

# MUSAC TERMS

## 1 APPLICATION OF TERMS

- 1.1 **Application:** These Terms apply to your use of the MUSAC Products. These Terms incorporate, and must be read in conjunction with, the Quote and the Privacy Policy.
- 1.2 **Agreement:** In accessing and using the MUSAC Products, you are confirming that:
- a you have agreed to these Terms; and
  - b where your access and use is on behalf of another person (e.g. a school), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that that person is bound by these Terms.

## 2 INTERPRETATION

- 2.1 **Definitions:** In these Terms, the following terms have the stated meaning:

Term	Meaning
<b>Agreement</b>	the agreement between us and you governed by these Terms.
<b>Confidential Information</b>	these Terms and any information that is not public knowledge and that is obtained from or about the other party in the course of, or in connection with, the Agreement. Our Confidential Information includes Intellectual Property owned by MUSAC (and its licensors), including the MUSAC Products. Your Confidential Information includes the Data.
<b>Data</b>	all data, content, and information (including Personal Information) owned, held, used or created by or on your behalf that is stored using, or inputted into, the MUSAC Products.
<b>Documentation</b>	the user and technical documentation (if any) designed to assist you to properly use the MUSAC Products, and includes any update of that documentation.
<b>Fees</b>	the fees set out in the Quote.
<b>Force Majeure</b>	an event that is beyond the reasonable control of a party,

Term	Meaning
	<p>excluding:</p> <ul style="list-style-type: none"> <li>▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or</li> <li>▲ a lack of funds for any reason.</li> </ul>
<b>Good Industry Practice</b>	in relation to an undertaking, that degree of skill and care that would reasonably be expected from an experienced operator engaging in the same or similar undertaking.
<b>Intellectual Property Rights</b>	includes copyright (including future copyright) and all worldwide rights conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. <b>Intellectual Property</b> has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.
<b>MUSAC, us, we, our</b>	MUSAC Limited.
<b>MUSAC Products</b>	the selected MUSAC software or software-as-a-service products offerings set out in the Quote (having the functionality described on the Website or in the Documentation), the Website and any other software (including apps) or services made available by MUSAC.
<b>Objectionable</b>	includes being objectionable, defamatory, obscene, harassing, threatening, or unlawful in any way.
<b>Personal Information</b>	has the meaning given in the Privacy Act 2020.
<b>Privacy Policy</b>	MUSAC's privacy policy set out at <a href="http://www.edgelearning.co.nz">www.edgelearning.co.nz</a> as may be updated from time to time.
<b>Quote</b>	the quote, proposal or similar document, issued by MUSAC, setting out the specific details and options that apply to your purchase of the MUSAC Products.
<b>Start Date</b>	the start date of the Agreement, set out in the Quote.

<b>Term</b>	<b>Meaning</b>
<b>Support Services</b>	<p>means:</p> <ul style="list-style-type: none"> <li>▲ telephone and email support in the form of consultation, assistance and advice; and</li> <li>▲ reasonable efforts to assist in the resolution of the issue (taking into account the nature and severity of the issue),</li> </ul> <p>as further described on the Website and provided during a working day but excludes training of your personnel.</p>
<b>Term</b>	<p>means the selected term of the Agreement being 1 year, set out in the Quote, for each year:</p> <p>ending on 1 July for the Assay product; or</p> <p>ending on 31 December for the SMS (School Management Systems) and Edge Library products; or</p> <p>as otherwise agreed for any other MUSAC Product.</p>
<b>Terms</b>	<p>these terms of use titled MUSAC Terms including the further terms set out in the Quote and the Privacy Policy, as may be varied by written agreement between the parties.</p>
<b>Underlying Systems</b>	<p>the software, hardware, IT solutions, systems and networks used by MUSAC, including those provided by any other person, to provide MUSAC Products that are provided on a software-as-a-service basis (or similar) or otherwise hosted by MUSAC.</p>
<b>User Limit</b>	<p>the maximum number of permitted concurrent users set out in the Quote.</p>
<b>Website</b>	<p>the internet site at <a href="http://www.edgelearning.co.nz">www.edgelearning.co.nz</a> or such other website notified to you by MUSAC.</p>
<b>working day</b>	<p>any day that is not a Saturday, Sunday or public holiday (including a regional anniversary holiday) in New Zealand.</p>
<b>Year</b>	<p>a 12 month period from 1 January to 31 December, inclusive. The first Year of the Agreement is deemed to be the period from the Start Date to 31 December, inclusive.</p>
<b>you, your</b>	<p>you or the person named in the Quote, or if clause 1.2b applies, you and the other person on whose behalf you are acting.</p>

