purchase Location, prior to commencement of the Trial;

Trial SaaS means the version of the SaaS made available by SuiteFiles at its discretion for a Trial.

Usage Limits means Service usage limits (if any);

Working Day means a day that is not a Saturday, Sunday or statutory holiday in Wellington, New Zealand and between the hours of 8.30am and 5.30pm NZST
Interpretation:

- reference to the plural includes reference to the singular, and vice versa; and
- headings inserted for convenience of reference only and do not affect the interpretation of the Agreement.

3. SaaS

Provision of SaaS: SuiteFiles will provide the SaaS to the Customer in accordance with the Agreement. The SaaS is provided to the Customer on a non-exclusive basis and the Customer's right to use the SaaS is not transferable. The Customer can access and use the SaaS by logging into its SuiteFiles site URL and entering their existing Microsoft 365 username and password.

3.1. SuiteFiles will provide log on access to the Customer to enable the Customer to access and use the SaaS.

3.2. SaaS Availability: The availability of the SaaS is dependent on factors outside of SuiteFiles' control including without limitation the availability of telecommunications networks and as such SuiteFiles cannot and does not warrant that the SaaS will be continuously available without interruption.

3.3. Without limiting the reasons for lack of availability of the SaaS, the SaaS could be unavailable due to:

- a. Planned maintenance which may require a period of downtime about which SuiteFiles may attempt to notify the Customer;
- b. Lack of availability or outages of telecommunications networks;
- c. A network or device failure external to SuiteFiles' or its third party providers data centres, including at the Customer's Site;
- d. Issues resulting from the Customer's use of infrastructure (including SaaS), software or services (other than the SaaS) including issues related to dependencies on the Primary Microsoft Product and/or Customer's Integrated Services and Products;
- e. Any third-party act, omission or circumstance which results in unavailability of the SaaS, whether malicious or not; or
- f. a Force Majeure Event.

3.4. SuiteFiles will advise the Customer in advance of any planned outage.

3.5. Application of common terms: Except for the clause relating to Trial SaaS (clause 11), all clauses of these Terms apply to the SaaS.

4. SaaS Dependencies

4.1. The Customer acknowledges that the SaaS is dependent on proper implementation and availability and correct functioning of:

- a. the Primary Microsoft Product; and
- b. the Customer's Integrated Services and Products.

4.2. SuiteFiles has no obligation to refund or reduce amounts paid by the Customer for any incorrect or unexpected functioning, or failure, of the SaaS which is directly or indirectly due to incorrect implementation or functioning, or the lack of availability of:

- a. the Primary Microsoft Product; or
- b. the Customer's Integrated Services and Products.

5. Data

5.1. The Customer warrants that the Customer has the right and authority to deal with the Data in the manner contemplated by the Agreement.

5.2. The Customer is responsible for:

- a. All Data entry requirements;
- b. Except as expressly provided otherwise in the Agreement, for all aspects of the Customer's access and use of the SaaS; and
- c. Ensuring that the Customer and all Permitted Users comply with all applicable laws. To the extent permitted by law, SuiteFiles accepts no responsibility for ensuring that use of the SaaS will result in the Customer complying with applicable laws or enable the Customer to comply with applicable laws (for example, laws requiring records to be stored in a particular jurisdiction).

5.3. The Customer is responsible for managing its Permitted Users in respect of its use of the SaaS, including the Customer ensuring that, in using the SaaS:

- a. Whenever the Customer elects to add a new Permitted User to its subscription, the Customer gives the users access to the Site;
- b. Permitted Users are aware of and comply with the Terms. Any non-compliance by Permitted Users is deemed to be a breach by the Customer of the Agreement and the Customer will be liable for that breach accordingly;
- c. Permitted Users keep all login details for the SaaS confidential and not share its login details; and
- d. Whenever a Customer's Permitted User has left, the customer is responsible for removing the user's access by manually deactivating the user from the customer's current user list. The user will continue to be a part of the user count for the month in which they were removed and will cease being counted from the month following. Any delays in the Customer's removal of a user that has left is deemed acceptance by the Customer that the current Relevant Pricing applies and that no adjustments will be made to the Customer's account.

