

Loadrite (Auckland) Limited Terms & Conditions for Services

Subject to the express terms of any other valid agreement you (“**Client**”) have with Loadrite, Loadrite’s provision of Services are governed by these Terms and Conditions for Services (“**Terms**”) and any applicable SOW which is deemed incorporated into these Terms. Loadrite agrees to perform the Services only upon these Terms.

1. **DEFINITIONS.**

- 1.1 “**Business Day**” means any day of the week other than a Saturday, Sunday or a statutory public holiday.
- 1.2 “**Change Document**” has the meaning given in Section 3.1.
- 1.3 “**Client Materials**” has the meaning given in Section 6.1.
- 1.4 “**Confidential Information**” has the meaning given in Section 9.1.
- 1.5 “**Deliverables**” means any products, equipment, software or other deliverables listed in the SOW.
- 1.6 “**Feedback**” has the meaning given in Section 6.2.
- 1.7 “**GST**” means Goods and Services Tax as defined in the New Zealand Goods and Services Tax Act 1985.
- 1.8 “**Loadrite**” means Loadrite (Auckland) Limited (NZCN 101782) and/or its affiliates identified in the SOW (as defined below). Any contrary or additional terms or conditions appearing on Client orders or associated purchase documentation will be of no effect.
- 1.9 “**Quotation**” means any quote or estimate of fees payable for the performance of Services and provision of Deliverables provided to Client by Loadrite.
- 1.10 “**Scope of Work**” or “**SOW**” means, collectively, the terms and conditions of any orders, Quotations, statements of work, scopes of work, or other similar document for the provision of services by Loadrite that references these Terms and is accepted by Loadrite in writing.
- 1.11 “**Services**” means the services described in the SOW, including the provision of any Deliverables.

2. **PROVISION OF SERVICES.**

- 2.1 Loadrite agrees to use commercially reasonable efforts to render the Services by the delivery dates specified in the SOW, if any.
- 2.2 The parties may execute additional SOWs describing Services and referencing these Terms.
- 2.3 Each accepted SOW, together with these Terms, will be interpreted as a single set of Terms, independent of other orders and/or SOWs.
- 2.4 Quotations are non-binding unless otherwise expressly stipulated in writing. Quotations are accepted as valid and binding only when confirmed by Loadrite in writing.

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2.5 Accepted Quotations cannot be cancelled for any reason without the prior written consent of Loadrite.

3. CHANGES TO SCOPE OF SERVICES.

3.1 If Client desires changes to a SOW, Client will submit a written request to Loadrite detailing the proposed changes to the Services, Deliverables, or any of these Terms. Upon receipt of Client's request, or if Loadrite desires changes to an SOW, Loadrite shall prepare an amendment to the SOW, change order, or like document (referred to collectively as the "**Change Document**") detailing the changes, any fee adjustments required as a result of such changes, any adjustments to the delivery schedule required as a result of such changes, and any other necessary adjustments. If the Change Document is mutually agreed to, both parties will execute it. If Client and Loadrite are not able to agree to the terms of the Change Document, the SOW will remain unchanged.

4. PAYMENT.

4.1 In consideration of the provision by Loadrite of the Services and Deliverables, Client will pay Loadrite the fees specified in each SOW. If no fee is stated in the applicable SOW Client will pay Loadrite its customary rates at the time the Services or Deliverables are provided monthly based upon actual time spent.

4.2 Client agrees to reimburse Loadrite for pre-approved travel, lodging and meal expenses incurred in the course of performing the Services at any location other than Loadrite's site.

4.3 Loadrite will invoice Client for expenses incurred and at Client's request and expense Loadrite will provide copies of receipts for which charges are incurred.

4.4 All payments are non-refundable and shall be made in New Zealand dollars (or such other currency specified in a SOW) within thirty (30) days from the date of Loadrite's invoice.

4.5 Client will be responsible for all sales, service, and any value added taxes, including GST, withholdings, duties and levies in connection with the Services (excluding taxes based on the net income or profits of Loadrite or any franchise tax imposed on Loadrite).

