



Terms and Conditions

These Terms and Conditions were last updated on 16 July 2018, with changes taking effect at midnight on 20 July 2018. Brief summary of changes:

- We have generally made the terms relating to our and your use and handling of data clearer in accordance with the EU General Data Protection Regulation (GDPR), which came into force on 25 May 2018
- Re-Leased has updated its terms and conditions to align with the growth it has had globally into new jurisdictions
- The new terms improve certainty in a number of key respects which benefit both Re-Leased and its customers
- We have also introduced a new disputes procedure to help manage and resolve any disputes that may arise between us
- If you have any comments or concerns, please do not hesitate to email us at legal@re-leased.com.

SUBSCRIPTION AGREEMENT

BY CHECKING THE “I ACCEPT” BOX DISPLAYED AS PART OF THE REGISTRATION PROCESS, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS GOVERNING YOUR SUBSCRIPTION AND USE OF RE-LEASED'S ONLINE PROPERTY MANAGEMENT PLATFORM. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “**YOU**” OR “**YOUR**” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MUST NOT CHECK THE “I ACCEPT” BOX AND YOU MAY NOT USE THE SERVICE. IN THIS AGREEMENT, RE-LEASED AND YOU ARE EACH REFERRED TO AS A “**PARTY**” AND ARE COLLECTIVELY REFERRED TO AS THE “**PARTIES**” (defined below).

The terms and conditions contained in this subscription agreement (this "**Agreement**"), effective as of the date that the Customer has clicked "I Accept" in conjunction with registering to access the Re-Leased Service (the "**Effective Date**"), is by and between you (the "**Customer**") and Re-Leased Software Company Limited, a private limited company organised and existing under the laws of New Zealand (company number 3767620), with its registered office at Level 1, 17 Napier Road, Havelock North, Havelock North, 4130, New Zealand ("**Re-Leased**"). All capitalised terms used in this Agreement not otherwise defined in context shall have the meanings as set out in Clause 14. The Parties agree as follows:

1. Provision of the Service

- 1.1 The Service shall be provided to the Customer via an online, web-based service and/or mobile service, including associated offline components, provided by Re-Leased via <https://www.re-leased.com/> and/or any other websites and applications designated by Re-Leased at any time.
- 1.2 Re-Leased shall make the Service available during the Term in a professional, competent manner in accordance with this Agreement and the Documentation.

2. Customer's Use of the Service

- 2.1 The Customer's use of the Service is governed by this Agreement and the Documentation made available to the Customer at <https://help.re-leased.com/support/home>.
- 2.2 In order to use the Service, the Customer must complete the registration process with Re-Leased and create an Account. To create an Account, the Customer will be required to follow the prompts directed to the Customer by email.
- 2.3 The Customer must conduct its own due diligence into the Service to ensure that the functionality provided by the Service meets the Customer's requirements. Re-Leased does not warrant or represent that the Service, Documentation and/or the information obtained by the Customer through the Service will meet the Customer's requirements.
- 2.4 Through the online and/or mobile interfaces made available by Re-Leased to the Customer, the Customer may access, and enable access of the Service for use by an Authorised User, solely for the internal business purposes of Customer and its Affiliates in accordance with the

Documentation and not for the benefit of any third parties other than Authorised User.

- 2.5 The Customer is responsible for all Authorised Users' use of the Service and compliance with this Agreement.
- 2.6 The Customer shall:
 - 2.6.1 be responsible for the security and confidentiality of the password and all other log-in information related to its Account;
 - 2.6.2 be solely responsible for all activities that occur under its Account;
 - 2.6.3 prevent unauthorised access to, or use of its Account and the Service, and notify Re-Leased promptly of any such unauthorised access or use of which it becomes aware;
 - 2.6.4 be responsible for all Authorised Users' use of the Service and compliance with this Agreement;
 - 2.6.5 have sole responsibility for the accuracy, quality and legality of all Customer Data, as defined in Clause 7 below, including without limitation for providing all relevant notices to individuals and obtaining all relevant consents when required by applicable Laws; and
 - 2.6.6 be liable for the acts and omissions of all Authorised Users and its and their Affiliates relating to this Agreement.
- 2.7 The Customer undertakes that:
 - 2.7.1 it will not allow or suffer any Authorised User's username or password to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Service and/or Documentation;
 - 2.7.2 it will not use the Service in a way that unreasonably degrades the performance of the Service for the Customer's own purposes or for the purposes of Re-Leased or other users, and the Customer will, if notified that the Customer's use of the Service is not reasonable, comply with reasonable service level requests issued by Re-Leased to limit the Customer's use of the service so that it is reasonable;

