

TERMS AND CONDITIONS

1. INTRODUCTION

1.1 These terms and conditions ("**Terms**") set out what we require from you when you use the Service and any related service provided by us to you, as well as our commitment to you in providing the Service. By accessing and using the Service:

- (a) you agree to these Terms; and
- (b) where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.

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

2. INTERPRETATION

"**Confidential Information**" means any information that is not public knowledge nor publically available and that is obtained from us or you in the course of, or in connection with, the provision and use of the Service.

"**Fees**" means the fees applicable to your plan with us (as each plan is set out on our pricing page on Groupview) or as agreed otherwise in writing between you and us, as may be updated from time to time.

"**Force Majeure**" means an event that is beyond the reasonable control of a party, excluding:

- (a) an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
- (b) a lack of funds for any reason.

"**Data**" means data, content, and information (including personal information) owned, held, used or created by you or on your behalf that is stored using, or inputted into, Groupview.

"**Groupview**" means our website (www.groupview.co.nz) and any software owned by us (and any licensors) that is used to provide the Services.

"**Intellectual Property Rights**" include copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. "**Intellectual Property**" has a consistent meaning, and includes any enhancement, modification or derivative work of that property.

"**Service**" means the service having the core functionality described on our website (www.groupview.co.nz), as updated from time to time.

"**Objectionable**" means objectionable, defamatory, obscene, harassing, threatening, harmful, unlawful in any way.

3. OUR SERVICE

3.1 We must use reasonable efforts to provide the Service:

- (a) in accordance with these Terms and New Zealand law; and
- (b) exercising reasonable care, skill and diligence.

3.2 Our provision of the Service to you is non-exclusive. Nothing in these Terms prevents us from providing the Service to any other person.

3.3 We will use reasonable efforts to ensure the Service is available during normal business hours in New Zealand. It is possible that the Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure.

3.4 Groupview interoperates with a range of third party service features, including the the services provided by the New Zealand Companies Office ("**Companies Office**"). We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available any of our related features to you. If we exercise our right to cease the availability of any Groupview features reliant a third party feature, you are not entitled to any refund, discount or other compensation.

4. YOUR OBLIGATIONS

4.1 You and your personnel must:

- (a) use the Service in accordance with these Terms solely for:
 - (i) your own internal business purposes; and
 - (ii) lawful purposes; and
- (b) not resell or make available the Service to any third party, or otherwise commercially exploit the Service.

4.2 When accessing the Service, you and your personnel must:

- (a) not impersonate another person (including by using another person's login information) or misrepresent authorisation to act on behalf of others or us;
- (b) not attempt to undermine the security or integrity of the Service;
- (c) not use, or misuse, the Service in any way which may impair the functionality of the Groupview or the Service or impair the ability of any other user to use Groupview or the Service;
- (d) not attempt to view, access or copy any material or data other than:
 - (i) that which you are authorised to access; and
 - (ii) to the extent necessary for you to use the Service in accordance with these Terms; and

- (e) neither use the Service in a manner, nor transmit, input or store any Data, that breaches any third party right (including intellectual property rights and privacy rights) or is Objectionable, incorrect or misleading.

4.3 You must not disclose your login information with any other person and you indemnify us from any loss we incur from another person using the Service with your login information (except where you were not at fault for that disclosure).

5. FEES

5.1 You must pay us the Fees.

5.2 We use Stripe to charge you the Fees. If you do not pay the Fees, you will lose access to or not be granted access to the Service for the relevant period.

6. CONFIDENTIALITY

6.1 We will, unless we have your prior written consent:

- (a) keep Confidential Information confidential at all times;
- (b) effect and maintain adequate security measures to safeguard the Confidential Information from unauthorised access or use; and
- (c) only disclose Confidential Information to our personnel or professional advisors on a *need to know* basis only and, in that case, notify those persons that the information is confidential (and that they are obligated to preserve confidentiality).

6.2 The obligation of confidentiality in clause 6.1 does not apply to any disclosure or use of Confidential Information:

- (a) for the purpose of performing any of our obligations, or exercising our rights, under these Terms;
- (b) as required by law or regulation;
- (c) which is publicly available;
- (d) which was rightfully received by us from a third party (where we had no knowledge that the disclosure was without restriction or was in breach of any obligation of confidentiality); or

6.3 by us if required as part of a *bona fide* sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 6.

7. INTELLECTUAL PROPERTY

7.1 Subject to clause 7.2, title to, and all Intellectual Property Rights in Groupview and the Service is and remains our property (and our licensors' property). You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

- 7.2 Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with these Terms.
- 7.3 To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual licence to use for our own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by us in Groupview and the provision of the Service.
- 7.4 If you provide us with ideas, comments or suggestions relating to Groupview, the Service or our business generally (together "**Feedback**"):
- (a) all Intellectual Property Rights in that Feedback and anything created as a result of that Feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
 - (b) we may use or disclose the Feedback for any purpose.
- 7.5 You acknowledge that Groupview links to third party websites (including the Companies Office) or feeds that are connected or relevant to the Service. Any link from Groupview does not imply that we endorse, approve or recommend, or have responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.