4.6 If Client disputes the accuracy of any invoice, Client will within five days after receipt of the invoice, give notice of that fact (in writing) to Loadrite. That notice will state the basis of the dispute and give relevant supporting details. Client will pay the undisputed portion of the invoice and may withhold payment of the portion disputed. If the parties do not resolve the dispute within 10 Business Days of the date of the notice, the dispute will be determined in accordance with clause 12.

4.7 If any fees are in arrears, Client will pay to Loadrite interest calculated and compounded daily on the outstanding sum from the date payment was due until the actual date of payment at the rate of 2% per month above the then current interest rate on business overdraft facilities charged by Loadrite's trading bank. If any late payment is the subject of a genuine dispute then Client will

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only pay interest under this clause 4.7 on the amount that is ultimately determined to be payable by Client whether by agreement, dispute resolution process, or Court order.

4.8 Client may not set off any monies claimed to be owed by Loadrite to Client against sums due to Loadrite.

5. TERMINATION.

5.1 Either party may terminate these Terms or any SOW immediately if the other party:

- (a) fails to cure any material breach of these Terms within thirty (30) days after written notice of such breach;
- (b) ceases operation without a successor; or
- (c) has a receiver, liquidator, administrator, manager or mortgagee take possession of or be appointed with respect to all or any part of its business assets or undertaking; or
- (d) makes an assignment for the benefit of its creditors, or enters into any general arrangements or composition with or for the benefit of its creditors

6. LICENSE AND OWNERSHIP.

6.1 **Client Materials.** Client agrees to provide Loadrite with reasonable access to and a limited right to use Client technical data, computer programs, files, documentation, and/or other materials ("**Client Materials**"), resources, personnel, equipment or facilities to the extent such access is necessary for the performance of Services. Client will be responsible for, and assumes the risk of any problems resulting from the content, accuracy, completeness, competence or consistency of Client Materials or its personnel. To the extent that Client does not timely provide the access, quality, level of detail and/or scope required for Loadrite to perform the Services or deliver the Deliverables, Loadrite shall be excused from performance of the Services or delivery of the Deliverables until such items/access are provided or the applicable deficiencies corrected. Client owns and will retain ownership (including all intellectual property rights) in the Client Materials. Client grants to Loadrite a royalty-free, non-exclusive license to access and use the Client Materials (including through subcontractors) to the extent and for the time required for Loadrite's performance of the Services.

6.2 **Deliverables.** Subject to Section 6.3(Assignment of Ownership to Client), Loadrite hereby grants Client a perpetual, worldwide, royalty-free, non-exclusive license to use, copy, modify, or develop derivative works of the Deliverables but only for internal purposes and otherwise in accordance with the description of Client's use and any restrictions set forth below or in the applicable SOW. Loadrite owns and will retain ownership (including all intellectual property rights) in and to the Deliverables (excluding any Client Materials) and any modifications, improvements and derivative works thereof (including any such materials to the extent incorporating any ideas, feedback or suggestions of Client ("**Feedback**")). Client acknowledges that Loadrite is free to exploit, use, license and distribute, any Feedback provided to Loadrite as it sees fit, without obligation of compensation or attribution.

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- 6.3 **Assignment of Ownership to Client.** If the parties have agreed that Loadrite will assign ownership of any portion of the Deliverables to Client, the relevant SOW must expressly set forth the terms and conditions regarding such assignment.
- 6.4 **Loadrite Product Enhancements and Modifications.** Notwithstanding anything in these Terms or any SOW to the contrary, any enhancements or other modifications to any of Loadrite's commercially available products and/or services that are developed by Loadrite as part of or in the course of performing the Services shall be owned by Loadrite and Client shall have no right, title, or interest therein; provided, that if Loadrite has granted to Client a license or access to use such commercially available products and/or services under a written agreement, then Client's rights under such agreement shall also extend and apply to any enhancements and modifications so made by Loadrite. Other than Client Materials, Loadrite owns all computer programs, utilities and intellectual property which aid Loadrite in performing the Services or which are produced as a result of the Services.
- 6.5 **Other Agreements.** Loadrite and Client may have entered into one or more separate agreements under which Loadrite supplies, licenses, or otherwise makes available certain products and/or services to Client, including updates and enhancements to that software. The delivery and use of any such products and/or services is governed by the terms of such other agreement and not these Terms, and even if listed in a SOW such products and/or services shall not be considered a Deliverable for the purposes of these Terms.
7. **LIMITED WARRANTY AND DISCLAIMER.**
- 7.1 Loadrite will perform the Services and deliver the Deliverables in:
- (a) a professional and workmanlike manner; and
 - (b) compliance in all material respects with all applicable laws, rules, and regulations.
- 7.2 Loadrite will, as its entire liability and obligation to Client and Client's sole and exclusive remedy for failure to provide Services or Deliverables meeting this warranty:
- (a) re-perform the non-conforming Services; or
 - (b) re-deliver the nonconforming Deliverables

