

AIMYPLUS

TERMS AND CONDITIONS OF SERVICE (International)

PLEASE READ THESE TERMS AND CONDITIONS OF SERVICE CAREFULLY.

These aimyPlus Terms and Conditions of Service set out the terms and conditions upon which Aimy Limited makes available the aimyPlus online management service.

IF YOU ARE REGISTERING AS A USER:

If you are registering with us as a user of the aimyPlus online management service under an existing organisation subscription, then:

- these Terms and Conditions are published on the login page. By accessing or using the Service you are deemed to have accepted to be bound by these aimyPlus Terms and Conditions of Service; and
- if you do not accept these aimyPlus Terms and Conditions of Service, you may not be able to use or access the aimyPlus online management service.

IF YOU ARE SUBSCRIBING AS AN ORGANISATION:

If you are registering yourself, or a company or other organisation, to be a subscriber of the aimyPlus online management service, then:

- you warrant and represent to us that you will be bound by, or that you have authority to bind that company or other organisation to, these aimyPlus Terms and Conditions of Service;
- upon your clicking “I have read and accept the aimyPlus Terms and Conditions of Service” attached to the account activation form, you or your company or other organisation (as the case may be) will be deemed to have accepted these Terms and Conditions of Service; and
- if you do not accept these aimyPlus Terms and Conditions of Service either yourself or on behalf of your company or other organisation, your authorised users or that company’s or organisation’s authorised users may not be able to use or access the aimyPlus online management service.

1. DEFINITIONS

For the purposes of these Conditions, the following terms have the following meanings:

Conditions means these aimyPlus Terms and Conditions of Service;

Content means the information and content available via the Service;

Monthly Subscription Fee means a monthly fee for the provision of the Service as notified by us to the Organisation or agreed between us and the Organisation in writing prior to commencement of the Organisation's subscription, as may be increased from time to time pursuant to clause 4.2;

Organisation means a person, company or other organisation that has an aimyPlus subscription with us;

Organisation Data means any data, reports or other information uploaded to the Service or generated via the Service, that is specific to the Organisation;

Service means the aimyPlus online management service provided by us and accessible via a URL notified by us to the Organisation during the subscription process, or such other website as we may determine from time to time;

Site means the geographical site notified to us by the Organisation during the process of the Organisation applying to subscribe for the Service, or such other geographical site as may be agreed between the parties in writing;

User means a person who registers with us as a user of the Service as authorised by an Organisation; and

We or our or us means Aimy Limited.

2. LICENCE TO USE THE SERVICE

- 2.1. We grant to each User a licence to access and use the Service solely in connection with the programme management and other activities of the Organisation. This licence is non-exclusive, non-transferable and non-sublicensable, and unless agreed by us in writing is limited to the programme management and other activities of the Organisation operated from the Site.
- 2.2. The Organisation may authorise a number of Users as it reasonably determines to use the Service, subject to our general right to limit the number of authorised Users to a reasonable number as necessary to use the Service in the manner intended by us. The Organisation will determine which Users will have which levels of use or access, subject always to the User role restriction parameters and Organisation account settings established by us as part of the Organisation's subscription.
- 2.3. The Organisation will be responsible to us for all acts or omissions of its employees, personnel or agents when they access or use the Service as Users, as if they were the acts or omissions of the Organisation.
- 2.4. Each User is responsible for keeping their registration login information, including their User account name and password issued to them, secret and secure. A User must not permit any other person to use their log-in information. A User must immediately notify us of any unauthorised use of their login information, and in such event we may take such actions as we deem reasonably necessary in order to maintain or enhance the security of the Service, including by temporarily suspending the Organisation's subscription or resetting any or all User passwords.
- 2.5. Each User is responsible for making sure that their user registration details are kept up to date and are accurate. We are not responsible for any loss, damage, cost or

expense arising as a result of any failure by a User to keep their user registration details up to date, or as a result of any inaccurate information provided by a User.

- 2.6.** We reserve the right to cancel or suspend any User's access to or use of the Service at any time and for any reason. We will endeavour to notify the relevant Organisation upon any User's access or use being cancelled or suspended.
- 2.7.** To use the Service, Users will need compatible devices and operating systems, and internet access. It is the Organisation's responsibility to ensure that its software, hardware and systems are able to operate with the Service, and meet any minimum specifications that may be notified by us to the Organisation from time to time.
- 2.8.** The Organisation must ensure that its information systems and networks on which the Service will be accessed are reasonably secure, and that security measures are in place to prevent unauthorised access to the Service to at least a reasonable industry standard.
- 2.9.** Users must not attempt to do any of the following things:

use the Service in any unlawful manner;

damage, disable, interfere with or harm the Service, or any network or system underlying or connected to the Service, in any way whatsoever;

modify, adapt, translate, reverse engineer or decompile any part of the Service, or any software comprising or underlying the Service, or in any manner attempt to derive the source code of any such software;

use any robot, spider, site search/retrieval application, or other device or technological process to retrieve or index any portion of the Service, except as expressly authorised by us in writing; or

encourage, assist or direct any other person to do any of the things set out in paragraphs (a) to (d) above.

