

# **Professional Services Agreement Terms and Conditions**

Updated 24 June 2025



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# **PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. THEY WERE LAST UPDATED ON 24 JUNE 2025**

## **Background**

LawHawk can provide, and the Customer can take and pay for, Professional Services.

The specific terms that will apply to each Professional Service will be set out in a separate Professional Services Order.

These Terms set out the general terms that will apply to the Professional Services and are applicable if incorporated into a Professional Services Order or in the circumstances set out in clause 2.2.

## **1 Application and Conflict of Terms**

- 1.1 These Terms apply in respect of the Professional Services (as defined in these Terms). For the avoidance of doubt, it does not apply to any Technology Licensing Services which are covered by the Technology Licensing Terms, or any other services LawHawk provides to the Customer.
- 1.2 To the extent of any conflict between these Terms and:
  - (a) the general terms and conditions on <https://www.lawhawk.nz/terms-conditions>, or any Customer terms and conditions, these Terms will prevail;
  - (b) LawHawk's Technology Licensing Terms, the Technology Licensing Terms will prevail unless expressly stated otherwise in these Terms or the relevant Professional Services Order;
  - (c) the relevant Professional Services Order, the Professional Services Order will prevail.

## **2 Particular Professional Services**

- 2.1 The scope, cost and specific requirements for the Professional Services are as set out in the relevant Professional Services Order. When a Professional Services Order is agreed, the Agreement forms the complete statement of the Customer's requirements and any performance criteria.
- 2.2 If the Customer and LawHawk do not formally agree upon and execute a Professional Services Order, and LawHawk provides Professional Services at the Customer's request anyway, these Terms will still apply and the Customer will pay LawHawk's standard reasonable charges in accordance with these Terms.

- 2.3 If LawHawk provides the Customer with any support or remedial services, it will perform these in accordance with the terms of the applicable Professional Services Order.

### **3 General Obligations**

- 3.1 Both Parties agree to:

- (a) be open, honest, respectful and fair;
- (b) discuss matters affecting the Agreement or the delivery of the Professional Services, whenever necessary;
- (c) recognise that both Parties are busy, but find ways to avoid delays and keep the Professional Services moving forward efficiently. Without limitation this will include responding to phone calls, emails or texts promptly, even if just a brief update on status and timing;
- (d) identify and work towards solving problems quickly and effectively;
- (e) recognise each other's roles and responsibilities in achieving successful contract outcomes;
- (f) work together to provide excellent service and value for money, whilst ensuring the spirit of the Agreement is met;
- (g) assist each other in achieving a high level of customer service and quality service provision; and
- (h) comply with all applicable laws and regulations.

### **4 LawHawk's Obligations**

- 4.1 LawHawk must deliver the Professional Services:

- (a) to the required performance standards or quality set out in the relevant Professional Services Order or as otherwise agreed in writing between the parties;
- (b) within the amounts agreed as charges for the Professional Services, and
- (c) with reasonable care, skill and diligence, and in accordance with Good Industry Practice.

- 4.2 LawHawk will use reasonable endeavours to deliver the Professional Services by the dates agreed in the relevant Professional Services Order.

- 4.3 LawHawk must:

- (a) ensure that its Personnel have the necessary skills, experience, training and resources to successfully deliver the Professional Services; and

- (b) If LawHawk is at the Customer's premises or is given access to the Customer's systems, LawHawk must observe the Customer's policies and procedures, including those relating to health and safety, and security requirements. The Customer must tell LawHawk what the relevant policies and procedures are, and either give LawHawk a copy of them or provide an internet link.

## **5 The Customer's Obligations**

### **5.1 The Customer must:**

- (a) provide LawHawk with any information and co-operation it has reasonably requested to enable the delivery of the Professional Services and to meet and enforce its obligations and rights under the Agreement;
- (b) carry out all other Customer responsibilities set out in the Agreement (including making decisions, testing and providing feedback and giving approvals) in a timely and efficient manner and as more specifically agreed in the relevant Professional Services Order. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, LawHawk may adjust any agreed timetable or delivery schedule as reasonably necessary and will be entitled to a reasonable increase in the charges to reflect any additional cost to LawHawk of providing the Professional Services to the Customer (which may include costs of people or other resources to the extent they were scheduled and are unable to be redeployed to other revenue earning activities);
- (c) pay LawHawk the charges for the Professional Services as long as LawHawk has delivered the Professional Services and invoiced the Customer in accordance with the Agreement;
- (d) not use the Professional Services, or any outputs of them, in any way that is illegal or in breach of the Agreement; and
- (e) always retain its own unautomated version(s) of the documents automated under the Agreement including as updated from time to time (whether at the Customer's request or as suggested by LawHawk as part of any Professional Services or Technology Licensing Services from time to time).

