

## **Audit Assistant Terms of Use**

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Audit Assistant Limited ("Audit Assistant") offers a web-based software product designed to allow accountancy firms to manage their audit and review work, and to assist in the production of work-papers compliant with Auditing, Compilation and Review Engagement Standards ("the Service").

Audit Assistant will provide you with the Service on the terms and conditions set out in this Agreement. Before using the Service you must have read, understood and agreed to these terms and conditions.

These terms and conditions will be binding on you from the time that Audit Assistant provides you with the Service.

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### **1. The Service**

- 1.1 The Service will be made available by Audit Assistant to you via The Website.
- 1.2 Audit Assistant grants to you a non-exclusive and non-transferrable right to use the Service, subject to the terms of this Agreement.
- 1.3 Audit Assistant may from to time and at its discretion introduce upgrades and updates to the Service.

### **2. Access Conditions**

- 2.1 You may create additional accounts to grant additional Users access to the Service on the following terms:
  - a. All additional Users must be your employees or contractors.
  - b. If you create an account for an additional User, or give an additional User existing login credentials, you grant that User authority to use the Service.
  - c. You must ensure that any User given access to the Service by you or your employees complies with all of your obligations under this Agreement.
- 2.2 You may not create more than the number of Clients permitted by your subscription type.
- 2.3 You must not:
  - a. Attempt to compromise or undermine the security or integrity of any computing networks or systems used by Audit Assistant;
  - b. Use or misuse the Services in a way which may impair Audit Assistant's provision of the Service to any other customer;
  - c. Attempt to gain unauthorised access to any materials other than those which you have been given express permission to access;
  - d. Use the Service to transmit or upload:

- i. Files that may damage any computer or network;
  - ii. Content that may be offensive;
  - iii. Data to which you do not own the copyright or have permission to use;
  - iv. Any other data, the transmission or upload of which would be in violation of any law;
  - e. Attempt to copy, disassemble, decompile, modify or reverse engineer any computer program or network used to provide you with the Service;
  - f. Sublicense the Service.
- 2.4 If you become aware of any breach of clause 2.3 you must immediately inform Audit Assistant.

### 3. **Data Location and Transfer**

- 3.1 Your data may be stored and processed in New Zealand, the United States of America or any other country in which Audit Assistant or its service providers maintain facilities.
- 3.2 You acknowledge that the technical processing and transmissions involved in providing you with the Service may result in your data:
- a. being transferred unencrypted over various networks and in various countries; and
  - b. changing to confirm and adapt to the technical requirements of connecting networks or devices.

### 4. **Backup of Data**

- 4.1 Audit Assistant backs up all data inputted into the Service each night, and will use its best efforts to make those backups available to you in the event of data loss. However, Audit Assistant makes no guarantee as to the availability of those backups.
- 4.2 Audit Assistant does not back up completed jobs. You bear sole responsibility for backing up any completed jobs.

### 5. **Fees and Payment Terms**

- 5.1 You must pay to Audit Assistant the Access Fee in advance.
- 5.2 Audit Assistant will provide the Service to you from the time that you first pay it the Access Fee. Audit Assistant will invoice you according to the frequency you choose at the time of registration and shall provide the Service to you, until this Agreement is terminated in accordance with clause 10.
- 5.3 You must pay all amounts specified in any invoice issued by Audit Assistant within 10 days of the invoice date.
- 5.4 All fees payable by you under this Agreement are exclusive of GST. You must pay GST (if any) to Audit Assistant on the day you pay any fees under this Agreement.
- 5.5 Audit Assistant may change the Access Fee by giving notice to you at least 60 days' beforehand.

5.6 If you require any training, and Audit Assistant agrees to provide such training, you must pay for that training in addition to the Access Fee.

## 6. **Intellectual Property Rights**

6.1 As between you and Audit Assistant, all rights, title and interest, including all Intellectual Property Rights, relating to the Service, including software and documentation (including without limitation all upgrades, updates, improvements, enhancements, modifications and derivative works of any of them) remain with Audit Assistant. Nothing in this Agreement grants to either party any ownership or other Intellectual Property Rights of the other party other than is expressly set out in this Agreement.

6.2 You may make sufficient copies of user documentation to support your use of the Service, but must use such copies for the sole purpose of your own use of the Service.

6.3 Audit Assistant claims no right or interest in your data other than a right to store and process your data in conjunction with providing you the Service.

## 7. **Indemnities**

7.1 You indemnify Audit Assistant against all claims, costs, damage and loss arising from your breach of any of these terms or any other obligation you may have to Audit assistant.

