



GENERAL TERMS AND CONDITIONS:

1. Definitions and Interpretation

1.1 In these General Terms and Conditions (the “GTCs”), unless specified otherwise:

Acceptance Criteria has the meaning set out in clause 3.3;

Aeroplanned means the person identified as Aeroplanned on the first page of the Services Agreement;

Aeroplanned Data means:

(a) reports, products, information, data and software relating to the Services, Aeroplanned’s clients or Aeroplanned’s business that is created by Aeroplanned independently of the Services but used in conjunction with the Services; and

(b) Analytical Data;

Aeroplanned IP has the meaning set out in clause 8.1;

Affected Party has the meaning set out in clause 11.1;

Agreement means these GTCs together with all applicable Services Agreements entered into between Aeroplanned and the Client;

Analytical Data has the meaning set out in clause 4.4;

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

Breached Party has the meaning set out in clause 11.1;

Client means the person identified as the client on the first page of the Services Agreement;

Client Data means any information, material or data (including Personal Information) that:

(a) is submitted, uploaded or input into the Software by the Client; or

(b) is provided to Aeroplanned by the Client to support or enable Aeroplanned to provide the Services,

and any modified form of that information that is created through the use of the Configured Software;

Client Tasks means the tasks (if any) specified in the Details Table that Client is required to carry out in relation to the Services;

Client User means any employee, officer, agent, delegate and/or individual contractor of Client who accesses the Configured Software using Client’s account(s);

Commencement Date is the date of last signature to the Services Agreement;

Confidential Information means any information, verbal or written, including documents, plans, software, market research data, product literature, trade secrets, processes, technical information, know-how, documentation, Intellectual Property Rights and any financial and commercial information (including, without limitation, pricing and pricing models) relating to the business of either party or any of either party’s related or associated companies. For the avoidance of doubt, Client Data is the confidential information of Client and Aeroplanned Data is the confidential information of Aeroplanned;

Configuration Services consist of using the Client Data provided by Client as part of the Client Tasks to configure the Software to Client’s information, as otherwise described in the Services Agreement.

Configuration Services Fees means the specific amounts which are to be paid by Client to Aeroplanned for the provision of the Configuration Services as set out in the Details Table;

Configured Software means the Software as configured following the Configuration Services;

Correction Period has the meaning set out in clause 3.4;

Data Security Breach means any unauthorised access to, or acquisition, use, disclosure, alteration, loss or destruction of, Confidential Information, Client Data or Personal Information, or any material compromise of the security of any systems or services that affects such information or data.

Details Table means the details table that forms part of the Services Agreement;

Feedback has the meaning set out in clause 8.5;

Fees means the Configuration Services Fees and the Monthly Service Fees;

Force Majeure Event means any event which is beyond the reasonable control of a party and includes acts of God, natural disaster, war, hostilities, piracy, terrorism, epidemic, pandemic (excluding Covid-19 and its variants), any law or any action taken by a government or public authority, riot or fire;

General Terms means these general terms and conditions that form part of the Agreement;

Good Industry Practice means exercising the skill, diligence, care, and foresight expected of a highly skilled and experienced person in the same or similar circumstances;

GST means goods and services tax payable under the New Zealand Goods and Services Tax Act 1985;

Hourly Rate means Aeroplanned’s hourly rate as notified by Aeroplanned to Client from time to time;

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;

Monthly Fees means the specific amounts which are to be paid by the Client to Aeroplanned on a monthly basis for the Software-as-a-Service as set out in the Details Table;

Onboarding Completion Date has the meaning set out in clause 3.3;

Onboarding Start Date means the date specified in the Details Table or as otherwise agreed by the parties in writing (including over email);

Personal Information has the meaning given by the New Zealand Privacy Act 2020;

PI Provider has the meaning set out in clause 10.2;

PI Recipient has the meaning set out in clause 10.2;

Provided Personal Information has the meaning set out in clause 10.2;

Recipient means a party that receives Confidential Information;

Required Service Change has the meaning set out in clause 4.5;

Service Levels means those specific performance standards and metrics, as further described in Appendix 1 to these GTCs;

Services Agreement means the services agreement instruction (including in electronic form) agreed between Aeroplanned and the Client, incorporating, and subject to, these GTCs;

Services means the Configuration Services, the Software-as-a-Service, the Support Services (if applicable), and any other services agreed between the parties under the Agreement;

Software refers to the Aeroplanned software that provides resource planning and data driven insights for flight schools.