- 2.7.3 each Authorised User shall keep a secure password, initially issued to it by Re-Leased, for use of the Service and Documentation, such password shall be changed no less frequently than every six months and each Authorised User shall keep their password confidential; and
- 2.7.4 it shall maintain a written, up-to-date list of current Authorised Users and provide such list to Re-Leased within 5 Business Days of Re-Leased's written request at any time or times.
- 2.8 If any password has been provided to any individual who is not an Authorised User, then without prejudice to Re-Leased's other rights, Re-Leased may promptly disable such passwords and Re-Leased shall have the right to not issue any new passwords to any such individual.
- 2.9 Re-Leased shall not be liable for any loss or damage resulting from a failure by the Customer to comply with Clause 2.6 and Clause 2.7 above.
- 2.10 The Customer shall not:
- 2.10.1 use the Service in violation of applicable Laws;
- 2.10.2 in connection with the Service, send or store infringing, obscene, threatening, or otherwise unlawful or tortious material or Malicious Code, including material that violates privacy rights;
- 2.10.3 sell, resell, license, sublicense, distribute, make available, rent or lease any Service, or include any Service in a service bureau or outsourcing offering;
- 2.10.4 attempt to gain access to the Service or its related systems or networks in a manner not set forth in the Documentation;
- 2.10.5 interfere with or disrupt the integrity or performance of the Service in whole or in part or third-party data contained therein;
- 2.10.6 attempt to gain unauthorised access to the Service in whole or in part or its related systems or networks;
- 2.10.7 permit direct or indirect access to or use of the Service in whole or in part in a way that circumvents a contractual usage limit, or use the Service to access or use any of Re-Leased's intellectual property except as permitted under this Agreement or the Documentation;
- 2.10.8 copy the Service or any part, feature, function or user interface thereof;

- 2.10.9 frame or mirror any part of the Service, other than framing on the Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation;
- 2.10.10 access the Service in whole or in part in order to build a competitive product or service or to benchmark with a product or service not developed or provided by Re-Leased; or
- 2.10.11 reverse engineer the Service in whole or in part (except to the extent such restriction is prohibited by law).

3. Fees, Invoices

Payment

- 3.1 The Customer will pay all fees specified for the Service as agreed between the Customer and Re-Leased in the service confirmation email sent by Re-Leased.
- 3.2 Fees for the Service will be invoiced to the Customer, in accordance with the relevant subscription or purchase made through the Service and payment shall be remitted from the Customer's country of residence. Fees shall be due in accordance with the invoice issued by Re-Leased or as otherwise set forth on the Service for the applicable subscription or order and all fees are quoted and payable in the currency of the invoice (unless otherwise agreed).
- 3.3 The Customer shall provide Re-Leased with complete and accurate billing and contact information including a valid email address for receipt of invoices. The Customer will make payments via by credit card, direct debit, standing order or as otherwise agreed between the Customer and Re-Leased. The Customer is asked to supply a remittance advice with each payment. All remittance advice and invoice inquiries can be directed to Re-Leased's Accounts Department. For the avoidance of doubt, this Agreement shall apply to any use of the Service, even if done so on a free or trial basis.
- 3.4 Fees are charged in advance and are non-refundable. Unless required by law, Re-Leased will not provide refunds in connection with the Re-Leased Services.
- 3.5 International Bank fees may be charged for currency conversion and international settlement; and your charge may still be subject to additional

fees even if you are being charged by Re-Leased in your local currency. If your bank statement and/or credit card statement charge differs from your Re-Leased invoice, please contact your bank in the first instance.

Re-Leased is not liable for any additional bank transaction fees that may be charged by your bank or intermediary institutions.

Future functionality

- 3.6 The Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Re-Leased regarding future functionality or features.

Overdue Payments

- 3.7 Any payment not received from the Customer by the relevant due date will accrue interest at the rate of four percent (4%) of the outstanding balance per month above the Reserve Bank of New Zealand base rate from time to time, from the date such payment was due until the date the overdue amount is paid. The Customer shall pay the interest together with the overdue amount.

- 3.8 If the Customer fails to make payment on or before the date on which payment is due, any undisputed Re-Leased Fees, or other fees payable in accordance with the Service Level Agreement, Re-Leased may from time to time charge a late fee (in addition to interest) of:

- (a) two percent (2%) on all unpaid amounts which are between one (1) and fourteen (14) days overdue, and
- (b) four percent (4%) on all unpaid amounts which are more than fourteen (14) days overdue.

Taxes

- 3.9 Re-Leased's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**").
- 3.10 The Customer is responsible for paying all Taxes associated with its purchases under this Agreement. If Re-Leased has the legal obligation to pay or collect Taxes for which the Customer is responsible under this Clause, Re-Leased will invoice the Customer and the Customer will pay that

amount unless the Customer provides Re-Leased with a valid tax exemption certificate authorised by the appropriate taxing authority. For the avoidance of doubt, Re-Leased is solely responsible for taxes assessable against it based on its income, property and employees.