## **6 Changes**

- 6.1 Sometimes the Professional Services may require changes that weren't expected at the outset. This can involve less or more cost to the Customer. If this happens, the change will be managed in accordance with the relevant Professional Services Order. If no change process is specified the following process will be followed:

- (a) A Project Change Request (**PCR**) is the vehicle for communicating change. The PCR must describe the change, the rationale for the change, and the effect the change will have on the project.
- (b) The requesting party will review the proposed change and determine whether to submit the request to the other party.
- (c) Both parties will review the proposed change and approve it for further investigation or reject it. LawHawk and the Customer must mutually agree upon any charges for such investigation, if any. If the investigation is authorised, the parties will sign the PCR, which will constitute approval for the investigation charges. LawHawk will invoice Customer for any such charges. The investigation will determine the effect that the implementation of the PCR will have on pricing, schedule and other terms and conditions of the Agreement.
- (d) Upon completion of the investigation, both parties will review the impact of the proposed change, and if mutually agreed, a Change Authorisation will be executed.
- (e) A written Change Authorisation and/or PCR must be signed by both parties to approve implementation of the investigated changes.
- (f) LawHawk and the Customer will both try and agree (acting reasonably) upon a variation (including a price variation) to the relevant Professional Services Order. If the Customer and LawHawk cannot come to a written agreement, the supply of the Professional Services will continue as already agreed.

## 7 Deliverables and other Services

- 7.1 If there is no acceptance testing process and warranty period agreed in the relevant Professional Services Order, this clause 7 will apply. Once LawHawk has supplied a Deliverable or other Professional Service to the Customer, the Customer will have 5 days (called the “**Review Period**”) to check if it conforms to the relevant Professional Services Order. At the end of the Review Period the Customer must either:
- (a) accept the Professional Service as conforming to the Agreement; or
  - (b) tell LawHawk in writing all deviations between the Professional Service and the Agreement.
- 7.2 LawHawk will resolve any actual deviations that the Customer identifies under clause 7.1 within a reasonable period of time. Once LawHawk has done this the Customer will review the Professional Service again under clause 7.1. If there are any deviations requiring only minor corrections, or the deviations do not affect the functionality of the Professional Service, the Professional Service will be considered accepted, and LawHawk will correct the deviation within a reasonable time after acceptance.

7.3 It is important that the Customer carefully reviews the Professional Services, because once a Professional Service is accepted the Customer confirms that LawHawk has completed all its responsibilities in respect of the Professional Service. The Customer will be deemed to have accepted a Deliverable if the Customer:

- (a) does not notify LawHawk in accordance with clause 7.1; or
- (b) uses the Professional Service for any purpose other than reviewing it under clause 7.1 (for example, if the Customer uses a Professional Service for productive purposes).

## **8 Charges and Payment**

8.1 The charges will be set out in the relevant Professional Services Order.

8.2 LawHawk will provide a valid GST invoice electronically to the Customer for the Professional Services. Except as agreed otherwise in writing, the charges are non-refundable.

8.3 The Customer will pay all invoices by the 20th of the month following the date of the invoice, without set-off or deduction. Subject to clause 8.4, if the Customer does not pay outstanding charges within 5 Business Days' of LawHawk's notice of an overdue invoice, the Customer will, if asked by LawHawk, pay interest, at the rate of 2% above the published overdraft interest rate charged by LawHawk's primary bank, on the amount due from the due date for payment until full payment has been made (after as well as before judgment). Interest will accrue daily and must be paid by the Customer on demand. At the end of each calendar month unpaid interest will compound so that it forms part of the unpaid sum on which interest will accrue. The Customer will pay all expenses (including legal costs on a solicitor-client basis) incurred by anyone in the recovery of any monies that the Customer owes to LawHawk. LawHawk may also elect to restrict or suspend the provision of any Professional Services or other services it provides the Customer until it receives payment in full.

