SAM Computer Systems Ltd

Terms & conditions

STANDARD TERMS

1. Application

1.1 These Terms apply to the provision of any Software, Hardware and Services by SAM (as defined below). By placing an Order with SAM, or by accessing or using any Trial Software:

a you agree to these Terms; and

b where you are placing an Order with SAM, or downloading, accessing or using any Trial Software on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.

1.2 The Agreement between the parties is formed when SAM notifies the Customer by email that SAM accepts the Customer's Order, or commences supplying the relevant Software, Hardware and/or Services to the Customer, whichever is the earlier (**Order Acceptance**) or, in the case of Trial Software, when SAM permits download, access and/or use of the Trial Software (**Trial Acceptance**).

1.3 On Order Acceptance, each Order forms a separate Agreement between the parties.

1.4 On Trial Acceptance, a separate Agreement between the parties for the provision of the Trial Software is formed.

1.5 The Agreement comprises:

a these Terms, including the Schedules;

b if the Services include Support Services, the Service Level Agreement; and

c the Order (if applicable).

1.6 The Agreement applies to the exclusion of any standard terms the Customer may have for the purchase of goods or services and any terms included, or incorporated by reference, in any request for quote, purchase order or other correspondence between the parties.

1.7 If there is any conflict between the documents that form part of the Agreement, they will have precedence in the descending order of priority set out below:

a the Schedules;

b these Terms, excluding the Schedules;

c the Service Level Agreement (if applicable); and

d the Order (if applicable).

2. Changes

2.1   SAM may change these Terms or the Service Level Agreement at any time by notifying the Customer of the change by email or by posting a notice on the Website.

2.2   If, on or after the date on which SAM gives notice of a change in accordance with clause 2.1, the Customer places an Order with SAM, or the Customer (or an individual acting on behalf of a Customer) first downloads, accesses or uses any Trial Software in a manner that gives rise to a new Agreement , that Agreement will be governed by the changed Terms and/or Service Level Agreement.

2.3   Subject to clauses 2.4 to 2.7, if an Agreement is in effect on the date on which SAM gives notice of a change under clause 2.1, the changed Terms and/or Service Level Agreement (if applicable) will apply to that Agreement 30 days after the date of SAM's notice (or such later date as SAM's notice states it takes effect).

2.4   If an Agreement is in effect on the date of SAM's notice under clause 2.1 and the change has a detrimental effect on the Customer, the Customer may terminate the Agreement on no less than 10 days' notice, provided the notice is received by SAM before the effective date of the change.

2.5   If the Customer gives notice of termination in accordance with clause 2.4 prior to the expiry of any minimum term for Software licence rentals or subscriptions, Hardware rentals, Hosting Services or Support Services:

a   the earliest date the Customer's notice of termination will take effect will be the expiry of that minimum term; and

b   during the period until the Customer's notice of termination takes effect, the previous version of the Terms and/or the Service Level Agreement will apply to the Agreement.

2.6   If the Customer gives notice of termination in accordance with clause 2.4 prior to the expiry of a periodic (e.g. monthly, quarterly or annual) subscription or billing period for Software rentals or subscriptions, Hardware rentals, Hosting Services or Support Services:

a   the earliest date the Customer's notice of termination will take effect will be the expiry of that subscription or billing period; and

b   during the period until the Customer's notice of termination takes effect, the previous version of the Terms and/or the Service Level Agreement will apply to the Agreement.

2.7   If the Customer gives notice of termination in accordance with clause 2.4 and has purchased and paid for a perpetual licence to any SAM Desktop Software prior to date of termination:

a   the Customer's licence to the SAM Desktop Software continues despite that termination; and

b   the previous version of the Terms (including, to avoid doubt, SAM's rights of termination under clause 18) will continue to apply to the Customer's licence to, and use of, the SAM Desktop Software.

2.8   If an Agreement is in effect on the date on which SAM gives notice of a change under clause 2.1 and the Customer does not terminate the Agreement in accordance with clause 2.4, the Customer is deemed to have accepted that the changed Terms or the Service Level Agreement apply to the Agreement.

2.9   In addition to clause 2.1, SAM reserve the right at any time to make any change to these Terms or the Service Level Agreement as SAM considers (acting reasonably) is required as a result of any change in applicable laws by notifying the Customer of the change by email or by posting a notice on the Website. The Customer is bound by any change under this clause 2.9 from the date of SAM's notice (or such other date as SAM's notice states it takes effect).

2.10 The Customer is responsible for ensuring it is familiar with the latest Terms and Service Level Agreement.

2.11 **These Terms were last updated on 23/07/2024.**

3.   Interpretation

In these Terms:

Agreement means these Terms (including the Schedules), the Service Level Agreement (if applicable) and the Order (if applicable).

Auxo means Australasian Automotive Business Solutions Limited, company number 1697484, trading as Auxo Software,

Auxo Group means Auxo and its related companies, including:

- SAM Computer Systems Limited, NZ company number 895865;

- Systime Automotive Solutions Limited, NZ company number 1186630;

- TSI SAM Pty Limited, Australian Business Number (ABN) 17-156-607-251;

- TSI Systime, Australian Business Number (ABN) 40-132-463-284.

Business Hours means the hours of operation as defined in the SAM Service Level Agreement

Business Days means the days defined within the hours of operation as per the SAM Service Level Agreement.

Charges means:

- subject to clause 12.2, the applicable fees set out in the order form or a quote issued by SAM; or

- if SAM has not issued an order form or quote, SAM's standard charges or price as at the time of supply,

in each case, as may be updated from time to time in accordance with clause 12.9.

Confidential Information means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the Service. SAM's Confidential Information includes Intellectual Property owned by SAM (or its licensors), including the SAM Software and the Documentation. The Customer's Confidential Information includes the Data (if applicable).

Customer means:

- the customer placing an Order or on whose behalf an Order is placed; or

- where the individual downloading, accessing or using Trial Software is doing so on behalf of another person, that other person.

