



Terms & Conditions for Supply of Services

Effective 2nd July 2020

1. *Purpose*

- 1.1 Set out below are Nova Consulting Limited's terms and conditions and licencing agreement relating to Information Technology products and services that maybe provided to you. This also relates to services provided under our trading name Nova IT for supply of services to you. These terms are effective from the date shown above. In requesting any services from Nova Consulting Limited you are agreeing to such terms.

2. *Definitions*

- 2.1. In this document:
- "we", "us" and "our" refers to Nova Consulting Limited and services provided under its trading names.
 - "you" and "your" refers to you, the client.
 - "App" and "Apps" refer to our products including but not limited to IOS/Android applications and our websites.

3. *Services*

- 3.1. We will supply Technology and consulting solutions for you/your facility/your company. All staff we use will have been subject to at least two reference/referee checks and a police check.
- 3.2. We also provide online products and services to assist with the automation of a range of functions from finance to staff rostering. These services may be provided by us under separate terms and conditions, including where any services are purchased by you as an in-App purchase.
- 3.3. The Nova IT provides a range of application software ("**Apps**") which are made available by Nova Consulting Limited/Nova IT Limited/Nova Healthcare Limited ("**we**", "**our**"). We are a limited company registered in New Zealand under company number 7851956 with a registered office at 68 Queen Street Cambridge Post code 3434 New Zealand.
- 3.4. If you have any comments or questions concerning these terms or you wish to contact us for any other reason please email our customer service team at info@novait.co.nz.

4. *Licence Agreement*

- 4.1. Any use of our Apps (defined below) is subject to the terms of this licence agreement ("**Agreement**"). Please read the full Agreement carefully.
- 4.2. For the purpose of this Agreement, Apps may include services which are provided by us which you may access, register or pay for via an App – these services maybe subject to separate terms and conditions. If you are unsure of which terms and conditions apply please contact us immediately so we can clarify.
- 4.3. By downloading or installing our Apps or clicking the "accept" button below (as applicable), you confirm that:

- you are aged 18 years old or over;
- your use of the App is in your capacity as an employee, agent or independent contractor of an organisation or as an individual trader and in each case for your internal business purposes only; and
- you accept and agree to be legally bound by all terms and conditions of this Agreement. If these terms are not accepted, you must not download, install or use (or continue use of) the App.

5. *Your privacy*

- 5.1. Under data protection legislation, we are required to provide you with certain information about who we are, how we process your personal data and for what purposes and your rights in relation to your personal data and how to exercise them. This information is provided in our privacy policy and it is important that you read that information.

Please be aware that internet transmissions are never completely private or secure and that any message or information you send using our Apps may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

6. *Licence*

- 6.1. We grant you a limited, non-exclusive and non-transferable licence to access and use our Apps and any updates or supplements to it as permitted in these terms ("**Licence**").

7. *Licence restrictions*

- 7.1. You agree that the Licence is personal to you. You may not rent, lease, sub-license, loan, provide, or otherwise make available, our Apps in any form, in whole or in part to any person without prior written consent from us. If you sell any device on which the App is installed, you must remove the App from it.

You agree you will:

- not copy our Apps, except as part of the normal use of the App in question or where it is necessary for the purpose of back-up or operational security;
- not translate, merge, adapt, vary, alter or modify, the whole or any part of our Apps, nor permit our Apps or any part of them to be combined with, or become incorporated in, any other programs, except as necessary to use the App in question on devices as permitted in these terms;
- only decompile, reverse engineer, or disassemble the source code of the software either in whole or in part, as expressly permitted under the Licence or under Sections 50(A), (B) and (BA) of the Copyright, Designs and Patents Act 1988 (as amended or updated from time to time) or other applicable law;
- comply with all applicable technology control or export laws and regulations that apply to the technology used or supported by the App.

