



**Realestate.co.nz Ltd**

**Subscriber Agreement**

## PARTIES

Realestate.co.nz Limited of 155 Khyber Pass Road, Grafton, Auckland ([realestate.co.nz](http://realestate.co.nz))

## BACKGROUND

- A. realestate.co.nz owns and operates an online Platform that provides a comprehensive selection of real estate listings and other listings as well as online marketing tools and other services.
- B. The Subscriber wishes to publish their Listings on the Platform and use other services.
- C. realestate.co.nz has agreed to publish the Subscriber's Listings on its Platform and offer services to the Subscriber in accordance with this Agreement.
- D. In return, the Subscriber has agreed to pay the Fees and allow realestate.co.nz to use the Listings in accordance with this Agreement.

## AGREED TERMS

### 1. DEFINITIONS & INTERPRETATION

- 1.1 Defined terms and principles for interpreting this Agreement are set out in **schedule 1** (Definitions & Interpretation).

### 2. TERM

- 2.1 **Term:** This Agreement commences on the Commencement Date and will continue in force until it is terminated in accordance with **clause 11** (Termination).

### 3. SUBSCRIBER ELIGIBILITY

- 3.1 **Eligibility:** To be eligible to enter this Agreement and to use the Services, the Subscriber must be:
  - (a) a Licensed Real Estate Agent;
  - (b) a property manager or broker;
  - (c) a property developer; or
  - (d) an entity or individual who wishes to publish Listings on the Platform and realestate.co.nz (in its absolute discretion) agrees to enter into this Agreement.

### 4. Realestate.co.nz GENERAL OBLIGATIONS

- 4.1 **Provision of Services:** Subject to the Subscriber complying with its obligations under this Agreement, realestate.co.nz will, for the Term, provide the Services in accordance with this Agreement. The provision of the Services is subject to any restrictions set out in this Agreement (as amended from time to time in accordance with this Agreement). The Subscriber acknowledges and agrees that an Authorised User may order Services on behalf of the Subscriber.

4.2 **Amendment of Services:** During the Term, the Services may be amended as follows:

- (a) realestate.co.nz may, in its absolute discretion, offer additional services to the Subscriber and the Subscriber may agree to acquire the additional services;
- (b) upon 20 Business Days' notice to the Subscriber, realestate.co.nz may, in its absolute discretion:
  - i. cease providing any of the Services to the Subscriber, provided however this does not apply to Listing Services;
  - ii. vary the Services; or
- (c) upon the written agreement between the Parties.

Where the Services are amended in accordance with this clause 4.2, Schedule 2 (Services Schedule) will be amended accordingly.

4.3 **General:** realestate.co.nz will:

- (a) comply with this Agreement; and
- (b) in the performance of the Services, materially comply all applicable laws.

## 5. SUBSCRIBER'S GENERAL OBLIGATIONS

5.1 **General:** The Subscriber will (and will procure that Authorised Users will):

- (a) comply with the Terms of Use of Services and any amendments to the Terms of Use of Services (as notified in writing to the Subscriber from time to time by publishing a notice on the Agent Portal).
- (b) provide realestate.co.nz with reasonable assistance, information and access to its personnel, systems and facilities which is necessary to allow realestate.co.nz to provide the Services.
- (c) provide realestate.co.nz with details of its Authorised Users and other information about its Authorised Users as reasonably required by realestate.co.nz and immediately notify realestate.co.nz of any changes to its Authorised Users.
- (d) ensure they do not use the Services in a way that interferes with the reasonable enjoyment or use of the Services by another person.
- (e) not modify, adapt, reverse engineer, decompile or disassemble any part of the Services.
- (f) only use the Services for its internal business purposes.
- (g) not disclose any information that is supplied as part of the Services (except to the extent required by law) and not resell the information. For avoiding doubt, this does not include:
  - i. any information the Subscriber (or any Authorised User) provides to realestate.co.nz when using the Services;
  - ii. any information expressly permitted to be disclosed to third parties set out in the Terms of Use;
  - iii. as expressly agreed in writing between the Parties.

- (h) be responsible for and will at their own costs provide all phones, phone services, computers and other software, hardware and other services necessary to access the Services.
- (i) only use the Services in accordance with this Agreement.
- (j) otherwise comply with this Agreement, and all applicable laws.

## 5.2 Give notice of certain events: The Subscriber will:

- (a) promptly (and no later than 2 Business Days) notify realestate.co.nz:
  - i. if any person ceases to be an Authorised User;
  - ii. if an Authorised User ceases to have authority to order Services on behalf of the Subscriber;
  - iii. if details of an Authorised User changes;
  - iv. if the Subscriber (who is a Licensed Real Estate Agent at the time of signing this Agreement) ceases to be a Licensed Real Estate Agent or has their licence suspended;
  - v. if an Authorised User (who is required to hold a licence under the Licensed Real Estate Laws) ceases to hold a licence or has their licence suspended; or
  - vi. of any circumstances that give, or may give, rise to a right for realestate.co.nz to terminate this Agreement or the Subscriber's or any Authorised User's access to the Services under clause 11.2(a) (Termination);
- (b) provide a generic email address to realestate.co.nz (e.g. "accounts@[Subscriber].co.nz") for invoicing purposes.

