

## Standards New Zealand Online Library Service Agreement for Public Libraries.

You are about to enter into a Standards New Zealand Online Library Service Agreement with Standards New Zealand over access to one or more documents belonging to Standards New Zealand, and which are subject to strict conditions of use. Please read the Terms and Conditions below carefully, as by confirming the placement of your application you are deemed to have read and agreed to be bound by these Terms and Conditions.

### Terms and Conditions

#### 1 DEFINITIONS AND INTERPRETATION

In these Terms and Conditions:

- 1.1 **Application** means an application for a Standards New Zealand Online Library Service Agreement
- 1.2 **Authorised User** means you or a contractor or employee of yours or of a company related to you (as defined in the Companies Act 1993), or any other person where you have expressly authorised that person to use the Online Library Service
- 1.3 **Commencement Date** means the date on which Standards New Zealand commences your ability to access the Online Library Service
- 1.4 **Online Library Portfolio** means all of the Standards New Zealand Documents that Standards New Zealand has agreed to provide you with access to under this Standards New Zealand Online Library Service Agreement
- 1.5 **Online Library Service** means the provision by Standards New Zealand to you and your Authorised Users of access to the Standards New Zealand Documents in Standards New Zealand's Online Library via a secure connection across the internet
- 1.6 **Reference Collection** means a group of hard copy or electronic (PDF) Standards New Zealand Documents which comprise 10% or more of the number of documents within your Online Library Portfolio
- 1.7 **Renewal Period** means the 30 days prior to a Subscription Anniversary Date
- 1.8 **Standards New Zealand Document** means any individual, set, or grouping of Standards, handbooks, specifications, manuals or other items published by Standards New Zealand in electronic form
- 1.9 **Standards New Zealand** is the operating arm of the Standards Council, an autonomous Crown Entity operating under the Standards Act 1988
- 1.10 **Subscription** means a current right of access to the Online Library Service in accordance with a Standards New Zealand Online Library Service Agreement
- 1.11 **Subscription Anniversary Date** is the first anniversary of the Commencement Date and, provided you continue to renew your right of access to the Online Library Service, is the anniversary of the Commencement Date in each subsequent year
- 1.12 **Subscription Fee** means the fee payable from time to time by you to Standards New Zealand to gain access to selected Standards New Zealand Documents in the Online Library Service
- 1.13 **Subscription Period** means either the 12 month period between the Commencement Date and the first Subscription Anniversary Date or the 12 month period between a Subscription Anniversary Date and the next Subscription Anniversary Date
- 1.14 **You** and **your** throughout these Terms and Conditions means the party entering into this Standards New Zealand Online Library Service Agreement with Standards New Zealand for access to the Online Library Service.

#### 2 RIGHT OF ACCESS

- 2.1 Standards New Zealand grants you and your Authorised Users a non-exclusive and non-assignable right of access to the Online Library Service.

- 2.2 This right of access is limited, at any one time, to the number of concurrent Authorised Users specified by you in your Application.
- 2.3 The right of access to the Online Library Service runs for 12 months from the Commencement Date and is thereafter renewable for further periods of 12 months upon payment of a further 12 month Subscription Fee by the due date of the invoice issued to you by Standards New Zealand during the Renewal Period.