Software-as-a-Service consists of the provision of the Configured Software to Client;

Special Terms means those special terms (if any) described in the Details Table;



SSO Monthly Fee means the SSO monthly fee (if any) described in the Details Table;

Support Services means the support services (if any) described in the Details Table;

Support Terms means the support terms (if any) described in the Details Table; and

Timetable means the timetable (if any) set out in the Details Table which outlines the timeframe within which:

- (a) Aeroplanned will deliver the relevant Services; and/or
- (b) Client will perform the Client Tasks.

2. Term

- 2.1 The Agreement starts on the Commencement Date and will continue until terminated by either party in accordance with this Agreement.

3. Onboarding

- 3.1 Aeroplanned will start providing the Configuration Services on the Onboarding Start Date.
- 3.2 Client must provide, at a minimum, the following Client Data to Aeroplanned to facilitate the Configuration Services:
 - (a) Syllabus details;
 - (b) Course information;
 - (c) Instructor details;
 - (d) Fleet details;
 - (e) Operational Data; and
 - (f) Any additional details that Aeroplanned may reasonably request from time to time.

If the Client does not have all the Client Data, Aeroplanned may be able to work with the Client to develop the required data. Depending on the scope, this may incur an additional charge. This additional work and cost must be agreed to by both parties in writing prior to commencement of this additional work.
- 3.3 The Client shall provide all Client Data specified in clause 3.2 to Aeroplanned in the format, structure and medium reasonably specified by Aeroplanned (**Required Format**), as notified to the Client in writing. To the extent any Client Data is not provided in the Required Format, Aeroplanned may (at its option) convert, cleanse or otherwise process the Client Data to meet the Required Format and Aeroplanned shall be entitled to charge the Client a reasonable one-off data handling fee.
- 3.4 Aeroplanned will test the Configured Software to ensure that Client can:
 - (a) see Client's planned hours, instructors, and fleet and student numbers;
 - (b) run agreed scenarios; and
 - (c) save new versions of outputs within the Configured Software,

(the **Acceptance Criteria**) and once Aeroplanned is satisfied, Aeroplanned will notify Client of the date that the Configuration Services are completed (the **Onboarding Completion Date**).
- 3.5 If Client, acting reasonably, does not consider that the Acceptance Criteria is met, Client will promptly (and in any event within 10 Business Days of the Onboarding Completion Date) notify Aeroplanned in writing (giving full details of its reasons) and Aeroplanned will provide further reasonable assistance with the aim of meeting all of the Acceptance Criteria within a timeframe agreed by the parties (acting reasonably) (the **Correction Period**).
- 3.6 If after the Correction Period, the Client can evidence that the Configured Software still does not meet the Acceptance Criteria in material respects:
 - (a) either Aeroplanned or the Client can immediately terminate this Agreement by giving notice to the other party and Aeroplanned will refund the portion of any prepaid amounts for the Services that have not been provided at the date of termination; or
 - (b) the parties can agree to extend the Correction Period.