7.2 You indemnify Audit Assistant against any costs it incurs relating to the recovery of any Access Fee that is due from you but has not been paid.

## 8. **Confidentiality and Privacy**

8.1 In this clause:

a. "Confidential Information" means information relating to the technology, technical processes, business affairs or finances of the other or of any affiliate of the other or of any suppliers, agents, distributors, licensees or customers of the other where such Confidential Information was received during the period of this Agreement.

b. "Recipient party" means the party receiving such Confidential Information.

c. "Observe Function" means the ability Audit Assistant employees have to log in to your account and access your data.

8.2 Each party, in its capacity as recipient party, undertakes and agrees to treat as secret and confidential and not at any time for any reason whatsoever to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any Confidential Information of the other party.

8.3 The obligations of confidence referred to in this clause do not extend to any Confidential Information which:

a. is or becomes generally available to the public otherwise than by reason of a breach by the recipient party of the provisions of this subclause;

b. is known to the recipient party and is at its free disposal prior to its receipt from the other party;

- c. is subsequently disclosed to the recipient party without obligation or confidence by a third party owing no such obligations to the other party in respect of such information;

provided that if the recipient party is legally required to disclose any Confidential Information the recipient party will:

- d. immediately notify the other party of such requirement;
- e. fully co-operate, at the other party's cost, with all legal actions taken by the other party to avoid or limit such disclosures;
- f. if the recipient party cannot avoid such disclosure, the recipient party will:
  - i. only disclose such portions of the Confidential Information as is legally required;
  - ii. use its reasonable endeavours to obtain assurances that such information will be treated as confidential by any person to whom it is disclosed.

8.4 If you request support from Audit Assistant, you grant Audit Assistant the right to use the Observe Function, subject to clause 8.2. That use shall be for the sole purposes of troubleshooting and providing you with assistance. Audit Assistant will not use the Observe Function unless support is requested and will not modify your data unless modification is requested by you.

8.5 You grant Audit Assistant the right to monitor and record the usage patterns, trends and other statistical data relating to your use of the Service.

## 9. **Warranties and Liabilities**

9.1 Audit Assistant warrants that:

- a. it is legally incorporated under the laws of New Zealand;
- b. it has the power and authority to enter into this Agreement;
- c. it will use its commercially reasonable efforts to maintain its systems associated with the Service free from viruses and other harmful code; and

9.2 Except as is expressly set out above, all terms, conditions, representations and warranties are excluded to the maximum extent permitted by law.

9.3 Audit Assistant disclaims any warranty that its interpretations or representations of Auditing Standards displayed on the Website are accurate or comprehensive. You accept sole responsibility for ensuring that you comply with any applicable standards.

9.4 You warrant that you have the power and authority to enter into this Agreement.

9.5 You acknowledge that you have carried out appropriate investigations and relied on your own knowledge or independent advice or both in assessing the risk, contingencies and circumstances that could affect your decision to enter into this Agreement and use the Service.

9.6 You acknowledge that in entering into this Agreement:

- a. You are acquiring the Service for the purposes of a business; and

- b. The Consumer Guarantees Act 1993 will not apply except as expressly set out in this Agreement.
- 9.7 Except to the extent excluded by law, Audit Assistant excludes all liability to you (whether by damages or otherwise) for any consequential, economic or indirect loss or damage arising out of this Agreement or the Service or in connection with either of them. This exclusion applies whether Audit Assistant's liability arises in contract, tort (including negligence) or otherwise.
- 9.8 Subject to clause 9.9, Audit Assistant's liability to you or breach of any term of this Agreement or arising out of the provision of the Service and whether in contract, tort or otherwise is limited to the Access Fee received from you for provision of the Service in the 12 months preceding the date on which your claim arose.
- 9.9 Audit Assistant is not responsible for any failure to provide the Service where such failure is caused, or contributed to, by an event outside Audit Assistant's reasonable control.
- 9.10 Audit Assistant uses a global network to provide the Service to you. Audit Assistant does not provide any guarantee and has no liability to you in respect of the communications and computer links between you and Audit Assistant allowing access to the Provider Service.
10. **Termination**
- 10.1 Audit Assistant may terminate this Agreement if:
- a. You breach clause 2.3; or
  - b. You breach any of these terms and do not remedy the breach within 14 days of after being given notice of the breach; or
  - c. Any amount due to Audit Assistant by you remains unpaid more than 30 days after it falls due.
- 10.2 Either party may terminate this Agreement by giving the other party 30 days' notice.
- 10.3 On termination of this Agreement you must immediately stop using the Service.
- 10.4 If this Agreement is terminated, Audit Assistant will not take any intentional action to erase any of your data for a period of 30 days after the effective date of termination. Your post-termination retrieval of your data is conditional on your payment of any fees due for the period following termination, payment in full of any other amounts due and your compliance with any other terms we may establish with respect to your data retrieval.
- 10.5 If this Agreement is terminated, Audit Assistant will not refund you any amount already paid by you.
- 10.6 Termination of this Agreement is without prejudice to any obligations or rights of either party accrued prior to such termination. If this Agreement is terminated, you remain liable for any accrued charges.
- 10.7 Termination of this Agreement does not affect any provision of this Agreement which is intended to come into affect on or continue in effect after such termination. Those provisions include (but are not limited to) clauses 6, 7 and 8.