at no additional cost to Client if notified of the non-conformity within thirty (30) days of delivery of the applicable Service or Deliverable; or
 - (c) if Loadrite determines such remedies to be impracticable within a reasonable period of time, terminate the applicable Statement of Work and refund the portion of fees attributable to such non-conforming Services or Deliverables.
- 7.3 **Warranty Exclusions:** Except for the warranty set out in Section 7.2, Loadrite makes no warranty whatsoever with respect to the services and deliverables, including any:
- (a) warranty of merchantability;

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- (b) warranty of fitness for a particular purpose;
- (c) warranty of title; or
- (d) warranty against infringement of intellectual property rights of a third party;

whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.

7.4 **CGA and FTA:** Client acknowledges that any Deliverables are being purchased for business purposes and that the New Zealand Consumer Guarantees Act 1993 (**CGA**) does not apply. The parties agree that the Services and Deliverables are supplied and acquired in trade within the meaning of the New Zealand Fair Trading Act 1986 (**FTA**), that sections 9, 12A and 13 of the FTA will not apply to the agreement between the parties, and that it is fair and reasonable to exclude their application. Client acknowledges, and the parties agree, that the Services and Deliverables are purchased for business purposes and supplied and acquired in trade for the purposes of any other applicable laws in each applicable jurisdiction, and any legislation equivalent to the CGA and sections 9, 12A and 13 of the FTA do not apply to the agreement between the parties to the extent permissible under that legislation.

8. **LIMITATION OF REMEDIES AND DAMAGES.**

- 8.1 Neither party will be liable for any loss of use, interruption of business, lost profits, or any indirect, special, incidental, or consequential damages of any kind arising out of or related to the Services or Deliverables regardless of the form of action whether in contract, tort (including negligence), strict product liability, or otherwise, even if it has been advised of the possibility of such damages in advance.
- 8.2 In no event will Loadrite's aggregate liability arising out of or related to performance of the Services or provision of Deliverables exceed the net amount Loadrite has actually received from Client under the SOW applicable to such claim. The existence of one or more claims will not enlarge this limit.
- 8.3 This Section 8 does not apply to either party with respect to any breach by that part of Section 9 (Confidential Information) or to Client with respect to any claim arising as a result of Client's violation of license restrictions applicable to the Deliverables under Section 6.2 (Deliverables), or its indemnity obligations under Sections **Error! Reference source not found.** and 11.
- 8.4 The parties agree that the limitations specified in this Section 8 are agreed and reasonable allocations of risk constituting in part the consideration for Loadrite's performance of the Services and provision of the Deliverables to Client and such limitations will apply notwithstanding the failure of essential purpose of any limited remedy.

9. **CONFIDENTIAL INFORMATION.**

- 9.1 Each party ("**Receiving Party**") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("**Disclosing Party**") constitute the

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confidential property of the Disclosing Party (“**Confidential Information**”), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure.

9.2 Any software, documentation or technical information provided by Loadrite (or its agents) and these Terms and any Quotations, and SOWs will be deemed Confidential Information of Loadrite without any marking or further designation.

9.3 Except as expressly authorised in this Section 9, the Receiving Party will hold in confidence and not use or disclose any Confidential Information to any third party. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

9.4 **Exclusions.** The Receiving Party’s nondisclosure obligation will not apply to information which the Receiving Party can evidence:

- (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information;
- (b) was or has become public knowledge through no fault of the Receiving Party;
- (c) was rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation;
- (d) was independently developed by employees of the Receiving Party who had no access to such information; or
- (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order subject to Section 9.6).