8.4 If the Customer disputes any part of the charges in good faith, it may withhold the disputed part of the invoice if it:

- (a) provides LawHawk with a written explanation of the grounds for the dispute by the due date for the relevant invoice; and
- (b) pays the undisputed part of the invoice by the due date for payment.

This is the only time that the Customer may withhold any of the charges. The disputed part of the invoice will be resolved in accordance with clause 13.

8.5 Except to the extent set out otherwise in the relevant Professional Services Order, the Customer will reimburse LawHawk for any actual and reasonable out of pocket expenses incurred by LawHawk in the performance of its obligations (for example, travel costs).

- 8.6 If LawHawk agrees to provide the Customer with a set number of hours or set value of Professional Services within a particular period (for example, X hours or \$Y of support per month), unless otherwise agreed, any unused hours or value will not accrue to the following period. Any additional work will be charged at LawHawk's then standard rates or as otherwise agreed, in accordance with the Agreement.
- 8.7 In relation to clause 8.6, it is the Customer's responsibility to schedule the use of committed Professional Services sufficiently in advance to ensure the availability of LawHawk staff. LawHawk will allocate staff to committed Professional Services with at least the same priority as incoming requests for new Professional Services from any other customers.

## **9 Intellectual Property Rights**

- 9.1 Pre-existing Intellectual Property Rights remain the property of their current owner.
- 9.2 New Intellectual Property Rights in Deliverables (and any modifications, adaptations or developments of Deliverables) become the property of the Customer when they are created.
- 9.3 New Intellectual Property Rights in the Automation IP (and any modifications, adaptations or developments of Automation IP) become the property of LawHawk when they are created. The Customer will not get title to the Automation IP, as it is licensed and not sold.
- 9.4 Subject to payment of all agreed charges, LawHawk grants to the Customer a perpetual and non-exclusive licence to use Intellectual Property Rights in the Automation IP for its own internal use in relation to the relevant document or documents covered by the scope of the Professional Services, on the basis that:
- (a) unless LawHawk agrees in writing, the Customer will not have any direct access to the Automation IP. The Customer will have the ability to use the Automation IP via the relevant "interview" questionnaire through the Technology Licensing Services to generate customised documents; and
  - (b) in any event, no licence is granted for the Customer or anyone else to commercialise any Automation IP and the Customer must not copy, modify, reverse engineer, create derivative works from, sub-licence, assign, transfer or otherwise distribute or share the Automation IP or associated "interview" questionnaire (including by making them available directly to clients via the internet, HotDocs desktop software, or otherwise) without the prior written consent of LawHawk; and
  - (c) any charges for such licence will be set out in the relevant Professional Services Order or otherwise agreed in writing.

The Customer acknowledges that LawHawk's charges and agreement to work with the Customer have been made on this basis.

- 9.5 LawHawk warrants that it is legally entitled to do the things stated in clause 9.4 with the Intellectual Property Rights in the Automation IP.



- 9.6 LawHawk warrants that Pre-existing and New Intellectual Property Rights provided by LawHawk and incorporated in the Professional Services and Automation IP do not infringe the Intellectual Property Rights of any third party.
- 9.7 LawHawk indemnifies the Customer in respect of any expenses, damage or liability incurred by the Customer in connection with any third party claim that the delivery of the Professional Services or Deliverables to the Customer or the Customer's use of them, infringes a third party's rights.
- 9.8 The Customer warrants that Pre-existing and New Intellectual Property Rights provided by or on behalf of the Customer to LawHawk do not infringe the Intellectual Property Rights of any third party.
- 9.9 The Customer indemnifies LawHawk in respect of any expenses, damage or liability incurred by LawHawk in connection with any third party claim that any information provided by or on behalf of the Customer to LawHawk (including any Word Documents or guidance information), or the Customer's use of that information, infringes a third party's rights.

## **10 Confidential Information**

- 10.1 Each Party confirms that it has adequate security measures to protect the other party's Confidential Information from unauthorised access, or use by third parties, and will not use or disclose the other Party's Confidential information to any person other than:
- (a) as necessary to perform its obligations or exercise its rights under the Agreement;
  - (b) with prior written approval of the other Party;
  - (c) as required by law; or
  - (d) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.
- 10.2 Each Party will ensure its Personnel comply with the confidentiality obligations in the Agreement as if they applied to those Personnel personally.
- 10.3 If LawHawk has access to personal information, LawHawk (including all of its Personnel) will exercise due care and skill in the handling and storage of any such information, and all personal information must be managed in accordance with the Privacy Act 2020.
- 10.4 LawHawk will immediately notify the Customer of any privacy breaches, breaches of the Privacy Act 2020 by LawHawk or any unauthorised access to Customer Data and Confidential Information.
- 10.5 The obligations under this clause survive termination of the Agreement.