## 6. GRANT OF LICENCES

6.1 **Licence to publish Listings:** The Subscriber grants to realestate.co.nz for the Term a non-exclusive, non-transferable, irrevocable, royalty-free licence to publish Listings (and any associated Intellectual Property of the Subscriber) on the Platform and on any other media.

6.2 **Licence to use underlying data:** The Subscriber grants to realestate.co.nz a non-exclusive, non-transferable, perpetual, irrevocable, royalty-free licence (including the right to sub-licence) to:

- (a) store, copy, access, licence, use, disclose (including to third parties), modify and adapt, as applicable, the underlying data of and relating to Listings for the purposes of:
  - (i) internal backup and reporting;
  - (ii) analytics, statistics and research, including identifying and publishing property-related trends and forecasts;
  - (iii) maintaining its Databases, including keeping records of the relevant address, physical characteristics, listing price and search price indication, and digital media (e.g. photos and videos) relating to individual properties and businesses;
  - (iv) enriching other data sets held by realestate.co.nz or data sets of its trusted commercial partners;
  - (v) improving Subscribers', Authorised Users' and Public Users' experience on the Platform;

- (vi) developing and improving the products and services that realestate.co.nz offers to Subscribers, Authorised Users, and Public Users; and
- (vii) any other commercial purpose;

provided that any underlying data that is disclosed to a third party must be disclosed in a manner that is consistent with realestate.co.nz's obligations under the Privacy Law and subject to the restrictions in clause 11.5(a) (**Termination**).

6.3 **Warranty:** The Subscriber warrants and represents that:

- (a) it is entitled to grant the licences in this clause 6; and
- (b) the grant of the licences in this clause 6 will not infringe any third party's Intellectual Property rights.

6.4 **Indemnity:** The Subscriber indemnifies realestate.co.nz against any and all direct losses, costs, expenses, demands or liability that is reasonably incurred arising out of a breach of clause 6.3.

## 7. FEES & PAYMENT

7.1 **Fees and Tax invoice:** The Subscriber will pay the Fees for the Services in accordance with this clause 7 (Fees & Payment). The Subscriber acknowledges that the Fees may be calculated on the basis of a set criteria to be met, and as a result, the monthly Fees may change from time to time. realestate.co.nz will issue a valid tax invoice to the Subscriber for the Fees monthly in arrears. Where realestate.co.nz is supplying Casual Subscription services only to the Subscriber, realestate.co.nz will issue a valid tax invoice to the Subscriber within 5 Business Days of the Listing being published.

7.2 **Payment:** Subject to **clause 7.3** (Fees & Payment), the Subscriber will pay the Fees to realestate.co.nz by the due date stated on the invoice (**due date**).

7.3 **Dispute:** If the Subscriber genuinely disputes any of the Fees then, provided it gives notice to realestate.co.nz of that genuine dispute (and provides all supporting documentation) before the due date and follows the process set out in **clause 12** (Disputes), it may withhold the genuinely disputed portion of the Fees until the dispute is resolved. For avoiding doubt, the Subscriber must pay all non-genuinely disputed Fees by the due date. If it is determined or agreed that any disputed Fees are valid and payable, then the Subscriber will pay interest on those unpaid Fees, calculated in accordance with **clause 7.5(b)** (Fees & Payment), from the original due date of such determination or agreement until the date that payment is made to realestate.co.nz (inclusive).

7.4 **Amendment of Fees:** realestate.co.nz can amend the Fees at any time on 20 Business Days' notice to the Subscriber, subject always to the Subscriber's right to terminate this Agreement under **clause 11.1** (Termination). For avoiding doubt, this may include amending the criteria upon which the Fees may be calculated. realestate.co.nz may give notice under this clause via publishing a notice on the Agent Portal.

7.5 **Failure to pay:** If the Subscriber fails to pay any non-genuinely disputed Fees by the due date, then without prejudice to realestate.co.nz's other legal rights and remedies:

- (a) realestate.co.nz can, at its option, suspend the Subscriber's and the Authorised Users' access to the Services or terminate this Agreement.
- (b) realestate.co.nz can charge default interest on the overdue monies at a rate of 3 percent per annum above the current commercial overdraft base rate charged by realestate.co.nz's bank. The default interest may be charged on a day to day basis from the due date until all monies, including default interest, have been paid in full. All monies received by realestate.co.nz will first be applied in payment of the default interest (if any).

- (c) All legal costs and expenses reasonably incurred by realestate.co.nz in collecting or attempting to collect any overdue amount (together with any interest payable), including third party debt collection fees and solicitor costs, will be payable by the Subscriber.

## 8. WARRANTIES, LIABILITY & INDEMNITIES

8.1 **Warranty:** Each Party represents and warrants to the other that it has the necessary power and authority to enter into and perform this Agreement in accordance with its terms.

