

# Taxlab Terms of Use

These Terms of Use were last updated on 1 April 2021 and are collectively referred to as “this Agreement”.

Welcome to “Taxlab”, an online software system designed specifically for businesses and accountants for tax compliance and certain statutory financial reporting (**Subscription Services**).

This Agreement is between Taxlab and Customer. Please read this Agreement carefully before registering to use the Subscription Services. By using the Subscription Services, Customer agrees to follow and be bound by this Agreement. Please note that additional terms apply to certain types of customers (e.g., licensed auditors, or registered banks in New Zealand) – these additional terms are set out in clause 16 of this Agreement. If Customer does not agree to this Agreement, Customer and its Authorised Users must not use the Subscription Services.

This Agreement may be varied by Taxlab at any time, effective upon the posting of modified terms through the Taxlab Website, within the Subscription Services, or as otherwise notified to Customer in writing (including by email). Customer will ensure that it, and its Authorised Users, have read, understood and agreed to the most recent version of this Agreement posted on the Taxlab Website, within the Subscription Services, or as otherwise notified to Customer.

## 1. Definitions and Interpretation

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1.1 In this Agreement, unless the context otherwise requires or it is specified otherwise:

**Administration Portal** means the portal accessible within the Subscription Services by users authorised by the Customer that allows the Customer to:

- (a) add, remove or change Authorised Users;
- (b) add, remove or change Subscription Services;
- (c) configure or customise any part of the Subscription Services; and
- (d) add, remove or change details in relation to the Customer’s account with Taxlab;

**Affiliate** means any entity that controls, is controlled by or is under common control with a party;

**Anonymised** means data from which all Customer Data and any other data that identifies any other entity has been removed, so that it is no longer possible to re-identify an individual or other entity from the information;

**Arbitration Legislation** means:

- (a) the Arbitration Act 1996 (NZ) and the Resolution Institution Arbitration Rules, where the Taxlab Entity is Taxlab New Zealand; or
- (b) Commercial Arbitration Act 2011 (Vic) and the Resolution Institution Arbitration Rules, where the Taxlab Entity is Taxlab Australia;

**Authorised Users** means, where Customer is using the Subscription Services:

- (a) for its own internal business purposes, any employee, contractor, officer or agent of Customer who is authorised by Customer to access and use the Subscription Services and Documentation; or
- (b) to provide accounting and/or tax advisory services (including where Customer is a licensed auditor) to its clients, only employees, contractors, officers or agents of Customer but not the Customer's clients;

**Basic Support Services** has the meaning given to that term in clause 4.3;

**Business Day** means a day other than a Saturday, Sunday or public holiday in:

- (a) Auckland, New Zealand, where the Taxlab Entity is Taxlab New Zealand; or
- (b) Melbourne, Australia, where the Taxlab Entity is Taxlab Australia;

**Calculations** has the meaning given to that term in clause 10.4(e);

**Claim** has the meaning given to that term in clause 10.9;

**Confidential Information** has the meaning set out in clause 9.2;

**Customer** means the entity that has entered into this Agreement with the relevant Taxlab Entity for the provision of the Subscription Services;

**Customer Data** means the data inputted, imported, and/or uploaded, by Customer for the purpose of using the Subscription Services or facilitating Customer's use of the Subscription Services, including, where applicable, Authorised Users' data and Personal Data;

**Dispute** has the meaning given to that term in clause 13.1;

**Documentation** means the documentation (if any) made available to Customer by Taxlab (whether in hardcopy or electronic form) which sets out a description of the Subscription Services and the user instructions for the Subscription Services;

**End User Terms and Conditions** means the relevant terms and conditions of this Agreement that apply to the Authorised Users' access and use of the Subscription Services, and any other terms that are made available through the Subscription Services (as may be amended from time to time by Taxlab);

**Effective Date** means the date that Taxlab provides Customer with access to the Subscription Services;

**Extended Support Services** means extended support services for the Subscription Services provided to Customer if it has purchased such support as part of its subscription to the Subscription Services, as set out at [www.taxlab.online/extended-support-services-and-service-levels-schedule/](http://www.taxlab.online/extended-support-services-and-service-levels-schedule/);

**Force Majeure Event** means an event as described under clause 14.1;

**Harmful Code** means any thing or device (including any software, code, file or program) which may:

- (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- (b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or
- (c) adversely affect the user experience, including worms, trojan horses, malware, viruses and other similar things or devices.

**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;

**Intellectual Property Warranty** has the meaning set out in clause 10.1(b);

**Jurisdiction** means:

- (a) New Zealand, where the Taxlab Entity is Taxlab New Zealand; or
- (b) Australia, where the Taxlab Entity is Taxlab Australia;

**Other User Data** has the meaning set out in clause 5.5;

**Personal Data** means any information, including information in electronic form, relating to a living person who can be identified:

- (a) from that information; or
- (b) from that information and the use of additional information, taking into account all means reasonably likely to be used by anyone to identify the person directly or indirectly; and

includes, without limitation, first and last names, ID numbers, including government-issued identifiers, personal dates such as birthdates, email addresses, location data, internet protocol address or other online identifiers and information concerning race, ethnicity or mental or physical health. For clarity, Personal Data includes personal data that is publicly available and excludes personal data that has been Anonymised so that it is no longer possible to re-identify an individual from the information, taking into account all means reasonably likely to be used by Taxlab or anyone else to re-identify an individual;

**Privacy Policy** means Taxlab's privacy policy accessible from the Taxlab Website at [www.taxlab.online/taxlab-privacy-policy/](http://www.taxlab.online/taxlab-privacy-policy/), within the Subscription Services, or other URL address notified to Customer by Taxlab from time to time. If there is any inconsistency between the Privacy Policy and these Terms of Use, these Terms of Use will prevail to the extent of any inconsistency;