5.4. Nothing in the Agreement transfers ownership of the Data to SuiteFiles or to any Authorised Partner.

5.5. All Data is available to the Customer:

- a. For the term of the Agreement, via the SaaS; and
- b. On request to SuiteFiles at any time during the term of the Agreement and for a period of 30 days following expiration or termination of the Agreement.

c. SuiteFiles may remove any Data, or any other content, from the SaaS at any time if SuiteFiles considers it necessary to ensure compliance with this Agreement or any applicable law.

5.6. SuiteFiles will use reasonable endeavours to provide assistance in resolving issues in respect of the Customer's access or use of the SaaS on request from the Customer.

6. Data Security Breach

6.1. Without limiting any other legal obligations that SuiteFiles may have in the event of a Data Security Breach, SuiteFiles represents that it has used and will continue to use reasonable endeavours in designing and/or utilising the SaaS Systems and in operating and managing the SaaS so as to minimise the risk of a Data Security Breach.

6.2. In the event of any Data Security Breach:

- a. Where SuiteFiles becomes aware of a Data Security Breach which may involve an unauthorised access to personal data inside the Customer's subscription, SuiteFiles will, subject to all applicable laws, notify the Customer as soon as practicable;
- b. Where the Customer becomes aware of the Data Security Breach, the Customer will notify SuiteFiles as soon as practicable (within 24 hours); and
- c. Subject to all applicable laws, immediately following notification of a Data Security Breach, the parties will coordinate with each other to investigate the Data Security Breach. SuiteFiles will cooperate with the Customer in the Customer's handling of the matter, to ensure compliance with the applicable law, regulation, industry standards or as otherwise reasonably required by Customer.

7. Compliance with Agreement and Laws

7.1 The Customer must comply with the Agreement and all applicable laws in the Customer's use of the Service.

7.2 The Customer must not use or attempt to use the Site or the Service:

- a. For any illegal purposes;
- b. To damage, harm or interfere with the running of the Site or the Service;
- c. To infringe the privacy of any person; or
- d. With any automated means (including robots) to access information on the Site.

7.3 The Customer must not, nor may the Customer permit any other person to do or attempt to do any of the following:

- a. Copy, alter, modify, reverse assemble, reverse compile, reverse engineer or enhance the SaaS Systems;
- b. Permit or enable users other than Permitted Users (and where applicable, Connect End-Users and/or Digital Signing Users under the Customer's Selected Subscription Plan) to access or use the SaaS;
- c. Re-sell, rent, lease, transfer, sublicense or otherwise transfer rights to use the SaaS;
- d. Use the SaaS in any way that could damage or interfere with the SaaS Systems in any way;

- e. Use the SaaS otherwise than in a manner other than could be reasonably intended or anticipated by SuiteFiles;
- f. Use a bot or any other form of automation except as expressly permitted by SuiteFiles;
- g. Use the SaaS in any way that could interrupt, damage, diminish the speed of or otherwise interfere with the use of the SaaS service for other SuiteFiles customers or its users, whether deliberately or not; or
- h. Do any act which would or might invalidate or be inconsistent with SuiteFiles' Intellectual Property rights.

8. Connect Service Terms

8.1 Where the Customer's Selected Subscription Plan includes the Connect Service, the Customer is deemed to accept this clause 8 in addition to all other Terms in this Agreement.