8. USE OF DATA

- 8.1 You acknowledge that:
- (a) we may require access to the Data to exercise our rights and perform our obligations under these Terms; and
 - (b) to the extent that this is necessary but subject to clause 2 (*Confidentiality*), we may authorise a member or members of our personnel to access the Data for this purpose.
- 8.2 You must arrange all consents and approvals that are necessary for us to access the Data as described in clause 8.1.
- 8.3 You acknowledge and agree that:
- (a) we may:
 - (i) use Data and information about your use of the Services to generate **anonymised** and **aggregated** statistical and analytical data ("**Analytical Data**");
 - (ii) use Analytical Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and

- (b) we may supply Analytical Data to third parties except where we consider that this may be inconsistent with the strict confidentiality obligations you may owe to your clients or that you may be bound by;
- (c) our rights under this clause 8 will survive termination of expiry of the Agreement; and
- (d) title to, and all Intellectual Property Rights in, Analytical Data is and remains our property.

8.4 You acknowledge and agree that to the extent Data contains personal information, in collecting, holding and processing that information through Groupview, we are acting as your agent for the purposes of the Privacy Act 1993 and any other applicable privacy law. You must obtain all necessary consents from the relevant individual to enable us to collect, use, hold and process that information in accordance with these Terms.

8.5 You agree that we may store Data (including any personal information) in secure servers in any overseas territory at our discretion (including Australia and the United States) and may access that Data (including any personal information) in New Zealand or any other territory from time to time.

8.6 You indemnify us against any liability, claim, proceeding, cost, expense (including legal fees) and loss of any kind arising from any actual or alleged claim by a third party that:

- (a) any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights); and
- (b) that the Data is Objectionable, incorrect or misleading.

9. WARRANTIES

9.1 Each party warrants that it has full power and authority to enter into and perform its obligations under, these Terms.

9.2 To the maximum extent permitted by law:

- (a) our warranties are limited to those set out in these Terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to the amount we have charged you as an individual user over the last year; and
- (b) we make no representation concerning the quality of the Service and do not promise that the Service will:
 - (i) meet your requirements or be suitable for a particular purpose, including that the use of the Service will fulfil or meet any statutory role or responsibility you may have; or
 - (ii) be secure, free of viruses or other harmful code, uninterrupted or error free.

9.3 You agree and represent that you are using the Service, and accepting these Terms, for the purpose of trade. We each agree that:

- (a) to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Service or these Terms; and
- (b) it is fair and reasonable that the parties are bound by this clause 9.3.

9.4 Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, our liability for any breach of that condition or warranty is limited, at our option, to:

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

10. LIABILITY

10.1 Our maximum aggregate liability under or in connection with these Terms or relating to the Service, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any year exceed an amount equal to the Fees paid by you relating to the Service in the previous year (which in the first year is deemed to be the total Fees paid by you from the day you first used the Service to the date of the first event giving rise to liability). The cap in this clause 10.1 includes the cap set out in clause 9.2(a).

10.2 Without limiting clause 10.5, neither of us are liable to the other under or in connection with these Terms or the Service for any:

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

10.3 Clause 10.2 does not apply to limit your liability to pay the Fees.

10.4 Neither of us will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.

10.5 On the basis that:

- (a) the New Zealand Government (by way of the Ministry of Business, Innovation and Employment) limits its liability for information available through the Companies Office services and any loss associated with the use of Companies Office services;
- (b) thousands of entities and persons have legal duties and responsibilities to ensure the accuracy of the information made available through the Companies Office services; and
- (c) we have identified numerous errors and inaccuracies of information about specific entities and persons (due to both technical error on the part of the Companies Office and failure of responsible entities and persons to maintain the accuracy of information) as provided by the Companies Office services which we has and

continues to innovate to overcome as additional errors and inaccuracies become apparent,

we do not accept any responsibility or liability for:

(d) the accuracy of information or material provided by or made available by the Service (nor do we represent that it will always be accurate for the reasons provided in clause 10.5); or

(e) any loss you incur in connection with your use of the Service, including any costs and expenses.

10.6 For the reasons in clause 10.5, you indemnify us from any third party loss or claim made against us where that loss or claim arises from your publication of information in connection with our Service or reliance on our Service.

10.7 Each of us must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms or the Service.

11. GENERAL

11.1 These Terms apply for a year immediately from each time you use the Service or if longer, until there are not any outstanding Fees.

11.2 Without prejudice to any other right or remedy available to us, if we consider that you have breached these Terms or we otherwise consider it appropriate, we may immediately, and without notice, suspend or terminate your access the Service (or any part of it).

11.3 On suspension or termination, you must immediately cease using the Service and must not attempt to gain further access. If you have paid us for use of Groupview and we restrict access or remove functionality, we will refund you for any services, which you paid for and which were unutilised due to any event pursuant to this clause. These Terms were last updated on 17 July 2020.

11.4 If we need to contact you, we may do so by email or by posting a notice on Groupview. You agree that this satisfies all legal requirements in relation to written communications.

11.5 For us to waive a right under these Terms, the waiver must be in writing.

11.6 We may change these Terms at any time by making available updated terms on Groupview. Unless stated otherwise, any change takes effect immediately. You are responsible for ensuring you are familiar with the latest Terms. We will notify you of any change of these Terms. By continuing to access and use Groupview, you agree to be bound by the changed Terms.

11.7 These Terms, and any dispute relating to these Terms or the Service, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or the Service.

11.8 If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be

treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.

- 11.9 These Terms set out everything agreed by the parties relating to your use of the Service and supersede and cancel anything discussed, exchanged or agreed prior to you agreeing to these Terms. The parties have not relied on any representation, warranty or agreement relating to the Service that is not expressly set out in the Terms, and no such representation, warranty or agreement has any effect from the date you agreed to these Terms.