### 3 CONDITIONS OF USE

- 3.1 An Authorised User may download a single copy of a Standards New Zealand Document for viewing purposes only. Standards New Zealand Documents must not be downloaded on to a CD Rom, data stick, floppy disk, personal computer, laptop or other portable device. The retention of any downloaded Standards New Zealand Document, whether in hardcopy or electronic form, is expressly prohibited.
- 3.2 The retention of downloaded Standards New Zealand Documents for the purposes of building up an electronic Reference Collection is expressly prohibited.
- 3.3 You do not own any of the Standards New Zealand Documents, whether in electronic or hard copy form, obtained directly or indirectly through the Online Library Service. You acknowledge that copyright subsists in each of the Standards New Zealand Documents and that full title to that copyright is at all times retained by Standards New Zealand.
- 3.4 Except as otherwise may be expressly permitted under the Copyright Act 1994, you undertake not to modify, merge with other software or documents, or circulate including via electronic mail, even for your internal purposes, any part of any Standards New Zealand Document in any form without securing the prior written permission of Standards New Zealand and you undertake to ensure that no Authorised User will engage in such activity.
- 3.5 Under no circumstances may a Standards New Zealand Document, whether in electronic or hard copy form, in full or in part, be sold, or transferred to a third party.
- 3.6 Under no circumstances may any Standards New Zealand Document you or any Authorised User downloads be placed on a network of any sort without the prior written permission of Standards New Zealand.
- 3.7 You will not modify, adapt, translate, reverse engineer, decompile, disassemble or create derivative works based on the Standards New Zealand Documents, or any part of them and you undertake to ensure that no Authorised User will engage in such activity without the prior written permission of Standards New Zealand.
- 3.8 You acknowledge that the right of access to the Online Library Service is personal to you and to each of the Authorised Users and cannot be transferred, sold, leased, licensed, rented or loaned via a timesharing, service bureau or other arrangement, or otherwise transferred, with or without consideration, to a third party.
- 3.9 You undertake to keep all Authorised User identification information, including logins and passwords, secret and secure and you further undertake to ensure that each Authorised User does the same. Without limiting the foregoing, you agree:
  - 3.9.1 not to permit any third party to use an Authorised User's login
  - 3.9.2 not to disclose, or provide to any third party, an Authorised User's password or any information that may allow them to gain access to the Online Library Service using an Authorised User's identification' and
  - 3.9.3 to, at all times, use all reasonable efforts to ensure that no improper or unauthorised use of any Authorised User's identification information is made.
- 3.10 You undertake to ensure that no Authorised User attempts to damage, interfere with, or harm the Standards New Zealand website or any network or system underlying or connected to the Online Library Service, including by using a robot, spider, scraper or other automated means to access the website, the Online Library Service, or any of the Standards New Zealand Documents for any purpose.

### 4 PRICING

- 4.1 Standards New Zealand will publish a retail subscription price for each document available in its Online Library Service.
- 4.2 Members of Standards New Zealand will receive a discounted subscription price for any document they add to their Online Library Portfolio.

- 4.3 Any relevant price reductions including membership discounts will be calculated using the published retail subscription price as the base price.
- 4.4 All prices are exclusive of GST unless otherwise specified.
- 4.5 Standards New Zealand may, from time to time, alter the price it charges for any Standards New Zealand Document. If the changes relate to any Standards New Zealand Documents that you have subscribed to prior to the date of the price change, they will only apply to you from the date of your next Subscription Anniversary Date.
- 4.6 You may add Standards New Zealand Documents to your Online Library Portfolio at any time. Standards New Zealand Documents added between the Commencement Date and the first Subscription Anniversary Date or between a Subscription Anniversary Date and the next Subscription Anniversary Date will be charged to you on a pro rated basis.
- 4.7 You may request Standards New Zealand to remove a Standards New Zealand Document from your Online Library Portfolio. Standards New Zealand is not obligated in any way to provide a refund or credit for any portion of the Subscription Fee associated with the removed Standards New Zealand Document that is no longer required or utilised by you. You remain obligated to pay your full Subscription Fee for the full term of the Subscription.