Data means all data, content, and information (including personal information) owned, held, used or created by the Customer or on its behalf that is stored using, or inputted into, the Software.

Delivery has the meaning given in clause 11.4. Other grammatical forms of that term have consistent meanings.

Documentation means the specifications, technical guides, user manuals and other written materials provided by SAM relating to the Software, Hardware and/or Services.

Force Majeure means an event that is beyond the reasonable control of a party, excluding:

- an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or

- a lack of funds for any reason.

Hosted Software means Software that SAM hosts for the Customer (excluding SaaS Software).

Hosting Services means hosting of Software by SAM.

including and similar words do not imply any limit.

Intellectual Property Rights includes copyright and all rights existing anywhere in the world 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. *Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Objectionable includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

Order Acceptance has the meaning given in clause 1.2.

Order means:

- an ordering document issued by SAM and signed or submitted to SAM by the Customer;

- a quote issued by SAM and accepted by the Customer; and

- any other request by the Customer for SAM to supply Software, Hardware or Services.

a *party* includes that party's permitted assigns.

Permitted Users means the Customer's personnel who are authorised to access and use Hosted Software or SaaS Software on the Customer's behalf in accordance with clause 6.5.

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.

personal information means information about an identifiable, living person.

personnel includes officers, employees, contractors and agents, but a reference to the Customer's personnel does not include SAM.

SaaS Software means SAM Software that is provided by SAM on a *software-as-a-service* basis.

SaaS Services means the provision of SAM Software on a *software-as-a-service* basis.

SAM means SAM Computer Systems Limited, company number 895865.

SAM Desktop Software means SAM Software provided to the Customer in executable form for installation on a Customer desktop computer, laptop or server.

SAM NZTA Data Retrieval Service means the service described in Schedule 1 (see page 27).

SAM Software means software owned by SAM or any other Auxo Group company. SAM Software may be provided as SAM Desktop Software and/or as SaaS Software.

Service Level Agreement means SAM's service level agreement at https://auxosoftware.com/terms/

Services means SaaS Services, Hosting Services, Support Services and any other services set out in an Order.

Smartcheck means the service described in Schedule 2 (see page 29).

Software means the SAM Software and/or Third Party Software set out in an Order or that SAM permits the Customer (or an individual acting on behalf of a Customer) to download, access or use as Trial Software.

Support Charges means the Charges payable for Support Services.

Support Services means support for the Software, the SaaS Services, and/or the Hosting Services, as further described in the Order and the Service Level Agreement.

Terms means these terms titled *SAM Computer Systems Standard Terms*, including the attached Schedules.

Territory means, unless otherwise specified in the Order, the country in which the Customer is incorporated.

Third Party Software means Software that is not SAM Software. Third Party Software may be provided by the Third Party in executable form for installation on a Customer desktop computer, laptop or server and/or on a *software-as-a-service* basis.

Trial Software means Software made available by SAM as a trial or for demonstration purposes.

Underlying Systems means the Software, IT solutions, systems and networks (including software and hardware) used to provide Hosting Services or SaaS Services, including any third party solutions, systems and networks.

Words in the singular include the plural and vice versa.

A reference to:

a   a *purchase* or *rental* of, or a subscription to, Software is a reference to the purchase or rental of, or a subscription to, a licence to Software. Other grammatical forms of those terms have consistent meanings:

b   a *related company* has the meaning given in section 2(3) of the Companies Act 1993 (read as if the expression "company" in that subsection included any body corporate of any jurisdiction); and

c   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.

4. Provision of Software, Hardware and Services

4.1   In consideration for payment of the Charges, SAM:

a   where the Order states that the Customer is purchasing or renting, or subscribing to Software:

   i   licenses that Software, or will procure that the applicable third party licensor licenses or provides that Software, to the Customer in accordance with clause 5; and

   ii   where the Software is SaaS Software, will provide SaaS Services for that Software to the Customer in accordance with clause 6;

b   where the Order states that the Customer is purchasing Hosting Services, will provide the Hosting Services to the Customer in accordance with clause 6;

c   where the Order states that the Customer is renting or subscribing to SAM Software (other than Trial Software), purchasing Hosting Services or subscribing to Support Services, will provide Support in accordance with clause 10;

d   where the Order states that the Customer is purchasing or renting Hardware, will sell or rent that Hardware to the Customer in accordance with clause 11; and

e   will provide the other Services set out in the Order,

in each case, in accordance with the Agreement.

4.2   SAM must use reasonable efforts to provide the Services:

a   in accordance with the Agreement and New Zealand law;

b   exercising reasonable care, skill and diligence; and

c   using suitably skilled, experienced and qualified personnel.

4.3   The Customer must:

a   permit SAM's personnel to have access to the Customer's premises to provide the Services during normal business hours or at such other times as the parties agree, subject to SAM and its personnel complying with the Customer's security, health and safety and other applicable polices notified by the Customer to SAM;

b   perform all tasks, functions and responsibilities set out in an order form or quote or otherwise reasonably requested by SAM in a timely manner, and supply sufficient suitably skilled resources and personnel for this purpose;

c   promptly make decisions (including approvals) and provide SAM with all information reasonably required to provide the Services;

d   before using the SAM NZTA Data Retrieval Service, accept the terms of use set out in Schedule 1 by completing the form set out at: forms.auxosoftware.com/sam/nzta;

e   when using the SAM NZTA Data Retrieval Service, comply with the terms of use set out in Schedule 1;

f   take full responsibility for the back-up of the SAM Desktop Software and associated data except where use of the Software is subject to the Hosting and SaaS Services defined in clause 6;

g   comply with any local, state or federal laws applicable to them in regards to the operation of the software and storage of the data and information contained therein; and

h   when using the Smartcheck service, comply with the terms of use set out in Schedule 2.

