

## TERMS AND CONDITIONS

Welcome to AskYourTeam, an online business analytics service. These Terms of Use are intended to explain our obligations as a service provider and your obligations as a customer. Please read them carefully. These terms are binding on any use of the Service and apply to You from the time that AskYourTeam provides You with access to the Service and for any subsequent renewals of the AskYourTeam service. The AskYourTeam service will evolve over time based on user feedback. AskYourTeam reserves the right to change these terms at any time, effective upon the posting of modified terms. AskYourTeam will make reasonable efforts to communicate these changes to You via email or via a notification on the Website. It is Your responsibility to ensure that You have read, understood and agree to the most recent terms available on the Website. By registering to use the service You acknowledge that You have read and understood these terms and have the authority to act on behalf of any person for whom You are using the service. You are deemed to have agreed to these terms on behalf of any entity for whom You use the service.

These Terms and Conditions were last updated on the 23rd May 2016

### 1. DEFINITIONS

#### "Agreement"

means these Terms and Conditions

#### "Access Fee"

means the annual fee (excluding any taxes and duties) payable by You in advance in accordance with the fee schedule set out on the Website (which AskYourTeam may change from time to time).

#### "Confidential Information"

includes all information exchanged between the parties to this agreement, whether in writing, electronically or orally, including the service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

#### "Data"

means any data inputted by You or with Your authority into the Website.

#### "Intellectual Property Right"

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

#### "Service"

means the online continuous involvement system services made available (as may be changed or updated from time to time by AskYourTeam) via the Website.

## ASKYOURTEAM – TERMS AND CONDITIONS

### "Website"

means the Internet site at the domain [www.AskYourTeam.com](http://www.AskYourTeam.com) or any other site operated by AskYourTeam.

### "AskYourTeam"

means Ask Holdings Limited (a New Zealand Registered Company (Company number: 5097962 - NZ Business Number: 9429041170304) and all current and future global subsidiaries of Ask Holdings Limited including, without limitation Ask Your Team NZ Limited trading as "AskYourTeam".

### "Invited User"

means any person or entity, other than the Subscriber, that uses the service with the authorisation of the Subscriber from time to time.

### "Subscriber"

means the person who registers to use the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

### "You" or 'Your'

means the Subscriber, and where the context permits, an Invited User. "Your" has a corresponding meaning.

## 2. USE OF SOFTWARE

AskYourTeam grants You the right to access and use the Service via the Website with the particular user roles available to You according to Your subscription type. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement. You acknowledge and agree that, subject to any applicable written agreement between the Subscriber and the Invited Users, or any other applicable laws:

2.1 the Subscriber determines who is an Invited User and what level of user role access to the relevant organisation and Service that Invited User has;

2.2 the Subscriber is responsible for all Invited Users' use of the Service;

2.3 the Subscriber controls each Invited User's level of access to the relevant organisation and Service at all times and can revoke or change an Invited User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an Invited User or shall have that different level of access, as the case may be;

2.4 if there is any dispute between a Subscriber and an Invited User regarding access to any organisation or Service, the Subscriber shall decide what access or level of access to the relevant data or service that Invited User shall have, if any.

## ASKYOURTEAM – TERMS AND CONDITIONS

### 3. YOUR OBLIGATIONS

#### 3.1 Payment obligations:

The Access Fee payable for Your subscription is the standard Access Fee as indicated on the Website for one year from the date Your survey is launched by AskYourTeam. You will be charged in the currency as indicated via the Website, which, if not the currency of Your bank account, will be converted by Your bank into the currency as indicated on the Website. We are not responsible for any additional charges Your bank may apply.

We accept payment by direct credit or credit card. If You choose to pay by direct credit an invoice will be sent to You, via the contact details provided by You, within 7 days from the date of Your subscription. The price payable as stated on the invoice is payable within 14 days of the date of the invoice. Until payment is received You will be able to complete the survey but will not be able to access any reports.

You agree that You are not entitled to any variations, subject to offers thereafter in respect of the Access Fee and as such, will not receive a part refund of the Access Fee initially agreed.