- 3.11 All fees payable to Re-Leased under their Service Level Agreement are net amounts and are payable in full, without deduction for taxes or duties of any kind and the Customer will be responsible for, and will promptly pay, all taxes and duties of any kind (including but not limited to sales, use and withholding taxes) associated with this agreement or Customer's receipt or use of the Services, except for taxes based on Re-Leased net income. In the event that Re-Leased is required to collect any tax for which its Customer is responsible (including but not limited to, Sales Tax, VAT, GST), the Customer will be liable to pay such tax directly to Re-Leased. If Customer pays any withholding taxes that are required to be paid under applicable law, the Customer will pay these directly to taxing authorities above fees due to Re-Leased, but not net against any invoices due to Re-Leased. Customers will furnish Re-Leased with written documentation of all such tax payments, including receipts (if requested by Re-Leased in writing).

Account Usage Verification

- 3.12 Re-Leased may monitor the usage of the Service on its hosted servers to validate the number of subscriptions and/or purchases made through the Service by the Customer and/or its Authorised User. Re-Leased reserves the right to increase the subscription fees payable by the Customer based on the Customer's level of usage of the Service.

4. Changes to the Service

- 4.1 Subject to Clause 8.2.2, Re-Leased may from time to time make changes to the functionality of the Service, for example to make improvements to the Service or to, address a security threat. Re-Leased shall notify the Customer of such changes through the Documentation.

5. Proprietary Rights

Ownership and Reservation of Rights to Re-Leased Intellectual Property

- 5.1 Re-Leased and its licensors own all right, title and interest in and to the Service and Documentation (and any Intellectual Property Rights therein), and other Re-Leased Intellectual Property Rights. Subject to the limited

rights expressly granted in accordance with this Agreement, Re-Leased reserves all rights, title and interest in and to the Service, and Documentation, including all related Intellectual Property Rights. No Intellectual Property Rights are granted to the Customer in accordance with this Agreement other than as expressly set forth in this Agreement.

Grant of Rights

- 5.2 Re-Leased grants the Customer a non-exclusive, non-transferable right to access and use the Service and Documentation, solely for the internal business purposes of the Customer and its Affiliates and solely during the Term, subject to this Agreement, the payment of the fees in accordance with Clause 3 and within the scope of rights specified by the relevant subscription and/or purchase made through the Service.

Ownership of Customer Data

- 5.3 As between Re-Leased and the Customer, the Customer shall own all right, title and interest in and to all Customer Data.

Customer Input

- 5.4 Re-Leased may adapt and use any Customer Input, provided that Re-Leased shall have no obligation to make any improvements based on such Customer Input. The Customer shall have no obligation to provide Customer Input. Re-Leased shall own any Intellectual Property Rights which arise as a result of Re-Leased making any changes to the Service or developing any new services based on Customer Input.

Aggregated Data Use

- 5.5 Subject to Clause 5.4 above, and with the exception of Customer Data, Re-Leased owns the aggregated and statistical data derived from the operation of the Service, including, without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service and the performance results for the Service (the “**Aggregated Data**”). Nothing in this Agreement shall be construed as prohibiting Re-Leased from utilising the Aggregated Data for the purposes of operating Re-Leased's business, provided that Re-Leased's use of Aggregated Data will not reveal the identity, whether directly or indirectly, of any individual or specific data entered by any individual into the Service. In no event shall the Aggregated Data include any Personal Data.

6. Confidentiality

6.1 A Party shall not disclose or use any Confidential Information of the other Party except as reasonably necessary to perform its obligations or exercise its rights pursuant to this Agreement except with the other Party's prior written permission, and only then subject to the disclose agreeing to be bound by binding obligations of confidentiality which shall be no less restrictive than those in this Clause 6.

Protection

6.2 Each Customer agrees to protect the Confidential Information of the other Party in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care.

Compelled Disclosure

6.3 A disclosure by one Party of Confidential Information of the other Party to the extent required by Law shall not be considered a breach of this Agreement, provided the Party so compelled promptly provides the other Party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other Party's cost, if the other Party wishes to contest the disclosure.

Remedies

6.4 If a Party discloses or uses (or threatens to disclose or use) any Confidential Information of the other Party in breach of confidentiality protections in this Agreement, the other Party shall have the right, in addition to any other remedies available, to seek injunctive relief to prohibit such acts, it being acknowledged by the Parties that any other available remedies are inadequate.

Exclusions

6.5 Confidential Information shall not include any information that:

6.5.1 is, or becomes, generally known to the public without breach of any obligation owed to the other Party;

6.5.2 was known to a Party prior to its disclosure by the other Party without breach of any obligation owed to the other Party;

6.5.3 was independently developed by a Party without breach of any obligation owed to the other Party; or

6.5.4 is received from a third party without breach of any obligation owed to the other Party. Customer Data shall not be subject to the exclusions set forth in this Clause.