## 11 Force Majeure

- 11.1 A Party (the "**affected Party**") will not be liable for any failure or delay in performance of any obligations under the Agreement to the extent such failure or delay is due to a Force Majeure Event, provided that the affected Party:
- (a) promptly notifies the other Party ("**non affected Party**") of the nature and extent of the Force Majeure Event and keeps the non affected Party reasonably informed of the steps the affected Party is taking to mitigate and remedy the Force Majeure Event;
  - (b) uses reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under the Agreement to the extent reasonably practicable; and
  - (c) resumes full performance as soon as reasonably practicable.
- 11.2 The non affected Party will be relieved of its corresponding obligations to the same extent the affected Party is relieved of its obligations due to this clause 11.
- 11.3 If the Force Majeure Event prevails for a continuous period of more than one month:
- (a) either Party may terminate the Agreement by giving 10 Business Days' notice to the other Party;
  - (b) on the expiry of the notice period referred to in clause 11.3(a), the Agreement will terminate; and
  - (c) neither Party will have any liability to the other in respect of any termination of the Agreement under clause 11.3(b), but such termination will be without prejudice to rights and liabilities which have accrued prior to termination.

## 12 Disclaimers, Exclusions and Limitation of Liability

The Customer acknowledges and agrees to the following:

- 12.1 LawHawk is a New Zealand company (separate from its owners, directors and employees). The Customer's relationship is solely with LawHawk, and not with any of its owners, directors or employees. LawHawk is not and does not intend to be a lawyer or a law firm or anything else referred to in section 21 of the Lawyers and Conveyancers Act 2006 (whether or not any of its owners, directors and employees are a lawyer or any of those things). LawHawk is not (and cannot be relied on as) providing legal advice.
- 12.2 LawHawk strongly recommends that the Customer takes legal, IT and other advice specific to the Customer's circumstances and objectives. In some circumstances, LawHawk may be able to introduce the Customer to lawyers or other suppliers who may be able to help the Customer. However:

- (a) it is entirely up to the Customer to decide what further advice it takes, and who from;
- (b) LawHawk is not acting as agent or in any other capacity for or on behalf of any other person;
- (c) the Customer is entirely responsible for all costs and other obligations incurred in obtaining any legal or other advice;
- (d) LawHawk has no responsibility or liability to the Customer beyond Professional Services provided to the Customer directly by LawHawk, including in connection with any additional advice or services the Customer does or does not take.

12.3 Notwithstanding any input by LawHawk, the content and adequacy of the documents, Deliverables and other aspects of the Professional Services (including the base template, the interview questions and associated guidance, and any draft documents generated in connection with the Professional Services) are solely the responsibility of the Customer. The Customer must test the Professional Services for these matters, and must promptly review each document generated and satisfy itself that the document meets its particular requirements. LawHawk cannot, and does not, monitor the Customer's use of the Professional Services and the documents produced.

12.4 Except as expressly provided in the Agreement all representations or warranties (statutory, express or implied and including under the Contract and Commercial Law Act 2017), except any which may not lawfully be excluded, are excluded. The Customer acknowledges and agrees that it is acquiring the Professional Services for the purposes of a business and accordingly the provisions of the Consumer Guarantees Act 1993 will not apply to such supply.

12.5 Nothing in the Agreement will limit or exclude LawHawk's or the Customer's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of confidentiality or Intellectual Property Rights;
- (d) any other liability which cannot be limited or excluded by applicable law.