4.4   SAM's provision of the Software, Hardware and Services to the Customer is non-exclusive. Nothing in the Agreement prevents SAM from providing the Software, Hardware or Services to any other person.

5.   Software licences

5.1   This clause 5 applies if the Order states that the Customer is purchasing or renting, or subscribing to, SAM Software or Third Party Software or if SAM permits the Customer (or an individual acting on behalf of the Customer) to access and/or use Trial Software.

5.2   SAM grants to the Customer, and the Customer accepts, a non-exclusive and non-transferable licence to access and use the SAM Software described in the Order or provided as Trial Software and the Documentation for the SAM Software, and to install any applicable SAM Desktop Software, solely:

   a   for the Customer's lawful internal business purposes;

   b   by the number of concurrent users specified in the Order (if applicable);

   c   within the Territory; and

   d   on the terms and conditions of the Agreement.

5.3   For SAM's Orion Dealer Management System Software, the ongoing payment of the Support Charges is a condition of the licence.

5.4   For SAM's SAM Workshop Management System, Support Services are optional for the Lite, Workmate, Supermate versions and mandatory for the Elite version. Access to some software features and functions (e.g.: WOF Check sheets) is restricted to customers who are subscribed to Support Services. Refusal or cancellation of Support Services may result in access to these features being removed (for a list of affected functions, contact SAM's support centre).

5.5   SAM reserves the right to suspend or withdraw the licence under clause 5.2 in the event of non-payment of the Charges for the applicable Software or (where payment of the Support Charges is a condition of the licence) the Support Charges.

5.6   For rentals of and subscriptions to SAM Software, the ongoing payment of the rental or subscription Charges is a condition of the licence.

5.7   To prevent fraudulent use, SAM Desktop Software periodically expires and requires the entry of a re-activation code. Re-activation is controlled centrally from an SAM server and is usually automatic. If any amount payable by the Customer is overdue, SAM may require payment of the overdue amount prior to providing a renewal codes. This service is provided at no charge to legitimate users.

5.8   The Customer:

   a   may use SAM Desktop Software on several desktop/laptop computers provided that the SAM Desktop Software is not installed on more than 1 file server or server instance, provided that, in the case of Licensed Synergy applications, the program files may be installed on additional workstations on the basis that the database is not installed on more than 1 file server or server instance;

   b   allow SAM to access SAM Desktop Software to inspect that Software and verify compliance with the licence terms in this clause 5 and the licence conditions in clause 7;

   c   ensure the SAM Desktop Software and the SAM Software Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;

d   maintain all proprietary notices on SAM Desktop Software and the SAM Software Documentation; and

e   not transfer, assign or otherwise deal with or grant a security interest in SAM Desktop Software, SAM Software Documentation or the Customer's rights under this clause 5.

5.9   If the Order states that the Customer is purchasing or renting any Third Party Software, that Software will be licensed on the terms set out in the relevant licensor's licence agreement, which the Customer will be required to accept prior to installation. The Customer must comply with the terms of that licence agreement.

5.10   Unless otherwise agreed by SAM in writing:

a   the minimum term for Software rentals or subscriptions is 6 months;

b   after the completion of the minimum term, Software rentals or subscriptions can be cancelled by either party on not less than 90 days' notice; and

c   the minimum notice period for cancellation of a webSAM system is 7 days, if this 7-day period overlaps the new billing period the respective invoice will remain payable; and

d   the Customer may terminate its licence to Trial Software at any time by [*notice to SAM/deleting its account*].

6.   SaaS and hosting services

6.1   This clause 6 applies where SAM is providing Hosting Services under an Order or where the SAM Software provided under an Order is SaaS Software.

6.2   In this clause 6, *Software* means the SaaS Software or Hosted Software, as applicable.

6.3   Subject to clause 9, and unless otherwise specified in the Order, SAM must use reasonable efforts to ensure the Software is available during Business Hours. However, it is possible that on occasion the Software may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. SAM must use reasonable efforts to notify advance details of any unavailability to the Customer by email and/or through its status notification web page http://sam.co.nz/about/system-status

6.4   When accessing the Software, the Customer and its personnel must:

a   not impersonate another person or misrepresent authorisation to act on behalf of others or SAM;

b   correctly identify the sender of all electronic transmissions;

c   not attempt to undermine the security or integrity of the Underlying Systems;

d   not use, or misuse, the Software in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Hosted Software or SaaS Services;

e   not attempt to view, access or copy any material or data other than:

     i   that which the Customer is authorised to access; and

     ii   to the extent necessary for the Customer to use the Software in accordance with the Agreement; and

f   neither use the Software 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; and

g   comply with any other reasonable policy or condition notified by SAM to the Customer.

6.5   Without limiting clause 6.4, no individual other than a Permitted User may access or use the Software. The Customer may authorise any member of its personnel to be a Permitted User, in which case the Customer must provide SAM with the Permitted User's name and other information that SAM reasonably requires in relation to the Permitted User. The Customer must procure each Permitted User's compliance with clauses 6.4 and 7.1.

6.6   The Customer is responsible for procuring all licences, authorisations and consents required for the Customer and its personnel to use Software, including to use, store and input Data into, and process and distribute Data through, the Software.

6.7   While SAM will take standard industry measures to back up all Data stored using the Software, the Customer agrees to keep a separate back-up copy of all Data and files inputted or uploaded by the Customer onto the Software and understands that:

a   any images or files uploaded to or otherwise stored on the Software are excepted from the data back-up obligations of SAM and such files may be modified, corrupted or distorted once uploaded; and

b   SAM reserves the right to delete images and files uploaded at its sole discretion. Such deletions shall primarily occur due to the cancellation, cessation, downgrade or non-payment of services; or instances of unreasonable use or as otherwise outlined in clause 6.10.

6.8   Unless otherwise specified in an order form or quote issued by SAM or agreed by SAM in writing:

a   the minimum term for Hosting Services is 6 months; and

b   after the completion of the minimum term, Hosting Services can be cancelled by either party on not less than 90 days' notice.