7. Customer Data

7.1 Definitions: In this Clause, the following terms shall have the following meanings:

7.1.1 "**controller**", "**processor**", "**data subject**", "**personal data**", "**processing**" (and "**process**") and "special categories of personal data" shall have the meanings given in the GDPR; and

7.1.2 "**Applicable Data Protection Law**" shall mean (the EU General Data Protection Regulation (Regulation 2016/679) ("**GDPR**"), together with any other data protection laws applicable to the Services.

7.1.3 Relationship of the parties: Customer (the controller) appoints Re-Leased as a processor to process the Personal Data described in this Agreement for the purposes described in this Agreement (or as otherwise agreed in writing by the parties) (the "**Permitted Purpose**"). Each party shall comply with the obligations that apply to it under Applicable Data Protection Law.

7.1.4 International transfers: Re-Leased shall take such measures to ensure compliance with any data transfer obligations contained in the Applicable Data Protection Law.

7.1.5 Confidentiality of processing: Re-Leased shall ensure that any person it authorises to process the Personal Data (an "**Authorised Person**") shall protect the Personal Data in accordance with Re-Leased's confidentiality obligations under this Agreement.

7.1.6 Security: The processor shall implement technical and organisational measures to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a "**Security Incident**").

7.1.7 Subcontracting: Customer consents to Re-Leased engaging third party subprocessors to process the Personal Data for the Permitted Purpose provided that: (i) Re-Leased maintains an up-to-date list of its subprocessors which is available upon request with 10 business days' notice, which it shall update with details of any change in subprocessors at least 10 days' prior to any such change; (ii) Re-Leased imposes data protection terms on any

subprocessor it appoints that require it to protect the Personal Data to the standard required by Applicable Data Protection Law; and (iii) Re-Leased remains liable for any breach of this Clause that is caused by an act, error or omission of its subprocessor. Customer may object to Re-Leased's appointment or replacement of a subprocessor prior to its appointment or replacement, provided such objection is based on reasonable grounds relating to data protection. In such event, Re-Leased will either not appoint or replace the subprocessor or, if this is not possible, Customer may suspend or terminate this Agreement (without prejudice to any fees incurred by Customer prior to suspension or termination).

- 7.1.8 Cooperation and data subjects' rights: Re-Leased shall provide reasonable and timely assistance to Customer (at Customer's expense) to enable Customer to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Personal Data. In the event that any such request, correspondence, enquiry or complaint is made directly to Re-Leased, Re-Leased shall promptly inform Customer providing full details of the same.
- 7.1.9 Data Protection Impact Assessment: If Re-Leased believes or becomes aware that its processing of the Personal Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform Customer and provide reasonable cooperation to Customer (at Customer's expense) in connection with any data protection impact assessment that may be required under Applicable Data Protection Law.
- 7.1.10 Security incidents: If it becomes aware of a confirmed Security Incident, Re-Leased shall inform Customer without undue delay and shall provide reasonable information and cooperation to Customer so that Customer can fulfil any data breach reporting obligations it may have under (and in accordance with the timescales required by) Applicable Data Protection Law. Re-Leased shall further take such any reasonably necessary measures and actions to remedy or mitigate the effects of the Security Incident and shall keep Customer of all material developments in connection with the Security Incident.

- 7.1.11 Deletion or return of Personal Data: Upon termination or expiry of this Agreement, Re-Leased shall (at Customer's election) destroy or return to Customer all Personal Data in its possession or control. This requirement shall not apply to the extent that Re-Leased is required by applicable law to retain some or all of the Personal Data, or to Personal Data it has archived on back-up systems, which Personal Data Re-Leased shall securely isolate and protect from any further processing except to the extent required by such law.
- 7.1.12 Audit: Upon request and no more than once per calendar year, Re-Leased shall provide Customer with reasonable documentation to demonstrate compliance with the obligations of this clause or submit its facilities to audit by Customer. Such activity shall be at Customer's expense and any audit reports or similar documentation shall be subject to the confidentiality provisions of this Agreement.
- 7.1.13 Sensitive Data: You shall not provide (nor permit any User to provide) any Sensitive Data to Re-Leased. For the purpose of these Terms, "Sensitive Data" shall mean data revealing a person's racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetics, biometrics, health data, data about sex life or sexual orientation, or data about criminal convictions and offences.

8. Warranties & Disclaimers

Warranties

- 8.1 Each Party warrants that it has the authority to enter into this Agreement and, in connection with its performance of this Agreement, shall comply with all Laws applicable to it related to data privacy, international communications and the transmission of technical or Personal Data.
- 8.2 Re-Leased warrants that in respect of any Service provided to the Customer:
- 8.2.1 the Service shall perform materially in accordance with this Agreement and the Documentation; and
- 8.2.2 the functionality of the Service will not be materially decreased when viewed in the aggregate.
- 8.2.3 The Customer warrants that any and all Customer Data is accurate and complete in all respects and does not infringe the Intellectual Property

Rights of any third party.