2.2 **Interpretation:** In these Terms:

- a clause and other headings are for ease of reference only and do not affect the interpretation of these Terms;
- b words in the singular include the plural and vice versa;
- c a reference to:
  - i a **party** includes that party's permitted assigns;
  - ii **personnel** includes officers, employees, contractors and agents, but a reference to your personnel does not include MUSAC;
  - iii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
  - iv **including, for example, e.g.** and similar words or expressions do not imply any limit; and
  - v a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- d no term is to be construed against a party because that term was first proposed or drafted by that party; and
- e if there is any conflict between the Quote and these Terms, these Terms prevail unless expressly stated otherwise in the Quote.

**3 MUSAC OBLIGATIONS**

3.1 **Start:** We will provide the MUSAC Products to you from the Start Date on the terms set out in these Terms.

3.2 **Condition:** Our obligation to provide the MUSAC Products is subject to:

- a you accepting these Terms; and
- b you paying the Fees due at the relevant time.

3.3 **Non-exclusive:** Our provision of the MUSAC Products to you is non-exclusive and non-transferable. Nothing in these Terms prevents us from providing the MUSAC Products to any other person.

3.4 **General:** In providing the MUSAC Products, we will:

- a exercise reasonable care, skill and diligence; and
- b act in accordance with these Terms and New Zealand law.

### 3.5 Availability:

- a Subject to clause 3.5b, we will use reasonable efforts to make available the MUSAC Products that are provided on a software-as-a-service basis or otherwise hosted by or on behalf of MUSAC, available 24 hours a day, 7 days per week. However, on occasion these MUSAC Products may be unavailable, for example:
  - i to permit maintenance or other development activity to take place;
  - ii to prevent or minimise actual or threatened harm to the MUSAC Products or any person, where in our opinion it is reasonably necessary to do so; or
  - iii in the event of Force Majeure.

We will use reasonable efforts to publish on the Website advance details of any scheduled unavailability.

- b The MUSAC Products may interoperate with third party service features, e.g. through the use of web services and APIs. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make that feature available to you. To avoid doubt, if we exercise our right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.

### 3.6 Additional related services:

- a We may, from time to time, make available further services relating to the MUSAC Products.
- b At your request and subject to you paying the fees for those services, we may agree to provide to you those further services under these Terms.

## 4 CUSTOMER OBLIGATIONS

### 4.1 General: You and your personnel must:

- a use the MUSAC Products and the Documentation in accordance with these Terms and solely for:
  - i your internal purposes; and
  - ii lawful purposes (including complying with the Unsolicited Electronic Messaging Act 2007);
- b not resell, resupply, or otherwise commercially exploit the MUSAC Products or the Documentation;

- c not transfer, assign, or otherwise deal with or grant a security interest in the MUSAC Products, the Documentation or your rights under these Terms; and
- d not copy, modify, adapt, decompile or reverse-engineer the MUSAC Products or any Underlying Systems except:
  - i as expressly provided for in these Terms; or
  - ii to the extent expressly permitted by any law or treaty in force that cannot be excluded, restricted or modified by these Terms.

**4.2 Access conditions:** When using the MUSAC Products, you and your personnel must:

- a neither use the MUSAC Products in a manner, nor transmit, input or store, any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading;
- b not attempt to undermine the security or integrity of the MUSAC Products or (if applicable) the Underlying Systems;
- c not use, or misuse, the MUSAC Products in any way which may impair the functionality of the MUSAC Products or (if applicable) the Underlying Systems, or impair the ability of any other user to use the MUSAC Products; and
- d not attempt to view, access or copy any material or data other than that to which you are authorised to access.

**4.3 Further conditions:** You and your personnel must:

- a ensure the MUSAC Products and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure; and
- b maintain all proprietary notices (including trade marks, © notices and other indications) appearing in relation to the MUSAC Products and the Documentation.

**4.4 Personnel access:**

- a You may authorise any member of your personnel to use the MUSAC Products, provided you comply with the User Limit and procure each user's compliance with these Terms and any other reasonable condition notified by us to you.
- b A breach of any of these Terms by your personnel is deemed to be a breach of these Terms by you.
- c You must notify us in writing promptly on becoming aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the MUSAC Products.

## 5 SUPPORT SERVICES

5.1 **Support Services:** We will provide you with the Support Services during our ordinary business hours (being Monday to Friday from 8.30am to 3.30pm) on working days, provided you have:

- a complied with these Terms, including paid all Fees due;
- b properly trained your personnel in the use of the MUSAC Products;
- c maintained a proper operating environment for the use of the MUSAC Products in accordance with any guidance from us (including in the Documentation);
- d first used reasonable efforts to resolve the issue including by referring to the Documentation; and
- e contacted us via one of the means set out on the Website.