Any additional participants that are added following Your initial subscription, which exceeds Your initial subscription, will be charged for.

#### 3.2 General obligations:

You must only use the Service and Website for Your own lawful internal business purposes, in accordance with these terms and any notice sent by AskYourTeam. You may use the Service and Website on behalf of others or in order to provide services to others but if You do so You must ensure that You are authorised to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this agreement that apply to You.

To maximise the value to Your organisation, You will;

- Get full buy-in and commitment from all of Your senior leadership team and management and that they lead by example and encourage active participation.
- Commit time to prepare, plan, set up the survey, analyse the reports, write action plans, implement plans, retest and review.
- Have a champion within Your organisation to lead and drive the whole process.
- Plan and implement very clear pre-survey communications and expectations to all of Your team.
- Produce a clear timeline over the next 12 months, including commitments to retest regularly
- Be constructive and positive with all of the feedback.
- Be clear and concise when writing action plans. It is recommended using a maximum of 3 for across the organisation or within each demographic area. The action plans should include the relevant assertions, which will aid in the re-testing process.

## ASKYOURTEAM – TERMS AND CONDITIONS

- Communicate clearly and in a timely manner with relevant feedback from any survey / retests to the whole team.
- Provide clean and accurate participant data for the set up and running of the system.

### 3.3 Access conditions:

a. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify AskYourTeam of any unauthorised use of Your passwords or any other breach of security and AskYourTeam will reset Your password and You must take all other actions that AskYourTeam reasonably deems necessary to maintain or enhance the security of AskYourTeam's computing systems and networks and Your access to the Service.

b. As a condition of these terms, when accessing and using the services, You must:

i. not attempt to undermine the security or integrity of AskYourTeam's computing systems or networks or, where the Service is hosted by a third party, that third party's computing systems and networks;

ii. not use, or misuse, the Service in any way which may impair the functionality of the Service or Website, or other systems used to deliver the Service or impair the ability of any other user to use the Service or Website;

iii. not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Service is hosted;

iv. not transmit, or input into the Website, any: files that may damage any other person's computing devices or software; content that may be offensive; or material or data in violation of any law (including data or other material protected by copyright or trade secrets which You do not have the right to use); and

v. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Service or to operate the Website except as is strictly necessary to use either of them for normal operation.

### 3.4 Usage Limitations:

Use of the Service may be subject to limitations, including but not limited to monthly transaction volumes. Any such limitations will be advised.

### 3.5 Indemnity:

You indemnify AskYourTeam against all claims, costs, damages or loss arising from Your breach of any of these terms or any obligation You may have to AskYourTeam, including (but not limited to) any costs relating to the recovery of any Access Fee that are due but have not been paid by You.

## 4. CONFIDENTIALITY AND PRIVACY

### 4.1 Confidentiality:

Subject to clause 5.2, unless the relevant party has the prior written consent of the other or unless required to do so by law:

## ASKYOURTEAM – TERMS AND CONDITIONS

- a. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these terms.
- b. Each party's obligations under this clause will survive termination of these terms.
- c. The provisions of clauses 4.1.a and 4.1.b shall not apply to any information which:
  - i. is or becomes public knowledge other than by a breach of this clause;
  - ii. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - iii. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
  - iv. is independently developed without access to the confidential information.

### 4.2 Privacy:

AskYourTeam maintains a privacy policy that sets out the parties' obligations in respect of personal information. You should read that policy at [www.askyourteam.com/privacy\\_policy/](http://www.askyourteam.com/privacy_policy/) and it will be taken that You have accepted that policy when You accept these terms.

## 5. INTELLECTUAL PROPERTY

### 5.1 General:

Title to, and all intellectual property rights in the Service, the Website and any documentation relating to the Service and any trademarks relating to AskYourTeam or the Service remain the property of AskYourTeam (or its licensors).

You agree that You will not attempt to sublicense, modify, adapt, or reverse engineer the software used to provide the Service or develop a similar product or system to the Service.