8.2 The Customer agrees that the Customer:

- a. May only provide access to the SaaS, to third parties as Connect End-Users where those third parties are independent of the Customer, and in accordance with any other policies or procedures notified by SuiteFiles from time to time;
- b. Is responsible for ensuring that all Connect End-Users are aware of and comply with the terms of this Agreement as if they were party to this Agreement;
- c. Is responsible for all access and use of the SaaS by any Connect End-User, including any Data or other content uploaded to the SaaS by any Connect End-User;
- d. Must ensure that each Connect End-User keeps all login details for the SaaS confidential and does not share its login details;
- e. Must ensure that each Connect End-User complies with all applicable laws, and only uses the SaaS and any Data and other content available in the SaaS for the purpose for which the Customer has provided the Connect End-User with access to the SaaS, in accordance with this Agreement; and
- f. Is responsible for ensuring that each Connect End-User is entitled to, and has all appropriate consents in order to, upload any Data to the SaaS, and is entitled to permit SuiteFiles to use and process that Data in accordance with this Agreement.

8.3 The Customer accepts that it is responsible for monitoring the access and use of the SaaS by all Connect End-Users, and ensuring that such access and use complies with this Agreement;

8.4 Any non-compliance by a Connect End-User is deemed to be a breach by the Customer of the Agreement and the Customer will be liable for that breach accordingly.

8.5 SuiteFiles may suspend any Connect End-Users access to the SaaS at any time if SuiteFiles considers it necessary to ensure compliance with this Agreement or any applicable law.

9. Digital Signing Service Terms

9.1 Where the Customer's Selected Subscription Plan includes the Digital Signing Service, the Customer is deemed to accept this clause 9, in addition to all other Terms in this Agreement.

9.2 SuiteFiles' only role is to provide the Service. SuiteFiles has no involvement in any Source File, Signed File or Service Document and accepts no responsibility or liability in respect of the content or otherwise, except to the extent of providing the Service.

9.3 SuiteFiles accepts no responsibility or liability in respect of the content or otherwise of any Source File in respect of which the Digital Signing Service is used.

9.4 In no event is automated or non-manual access permitted, whether by EDI, a bot or otherwise, unless expressly approved in writing by SuiteFiles following request made by the Customer. Any such authorisation is granted or declined at the absolute discretion of SuiteFiles and if granted, may be granted on any conditions that SuiteFiles thinks fit.

9.5 The Customer warrants that the Customer has the right and authority to deal with the Source Files in the manner contemplated by the Agreement.

9.6 The Customer is responsible for uploading Source Files as and when it wishes to use the Service and, except as expressly provided otherwise in the Agreement, for all aspects of the Customer's access and use of the Digital Signing Service.

9.7 Nothing in the Agreement transfers ownership of the Source Files or Service Document to SuiteFiles.

9.8 All Source Files and Signed Files are available to the customer for the term of the Agreement.

9.9 The Customer is solely responsible for its use of the Digital Signing Service. The Customer acknowledges that:

- a. Certain jurisdictions have restrictions on use of digital signatures for specified types of documents, activities and /or transactions;
- b. It is the Customer's responsibility to ensure that there are no legal restrictions in respect of the Customer's proposed use of the Digital Signing Service; and
- c. Where any Source File would not be legally enforceable if signed or accepted by any other means, use of the Digital Signing Service to sign that Source File will not alter that.

10. Term

10.1 The Agreement and provision of the SaaS commences on the Commencement Date and the Agreement will continue:

- a. Where the Customer opts for a Fixed Term plan, until the end of the applicable fixed term (subject to any automatic renewal of that fixed term); or
- b. Where the Customer is not on a Fixed Term plan, until terminated by the Customer on notice in writing as provided under clause 21.1

10.2 Subscription period:

- a. The Customer's subscription continues for the period covered by the subscription fee paid or payable; and
- b. At the end of each billing period, these terms automatically continue for a further period of the same duration as the previous one, provided the Customer continues to pay the subscription fee in accordance with the pricing plan.