4. Services

- 4.1 From the Onboarding Completion Date until the termination of this Agreement, Aeroplanned:
 - (a) grants to Client a non-exclusive, non-transferable, non-sublicensable licence to access and use (and to enable Client Users to access and use on Client's behalf) the Configured Software for Client's own internal business purposes in accordance with all relevant laws and the terms of this Agreement; and
 - (b) will, if applicable, provide the Support Services on the Support Terms to Client.
- 4.2 Client will:
 - (a) provide all facilities required to use the Configured Software, including computer hardware, communications software and data connections; and
 - (b) be responsible for Client's own business continuity, disaster recovery, security and authentication processes and procedures relating to the Configured Software.
- 4.3 At Aeroplanned's request, Client will allow Aeroplanned's representative to access Client's premises, IT systems/network/environment, and/or records, to verify Client's compliance with this Agreement. In addition, Aeroplanned may remotely monitor Client's (and Client User's) use of the Configured Software to verify Client's compliance with this Agreement.
- 4.4 Client acknowledges and agrees that Aeroplanned may:
 - (a) use Client Data and information about Client's (and Client User's) use of the Services, in particular the use of the Configured Software, to generate anonymised and aggregated statistical and analytical data (**Analytical Data**); and
 - (b) use and perpetually retain Analytical Data for its business purposes, including (without limitation) to develop the Software and other products, and to develop industry insights.
- 4.5 Client acknowledges that:
 - (a) in providing the Services, Aeroplanned utilises various third party inputs which Aeroplanned is not the only purchaser and/or consumer of and as such these inputs are subject to change without the approval of Aeroplanned;
 - (b) there may be circumstances where there is change to applicable law that may, in Aeroplanned's reasonable opinion, affects the ability of Aeroplanned to provide the Services, the manner or cost of providing them or the manner in which the Client is able to use the Services; and/or
 - (c) the Software is developed on a one-to-many software-as-a-service basis and Aeroplanned may add, remove, change, update and/or disable features and capabilities from time to time as it develops the Software,

and, subject to clause 12.2, Aeroplanned may, at any time and without liability to the Client, make a change to the Services and/or Configured Software arising out of the above, or any substantially similar, situations with or without notice.
- 4.6 In the provision of the Services, Aeroplanned will use its reasonable endeavours to comply with any applicable Service Levels specified in Appendix 1.



5. Client Obligations

- 5.1 In providing the Services, AeroPlanned may require assistance from Client. Client will:
- (a) carry out the Client Tasks and its other obligations to an adequate standard, and in a timely, competent, efficient, and professional manner, using appropriate care and skill;
 - (b) consult, co-operate and coordinate activities with AeroPlanned and its personnel and provide any assistance reasonably required (whether or not such assistance is a Client Task);
 - (c) obtain any licences, authorisations, or consents to enable AeroPlanned to carry out its obligations under this Agreement;
 - (d) comply with any relevant obligations imposed by law applicable to the Services;
 - (e) comply with any reasonable instructions specified by AeroPlanned in respect of the Services.
- 5.2 If Client fails to comply with clause 5.1:
- (a) AeroPlanned will not be liable for any failure or delay in providing the Services;
 - (b) the parties will agree a reasonable extension of time to the Timetable so that AeroPlanned can provide the Services;
 - (c) AeroPlanned may charge, and Client will pay, any additional costs incurred that result from such failure and any additional time expended at the Hourly Rate.

6. Use restrictions

- 6.1 Client will ensure that each Client User complies with the terms of this Agreement, and any act or omission of a Client User will be treated as an act or omission of Client.
- 6.2 Client will, and will procure that each Client User will:
- (a) keep the logins and passwords for Client's access and use of the Configured Software secure and confidential; and
 - (b) promptly disable any Client account if Client or AeroPlanned discover any details have been disclosed or compromised.
- 6.3 Client will not, except as expressly permitted under this Agreement or by any applicable law that cannot be excluded by agreement, and will procure that Client Users will not:
- (a) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any part of the Services, the Software or Configured Software other than as expressly permitted by this Agreement; or
 - (b) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services, the Software or the Configured Software;
 - (c) access the Services or use the Software or Configured Software to build a product or service which competes with the Services, the Software or the Configured Software;
 - (d) make the Services, Software or Configured Software available to any third party;
 - (e) undermine the integrity or security of:
 - (i) the Software or the Configured Software; or
 - (ii) AeroPlanned's systems, networks or resources used in providing the Services and Configured Software;
 - (f) access, store, distribute or transmit any Viruses;
 - (g) use the Services or Configured Software in a manner likely to cause excessive load or otherwise interfere with the delivery of the Services, or with the delivery of services or Software to third parties;
 - (h) obtain, or assist third parties in obtaining, access to the Services, Software or Configured Software, or other related materials, other than as provided under this Agreement; or
 - (i) attempt to do any of the things specified in paragraphs (a) to (h) above.
- 6.4 Client will use all reasonable efforts to prevent any unauthorised access to, or use of, the Services and Configured Software, and in the event of any such unauthorised access or use, promptly notify AeroPlanned. Where Client is in breach of clauses 6.1 or 6.3, AeroPlanned may immediately, without liability and without limiting its other rights and remedies, disable or otherwise suspend some or all of the Client's (or Client Users') access to the Services and Configured Software. AeroPlanned will restore Client's access after Client has resolved the breach giving rise to the restriction of access. Client remains responsible for the payment of all Fees during the period of restriction.