6.9   At any time prior to one month after the date of termination of a licence to SaaS Software, Hosting Services or the Agreement, the Customer may request:

a   a copy of any Data stored using the Software, provided that the Customer pays SAM's reasonable costs of providing that copy. On receipt of that request, SAM must provide a copy of

the Data in a common electronic form. SAM does not warrant that the format of the Data will be compatible with any software; and/or

b   deletion of the Data stored using the Software, in which case SAM must use reasonable efforts to promptly delete that Data.

To avoid doubt, SAM is not required to comply with clause 6.9a to the extent that the Customer has previously requested deletion of the Data.

6.10 Without limiting any other right or remedy available to SAM, SAM may restrict or suspend the Customer's access to and use of the Software and/or delete, edit or remove the relevant Data or files stored using the Software if SAM considers that the Customer or any of its personnel have:

a   undermined, or attempted to undermine, the security or integrity of the Software or any Underlying Systems;

b   used, or attempted to use, the Software:

i   for improper purposes; or

ii   in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Service;

c   transmitted through, inputted into or stored using the Software any Data that breaches or may breach the Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading;

d   failed to pay the applicable Charges in accordance with clause 12; or

e   otherwise materially breached the Agreement.

7. Software licence and access conditions

7.1   The Customer and its personnel must:

a   use the Software in accordance with the Agreement solely for:

i   the Customer's own internal business purposes; and

ii   lawful purposes; and

b   not resell or make available Software to any third party, or otherwise commercially exploit the Software;

c   when sending bulk or commercial email, comply with:

i   all applicable laws, including the Unsolicited Electronic Messages Act 2007; and

ii   the most recent version of
       https://www.marketing.org.nz/Resources/Regulatory/Guidelines_Email_Marketing; and

d   not copy (except making a single copy of SAM Desktop Software for the Customer's own back-up purposes), reproduce, translate, decompile, reverse-engineer, modify, vary, sub-license or otherwise deal in the Software or its Documentation except:

        i   as expressly provided for in the Agreement; or

        ii   to the extent expressly permitted by any law or treaty that is in force in the Territory where that law or treaty cannot be excluded, restricted or modified by the Agreement.

7.2   A breach of any of the Agreement by the Customer's personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of the Agreement by the Customer.

8. Trial Software

8.1   This clause 8 applies where the Customer (or an individual acting on behalf of the Customer) accesses and/or uses Trial Software.

8.2   SAM will provide the Trial Software to the Customer for the trial period notified by SAM to the Customer (or the individual acting on behalf of the Customer) (**Trial Period**).

8.3   The Trial Software is provided to the Customer during the Trial Period on an *as is* basis, and, despite any other provision in these Terms, all conditions, warranties, guarantees and indemnities in relation to the Trial Software are excluded by SAM to the fullest extent permitted by law.

8.4   No Support Services are provided for Trial Software. SAM may however, at its discretion, respond to support queries submitted by the Customer.

8.5   The Customer accepts that, during the Trial Period, access may be shared by other users of the Trial Software and any Data may be shared and publicly visible. As such, Data of a private or confidential nature should not be inputted into the Trial Software during the Trial Period. The Customer must immediately notify SAM of any actual or potential privacy breaches relating to the Trial Software or the Data of which it becomes aware.

8.6   The Customer must purchase, rent or subscribe to a commercial version of the Trial Software if it wishes to access and use the applicable Software following expiry of the Trial Period.

8.7   Nothing in the Agreement imposes any obligation:

a   on the Customer, at the termination or expiry of the Trial Period, to purchase, rent or subscribe to a commercial version of the Trial Software or any other Software provided by SAM; or

b   on SAM:

        i   at the termination or expiry of the Trial Period, to provide a commercial version of Trial Software or any other Software provided by SAM; or

        ii   to maintain any feature or part of the Trial Software in any commercial version of Trial Software or any other Software.

9.   Third Party Features

Through the use of web services and APIs, the Software may interoperate with a range of third party service features (**Third Party Features**). SAM does not make any warranty or representation on the availability of those Third Party Features. Without limiting the previous sentence:

a   if a Third Party Feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, SAM may cease to make the relevant Third Party Feature available to the Customer. If SAM ceases the availability of a Third Party Feature:

     i   where SAM is charging the Customer a fee for that Third Party Feature as a separate item from the Charges for the Software, SAM will cease charging the Customer that fee, with effect from the date SAM ceases the availability of the Third Party Feature; and

     ii   no other refund, discount or other compensation will be payable by SAM; and

b   if a Third Party Feature provider changes the terms on which it provides that feature to SAM, SAM may change these Terms as it considers necessary to reflect that change in accordance with clause 2.1.

10.   Support Services

10.1   This clause 10 applies if the Order states that the Customer is:

a   renting or subscribing to SAM Software (other than Trial Software);

b   purchasing Hosting Services; or

c   subscribing to Support Services.

10.2   For rentals or, and subscriptions to, SAM Software, the Support Services are included in the rental or subscription Charges. For Hosting Services (other than for rental or subscription SAM Software), the Support Charges are additional to the Charges for the Hosting Services.

10.3   SAM will provide the Customer with support in accordance with the Service Level Agreement, provided the Customer has:

a   paid all Charges due;

b   in the case of SAM Desktop Software, maintained a proper operating environment for the use of the Software in accordance with any guidance from SAM, including in the Documentation; and

c   complied with the Agreement and the Documentation.

10.4   Unless otherwise specified in an order form or quote issued by SAM or agreed by SAM in writing:

a   the minimum term for Support Services is 6 months; and

b   after the completion of the minimum term, Support Services can be cancelled by either party on not less than 30 days' written notice.

To avoid doubt, this clause 10.4 does not apply to Software rentals or subscriptions or Hosting Services. The minimum term for Software rentals or subscriptions is as set out in clause 5.10 and the minimum term for Hosting Services is as set out in clause 6.8.