10.3 In addition to the party's rights of early termination under the Agreement or otherwise at law, where there is no Fixed Term, the Agreement may be terminated by the Customer:

- a. On 30 days written notice in advance under clause 21.1 to SuiteFiles, or where the purchase was made from an Authorised Partner on written notice to that Authorised Partner; or
 - b. Through the termination process at the Purchase Location, with the termination taking effect at the end of the month in which SuiteFiles or Authorised Partner (as applicable) confirms receipt of the Customer's termination request.
- 10.4. In addition to the parties' rights of early termination under the Agreement or otherwise at law, where a Fixed Term applies, the Agreement will continue until expiration of the Fixed Term.
- 10.5. The Customer agrees to pay all relevant subscription fees up to and including the day of termination.

11. Trial SaaS

- 11.1. SuiteFiles may, at its discretion, offer a time-limited trial subscription at no charge to the Customer. The Customer may elect to use the SaaS for a trial and by doing so, the Customer is deemed to accept these additional Terms.
- 11.2. The trial period will commence when the Trial SaaS is made available to the Customer. In order for the Trial SaaS to be available to the Customer, the Customer will need to follow the steps outlined to the Customer by SuiteFiles, the Authorised Partner or at the Purchase Location, and accept these Terms. The Customer acknowledges that the trial is for the version of SaaS made available under the free trial offer. The free trial will end on expiration of the Trial Period, unless terminated earlier under these Terms.
- 11.3. SuiteFiles will provide the Customer with access to the Trial SaaS, and the Customer agrees that it will access and use the Trial SaaS in accordance with all the terms of this Agreement and these Terms of Use.
- 11.4. SuiteFiles will provide email support with use of the SaaS as reasonably requested by the Customer (or SuiteFiles will procure the Authorised Partner to provide assistance). The support will be available during the hours notified by SuiteFiles, or the hours notified by the Authorised Partner or at the Purchase Location (as applicable). If no hours are notified, SuiteFiles or relevant Authorised Partner will use reasonable endeavours to provide email support during SuiteFiles' working day.
- 11.5. The Customer's accepts that usage of the Trial SaaS is at the Customer's own risk.
- 11.6. Where the Customer chooses to continue using SuiteFiles' services after the trial, the Customer will provide SuiteFiles with its billing and credit card details. If the Customer chooses not to continue using SuiteFiles' services following a trial, then SuiteFiles may remove customer access to the Trial SaaS.

12. Beta Service

- 12.1. SuiteFiles may, at its discretion, offer a Beta Service at no additional cost to the Customer. The Customer may accept or decline any offer for a Beta Service at its discretion.
- 12.2. Beta Services:

- a. Are made available for the purposes of testing the Beta functionality; and
- b. Are not part of the SaaS for the purposes of the Agreement and any support services available from SuiteFiles in respect of the SaaS are not available in respect of the Beta Service;

12.3. Beta period: SuiteFiles will make the Beta Service available for the time period notified by SuiteFiles or until SuiteFiles notifies the Customer that:

- a. The Beta Service will be or has been discontinued; or
- b. The Beta Service has been incorporated by SuiteFiles into the SaaS for general availability.

12.4. Where the Customer elects to use the Beta Service, the Customer is deemed to accept that:

- a. The Customer will participate within the agreed Beta period; and
- b. The Customer will allow its computer to be connected to the Beta Service for purposes of the installation of the use of SaaS; and
- c. At the completion of the testing period of the Beta Service, the Customer will provide the Customer's feedback within SuiteFiles' stipulated time frame; and
- d. The Beta Service may be subject to additional terms and conditions (including but not limited to, the signing of an "NDA Non-Disclosure Agreement")

12.5. To the extent permitted by law, SuiteFiles has no liability to the Customer in connection with any Beta Service.

13. Charges and Payment

13.1. SuiteFiles will charge the Relevant Pricing to the Customer's credit card and invoice the Customer on a monthly basis.

13.2. The Customer will be charged all applicable transactional taxes (like VAT and GST) in addition to the Relevant Pricing.