### 8.2 **Liability for Authorised Users and Disclaimers:**

- (a) The Subscriber must ensure that Authorised Users are made aware of and agree to be bound by the terms of this Agreement, as if that Authorised User was a party to this Agreement.
- (b) The Subscriber is liable for the actions of its Authorised Users pursuant to this Agreement, including any breach of this Agreement by an Authorised User.
- (c) The use of the Services by the Subscriber (and Authorised Users) and any information or material downloaded or otherwise obtained through the use of the Services is at the Subscriber's (and Authorised Users') own discretion and risk and the Subscriber is solely responsible for any damage to the Subscriber's computer system or other device or loss of data that results from such use.
- (d) realestate.co.nz makes no guarantees with respect to the availability, quality, and uptime of the Services.

8.3 **No warranties regarding accuracy, errors etc:** realestate.co.nz makes no representations or gives any warranties of any kind whatsoever in relation to the Services. In particular, realestate.co.nz does not represent or warrant that the Services and the Platform (or any data or information within them):

- (a) are free from errors, omissions or other inaccuracies, or are fit for any purpose;
- (b) will be capable of being processed on the Subscriber's (or Authorised Users') computer equipment and software, or that the Subscriber's (or Authorised Users') data will be compatible with the Platform or the Agent Portal; or
- (c) will be free from infection, viruses or destructive code.

8.4 **Subscriber warranties:** The Subscriber warrants and represents to realestate.co.nz continuously throughout the Term that:

- (a) it has obtained all necessary third party consents to provide the Listings to realestate.co.nz to use in accordance with this Agreement (including for the purposes referred to in **clause 6.1** and **clause 6.2** (Grant of Licence)).
- (b) it has taken all steps necessary to ensure the supply of information by the Subscriber (and its Authorised Users) to realestate.co.nz when using the Services is in accordance with Privacy Laws.
- (c) prior to any Authorised User accessing the Services or any Personal Information about an Authorised User being provided to realestate.co.nz, it has given the relevant Authorised User details of the Privacy Policy, including providing a copy of the Privacy Policy.
- (d) an Authorised User has the authority to order Services under this Agreement.
- (e) where an Authorised User in their dealings with realestate.co.nz represents or holds out that they are licensed under the Licensed Real Estate Laws, the Authorised User has a current licence under the Licensed Real Estate Laws.

- (f) all information it (and its Authorised Users) provide to realestate.co.nz in connection with this Agreement is accurate at the time it is provided to realestate.co.nz and is updated so it continues to be accurate and any information that is inaccurate (or becomes inaccurate or out of date), will be promptly corrected or updated (as the case may be).

## 8.5 Exclusions and limitation of liability:

- (a) Nothing in this Agreement is intended to exclude or limit liability that cannot by law be excluded or limited.
- (b) Except as specifically set out in this Agreement, realestate.co.nz excludes all conditions, guarantees and warranties expressed or implied by statute, common law, equity, trade customer usage or otherwise are expressly excluded to the maximum extent permitted by law. The liability of realestate.co.nz for breach of any condition, guarantee or warranty that cannot be excluded is limited, at realestate.co.nz's option, to realestate.co.nz resupplying the Services and/or rectifying the fault.
- (c) Except for the indemnity at **clause 8.8** (Indemnity by realestate.co.nz), realestate.co.nz is not responsible or liable whether in contract, tort (including negligence), equity or on any other basis for any loss, damage, liability or expense sustained by the Subscriber, its Authorised Users, or any other person, directly or indirectly, from any use whatsoever of the Platform, the Agent Portal, the Services or otherwise in connection with this Agreement (except to the extent of realestate.co.nz's breach of this Agreement), even if realestate.co.nz has been advised of, or has knowledge of, the possibility of such loss, damage, liability, or expense.
- (d) realestate.co.nz's total aggregate liability arising under or in connection with this Agreement, whether that liability arises in tort (including negligence), contract, equity or on any other basis, is limited to \$10,000 provided however this limitation does not apply to realestate.co.nz's liability under the indemnity in **clause 8.8** (indemnity by realestate.co.nz).

8.6 **Notification of claims:** Except for a claim under an indemnity, any claim arising under this Agreement must be made within 3 months of the act or omission giving rise to the claim.

8.7 **Indemnity by Subscriber:** The Subscriber indemnifies realestate.co.nz against any and all direct losses, costs, expenses, demands or liability (**loss**) that is reasonably incurred, whether arising in contract, tort (including in each case negligence), or equity or otherwise, arising out of a claim by a third party alleging that use or publication by realestate.co.nz of a Listing in accordance with this Agreement is an infringement of that third party's legal rights or a breach of any law.

8.8 **Indemnity by realestate.co.nz:** realestate.co.nz indemnifies the Subscriber against any and all direct losses, costs, expenses, demands or liability (**loss**) that is reasonably incurred, whether arising in contract, tort (including in each case negligence), or equity or otherwise, arising out of a claim by a third party alleging that use or publication by realestate.co.nz of a Listing, otherwise than in accordance with this Agreement, is an infringement of that third party's legal rights or a breach of any law.

8.9 **Mitigation:** A Party claiming under an indemnity must take steps to mitigate all losses.

