

# Terms and Conditions



## 1. Definitions

1.1 The following terms have the following meanings:

“Agreement” means the agreement between the Customer and the Provider for the provision of the Provider’s Service, which is subject to these Terms and Conditions.

“Business Day” means a day (other than a Saturday, Sunday or public holiday) on which registered banks are open for general business in Palmerston North.

“Confidential Information” means information relating to the technology, technical processes, business affairs or finances of the Provider or of any affiliate of the Provider or of any suppliers, agents, distributors, licensees or customers of the Provider where such Confidential Information was received during the period of this Agreement.

“Customer” means the Customer identified in the Schedule.

“Data” means the data obtained by the Provider through the Provider’s Equipment.

“Initial Term” has the meaning set out in the Schedule.

“Installation Date” is the date that Levno is installed. Billing will commence from this date unless otherwise agreed.

“Intellectual Property Rights” means any intellectual property rights recognised by law including, without limitation, that protected through legislation (such as patents, copyrights, trademarks) or arising from protection of information as a trade secret, confidential information, and all trade secrets, know-how and other intellectual property developed by the Provider.

“Provider” means Levno Limited.

“Provider’s Equipment” means the various items of equipment or apparatus of the Provider installed or used at the Customer’s place of business for the purposes of the Provider’s Service.

“Provider’s Service” means those Services provided by the Provider, and purchased by the Customer, as further defined in the Schedule and includes any additional services that we may agree to provide you with from time to time).

“Renewal Term” has the meaning set out in clause 3.1.

“Separation Distance” means the distance (as specified in the Schedule) from the Provider’s Equipment within which

flammable liquids and other such dangerous items cannot be stored, which must be observed to ensure safe operation of the Provider’s Equipment.

“Service Fees” means the fees, for receipt of the Provider’s Service, as set out in the Pricing Schedule as set out in Part E, on the Website and subject to review in accordance with clause 8.

“Start Date” has the same meaning as “Installation Date”.

“Term” means the Initial Term together with any Renewal Terms.

“Website” means the website or websites owned by the Provider and through which it provides monitoring information and/or Data to the Customer.

## 2. Acceptance by Provider

2.1 The Provider’s obligations to the Customer will not become binding until such time as the Provider has notified the Customer in writing that it has accepted the Customer’s application. However, the Customer’s obligations will become binding as soon as it has signed this Agreement.

2.2 The Customer acknowledges that the Provider’s acceptance of its application may be subject to the Customer procuring personal guarantees of the Customer’s obligations as the Provider may require in such form as the Provider requires.

## 3. The Provider’s Service

3.1 During the Term, the Provider grants to the Customer a non-exclusive and non-transferrable right to use the Provider’s Service.

3.2 The Provider may from time to time and at its discretion introduce upgrades and updates to the Provider’s Service at no additional charge. The Provider will use its best endeavours to ensure that such upgrades and updates will not detrimentally affect the core functionality of the Provider’s Service.

3.3 The Customer authorises the Provider to send to it from time to time information about other products and services offered by the Provider at its various communication points listed in the Schedule.

#### 4. Term and Termination

4.1 This Agreement commences on the Installation Date and continues for the duration of the Initial Term. It is automatically renewed by the Customer for additional 12-month terms (a “Renewal Term”) unless the Customer gives the Provider 60 days’ notice in writing before the expiry of the then current Term. This clause is subject to clause 8 below.