9.5 **Use and Protection of Confidential Information.** The Receiving Party may use the Confidential Information of the Disclosing Party only in pursuance of its business relationship with the Disclosing Party under these Terms. Except as expressly provided hereunder, the Receiving Party will not disclose Confidential Information of the Disclosing Party to anyone without the Disclosing Party’s prior written consent. The Receiving Party will take all reasonable measures to avoid disclosure, dissemination or unauthorised use of the Disclosing Party’s Confidential Information, including, at a minimum, those measures it takes to protect its own Confidential Information of a similar nature. The Receiving Party will restrict the possession, knowledge and use of the Confidential Information to its employees, contractors, legal and financial advisors who:

- (a) have a need to know such Confidential Information in connection with the parties’ business relationship; and
- (b) have executed written nondisclosure agreements obligating them to protect the Confidential Information on substantially the same terms as set out in this Section 9.

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- 9.6 **Legally Required Disclosure.** The Receiving Party may disclose Confidential Information to the extent reasonably required to comply with court, administrative, or binding orders of governmental entities, provided that the Receiving Party gives prompt notice to the Disclosing Party of the receipt of the order and cooperates fully in any effort to obtain an order preserving the confidential nature of the Confidential Information.
- 9.7 **Reverse Engineering** Unless and except to the extent expressly authorised by Loadrite to do so in the applicable SOW, Client will not attempt to reverse engineer, de-encrypt, or otherwise derive the design, internal logic, structure or inner workings of any Deliverable.
10. **CLIENT REFERENCE.**
- 10.1 Client agrees that upon execution of these Terms, Loadrite may add Client to Loadrite's publicly disclosed customer list (which may include use of Client's name and logo in customer lists on Loadrite's website and marketing materials). Except as set forth in this Section 10, neither party may use the other party's name in advertisements nor otherwise publicly disclose the terms and content of these Terms without the other's prior written consent.
11. **EXPORT COMPLIANCE.**
- 11.1 Client is responsible for complying with all applicable export and import regulations and obtaining all necessary export and import licenses or permits for the direct or indirect export or import of any Deliverable.
- 11.2 Client may not use or otherwise export or re-export any Deliverable except as authorised by the laws of the jurisdiction in which it was obtained. In particular, but without limitation Deliverables may not be exported or re-exported in violation of export laws, including if applicable export or re-export into any New Zealand or US-embargoed countries or to anyone on the US Treasury Department's list of Specially Designated Nationals or the US Department of Commerce Denied Person's List or Entity List.
- 11.3 Client will defend, indemnify and hold Loadrite harmless against any liability (including attorneys' fees) arising out of its failure to comply with the terms of this Section 11
- 11.4 Client acknowledges and agrees that Loadrite technology, software, products, and/or proprietary information that may be used in the creation of Deliverables and incorporated therein are subject to the U.S. Export Administration Regulations and were exported from the United States, if at all, in accordance with those regulations.
12. **DISPUTE RESOLUTION.**
- 12.1 If a party believes that there is a dispute in relation to these Terms or any SOW, it will first notify the other party in writing giving details of the dispute. The dispute will then be promptly referred to a senior representative of each party for resolution (who may use mediation to assist). Pending resolution of the dispute, both parties will continue to perform all their respective obligations under these Terms. If the dispute remains unresolved 20 Working Days after the meeting of senior representatives referred to above, then the dispute will be referred to the arbitration of a

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single arbitrator to be appointed by the parties or failing agreement to be appointed by the President of the New Zealand Law Society. Such arbitration will be carried out in accordance with the provisions of the New Zealand Arbitration Act 1996.

- 12.2 Nothing in these Terms prevents either party from taking urgent interlocutory, injunctive or declaratory relief in respect of the dispute.

13. GENERAL PROVISIONS.

- 13.1 **Governing law and jurisdiction:** Unless expressly otherwise set forth in an SOW, New Zealand law governs these Terms and all SOWs, and the parties agree to submit to the jurisdiction of the New Zealand courts (subject to Section 12). The United Nations Convention on Contracts for the International Sale of Goods is excluded.