5.2 **Licensed software updates:** Where you have purchased MUSAC Products that are not provided on a software-as-a-service basis (or similar) or otherwise hosted by MUSAC, we may, at our sole discretion, provide you with updates to those MUSAC Products, and in that case:

- a you must promptly install the update; and
- b if you fail to promptly install the update, then we may, at our option:
  - i cease to provide the Support Services; or
  - ii increase the Fees with immediate effect by an amount we consider reasonable to cover any additional cost of us continuing to provide the Support Services.

5.3 **Exclusions:** Nothing in these Terms requires us to provide Support Services where support is required as a result of:

- a the modification or alteration of the MUSAC Products by any person other than us; or
- b a breach of these Terms by you, including use of the MUSAC Products in a manner or for a purpose not reasonably contemplated by these Terms or not authorised in writing by us.

## 6 DATA

6.1 **Your authorisations:**

- a You are solely responsible for procuring all necessary licences, authorisations and consents for you, your personnel, and MUSAC to use the MUSAC Products, including to use, store and input Data into, and process and distribute Data using the MUSAC Products, for the intended purposes of the MUSAC Products and the other purposes set out in these Terms.

- b Without limiting clause 6.1a, to the extent that any Data contains Personal Information, you must ensure you have obtained in advance all necessary consents in relation to the relevant individual (e.g. parental, guardian and/or child consent) to enable you and your personnel to collect, use, hold, process and distribute that information using the MUSAC Products. In using the MUSAC Products to collect, use, hold, process and distribute Personal Information, you must act in accordance with:
  - i the scope of any relevant individual's consent;
  - ii these Terms (including the Privacy Policy); and
  - iii the Privacy Act 2020.

**6.2 MUSAC access to Data:**

- a Subject to clause 6.3, you acknowledge that:
  - i we may require access to the Data to exercise our rights and perform our obligations in relation to the MUSAC Products; and
  - ii we may authorise a member or members of its personnel to access the Data for this purpose.
- b You must ensure you have obtained all necessary consents for us to access, collect, hold, process and distribute the Data as described in these Terms.

**6.3 MUSAC use and compliance:**

- a We may use Data to conduct research and statistical analysis (on an anonymised basis in relation to both individuals and schools).
- b We may disclose Data:
  - i the Ministry of Education where that disclosure is reasonably contemplated by the relevant MUSAC Products;
  - ii to third party agencies who integrate with our product offerings with consent of the school
  - iii to other third parties (on an anonymised basis in relation to both individuals and schools); or
  - iv as required by law.
- c In accessing, collecting, holding, processing or distributing any Personal Information, we will comply with:
  - i the Privacy Policy; and
  - ii the Privacy Act 2020.

- 6.4 **Agent:** You acknowledge and agree that to the extent Data contains Personal Information, in accessing, collecting, holding and processing that information through the MUSAC Products for

your benefit, we are acting as your agent for the purposes of the Privacy Act 2020 and any other applicable privacy law.

- 6.5 **Backups of Data:** While we will use reasonable endeavours to back up all Data stored using the MUSAC Products that are provided on a software-as-a-service basis (or similar) or otherwise hosted by MUSAC in accordance with Good Industry Practice, you must keep separate and regular back-up copies of all Data uploaded by you onto those MUSAC Products, in accordance with Good Industry Practice.
- 6.6 **International storage of Data:** You agree that we may store Data (including any Personal Information) in secure servers in New Zealand and Australia and may access that Data (including any Personal Information) in New Zealand from time to time.

## **7 FEES**

- 7.1 **Fees:** You must pay us the Fees, subject to us providing you with valid GST tax invoices.

### **7.2 Invoicing and payment:**

- a The Fees exclude GST, which you must pay on taxable supplies made under these Terms.
- b You must pay the Fees electronically in cleared funds to our nominated bank account set out in the invoice (or as may otherwise be notified to you by us from time to time) without any set-off or deduction.

- 7.3 **Adjustment:** We may increase the Fees from time to time. Fees updated under this clause are deemed to be the Fees set out in the Quote from the date set out in the relevant notice.

- 7.4 **Overdue amounts:** We may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by our primary trading bank as at the due date (or, if our primary trading bank ceases to quote that rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.

## 8 INTELLECTUAL PROPERTY

### 8.1 Ownership:

- a Subject to clause 8.1b, title to, and all Intellectual Property Rights in, the MUSAC Products, all Underlying Systems and the Documentation is and remains our property (and the property of our licensors). You must not dispute that ownership.
- b Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid-up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of its rights and performance of its obligations in accordance with these Terms.