12.6 Subject to clause 12.5:

- (a) neither party to the Agreement will have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits, revenue, business or goodwill; costs of procuring substitute services; business interruption; or indirect or consequential loss arising under or in connection with the Agreement;

- (b) If any of LawHawk's obligations in relation to a Professional Service are not complied with and re-performance of the relevant Professional Service is reasonably possible, LawHawk's sole liability and the Customer's sole remedy is re-performance of the non-conforming Professional Services;
  - (c) In all other cases, LawHawk's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with a Professional Service will be limited to the total charges paid and payable by the Customer for that Professional Service; and
  - (d) the Customer's total liability to LawHawk, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with a Professional Service will be limited to the total charges paid and payable by the Customer for that Professional Service.
- 12.7 The remedies in clauses 12.6(b) and 12.6(c) are only available to the Customer if the Customer notifies LawHawk of any defect in the Professional Services within 30 days of acceptance.
- 12.8 Each party will use reasonable endeavours to mitigate any losses, claims and costs it incurs as a result of breach by the other.
- 12.9 Any liability of a party to the other for loss or damage of any kind will be reduced to the extent that loss or damage was caused or contributed to by the other party.
- 12.10 LawHawk's only obligations are to the Customer. LawHawk excludes all liabilities to any third party (including any users authorised by the Customer and any customers of the Customer) arising in any way in connection with the use of the Professional Services by the Customer or anyone the Customer has authorised to use the Professional Services (excluding any fees and charges LawHawk incurs in the ordinary course of providing the Professional Services).

## **13 Resolving Disputes**

- 13.1 The Customer and LawHawk will attempt to resolve any dispute in good faith by senior level negotiations (this may include mediation using the services of an agreed mediator).
- 13.2 If a dispute is referred to mediation, the mediation will be conducted:
- (a) by a single mediator agreed by the Parties or if they cannot agree, appointed by the Chair of the Resolution Institute;
  - (b) on the terms of the Resolution Institute standard mediation agreement; and
  - (c) at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Chair of the Resolution Institute.
- 13.3 Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 13.

- 13.4 If the dispute is not resolved through negotiation or mediation the New Zealand Courts will have exclusive jurisdiction, over all claims that may arise out of or in connection with the Agreement.
- 13.5 Each of LawHawk and the Customer irrevocably waives any claim that an action is brought in an inconvenient forum, or that the New Zealand Courts do not have jurisdiction.
- 13.6 If there is a dispute, each Party will continue to perform its obligations under the Agreement as far as practical given the nature of the dispute.
- 13.7 Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 13.1, unless court action is necessary to preserve a Party's rights.

## 14 Ending the Agreement

- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) it is entitled to terminate in accordance with clause 14.2;
  - (b) the other party commits a material breach of the Agreement and such breach cannot be remedied;
  - (c) the other party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
  - (d) the other party is or states that it is insolvent or unable to pay its debts as they fall due, enters into any composition or arrangement with its creditors, is wound up or doing any act which would render it liable to be wound up, or has a liquidator, provisional liquidator, receiver or official manager appointed over all or any of its property; or
  - (e) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.2 Termination by a Party if a breach has not been remedied:
- (a) If a Party fails to meet the requirements of the Agreement (**defaulting Party**) and the other Party (**non-defaulting Party**) reasonably believes that the failure can be remedied, the non-defaulting Party must give a Notice (**default Notice**) to the defaulting Party.
  - (b) A default Notice must state:
    - (i) the nature of the failure;
    - (ii) what is required to remedy it; and
    - (iii) the time and date by which it must be remedied.

- (c) The period allowed to remedy the failure must be reasonable given the nature of the failure.
- (d) If the defaulting Party does not remedy the failure as required by the default Notice, the non-defaulting Party may terminate the Agreement immediately by giving a further Notice.

14.3 On giving or receiving a Notice of termination:

- (a) LawHawk must stop providing the Professional Services; and
- (b) Each party must use reasonable endeavours to mitigate any losses, claims and costs it incurs as a result of the termination of the Agreement.

14.4 On termination or expiry of the Agreement, each Party must, if requested by the other Party, immediately return or securely destroy all relevant Confidential Information and other material or property belonging to the other Party.

14.5 The termination or expiry of the Agreement does not affect those rights of each Party which:

- (a) accrued prior to the time of termination or expiry; or
- (b) relate to any breach or failure to perform an obligation under the Agreement that arose prior to the time of termination or expiry.

14.6 If the Agreement is terminated other than due to the default of the Customer, the Customer:

- (a) will only be liable to pay charges that were due for Professional Services delivered before the effective date of termination; and
- (b) may recover from LawHawk or set off against sums due to LawHawk, any charges paid in advance that have not been incurred.

## **15 The Contractual Relationship**

15.1 Nothing in the Agreement constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. LawHawk is responsible for the liability of its own, and its Personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to LawHawk's business or the engagement of its Personnel.