13.3. The Customer accepts that continued access to SuiteFiles' services will be made available on the basis of the Customer making timely payments. To avoid delayed or missed payments, the Customer is responsible for providing SuiteFiles accurate payment information.

13.4. The Customer will pay all invoices in full, without set-off, counterclaim or deduction of any kind, on or before the due date. SuiteFiles may suspend access to the Customer's subscription until the payment is made.

13.5. If the Customer wishes to dispute an invoice, the Customer must notify SuiteFiles in writing within 30 days of the date of the invoice and provide details of the dispute. The Customer must continue to pay all invoices in full and must not withhold payment of the disputed part of an invoice until an agreement is reached through the resolution of the dispute. Should the Customer withhold payment, either in part or in full prior to a determination being made, SuiteFiles may suspend supply of the SaaS until the outstanding amount is paid in full.

13.6. Without SuiteFiles waiving any other right or remedy it may have, if any amount due is not paid by the Customer by the due date, SuiteFiles may:

- a. Charge the Customer interest calculated at 2% per month on the balance of the amount due by the Customer from the due date until payment is received in full by SuiteFiles;
- b. Charge the Customer all collection costs reasonably incurred by SuiteFiles in collection of the amount outstanding (including solicitor and/or collection agency fees); and/or

c. On five days notice in writing to the Customer, suspend provision of the use of SaaS until SuiteFiles receives payment in full.

13.7. SuiteFiles may change the Relevant Pricing by giving at least 30 days written notice by email to the Customer of the new charges that will apply except that where a Fixed Term applies, the new pricing will not apply until expiration of the current Fixed Term.

14. Customer Details

14.1. The information that the Customer provides when using the Service must be accurate, complete and up-to-date at all times. The Customer must review and update its Customer Information details to ensure the details remain accurate, complete and up-to-date.

14.2. The Customer (and each Permitted User) is solely responsible for keeping its login details for use of the Service confidential. SuiteFiles recommends that the Customer (and Permitted Users) keep their passwords secure.

15. Privacy

15.1. Any personal information provided to SuiteFiles by the Customer through use of the Service, whether it is provided via the Site or otherwise, will be treated in accordance with SuiteFiles Privacy Policy.

16. Links to Other Sites

16.1. The Site may contain links to other sites and access to content, products, and services from third parties.

16.2. SuiteFiles provides these links to the Customer only as a convenience, and the inclusion of any link does not imply endorsement by SuiteFiles of any third-party sites.

16.3. The Customer agrees that SuiteFiles is not responsible for the privacy practices of, availability of or content provided on, third-party sites and should refer to the policies of the respective Site.

17. Confidential Information

17.1. The parties recognise and acknowledge the confidential nature of the Confidential Information.

17.2. The parties may not use or disclose any Confidential Information other than:

a. To its employees, directors or contractors to the extent necessary in the performance of the Agreement;

b. With the express prior written consent of the other party; or

c. To its professional advisors.

18. GDPR and Data Protection

18.1. Where the GDPR applies, the GDPR & Data Protection Schedule attached to these Terms applies, as found at (www.suitefiles.com/gdpr)

19. Intellectual Property

19.1. All Intellectual Property in the SaaS (and where applicable, the Connect Service and/or Digital Signing Service under the Customer's Selected Subscription Plan) and the software, processes, methodology and know-how used by SuiteFiles in its performance of the Agreement, is the property of SuiteFiles (or its licensors) and nothing in the Agreement operates to change that ownership.

19.2. The Customer must notify SuiteFiles of any actual, threatened or suspected infringement of any Intellectual Property right and of any claim by any third party that any use of the SaaS (and where applicable, the Connect Service and/or Digital Signing Service under the Customer's Selected Subscription Plan) infringes any rights of any other person, as soon as that infringement or claim comes to the Customer's notice. The Customer must (at SuiteFiles' expense) do all such things as may reasonably be required by SuiteFiles to assist SuiteFiles in pursuing or defending any proceedings in relation to any such infringement or claim.