## 5 GROUPINGS OF STANDARDS

- 5.1 Standards New Zealand may, from time to time, develop and offer Subscriptions for groups of Standards New Zealand Documents which may be referred to as catalogues.
- 5.2 Catalogues prices are based on a published retail subscription price. Any relevant price reductions, including membership discounts, will be calculated using the published retail subscription price as the base price.
- 5.3 Catalogues will be annually reviewed by Standards New Zealand in conjunction with relevant industry bodies. This review may result in changes to the groupings of Standards New Zealand Documents in catalogues, the removal of a catalogue, and/or change to the pricing of a catalogue. In these situations:
  - 5.3.1 If the composition of a catalogue in your Online Library Portfolio has changed, you will automatically receive access to the latest version of the catalogue as soon as it is available within the Online Library Service. You will not be able to access the previous or earlier versions of the catalogue.
  - 5.3.2 If a catalogue in your Online Library Portfolio is removed, you will be able to access the catalogue via your Online Library Subscription until your next Subscription Anniversary Date. At that point, the catalogue will be removed from your Online Library Portfolio.
  - 5.3.3 If the price of a catalogue in your Online Library Portfolio changes, your Online Library Portfolio and portion of your Subscription Fee relating to that catalogue will remain unchanged until your next Subscription Anniversary Date. Your Subscription Fee for the period after your next Subscription Anniversary Date will be based on the changed price.
- 5.4 You may subscribe to a catalogue in the Online Library Service at any time. Catalogues added to your Online Library Portfolio between the Commencement Date and the first Subscription Anniversary Date or between a Subscription Anniversary Date and the next Subscription Anniversary Date will be charged to you on a pro rated basis.
- 5.5 You may request Standards New Zealand to remove a catalogue from your Online Library Portfolio. Standards New Zealand is not obligated in any way to provide a refund or credit for any portion of the Subscription Fee associated with the removed catalogue that is not utilised by you. You remain obligated to pay your full Subscription Fee for the full term of the Subscription.
- 5.6 When you subscribe to two or more catalogues which include Standards New Zealand Document(s) common to two or more of those catalogues, the common Standards New Zealand Document(s) will remain in each respective catalogue(s) and will not be removed from your Online Library Portfolio. Catalogue pricing will not be altered in anyway in this situation.
- 5.7 When you subscribe to a catalogue which contains one or more individual Standards New Zealand Documents that you have already subscribed to within your Online Library Portfolio, your Online Library Portfolio and Subscription Fee will be altered as follows:
  - 5.7.1 The affected individual Standards New Zealand Documents will be removed from your Online Library Portfolio

- 5.7.2 A credit value will be calculated for the remaining portion of the Subscription Fee relating to the affected individual Standards New Zealand Documents that you will not utilise
- 5.7.3 The credit value will be applied to the total amount of the purchase order containing the catalogue.
- 5.7.4 The catalogue including the affected Standards New Zealand Documents will be added to your Online Library Portfolio.

## 6 RENEWAL AND TERMINATION

- 6.1 Except during the Renewal Period, you must provide at least 30 (thirty) days notice in writing informing Standards New Zealand that you no longer require your Subscription.
- 6.2 If you do not give such notice at least 30 days prior to your requested termination date, you will be deemed to be continuing to use the Online Library Service after your requested termination date for the full 30 day notice period. If you do not validly terminate your Subscription prior to your Subscription Anniversary Date Standards New Zealand may issue you with an invoice for a further 12 month Subscription Fee which you will be liable to pay.
- 6.3 Standards New Zealand is not obligated in any way to provide a refund or credit for any portion of the Subscription Fee not utilised by you.
- 6.4 You remain obligated to pay your full Subscription Fee for the full term of the Subscription Period.
- 6.5 During your Renewal Period, you may cancel your Online Library Service by providing Standards New Zealand with written notice that you no longer require your Subscription. Your request will take effect from your Subscription Anniversary Date.
- 6.6 Standards New Zealand reserves the right to terminate access without notice to the Online Library Service if payment of the Subscription Fee is not received by the invoice due date.
- 6.7 At any time, Standards New Zealand may give notice of a change:
  - 6.7.1 to the Subscription Fee which will apply to the period after your next Subscription Anniversary Date
  - 6.7.2 to any of these Terms and Conditions governing access to the Online Library Service which, unless otherwise specified, will be deemed to have effect 7 (seven) days from the date of the notice advising of the change.
- 6.8 Standards New Zealand shall be entitled to terminate your and your Authorised Users' access to the Online Library Service automatically and without notice if you or any of your Authorised Users fail to comply with any of these Terms and Conditions.
- 6.9 Upon termination of your Subscription, you and each Authorised User must destroy all copies of the Standards New Zealand Documents in your or their possession, power or under your or their control, including all partial copies, whether in electronic or hard copy form, directly or indirectly provided by Standards New Zealand under the Online Library Service. At its sole discretion Standards New Zealand may require a written declaration from you that such destruction has occurred.
- 6.10 If, at any time during or after your Subscription Standards New Zealand believes based on reasonable grounds that you or an Authorised User has breached any of these Terms and Conditions, you shall permit an independent information technology consultant to act as an auditor, within seven days of being provided notice thereof. You shall permit the auditor (or any other independent person appointed jointly by Standards New Zealand and you) at a reasonable time during normal business hours (at Standards New Zealand's expense) to inspect (and hereby permit such person to enter any building for such purpose) your and each of your Authorised Users' computers and records for the purpose of verifying compliance with these Terms and Conditions subject to the execution of an appropriate confidentiality agreement. It is also agreed that, for the avoidance of doubt, the auditor can disclose to Standards New Zealand such information as is appropriate to enable Standards New Zealand to have a full understanding of any report being provided by the auditor to Standards New Zealand.
- 6.11 If as a result of the auditor's inspection any irregularities are found in the manner of compliance with these Terms and Conditions by any Authorised User, or at any other time Standards New Zealand has factual evidence giving it reason to believe that there are irregularities in the manner of compliance of any Authorised User, and without prejudice to any other rights Standards New Zealand may have, Standards New Zealand shall be entitled, at its discretion:

- 6.11.1 to undertake a review relating to such irregularities and to impose such further conditions relating to such irregularities as it deems reasonably necessary to ensure the proper performance under these terms and conditions, and / or
- 6.11.2 to undertake a full review of you and your Authorised Users' performance under these terms and conditions and to impose such further conditions as it deems reasonably necessary to ensure the proper performance of all obligations under these terms and conditions.

## 7 WARRANTIES

- 7.1 Standards New Zealand is not aware of any inherent risk of viruses in any Standards New Zealand Document at the time that it is downloaded. Standards New Zealand has exercised due diligence to ensure, so far as practicable, that such documents do not contain viruses.
- 7.2 Standards New Zealand warrants that it will use reasonable endeavours to maintain the availability of access by Authorised Users to the Standards New Zealand Documents in the Online Library during the continuation of your Subscription to the Online Library Service, such access being to a standard which accords with accepted industry practice applicable to services of the nature and of the type or kind of the Online Library Service. From time to time, Standards New Zealand may alter the details of the online service and support it offers. Further details about the online service and support that Standards New Zealand is able to provide are available from the Standards New Zealand website at [www.standards.co.nz](http://www.standards.co.nz)
- 7.3 To the maximum extent permitted by law, any and all liability and responsibility of Standards New Zealand to you or any other person under these terms and conditions is excluded regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty or otherwise. Standards New Zealand's liability and responsibility is excluded in respect of any and all loss or damage, whether direct or indirect, including, without limitation, loss of profits, loss of data, loss of business or anticipated savings, general and special damages, and consequential and incidental loss.
- 7.4 Without limiting clause 7.3 in any way, under no circumstances shall Standards New Zealand be held liable for any delay or failure in performance resulting directly or indirectly from acts of nature, forces, or causes beyond its reasonable control, including, without limitation, internet failures, computer equipment failures, telecommunication equipment failures, other equipment failures, electrical power failures, strikes, labour disputes, riots, insurrections, civil disturbances, shortages of labour or materials, fires, floods, storms, explosions, acts of God, war, governmental actions, orders of domestic or foreign courts or tribunals, non-performance of third parties, or loss of or fluctuations in heat, light, or air conditioning.
- 7.5 To the full extent permitted by law Standards New Zealand excludes all implied and express terms, conditions and warranties, including warranties as to the fitness of any of the Standards New Zealand Documents or of the Online Library Service for a particular purpose.

## 8 LAW

- 8.1 New Zealand law applies exclusively to the interpretation of these Terms and Conditions including interpretation of whether there has been compliance or non-compliance with any term or condition by you, an Authorised User or Standards New Zealand, all of whom submit to the exclusive jurisdiction of the New Zealand Courts.
- 8.2 Regardless of from where in the world the Online Library Service is accessed, the use of the Online Library Service to download any Standards New Zealand Document is deemed to be reconfirmation of your agreement to these Terms and Conditions, and in particular to clause 8.1.