Warranty Remedies

- 8.3 As the Customer's exclusive remedy and Re-Leased's sole liability for breach of the warranties Clause 8.2 above:
- 8.3.1 Re-Leased shall correct the non-conforming Service at no additional charge to the Customer; or
- 8.3.2 in the event Re-Leased is unable to correct such deficiencies after good-faith efforts, Re-Leased shall refund the Customer amounts paid that are attributable to the defective part of the Service from the date Re-Leased received such notice.
- 8.3.3 Notwithstanding the foregoing, Re-Leased is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.4 To receive warranty remedies, the Customer must promptly report deficiencies in writing to Re-Leased, but in any case no later than ten (10) days of the date the deficiency is first identified by the Customer.

Disclaimer

- 8.5 Except as expressly provided in this Agreement and to the maximum extent permitted by applicable law, Re-Leased makes no warranties of any kind, whether express or implied, statutory or otherwise, and specifically disclaims all implied warranties, including any warranties of merchantability, fitness for a particular purpose or non-infringement with respect to the Service and/or related Documentation. Re-Leased does not warrant that the Service will be error free or uninterrupted. The limited warranties provided in this Agreement are the sole and exclusive warranties provided to the Customer in connection with the provision of the Service.

9. Mutual Indemnification

Indemnification by Re-Leased

- 9.1 Re-Leased shall defend, indemnify and hold the Customer harmless against any loss, damage or costs (including reasonable legal fees) in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought

against the Customer by a third Customer alleging that the use of the Service as contemplated in this Agreement infringes any Intellectual Property Right; provided, however, that the Customer:

- 9.1.1 promptly gives written notice of the Claim to Re-Leased;
 - 9.1.2 gives Re-Leased sole control of the defense and settlement of the Claim (provided that Re-Leased may not settle any Claim unless it unconditionally releases the Customer of all liability); and
 - 9.1.3 provides to Re-Leased, at Re-Leased's cost, all reasonable assistance.
- 9.2 Re-Leased shall not be required to indemnify the Customer to the extent the Claim is caused by:
- 9.2.1 modification of the Service by the Customer or an Authorised User in conflict with the Customer's obligations or as a result of any prohibited activity as set forth in this Agreement;
 - 9.2.2 use of the Service in a manner inconsistent with the Documentation;
 - 9.2.3 use of the Service in combination with any other product or service not developed or provided by Re-Leased; or
 - 9.2.4 use of the Service in a manner not otherwise contemplated by this Agreement.
- 9.3 If the Customer is prohibited from using the Service or Re-Leased reasonably believes it will be prohibited or a claim of infringement will be made, Re-Leased shall have the right, at its sole option, to obtain for the Customer the right to continue use of the Service or to replace or modify the Service so that it is no longer infringing. If neither of the foregoing options is deemed available to Re-Leased in its sole discretion, then use of the Service may be terminated at the option of Re-Leased and Re-Leased's sole liability shall be to refund any prepaid fees for the Service that were to be provided after the effective date of termination.

Indemnification by Customer

- 9.4 The Customer shall defend, indemnify and hold Re-Leased, its subsidiaries and Affiliates, and its and their respective owners, employees, officers, directors and agents harmless from any loss, damage or costs (including reasonable legal fees) in connection with Claims made or brought against Re-Leased by a third Customer arising from an allegation that the Customer

Data infringes the rights of, or has caused harm to a third party, or violates any Law, the breach of this Agreement or the warranties set forth in this Agreement, or the improper act, omission or negligence of the Customer provided, however, that Re-Leased:

- 9.4.1 promptly gives written notice of the Claim to the Customer;
- 9.4.2 gives the Customer sole control of the defense and settlement of the Claim (provided that the Customer may not settle any Claim unless it unconditionally releases Re-Leased of all liability); and
- 9.4.3 provides to the Customer, at the Customer's cost, all reasonable assistance.

10. Limitation of Liability.

Limitation of Liability

- 10.1 To the maximum extent permitted by law and except with respect to the Customer's payment obligations, in no event shall either Party's (or Re-Leased's third party licensors') aggregate liability arising out of or related to the Agreement, whether in contract, tort or otherwise, exceed the fees actually paid by the Customer to Re-Leased in consideration for Re-Leased's Service delivery during the six (6) month period immediately preceding the facts and circumstances from which the claim arose.
- 10.2 Re-Leased shall not exclude or limit in any way Re-Leased's liability to the Customer where it would be unlawful to do so. This includes liability for death or personal injury caused by Re-Leased's negligence or Re-Leased's employees, agents or subcontractors for fraud, fraudulent misrepresentation or for breach of the Customer's legal rights in relation to the Service.

Exclusion of Damages

- 10.3 Except with respect to the Customer's payment obligations, in no event shall either Party have any liability to the other party for any indirect, special, incidental, punitive or consequential damages, however caused, or for any lost profits whether in contract, tort or otherwise, arising out of, or in any way connected with the Service, including but not limited to the use or inability to use the Service, any interruption, inaccuracy, error or omission, even if the party from which damages are being sought or such party's licensors or subcontractors have been previously advised of the possibility of such loss or damages.