19.3. The Customer indemnifies SuiteFiles against any loss, costs, expenses, demands or liability whether direct, indirect or otherwise, and whether arising in contract, tort (including negligence), equity or otherwise, arising out of a claim by a third party alleging infringement of that third party's Intellectual Property rights if such claim arises from infringement, suspected infringement or alleged infringement due to:

- a. Use of the SaaS (and where applicable, the Connect Service and/or Digital Signing Service under the Customer's Selected Subscription Plan) in a manner or for a purpose or in combination with any other SaaS, service or product not reasonably contemplated or Authorised by SuiteFiles;
- b. A breach by the Customer of clause 19.1; or
- c. The content or use of any Source File or Service Document.

20. Warranties

20.1. Each party warrants to the other that it has authority to enter into and perform and the ability to perform its obligations under the Agreement.

20.2. The Service, and all information on the Site, is provided on an "as is" basis and all warranties and conditions, either express or implied by statute, common law or otherwise, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose, are excluded to the extent permitted by law.

20.3. SuiteFiles makes no warranty that:

- a. The Service will meet the Customer's requirements; or
- b. The Service will be available on an uninterrupted or error-free basis.

20.4. Where any warranties apply to the Customer under the Agreement, it extends solely to the Customer.

21. Termination

21.1. SuiteFiles or the Customer may terminate the Agreement with 30 days written notice or as otherwise agreed.

21.2. SuiteFiles may terminate or suspend the Customer's subscription or access to all or any data immediately if the Customer:

- a. Breaches any of these Terms and does not remedy the breach within 14 days after receiving notice of the breach;
- b. Breaches any of these Terms and the breach cannot be remedied;
- c. Fails to pay subscription fees;
- d. Ceases business or becomes insolvent or goes into liquidation or has a receiver or statutory manager appointed over its assets or ceases to carry on business or makes any arrangement with its creditors; or
- e. Becomes subject to any similar insolvency event in any jurisdiction.

21.3. On termination of the Agreement under clause 21.1:

- a. All amounts due to SuiteFiles or relevant Authorised Partner will become immediately due and payable, and in the case where a Fixed Term period applies, the Customer is deemed to have forfeited the balance amount on its account;
- b. SuiteFiles will cease to provide the SaaS to the Customer, and the Customer will cease to have any entitlement to use the SaaS; and
- c. The provisions of the Agreement that are by its nature intended to survive termination will remain in full force.

21.4. No refund is due to the Customer if the Customer terminates its subscription or SuiteFiles terminates it in accordance with these Terms.

22. Limitation of Liability

22.1. To the extent permitted by law, SuiteFiles' liability to the Customer in connection with the supply of services or these Terms, in contract, tort (including negligence) or otherwise, is limited as follows:

- a. SuiteFiles has no liability arising from the Customer's use of our services for any loss the Customer's revenue or profit, loss of goodwill, loss of customers, loss of capital, loss of anticipated savings, loss of data, business interruption, legal, tax or accounting compliance issues, damage to reputation, loss in connection with any other contract, or indirect, consequential, incidental, punitive, exemplary or special loss, damage or expense; and
- b. For the loss or corruption of the Customer's data, SuiteFiles' liability will be limited to taking reasonable steps to try and recover that data from SuiteFiles' available backups.

22.2. Without limiting clause 22.1, SuiteFiles will be liable for direct damages up to an amount equal to your subscription fees for the month during which the loss or breach occurred.

23. Consumer Guarantees Act

23.1. The Customer acknowledges that if it is acquiring the Services from SuiteFiles for the purposes of a business, the New Zealand Consumer Guarantees Act 1993 does not apply to the Agreement.

24. Force Majeure

24.1. SuiteFiles may suspend its obligations to perform under the Agreement if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.