11. Hardware

11.1   This clause 11 applies if the Order states that the Customer is purchasing or renting Hardware.

11.2   SAM will use reasonable endeavours to deliver the Hardware on or before the delivery date requested in the Order, but will not be liable for any loss, liability or damage resulting from any delay, nor will the Customer be relieved of any obligation to accept or pay for the Hardware by reason of that delay.

11.3   Delivery and return of Hardware is at the Customer's cost and risk. If requested, SAM will ship Hardware at the Customer's expense.

11.4   Risk of loss in Hardware passes to the Customer when the Hardware is delivered or made available for collection by a common carrier or other person nominated by the Customer at SAM's premises (whichever is the earlier).

11.5   Where the Customer is purchasing Hardware, title in the Hardware passes to the Customer when full payment for the Hardware is received by SAM. Until payment in full of has been made:

a   the Customer must if requested by SAM store the Hardware supplied in such a way that it is clear that it is the property of SAM;

b   if the Customer is in breach of the Agreement (including failing to pay any payment when due), SAM or its agent will be entitled to enter upon the Customer's premises at any reasonable time and repossess the Hardware;

c   the Customer must not, and must not attempt to, sell, assign, pledge, mortgage, charge, encumber, hire, license, or part with possession or permit any lien to exist in respect of the Hardware or grant any security interest over the Hardware to any third party; and

d   if the Customer sells the Hardware prior to payment in full in breach of clause 11.5c, then the proceeds of sale will be the property of SAM but for an amount no more than the Customer's indebtedness to SAM.

11.6   Where the Customer is renting Hardware:

a   unless otherwise specified in an order form or quote issued by SAM or agreed by SAM in writing:

i   the term of the rental will begin on the 1st day of the month following receipt of the first rental payment;

    ii   the minimum term of the rental will be either 36 or 48 months (as specified in the Order); and

    iii   after the completion of the minimum term, the Hardware rental can be cancelled by either party on not less than 90 days' notice;

b   legal and beneficial ownership of the Hardware remains with SAM at all times;

c   the Customer must, until the Hardware is returned to SAM:

    i   effect and maintain standard commercial insurance against standard risks, including fully insuring the Hardware for full replacement value, with SAM's interest in the Hardware noted on the applicable policy;

    ii   provide SAM with evidence of the Customer's compliance with clause 11.6ci on request by SAM; and

    iii   not allow anything to be done that might prejudice the insurance;

d   the Customer must:

    i   take proper care of the Hardware;

    ii   not service or repair the Hardware;

    iii   allow SAM to access the Customer's premises at reasonable times to inspect, service and repair the Hardware;

    iv   not remove, deface or obscure, and not allow any other person to remove, deface or obscure, any marks of identification or ownership or registration on the Hardware;

    v   immediately notify SAM of any loss, theft or damage to the Hardware; and

    vi   is liable for any loss, theft or damage to the Hardware however caused. The amount to repair the damage or replace the Hardware, plus lost rental revenue (if applicable), is at SAM's sole discretion.

e   if the Customer is in breach of the Agreement (including failing to pay any payment when due), or on termination of the rental or the Agreement for any reason, SAM or its agent will be entitled to enter upon the Customer's premises at any reasonable time and repossess the Hardware;

f   if the rental or the Agreement is cancelled or terminated for whatever reason before the end of the minimum term, SAM reserves the right to charge the Customer the full monthly rental Charges for the outstanding contract period;

g   SAM may assign its rights, title and interest in the Hardware in part or in whole at any time;

h   the Customer:

i   agrees that the supply of rental Hardware under the Agreement creates a security interest over the rental Hardware, and all of the Customer's present and future rights in relation to the rental Hardware and any proceeds, in favour of SAM that may be registered on the personal property securities register under the Personal Properties Securities Act 1999 (**PPSA**);

ii   must provide all information and do all things including the execution of documents as SAM may require for the purpose of ensuring that SAM has a perfected first ranking security interest in the Hardware and any proceeds under the PPSA;

iii   must not, and must not attempt to, sell, assign, pledge, mortgage, charge, encumber, hire, license, or part with possession or permit any lien to exist in respect of the Hardware or grant any security interest over the Hardware to any third party;

iv   agrees that sections 114(1)(a), 133 and 134 of the PPSA do not apply to the enforcement by SAM of any security interest created or provided for by the Agreement to which Part 9 of the PPSA applies, and waives any right it may have under sections 116, 120(2), 121, 125, 127, 129 and 131 of the PPSA on such enforcement; and

v   waives any right it may have to receive from SAM a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to the Hardware.

12. Charges

12.1   The Customer must pay SAM the Charges.

12.2   The Charges:

a   set out in SAM's order form or quote are valid for up to 30 days from the date SAM issues the order form or quote; and

b   are subject to change without notice at any time prior to Order Acceptance. The Customer should confirm the Charges with SAM before placing an Order.

12.3   Unless other set out in SAM's order form or quote, all freight, travel, accommodation, cabling and similar disbursements are additional to the Charges.

12.4   The Charges set out in SAM's order form or quote are quoted on the assumption that any existing PCs, printers and other peripheral equipment are suitable for the tasks required of them. Any additional costs arising from incompatible or inadequate hardware platforms, software or services provided by any third party suppliers are the responsibility of the Customer.

12.5   SAM will provide the Customer with valid GST tax invoices in accordance with the invoicing terms set out in SAM's order form or quote or, if none are stated:

a   for Software purchases, Hardware purchases and installation and training services, prior to delivery where possible; and

b	for Software rentals and subscriptions, Hosting Services, Support Services and Hardware rentals, monthly in advance and prior to the due date for payment.