If any User does any of these things, the Organisation (if the User is an employee, personnel or agent of the Organisation) and that User will be responsible to us for any losses, damages, costs or expenses incurred or suffered by us as a result.

- 2.10.** The Organisation and its Users acknowledge that:

the Service is of significant commercial value to us and our licensors;

all copyright, trade marks, database rights and other intellectual property rights in the Service (including in any new features, customisations or enhancements of the Service that we may introduce at any time) are owned by us or our third party licensors, and neither the Organisation nor its Users will in any way question or dispute the ownership by us or our third party licensors of such intellectual property rights. This clause 2.10(b) will not apply to the extent that the Organisation has commissioned us to develop particular new features, customisations or enhancements of the Service for the benefit of the Organisation, and we have agreed in writing under a separate contract that the Organisation will own the

copyright, trade marks, database rights and other intellectual property rights in those new features, customisations or enhancements; and

except as expressly stated in these Conditions, no right or licence is granted to the Organisation or its Users in relation to the Service or Content.

Neither the Organisation nor its Users may do any of the following:

copy any of the Content unless expressly permitted by us to do so;

compile or extract the Content for the purpose of making such information available to others (whether as a directory or otherwise) with a view to a profit or for a fee or other consideration; or

use any proprietary trademark of us or our licensors in a manner that is reasonably considered by us or our licensors to be a misuse or appropriation of that trade mark.

2.11. Nothing in clauses 2.10 will:

give us any rights or interests in any Organisation Data, other than to the extent necessary to provide the Service (and the Organisation grants to us a worldwide, royalty-free, sub-licensable, non-exclusive right and licence to use, copy and distribute the Organisation Data for the term of the Organisation's subscription for the Service to the extent necessary to provide the Service), and any such rights or interests will remain with the Organisation; or

limit the Organisation's right to use, copy or otherwise exploit its Organisation Data in any way that it may see fit.

3. SUPPORT AND SERVICE AVAILABILITY

3.1. Users have a number of options for reporting issues with the Service, or for seeking further information about particular features of the Service, including the following:

we provide a range of online materials and resources to assist Users with questions about the operation and use of the Service. In the event that a User has a problem with or question about the Service, the User should check if these materials and resources provide a solution;

we provide an online chat service on our website and access to support via email, where Users can ask questions about the Service and report issues or problems with the Service. We will endeavour to respond to questions asked or issues reported by Users using the online chat service or via email within a reasonable time during our usual business hours; and

We will use reasonable endeavours to keep the Service operational 24 hours a day, seven days a week. However, no warranty or representation is given that the Service will be uninterrupted or error-free.

No warranty or representation is given by us that any bugs, errors, defects or unexplained outages within the Service will be responded to or resolved within any particular time period, or that any resolution to a particular issue will be possible or practical from a technical or business administrative perspective.

3.2. The Organisation and its Users acknowledge that:

the operation and availability of the systems and networks used by the Organisation and its Users to access the Service, such as computer systems and the Internet, may be unpredictable and prevent the use of or access to the Service; and

there may be occasions where some or all of the Service is unavailable, for example to permit maintenance, or due to unexpected or uncontrollable outages. We will use reasonable endeavours to notify Users in advance of any significant planned Service outages.

4. PAYMENT

- 4.1.** In consideration for the grant of licence under clause 2.1 and the provision of the Service to Users on behalf of the Organisation, the Organisation agrees to pay to us the Monthly Subscription Fee.
- 4.2.** We may increase the Monthly Subscription Fee at any time, upon giving the Organisation prior written notice.
- 4.3.** There are a number of different Service subscription types, based on the number of active attendees within each of the business units that the Organisation wishes to use the Service for. Each subscription type has a different Monthly Subscription Fee payable. The Organisation will select the appropriate subscription type for the Organisation when it first applies to subscribe to the Service. If the Organisation wishes to add additional attendees to a subscription, in excess of the number of attendees provided for under its subscription type, then it may do so, but that will move the Organisation into a different subscription type with a higher Monthly Subscription Fee payable from the date of the increase. An Organisation can change its subscription type at any time to one based on a lower number of attendees, and this will result in a decrease in the Monthly Subscription Fee payable.
- 4.4.** When the organisation's subscription type changes, the consequential increase or decrease in the Monthly Subscription Fee will take effect from the start of the next monthly billable period.
- 4.5.** Unless we have agreed otherwise with the Organisation in writing, we will debit the Organisation's nominated bank account or credit card for the applicable Monthly Subscription Fees at or following the start of each month of the Organisation's subscription for the Service, for the duration of the Organisation's subscription. The Organisation will provide us with a direct debit authority to enable us to debit such bank account or credit card for the applicable Monthly Subscription Fees, and will ensure that we retain such authority for the duration of the Organisation's subscription.
- 4.6.** We will send or make available invoices for the Monthly Subscription Fee by email or other means agreed between us and the Organisation, to the person designated by the Organisation to receive or access invoices for the Monthly Subscription Fee.