**Purpose** means:

- (a) Customer's own accounting and tax compliance purposes; and
- (b) if Customer is an accounting firm and/or licensed auditor, the accounting and tax compliance purposes of that Customer's clients;

**Services** means the Subscription Services, Basic Support Services and Extended Support Services (where applicable);

**Subscription Fee** means:

- (a) the subscription fee payable by Customer to Taxlab for the access and use of the Subscription Services by Authorised Users;
- (b) such other fee for functionality, entity numbers, data volumes or anything else Customer is subscribed for,

as set out on the Taxlab Website at [www.taxlab.online/taxlab-pricing/](http://www.taxlab.online/taxlab-pricing/);

**Subscription Level** has the meaning given to that term in clause 3.2;

**Subscription Services** has the meaning described at the beginning of this Agreement, which is accessible via the Taxlab Website;

**Taxlab** means the Taxlab Entity invoicing Customer for the provision of the Subscription Services, and which has entered into this Agreement with Customer;

**Taxlab Entity** means either:

- (a) Taxlab Limited (**Taxlab New Zealand**); or
- (b) Taxlab Australia Pty Limited (**Taxlab Australia**);

**Tax Office** means, where the Jurisdiction is:

- (a) New Zealand, the Inland Revenue Department; or
- (b) Australia, the Australian Taxation Office;

**Tax Office Conditions** means the conditions subject to which Taxlab has been authorised by a relevant Tax Office to provide the Subscription Services as specified in the Tax Office Conditions Schedule at [www.taxlab.online/tax-office-conditions-schedule/](http://www.taxlab.online/tax-office-conditions-schedule/)

**Taxlab Website** means [www.taxlab.online](http://www.taxlab.online) or any sub-domains or other URL address notified to Customer by Taxlab from time to time;

**Term** means the term commencing on the Effective Date and ending on termination or expiry of this Agreement in accordance with the terms of this Agreement;

**Terminating Party** has the meaning given to that term in clause 11.2;

**Third Party Provider** has the meaning set out in clause 10.5(b).

1.2 In this Agreement, unless the context requires otherwise:

- (a) words importing one gender include the others;
- (b) words importing the singular or plural number include the plural and singular number respectively;

- (c) headings are inserted for the sake of convenience of reference only and do not affect the interpretation of this Agreement; and
- (d) a **person** includes any individual, corporation, unincorporated association, government department or municipal authority.

## 2. Access to Subscription Services

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2.1 Taxlab grants to Customer a non-exclusive, non-transferable right to:

- (a) access and use the Subscription Services that Customer has subscribed to, and the relevant Documentation; and
- (b) permit the Authorised Users to access and use the Subscription Services and the Documentation,

during the Term, solely for the Purpose, all on the terms and conditions set out in this Agreement.

2.2 Customer will:

- (a) ensure that only Customer and Authorised Users access and use the Subscription Services and the Documentation;
- (b) keep secure logins and passwords for Customer's access and use of the Subscription Services and Documentation and keep such logins and passwords confidential;
- (c) procure that the Authorised Users keep secure logins and passwords for their access and use of the Subscription Services and Documentation and keep such logins and passwords confidential;
- (d) procure that the Authorised Users comply with the End User Terms and Conditions and acknowledges that:
  - (i) Taxlab will have no liability to Authorised Users (whether direct or indirect) arising out of or in connection with their use of the Subscription Services;
  - (ii) any act or omission of Authorised Users relating to the use of the Subscription Services will be treated as Customer's act or omission; and
  - (iii) Taxlab may terminate or change any access privileges or authority Customer has granted to any Authorised User if Taxlab considers that the relevant Authorised User is in breach of this Agreement or puts Customer in breach of this Agreement;
- (e) permit Taxlab to actively monitor and audit the Subscription Services to establish whether the Subscription Services are being used in accordance with this Agreement;
- (f) promptly disable any login account if Taxlab discovers that any login details have been provided to any party that is not an Authorised User;

- (g) on demand, pay to Taxlab an amount of any underpayment of Subscription Fees discovered by Taxlab; and
- (h) be responsible for determining the level of access that each Authorised User has to access and use the Subscription Services, and Customer acknowledges that Taxlab will not be responsible for Customer's use of, inability to use, or incorrect use of, the Subscription Services arising out of or in connection with:
  - (i) any act or omission of the Authorised Users; or
  - (ii) Customer incorrectly granting a level of access to an Authorised User, which that Authorised User is not entitled to.

2.3 Customer will not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
  - (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Subscription Services and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Subscription Services;
- (b) access all or any part of the Subscription Services and Documentation to build a product or service which competes with the Subscription Services and/or the Documentation;
- (c) use the Subscription Services and/or Documentation to provide services to third parties (other than to Authorised Users in accordance with this Agreement) except to the extent such use is included in the functionality of the Subscription Services;
- (d) make the Subscription Services and/or Documentation available to any third party except the Authorised Users;
- (e) attempt to undermine the integrity or security of:
  - (i) the Subscription Services; or
  - (ii) Taxlab's, or any third party's systems, networks or resources used in the provision of the Subscription Services;
- (f) attempt to gain unauthorised access to any information or materials other than those to which Customer has been given express permission to access as part of the Subscription Services;
- (g) attempt to obtain, or assist third parties in obtaining, access to the Subscription Services and/or Documentation, other than as provided under this clause 2; or

- (h) access, store, distribute or transmit any Harmful Code, and Taxlab may, without liability to Customer, disable Customer's access to the Subscription Services if Customer is in breach of this clause.
- 2.4 Customer will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Taxlab.
- 2.5 If the Authorised User is authorised by the Customer as an administrator of the Customer's account with Taxlab, Authorised User may access the Administration Portal.