7. Fees

- 7.1 Subject to any payment terms otherwise agreed in the Details Table, AeroPlanned may issue invoices to Client on a monthly basis for the Fees and any other agreed charges and the Client will pay all such Fees and charges in accordance with this Agreement.
- 7.2 Client will pay:
- (a) the Configuration Services Fees and any other charges agreed to AeroPlanned into a bank account nominated by AeroPlanned within twenty Business Days of the date that AeroPlanned's invoice is issued;
 - (b) the SSO Monthly Fee (if any) to AeroPlanned immediately into the bank account nominated by AeroPlanned by automatic credit card charge or direct debit; and
 - (c) the Monthly Fees (charged a month in advance) immediately into the bank account nominated by AeroPlanned by automatic credit card charge or direct debit.
- 7.3 All amounts payable by the Client under this Agreement will be paid without any set-off or other deduction.
- 7.4 If any amount of any invoice is disputed, Client will pay the part of the invoice that is not in dispute, if any, and will notify AeroPlanned of the reasons for disputing the whole or any part of the invoice (as the case may be) within ten (10) Business Days of receipt of the invoice.
- 7.5 Unless expressly stated otherwise in the Details Table, all amounts payable are to be paid in USD.
- 7.6 All fees and any other amounts payable do not include GST or any other taxes, duties or charges levied in New Zealand or overseas in connection with this Agreement. Client will pay all such GST and other levied taxes, duties or charges (if any) on all supplies made by AeroPlanned to Client under this Agreement.
- 7.7 If Client is required by law to deduct or withhold taxes or charges from the amounts due to AeroPlanned under this Agreement, Client will ensure that the amount due to AeroPlanned is increased so that the payment actually made to AeroPlanned equals the amount due to AeroPlanned as if no such taxes or charges had been imposed.
- 7.8 If Client fails to pay any amount due, AeroPlanned may without prejudice to its other rights or remedies under this Agreement:
- (a) charge interest on the amount owing from the due date until the date of actual payment at 2% per annum over the base overdraft rate charged by AeroPlanned's bankers from time to time; and/or
 - (b) suspend the provision of the Services and/or Configured Software, without liability to Client.



- 7.9 Client will indemnify Aeroplanned for all reasonable costs incurred in receiving overdue amounts owed by the client under this Agreement, including legal costs, debt collection costs or any other expenses or costs incurred by Aeroplanned to collect amounts owing.
- 7.10 Aeroplanned may at any time and frequency:
- (a) increase any, or introduce new, Fees;
 - (b) amend its pricing model; and/or
 - (c) increase the Hourly Rate,
- by giving Client at least 30 days' prior written notice. If Client does not wish to pay the increased or new Fees or does not agree to the new Hourly Rate or pricing model, it may terminate this Agreement by giving notice to Aeroplanned at least five (5) Business Days prior to the effective date of the increased Fees/Hourly Rate or introduction of the new Fees or pricing model.