11. Term, Termination and Suspension.

Term of Agreement

- 11.1 The term of this Agreement commences on the Effective Date and shall continue until the stated term for the current applicable subscription and/or purchase of the Service has expired, unless otherwise terminated under Clause 11.6 below (the "**Term**").
- 11.2 The Term shall be automatically extended for a one year period following the expiration of the then current Term.
- 11.3 If a Customer does not wish to automatically extend the Term pursuant to Clause 11.2 above, it must notify Re-Leased ninety (90) days prior to the current end of the Term by email.
- 11.4 Re-Leased may amend these terms from time to time and will notify you of changes via email or via notification through the Service. Amended terms are effective from the date that they are published as part of an updated Agreement. Previous versions of this Agreement can be located in [Re-Leased's archive](#). Continued use of the Service following any modification constitutes Customer acceptance of the modified Agreement.

Termination

- 11.5 Either Party may terminate this Agreement:
- 11.5.1 upon thirty (30) days prior written notice to the other Party of a material breach by the other Party if such breach remains uncured at the expiration of such notice period; or
- 11.5.2 immediately upon written notice in the event the other Re-Leased becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.5.3 Re-Leased may terminate this Agreement in the event that the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default no less than thirty (30) days after being notified in writing to make such payment.
- 11.5.4 In the event the Agreement is terminated, subscription to the Customer's Account will be simultaneously terminated.

Effect of Termination

- 11.6 Upon any termination of this Agreement, the Customer shall, as of the date of such termination:
- 11.6.1 immediately cease accessing and otherwise utilising the Service, except as permitted under Clauses 11.11 and 11.12 and Clause 6; and
 - 11.6.2 return and make no further use of any Documentation and other items (and all copies of them) belonging to Re-Leased.
 - 11.6.3 Termination for any reason shall not relieve Customer of the obligation to pay any fees accrued or due and payable to Re-Leased prior to the effective date of termination and termination for any reason other than for uncured material breach by Re-Leased shall not relieve Customer of the obligation to pay all future amounts due through under the Service.

Suspension Rights

- 11.7 Re-Leased shall be entitled to immediately on notice suspend provision of the Service where:
- 11.7.1 the Customer or an Authorised User breaches this Agreement and Re-Leased reasonably believes that such breach has the potential to threaten the security, integrity or availability of the Service or impact any other users of the Service (including Re-Leased other customers); or
 - 11.7.2 the Customer fails to pay any amount due under this Agreement.
- 11.8 Re-Leased shall not be liable for any breach by it of this Agreement which is caused by the suspension of provision of the Service. The Customer shall remain liable for all fees due under this Agreement during the period of any suspension.
- 11.9 Following resolution by the Customer of the issues that gave rise to the right to suspend, Re-Leased shall as soon as reasonably practicable reinstate provision of the Service.

Retrieval of Customer Data.

- 11.10 Upon request by Customer made within thirty (30) days after any expiration or termination of this Agreement, Re-Leased will make all Customer Data available to Customer through the Service as a .csv file (or in such other format as is agreed between the Parties), solely for the purpose of Customer retrieving Customer Data, for a period of up to thirty (30) days after such request is received by Re-Leased. After such period for retrieval

of Customer Data, within sixty (60) days after Customer's written request, Re-Leased will delete the Customer Data by deletion of Customer's Tenant; provided, however, that Re-Leased will not be required to remove copies of the Customer Data from its backup media and servers until such time as the backup copies are scheduled to be deleted, and provided further that in all cases Re-Leased will continue to protect the Customer Data in accordance with this Agreement. The foregoing deletion obligation will be subject to any retention obligations imposed on Re-Leased by Law.

Surviving Provisions.

- 11.11 The following provisions of this Agreement shall not survive and will have no further force or effect following any termination or expiration of this Agreement:
- 11.11.1 Clause 1 (Provision of the Service);
 - 11.11.2 Clause 5.2 (Grant of Rights); and
 - 11.11.3 any subscriptions and/or purchases made through the Service.
 - 11.11.4 All other provisions of this Agreement shall survive any termination or expiration of this Agreement to the extent necessary to give effect to the purpose of such provision.