4.7. All Monthly Subscription Fees:

are exclusive of any goods and services taxes, sales taxes or value added taxes which, where applicable, will be payable by the Organisation to us;

will be paid by the Organisation by way of direct debit in the currency that we notify to the Organisation when it first subscribes to the Service, to the credit of a bank account to be designated in writing by us; and

will be paid by the Organisation in full by the due date for payment, without set-off or deduction of any kind, failing which:

we may charge the Organisation interest on the outstanding amount at an annual rate equivalent to the standard interest rate charged by our bankers for commercial overdrafts, plus 3%. Interest will be calculated on a daily basis from the due date until the date of actual payment; and

the Organisation will reimburse us for all costs and expenses we incur in connection with any actions or proceedings for recovery of such amounts, including all reasonable accounting costs, legal and attorney costs (on a solicitor and own client basis), court costs, and debt collection costs.

4.8. We may in some circumstances agree payment arrangements with or for the benefit of an Organisation or group of Organisations, that are different to the provisions specified in this clause 4. For example, we may agree that the Monthly Subscription Fees for all Organisations who are affiliated to a particular company or are members of a particular group will be paid directly by that company or some other representative body. No such alternative payment arrangements will be binding upon us unless they have been agreed by us in writing.

5. PRIVACY POLICY

5.1. In the course of providing the Service, we may collect, use, disclose, and hold personal information about identifiable individuals, as well as other data about the Organisation and its business affairs, employees, customers, parents and children. This information will be used, disclosed and held by us in accordance with our Privacy Policy.

5.2. The Organisation and its Users acknowledge that they have read our Privacy Policy and accept it. They acknowledge that our Privacy Policy may be amended or reviewed from time to time and that their continued use of the Service will constitute acceptance of any amendments or revisions to our Privacy Policy.

5.3. If any User provides us with any personal information about any third party, then the Organisation (if the User is an employee, personnel or agent of the Organisation) and that User warrant to us that the User has obtained all necessary consents and authorisations from that third party to enable us to collect, use, disclose and hold such personal information in accordance with our Privacy Policy.

6. WARRANTIES AND LIABILITY

6.1. We warrant and represent to the Organisation that:

we are entitled to provide the Service subject to the terms of these Conditions; and

to the best of our knowledge, the use and access of the Service by the Organisation and its Users will not infringe the copyright or other intellectual property rights of any third party, provided that no such warranty or representation is given to the extent that any such infringement arises as a result of our collection, copying and use of any Organisation Data in connection with the Service.

6.2. The Organisation warrants and represents to us that:

it is acquiring the right to access and use the Service for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the provision of the Service or these Conditions; and

our collection, copying and use of the Organisation Data in connection with the Service will not infringe the copyright or other intellectual property rights of any third party.

6.3. The Organisation and its Users acknowledge that:

while we use all reasonable endeavours to ensure that appropriate systems are in place to protect data from being lost, damaged or corrupted, we are not responsible for any loss or corruption of any data or other information contained within or created using the Service. The Organisation is responsible for ensuring its own backup of any data accessed from the Service by its Users;

they are responsible for their own set-up, installation and implementation of the Service on their systems and networks. While we may from time to time provide instructions or recommendations about how best to set up, install or implement the Service, each Organisation's or User's environment will be unique to it, and we are not liable to Organisations or Users for any liability, loss, damage, cost or expense that may arise as a result of our providing such instructions or recommendations;

in entering into these Conditions, they do not rely on any representation, warranty, term or condition that is not expressly provided in these Conditions; and

all conditions, warranties or other terms implied by statute or common law are excluded from these Conditions, to the fullest extent permitted by law.

6.4. Without limiting the scope of clause 6.3 we do not give any warranty, representation or undertaking:

about the efficacy or usefulness of the Service, or about any fitness for a particular purpose or merchantability;

that the Service will be free from bugs, defects, errors or outages; or

that any Content generated or accessible via the Service will be accurate or complete.

6.5. Without limiting clauses 6.3 or 6.4, our maximum liability to the Organisation and its Users (whether in contract, tort, negligence or in any other way) arising out of any and all claims under these Terms and Conditions or relating to the Service, will not in any circumstances exceed in aggregate the total Monthly Subscription Fee payable for the month in which such liability first arose.