8. *Acceptable use restrictions*

- 8.1. You must not:
- use our Apps in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into our Apps or any operating system;
 - infringe our intellectual property rights or those of any third party in relation to your use of our Apps, including by the submission of any material (to the extent that such use is not licensed by these terms);
 - transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of our Apps;
 - use the Apps in a way that could damage, disable, overburden, impair or compromise our

systems or security or interfere with other users of the Apps or our services; and/or
- collect or harvest any information or data from our systems or attempt to decipher any transmissions to or from the servers running any service.

9. Intellectual property rights

9.1. All intellectual property rights in our Apps throughout the world belong to us (or our licensors) and the rights in our Apps are licensed (not sold) to you. You have no intellectual property rights in, or to, our Apps other than the right to use our Apps in accordance with these terms.

10. Your applicable app store terms also apply

10.1. The ways in which you can use the App may also be controlled by the rules and policies of the relevant app store from which the App was downloaded (such as Apple App Store or Google Play Store). The applicable app store's rules and policies will apply instead of these terms in the event that there are differences between the two.

11. Changes to these terms

11.1. We may amend these terms from time to time and will display any updated version on the App. You may be required to read and accept the changes to continue to use the App but in any event, your continued use of the App shall be deemed to constitute acceptance of any revised terms.

12. Updates to our Apps

12.1. From time to time we may automatically update our Apps to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively, we may ask you to update our Apps for these reasons.

12.2. If you choose not to install such updates or if you opt-out of automatic updates you may not be able to continue using the App or services provided through the App.

13. If someone else owns the phone or device you are using

13.1. If you download or stream our Apps onto any phone or other device not owned by you, you must have the owner's permission to do so. You will be responsible for complying with these terms, whether or not you own the relevant phone or other devices.

14. We may collect technical data about your device

14.1. By using our Apps, you agree to us collecting and using technical information about the devices you use our Apps on and related software, hardware and peripherals, in order to provide any relevant services to you.

15. We may collect data provided by you for wider internal use

15.1. By using our Apps and websites, you agree to us collecting and using information you provide to us. This information will be used to assist in developing machine learning algorithms and other tools to aid us to better serve your needs and those of our other clients. Data we collect and use will adhere to relevant laws. Similarly finer details around use are available under our data related policies.

16. We are not responsible for other websites you link to

16.1. Our Apps may contain links to other independent websites and/or tools which are not provided by us. Such independent sites/tools are not under our control, and we are not responsible for and have not checked and approved their content or their privacy policies (if any).

You will need to make your own independent judgement about whether to use any such independent sites or tools, including whether to buy any products or services offered by them.

17. Limitations and exclusions of liability

Nothing in this Agreement shall exclude or limit our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded by New Zealand law.

No liability to you. You are downloading our Apps entirely at your own risk. We shall not be liable to you for any loss or damage (direct or indirect) whatsoever arising under or in relation to this Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) or in connection with your use of our Apps or reliance on any content displayed on our Apps.

Partners and Clients. The relevant limitations and exclusions to our liability in respect of the services we provide to our customers (i.e. your employer or business) is set out in our general terms and conditions of service (see **Other applicable terms** above).

Limitations to our Apps. Our Apps are provided for information purposes only and does not offer advice on which you should rely. You must obtain professional or specialist advice before taking, or refraining from, any action on the basis of information obtained from our Apps. Although we make reasonable efforts to update the information provided by our Apps, we make no representations, warranties or guarantees, whether express or implied, that such information is accurate, complete or up to date.

Back-up content and data used with our Apps. We recommend that you back up any content and data used in connection with our Apps, to protect yourself in case of problems with any of our Apps.

18. Term and termination

The Licence shall commence upon your acceptance of these terms and shall continue in perpetuity unless terminated in accordance with this clause 17.

We may terminate the Licence immediately and without notice if

- we reasonably suspect that you are using our Apps for any purpose which contravenes any applicable law; or
- you materially fail to comply with any provision of this Agreement.

If we terminate your Licence:

- You must stop all activities authorised by these terms, including your use of our Apps;
- You must delete or remove the App in question from all devices in your possession and immediately destroy all copies of the App which you have and confirm to us that you have done this; and
- Where it is possible for us to do so, we may remotely access your devices and remove the App from them.