8.2 **Know-how:** To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual licence to use for any purpose any know-how, techniques, ideas, methodologies, and similar expertise gained by us in the provision of the MUSAC Products.

8.3 **Feedback:** If you provide us with ideas, comments or suggestions relating to the MUSAC Products, the Underlying Systems or the Documentation (together **feedback**):

- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
- b we may use or disclose the feedback for any purpose.

8.4 **Third party sites and material:** You acknowledge that the MUSAC Products may link to third party websites or feeds that are connected or relevant to the MUSAC Products. Any such link does not imply our endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.

## 9 CONFIDENTIALITY

9.1 **Security:** Each party must, unless it has the prior written consent of the other party:

- a keep confidential at all times the Confidential Information of the other party;
- b effect and maintain adequate security measures in accordance with Good Industry Practice to safeguard the other party's Confidential Information from unauthorised access or use; and
- c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 9.1a and 9.1b.

9.2 **Permitted disclosure:** The obligation of confidentiality in clause 9.1a does not apply to any disclosure or use of Confidential Information:

- a for the purpose of performing a party's obligations or exercising a party's rights under the Terms;
- b required by law (including under the rules of any stock exchange);
- c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- d which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
- e by us if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

9.3 **Security failure:** To avoid doubt, a failure by us to prevent unauthorised access, use or disclosure of Data is not a breach of clause 9.1a (or any other obligation) provided that we have complied with our obligation under clause 9.1b.

## 10 WARRANTIES

10.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Terms which constitute binding obligations on the warranting party.

10.2 **No implied warranties:** To the maximum extent permitted by law:

- a our warranties are limited to those set out in these Terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under the Sale of Goods Act 1908) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to an amount equal to the Fees paid by you under these Terms in the previous Year (which in the first Year is deemed to be the total Fees by you from the Start Date to the date of the first event giving rise to liability); and
- b we make no other representation concerning the quality of the MUSAC Products and we do not promise that the MUSAC Products will:
  - i meet your requirements or be suitable for a particular purpose, including that the use of the MUSAC Products will fulfil or meet any statutory role or responsibility you have; or
  - ii be secure, free of viruses or other harmful code, uninterrupted or error free.

- 10.3 **Consumer Guarantees Act:** You agree and represent that you are not acquiring the MUSAC Products, or entering the Agreement, as a consumer (as that term is defined in the Consumer Guarantees Act 1993; the **Consumer Guarantees Act**) and that the Consumer Guarantees Act does not apply to the supply of the MUSAC Products or the Agreement.
- 10.4 **Exclusions:** The warranties under these Terms do not apply to the extent that any failure arises from or in connection with any of the following circumstances:
- a the matters set out in clauses 5.3a or 5.3b;
  - b any third party software or system; or
  - c any third party data or any Data.
- 10.5 **Limitation of remedies:** Where legislation or rule of law implies into these Terms a condition, guarantee or warranty that cannot be excluded or modified by contract, the condition, guarantee or warranty is deemed to be included in these Terms. However, our liability for any breach of that condition, guarantee or warranty is limited to supplying the MUSAC Products again and, in any case, subject to the maximum liability set out in clause 11.1.

## 11 LIABILITY

- 11.1 **Maximum liability:** Our maximum aggregate liability under or in connection with these Terms or relating to the MUSAC Products, whether in contract, tort (including negligence), breach of statutory duty or otherwise, will not in any Year exceed an amount equal to the Fees paid by you under these Terms in the previous Year. The cap in this clause 11.1 includes the cap set out in clause 10.2a.
- 11.2 **Unrecoverable loss:** Neither party is liable to the other under or in connection with these Terms or the MUSAC Products for any:
- a loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
  - b consequential, indirect, incidental or special damage or loss of any kind.
- 11.3 **Unlimited liability:**
- a Clauses 11.1 and 11.2 do not apply to limit our liability under or in connection with these Terms for:
    - i personal injury or death; or
    - ii fraud or willful misconduct.
  - b Clause 11.2 does not apply to limit your liability:
    - i to pay the Fees;
    - ii under the indemnity in clause 6.7;

- iii for a breach of clauses 4, 6 or 9; or
- iv for those matters stated in clauses 11.3ai and 11.3aii.

11.4 **No liability for other's failure:** Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.

11.5 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms.

## 12 TERM, TERMINATION AND SUSPENSION

12.1 **Duration:** Unless terminated under this clause 12, the Agreement starts on the Start Date and ends on the expiry of the Term.