15.2 Neither Party has authority to bind or represent the other Party in any way or for any purpose.

## **16 Privacy**

16.1 LawHawk agrees:

- (a) to use or disclose Personal Information obtained only for the purposes of delivering Professional Services and complying with the Agreement;
- (b) not to do anything that would breach an information privacy principle contained in the Privacy Act 2020, which if done or engaged in by an agency under the Privacy Act 2020, would be a breach of that information privacy principle;
- (c) to otherwise comply with the Privacy Act 2020 and any code established under the Privacy Act 2020;
- (d) to immediately notify the Customer if LawHawk becomes aware of any breach or possible breach of the Privacy Act 2020 whether by it or any of its subcontractors; and
- (e) to ensure that any of LawHawk's Personnel who are required to deal with Personal Information for the purposes of the Agreement are made aware of and comply with the obligations set out in this clause 16.

## 17 Notices

- 17.1 All Notices to a Party must be delivered by hand or sent by post, courier, or email to that Party's address for Notices stated in the relevant Professional Services Order.
- 17.2 Notices must be signed or in the case of email sent by the appropriate manager or person having authority to do so.
- 17.3 A Notice will be considered to be received:
- (a) if delivered by hand, on the date it is delivered;
  - (b) if sent by post within New Zealand, on the 3rd Business Day after the date it was sent;
  - (c) if sent by post internationally, on the 7th Business Day after the date it was sent;
  - (d) if sent by courier, on the date it is delivered;
  - (e) if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.
- 17.4 A Notice received after 5pm on a Business Day or on a day that is not a Business Day will be considered to be received on the next Business Day.

## 18 Miscellaneous Terms

- 18.1 The Customer agrees that LawHawk may make public a marketing case study relating to the Professional Services it supplies to the Customer, and list the Customer and its logo on LawHawk marketing material, including LawHawk's website.

- 18.2 Any change to the Agreement is called a Variation. A Variation must be agreed by both Parties and recorded:
- (a) in writing and signed by both Parties; or
  - (b) through an exchange of emails where the authors have delegated authority to approve the Variation.
- 18.3 The Agreement (including any Variation), records everything agreed between the Parties relating to the Professional Services. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the Professional Services before the relevant Professional Services Order was signed, whether they were verbal or in writing. Without limiting the previous sentence, where the Customer is acquiring the Professional Services in trade, LawHawk and the Customer agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986 to the extent necessary to permit the inclusion of this clause.
- 18.4 If a Party breaches the Agreement and the other Party does not immediately enforce its rights resulting from the breach that:
- (a) does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future; and
  - (b) does not prevent the other Party from exercising its rights resulting from the breach at a later time.
- 18.5 Each of the provisions of the Agreement is severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction:
- (a) that will not affect or impair the legality, validity or enforceability in that jurisdiction of the other provisions of the Agreement, or of that or any provisions of the Agreement in any other jurisdiction; and
  - (b) the provision will be read down to the extent necessary to make it legal, valid and enforceable in that jurisdiction or, if it cannot be read down, deemed not to form part of the Agreement.
- 18.6 Despite any other provision in these Terms, nothing in these Terms restricts LawHawk from providing similar services to, or entering into similar agreements with, other parties or entities or in any way transferring, licensing or otherwise exploiting any Intellectual Property Rights owned by LawHawk or its third party licensors.
- 18.7 Neither Party may, without the other Party's prior written consent, assign, transfer or otherwise deal in any way with (or attempt to do any such thing) the benefit of, or any of its rights or obligations under or interest in the Agreement or any cause of action arising in connection with any of them, and any purported assignment, transfer, or dealing in contravention of this clause will be ineffective.



- 18.8 The Agreement will be governed and interpreted in accordance with the laws of New Zealand, and the Parties submit to the jurisdiction of the courts of New Zealand. All money is in New Zealand dollars, unless a different currency is agreed in writing. Dates and times are New Zealand time.
- 18.9 The date of execution is the date the relevant Professional Services Order is signed. The Professional Services Order is properly signed if each Party signs the same copy, or separate identical copies. If the Professional Services Order is signed on two separate dates or separate copies are signed, the date of execution is the later of the two dates. Where separate copies are signed the signed copy can be the original document, or a emailed copy.
- 18.10 During the term of the Agreement and for a period of 6 months after the termination or expiry of the Agreement neither Party will, without the other's written consent, deliberately solicit for employment or hire any person who is or has been employed by the other and involved in the delivery of the Professional Services. This does not apply where a person has responded to a legitimate advertisement.
- 18.11 The clauses that by their nature should remain in force on expiry or termination of the Agreement do so, including clauses 9 (Intellectual Property Rights), 10 (Confidential Information), 12 (Disclaimers, Exclusions and Limitation of Liability), 13 (Resolving Disputes), 14 (Ending the Agreement), 16 (Privacy), 18 (Miscellaneous Term) and 19 (Definitions).