The Licence will terminate automatically if you uninstall and cease use of the App.

Where the Licence is terminated in accordance with this clause **14**, then the Agreement shall terminate in its entirety.

19. General

Governing law and settlement of disputes. This Agreement (and any dispute or claim relating to it, or its formation, existence, construction, performance, validity or termination) will be governed by and construed in accordance with the laws of New Zealand. The courts of New Zealand shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Assignment. You shall not assign, transfer, sub-contract any rights or obligations under this Agreement without our prior written consent (such consent not to be unreasonably withheld) and any unauthorised assignment shall be null and void. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under this Agreement.

Severability. If any provision or part of any provision in this Agreement is found to be illegal, invalid or unenforceable for any reason then the remaining provisions or part provisions remain unaffected and the parties shall meet promptly to discuss in good faith and agree on an alternative provision or part-provision that provides as closely as possible, the same commercial effect as the original.

No waiver. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

Entire agreement. This Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersedes any prior oral agreements, representations or understandings between the parties in relation to such subject matter.

Consultancy Services and other terms:

20. Our commitment to you

We will:

- (a) Educate all our staff members on a regular basis.
- (b) Ensure all our staff have been educated on safe working practices.
- (c) Ensure all our staff are adequately trained for the work required and hold the necessary qualifications and certifications.
- (d) Endeavour to provide you with adequate notice if we are unable to supply a suitable staff member to enable you to search elsewhere.
- (e) Ensure our services are kept as up to date as practicable.

21. Your commitment to us

In return for us providing services to you, you agree to:

- (a) Pay for the services we provide to you by the due date.
- (b) Ensure you provide all our staff with a safe working environment. We reserve the right for our staff to refuse to work in an environment either we or our staff consider unsafe.
- (c) Provide all our staff with sufficient information to enable them to perform their designated tasks to a satisfactory standard.
- (d) Provide us with an adequate timeframe to search for a suitable staff member.
- (e) Respond in a timely manner your intent to accept and place staff provided to you.
- (f) Ensure all information provided to us is complete and accurate and promptly advise us of any changes to this information.
- (g) Ensure we have the information we need to implement any service or App you wish to use from us.

- 21.1. *If receiving staff from us you will be required to certify that the time records supplied by our staff are correct.*
- 21.2. *You will be responsible for the supervision of our staff working at your facility and you will provide us with any feedback requested as to the performance of our staff in a timely manner.*
- 21.3. *If we allocate you a password or a security code to use in connection with the services or to access your account information, then you will be solely responsible for maintaining security around that*

password or security code.

22. Cost assumptions

- 22.1. The fees quoted are an estimate according to specific project requirements, the agreed timescale, agreed services and any assumptions detailed in the proposal or agreement. If the timescale, project objectives, requirements or the assumptions on which the quote is based change in any way by you, we reserve the right to review the date of completion and the agreed fee, and charge for any additional work that has resulted from the changes.

23. Invoicing and payment

- 23.1. Our fees for services provided to you will be in accordance with our current relevant written price schedule (which we will provide to you from time to time) or as otherwise agreed in writing between us and you. Unless agreed otherwise in writing, all fees will be plus GST.
- 23.2. Rates will be reviewed by us 1 July each year unless noted otherwise. However, we reserve the right to change our fees at any time, but we will give you a minimum of 4 weeks' written notice of any such changes.
- 23.3. Invoices will be sent periodically and all invoices must be **paid within the due date noted on the invoice.**
- 23.4. If any invoiced amount remains unpaid after the due date we may, without prejudice to any of our other rights or remedies, do all or any of the following:
- (a) Cancel our contract with you and remain entitled to payment for all the services provided to you up to the date of cancellation.
 - (b) Suspend our services until such time as payment of the full amount owing is received.
 - (c) Charge late payment interest of 1.5% per month, calculated on a daily basis on the amount outstanding, until the payment is received in full.
 - (d) Pass the outstanding amount on to a third party to recover such amount, the costs of which will be added to the outstanding amount and will be fully payable by you.
 - (e) Any invoice which remains unpaid one full month post the due date can incur a \$100 administration fee. This administration fee can be added each subsequent month until the invoice, late payment interest and any administration fees are paid in full. This fee will be at the discretion of Nova Consulting Limited.
- 23.5. Part payment of an invoice will not amount to a full and final settlement unless we have agreed to this in writing.