### 3. **Change in Authorised Users and Subscription Levels**

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- 3.1 Customer may add, remove or change the number of Authorised Users by accessing and using the Administration Portal. Taxlab will grant, remove or change access to the Subscription Services and the Documentation for the relevant Authorised Users as soon as practicable in accordance with the provisions of this Agreement.
- 3.2 The parties acknowledge and agree that Customer may choose different subscription options or levels where offered by Taxlab as part of the Subscription Services (**Subscription Level**). If Customer changes its Subscription Level, no refunds will be paid or credits provided if the Subscription Fees for the new Subscription Level are lower than the Subscription Fees paid for the previous Subscription Level. If Customer changes to a Subscription Level where the Subscription Fees are more than the Subscription Fees for the previous Subscription Level, the balance already paid for the rest of the term for the previous Subscription Level will be credited to Customer's account for the new Subscription Level. Taxlab will charge Customer for any net amount due as a result of the change to Subscription Level and Customer's renewal date for the new Subscription Level will be reset to the next available billing day.
- 3.3 If Customer downgrades its Subscription Level, that may cause the loss of content, or features or capacity in relation to the Subscription Services. If Customer chooses to change its Subscription Level, Taxlab does not accept any liability for the resulting loss of data, content, features or capacity.

### 4. **Services**

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- 4.1 Taxlab will, during the Term, provide the Subscription Services and make available the Documentation to Customer on and subject to the terms of this Agreement.
- 4.2 Taxlab will use commercially reasonable endeavours to provide the Subscription Services.
- 4.3 Taxlab will provide Customer with basic helpdesk and/or other services in relation to the Subscription Services (**Basic Support Services**). Taxlab may at any time suspend, discontinue, or change the Basic Support Services without notice to Customer. Customer may change its Subscription Level to include the provision of Extended Support Services.
- 4.4 Customer acknowledges that Taxlab regularly upgrades and updates the Subscription Services and that the Subscription Services are continually evolving. Taxlab may update, upgrade and/or vary the Subscription Services at any time

provided that the changes do not cause a breach of the security obligations set out in this Agreement.

- 4.5 Customer will, where required, upgrade its software and/or equipment to make efficient use of the Subscription Services. Taxlab will provide Customer with reasonable notice of any such upgrades required by the Customer.

## 5. Customer Data and Security

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- 5.1 Taxlab acknowledges and agrees that Customer and/or the other Authorised Users will own all rights, title and interest in and to all of the Customer Data and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

- 5.2 Where Customer Data comprises personal information or data (as may be defined in privacy legislation in the relevant Jurisdiction), Taxlab's Privacy Policy at [www.taxlab.online/taxlab-privacy-policy/](http://www.taxlab.online/taxlab-privacy-policy/), will apply.

- 5.3 Customer acknowledges and agrees, and Customer will procure that other Authorised Users acknowledge and agree, that Taxlab may be approved by the Tax Office under the relevant legislation or otherwise in the Jurisdiction, to store taxpayers' records outside of the Jurisdiction. As part of receiving this approval Customer agrees to Taxlab:

- (a) holding Customer Data in a form approved by the Tax Office;
- (b) ensuring that Customer Data is accessible by the Tax Office in a way approved by the Tax Office; and
- (c) complying with the Tax Office Conditions.

- 5.4 Taxlab may use Customer Data for the purpose of:

- (a) performing Taxlab's obligations under this Agreement;
- (b) ensuring that Customer is complying with this Agreement;
- (c) ensuring that the Authorised Users are complying with the End User Terms and Conditions;
- (d) improving or enhancing the Subscription Services; and
- (e) performing data analysis, machine learning, or cross entity analysis, on an Anonymised basis, including in the manner contemplated in clause 5.5,

provided that Taxlab complies with its confidentiality obligations under clause 9.

- 5.5 Taxlab's Subscription Services may offer Customer the ability to benchmark Customer Data against the data provided by other users of the Subscription Services (**Other User Data**) and to receive the results of such benchmarking. If Customer wishes to benefit from the benchmarking offered by Taxlab's Subscription Services Customer must opt-in to participate in the benchmarking by selecting the relevant option in the Administration Portal or such other location within the Subscription Services. If Customer is involved in any benchmarking exercises, Customer agrees to Taxlab using Customer Data to benchmark against Other User Data. Taxlab may, from time to time, provide Customer with such benchmarking

results. Taxlab does not systematically and/or independently verify Customer Data or Other User Data entered into the Subscription Services by Customer or other users of the Subscription Services. Therefore, Customer acknowledges that any benchmarking or other report generated by the Subscription Services may not be accurate, and under no circumstances does Taxlab guarantee the accuracy of any reports generated by the Subscription Services, or accept liability for any form of loss or damage arising out of Customer's use of reports generated through the use of the Subscription Services.

- 5.6 Each party will take appropriate technical, physical and organisational security measures and safeguards against unauthorised or unlawful processing of the Customer Data or its accidental loss, destruction or damage and Taxlab will, as part of these measures, back-up Customer Data on a regular basis. Customer acknowledges that if there is any loss or damage to Customer Data, the Customer's sole and exclusive remedy will be for Taxlab to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Taxlab. Taxlab will not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 5.7 Each party will notify the other party as soon as reasonably practicable if it becomes aware of any security breach resulting in loss, destruction, or damage to Customer Data, and Taxlab will immediately make available appropriately skilled personnel to Customer to address such breach or occurrence.
- 5.8 Unless otherwise agreed between the parties in writing, Taxlab is under no obligation to prepare or complete security assessments or questionnaires for Customer.