12. General Provisions

Relationship of the Parties and Third Party Rights

- 12.1 Nothing in this Agreement is intended to or shall give rise to a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

Prevention of Corruption

- 12.2 Each Party warrants that in entering into this Agreement it has not committed any Prohibited Act (defined below).
- 12.3 If a Party or any subcontractor of that Party (or anyone employed by or acting on behalf of any of them) or any of its or their agents commits any Prohibited Act, that act shall be considered a material breach subject to the provisions of Clause 11.6 above (Termination). Depending on the

circumstances of the breach, such remedy may include, but shall not be limited to:

- 12.3.1 the termination of employment (or instruction, if a subcontractor) of the person(s) committing the Prohibited Act;
 - 12.3.2 if necessary, procuring the continued performance of the Agreement (in Re-Leased's case, the Service) by another person(s); and/or
 - 12.3.3 an undertaking by a sufficiently senior executive (director level or above) that the Prohibited Act has been fully investigated and remedied, to the reasonable satisfaction of the innocent Party.
- 12.4 For the purposes of this Clause 12.5, the term "**Prohibited Act**" means
- 12.4.1 the offering, promising or giving of a financial or other advantage to another person (whether directly or through a third party) with the intention to induce that person to perform improperly a relevant function or activity or to reward that person for the improper performance of such a function or activity or knowing or believing that the acceptance of the advantage would constitute the improper performance of such a function or activity; and/or
 - 12.4.2 the requesting, agreeing to receive or acceptance of a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by that person or another person) or improperly performing a relevant function or activity in anticipation of receiving or accepting a financial or other advantage; and/or
 - 12.4.3 the offering, promising or giving of a financial or other advantage to another person (whether directly or through a third party) who is a foreign public official (as defined in the United Kingdom Bribery Act 2010) intending to influence the performance of that foreign public official's functions (whether in the exercise or in omitting to exercise those functions) or otherwise to use the foreign public official's position in order to obtain or retain business or an advantage in the conduct of business; and/or
 - 12.4.4 without limiting the foregoing, any act that is in breach of applicable Law, including those relating to anti-bribery and anti-corruption (including the UK Bribery Act 2010 and US Foreign & Corrupt Practices Act as they may be amended).
- 12.5 In the definition of Prohibited Act above:

- 12.5.1 a "person" includes an individual, partnership, body corporate or other recognized commercial organization; and
- 12.5.2 a "relevant function or activity" shall mean a function or activity if it is of a public nature, or is connected with a business, or is performed in the course of a person's employment or is performed on behalf of a body of persons (whether corporate or unincorporated) and the person performing the function or activity is expected to perform it in good faith, or impartially, or is in a position of trust by virtue of performing it (failure of any one of the above conditions being improper performance of that function or activity) regardless of where in the world such function or activity is performed or should be performed.

Notices

- 12.6 All notices under this Agreement shall be in writing and shall be deemed to have been given upon:
- 12.6.1 personal delivery;
- 12.6.2 the third business day after first class mailing; or
- 12.6.3** the second business day after sending by email with electronic confirmation of receipt. Notices to Re-Leased shall be addressed to **legal@re-leased.com**
- 12.7 Notices to the Customer shall be addressed to the party set forth under the applicable subscriptions and/or purchases through the Service. Each Party may modify its recipient of notices by providing notice pursuant to this Agreement.

Waiver and Cumulative Remedies.

- 12.8 The failure to exercise or delay in exercising a right or remedy provided to a party under this Agreement shall not constitute a waiver of that right or remedy, and no waiver by a party of any breach of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision.
- 12.9 The rights and remedies of the Parties under and in connection with this Agreement are cumulative and not exclusive of any rights and remedies provided by law, and all such rights and remedies may be enforced separately or concurrently with any other right or remedy. Each Party shall pay its own costs and expenses in relation to the negotiation, preparation,

execution and performance of this Agreement and the transactions and arrangements contemplated by this Agreement.

Force Majeure

12.10 Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable in accordance with this Agreement) for causes beyond that Party's reasonable control and not caused by that Party's fault, or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labour problems (other than those involving Re-Leased or Customer employees, respectively), computer attacks or malicious acts, such as attacks on or through the internet, any internet service provider, telecommunications or hosting facility (a "**Force Majeure Event**"), but in each case, only if and to the extent that the non-performing Party is without fault in causing such failure or delay, and the failure or delay could not have been prevented by reasonable precautions and measures and cannot reasonably be circumvented by the non-conforming Party through the use of alternate sources, workaround plans, disaster recovery, business continuity measures or other means. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

Assignment

12.11 The Customer may not assign any of its rights or obligations in accordance with this Agreement, whether by operation of law or otherwise, without the prior written consent of Re-Leased (which will not be unreasonably withheld). Any attempt by the Customer to assign its rights or obligations under this Agreement in breach of this Clause 12.11 shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

12.12 Re-Leased may assign all of its rights or obligations in accordance with this Agreement to any of its group companies, subsidiaries and/or affiliates.

Disputes

12.13 If there is a dispute between the parties in relation to this Agreement (or any previous version of this Agreement), either party must give the other party notice of the nature and details of the dispute, and neither party will commence any Court or arbitration proceedings until the procedure described in this section has been complied with.