## 19 Definitions

19.1 Unless the context requires otherwise:

**“Agreement”** means the relevant Professional Services Order (including these Terms).

**“Automation IP”** means the automation component file or automation programming LawHawk applies to any document or process to create an automated template or process, and includes the automated template itself and any ideas, know-how, software, technology, processes, improvements and techniques developed or provided by LawHawk in connection with the Professional Services.

**“Business Day”** means a day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday, and public holidays. A Business Day starts at 8.30am and ends at 5pm.

**“Confidential Information”** means information that is proprietary or includes information that:

- (a) is by its nature confidential
- (b) is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
- (c) is provided by either Party or a third party 'in confidence'
- (d) either Party knows or ought to know is confidential, or
- (e) is of a sensitive nature or commercially sensitive to either Party (and in relation to LawHawk includes the Automation IP).

**“Deliverables”** means a tangible output stated in the relevant Professional Services Order. For the avoidance of doubt, the Deliverables do not include the Automation IP except to the extent LawHawk expressly agrees in writing.

**“Force Majeure Event”** means an event beyond the reasonable control, and without the fault or negligence, of the affected Party.

**“Good Industry Practice”** means good industry practice as would be expected from a leading New Zealand supplier of the relevant services.

**“GST”** means the goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.

**“Intellectual Property Rights”** includes patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

**“LawHawk”** means LawHawk Limited, including its successors, and permitted assignees.

**“New Intellectual Property Rights”** means Intellectual Property Rights developed after the commencement of a Professional Service and incorporated into the Professional Service.

**“Notice”** means a formal or legal communication from one Party to the other that meets the requirements of clause 17.1.

**“Party”** means each of the Customer and LawHawk, who are together the **“Parties”**.

**“Personnel”** means the employees, contractors, agents and representatives of either party.

**“Pre-existing Intellectual Property Rights”** means Intellectual Property Rights developed before the commencement of a Professional Service. It does not cover later modifications, adaptations or additions.

**“Professional Services”** means all work, tasks and Deliverables that LawHawk must perform and deliver under the Agreement.

**“Professional Services Order”** means a separate written document setting out the specific details of a Professional Service that LawHawk is to perform for the Customer, and which expressly incorporates these Terms.

**“Resolution Institute”** means an Australasian, not-for-profit membership organisation formed to serve the community by promoting and facilitating the use of consensual dispute resolution processes generally known as Alternative Dispute Resolution or ADR.

**“Technology Licensing Services”** means the technology licensing services provided by LawHawk under LawHawk’s Technology Licensing Terms (<https://www.lawhawk.nz/terms-conditions>).

**“Variation”** means a change to any aspect of the Agreement that complies with clause 18.2.

## 20 Interpretation

20.1 Unless the context requires otherwise:

- (a) references to clauses and schedules are to clauses and schedules of these Terms,
- (b) headings will be ignored in construing the Agreement,
- (c) the plural includes the singular and vice versa,
- (d) a statute includes any amendments to it, regulations, orders in council and other instruments issued under, or passed in substitution of, that statute,
- (e) an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done,
- (f) derivatives of any defined term have a corresponding meaning,
- (g) all amounts expressed as payable under the Agreement are (unless expressly stated otherwise) exclusive of GST and in New Zealand dollars. Any GST payable on any amount will be added to that amount and will be payable at the time the amount itself is payable;
- (h) if the Customer comprises more than one person, each person’s liability is joint and several;
- (i) “including” and similar words do not imply any limitation
- (j) any obligation on a party to use its “best endeavours” or “all reasonable endeavours” means diligent performance in accordance with Good Industry Practice, but shall not be construed to require unusual or exceptional expenditure or, in the case of LawHawk, use or engagement of facilities, resources and Personnel that are not ordinarily available for the performance of Professional Services or would materially impair the ability to service other customers.