24. Disputed invoices

- 24.1. If you believe that an invoice contains an error, you must advise us of the possible error before the due date for payment of the invoice and we will investigate the matter. Pending the outcome of our investigation you must pay the full amount of the invoice by the due date. If we subsequently find that the error has been made we will issue an amended invoice and refund any amount owing to you.
- 24.2. If you have not notified us of a possible error in an invoice before the due date for payment of the invoice, then you will be deemed to have accepted the invoice as being correct and the invoice will be payable in full.

25. Credit checks

- 25.1. We may decide to use information that you give us in order to check your creditworthiness at any time. We may also pass on your information to third parties so that they can run credit checks on our behalf.

26. Travel and Accommodation

- 26.1. You may require our staff to travel or temporarily relocate to oversee local operations, attend meetings, and/or carry out the performance of our duties. If relocation or travel is required, you shall provide the our staff with reasonable accommodations as well as travel expenses. If travel expenses are not agreed within the contract or in writing between the parties and our staff are required to travel outside our local catchment area (more than 20km from our head office) an additional charge per every hour worked will be incurred (as noted in the rates schedule), including the time taken traveling to and from the destination.

27. Ordering and cancellation of staff

- 27.1. You will notify us of your intent to accept and subsequently place staff within 10 working days of receiving potential staff, which includes time for contacting and interviewing if applicable. Failure to do so may incur a penalty. This fee will be at the discretion of Nova Consulting.
- 27.2. If you can guarantee a fixed term placement then you will be entitled to a discount, as specified on the pricing schedule.
- 27.3. You will provide verbal or written notice to us of any request for staff no later than 2 weeks prior to commencement of the required duty.
- 27.4. If you have an urgent staff request and are unable to provide the required 2 weeks notice, we will endeavour to provide the required staff but we will not be obliged to do so.
- 27.5. If you wish to cancel any staff you have requested you must notify us verbally or in writing at the earliest possible opportunity but no later than 48 hours prior to the commencement of the duty which is cancelled.
- 27.6. If we have sent (or phoned through) confirmation of a staff member for you/your facility as requested and you choose to cancel the shift, a cancellation fee will apply; more than 48 hours' notice will result in a \$100 administration fee; if you provide less than 48 hours notice then a 4 hour minimum charge at the applicable booked rate will apply. Exceptional circumstances may result in this fee being waived at the discretion of Nova Consulting.
- 27.7. In the event of cancellation of the contract by you, the following charges will apply:
 - If the project is cancelled at any time prior to completion of the project, you will be liable to us for any and all indirect expenses and costs incurred by us, our contractors, or employees and any loss of earnings or any other loss whatsoever. An administration fee of 20% will be added on top of any and all direct and indirect expenses.
 - If you cancel a project that is conducted throughout a period of six months or more, you will still

be required to pay the first 60% of the agreed fee for the project. You will also be liable to us for any and all direct and indirect expenses and costs incurred by us, our contractors and employees and any loss of earnings or any loss whatsoever. An administration fee of 20% will be added on top of any and all direct and indirect expenses.

28. *Employment of staff*

- 28.1. Under no circumstances will you ask any of our staff members to work for you either as employees or independent contractors. Breach of this requirement will require you to pay us a recruitment fee as determined by us. The recruitment fee will either be 30% of the staff member's forecast annual salary or a minimum of \$15,000.
- 28.2. If any of our staff members approach you for employment either as employees or independent contractors within 12 months of their last shift with us you must notify us immediately. If you subsequently intend employing the person you must notify us and a recruitment fee may apply as determined by us.
- 28.3. Any duty you have asked us to complete, whether or not we are able to do so, cannot be completed by any of our staff without our staff completing the duty as our employee and you paying us the appropriate fee for that duty.
- 28.4. Our staff will remain our employees for the purposes of payment of all remuneration and reimbursement.
- 28.5. To be valid, any variations to this Agreement must be in writing and signed by an Executive Director of Nova Consulting.