8.10 **Restrictions on indemnity:** An indemnifying Party (**Party A**) will not have any obligation or liability to the other Party claiming under an indemnity (**Party B**) unless:

- (a) Party B promptly notifies Party A of the claim;
- (b) allows Party A a reasonable opportunity to take over conduct of the claim;
- (c) Party B refrains from making any admission or settlement except without the consent of Party A (not to be unreasonably withheld or delayed);

- (d) where Party A takes over conduct of the claim, Party B provides all assistance and co-operation reasonably requested by Party A for the purposes of related negotiations or litigation in which case, Party A will compensate Party B for its reasonable internal staff time and external expenses incurred for that purposes.

8.11 **Contribution:** Notwithstanding any other provision in this Agreement, a Party's liability, arising under or in connection with this Agreement (including under an indemnity) will be reduced proportionately to the extent that:

- (a) any breach of this Agreement by the other Party (and in the case of the Subscriber, any of its Authorised Users), or
- (b) any unlawful, default, negligent or other tortious act or omission of the other Party (and in the case of the Subscriber, any of its Authorised Users)

contributed to the relevant liability, loss, damage or expense.

8.12 **Consumer Guarantees Act & Fair Trading Act:** The Parties acknowledge and agree that the Services are both supplied and acquired in trade and that:

- (a) the provisions of the Consumer Guarantees Act 1993 do not apply;
- (b) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply; and
- (c) contracting out of these provisions is fair and reasonable.

## 9. INTELLECTUAL PROPERTY, CONFIDENTIALITY & SECURITY

### 9.1 Intellectual Property:

- (a) Except as specifically provided under this Agreement (including, for avoiding doubt, the licence granted by the Subscriber to realestate.co.nz under **clause 6.1 and clause 6.2** (Grant of Licence)), neither Party grants any title or licence or right to use its Intellectual Property. Such Intellectual Property will remain the exclusive property of the Party that owned it at either the commencement or during the Term, including any alterations, additions or amendments to such Intellectual Property.
- (b) realestate.co.nz (or its licensors) is the sole owner of all rights (including Intellectual Property rights) in the realestate.co.nz API, the Platform, the Agent Portal, the Data Delivery Specifications, and the Databases.
- (c) Each Party must maintain adequate internal procedures, including appropriate agreements with its employees, consultants and all Authorised Users to protect the Intellectual Property of the other Party in the same manner as it protects its own Intellectual Property.
- (d) Ownership of any new Intellectual Property created by realestate.co.nz in connection with this Agreement will, unless expressly agreed otherwise, reside with realestate.co.nz.

### 9.2 Confidentiality:

- (a) Each Party will keep the other Party's Confidential Information confidential and adopt and maintain best practice security measures to protect the other Party's Confidential Information from unauthorised use and disclosure, and to detect the same.
- (b) Neither Party can use or disclose the other Party's Confidential Information other than:
  - (i) to its employees, directors, agents, consultants, or subcontractors to the extent necessary to perform its obligations under this Agreement (provided that those employees, directors, agents, consultants or subcontractors must first be made aware of the terms of this Agreement and agree to be bound by them as if they were

a party to them);

- (ii) with the express prior written consent of the other Party;
- (iii) to its professional advisers; or
- (iv) otherwise as expressly permitted under this Agreement.

9.3 **Security:** The Subscriber will (and will procure that Authorised Users will):

- (a) keep confidential all Subscriber and Authorised User's identifiers provided by realestate.co.nz to access the Services (including logins and passwords) confidential and not share that information with any other party.
- (b) where any API Key has been provided, keep the API Key confidential and not share that information with any other party.
- (c) not attempt to damage, interfere or harm the Platform, the Agent Portal, or any network or system underlying or connected to the Platform, the Agent Portal and/or the Services; and
- (d) not use the realestate.co.nz API to copy, scrape or store any Listing, except as expressly permitted under this Agreement.

9.4 **Subscriber responsible:** The Subscriber is responsible for all use of the Platform, the Agent Portal and the Services made using the API Key or any Authorised User identifier provided by realestate.co.nz, whether or not the use is made by the Subscriber, an Authorised User, or someone using the Authorised User identifier.

9.5 **Notification breach:** The Subscriber must notify realestate.co.nz immediately if the Subscriber believes there has been a breach of **clause 9.3** (Security) or there has been a breach of the security of the Authorised User identifier or API Key (as the case may be) provided to the Subscriber.

9.6 **Security measures:** realestate.co.nz will adopt and maintain industry best practice security measures to protect the realestate.co.nz API and Listings against unauthorised access, use and disclosure (as applicable), and to detect the same.

## 10. PRIVACY

10.1 **Compliance with Privacy Laws:** In exercising their rights and performing their obligations under this Agreement, realestate.co.nz and the Subscriber will each act in a manner that is consistent with their obligations under the Privacy Laws, including by assisting each other to promptly and appropriately respond to any requests for access to or correction of Personal Information.

10.2 **Handling Personal Information:** realestate.co.nz must collect and handle Personal Information about the Subscriber and Authorised Users in order to deliver the Services and for other purposes as set out in the Privacy Policy. realestate.co.nz will manage this information in accordance with its obligations under the Privacy Law, the warranties given by the Subscriber, and as set out in the Privacy Policy, as may be amended from time to time in accordance with **clause 10.3** (Privacy Policy) .

