

End Tenant Licence Agreement

Last updated: June 2019

Prime Campus Limited (**Prime Campus**) grants to the Tenant, the Tenant named in the Pre-Tenancy Application Form (the **Tenant**), a non-exclusive, non-transferable licence to allow the Tenant's Named Tenants to access and use the software products specified in the Pre-Tenancy Application Form (the **Software**) on the following terms (these **Terms**).

1 Definitions

In these Terms:

Charges means the amounts to be paid for the Licence and the Services and any other charges set out in the Pre-Tenancy Application Form;

Data means all data the Tenant make available to Prime Campus or the Tenant maintains through use of the Software;

Commencement Date means the date Prime Campus first provides the Tenant with access to the Software;

Documentation means any user manuals or other materials provided by Prime Campus in respect of the Software;

Initial Term means the period specified in the Pre-Tenancy Application Form;

IP Rights means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how, confidential information and any other intellectual property right;

Named Tenant means individual persons identified by the Tenant as licensed users of the Software, up to the total number of Named Tenants set out in the Pre-Tenancy Application Form, provided that a competitor of ours may not, in any event, be a Named Tenant;

Normal Business Hours means 8.30 am to 5pm, Monday to Friday other than public holidays in Auckland;

Services means the services in respect of the tenancy software Tenants receive login credentials for.

Site means the website from which Prime Campus makes the Software available, the current address being in the Pre-Tenancy Application Form;

Software means the software modules listed in the Pre-Tenancy Application Form, as updated by any subsequent release, but specifically excludes any third-party software.

2 Term

2.1 The Tenant's licence to access and use the Software (the **Licence**) commences on the date specified in the Pre-Tenancy Application Form and will continue until terminated in accordance with these Terms.

3 Access

3.1 In order to access and use the Software, the Tenant must:

- (a) have an internet connection at least equivalent to the options identified in the Pre-Tenancy Application Form;
- (b) provide Prime Campus with the names of the Named Tenants, limited to the number specified in the Pre-Tenancy Application Form, who will be granted access to the Software; and
- (c) pay the Charges.

3.2 Prime Campus will provide the initial login name and password for each Named Tenant to enable the Named Tenant to access the Software. The Tenant may change the Named Tenants on giving notice to Prime Campus.

3.3 The Tenant must use the Software in accordance with the operating procedures set out in the "Help" section of the Software.

4 Tenant obligations

4.1 The Tenant will:

- (a) not attempt to circumvent or disable the Software;
- (b) not copy, translate, adapt or modify the Software except as expressly permitted by these Terms;
- (c) not attempt to decompile, reverse engineer or attempt to derive the source code for the Software;

- (d) not disclose or dispose of the Software to any third party except as expressly permitted by these Terms;
- (e) allow only Named Tenants to use the Software;
- (f) not develop or distribute any product that would compete with the Software or that imitates any ideas, features, or functions of the Software;
- (g) not copy any Documentation, except for the Tenant's own back-up purposes;
- (h) not use the Software in a way that would infringe any third party IP Rights;
- (i) not undermine the security and integrity of Prime Campus's systems or where the Software is hosted by a third party, that third party's computing systems and networks;
- (j) not impair the functionality of the Software, Site or any other systems used to deliver the Software or impair any other user's ability to use the Software or the Site;
- (k) not input into the Software or Site any files that may damage any other person's computing device or software, content that may be offensive or inappropriate, or material or any data (including Data) in violation of any law;
- (l) keep confidential the login details assigned to each Named Tenant.

4.2 The Tenant will:

- (a) use the Software at the Tenant's own risk;
- (b) be responsible for the Tenant's internet connection, device configuration and implementation of the Software;
- (c) be responsible for determining that the Software meets the Tenant's needs;
- (d) promptly provide Prime Campus with information and access to the Tenant's systems so that Prime Campus can perform the services.

5 Prime Campus services

- 5.1 Prime Campus will make the Software available and provide hosting and other services on the terms set out at the Site.

- 5.2 Prime Campus will train the Tenant's designated personnel in the use and operation of the Site and the Software, at Prime Campus's then-current standard hourly rates.
- 5.3 Prime Campus will:
- (a) make the Site and Software available 24 hours a day except for maintenance windows outside Normal Business Hours;
 - (b) where possible, notify the Tenant of maintenance activity in advance;
 - (c) provide support for the use of the Software during Normal Business Hours as standard, with extended support options available to meet specific requirements;
 - (d) provide a hosted environment that provides 98% availability for the Software and the Site during Normal Business Hours.

6 Charges and payment

- 6.1 The Tenant will pay the Charges to Prime Campus in accordance with clauses 6.3 to 6.6.
- 6.2 Prime Campus may amend the Charges with effect from each anniversary of the Commencement Date.
- 6.3 All Charges and other fees exclude GST, which are to be paid at the applicable rate on the due date for payment of the amount to which the GST relates.
- 6.4 Prime Campus will render invoices to the Tenant at the end of each month or other period specified in the Pre-Tenancy Application Form.
- 6.5 The Tenant will pay each invoice within 20 days of the invoice date, without set-off or deduction.
- 6.6 If the Tenant fail to pay an invoice, the amount set out in that invoice will be subject to interest of 1.0% per month, plus any collection cost.