29. *Complaints regarding staff*

- 29.1. All complaints regarding our staff will be investigated within 48 hours of receiving written notification of the incident, and investigation results will be provided to you (if requested) within 4 working days of the notification.

30. *Confidentiality, publicity and privacy*

- 30.1. Each party agrees not to reveal any information concerning the provisions of these Terms and Conditions or information provided under them to any third party, other than:
 - (a) As permitted under clause 23.1.
 - (b) As required by law or by the rules of any stock exchange.
 - (c) To its employees, agents and contractors in order to give effect to the purpose for which the information was provided.
 - (d) Where the information is already in the public domain (but not where it is in the public domain as a result of a breach of this clause).
 - (e) With the other party's written consent.
- 30.2. Each party agrees not to issue any press release or public announcement concerning these Terms and Conditions without the other party's prior written approval.
- 30.3. The parties agree not to make or distribute any public statement, concerning each other without the prior written consent of the other party.

30.4. We reserve the right to publicise the existence of our relationship with you and shall utilise testimonials given by you on our websites (<https://novaConsulting.co.nz>, www.novait.co.nz), both during and after the term of the contract. The form and content of all publicity material relating to you shall be agreed by us and you prior to publication and we agree not to publish or display any such material without your approval (such approval shall not be unreasonably withheld or delayed).

30.5. We reserve the right, subject to your approval (such approval shall not be unreasonably withheld or delayed) to use project information as examples of case studies and as public relations (PR) material.

31. Default

31.1. If, as a result of your default in performing any provision of these Terms and Conditions, we instruct our solicitor to make demand or institute legal proceedings against you, you will be liable for all legal costs and disbursements incurred by us including the costs between solicitor and client.

32. Clauses severable

32.1. If any clause of these Terms and Conditions are found to be illegal, all other clauses shall remain in full force.

33. Notices

33.1. Any notice given pursuant to these Terms and Conditions must be in writing and be delivered, or sent by post, facsimile or email.

34. Amendments

34.1. We may amend these Terms and Conditions at any time but if we do so, we will give you at least 14 days' written notice of the amendments either by email or post.

35. Health and safety

35.1. The provisions relating to health and safety matters pursuant to the Health and Safety at Work Act 2015 ("the Act") or any legislative amendments relating to health and safety in the workplace are set out in the Health and Safety Agreement contained in Schedule One of this document.

36. Infection control

36.1. Your responsibilities and our responsibilities relating to our policy and commitments on infection control are set out in the Infection Control Agreement contained in ScheduleTwo of this document.

37. Indemnity

37.1. You shall indemnify us against all liabilities, costs (including full costs between Solicitor and Client), losses, claims or demands incurred by us arising out of or incidental to the Services or your non-compliance with this Agreement.

38. *Limitation of Liability*

- 38.1. Notwithstanding anything else in this Agreement, we will not be liable to you for any losses of profit, bargain, or business opportunity, or exemplary damages or losses suffered by you arising out of or flowing from any breach of contract, any precontractual misrepresentation or other dispute arising out of this Agreement and whether actionable in contract, tort (including negligence), equity or otherwise.
- 38.2. Notwithstanding the above, in the event that Nova Consulting is found liable under this Agreement, liability shall not exceed the value of the Services to which the liability relates.

39. *Intellectual Property*

- 39.1. All intellectual property which is owned by and/or licensed to a party at the date of this Agreement shall remain owned by and/or licensed to that party.
- 39.2. Any new intellectual property, including improvements and/or inventions created as a result, or in connection with the provision of the Services under this Agreement shall be owned by us.
- 39.3. You agree that you shall do all things necessary to give effect to our ownership of the new intellectual property.