#### 5. Installation and maintenance of the Provider’s Equipment

5.1 The Customer agrees:

- (a) that the Provider, its officers, employees and agents will be entitled to access the Customer’s place of business (or such other location at which the Provider’s Equipment is located) for the purposes of installing, maintaining, repairing, replacing and/or removing the Provider’s Equipment;
- (b) that it will, at all times, comply with the Provider’s directions and instructions as to the use and placement of the Provider’s Equipment;
- (c) that it will not store flammable liquids and other such dangerous items within the Separation Distance and will strictly observe the Provider’s instructions regarding the Separation Distance;
- (d) that once the Provider’s Equipment has been installed, it will not:
  - (i) move, relocate or otherwise tamper with the Provider’s Equipment;
  - (ii) move or install any fuel tanks or other flammable items within the Separation Distance without first obtaining the written consent of the Provider – the Customer acknowledges that this is an important safety requirement;
  - (e) that while the Provider’s Equipment is installed at the Customer’s place of business:
    - (i) the Provider’s Equipment will remain a chattel and will not become a fixture (notwithstanding that any items of the Provider’s Equipment may be attached to the Customer’s property);
    - (ii) the Customer will be a bailee of the Provider’s Equipment (and will therefore be responsible for any damage or destruction due to the Customer’s negligence or misuse);
    - (iii) the Customer must ensure that the Provider’s Equipment is secure at all times;
    - (iv) the Customer must immediately notify the Provider on discovery of any damage or theft of any of the Provider’s Equipment;

(v) the Customer will be responsible for ensuring that the Provider’s Equipment is insured and paying any premiums for the same;

(vi) the Customer will not do or permit anything to be done that may damage the Provider’s Equipment or prejudice the insurance of the same or that would allow the insurer to decline a claim.

5.2 The Provider agrees:

- (a) it will, as soon as is practicable, arrange battery changes, repairs and other maintenance of the Provider’s Equipment;
- (b) it will, when installing, maintaining, repairing or replacing the Provider’s Equipment, use its best endeavours to observe prudent health and safety and security principles in relation to the Customer’s place of business and to observe any statutory requirements as to the same; and
- (c) where such activities are being undertaken by an agent or other contractor, the Provider will only be responsible for:
  - (i) ensuring that such agent or contractor is properly qualified to undertake such work; and
  - (ii) instructing such agent or contractor to adhere to the same standards set out in clause 5.2(b) above.

#### 6. Ownership and use of Data

6.1 The Customer will retain ownership of the Data.

6.2 Subject to clause 7.5, the Provider will make the Data available to the Customer through the Website, subject to any Terms of Use specified on the Website from time to time.

6.3 The Customer irrevocably agrees that the Provider may access, use and aggregate the Data for its own business purposes, which may include the following:

- (a) improving the Provider’s Service;
- (b) analysing and gaining understanding as to how the Provider’s Service is being used;
- (c) marketing the Provider’s Service;
- (d) generating information, research and insights; and
- (e) such other matters as may be specified on the Website from time to time.

6.4 The Customer acknowledges that the Data will only be as accurate as the Provider’s Equipment allows and accordingly:

- (a) the Data will generally be less accurate than a reading by a certified meter;
- (b) there may be discrepancies in the Data from time to time; and

(c) except where expressly agreed by the Provider in writing, the Data will not be suitable for measuring the outflow of any liquids for retailing purposes or certifying or confirming any matter to any third party.

## 7. Payment of the Service Fees

7.1 During the Term, the Customer will pay the Service Fees to the Provider each month in advance by direct debit (in the manner directed by the Provider).

7.2 If the Start Date is not the first day of a month, then the first month's Service Fees will be reduced on a pro rata basis. The Provider will not be required to deliver the Provider's Equipment to the Customer or make any Data available to the Customer until the first month's Service Fees have been paid.

7.3 All subsequent Service Fees must be paid by the 20th of the month preceding the next month in the Term. For the avoidance of doubt, such payment will be for the period of the following calendar month.

7.4 All fees and charges payable by the Customer under this Agreement are exclusive of GST. The Customer must pay GST (if any) to the Provider on the day it pays the fees or charges under this Agreement.

7.5 In the event that payment in full is not made by the Customer in accordance with clauses 7.1 and 7.3 above, the Provider may at its discretion:

(a) charge default interest to the Customer at an annual rate of 15%, such interest to be calculated daily from the date of the applicable invoice to and including the date of payment; and/or

(b) suspend or withhold access to the Data and the Website by the Customer until all amounts owing to the Provider have been paid in full.