24.2. Where SuiteFiles' obligations have been suspended under clause 24.1 for a period of 90 days or more, the Customer may immediately terminate the Agreement by giving notice in writing to SuiteFiles.

25. Dispute Resolution

25.1. Where any dispute arises between SuiteFiles and the Customer concerning this Agreement or the circumstances, representations, or conduct giving rise to the Agreement, the Customer agrees to raise its concerns for a resolution in a timely manner by first contacting SuiteFiles at support@suitefiles.com

25.2. Where SuiteFiles is unable to resolve the Customer's complaint informally or to the Customer's satisfaction, the parties agree not to initiate proceedings by arbitration or in court unless that party has complied with the procedures set out in this clause 25.

25.3. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation, as follows:

- a. Each party will nominate a representative that will have authority to settle or resolve the dispute;
- b. The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the respondent") and nominate in that notice the first party's representative for the negotiations; and
- c. The respondent must within seven days of receipt of the notice, give written notice to the first party naming its representative for the negotiations.

25.4. If the parties are unable to resolve the dispute by discussion and negotiation within 14 days of receipt of the written notice from the first party, then the parties must immediately refer the dispute to mediation.

25.5. The mediation must be conducted in terms of the Resolution Institute New Zealand Inc Standard Mediation Agreement. The mediation must be conducted by a mediator at a fee agreed by the parties. Failing agreement between the parties, the mediator will be selected, and the mediator's fee determined by the Chair for the time being of the Resolution Institute New Zealand Inc.

25.6. The parties agree that any dispute must be brought in the parties' individual capacity and not as a plaintiff or class member in any purported class or representative proceeding.

26. Notices

- 26.1. Notices under the Agreement must be in writing.
- 26.2. The Customer will provide notices to SuiteFiles by emailing SuiteFiles at the email address specified on the Site.
- 26.3. SuiteFiles will provide notices to the Customer by emailing the address submitted by the Customer on registration (or any updated address details advised by the Customer to SuiteFiles on seven days notice).

27. General Provisions

27.1. Waiver: No delay or failure by SuiteFiles to exercise any powers, rights or remedies under these Terms will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them.

27.2. Partial invalidity: If any provision of the Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of the Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

27.3. Independent contractor: SuiteFiles is an independent contractor to the Customer and is in all respects independent of the Customer. Nothing in the Agreement constitutes either party a partner, agent, employee or joint venture of the other.

27.4. Suspension: SuiteFiles may suspend performance of its obligations under the Agreement for so long as it is unable to perform for reasons outside of its control.

27.5. Blocking access, disabling subscription, or refusing to process a payment: As SuiteFiles' sites are global, different laws may apply in different countries that restrict SuiteFiles' relationship with the Customer. SuiteFiles may block the Customer's access, terminate subscription, or refuse to process a payment if SuiteFiles reasonably believes there's a risk (including but not limited to a potential breach of a law or regulation associated with the Customer, the subscription, or payment). Examples of where SuiteFiles might do this include transactions where the payment is from a sanctioned person or country; or where SuiteFiles reasonably believe there is a legal or regulatory risk or a risk of loss being suffered by SuiteFiles or Authorised Partners. The Customer undertakes that the Customer is not located in a sanctioned country and are not on a sanctioned persons list. SuiteFiles may also block users from a country if SuiteFiles is unable to receive payments from that country. The Customer should check what payment methods are available in the Customer's country for making payments. SuiteFiles may take any of these actions without notice.

27.6. Assignment: The Customer must not assign its rights under the Agreement without the prior written consent of SuiteFiles. SuiteFiles reserves the right to assign the benefit of the whole or part of any of its rights under these Terms to any third party.

27.7. Precedence: In the event of any conflict or inconsistency as between these Terms and any other aspect of the Agreement, these Terms will take precedence.

28. Governing Law

28.1. These Terms, and the Agreement, are governed by the laws of New Zealand and the Customer and the parties to the Agreement submit to the exclusive jurisdiction of the courts of New Zealand.