- 12.14 Within ten (10) business days of receipt of the notice of dispute, senior managers of the parties shall meet either in person or via electronic means as agreed to endeavour to resolve the dispute in good faith. If the dispute is not resolved within twenty (20) business days of receipt of the notice of dispute, either party may by notice to the other party refer the dispute to mediation. The mediation will be conducted in Auckland, New Zealand and conducted under the LEADR New Zealand Incorporated (“LEADR”) standard mediation agreement. If the parties do not agree on a mediator or the mediator’s fees within ten (10) business days of receipt of the notice of mediation, the mediator shall be appointed or the fees set by the chair of LEADR (or their nominee) at the request of either party
- 12.15 If the dispute cannot be resolved through mediation, then either party may refer the dispute to for adjudication in the Courts according to clause 13 below.

13. Governing Law and Jurisdiction

- 13.1 **General jurisdiction:** For the purposes of dispute resolution, in all situations other than those specified, or if the information or Data You are accessing using the Services and the Website is solely that of a person who is a tax resident in New Zealand at the time that You accept these terms, then New Zealand law governs this Agreement and You submit to the exclusive jurisdiction of the courts of New Zealand for all disputes arising out of or in connection with this Agreement which have not been resolved through negotiation in good faith or mediation; or
- 13.2 **Australia:** If the information or Data You are accessing using the Services and the Website is solely that of a person who is a tax resident in Australia at the time that You accept these terms then Australian law governs this Agreement and You submit to the exclusive jurisdiction of the courts of Australia for all disputes arising out of or in connection with this Agreement which have not been resolved through negotiation in good faith or mediation; or
- 13.3 **United Kingdom:** If the information or Data You are accessing using the Services and the Website is solely that of a person who is a tax resident in the United Kingdom at the time that You accept these terms then this Agreement is governed by the laws of England and Wales and You hereby submit to the exclusive jurisdiction of the courts of England and Wales for all disputes arising out of or in connection with this Agreement which have not been resolved through negotiation in good faith or mediation

Miscellaneous

- 13.4 This Agreement, and the subscriptions and/or purchases through the Service, constitutes the entire agreement between the Parties with respect to the subject matter in this Agreement. In the event of a conflict, the provisions of any subscriptions and/or purchases through the Service shall take precedence over provisions of the body of this Agreement. This Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.
- 13.5 If any provision of this Agreement is or becomes, or is declared by any competent court or body to be, illegal, invalid or unenforceable this shall not affect or impair the legality, validity or enforceability of the remaining provisions of this Agreement.
- 13.6 The Customer permits Re-Leased to use the Customer's name and logo in lists of Customers, on marketing materials and on its website.

14. Definitions

"Account" means a registered account with Re-Leased for the use of the Service.

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control by either party. For purposes of the preceding sentence, "control" means direct or indirect ownership or control of more than fifty per cent (50%) of the voting interests of the subject entity.

"Authorised User" means any of the Customer's:

- (a) employees;
- (b) consultants;
- (c) service providers;
- (d) contractors;
- (e) agents;
- (f) Customer Tenants; and
- (g) third party providers,

authorised to access the Service by the Customer, through their personalised username and password, created by the Customer using Re-Leased products and services.

"Confidential Information" means

- (a) any software utilised by Re-Leased in the provision of the Service and its respective source code;
- (b) Customer Data;
- (c) each party's business or technical information, including but not limited to the Documentation, training materials, any information relating to software plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how that is designated by the disclosing Customers "confidential" or "proprietary" or the receiving party knows or should reasonably know is confidential or proprietary; and
- (d) the terms, conditions, pricing and/or any discounts relating to this Agreement (but not its existence or parties).

"Customer Data" means the electronic data or information submitted by the Customer or Authorised User to the Service, which may include Personal Data.

"Customer Input" means suggestions, enhancement requests, recommendations or other feedback provided by Customer and an Authorised User relating to the operation or functionality of the Service.

"Customer Tenant" means any tenant who is given access to the Service by the Customer to complete his or her respective tenancy process, make payments or access other services.

"Documentation" means Re-Leased's electronic user guide for the Service available at www.releasedsoftware.freshdesk.com/support/home, which may be updated by Re-Leased from time to time.

"Intellectual Property Rights" means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honoured or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.

"Law(s)" means any local, state, national and/or foreign law or laws, treaties, and/or regulations applicable to a respective party.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents or programs.

“Material breach” means a breach (including an anticipatory breach) which is serious in the widest sense of having a serious effect on the benefit which the party alleging the material breach would otherwise derive from a substantial portion of this Agreement over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

"Personal Data" means any information that relates to an identified or identifiable individual.

"Service" means Re-Leased’s software-as-a-service property management platform as described in the Documentation.

"We" or **"Re-Leased"** means Re-Leased Software Company Limited (New Zealand company number 3767620) and any of our related companies.



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pre-COVID19 levels, Australia trending up at 57% for July day 6



With the benefit of hindsight, April and May of 2020 in New Zealand look to be the poorest performing rent collection months across the last 3 years, regardless of the asset class. However, rent collection statistics suggest that this downturn may have subsided already for New Zealand.

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