## 8. Review of Service Fees

8.1 The Provider may review the Service Fees on 60 days' notice in writing (the end of which is a "Review Date"), provided that:

(a) the reviewed Service Fees will, in addition to being emailed to the Customer, be published on the Provider's website; and

(b) if the Customer objects to the reviewed Service Fees, it may terminate this contract by notice in writing to the Provider provided that such notice must be given at least 30 days before the Review Date (time being of the essence); and

(c) in such case, this Agreement will be deemed terminated as of the Review Date.

## 9. Technical requirements

9.1 The Customer acknowledges that in order to use the Provider's Service, its systems must meet the minimum standards determined by the Provider.

9.2 The Customer acknowledges that the minimum and technical data standards may need to be altered by the Provider over time and from time to time and that the Provider may in its absolute discretion revise those required technical or data standards in whole or in part. The Customer will be responsible for all costs associated with any change to its systems and/or data required to meet the Provider's technical and/or data standards.

## 10. Intellectual Property Rights

10.1 As between the Customer and the Provider, all rights, title and interest, including all Intellectual Property Rights, relating to the Provider's Service, including the Provider's Equipment, software and documentation (including without limitation all upgrades, updates, improvements, enhancements, modifications and derivative works of any of them) remain with the Provider. Nothing in this Agreement grants to either party any ownership or other Intellectual Property Rights of the other party other than is expressly set out in this Agreement.

10.2 The Customer may make sufficient copies of user documentation to support its use of the Provider Service, but must use such copies for the sole purpose of its own use of the Provider's Service and will not provide them to any third party.

10.3 The Customer must not attempt to sublicense, modify, tamper with, adapt or reverse engineer the Provider's Equipment or any software or hardware used to provide the Provider's Service.

## 11. Confidential Information

11.1 The Customer undertakes to treat as secret and confidential, and not at any time for any reason whatsoever to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of, any Confidential Information of the Provider.

11.2 The obligations of confidence referred to in this clause do not extend to any Confidential Information which:

(a) is or becomes generally available to the public otherwise than by reason of a breach by the Customer of the provisions of subclause 11.1;

(b) is known to the recipient party and is at its free disposal prior to its receipt from the Customer;

(c) is subsequently disclosed to the Customer without obligation or confidence by a third party owing no such obligations to the other party in respect of such information;

provided that if the Customer is legally required to disclose any Confidential Information it will:

(d) immediately notify the Provider of such requirement;

(e) fully co-operate, at the Provider's cost, with all legal actions taken by the Provider to avoid or limit such disclosures;

if the Customer cannot avoid such disclosure, it will:

(f) only disclose such portions of the Confidential Information as is legally required;

(g) use its reasonable endeavours to obtain assurances that such information will be treated as confidential by any person to whom it is disclosed.

11.3 The obligations of the parties under this clause survive the expiry or the termination of this Agreement for whatever reason.

## 12. Warranties and Liabilities

12.1 The Provider warrants that:

(a) it is legally incorporated under the laws of New Zealand;

(b) it has the power and authority to enter into this Agreement;

(c) it will use commercially reasonable efforts to maintain its systems associated with the Provider's Service free from viruses and other harmful code; and

(d) it will use reasonable efforts to ensure the Provider's Service is performed in a professional, workmanlike manner commensurate with the industry practices in the industry in which the Provider operates.

12.2 Except as is expressly set out above, all terms, conditions, representations and warranties are excluded to the maximum extent permitted by law.

12.3 The Customer warrants that:

(a) it is legally incorporated under the laws of New Zealand (if a company); and

(b) it has the power and authority to enter into this Agreement.

12.4 The Customer acknowledges that it has carried out all appropriate investigations and relied on its own knowledge or independent advice or both in assessing the risk, contingencies and circumstances that could affect its

decision to enter into this Agreement and use the Provider's Service.