8. Intellectual Property Rights

- 8.1 Client acknowledges and agrees that:
- (a) the Software;
 - (b) the Configured Software; and
 - (c) Aeroplanned Data;
- including any modifications or enhancements (together, **Aeroplanned IP**) belong to Aeroplanned or its licensors, and Client will not dispute such ownership.
- 8.2 Client acknowledges and agrees that the Aeroplanned IP may include open source software that has been contributed by third parties and all Intellectual Property Rights in that software remains with those third parties.
- 8.3 Aeroplanned acknowledges and agrees that as between Client and Aeroplanned, Client owns the Client Data. Client grants, or will procure that its licensors grant to, Aeroplanned a non-exclusive, sub-licensable, royalty-free licence to use the Client Data in accordance with Aeroplanned's rights and obligations set out in this Agreement.
- 8.4 Client will indemnify Aeroplanned against any loss, cost, liabilities and expenses incurred by Aeroplanned as a result of any claim(s) that the supply or use of Client Data infringes the Intellectual Property Rights or privacy rights of any third party.
- 8.5 Client may provide Aeroplanned with comments, suggestions and other feedback regarding the Services and/or Aeroplanned IP, including but not limited to usability, missing features, functional errors, and bug reports (**Feedback**). Client agrees that any Feedback provided to Aeroplanned may be used by Aeroplanned for any purpose and, without compensation of any kind to Client, and Aeroplanned will be the sole owner of any and all software, documentation, improvements or other items developed by Aeroplanned that may relate to such Feedback.
- 8.6 This clause 8 will survive termination of this Agreement.

9. Confidentiality

- 9.1 Subject to clause 9.2, the Recipient must:
- (a) keep any Confidential Information of the other party confidential and secure; and
 - (b) only use the other party's Confidential Information to exercise its rights and perform its obligations under this Agreement; and
 - (c) only disclose the other party's Confidential Information to its employees, agents and contractors who need to know it for those purposes, ensuring they keep it confidential.
- 9.2 The obligations of confidentiality in clause 9.1 will not apply to information that:
- (a) the Recipient has prior written consent from the other party to disclose and/or use;
 - (b) the Recipient can clearly show was independently available to it from a third party with the right to disclose it;
 - (c) is in the public domain through no fault of the Recipient or any other person to whom the Recipient discloses the information; or
- 9.3 Where the Recipient is obliged by law, a regulator or the rules of any stock exchange to disclose the other party's Confidential Information, the Recipient may do so provided that the Recipient has (to the extent legally permitted) first advised the other party of this obligation, has allowed the other party reasonable time to avoid the disclosure having to be made, and the Recipient only discloses Confidential Information to the extent that it is obliged to do so.
- 9.4 Subject to clause 9.5, the Recipient must immediately, on the reasonable request of the other party, return, destroy or delete (at the Recipient's option) all documents or other materials containing the other party's Confidential Information which is in the Recipient's possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under clauses 9.1(c), unless the Recipient has a right under this Agreement or under applicable law, to retain it, and the Recipient will provide confirmation in writing to the other party once the Confidential Information has been destroyed or deleted (if applicable).
- 9.5 The obligation in clause 9.4 does not apply to:
- (a) copies of any Confidential Information held in an electronic storage system where it is not reasonably possible to delete this information (in which case the Recipient agrees not to access that Confidential Information, unless required by law); and
 - (b) its own board papers which, for legitimate reasons, refer to or contain the Confidential Information.
- 9.6 This clause 9 will survive termination of this Agreement.

10. Privacy

- 10.1 Each party must, and must ensure that its users who have access to Personal Information in the course of providing or accessing the Services will, comply with any relevant privacy laws that apply to it when dealing with any Personal Information provided by a party to the other under this Agreement.
- 10.2 If a party provides access to Personal Information (**PI Provider**) to the other party (**PI Recipient**) the PI Provider will ensure the PI Recipient is able to use that Personal Information (**Provided Personal Information**) in the manner contemplated by this Agreement, including having the appropriate authorisations required.
- 10.3 If the PI Recipient is required by a court or government agency under any applicable law to disclose or use the Provided Personal Information in a way that would not otherwise be permitted by this Agreement, then the PI Recipient may make that disclosure that is required by the applicable law and where permitted by applicable law will advise the PI Provider of that disclosure.