12.6	The Charges exclude GST, which the Customer must pay on taxable supplies, and all other taxes, duties and levies.

12.7	The Customer must pay the Charges and disbursements:

a	in accordance with the invoicing terms set out in SAM's order form or quote or, if none are stated:

i	for Software purchases, Hardware purchases and installation and training services, on delivery;

ii	for monthly Charges for Software rentals and subscriptions, Hosting Services, Support Services and Hardware rentals, on or before the first day of the relevant month;

iii	for all other amounts, within 7 days of the date of invoice; and

b	electronically in cleared funds without any set off or deduction.

12.8	SAM may:

a	charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at a rate of 1.5% per month; and

b	recover all costs incurred in recovering overdue amounts and interest from the Customer, including the actual fees charged by its lawyers and any debt collection agency.

12.9	SAM may increase the Charges for Software rentals and subscriptions, Hosting Services, Support Services and Hardware rentals at any time following the expiry of the relevant minimum term by giving at least 30 days' notice. If the Customer does not wish to pay the increased Charges, the Customer may terminate the relevant rental, subscription or Services on no less than 10 days' notice, provided the notice is received by SAM before the effective date of the increase. If the Customer does not terminate the relevant rental, subscription or Services in accordance with this clause, the Customer is deemed to have accepted the increased Charges.

13. Data

13.1	Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the Customer's property. The Customer grants SAM 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 SAM's rights and performance of its obligations in accordance with the Agreement.

13.2   The Customer acknowledges that:

a   SAM may require access to the Data to exercise its rights and perform its obligations under the Agreement; and

b   to the extent necessary for this purpose but subject to clause 15:

i   the SAM Desktop Software may, from time to time, automatically send Data to SAM;

ii   SAM may request that the Customer provide SAM with Data held in the SAM Desktop Software); and

iii   SAM may authorise a member or members of its personnel to access the Data held by SAM.

13.3   The Customer must arrange all consents and approvals that are necessary for SAM to collect and access the Data as described in clause 13.2.

13.4   The Customer acknowledges and agrees that:

a   SAM may:

i   use Data and information about the Customer's and its personnel's use of the Software to generate anonymised and aggregated statistical and analytical data (**Analytical Data**);

ii   use Analytical Data for its internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and

iii   supply Analytical Data to third parties;

b   SAM's rights under clause 13.4aii and iii above will survive termination of expiry of the Agreement; and

c   title to, and all Intellectual Property Rights in, Analytical Data is and remains SAM's property.

13.5   The Customer acknowledges and agrees that to the extent Data contains personal information, in collecting, holding and processing that information for the purposes of performing its obligations under the Agreement, SAM is acting as the Customer's agent for the purposes of the Privacy Act 2020 and any other applicable privacy law. The Customer must obtain all necessary consents from the relevant individual to enable SAM to collect, use, hold and process that information in accordance with the Agreement.

13.6   If the Customer is located outside New Zealand, the Customer agrees that SAM may store Data (including any personal information) in secure servers in New Zealand and may access that Data (including any personal information) in New Zealand from time to time.

13.7 The Customer indemnifies SAM against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by SAM's solicitors) and loss of any kind arising from any:

a   breach of clause 7.1 or 6.4; or

b   actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

14. Intellectual property

14.1 Subject to clause 13.1, title to, and all Intellectual Property Rights in, the SAM Software and all Underlying Systems is and remains SAM's property (and its licensors' property). The Customer must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

14.2 To the extent not owned by SAM, the Customer grants SAM a royalty-free, transferable, irrevocable and perpetual licence to use for its own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by SAM in the provision of the Services.

14.3 If the Customer provides SAM with ideas, comments or suggestions relating to the SAM Software, Services or Underlying Systems (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 SAM; and

b   SAM may use or disclose the feedback for any purpose.

14.4 The Customer must:

a   not challenge SAM's (or any other Auxo Group company's) ownership, or the validity, of the SAM Software or its Documentation or any other item or material created or developed by or on behalf of SAM under or in connection with the Agreement (including the Intellectual Property Rights in those items); and

b   notify SAM in writing immediately after it becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the SAM Software or the Documentation.

15. Confidentiality

15.1 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 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, clauses 15.1a and 15.1b.

15.2   The obligation of confidentiality in clause 15.1 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 Agreement;

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 SAM 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 SAM enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 15.

16. Warranties

16.1   Each party warrants that it has full power and authority to enter into, and perform its obligations under, the Agreement.

16.2   SAM does not give any warranty to the Customer relating to Third Party Software, which usually has separate warranties supplied by the relevant licensor.

16.3   SAM does not give any warranty to the Customer relating to Trial Software. Trial Software is provided *as is* and *as available*.

16.4   SAM does not give any warranty to the Customer relating to Hardware purchased by the Customer. SAM will use commercially reasonable efforts to transfer to the Customer the benefit of any warranties provided by the relevant manufacturer.

16.5   For rental Hardware:

a   SAM warrants that the Hardware functions in accordance with the manufacturer's specifications;

b   SAM will, at its own expense, repair or replace Hardware that fails to function in accordance with the manufacturer's specifications as soon as reasonably practicable.   Work carried out for causes other than Hardware failure will be charged to the Customer; and

c   the installation, transfer, removal and ongoing operation of software other than SAM Software is excluded from any warranty.

16.6 To the maximum extent permitted by law:

a SAM's warranties are limited to those set out in the Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded; and

b SAM makes no representation concerning the quality of the Software, Hardware or Services and does not promise that the Software, Hardware or Services will:

i meet the Customer's requirements or be suitable for a particular purpose; or

ii be secure, free of viruses or other harmful code, uninterrupted or error free.

16.7 The Customer agrees and represents that it is acquiring the Software, Hardware and Services, and accepting the Agreement, for the purpose of trade. The parties agree that:

a to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Service or the Agreement; and

b it is fair and reasonable that the parties are bound by this clause 16.7.

16.8 Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, SAM's liability for any breach of that condition or warranty is limited, at its option, to:

a supplying the Software, Hardware or Services again; and/or

b paying the costs of having the Software, Hardware or Services supplied again; and/or

c refunding the Charges paid for the Software, Hardware or Services.