6.6. In no event will we be liable (whether in contract, tort, negligence or in any other way) to any Organisation or User for:

loss of revenue or profit, loss of anticipated savings, loss of goodwill or opportunity, loss of production, loss or corruption of data or wasted management or staff time; or

loss, damage, cost or expense of any kind whatsoever that is indirect, consequential, or of a special nature, arising directly or indirectly from the Service or these Conditions, even if we had been advised of the possibility of such loss, damage, cost or expense, and even if such loss, damage, cost or expense was reasonably foreseeable by us.

6.7. Neither the Organisation nor any User may bring any proceedings under these Conditions in relation to any act or omission of us, or any breach by us of these Conditions, more than two years following the date the Organisation or such User (as the case may be) first became aware of the relevant act, omission or breach.

6.8. The Organisation agrees to defend, indemnify and hold harmless us and our officers, employees and agents against any and all liabilities, losses, damages, costs and expenses that may arise as a result of:

any breach by the Organisation or any of its Users of any of these Terms and Conditions; or

any damage or injury to persons or property arising from the Organisation or any of its Users accessing or using the Service.

6.9. None of the exclusions or limitations set out in these Terms and Conditions is intended to limit or exclude any form of liability that cannot be so limited or excluded under applicable law.

7. TERM AND TERMINATION

- 7.1.** These Conditions will come into effect on the date that we first provide the Organisation with access to the Service via its Users, and will continue in full force and effect until the Organisation's subscription has been terminated under clauses 7.2 or 7.3.
- 7.2.** Either we or the Organisation may elect to terminate the Organisation's subscription at any time upon giving the other party (being us or the Organisation) at least 30 days' prior written notice. Any such rights of termination may be modified to the extent agreed in writing between us and the Organisation (for example, to provide for a minimum subscription period of longer than 30 days).
- 7.3.** We may elect to terminate the Organisation's subscription with immediate effect by giving written notice to the Organisation if:

the Organisation or any User of the Organisation is in breach of these Terms and Conditions;

the Organisation ceases or threatens to cease to carry on all or substantially all of its business or operations, is declared or becomes bankrupt or insolvent, is unable to pay its debts as they fall due, enters into a general assignment of its indebtedness or a scheme of arrangement or composition with its creditors, or takes or suffers any similar or analogous action in consequence of debt;

a trustee, manager, administrator, administrative receiver, receiver, inspector under any legislation or similar officer is appointed in respect of the whole or any part of the Organisation's assets or business; or

an order is made or a resolution is passed for the liquidation of the Organisation (other than voluntarily for the purpose of a solvent amalgamation or reconstruction).

- 7.4.** In the event of termination of the Organisation's subscription under clauses 7.2 or 7.3:

we will cease to provide the Service, and the Organisation and its Users will cease to use and access the Service;

we will retain any Organisation Data in our possession for a minimum period of three months following termination, after which time that Organisation Data may be destroyed or erased. Upon termination of its subscription the Organisation will no longer be able to access the Organisation Data via the Service, but may request from us a copy of the raw Organisation Data held by us, subject to paying any additional fees reasonably determined by us in order to cover the time spent by us in preparing such copy. Such copy will be provided in a format reasonably determined by us or otherwise agreed by us and the Organisation in writing;

we may debit the Organisation's nominated bank or credit card account for any Monthly Subscription Fees not yet invoiced covering the period up until the date of termination of the Organisation's subscription (and in the case of any part-month period, such Monthly Subscription Fees will be calculated on a pro-rata basis);

the Organisation will not be entitled to a refund of any Monthly Subscription Fees paid by it;

the provisions of clauses 4.6, 6.1 to 6.9, 7.3, 7.4, 8.1 to 8.5 and any other clauses intended to survive termination, together with those other provisions of this Agreement that are incidental to, and required to give effect to those clauses, will remain in full force and effect; and

subject to this clause 7.4 and except for any rights and remedies of the parties that have accrued before termination, including for any prior breach of this Agreement, no party will be under any further obligation to another party.

8. GENERAL

- 8.1.** We will not be liable for any failure to provide the Service due to an event of Force Majeure. For the purposes of this clause 8.1, Force Majeure includes any inability to obtain supplies, labour, industrial disputes, delays, acts of God, fire, flood, storm, adverse weather conditions, or other matters beyond our reasonable control.
- 8.2.** These Terms and Conditions embody the entire agreement of the parties in relation to the subject matter of these Conditions and supersedes all prior understandings, communications and representations between the parties, whether oral or written. The parties acknowledge that they do not rely on any representation, agreement, term or condition that is not set out in these Conditions.
- 8.3.** Neither the Organisation nor any of its Users may assign, transfer or subcontract any of their rights or obligations under these Conditions, without first obtaining our written consent.
- 8.4.** No amendment to these Conditions will be effective unless in writing and signed by an authorised representative of us.
- 8.5.** These Terms and Conditions will be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.