12.5 The Customer acknowledges that in entering into this Agreement:

(a) it is acquiring the Provider's Service for the purposes of a business; and

(b) the Consumer Guarantees Act 1993 will not apply except as expressly set out in this Agreement.

12.6 Except to the extent excluded by law, the Provider excludes all liability to the Customer (whether by damages or otherwise) for any consequential, economic or indirect loss or damage arising out of this Agreement or the Provider's Service or in connection with either of them. This exclusion applies whether the Provider's liability arises in contract, tort (including negligence) or otherwise.

12.7 Subject to clause 12.8, the Provider's liability to the Customer for breach of any term of this Agreement or arising out of the provision of the Provider's Service and whether in contract, tort or otherwise is limited to the Service Fees received by the Provider for provision of the Provider's Service in the 12 months preceding the date on which the Customer's claim arose.

12.8 The Provider will have no liability for the performance of the Provider's Equipment in relation to any use or purpose other than that which has been specifically prescribed by the Provider.

12.9 The Provider is not responsible for any failure to provide the Provider's Service where such failure is caused, or contributed to, by an event outside the Provider's reasonable control.

12.10 The Provider will have no liability in respect of any loss (including any environmental costs or liability) incurred by the Customer relating to any leakage from any tank which is monitored by the Provider under this Agreement.

12.11 The Provider does not provide any guarantee and has no liability to the Customer in respect of the communications and computer links between the Customer and the Provider allowing access to the Provider's Service.

## 13. Termination

13.1 The Provider may terminate this Agreement by giving 14 days' notice in writing to the Customer if the Customer materially breaches any clause of this Agreement and such breach is not remedied by the Customer within 14 days of receipt of the written notice outlining the breach. In such

case, the Provider will not be required to make any refund of any Service Fees paid in advance.

13.2 The Provider may terminate this Agreement:

- (a) by giving not less than 60 days' notice to the Customer;
- (b) by giving not less than 30 days' notice if any payment due from the Customer to the Provider remains unpaid for a period of 30 days;
- (c) by giving not less than 30 days' notice if the Provider elects to discontinue its business.

13.3 On termination or expiry of this Agreement:

- (a) the Customer must immediately cease to use the Provider's Service and must immediately, upon request of the Provider:
  - (i) return the Provider's Equipment to the Provider (and irrevocably grants to the Provider a right to enter the Customer's place of business for the purposes of recovering the Provider's Equipment); and
  - (ii) return any end user documentation or other materials associated with the Customer's use of the Provider's Service;
- (b) the Provider will return one copy of the Data to the Customer in the file format usually provided by the Provider (if this is requested in writing by the Customer).

13.4 Termination or expiry of this Agreement is without prejudice to any antecedent breach of the provisions of this Agreement, and does not affect any provision of this Agreement which is intended to come into effect on or continue in effect after such termination.

#### 14. Personal Property Securities Act 1999

14.1 The Provider's Equipment shall at all times remain in the ownership of the Provider and the Customer shall at all times be a bailee of the Provider's Equipment.

14.2 This Agreement creates a security interest under the Personal Property Securities Act 1999 ("PPSA") to the extent necessary to allow the Provider to register a financing statement;

14.3 The Customer waives any rights to receive a copy of a Verification Statement under the PPSA and agrees, to the extent permitted by law, that in respect of any arrangement between the Customer and the Provider:

- (a) sections 114(1)(a), 133 and 134 of the PPSA shall not apply;
- (b) the Customer shall have none of the rights referred to in paragraphs (c) to (e) and (h) to (j), all inclusive, of Section 107(2) of the PPSA; and

(c) where the Provider has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply and, in particular, shall not be limited by Section 109 of the PPSA.