## **6. Customer's Obligations**

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- 6.1 Customer will:
- (a) provide Taxlab with all necessary co-operation in relation to this Agreement, and all necessary access to such information as may be required by Taxlab, so that Taxlab can provide the Services including but not limited to Customer Data, security access information and configuration services. Customer warrants that it is authorised to provide the foregoing information and/or access to Taxlab so that Taxlab can provide the Services to Customer;
  - (b) comply with all applicable laws and regulations in respect of the collection, use and disclosure of personal information that is included in Customer Data with respect to the use of the Subscription Services and its activities under this Agreement;
  - (c) ensure that it, and its Authorised Users, use(s) the Subscription Services and the Documentation in accordance with this Agreement and the End User Terms and Conditions;
  - (d) be responsible for all acts and omissions of the other Authorised Users as if those acts and omissions are those of Customer;
  - (e) ensure that its network and systems comply with the relevant specifications as may be specified by Taxlab from time to time; and
  - (f) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Taxlab's data centres, and

all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or caused by the internet.

## **7. Charges and Payment**

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- 7.1 Customer will pay to Taxlab the Subscription Fees for the Subscription Services in accordance with this clause 7.
- 7.2 Taxlab will issue a valid tax invoice to Customer for the Subscription Fees at the end of each month. Unless otherwise specified by Taxlab, payment of each invoice will be payable on the 20th of the month following the date of the invoice. Payment details will be specified on the invoice.
- 7.3 If Customer fails to pay any invoice when due then without prejudice to any other rights and remedies of Taxlab:
- (a) Taxlab may, without liability to Customer, disable access to all or part of the Subscription Services, and Taxlab will be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and/or
  - (b) interest will accrue on such due amounts at an annual rate equal to 2% over the then current base overdraft rate of Taxlab's bankers calculated from the due date until the date the amount is paid in full.
- 7.4 If Customer disputes in good faith the whole or any portion of any valid tax invoice, Customer will pay the portion of the valid tax invoice that is not in dispute, but may withhold payment of the disputed portion until the dispute is resolved.
- 7.5 All amounts stated or referred to in this Agreement are exclusive of GST and any other taxes, levies and duties (if any), which will be paid for by Customer.
- 7.6 If Customer is required by law to deduct or withhold taxes or charges from the amounts due to Taxlab under this Agreement, Customer will ensure that the amount due to Taxlab is increased so that the payment actually made to Taxlab equals the amount due to Taxlab as if no such taxes or charges had been imposed.
- 7.7 Taxlab may change the Subscription Fees at any time by giving Customer at least 30 days' prior written notice.

## **8. Intellectual Property Rights**

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- 8.1 Customer acknowledges and agrees that Taxlab and/or its licensors own all Intellectual Property Rights:
- (a) in, or created during the performance of, the Services (except Customer Data); and
  - (b) in the Documentation,
- together with all modifications, enhancements and other developments to the Services and Documentation (whether or not recommended or suggested by Customer).

- 8.2 Except as expressly stated in this Agreement, this Agreement does not grant Customer any rights to, or in, the Intellectual Property Rights, or any other rights or licences in respect of the Services or the Documentation.
- 8.3 Taxlab acknowledges and agrees that, subject to clause 8.1, Customer owns the Intellectual Property Rights in Customer Data. Customer grants to Taxlab a non-exclusive right to use Customer Data in the manner set out or contemplated in this Agreement, and to perform its obligations under this Agreement.
- 8.4 Taxlab confirms that it has all the rights in relation to the Subscription Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

## 9. Confidentiality

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- 9.1 Each party will treat as confidential all information obtained from the other pursuant to this Agreement. Neither party will divulge such information to any persons (except to its employees (for whom that party will be responsible) and then only to those employees who need to know) without the other party's prior written consent.
- 9.2 In relation to either party, **Confidential Information** means any information relating to the business or affairs of that party and includes, without limitation, its designs, drawings, manufacturing know how, object codes, source codes, planned modifications to hardware or software, planned enhancements to hardware or software, product knowledge, quality standards, research and development, unpublished specifications, technical information, pricing, manipulated data, business plans, business processes, methodologies, techniques, general know-how, costs and margins, customer lists, financial data, internal price information, market research, marketing plans, sales forecasts and trade secrets, and in the case of Customer, includes the Customer Data and personal information of individuals provided to Taxlab by Customer.
- 9.3 The obligations of confidentiality set out in this Agreement will not apply to Confidential Information which:
- (a) is authorised by the disclosing party in writing to not have obligations of confidentiality attached;
  - (b) at the time of execution of this Agreement is in the public domain or subsequently enters the public domain through no fault on the part of the receiving party or any other person who has similar confidentiality obligations owed to the disclosing party;
  - (c) the receiving party can show by written record was in the receiving party's lawful possession prior to disclosure and had not been obtained by the receiving party from the disclosing party;
  - (d) the receiving party can show by written record has been lawfully disclosed to the receiving party by a third party having the right to disclose it; or
  - (e) is independently developed by the receiving party without the benefit or use of any of the disclosing party's Confidential Information or knowledge derived from such Confidential Information.
- 9.4 If the recipient of any Confidential Information is required by any applicable law, court or authority, or professional association, to disclose such Confidential Information to any person, it will:

- (a) give the disclosing party prompt written notice of the disclosure, where practicable before it occurs, so that the disclosing party has sufficient opportunity to prevent the disclosure through appropriate legal means;
  - (b) disclose only that part of the Confidential Information which the recipient's legal advisors consider is legally required to be disclosed; and
  - (c) use all reasonable endeavours to obtain an assurance that the Confidential Information disclosed will be treated confidentially by the recipient.
- 9.5 Subject to clause 11.4(d), each party will on demand and, in any event, on termination of this Agreement, deliver to the other party all Confidential Information and any other document supplied by or obtained from the other party.
- 9.6 This clause 9 will survive termination of this Agreement.