16.9 The Customer acknowledges that Software may link to third party services, websites or feeds that are connected or relevant to the Software. Any link from the Software does not imply that SAM endorses, approves, or recommends, or has responsibility for, those services, websites or feeds or their content or operators. To the maximum extent permitted by law, SAM excludes all responsibility or liability for those services, websites or feeds.

17. Liability

17.1 Subject to clause b, SAM's maximum aggregate liability under or in connection with the Agreement or relating to the Software, Hardware or Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed:

a where the liability relates to rental or subscription Software, Hosting Services or Support Services, an amount equal to the Charges paid by the Customer for the relevant rental or

subscription, Hosting Services or Support Services (as applicable) in the 1 month period prior to the date of the first event giving rise to liability; and

b   in all other cases, the Charges paid by the Customer for the Software, Hardware or Services to which the liability relates.

17.2   Where the Agreement is an agreement for the provision of Trial Software:

a   to the maximum extent permitted by law:

i   the Customer accesses and uses the Trial Software at its own risk; and

ii   SAM is not liable or responsible to the Customer or any other person for any claim, damage, loss, liability and cost under or in connection with the Agreement, the Trial Software, or the Customer's access and use of (or inability to access or use) the Trial Software. This exclusion applies regardless of whether SAM's liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise; and

b   to the extent clause 17.2a does not apply, SAM's liability is limited as set out in clause 17.1.

17.3   Neither party is liable to the other under or in connection with the Agreement or the Software, Hardware or Services 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.

17.4   Clauses 17.1 to 17.3 do not apply to limit SAM's liability under or in connection with the Agreement for:

a   personal injury or death;

b   fraud or wilful misconduct; or

c   a breach of clause 15.

17.5   Clause 17.3 does not apply to limit the Customer's liability:

a   to pay the Charges;

b   under the indemnity in clause 13.7; or

c   for those matters stated in clause 17.4a to 17.4c.

17.6   Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

17.7 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 the Agreement or the Software, Hardware or Services.

18. Termination

18.1 Either party may, by notice to the other party, immediately terminate the Agreement if the other party:

   a   breaches any material provision of the Agreement and the breach is not:

        i   remedied within 30 days of the receipt of a notice from the first party requiring it to remedy the breach; or

        ii   capable of being remedied; or

   b   becomes 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.

18.2 The Customer may terminate the Agreement in accordance with clauses 2.4 and 12.9.

18.3 Termination of the Agreement does not affect either party's rights and obligations that accrued before that termination.

18.4 On termination of the Agreement, the Customer must pay all Charges for Software, Hardware and Services provided prior to that termination.

18.5 No compensation is payable by SAM to the Customer as a result of termination of the Agreement for whatever reason, and the Customer will not be entitled to a refund of any Charges that it has already paid.

18.6 Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of the Agreement but subject to clause 6.8, 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.

19. General

19.1 The Customer agrees that during the term of the Agreement and for 2 years after its expiry or termination (**Restraint Period**), the Customer and its related companies must not, without the prior written consent of SAM:

   a   directly or indirectly solicit or offer employment or any contract for services to any of SAM's personnel;

   b   solicit or entice any member of the other party's personnel to terminate their position, employment or relationship with SAM; or

c   assist or encourage any person to do any of the things described in clauses 19.1a and 19.1b.

19.2   Clause 19.1 will not apply to any SAM personnel who terminated their position, employment or relationship with SAM 2 years or more prior to the Customer offering employment or a contract for services.

19.3   Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure.

19.4   No person other than the Customer and SAM has any right to a benefit under, or to enforce, the Agreement.

19.5   For SAM to waive a right under the Agreement, that waiver must be in writing and signed by SAM.

19.6   Subject to clause 13.5, SAM is an independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.

19.7   If SAM needs to contact the Customer, SAM may do so by email. The Customer agrees that this satisfies all legal requirements in relation to written communications. The Customer may give notice to SAM under or in connection with the Agreement by emailing admin@sam.co.nz.

19.8   The Agreement, and any dispute relating to the Agreement or the Software, Hardware or Services, 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 or the Software, Hardware or Services.

19.9   Clauses which, by their nature, are intended to survive termination of the Agreement, including clauses 6.8, 13.7, 14, 15, 17, 18.3 to 18.6 and 19.8, continue in force.

19.10   If any part or provision of the Agreement is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from the Agreement. The remainder of the Agreement will be binding on the Customer.

19.11   Subject to clauses 2.1, 2.9 and 12.9, any variation to the Agreement must be in writing and signed by both parties.

19.12   The Agreement sets out everything agreed by the parties relating to the Software, Hardware and Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the date of Order Acceptance. The parties have not relied on any representation, warranty or agreement relating to the Software, Hardware or Services that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the date of Order Acceptance. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 19.12.

19.13   The Customer may not assign, novate, subcontract or transfer any right or obligation under the Agreement without SAM's prior written consent, that consent not to be unreasonably withheld. In the case of a genuine sale of a going concern that uses SAM Software, SAM will typically allow the

Agreement to be transferred provided the transferee accepts the Agreement and agrees to make all payments in accordance with the Agreement. The Customer remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer.

Schedule 1

MOTOR VEHICLE REGISTER DATA RETRIEVAL SERVICE – TERMS OF USE

In this Schedule:

PPSR means the Personal Property and Security Register

RMVT means a registered motor vehicle trader

NZTA means the Waka Kotahi New Zealand Transport Agency

By registering and using the SAM NZTA Data Retrieval Service, the Customer agrees that:

1. The Customer is responsible for payment in full of all NZTA data requests that return a result. Notwithstanding this, multiple databases operated by different Government agencies and departments are being accessed during a search. It is possible that one or more of these sources may be unavailable from time to time due to maintenance or outage. SAM and its partner Carjam will endeavour to check for unavailability and advise this as early in the search process as possible to avoid costs if possible.