### 5.2 Ownership of Data:

You agree that AskYourTeam will, subject to clause 4.2, have access to Your data and may use Your data (anonymously) and distribute information derived from that data, including but not limited to survey results, as long as it is in a form that does not personally identify You, Your organisation or any person You have authorised to use the service. The purpose of this is to enable AskYourTeam to develop and distribute information relating to industry specific trends and benchmarking, Industry comparisons, analysis of common issues and information relating to demographics derived from surveys and survey data.

### 5.3 Backup of Data:

AskYourTeam adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of data. AskYourTeam expressly excludes liability for any loss of data no matter how caused.

## ASKYOURTEAM – TERMS AND CONDITIONS

### 6. WARRANTIES AND ACKNOWLEDGEMENTS

#### 6.1 Authority:

You warrant that where You have registered to use the Service on behalf of another person, You have the authority to agree to these terms on behalf of that person and agree that by registering to use the Service You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these terms, without limiting Your own personal obligations under these terms.

#### 6.2 Acknowledgement:

You acknowledge that:

a. You are authorised to use the Service and the Website and to access the information and data that You input into the Website, including any information or data input into the Website by any person You have authorised to use the Service. You are also authorised to access the processed information and data that is made available to You through Your use of the Website and the Service (whether that information and data is Your own or that of anyone else).

b. AskYourTeam has no responsibility to any person other than You and nothing in this agreement confers, or purports to confer, a benefit on any person other than You. If You use the Service or access the Website on behalf of or for the benefit of anyone other than Yourself (whether a body corporate or otherwise) You agree that:

i. You are responsible for ensuring that You have the right to do so;

ii. You are responsible for authorising any person who is given access to information or data, and You agree that AskYourTeam has no obligation to provide any person access to such information or data without Your authorisation and may refer any requests for information to You.

iii. You will indemnify AskYourTeam against any claims or loss relating to:

a. AskYourTeam's refusal to provide any person access to Your information or Data in accordance with these Terms,

b. AskYourTeam's making available information or data to any person with Your authorisation.

iv. The provision of, access to, and use of, the Service is on an "as is" basis and at Your own risk.

v. AskYourTeam does not warrant that the use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the internet, can be unpredictable and may from time to time interfere with or prevent access to the Service. AskYourTeam is not in any way responsible for any such interference or prevention of Your access or use of the Service.

vi. AskYourTeam recognises the range of browsers available. Some browsers are at this time not compatible with the software of AskYourTeam, for example, it is required for Internet Explorer version 11 or above. AskYourTeam recommends using Chrome, Firefox or Safari. It is Your responsibility to ensure all participants have access to appropriate and updated browsers.

## ASKYOURTEAM – TERMS AND CONDITIONS

f. AskYourTeam is not Your business advisor and use of the Service does not constitute the receipt of business advice. If You have any advisory questions, please contact an advisor.

g. It is Your sole responsibility to determine that the Service meets the needs of Your business and are suitable for the purposes for which it is used.

h. AskYourTeam is authorised by You to use Your CEO's name in any communications from AskYourTeam in relation to completing Your survey, as receiving an email from the CEO encourages Your people to open and read the email.

i. The CEO/GM/Owner has the ability to write their own customised questions. AskYourTeam is not responsible for the text, grammar or language or outcomes generated by any customised questions.

### **6.3 No warranties:**

AskYourTeam gives no warranty about the Service. Without limiting the foregoing, AskYourTeam does not warrant that the Service will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

### **6.4 Consumer guarantees:**

You warrant and represent that You are acquiring the right to access and use the Service for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Service, the Website or these terms.

## **7. LIMITATION OF LIABILITY**

7.1 To the maximum extent permitted by law, AskYourTeam excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website.

7.2 If You suffer loss or damage as a result of AskYourTeam's negligence or failure to comply with these terms, any claim by You against AskYourTeam arising from AskYourTeam's negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Access Fees paid by You in the previous 12 months.