## 10. Warranties and Liability

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- 10.1 Taxlab warrants that:
- (a) the Subscription Services will function substantially as described in the Documentation; and
  - (b) to the best of its knowledge and belief the Subscription Services do not infringe the copyright of any third party (**Intellectual Property Warranty**) and Taxlab will indemnify Customer against any loss or damage that Customer incurs arising out of a breach by Taxlab of the Intellectual Property Warranty.
- 10.2 If the Subscription Services do not function substantially in accordance with the Documentation, Taxlab will, at its option, either:
- (a) modify the Subscription Services to conform to the Documentation; or
  - (b) provide a workaround solution.
- If neither of the options in paragraphs (a) or (b) is commercially feasible, either party may terminate this Agreement by giving written notice to the other party, in which case Taxlab will refund to Customer all Subscription Fees pre-paid to Taxlab for unused Subscription Services. Such correction or substitution constitutes Customer's sole and exclusive remedy for any breach of the warranty set out in clause 10.1.
- 10.3 Taxlab will not be liable for a breach of the warranty in clause 10.1 to the extent of any non-conformance which is caused by use of the Subscription Services contrary to the Documentation and any other Taxlab instructions, or modification or alteration of the Subscription Services by any party other than Taxlab or Taxlab's duly authorised contractors or agents.
- 10.4 Taxlab does not warrant:
- (a) that Customer's use of the Subscription Services will be uninterrupted or error-free;
  - (b) that the Subscription Services, Documentation and/or the information obtained by Customer through the Subscription Services will always be available, either in its current form or at all;

- (c) that Taxlab will support, maintain or continue to offer the Subscription Services;
- (d) that the Subscription Services, Documentation and/or the information obtained by Customer through the Subscription Services will meet Customer's requirements; and
- (e) the accuracy, correctness, reliability and completeness of any information, formulae, or calculation provided through the use of the Subscription Services (together referred to as **Calculations**). Customer acknowledges the results from any Calculations are for informational purposes only, and that the assumptions used and figures generated are for purposes of illustration and reference only, and are subject to change depending on a variety of factors, which may not have been taken into account in the computation. To the maximum extent permitted by law, Taxlab will not be liable for any form of loss or damage, arising out of or in connection with Customer's reliance on and use of the Subscription Services. Customer agrees that it will not rely solely on the Calculations and will carry out its own calculations (other than by using the Subscription Services) to verify the accuracy, correctness, reliability and completeness of the Calculations.

10.5 Customer acknowledges that:

- (a) Taxlab is not Customer's accountant, tax or other professional advisor and Customer is solely responsible for ensuring the accuracy and correctness of any inputs (including Customer Data), output or result from Customer's use of the Subscription Services;
- (b) Taxlab may rely on the provision of services by third parties (including data centre, electricity, telecommunications and outsourcing providers) in order to provide the Subscription Services (**Third Party Providers**) and that the Subscription Services may be subject to limitations, delays and other problems inherent in the use of such services provided by Third Party Providers; and
- (c) Taxlab will not be responsible for any delays, delivery failures, 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, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

10.6 Each party warrants that it is in compliance with all laws, including privacy laws, applicable to the performance of its obligations under this Agreement.

10.7 Except as expressly set out in this Agreement, the Subscription Services and the Documentation are provided on an "as is" basis and all representations, conditions or warranties (whether express or implied, statutory or otherwise, and including warranties of merchantability and fitness for a particular purpose) in respect of the Subscription Services and Documentation are expressly excluded.

10.8 Customer will indemnify Taxlab against all costs, losses, expenses and damages arising out of or in connection with, or incurred through:

- (a) any claims by a third party against Taxlab resulting from use of the Subscription Services and the Documentation by Customer and/or other Authorised Users; and
- (b) any breach of this Agreement by Customer.

- 10.9 Except where Taxlab has liability to Customer under clause 10.1(b) and unless stated otherwise in this Agreement, Taxlab will not be liable to Customer under the law of tort, contract or otherwise for any claim, damages or liability (collectively referred to as a **Claim**), including loss of profits, loss of revenue, loss of data, or any direct, indirect, consequential or special loss or damage suffered or incurred by Customer, however caused, arising out of or in connection with this Agreement.
- 10.10 If, despite clause 10.10, Taxlab is found liable for any Claim (including where Taxlab has liability to Customer under clause 10.1(b)), then to the maximum extent permitted by law, Taxlab's liability arising out of all Claims under this Agreement will not exceed in aggregate an amount equal to the Subscription Fees actually paid by Customer to Taxlab in the 12 months prior to time the liability arises.
- 10.11 Customer acknowledges and agrees that no Authorised User (other than Customer) may make a claim in relation to this Agreement provided that where any Authorised User suffers any loss or damage which, if suffered by Customer, would be recoverable from Taxlab then Customer may make that claim on the Authorised User's behalf. Customer will indemnify Taxlab against any claims made by any Authorised User in relation to this Agreement.

## 11. Term and Termination

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- 11.1 This Agreement is in full force and effect during the Term.
- 11.2 Either party (**Terminating Party**) may terminate this Agreement without cause by giving the other party at least:
- (a) 30 days' prior written notice, where Customer is the Terminating Party; or
  - (b) 120 days' prior written notice, where Taxlab is the Terminating Party.
- 11.3 Either party may terminate this Agreement if the other party:
- (a) is in material breach of this Agreement and fails to remedy such breach within 14 days of receiving notice from the other party specifying the breach and requiring it to be remedied; or
  - (b) goes into liquidation or has a receiver or statutory manager appointed of any of its assets, becomes insolvent or makes any arrangement with creditors.
- 11.4 On termination of this Agreement for any reason:
- (a) all licences granted under this Agreement will immediately terminate and Customer must cease using the Subscription Services and the Documentation;
  - (b) each party will return, and make no further use of, any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - (c) Taxlab will retain Customer Data for such period reasonably required so that it can comply with relevant laws, regulations and the Tax Office Conditions (if any). Taxlab will also hold Customer Data in the form approved by the Tax Office, and allow the Tax Office to access Customer Data in a way approved by the Tax Office;