11. Security

- 11.1 Each party (**Breached Party**) will as soon as reasonably practicable notify the other (**Affected Party**) if the Breached Party becomes aware that it has suffered a Data Security Breach and:
- (a) the parties will work together as expeditiously as reasonably practicable to understand:



- (i) the nature and details of the Data Security Breach;
 - (ii) the Confidential Information, Personal Information and/or Client Data that has been impacted (or is suspected to have been impacted) by the Data Security Breach; and
 - (iii) recommendations for any actions to be taken by the Breached Party, the Affected Party and/or any individuals who are or may be impacted by the Data Security Breach; and
- (b) the Breached Party will take all reasonable remedial action to mitigate and limit the potential loss or other negative consequences that may result from the Data Security Breach, and to prevent its re-occurrence;
- (c) each party will comply with their reporting and other obligations under applicable law;
- (d) the Breached Party will, subject to clause 14.2, be liable to the Affected Party for any costs reasonably incurred by the Affected Party in:
- (i) notifying any relevant regulatory authority and any individuals who are or may be impacted by the Data Security Breach;
 - (ii) ensuring that to the extent that the Personal Information and/or Client Data impacted by the Data Security Breach has been modified without authority, a new unmodified version is re-established.

11.2 After the Data Security Breach is contained, the risk of immediate harm is mitigated and any reporting and other obligations have been met, the Breached Party will investigate the root cause of the Data Security Breach and provide the Affected Party with a report detailing the corrective actions to be undertaken to mitigate the risk of a repeat occurrence of the Data Security Breach.

11.3 The steps required of the Breached Party under this clause 11 will be the Affected Party's sole and exclusive remedy in relation to the Data Security Breach.

12. Termination

12.1 The Client may terminate this agreement on 30 days' written notice, provided that this termination does not occur within the initial six months from the Onboarding Date.

12.2 Where AeroPlanned modifies the Services and/or Configured Software (or any part of them) pursuant to clause 4.5, and such modification or discontinuance results in a material adverse impact on the Client's business, the Client may terminate this Agreement by written notice to AeroPlanned, provided that:

- (a) the Client, acting reasonably, notifies AeroPlanned of the material adverse impact of the relevant change within fifteen (15) Business Days of the change being notified or released;
- (b) the parties use reasonable endeavours, for a period of fifteen (15) Business Days following AeroPlanned's receipt of notice under clause 12.2(a), to agree to a solution to address the material adverse impact; and
- (c) if the parties are unable to agree such a solution within that period, the Client may terminate this Agreement by giving written notice to AeroPlanned.

12.3 Either party may terminate this Agreement immediately on written notice, if:

- (a) the other party commits a material breach of this Agreement and does not rectify that material breach within 30 days of receiving notice from the non-defaulting party requiring the breach to be rectified; or
- (b) the other party ceases operations or goes into liquidation or has a receiver or statutory manager appointed of any of its assets, becomes insolvent or makes any arrangement with creditors.

12.4 If this Agreement is terminated:

- (a) Client will immediately pay AeroPlanned for all work-in-progress that is unbilled as at the time of termination and any previous invoices that remain unpaid; and
- (b) Client will, and will procure that Client Users will, immediately cease to use the Services and the Configured Software.

12.5 Termination of this Agreement will not affect the provisions of this Agreement which are intended to continue, or should reasonably continue, after termination (whether expressly stated so or not). Termination will not affect any claim by either party against the other party arising out of any breach or failure under this Agreement prior to termination.

13. Warranties

13.1 AeroPlanned warrants to the Client that to the best of its knowledge and belief the provision of the Configured Software will not infringe the copyright of any third party. For the avoidance of doubt, this warranty does not extend to any Client Data stored or processed in, or used to configure, the Configured Software, which remains the responsibility of Client.

13.2 Except as expressly set out in this Agreement, all representations, conditions and warranties (whether express or implied, statutory or otherwise) and including (without limitation) warranties as to the merchantable quality or fitness for any particular purpose of the Configured Software and the Services are (to the full extent permitted by law) expressly excluded. The parties agree that the provisions of the New Zealand Consumer Guarantees Act 1993 and sections 9, 12A, 13, and 14(1) of the New Zealand Fair Trading Act 1986 do not apply to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

13.3 Client acknowledges and agrees that the Services and Configured Software are intended, and should only be used, for general information and learning purposes and they are not intended to substitute Client's own judgement.