2. SAM reserves the right to vary pricing at any time with a notice period of not less than 30 days. The current and applicable pricing schedule will be clearly displayed within the software system.

3. Invoicing for the SAM NZTA Data Retrieval Service will only be available by electronic (email) means. It is a requirement of access to this service that an active and valid email address will be provided and maintained for this invoicing. Billing is automated and manual invoices will not be sent for this service.

4. Internet access from the computer where the search is being run is required to access the NZTA data.

5. SAM reserves the right to:

    a. suspend the SAM NZTA Data Retrieval Service for late payment;
    b. charge interest on overdue payments at a rate of 1.5% per month, calculated daily; and
    c. recover any costs incurred in recovering debts or in exercising any other rights, including commissions and legal costs on a solicitor and client basis

6. The data and information provided via the NZTA Data Retrieval Service is collated from several disparate sources and is only valid as at the date and time of request. Its accuracy and completeness is beyond the control of SAM and its partner Carjam. No liability whosoever attaches to SAM, and the Customer indemnifies SAM against any claim for loss or consequence deriving from the provision of the NZTA Data Retrieval Service.

7. The Customer must ensure that all NZTA data retrieval requests are conducted for legitimate purposes relating to the normal operation of its business and provision of services to its clients. In particular:

    a. Where PPSR information is included, the Customer undertakes that this information will be accessed and used for legitimate purposes as set out in the Personal Property Securities Act 1999.
    b. Where vehicle owner information is included, the Customer undertakes that all searches will be for a specified purpose as allowed under section 241(1) of the Land Transport Act 1998.
    c. For access to vehicle owner information, the Customer must provide SAM with a membership number of industry body approved to provide MVR access e.g. NAITA, MTA, or direct authorisation from the NZTA, and advise SAM of any changes to membership status.

8. Where information is passed to a third party, including the Customer's own clients, it is the Customer's responsibility to ensure that all actual and implied obligations regarding data usage and privacy are passed to the third party. These include but are not limited to:

   a. The information must be retrieved for legitimate purposes.
   b. Where laws such as the Personal Property Securities Act 1999 apply, these must be complied with.
   c. All uses must be specified purposes as allowed under section 241(1) of the Land Transport Act 1998.

9. The Customer is responsible for all staff accessing NZTA information to be trained and aware of the relevant requirements of the Personal Property Securities Act 1999 and the Land Transport Act 1998 including the points in (7) and (8) above.

10. Software upgrades or new versions may be provided from time to time to support this service. Provided these do not adversely affect any service SAM provide to the Customer, the Customer must install the upgrade or new version as soon as is reasonably practicable, but in no case more than 3 months from the date SAM supplies it to the Customer.

11. SAM owns all intellectual property relating to the SAM NZTA Data Retrieval Service provided in SAM Software. This includes copyright, trade marks, design rights and any intellectual property rights arising from future improvements or changes. This ownership is retained by SAM where the service or information derived from it is resold to end-consumers.

12. Support for the SAM NZTA Data Retrieval Service is provided by the SAM helpdesk and support centre during normal business hours. Normal business hours are 7.30am to 5.30pm Monday to Friday NZST. After hours, weekend and public holiday support is available but may require additional charges.

13. Either party may terminate the SAM NZTA Data Retrieval Service with 30 days' notice.

[>> Activate the NZTA Data Retrieval Service.](#)

Schedule 2
Smartcheck eWOF – Terms of Use

In this Schedule:

> *Smartcheck* means the Smartcheck addon functionality within SAM Software and the associated Smartcheck web application and services; including the eWOF electronic WOF check sheet services.

> *Waka Kotahi* means the Waka Kotahi New Zealand Transport Agency

> *eWOF* means Electronic Warrant of Fitness check sheet functionality provided using Smartcheck

By activating, registering and/or using the Smartcheck service, the Customer agrees that, in addition to the terms set out in clauses 1 to 19 of the SAM Standard Terms and Conditions:

1. The Customer is responsible for payment in full of the Smartcheck service subscription. Notwithstanding this, Smartcheck may be unavailable from time to time due to maintenance or outage. SAM will endeavour to advise of any systemic outages as soon as is reasonably practicable.

2. Internet access is required on any devices accessing the Smartcheck service.

3. No liability whosoever attaches to SAM, and the Customer indemnifies SAM against any claim for loss or consequence deriving from the provision of the Smartcheck Service.

4. The Customer must ensure that all use of Smartcheck eWOF is conducted for legitimate purposes relating to the normal operation of its business and in accordance with any requirements set by Waka Kotahi regarding to the operation of this service, including:

   a. Retaining at least one paper WOF Checksheet book on their premise, to be used only where Waka Kotahi has been notified and agreed, in the instance of an outage where the online Smartcheck service cannot be operated.

5. The Customer is responsible for all staff using Smartcheck to be trained and aware of the full and proper operation of Smartcheck, including but not limited to;

   a. entry and completion of a vehicle inspection, including recheck inspections;

   b. retrieval and supply of records upon demand by any relevant authority;

   c. what to do where the user experiences difficulty accessing or using Smartcheck, including but not limited to loss of connectivity, loss or damage to hardware and system failure

6. To aid in compliance with paragraph 5 of this Schedule, SAM will provide training material in the form of Knowledge Base articles and User Documentation provided through its customer service portal or on request to the SAM customer service (support) team.

7. Software upgrades or updates may be provided from time to time to support the Smartcheck service. Provided these do not adversely affect any service SAM provides to the Customer, the Customer must install the upgrade or update as soon as is reasonably practicable, but in no case more than 3 months from the date SAM supplies it to the Customer.

8. SAM owns all intellectual property relating to the Smartcheck service. This includes copyright, trade marks, design rights and any intellectual property rights arising from future improvements or changes.

9. Either party may terminate the Smartcheck service with 30 days' notice. Cancellation by the customer must be notified by email to accounts@sam.co.nz