- (d) Following Customer's written request, Taxlab will provide Customer, and/or allow Customer to export, a copy of Customer Data in a meaningful and usable format specified by Taxlab within 30 Business Days of Customer's request. Customer acknowledges that exported Customer Data cannot be used as a restore function and may not be suitable for import or upload as part of any subsequent subscription to the Subscription Services and/or any other third party system;
- (e) Provided that Taxlab is complying with relevant laws, regulations and Tax Office Conditions and has met its obligations under clause 11.4(d), at any time following termination of this Agreement, Taxlab:
  - (i) will, if requested by Customer in writing or through functionality within the Subscription Services, permanently delete any Customer Data from any of its production or other systems, where reasonably practical to do so; or
  - (ii) may at its discretion and by providing at least 30 days' prior written notice to Customer, permanently delete any Customer Data from any of its production or other systems;
- (f) Customer acknowledges and agrees that:
  - (i) it may not be reasonably practical to permanently delete Customer Data where such Customer Data is held in backups; and
  - (ii) permanently deleted Customer Data cannot be recovered;
- (g) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination (including clauses 5.3 and 11.4) will not be affected or prejudiced;
- (h) (except where Customer has terminated in accordance with clause 11.3), Customer will:
  - (i) not be entitled to a refund of any Subscription Fees pre-paid to Taxlab for unused Subscription Services; and
  - (ii) be liable to pay the Subscription Fees on a pro-rata basis for each day up to and including the date of termination of this Agreement to the extent that Customer has not paid for the use of the Subscription Services on those days;
- (i) notwithstanding clause 11.4(b) Taxlab may retain and continue to use after termination of this Agreement any aggregated and Anonymised data that is derived from the Customer Data.

## 12. Subcontracting

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- 12.1 Taxlab may subcontract any of its obligations under this Agreement without obtaining Customer's prior written consent.
- 12.2 Where Taxlab subcontracts or transfers any of its material obligations under this Agreement it will provide Customer with at least 30 days prior written notice of the subcontract or transfer.

- 12.3 Taxlab will not be relieved from any of its liabilities or obligations under this Agreement as a result of any subcontracting.

## 13. Disputes

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- 13.1 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 paragraphs of this clause, except where the party seeks urgent interlocutory relief.
- 13.2 A party claiming the Dispute has arisen must give written notice to the other party specifying the nature of the Dispute.
- 13.3 On receipt of that notice, the parties will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means.
- 13.4 If the Dispute is not resolved within 15 Business Days of the notice being given pursuant to clause 13.2 (or within such further period agreed in writing by the parties), either party may, by giving written notice to the other party, require the Dispute to be determined by the arbitration of a single arbitrator. The arbitrator will be appointed by the parties or, failing agreement within 5 Business Days of the notice requiring arbitration, by:
- (a) the President of the New Zealand Law Society, where the Taxlab Entity that has entered into this Agreement is Taxlab New Zealand; or
  - (b) the President of the Law Institute of Victoria, where the Taxlab Entity that has entered into this Agreement is Taxlab Australia,

on application of either party. The arbitration will be conducted as soon as possible and in accordance with the provisions of the Arbitration Legislation.

## 14. Force Majeure

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- 14.1 Taxlab will have no liability to Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, failure of a utility service or transport or telecommunications network or service of a Third Party Provider, act of God, war, riot, civil commotion, malicious damage, epidemic, pandemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, provided that Customer is notified of such an event and its expected duration. A strike, lockout or labour dispute involving a party's personnel does not excuse that party from its obligations under this Agreement.

## 15. General

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- 15.1 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understanding or agreements on that subject matter.
- 15.2 This Agreement will not be deemed to create a partnership, joint venture or agency relationship of any kind between the parties.

- 15.3 If any part or a provision of this Agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this Agreement will continue to operate.
- 15.4 A provision or a right under this Agreement may not be waived except in writing signed by the party granting the waiver.
- 15.5 A party may exercise a right, power or remedy under this Agreement at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party under this Agreement does not prevent a further exercise of that or of any other right, power or remedy.
- 15.6 This Agreement may be varied by Taxlab at any time, effective upon the posting of modified terms on the Taxlab Website, within the Subscription Services or as otherwise notified to Customer in writing (including by email). Customer will ensure that it has read, understood and agreed to the most recent terms posted on the Taxlab Website, within the Subscription Services or as otherwise notified to Customer.
- 15.7 Customer will not, and will procure that other Authorised Users 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 Taxlab.
- 15.8 Notices and other communications under this Agreement are to be given in writing by email, personal delivery or by post and must be sent to the correct email or address of the receiving party. The email address for email notices to Taxlab is [legal@taxlab.online](mailto:legal@taxlab.online)
- 15.9 A notice or communication in relation to this Agreement will be deemed to be received:
- (a) in the case of a letter, on the third Business Day after posting;
  - (b) in the case of email, on the Business Day on which the email is successfully delivered; and
  - (c) in the case of personal delivery, when delivered.
- 15.10 This Agreement will be governed by and construed in accordance with the laws of the place where the Taxlab Entity is incorporated, being:
- (a) New Zealand, where the Taxlab Entity that has entered into this Agreement is Taxlab New Zealand; or
  - (b) the Commonwealth of Australia, and where relevant, the State of Victoria, Australia where the Taxlab Entity that has entered into this Agreement is Taxlab Australia.

If Customer seeks to bring any claim or other action against Taxlab arising out of or in connection with this Agreement, then Customer must bring that claim or other action against Taxlab in the relevant Jurisdiction.