10.3 **Privacy Policy:** realestate.co.nz may amend the Privacy Policy by displaying an amended Privacy Policy on the Agent Portal and providing 20 Business Days notice to Subscriber. Subscriber must promptly provide all Authorised Users notice of the amended Privacy Policy, including providing a copy of the Privacy Policy.

## 11. TERMINATION

11.1 **By Subscriber:** The Subscriber can terminate this Agreement by giving at least 40 BusinessDays' notice to realestate.co.nz. Where realestate.co.nz is supplying Casual Subscription services only to the Subscriber, this Agreement terminates when the Listing is withdrawn.

11.2 **By realestate.co.nz:** realestate.co.nz can terminate this Agreement or the Subscriber's or an Authorised User's access to the Services (at its election):

- (a) at any time by notice to the Subscriber if:
  - (i) the Subscriber or an Authorised User breaches its obligations under this Agreement, including any Terms of Use of Services;
  - (ii) where the Subscriber or an Authorised User is licensed under the Licensed Real Estate Laws and the Subscriber or Authorised User is in breach of the Licensed Real Estate Laws;
  - (iii) the Subscriber's obligations are suspended under **clause 14.1** (Force Majeure) for a period of at least 30 consecutive days; or
  - (iv) the Subscriber: (1) is or is deemed to be insolvent; (2) makes an assignment for the benefit of, or makes arrangement or composition with its creditors; (3) goes into receivership or has a receiver, trustee and/or manager (including a statutory manager) appointed in respect of all or any of its property; or (4) any resolution is passed or proceedings are committed for the Subscriber's liquidation (except for the purposes of a solvent reconstruction approved by the Party not undergoing the reconstruction, which approval may be withheld by the Party not undergoing the reconstruction in its absolute discretion); or
- (b) for convenience, by giving at least 20 Business Days' notice to the Subscriber.

11.3 **Consequences of Termination:** If this Agreement is terminated for any reason:

- (a) the Subscriber and Authorised Users will immediately cease to have access to the Services;
- (b) the Subscriber will remain liable for any Fees accrued up to the date of termination; and
- (c) realestate.co.nz will charge the Subscriber for any accrued Fees up to the date of termination, provided that any recurring Fees will be pro-rated up to the date of termination.
- (d) For avoiding doubt, except as otherwise expressly provided in this Agreement, realestate.co.nz has no obligation to hold, delete or return any information held on its Databases.

11.4 **Effect:** The expiry or termination of this Agreement will be without prejudice to the rights and remedies of the Parties (at law and in equity) accrued up to the end of the time of expiry or termination

11.5 **Survival:** The following clauses will survive the expiry or termination of this Agreement:

- (a) **clause 6.2** (Grant of Licence), except that, realestate.co.nz will cease to use or disclose any Subscriber name or logo of the Subscriber and will remove any related office and salesperson information from the Listing;
- (b) **clause 8** (Warranties, Liability & Indemnities);

- (c) **clause 9** (Intellectual Property, Confidentiality & Security);
- (d) **clause 10** (Privacy);
- (e) **clause 11** (Termination);
- (f) **clause 12** (Disputes);
- (g) **clause 25** (Governing Law); and
- (h) any other clause which, by its nature, is intended to survive termination.

## 12. DISPUTES

12.1 **Disputes process:** Except where a Party seeks urgent interlocutory relief, if any difference or dispute arises between the Parties in connection with this Agreement or its construction or interpretation (**Dispute**), a Party must follow the following dispute resolution procedures:

- (a) A Party claiming that a Dispute has arisen under or in relation to this Agreement must give notice to the other Party specifying the nature of the Dispute.
- (b) On receipt of that notice by the other Party, the Parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation and determination or similar techniques agreed by them.
- (c) If the Parties do not agree within 5 Business Days of receipt of the notice (or such further period as agreed in writing by them) as to the dispute resolution technique and procedures to be adopted, the timetable for all steps in those procedures, and the selection and compensation of the independent person required for such technique, then the Parties must mediate the dispute in accordance with the Resolution Institute Mediation Rules and, failing agreement between the Parties, the mediator will be selected and his/her fee determined by the Chair for the time being of the Resolution Institute.
- (d) If the Dispute is not able to be resolved by mediation in terms of the preceding paragraph within 30 Business Days, or such extended period as the parties may agree, the Dispute will be referred to arbitration by a single arbitrator (agreed to by the parties within 5 Business Days or in default of agreement, nominated by the President of the New Zealand Law Society).
- (e) The arbitration will be conducted in accordance with the Arbitration Act 1996 and the parties expressly include the provisions of the Second Schedule of the Act. The Parties agree that the decision of the arbitrator will be final and binding except that the Parties reserve the right to appeal to the High Court on any question of law arising out of an award.
- (f) In respect of any time periods described in this **clause 12**, time will be of the essence.
- (g) The Parties will continue to perform their obligations under this Agreement as far as possible, as if no dispute had arisen, pending the final settlement of any matter in dispute.

## 13. SUBSCRIBER OFFICES AND BRANCHES

13.1 This Agreement is intended to confer benefits upon and be enforceable by all of the Subscriber's offices and branches pursuant to the terms of the Contract and Commercial Law Act 2017.