## **8. TERMINATION**

### **8.1 No-fault termination:**

These terms will continue for the period covered by the Access Fee paid or payable under clause 3.1.

## ASKYOURTEAM – TERMS AND CONDITIONS

### 8.2 Breach:

If You:

- a. breach any of these terms (including, without limitation, by non@ payment of any Access Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
- b. breach any of these terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.3 or any payment of Access Fees that are more than 30 days overdue); or
- c. You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed to any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction, AskYourTeam may take any or all of the following actions, at its sole discretion:
  - i. terminate this agreement and Your use of the Service and the Website;
  - ii. suspend for any definite or indefinite period of time, Your use of the Service and the Website;
  - iii. suspend or terminate access to all or any data;
  - iv. take either of the actions in sub@ clauses c. (i), (ii) and (iii) of this clause 8.2 in respect of any or all other persons whom You have authorised to have access to Your information or data. For the avoidance of doubt, if payment of any invoice for Access Fees due in relation to any of Your billing contacts, billing plans or any of Your organisations (as defined at clause 3) is not made in full by the relevant due date, AskYourTeam may suspend or terminate Your use of the Service; the authority for all or any of Your organisations to use the Service; or Your rights of access to all or any data.

### 8.3 Accrued Rights:

Termination of these terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this agreement You will:

- a. remain liable for any accrued charges and amounts which become due for payment up to the date of termination; and
- b. immediately cease to use the Service and the Website.

### 8.4 Expiry or termination:

Clauses 3.1, 3.5, 4, 5, and 7 survive the expiry or termination of these terms.

## 9. HELP DESK

### 9.1 Technical Problems:

In the case of technical problems please check the support provided online by AskYourTeam on the Website or failing that email us at [support@askyourteam.com](mailto:support@askyourteam.com)



## ASKYOURTEAM – TERMS AND CONDITIONS

### 9.2 Service availability:

Whilst AskYourTeam intends that the Service should be available 24 hours a day, seven days a week, it is possible that on occasions the Service or Website may be unavailable to permit maintenance or other development activity to take place.

If for any reason AskYourTeam has to interrupt the Service for longer periods than AskYourTeam would normally expect, AskYourTeam will use reasonable endeavours to publish in advance details of such activity on the Website.

## 10. GENERAL

### 10.1 Entire agreement:

These terms, together with the AskYourTeam privacy policy and the terms of any other notices or instructions given to You under these terms of use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and AskYourTeam relating to the Service and the other matters dealt with in these terms.

### 10.2 Waiver:

If either party waives any breach of these terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

### 10.3 Delays:

Neither party will be liable for any delay or failure in performance of its obligations under these terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

### 10.4 No Assignment:

You may not assign or transfer any rights to any other person without AskYourTeam's prior written consent.

### 10.5 Governing law and jurisdiction:

This Agreement is governed by the laws of New Zealand and You submit to the exclusive jurisdiction of the courts of New Zealand for all disputes arising out of or in connection with this agreement.

### 10.6 Severability:

If any part or provision of these terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this agreement will be binding on the parties.

### 10.7 Notices:

Any notice given under these terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to AskYourTeam must be sent to [support@askyourteam.com](mailto:support@askyourteam.com) or to any other email address notified by email to You by AskYourTeam. Notices to You will be sent to the email address which You provided when setting up Your access to the service.

# ASKYOURTEAM – TERMS AND CONDITIONS

## 10.8 Rights of Third Parties:

A person who is not a party to these terms has no right to benefit under or to enforce any clause of these terms.

## 10.9 Refund & Cancellation Policy:

AskYourTeam will cancel Your subscription and offer a complete refund if You are able to identify individual participants by their feedback provided in the assertions.

Signed: .....

Name: .....

Title: .....

Date: .....

## FIND US ON



Website: [www.AskYourTeam](http://www.AskYourTeam)  
 Email: [info@AskYourTeam](mailto:info@AskYourTeam)  
 Within NZ: 0800 001 335  
 Outside NZ: +64 6 280 5305