## 16. Additional Terms Applicable to Certain Customers

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- 16.1 This clause 16 sets out additional terms that apply to Customer and Taxlab if Customer meets certain criteria. The terms set out below will apply to Customer and Taxlab, to the extent applicable.

### Extended Support Services and Service Levels

- 16.2 Additional terms apply to Customer if it has subscribed to the Extended Support Services and Service Level Agreement and these terms are set out in the Extended Support Services and Service Level Schedule at [www.taxlab.online/extended-support-services-and-service-levels-schedule/](http://www.taxlab.online/extended-support-services-and-service-levels-schedule/).

### Extended Security Warranty

- 16.3 If Customer has subscribed to the Extended Security Warranty then Taxlab warrants that it meets or exceeds the security controls set out in the Extended Security Warranty Schedule at [www.taxlab.online/extended-security-warranty-schedule/](http://www.taxlab.online/extended-security-warranty-schedule/) in accordance with ISO/IEC 27001:2013.

### Extended Security Questionnaire Service

- 16.4 Additional terms apply to Customer if it has subscribed to the Extended Security Questionnaire Service as follows:
- (a) Customer will request in writing that Taxlab complete a security questionnaire;
  - (b) Taxlab will, within a commercially reasonable timeframe following such request, complete the security questionnaire;
  - (c) Customer may only request one request in any 12 month period;
  - (d) Customer agrees that responses to security questionnaires are at a point in time and do not override this Agreement, Taxlab's security controls, or Taxlab's compliance with ISO/IEC 27001:2013; and
  - (e) Customer acknowledges that it is solely responsible for evaluating Taxlab's responses to security questionnaires and determining whether they are appropriate and adequate for Customer's own security policies. Taxlab is not required to change any aspect of its security controls, the Subscription Services, and/or its operations following Customer's review of Taxlab's responses.

### Customers that are Accounting Firms and/or Licensed Auditors

- 16.5 If agreed by Taxlab in writing, if Customer is an accounting firm and/or licensed auditor, it may enter into this Agreement on behalf of its member firms that are in the same jurisdiction as Customer (**Member Firms**). The parties acknowledge and agree that:
- (a) Customer must identify the Member Firms to Taxlab in writing;

- (b) the rights granted, and the benefits flowing, under this Agreement are intended to be for the benefit of Customer and its Member Firms and that this Agreement creates obligations on the part of Taxlab that are enforceable at the suit of Customer and its Member Firms pursuant to Part 2, Subpart 1 of the Contract and Commercial Law Act 2017;
- (c) where any loss is suffered by a Member Firm under this Agreement, that loss will be treated as a loss to Customer (**Member Firm Loss**);
- (d) Customer will procure that none of its Member Firms will bring any claim against Taxlab under this Agreement provided that where any Member Firm Loss is suffered by a Member Firm, Customer may make a claim against Taxlab relating to the Member Firm Loss on the relevant Member Firm's behalf;
- (e) any act or omission of a Member Firm will be deemed to be an act or omission of Customer;
- (f) Taxlab will not bring any claim against a Member Firm under this Agreement and Taxlab may only bring any such claim against Customer;
- (g) except as set out in this clause, it is agreed that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

16.6 Taxlab will not use any Confidential Information (including any Confidential Information that relates to a Customer that is an accounting firm and/or licensed auditor or its clients) to contact Customer's clients directly, including for marketing purposes. Nothing in this clause will prevent Taxlab from contacting a client of the Customer where Taxlab has a relationship with that client, or a right to contact that client, which is independent of this Agreement and does not use any Confidential Information obtained by Taxlab under or in relation to this Agreement.

16.7 Additional terms apply to Customer if it is a licensed auditor, as follows:

- (a) Customer acknowledges that Taxlab does not monitor licensed auditor registers and agrees that it must notify Taxlab in writing that it is a licensed auditor in order for these terms to apply;
- (b) Taxlab acknowledges Customer may require certain information to enable Customer to determine whether this Agreement or any Services provided in connection with it, results or may appear to result in Customer, Customer's Affiliates, or any of their clients, ceasing to be independent of an audit or assurance client or ceasing to comply with professional obligations or regulations;
- (c) where Customer requires any such information from Taxlab, Customer will notify Taxlab in writing of the information required;
- (d) following Customer's written request under this clause, Taxlab agrees to provide to Customer (to the extent that it is reasonably able to do so) the information requested by Customer, as soon as reasonably practicable;
- (e) Taxlab will notify Customer as soon as reasonably practicable following:
  - (i) any changes to the directors appointed to Taxlab or any Affiliate of Taxlab; or

- (ii) any person acquiring or becoming entitled to 10% or more of the issued share capital of Taxlab or any Affiliate of Taxlab, or becoming entitled to 10% or more of the voting rights in Taxlab or any Affiliate of Taxlab; and
- (f) Customer may terminate this Agreement in whole or in part by written notice to Taxlab if Customer reasonably believes that its continued participation in this Agreement results or may appear to result in Customer, Customer's Affiliates, or any of their clients, ceasing to be independent of an audit or assurance client or ceasing to comply with professional obligations or regulations.

### **Customers Utilising Single Sign-On with the Australian Tax Office**

16.8 If Customer uses Subscription Services functionality to access its accounts on the Australian Tax Office's systems using a single sign-on process, Customer warrants that it has met the following minimum requirements:

- (a) it has control over the access management solution (e.g. Customer has an active directory and does not use social media to log in);
- (b) it has a strong encryption protocol in place (e.g. TLS1.2);
- (c) it has a password management policy in place which covers length and complexity (including salt and hashing);
- (d) it enforces a brute force lockout regime; and
- (e) its software application is positioned behind a firewall and generates security alerts.