40. *Consumer Guarantees Act 1993*

- 40.1. You acknowledge that you acquire our services for a business purpose and that the Consumer Guarantees Act 1993 is excluded and does not apply.

41. *Public Announcement*

- 41.1. The parties agree not to make or distribute any public statement, concerning each other without the prior written consent of the other party.

42. *Force Majeure*

- 42.1. We will not be held liable for delays or other failures to perform or losses caused to you or any third party resulting from events or circumstances beyond reasonable control of us including but not limited to failure as a result of any failure by you to provide any information, services or resources reasonably contemplated by this Agreement to be provided to us.

43. *Termination*

- 43.1. We may terminate this Agreement for any reason by providing one month's notice in writing to you.

Notwithstanding the above, if you fail to pay any monies, commit any act of bankruptcy, or being a company does any act which would render yourself liable to be wound up, ceases or threatens to cease trading, or has a receiver appointed over your property, we may immediately (without prejudice to any other remedies available to it) suspend the Services or terminate this Agreement and the monies owing by you will fall immediately due and payable.

44. Dispute

- 44.1. In the event of any dispute between the parties in relation to this Agreement, a party shall first notify the other in writing and they shall in good faith endeavor to resolve the dispute. If the dispute remains unresolved, the parties shall seek mediation before pursuing resolution through the Courts.

Schedule 1

Health and Safety Agreement

Your duties

1. You will ensure that your facility including buildings, fittings and equipment are safely maintained and represent no hazard to our staff.
2. You will provide incident forms to our staff to enable a record to be kept of incidents, hazards and near misses which affect our staff. You will notify us of any incident involving our staff.
3. You will provide a first aid service conducted by qualified staff, to our staff, in the event of an accident.
4. You will provide to our staff a list of safety information related to the site on commencement of the duty. This information will include policies and procedures and identification of new and existing hazards to staff.
5. You will take all practical steps to ensure that our staff are not harmed while doing work they were engaged to do.
6. You will provide suitable clothing and equipment to protect our staff from any harm that they may be caused or which may arise out of any hazard.
7. At our request you must promptly supply us with any information and documentation regarding accidents or incidents involving any of our staff to enable us to minimise future occurrences.
8. You will provide us with relevant documentation to our staff to aid them to maintain a safe environment while working at your site.

Our duties

1. We will provide you with appropriate and suitable staff who are aware of relevant health and safety and professional issues.
2. We will operate our own health and safety system in accordance with the Act and our own procedures.
3. We will ensure that our staff are given adequate training in health and safety so that they are in a position to request the use of safety equipment where appropriate and are able to identify hazards in the work place.
4. We agree to complete our part of incident forms recording accidents, hazards and near misses which occur at your facility. We will work in conjunction with you to fully investigate accidents.
5. We agree, with the best of our ability, to ensure our staff will read the safety information provided by you prior to the commencement of their duty.
6. We will maintain a detailed health and safety policy that will be available to our staff. Although we encourage our staff to follow your health and safety policy while on site this policy will act as a reference where queries on matters not covered under your policy may be found by our staff if required.

Schedule 2

Infection Control Agreement

Your duties

- 1 For the safety of our staff and our other clients, we require that you and your staff immediately inform us of any knowledge you have of patients with an infectious disease which could be spread to our staff.
- 2 Failure to inform us of any risks of our staff being exposed to an infectious disease in your facility, may incur an additional full shift fee as determined by us.
- 3 You will ensure your facility has its own infection control policy in place to prevent and control the spread of infectious disease.

Our duties

- 1 To help contain any infectious disease that our staff have knowingly come in contact with, those staff shall be cleared after 48 hours of knowingly coming into contact with the disease before being able to complete work at another client's facility.
- 2 We will maintain a detailed infection control policy that will be available to our staff. Although we encourage our staff to follow your infection control policy while on site this policy will act as a reference where queries on matters not covered under your policy may be found by our staff if required.