14.4 The Customer acknowledges that it has no right to and that it will not attempt to sell, assign, pledge, mortgage, charge, encumber, hire, licence or part with possession or permit any lien to exist in respect of the Provider's Equipment or grant any security interest to any third party.

#### 15. Force Majeure

15.1 Neither party will be responsible for any act, omission or failure to fulfil its obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond its control ("Force Majeure Event").

15.2 The party who cannot carry out its obligations under this Agreement must give the other party notice as soon as practicable of the Force Majeure Event and, insofar as it is known, the probable extent to which the party giving the notice will be unable to perform or will be delayed in performing its obligations under this Agreement.

15.3 On the issue of notice of a Force Majeure Event, the obligations of the party giving the notice will be suspended insofar as that party is prevented during the continuance of such cause to carry out its obligations under this Agreement.

15.4 The party giving notice which is affected by the Force Majeure Event must take all reasonable steps to mitigate the effects of, and eliminate, the intervening event and must resume performance of its obligations under this Agreement as promptly as possible.

15.5 Should the Force Majeure Event continue for a period exceeding twenty (20) Business Days, then the party being the recipient of the Force Majeure Event notice may cancel this Agreement by giving written notice to the other party.

#### 16. Notices

16.1 Any notice, document, request, demand or other communication ("notices") to be given by the parties to each other by email. The email address for the Customer is that specified on the front page of the agreement. The email address for the Licensor is info@levno.com.

16.2 Any notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first business day after that day.

## 17. General

17.1 In the event that any claim or dispute arises under these Terms and Conditions, the Provider shall have the right to refer the matter to arbitration by a single arbitrator nominated by the President of the New Zealand Law Society, such arbitration to be otherwise carried out in accordance with the Arbitration Act 1996.

17.2 The Customer may not assign or sublet its rights under this Agreement without the prior consent of the Provider, to be given in its sole discretion.

17.3 Where this Agreement prohibits the Customer from undertaking any action, the Customer will be responsible for ensuring that its officers, employees, contractors and invitees observe the same prohibitions.

17.4 This Agreement is governed by the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

17.5 Where any term or provision in this Agreement is invalid, illegal or otherwise contrary to statutory or common law rule, such term or provision shall be deemed replaced by a term or provision that is valid and enforceable and which comes closest to expressing the intention of the term replaced.

17.6 This Agreement constitutes the entire agreement between the parties relating to its subject matter and replaces all prior agreements or undertakings between them. Each party confirms that on entering into this Agreement it has not relied upon any statement, warranty or other representation made or information supplied by or on behalf of the other party.

17.7 No right under this Agreement will be deemed to be waived except by notice in writing signed by each party. A waiver does not prejudice rights in respect of any subsequent breach.

17.8 The Customer will indemnify and hold harmless the Provider from any and all claims, expenses and costs (including legal fees). Losses, liabilities or damages which are incurred by the Provider as a result of any non-observance of this Agreement by the Customer (including any costs incurred by the Provider in the enforcement of this Agreement against the Customer).

17.9 The obligations set out under clauses 6, 11 and 17.8 will continue in force notwithstanding termination or expiry of this Agreement.

## 18. Bargaining power

18.1 The Customer acknowledges that prior to entering into this agreement:

- (a) it was in a position to negotiate for the alteration, or rejection of any of the provisions of this agreement;
- (b) there was no inequality in bargaining power between the parties; and
- (c) it had the opportunity to consult independent legal advisers.

## 19. Interpretation

19.1 References to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.

19.2 Words denoting the singular will include the plural and vice versa.

19.3 The parties agree that the rule of construction known as the contra proferentum rule does not apply to this agreement.

19.4 The words "include" and "including" will not be construed as terms of limitation. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated. The symbol "\$" means New Zealand dollars.

19.5 The headings and use of bold type in this Agreement are for convenience only and will not affect the interpretation of any provision of this Agreement.

19.6 References to this Agreement or any other document will include any permitted and authorised variation, amendment or supplement to such document.