13.4 If Client or AeroPlanned (acting reasonably) is made aware of a breach or suspected breach of clause 13.1, AeroPlanned will use reasonable endeavours to, at AeroPlanned's election, either:

- (a) obtain for Client the right to continue to use the Configured Software or impacted component of it in accordance with this Agreement; or
- (b) replace or modify the Configured Software or impacted component of it so that it becomes non-infringing,

but in each case AeroPlanned must ensure that the remedy does not materially adversely affect the Configured Software, or Client's use of it, and where AeroPlanned determines acting reasonably that the above (a) – (b) are not reasonably commercially available or feasible, AeroPlanned may terminate the Agreement and refund Client the portion of any prepaid amounts for the Services that have not been provided at the date of termination.

13.5 Clause 13.4 sets out Client's sole and exclusive remedy in respect of any breach of the warranty set out in clause 13.1.

14. Liability

14.1 Subject to clause 14.3, neither party will be liable to the other party under the law of tort, contract or otherwise for any:

- (a) indirect or consequential loss arising out of, or in connection with, this Agreement; and/or
- (b) loss of revenue, loss of profit, data loss or corruption, liquidated damages, penalties, fines, implementation delays, arising out of, or in connection with, this Agreement.

14.2 Subject to clause 14.3, and to the extent permitted by applicable law, the maximum liability of either party to the other party for any and all claims under this Agreement whether in contract, tort (including negligence) or for any other common law or statutory cause of action, is limited in aggregate



in any 12 month period to the total Fees paid by Client to AeroPlanned under the Agreement in the 12 months immediately preceding the event or occurrence giving rise to the claim.

14.3 Clauses 14.1 and 14.2 will not apply to limit:

- (a) either party's liability for a breach of clause 9 (Confidentiality) (excluding a breach covered by clause 11 which will be managed in the manner set out in that clause and will continue to be subject to clauses 14.1 and 14.2);
- (b) either party's liability for an infringement of the other party's Intellectual Property Rights;
- (c) either party's liability under an indemnity given by that party under this Agreement; and/or
- (d) Client's obligation to pay any Fees or other charges under or in connection with this Agreement.

14.4 AeroPlanned will not be liable to Client for any loss suffered by Client:

- (a) as a result of any default, breach of this Agreement, or any negligent act or omission of Client (including any unpermitted use of the AeroPlanned IP or any component of it);
- (b) due to any delay, where that delay was (in whole or in part) the fault of Client in any material way.

14.5 Client acknowledges that:

- (a) AeroPlanned may rely on the provision of services by third parties (including data centre and telecommunications providers) in order to perform its obligations under this Agreement (**Third Party Providers**) and that the performance of those obligations may be subject to limitations, delays and other problems inherent in the use of such services provided by Third Party Providers; and
- (b) AeroPlanned will not be responsible for any delays, delivery failures, penalties, liquidated damages, 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, penalties, liquidated damages, or any other loss or damage resulting from the transfer of data over communications networks and facilities (including the internet).

15. Subcontracting

15.1 AeroPlanned may subcontract any of its obligations under this Agreement without obtaining Client's prior written consent.

15.2 If AeroPlanned uses a subcontractor in respect of this Agreement, AeroPlanned is not relieved of any of its liabilities or obligations under this Agreement.

16. Disputes

16.1 If a dispute arises out of or relates to this Agreement (**Dispute**), a party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following provisions of this clause 16, except where the party seeks urgent interlocutory relief.

16.2 A party claiming the Dispute has arisen must give written notice to the other party specifying the nature of the Dispute.

16.3 On receipt of that notice, the parties will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation, or other informal means.

16.4 If the Dispute is not resolved within 15 Business Days of the notice being given pursuant to clause 16.2 (or within such further period agreed in writing by the parties), then either party may, by giving written notice to the other party, require the Dispute to be determined by the arbitration of a single arbitrator (except in the case of urgent interlocutory relief). The arbitrator will be appointed by the parties or, failing agreement within 5 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 New Zealand Arbitration Act 1996. The seat of any arbitration will be New Zealand. The arbitrator's decision will be binding on the parties without any right of appeal other than as permitted by article 5 of Schedule 2 of the Arbitration Act 1996.