- 13.2 **Independent Contractors.** Each party is an independent contractor of the other and neither is an employee, agent, partner or joint venturer of the other. Neither party shall voluntarily or involuntarily bind nor attempt to bind the other to any contract or to the performance of any obligation. Neither party may represent to third parties that it has any right to enter into any obligation on the other's behalf. The parties hereby agree that there are no third party beneficiaries of these Terms.

- 13.3 **Survival:** Following termination under Section 5, Sections 6 (License and Ownership), 8 (Limitation of Remedies and Damages), 9 (Confidential Information), 10 (Client Reference), 11 (Export Compliance) and 13 (General Provisions) will survive. Section 4 (Payment Terms) will survive with respect to payments earned prior to termination.

- 13.4 **Assignment; Binding Effect.** Neither party shall assign these Terms without the advance written consent of the other party, except that Loadrite may assign these Terms to an affiliate or in the event of a merger, reorganisation, acquisition or other transfer of all or substantially all of Loadrite's assets or voting securities. These Terms will otherwise be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

- 13.5 **Notices:** Any notice, report, approval or consent which may be or is required to be given under these Terms will be in writing to the address(es) specified by each party in the SOW. A communication under these Terms will only be effective:

- (a) in the case of personal delivery, when delivered; and
- (b) if made by email, on the Business Day on which it is delivered, provided the sender does not receive an automated "out of office" or notification of non-delivery indicating the message has not been received;

provided that any communication received or deemed received after 5 pm or on a day which is not a Business Day will be deemed not to have been received until the next Business Day.

- 13.6 **Force Majeure.** Except for payment obligations, neither Party will be liable to the other for failure to perform its obligations to the extent caused by an event beyond the reasonable control of such

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Party, including, without limitation, government regulations or orders, outbreak of a state of emergency, acts of god, acts of terrorism, blockade, war, warlike hostilities, civil commotion, riots, epidemics and pandemics, fire, natural disasters, strikes, lockouts, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency, or any other similar cause or causes, provided that, to the extent feasible, the affected party promptly notifies the other of such occurrence and makes its commercially reasonable efforts to eliminate the effect thereof.

- 13.7 **Waivers.** No 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.
- 13.8 **Severability:** If any provision or part of a provision of these Terms is held invalid, unenforceable or illegal for any reason, these Terms and any remainder of the provisions will remain otherwise in full force apart from that part of the provisions which will be deemed deleted
- 13.9 **Headings.** The headings contained in these Terms are for reference purposes only and shall not affect in any way the meaning or interpretation of these Terms.
- 13.10 **Entire Agreement.** No provision of any purchase order or other business form employed by Client will supersede these Terms, and any such document relating to these Terms shall be for administrative purposes only and shall have no legal effect. Both parties agree that these Terms, together with the SOW, are the complete and exclusive statement of the mutual understanding of the parties, and supersede and cancel all previous written and oral agreements and communications relating to the subject matter of these Terms.
- 13.11 **Official Language.** The official language of these Terms is English. If there is a conflict between versions of these Terms in any other language, the English language version controls.
- 13.12 **Amendments.** No change to these Terms or an SOW will be effective unless in writing and signed by both parties. .
- 13.13 **Independent Activities.** Client acknowledges that nothing in these Terms will prohibit Loadrite or its affiliates from providing products and services that are similar to or compete with the Services and Deliverables provided that Loadrite does not violate any of its confidentiality obligations under these Terms in connection with such activities.
- 13.14 **Order of Precedence.** In case of any inconsistency, conflict, or ambiguity among these Terms, an SOW, or any related agreements, the documents shall govern in the following order:
- (a) these Terms;
 - (b) mutually executed changes to an SOW recorded in a Change Document;
 - (c) the SOW; and
 - (d) any other documents expressly referenced in a Change Document and/or the SOW.

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Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one document and not identified in another shall not be considered a conflict or inconsistency.

- 13.15 **Counterparts.** The SOW may be executed in any number of counterparts, each of which will be considered an original and all of which when taken together will constitute a single fully-signed original. Electronic means of signatures on the SOW are binding.