## 14. FORCE MAJEURE

14.1 Neither Party is liable for any delay or failure to perform any of its obligations under this Agreement if and to the extent that such delay or failure is due to Force Majeure, and the affected Party's obligations will be suspended for the duration of the Force Majeure event.

## 15. NOTICES

15.1 **Method:** All notices and other communication under this Agreement must be given in writing and may be delivered, by hand, or email to the addresses specified below or by each Party to the other Party for the express purpose of giving notice under this Agreement, except as otherwise expressly provided in this Agreement.

(a) **realestate.co.nz 155 Khyber Pass Road, Grafton, Auckland – [accounts@realestate.co.nz](mailto:accounts@realestate.co.nz)**

(b) **Subscriber**

15.2 **Deemed notice:** Notice will be deemed given:

- (a) in the case of hand delivery, upon written acknowledgement of receipt by an officer or other duly authorised employee, agent, or representative of the receiving Party; and
- (b) in the case of email, at the time the email enters the electronic information system of the addressee (provided that notice will not be effective where an 'out of office' or similar notification is received). 'Electronic information system' means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

## 16. COSTS

16.1 Each Party will bear its own costs and expenses incurred in relation to the entering of this Agreement.

## 17. VARIATION

17.1 realestate.co.nz can vary this Agreement at any time by notice to the Subscriber, subject always to the Subscriber's right to terminate this Agreement under **clause 11.1** (Termination).

## 18. ASSIGNMENT

18.1 The Subscriber must not assign or transfer the whole or any part of its rights, duties or obligations under this Agreement without the prior written consent of realestate.co.nz. A change in the effective control of the Subscriber of at least 25% (in aggregate during the Term) is deemed an "assignment" for the purposes of this **clause 18**.

## 19. WAIVER

19.1 No exercise or failure to exercise or delay in exercising any right or remedy by a Party will constitute a waiver by that Party of that or any other right or remedy available to it.

## 20. NO PARTNERSHIP OR AGENCY

21. Nothing contained in this Agreement is deemed to constitute the Parties partners nor, except as otherwise expressly provided in this Agreement, constitute any Party the agent or legal representative of another Party. No Party has authority to act or to assume any obligation or liability on behalf of any other Party except as expressly provided for in this Agreement. In particular, the Subscriber is not entitled to make any representation with respect to the Platform, the Agent Portal or the Services to any Authorised User other than as expressly supplied to it by realestate.co.nz.

## 22. PARTIAL INVALIDITY

- 22.1 If any provision of this Agreement or their application to any Party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and their application will not be affected and will remain enforceable to the greatest extent permitted by law.

## 23. ELECTRONIC SIGNING & COUNTERPARTS

- 23.1 The Parties acknowledge and agree that this Agreement may be executed:
- (a) by means of an electronic signature in accordance with Part 4 (Electronic Transactions) of the Contract and Commercial Law Act 2017; and
  - (b) in counterparts (including electronic copies), each of which will be deemed an original, but all of which together will constitute one and the same instrument.

## 24. ELECTRONIC MESSAGES

- 24.1 The Subscriber consents to receiving electronic messages from realestate.co.nz from time to time which market or promote realestate.co.nz's goods and services. realestate.co.nz will include a functional unsubscribe facility in any electronic messages sent to the Subscriber which market or promote realestate.co.nz's goods and services.

## 25. ENTIRE AGREEMENT

- 25.1 This Agreement and the documents referred to within it constitute the entire agreement between the Parties and supersede all prior representations, agreements, statements and understandings, whether verbal or in writing, relating to the subject matter of this Agreement.

## 26. GOVERNING LAW

- 26.1 This Agreement will be governed by and construed according to the laws of New Zealand and the courts of New Zealand will have non-exclusive jurisdiction in any proceedings relating to it.

## EXECUTION

Executed as an agreement

## SCHEDULE 1 – DEFINITIONS & INTERPRETATION

In this Agreement, unless the context otherwise requires:

<b>Agent Portal</b>	means the agent portal provided by realestate.co.nz, accessed through the domain name(s) my.realestate.co.nz, agentpro.co.nz or agent.realestate.co.nz (or such other domain name nominated by realestate.co.nz from time to time), for use by the Subscriber and Authorised Users to enable the management of subscriptions, Listings and advertising.
<b>Agreement</b>	means this agreement including all schedules and annexures.
<b>API Key</b>	means a unique code issued by realestate.co.nz to the Subscriber to enable the Subscriber to access the realestate.co.nz API.
<b>Authorised User</b>	means a person who has been authorised by the Subscriber to use the Services on behalf of the Subscriber (including all Subscriber's sales persons, offices and branches). For avoiding doubt, this includes a third party service provider or data provider that has been authorised by the Subscriber (including any Subscriber's offices and branches) to submit Listings or retrieve live Listings on its behalf via the realestate.co.nz API.
<b>Business Day</b>	means any day other than a Saturday, a Sunday or a public holiday in Auckland.
<b>Subscriber</b>	means the person, entity or organisation who is named as a party to this Agreement.
<b>Commencement Date</b>	means the date on which realestate.co.nz grants the Subscriber and Authorised Users access to the Services.
<b>Confidential Information</b>	<p>means all information of a confidential or proprietary nature disclosed by or on behalf of one Party to the other, whether before or after the Commencement Date, except information which:</p> <ul style="list-style-type: none"><li>• is or becomes publicly available through no fault of the receiving Party;</li><li>• is independently acquired or developed by the receiving party without breaching any of its obligations under this Agreement or at law, and without the benefit or use of any confidential information of the providing Party; or</li><li>• is lawfully acquired by the receiving Party from a third party, provided such information is not obtained as a result of a breach by that third party of any confidentiality obligations owing to the providing Party.</li></ul> <p>For avoiding doubt, Listings and property sales information is not Confidential Information.</p>
<b>Database</b>	means a realestate.co.nz database for Listings and any other databases holding information in connection with the supply of the Services.
<b>Data Delivery Specifications</b>	means the prevailing minimum data standards and protocols that govern (among other things) the method and format in which Listings may be submitted and/or retrieved (as applicable) from the Database, including via the realestate.co.nz API, as made available by realestate.co.nz to the Subscriber, and updated by realestate.co.nz from time to time.
<b>Dispute</b>	has the meaning given to that term in <b>clause 12</b> (Disputes).
<b>Fees</b>	means the applicable fees payable by the Subscriber for the Services provided by realestate.co.nz pursuant to this Agreement as set out in realestate.co.nz's prevailing fee schedule published in the Agent Portal and as amended in accordance with <b>clause 7.4</b> or as expressly agreed in writing by the Parties.
<b>Force Majeure</b>	means any event, action or circumstance beyond the reasonable control of a Party that prevents or delays the execution of or compliance with any of the terms and conditions contained in this Agreement by that Party (other than

the payment of money). Such event, action or circumstance includes, for example, acts of war, riot, sabotage or terrorism, industrial action, power shortages, acts of God, governmental or legislative action of general effect (after the Commencement Date), fire, earthquake, flood or similar natural disaster, or banking system or civil infrastructure failure.

**GST** means goods and services tax imposed under the Goods and Services Tax Act 1985.

**Intellectual Property** means all rights and interests in and to trade marks, inventions, patents, designs, copyrights, moral rights, plant variety rights, database rights, know-how, data and confidential information, business names, trade names, service marks, trade dress and livery, domain names, layout designs, software (including, without limitation, in source and object codes) and any similar rights in any part of the world, including any registration of such rights and applications for such registrations.

**Licensed Real Estate Laws** means the Real Estate Agents Act 2008 or any subordinate rules or regulations, including the Real Estate Agents Act (Professional Conduct and Subscriber Care) Rules 2012.

**Licensed Real Estate Agent** means a real estate agent who holds a current licence as an agent under the Licensed Real Estate Laws. For avoiding doubt, this does not include persons holding other licences under the Licensed Real Estate Laws (for example, a licensed salesperson).

**Listing** means:

- a residential, commercial, or rural (including lifestyle) “for sale” or sold listing;
- a residential, commercial, or rural (including lifestyle) “for rent/lease” listing;
- a business “for sale” or sold listing; or
- any other type of listing,

of the Subscriber and all associated data provided by the Subscriber (and its Authorised User), including:

- all related media (e.g. images/videos), links, and embeddable content or documents; and
- all related salesperson, contact and office information.

**Party** means realestate.co.nz or the Subscriber and **Parties** means both of them.

**Personal Information** has the meaning given to that term in the Privacy Law.

**Platform** means a public consumer platform provided by realestate.co.nz accessed by Public Users through the domain name of realestate.co.nz, (or such other domain name as realestate.co.nz may nominate from time to time), including access via any application or service provided by realestate.co.nz and its platform APIs.

**Privacy Law** means the Privacy Act 2020 and any replacement legislation.

**Privacy Policy** means the Privacy Policy displayed on the Agent Portal, and as amended from time to time in accordance with **clause 10.3** (Privacy).

**Public User** means a public user of the Platform.

**realestate.co.nz API** means realestate.co.nz’s application programming interface which allows the Subscriber and Authorised Users to interact directly with a Database.

**Services** means the services provided by realestate.co.nz to the Subscriber and its Authorised Users as described in Schedule 2, or as amended in accordance with **clause 4.2** (Services) and to avoid doubt, includes Casual Subscription Services.

<b>Term</b>	means the term of this Agreement pursuant to <b>clause 2</b> (Term).
<b>Terms of Use of Services</b>	means the prevailing terms and conditions governing the Subscriber's and Authorised Users' access to and use of the Agent Portal, realestate.co.nz API and Services as set out in Schedule 3 and as amended from time to time by realestate.co.nz by publishing on the Agent Portal.

For the purposes of interpretation and construction of this Agreement:

- (a) words importing the singular or plural include the plural and singular respectively;
- (b) references to clauses are references to clauses of this Agreement, unless expressly stated otherwise;
- (c) headings are for ease of reference only and do not affect the interpretation of this Agreement;
- (d) references to the Parties include (insofar as is consistent with the provisions of this Agreement) their respective personnel and their respective successors in title and permitted assigns;
- (e) a reference to dollars or \$ is a reference to New Zealand dollars;
- (f) unless expressly stated otherwise, all amounts are exclusive of GST (if any);
- (g) a reference to "including" does not imply any limitation; and
- (h) any reference to a statute, regulation or rule is a reference to that statute, regulation or rule as amended or replaced.