17. Changes to the Agreement

17.1 Subject to clauses 4.5, 4.6, 4.7 and 17.2, no variation to the terms of the Agreement will be of any force or effect unless it is in writing and agreed by the parties.

17.2 Notwithstanding clause 17.1, AeroPlanned reserves the right to update these GTCs from time to time:

- (a) in the case of material changes, by notifying the Client in writing at least thirty (30) days before the change takes effect; and
- (b) in the case of all other changes, by updating the version of the GTCs.

17.3 If the Client does not agree with the updated GTCs, the Client may terminate this Agreement in accordance with clause 12.1. Continued use of the Services after the effective date of the update constitutes acceptance of the new GTCs.

18. General

18.1 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understanding or agreements on that subject matter. To the extent of any conflict or inconsistency between any terms and conditions forming part of this Agreement, the following order of precedence shall apply: firstly, any Special Terms, secondly, these GTCs, and thirdly, the remainder of the applicable Services Agreement.

18.2 If any part or a provision of this Agreement is judged invalid or unenforceable, it is severed and the remainder of this Agreement will continue to operate.

18.3 A provision or a right under this Agreement may not be waived except in writing signed by the party granting the waiver.

18.4 Client will not assign, transfer, or otherwise deal with this Agreement, or any of its rights or obligations under this Agreement, whether in whole or in part, without the prior written consent of AeroPlanned.

18.5 The parties are independent contractors. Nothing contained in this Agreement will be deemed to create any association, partnership, joint venture, or relationship of principal and agent between the parties.

18.6 Except for Client's obligation to pay the Fees and other amounts payable to AeroPlanned under this Agreement, neither party will be liable for any delay or failure to perform its obligations under this Agreement if the delay or failure was caused by any Force Majeure Event and which could not have been prevented by using Good Industry Practice. If a Force Majeure Event occurs, the affected party must promptly give written notice of the fact and circumstances of the Force Majeure Event to the other party and use its best efforts to mitigate any effects.

18.7 Any notice or communication to be given under this Agreement must be sent electronically to the intended recipient's email address, as set out in the Services Agreement (or to such other email address as the intended recipient notifies to the other party by written notice in accordance with this clause 18.7 from time to time). Any notice or communication will be deemed to be received when the email is sent, provided that:

- (a) the sender can demonstrate that the email was sent to the correct email address of the recipient; and
- (b) no error message was received by the sender to indicate that the email did not reach its intended destination,

however, if the notice or communication is delivered after 5.00pm or on a non-working day at the place of receipt, then it will be deemed not to be



received until 9:00am on the next working day at the place of receipt.

- 18.8 This Agreement is governed by and construed in accordance with the laws of New Zealand and, for any urgent interlocutory relief only, the parties submit to the exclusive jurisdiction of the New Zealand courts.
- 18.9 This Agreement may be executed in any number of counterparts (including any scanned PDF counterpart), each of which will be deemed an original, but all of which together will constitute the same instrument. No counterpart will be effective until each party has executed at least one counterpart.



APPENDIX 1 – SERVICE LEVEL AGREEMENT

System Availability

98.5% system availability on a monthly basis. Scheduled maintenance shall be communicated one (1) week in advance and will include the expected duration of the maintenance and the expected functionality and modules affected.

Support and Response Times

Support response times will vary depending on the severity of the disruption; the priority for resolution is determined by Aeroplanned when evaluating the Client's request.

Priority	Description	Target Response Time
High Priority	Use of the Services or substantial parts thereof or complete processes is impossible	Within 12 hours
Medium Priority	Use of the Services is substantially impaired, but basic use is possible	Within 24 hours
Low Priority	The Services are available but minor problems are exhibited that do not affect the result	Within 48 hours

All requests must be reported by email to support@aeroplanned.com.

Email support: 8:30AM – 5PM, Business Days (NZST)