7 IP Rights and Data

- 7.1 The Tenant owns all IP Rights in the Data but Prime Campus may:
- (a) use the Data to perform its obligations under these Terms; and
 - (b) aggregate the Data for benchmarking and statistical purposes on an anonymous basis.

- 7.2 Prime Campus owns all IP Rights in the Software and Documentation.
- 7.3 The Tenant owns and has sole responsibility for the Data, and for ensuring that Prime Campus has the right to use, the Data. Prime Campus will not be liable for the deletion, correction, damage, loss or failure to store any Data.

8 Confidentiality

- 8.1 Each party (a **Recipient**) will keep confidential all information obtained from the other which is marked confidential or is by its nature clearly confidential and, except as permitted under clause 8.2 or 8.3, will not disclose it to a third party without the written consent of the other party.
- 8.2 The Recipient may disclose confidential information to those of its employees, agents and contractors who are directly involved in fulfilling the Recipient's obligations under these Terms and will ensure that those persons comply with this clause 7.
- 8.3 Clause 8.1 will not apply to information that:
 - (a) was independently available to the Recipient from a third party having the right to disclose it;
 - (b) is the public domain through no fault of the Recipient or any other person to whom it discloses the information; or
 - (c) the Recipient is obliged by law to disclose.

9 Liability and indemnities

- 9.1 Prime Campus will indemnify the Tenant against any liability, loss, damage or expense arising directly from a claim that the Tenant's use of the Software or the Documentation infringes the IP Rights of a third party.
- 9.2 Clause 9.1 will not apply to the extent an infringement results from use of the Software for a purpose not specifically authorised in writing by Prime Campus;
- 9.3 Prime Campus warrants that:
 - (a) subject to clause 9.4, the Software will operate substantially in accordance with the Documentation; and
 - (b) the Services will be of a professional quality conforming to generally accepted industry standards.

As Prime Campus's sole responsibility and the Tenant's sole remedy, Prime Campus will, at its own cost, repair or replace the

Software or re-perform the affected services that breach the above warranties.

- 9.4 Prime Campus does not warrant that:
- (a) the Software is error free, can be used without interruption or will meet all the Tenant's of needs;
 - (b) access to the Site will be uninterrupted; or
 - (c) the Site will be free from anyone accessing Prime Campus 's systems without Prime Campus's consent.
- 9.5 The Tenant warrants that:
- (a) the Tenant has complied with all laws applicable to personal information contained in the Data;
 - (b) Prime Campus's use of the Data will not breach any third-party rights;
 - (c) the Tenant is acquiring the Licence for business purposes.
- 9.6 Except as expressly provided in these Terms, all representations or warranties (statutory, express or implied) except any that may not be lawfully excluded, are expressly excluded.
- 9.7 Subject to clause 9.1, Prime Campus 's total liability to the Tenant for all claims for damages in connection with these Terms will not exceed in aggregate the Charges paid in the 6 months preceding the date on which the relevant claim arose.
- 9.8 In no circumstances will Prime Campus will be liable for any loss of profits or for any consequential, special, indirect or incidental loss or damages, however caused, arising out of the Tenant's use of the Software.

10 Termination

- 10.1 Either party may terminate the Licence by giving the other party 60 business days' notice, provided that such notice will only be effective on or following expiry of the Initial Term.
- 10.2 Prime Campus may terminate the Licence immediately on giving the Tenant written notice if the Tenant:
- (a) breaches these Terms and fails to remedy the breach (if remediable) within 14 days' notice of the breach; or
 - (b) become insolvent.
- 10.3 If Prime Campus terminates the Licence, Prime Campus may:

- (a) retain any money paid to it, even though the period in respect of which it was paid has not ended;
 - (b) prevent the Tenant from accessing the Software;
- 10.4 On termination of the Licence the Tenant must, at its own expense, and at Prime Campus 's option, deliver or destroy:
- (a) any notes made in relation to the Software or any part of it; and
 - (b) all Documentation.
- 10.5 When the Licence is terminated, and otherwise at the Tenant's request, all Data will be supplied by Prime Campus to the Tenant. Prime Campus may charge for its time and materials in complying with this clause.

11 Miscellaneous

- 11.1 Any notice to be given under these Terms must be in writing, by email sent to the registered office or principal place of business of the other party or to such other address as may be notified by either party to the other from time to time. Any notice by email will be deemed to be received when transmitted to the correct email address of the recipient. Any other notice will be deemed to be received when left at the specified address of the recipient or on the third day following the date of posting.
- 11.2 The Tenant may not assign, transfer or sub-license any of its rights under these Terms without Prime Campus's prior written consent. A change in the legal or beneficial ownership or control of the Tenant's entity will be deemed to be an assignment.
- 11.3 Prime Campus may amend these Terms on posting the new terms on its website. The Tenant continued use of the Software will constitute acceptance of the amended Terms.
- 11.4 These Terms are governed by New Zealand law.