12.2 **Termination for cause:** Either party may, by notice to the other party, terminate the Agreement if the other party:

- a breaches any material provision of these Terms (which, in your case, includes a failure to pay any invoice for all or any part of the Fees) and the breach is not:
  - i remedied within 10 working days of the receipt of a notice from the first party requiring it to remedy the breach; or
  - ii capable of being remedied;
- b becomes (or in your case, is likely, in our reasonable opinion, to become) insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
- c is unable to perform a material obligation under these Terms for 30 days or more due to Force Majeure.

12.3 **Termination for convenience:** For SMS (School Management Systems), Assay and Edge Library products, the Term shall renew automatically. You are required to provide a minimum of one (1) month's written notice via email to [admin@edgelearning.co.nz](mailto:admin@edgelearning.co.nz) prior to the end date of the then-current Term in order to terminate your subscription for the subsequent Term. Notwithstanding anything contained in clause 12.4 below, in the event that the required notice is not provided, you shall be liable for the Fees with respect to the subsequent Term.

12.4 **Consequences of termination or expiry:**

- a Termination or expiry of the Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
- b On termination or expiry of the Agreement for any reason:

- i (other than termination by you under clause 12.2), you must pay all remaining Fees payable for the Term;
- ii we will not pay any refunds (or credits) for any Fees already paid, or for any Fees not yet paid but payable for the Year in which termination or expiry occurs; and

- iii you must cease accessing and using, and we may prevent your accessing or using, the MUSAC Products.
- c Except to the extent that a party has ongoing rights or obligations to use Confidential Information, at the other party's request following termination or expiry of the Agreement, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control (including in your case, the Licensed Software and the Documentation). To avoid doubt, we are not required to comply with this clause 12.4c to the extent that it is not feasible using reasonable efforts to delete that Confidential Information.
- d At any time prior to one month after the date of termination or expiry, you may download a copy of any Data that is stored using MUSAC Products that are provided on a software-as-a-service basis (or similar) or otherwise hosted by MUSAC. We do not warrant that the format of the Data will be compatible with any software.

12.5 **Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 6.7, 8, 9, 11, 12.4, 12.5 and 13, continue in force.

12.6 **Suspension:** Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of the MUSAC Products where you (including any of your personnel):

- a undermine, or attempt to undermine, the security or integrity of the MUSAC Products or any Underlying Systems;
- b use, or attempt to use, the MUSAC Products:
  - i for improper purposes; or
  - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the MUSAC Products; or
- c have otherwise breached these Terms (in our reasonable opinion).

12.7 **Notice:** We will use reasonable efforts to notify you where we restrict or suspend your access and use under clause 12.6.

### **13 DISPUTES**

13.1 **Good faith negotiations:** Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with the MUSAC Products or these Terms, through good faith negotiations.

13.2 **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under these Terms even if there is a dispute.

13.3 **Right to seek relief:** This clause 13 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

## 14 GENERAL

14.1 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:

- a promptly notifies the other party about the Force Majeure;
- b uses reasonable efforts to overcome the Force Majeure; and
- c continues to perform its obligations to the extent practicable.

14.2 **Rights of third parties:** No person other than us and you have any right to a benefit under, or to enforce, the Agreement.

14.3 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.

14.4 **Independent contractor:** Subject to clause 6.4, we are an independent contractor to you, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.

14.5 **Notices:** A notice given:

- a by you under the Agreement must be delivered to us via email using the email address set out below or as otherwise notified by us for this purpose. If the notice is a notice of termination, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive or equivalent officer of MUSAC at either the postal address or physical address set out below or as otherwise notified by us for this purpose.

**MUSAC email address for notices:**

[admin@edgelearning.co.nz](mailto:admin@edgelearning.co.nz) (subject to section 12.3)

**MUSAC postal address for notices:**

Accounts Team,  
MUSAC Ltd  
749 Main Street  
Roslyn  
Palmerston North 4414  
New Zealand

- a by us may be given to you via email using the email address provided to us or, where in our opinion it is reasonable to do so, by posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications.

14.6 **Severability:** If any provision of the Agreement is held to be illegal, unenforceable or invalid, that provision will be modified to the extent necessary to remedy the illegality, unenforceability or invalidity. Any such illegality, unenforceability or invalidity does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.

- 14.7 **Variation:** Any variation to the Agreement must be in writing and signed by both parties.
- 14.8 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to the MUSAC Products, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, you and we agree that sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply.
- 14.9 **Subcontracting and assignment:** You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing
- 14.10 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute connected with the Agreement.