**SCHEDULE 2 – SERVICES SCHEDULE**

Type of Service	Description of Service
<p><b>Listing Services</b></p>	<p>Publish all Listings submitted by the Subscriber and its Authorised Users on the Platform.</p> <p>Providing functionality for any Public User enquiries made on a Listing displayed in the Platform to be referred to the Salesperson nominated by the Subscriber.</p>
<p><b>Agent Portal</b></p>	<p>Allows the Subscriber, and Authorised Used to manage their Listings and advertising.</p>
<p><b>realestate API</b></p>	<p>The use of a realestate.co.nz API to allow the Subscriber, Authorised Users to upload, edit and remove their listings from the Platform.</p>

and any other Services agreed in writing between the Parties

## SCHEDULE 3: TERMS OF USE OF SERVICES

### For all Services:

1. The Subscriber (and Authorised Users) must:
  - (a) only use the Services and the information obtained from the Services for a lawful purpose.
  - (b) only use the Services and the information obtained from the Services for the purposes as permitted by this Agreement.
  - (c) comply with any policies and procedures reasonably required and notified by realestate.co.nz relating to the proper use of the Services.
  - (d) immediately notify realestate.co.nz if it suspects, or becomes aware of a breach of the security obligations in this Agreement.

### Listing Services

2. The Subscriber (and Authorised Users) must:
  - (a) submit all of its Listings to realestate.co.nz in accordance with the Data Delivery Specifications;
  - (b) ensure that each Listing is:
    - (i) accurate;
    - (ii) not offensive, inappropriate, deceptive, misleading, discriminatory or unlawful in any respect; and
    - (iii) not listed more than once by the Subscriber or an Authorised User (or their Respective Office), even if in different categories;
  - (c) not submit a Listing that is the same as a previous Listing to obtain a more recent listed date except as expressly agreed in writing by realestate.co.nz;
  - (d) ensure that all media, imagery and content included in a Listing relates solely to that Listing, and is not wholly or partly for the promotion of the Subscriber and/or an Authorised User (or their Respective Office);
  - (e) ensure that published Listings that are no longer on the market are promptly (and no later than 1 Business Day) updated with the appropriate status of withdrawn, sold, leased or rented;
  - (f) provide up to date contact details for enquiries to be referred to;
  - (g) notify realestate.co.nz promptly in regard to any change of office or salespeople working at the office of the Subscriber;
  - (h) use unique listing IDs, not plain language words as listing numbers.; and
  - (i) not use the Services to access, edit or remove the Listings of another Subscriber (or attempt to do so).
3. The Subscriber (and Authorised Users) are permitted to disclose to their vendor client information regarding the views of the relevant Listing (including the performance metrics).
4. Premium paid advertising on a Listing cannot be transferred to another Listing.

5. realestate.co.nz reserves the right to not display, or otherwise remove or alter, any Listing on the Platform at its sole discretion, including where realestate.co.nz believes (acting reasonably) that:
  - (a) the Listing is in breach of the Agreement, including these Terms of Use; or
  - (b) the Subscriber or Authorised User placing the Listing has engaged in any dishonest or unethical practices in relation to the Platform (or any similar website or listing portal), or has previously breached the Agreement.

## Agents' Portal

6. Via the Agent Portal, the Subscriber (and Authorised Users) are permitted to:
  - (a) load new Listings and edit, access and remove the Listings.
  - (b) access metrics relating to Listings.
  - (c) update profile information including sold Listing.
  - (d) purchase advertising and other Services

## realestate.co.nz API

7. Where the Subscriber is given access to the Services via a realestate.co.nz API, the Subscriber (and Authorised Users) are permitted to undertake the following via the API:
  - (a) load new Listings and edit, access and remove the Listings.
  - (b) access metrics relating to the Listings.
  - (c) add, update and remove Subscriber's sales person/s and contact details.
  - (d) apply premium paid advertising to Listings.
8. The Subscriber acknowledges and agrees:
  - (a) realestate.co.nz makes no guarantees with respect to the availability, quality, and uptime of the realestate.co.nz APIs or any updates to the realestate.co.nz APIs;
  - (b) the form and nature of the realestate.co.nz APIs may change without prior notice to the Subscriber and that future versions of the realestate.co.nz APIs may be incompatible with applications developed for use with previous versions of the realestate.co.nz APIs;
  - (c) the licence to use the realestate.co.nz APIs is non-transferable and non-sublicensable;
  - (d) the Subscriber's network, operating system, and the software of its web servers, databases and computer systems must be configured to securely operate and protect the realestate.co.nz APIs and the Databases from misuse, interference, loss, and unauthorised access, modification or disclosure;
  - (e) realestate.co.nz may conduct maintenance on the realestate.co.nz APIs at any time with or without notice;
  - (f) realestate.co.nz may change the method of access to the realestate.co.nz APIs at anytime.