16.9 Customer acknowledges and agrees that:

- (a) Taxlab, through Customer's use of the Subscription Services, is not providing an agent service and is not responsible for the preparation of any taxation, superannuation or other related documents on behalf of Customer or its clients; and
- (b) Taxlab can, however, submit transmissions (e.g., lodgements and prefill) through the Standard Business Reporting (SBR) channel that Customer or its clients chooses to make through the use of the Subscription Services.

### **Customers Utilising Taxlab APIs for Sending Data to Third Parties**

16.10 If Customer uses the Subscription Services to send any data that was received from an Inland Revenue electronic service (**Inland Revenue Sourced Data**) to a third party through a Taxlab application programming interface or other means from the Subscription Services, then to ensure that the Inland Revenue Commissioner's taxpayer information disclosure obligations under the Tax Administration Act 1994 are met:

- (a) Customer warrants that, prior to using Subscription Services functionality to send Inland Revenue Sourced Data to a third party, Customer holds the necessary taxpayer authorisations from each taxpayer it represents permitting Customer to authorise Taxlab to send Inland Revenue Sourced Data to a third party;

- (b) Customer acknowledges that Inland Revenue may from time to time require Taxlab to provide evidence of the necessary taxpayer authorisations and agrees to provide Taxlab with copies of the necessary taxpayer authorisations when requested for the sole purpose of providing them to Inland Revenue for review; and
- (c) Customer acknowledges and agrees that Inland Revenue may require Taxlab to suspend the provision of Inland Revenue Sourced Data sharing functionality within the Subscription Services without notice if Customer does not provide copies of the necessary taxpayer authorisations when requested (within a reasonable timeframe) or if Inland Revenue determines that the necessary taxpayer authorisations are not sufficient.

### **Customers subject to New Zealand BS11 Outsourcing Policy Requirements**

- 16.11 If Customer is a registered bank under the Reserve Bank of New Zealand Act 1989 and meets the definition of a Large Bank under the Reserve Bank of New Zealand's BS11 Outsourcing Policy:
- (a) Taxlab agrees to maintain and test (on at least an annual basis) business continuity and disaster recovery plans and capability designed to enable continuous availability of the Subscription Services in accordance with Taxlab's ISO/IEC 27001:2013 certification;
  - (b) Taxlab agrees to activate business continuity and disaster recovery plans and capability when required to do so under these plans in accordance with Taxlab's ISO/IEC 27001:2013 certification;
  - (c) Taxlab agrees that when requested by Customer, Taxlab will provide Customer with evidence that Taxlab's business continuity and disaster recovery plans are in place and regularly tested in accordance with Taxlab's ISO/IEC 27001:2013 certification;
  - (d) Customer acknowledges that it is solely responsible for evaluating Taxlab's business continuity planning and disaster recovery capability and determining whether they are appropriate and adequate for BS11 Outsourcing Policy purposes;
  - (e) If a statutory manager has been appointed under section 117 of the Reserve Bank of New Zealand Act 1989 or section 38 of the Corporations (Investigation and Management) Act 1989 to manage Customer then:
    - (i) Taxlab irrevocably agrees that any notice of termination Taxlab has given Customer within 20 Business Days preceding the date the statutory manager was appointed is deemed to be withdrawn; and
    - (ii) Taxlab irrevocably agrees that clause 11.3(b) of this Agreement does not apply and Taxlab will not, while Customer is under statutory management, terminate this Agreement or suspend the Subscription Services, and Customer agrees to continue to pay Taxlab the Subscription Fees in accordance with this Agreement except that Taxlab may terminate this Agreement if:
      - (A) the statutory manager has given Taxlab written consent to terminate this Agreement;

- (B) the statutory manager suspends the payment of any fees owing to Taxlab under this Agreement prior to the statutory management taking effect (except if the suspension is due to Taxlab's material breach of this Agreement); or
  - (C) following the appointment of the statutory manager, Customer materially breaches this Agreement and that breach cannot be remedied within 20 Business Days;
- (f) If Taxlab receives a request from the Reserve Bank of New Zealand for documentation and/or information under the BS11 Outsourcing Policy in relation to the Subscription Services and this Agreement:
  - (i) Taxlab agrees to immediately notify Customer of the request (unless Taxlab has been instructed not to by the Reserve Bank of New Zealand);
  - (ii) Taxlab agrees to validate the authenticity of the request with the Reserve Bank of New Zealand before providing any documentation and or information;
  - (iii) Taxlab agrees to provide to the Reserve Bank of New Zealand the requested documentation and/or information in accordance with timetables Taxlab agrees with the Reserve Bank of New Zealand;
  - (iv) Customer agrees that, notwithstanding any confidentiality obligations that would otherwise apply, Taxlab may provide any information or documents to the Reserve Bank of New Zealand in response to such a request; and
  - (v) Taxlab agrees not to disclose or advertise to any third party that the Reserve Bank of New Zealand has asked questions or requested information or conducted an inspection;
- (g) If Customer receives a request from the Reserve Bank of New Zealand for documentation and/or information under the BS11 Outsourcing Policy in relation to the Subscription Services and this Agreement, Taxlab agrees:
  - (i) to assist Customer with meeting its obligation to provide to the Reserve Bank of New Zealand the requested documentation and or information;
  - (ii) that Taxlab will not communicate or correspond directly with the Reserve Bank of New Zealand in relation to this request;
  - (iii) that, notwithstanding any confidentiality obligations that would otherwise apply, Customer may provide any information or documents to the Reserve Bank of New Zealand in response to such a request; and
  - (iv) that Taxlab will not disclose or advertise to any third party that the Reserve Bank of New Zealand has asked questions or requested information or conducted an inspection;
- (h) When requested by Customer, Taxlab agrees to provide Customer with the legal name, physical address, and address for service, of the entity providing the Subscription Services to Customer. Taxlab agrees that Customer may provide these details, along with details of fee arrangements, this Agreement

and an overview of the Subscription Service to the Reserve Bank of New Zealand.