## 11. Force Majeure

- 11.1 Neither party will be responsible for any act, omission or failure to fulfil its obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond its control ("Force Majeure Event") which includes floods, earthquakes and other acts of God but excludes any industrial actions or business trading risk.
- 11.2 The party who cannot carry out its obligations under this Agreement must give the other Party notice as soon as practicable of the cause and, insofar as it is known, the probable extent to which the party giving the notice will be unable to perform or will be delayed in performing its obligations under this Agreement.
- 11.3 On the issue of notice of a Force Majeure Event, the obligations of the party giving the notice will be suspended insofar as that party is prevented during the continuance of such cause to carry out its obligations under this Agreement.
- 11.4 The party giving notice which is affected by the Force Majeure Event must take all reasonable steps to mitigate the effects of, and eliminate, the intervening event and must resume performance of the supply of Services as promptly as possible.
- 11.5 Should the Force Majeure Event continue for a period exceeding twenty (20) Business Days, then the party being the recipient of the Force Majeure Event notice may cancel this Agreement by giving written notice to the other party.

## 12. General

- 12.1 You may not assign your rights under this Agreement without the prior consent of Audit Assistant, to be given in its sole discretion.
- 12.2 This Agreement is governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 12.3 In the event that any one or more of the provisions in this Agreement is declared invalid by any Court of competent jurisdiction, this Agreement will be read as if such provision had not been inserted.
- 12.4 This Agreement constitutes the entire agreement between the parties relating to its subject matter and replaces or prior agreements or undertakings between them. Each party confirms that on entering into this Agreement it has not relied upon any statement, warranty or other representation made or information supplied by or on behalf of the other party.
- 12.5 No right under this Agreement will be deemed to be waived except by notice in writing signed by each party. A waiver does not prejudice rights in respect of any subsequent breach.

## 13. Definitions

- 13.1 The following terms have the following meanings:

**"Access Fee"** means the fee for the Service (excluding any taxes or duties) payable by you in accordance with your subscription type and the fees set out on The Website.

**"Client"** means any audit, review or other client that you create in the Service, whether or not you use the Service to do work for that client.

**"Intellectual Property Rights"** means any intellectual property rights recognised by law including without limitation protected through legislation (such as patents,

copyrights, trade marks) or arising from protection of information as a trade secret, confidential information, and all trade secrets, know-how and other intellectual property.

**"Subscription type"** means the level of subscription and payment chosen in the registration process, or as altered subsequently by agreement with Audit Assistant.

**"The Website"** means the Audit Assistant website at <http://www.auditassistant.com>.

**"The Parties"** means you and Audit Assistant Limited.

**"User"** means any person using or intending to use the Service.

**"You"** means the person or entity who registers to use the Service and includes any entity or agent authorised by that person to use the Service. If the person who registers to use the Service does so on behalf of a company or other entity, that person warrants they have authority to bind that company or other entity to this Agreement, and in that case "you" refers to the company or other entity. "Your" has a corresponding meaning.

**"Your data"** means your own data as input by you while using the Service.

- 13.2 References to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.
- 13.3 Words denoting the singular will include the plural and vice versa.
- 13.4 The words "in particular", "include" and "including" will not be construed as terms of limitation. The words "day" and "month" mean "calendar day" and "calendar month" unless otherwise stated. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated.
- 13.5 The symbol "\$" means New Zealand dollars.
- 13.6 The headings and use of bold type in this Agreement are for convenience only and will not affect the interpretation of any provision of this Agreement.
- 13.7 References to this Agreement or any other document will include any permitted and authorised variation, amendment or supplement to such document.