

LICENSE AGREEMENT dated the first day of September, 2014**PARTIES**

- 1. The Gap 2014 Limited**
- 2. The Licensee**

INTRODUCTION

- A. The Gap 2014 Limited (TG) is the exclusive owner of certain content and supporting tools, videos and know-how for the implementation of Business Development services by accounting practices, marketed under the brand The Gap ("Product").
- B. TG has agreed to grant the Licensee a license to use the Product upon the terms of this agreement.

AGREEMENT**1. INTERPRETATION**

1.1 Definitions in this Agreement, unless the context otherwise requires:

"Agreement" means this agreement and all its schedules, appendices and agreed variations.

"Business Day" means any day other than a Saturday or Sunday or a New Zealand statutory public holiday.

"Business Hours" means 8.30 am to 5.00 pm New Zealand Standard Time (NZST) on a Business Day.

"Commencement Date" means the date specified in The Gap Membership Form as executed by the Licensee.

"Enhancement and support services" means:

- a) The electronic delivery to the licensee, via the licensee's document management system or via The Gap Portal, of new content releases, versions and updates of the product as they become available;
- b) The provision of unlimited off-site support, during Business Hours, for the Product in relation to diagnosis and correction of any errors, omissions or other defects in relation to the Product in the form supplied by TG;
- c) The provision of online and workshop training and support to encourage best practice use of the Product as follows:
 - i. The provision of at least three online and community group based training sessions during the initial term and any extended terms under this Agreement, and;
 - ii. The provision of up to five individual tickets to our Annual Workshop Programme during the initial term and any extended term under this Agreement, with any travel and accommodation cost being the responsibility of

the Licensee. The location of the annual one-day workshop is to be communicated to members a minimum of three months prior to the workshop and the workshop will be presented in one New Zealand location on an annual basis, and:

- iii. The provision of custom-branded marketing and collateral for web and print media
- d) The provision of unlimited off-site support, during Business Hours, in relation to diagnosis and correction of any operating error, omission or other defect in The Gap Portal,

But excludes:

- a) Diagnosis and correction of any errors, omissions or other defects in relation to the Product that are, in TG's opinion (acting reasonably), caused by:
 - I. Modification, alteration or adaption of the Product by the Licensee;
 - II. The Licensee's hardware and software systems;
 - III. Use of the product in a manner contrary to any specifications or advice provided by TG;
 - IV. The Licensee's failure to utilise new releases, versions and updates provided by TG as part of the enhancement and support services on a timely basis;
 - V. Use of the Product by the Licensee's staff who are not suitably qualified or trained to use the Product;
 - VI. Any unauthorised use of the Product, or;
 - VII. Any failure of the Licensee to comply with the terms of this Agreement

"Force Majeure Event" means an event or occurrence:

- a) Which is beyond the reasonable control of either party; and
- b) Which a party could not have reasonably foreseen and taken reasonable measures to prevent,

But will not include any form of labour dispute or delay caused by contractual or labour relations between the parties and any of their employees, agents, sub-contractors or suppliers, or inability to perform due to lack of available funds.

"GST" means goods and services tax payable under the Goods and Services Tax Act 1985.

"Intellectual Property" means, in respect of any person, all intellectual and industrial property rights and interests (including common law rights and interests) owned or held by that person, or lawfully used by that person, including:

- a) Patents, trademarks, service marks, copyright, registered designs, trade names, symbols and logos;
- b) Patent applications and applications to register trademarks, service marks and designs, and;
- c) All formulae, methods, plans, data, drawings, specifications, characteristics, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, source codes, object codes, algorithms, trade secrets and other information used by that person.

"License" means the license granted to the Licensee pursuant to clause 2.1.

“Monthly License Fee” means the monthly fee payable for the provision of the Enhancement and Support Services as specified.

“Product” means any content, documents, templates, presentations, tools, videos (in hard copy or electronic format) produced by TG and provided to the Licensee under this agreement, and includes new releases, versions and updates as part of the ongoing enhancement and support services.

“Team Member” for the purpose of determining any monthly Enhancement and Support fee includes any employee, accounting or Business Development contractor or consultant and all working owners, regardless of the numbers of hours worked.

“Term” means the Initial Term and any Extended Terms as specified in clause 13.

1.2 Interpretation in this Agreement, unless the context otherwise requires:

- a) The word “person” includes a natural person and anybody or entity whether incorporated or not;
- b) “Including” and similar words do not imply any limitation;
- c) A reference to the Licensee or TG is also a reference to that party’s permitted assigns or successors;
- d) References in this Agreement to a party or parties are references to the parties to this Agreement;
- e) References in this Agreement to sections and clauses are references to sections and clauses in this Agreement;
- f) All amounts are plus GST (if any); and
- g) All amounts are in New Zealand dollars, unless expressly stated otherwise.

2. GRANT OF LICENSE

2.1 Product license: Subject to the terms and conditions of this Agreement, TG grants to the Licensee, and the Licensee accepts a non-transferable, non-exclusive License to use the Product.

2.2 License limitations: The Licensee may use the products to support the provision of services to its own clients, but may not sub-license, sell or otherwise transfer or dispose of the Products in whole or in part, or otherwise use or deal with the Products in any way that could diminish TG’s Intellectual Property Rights in the Product.

3. ENHANCEMENT AND SUPPORT SERVICES

3.1 Enhancement and Support Services: TG will provide the Enhancement and Support Services during the Term.

3.2 Suspension of Enhancement and Support Services if fees overdue: TG may (without prejudice to its other rights and remedies) suspend delivery of the Enhancement and Support Services during any period in which the Licensee is in arrears for payment of any fees payable under this Agreement.

4. ACCESS TO THE GAP PORTAL

- 4.1 TG will provide the Licensee with access to The Gap Portal software.
- 4.2 TG may suspend access to The Gap Portal software during any period in which the Licensee is in arrears for payment of any fees payable under this agreement.

5. ADDITIONAL SERVICES

- 5.1 If requested by the licensee, TG may provide additional services outside the scope of this Agreement, or recommend the services of other providers for services outside the scope of this Agreement. The scope of such additional services, the fees and payment terms shall be agreed in writing between the parties at the time.

6. ENHANCEMENT AND SUPPORT FEES

- 6.1 The Licensee will pay monthly Enhancement and Support Fees in accordance with the terms set out in Schedule 1.
- 6.2 TG may review the Enhancement and Support Fees at any time after the expiry of the Initial Term under clause 13 and shall give the Licensee written notice of the outcome of any such review. Any such review will take effect one month after receipt of such notice by the Licensee in accordance with clause 15.
- 6.3 If the Licensee disputes the whole or any portion of any invoice submitted to it by TG, the Licensee agrees to:
 - a) Notify TG within 10 Business Days of receipt of the invoice of the dispute and the reasons for it; and
 - b) Pay that portion of the invoiced amount (if any) that is not in dispute by the due date.
- 6.4 Default interest: If any amount due and payable under this Agreement remains unpaid after the due date for payment, TG may (without prejudice to its other rights and remedies) charge default interest, from the due date for payment until payment in full of the overdue amount, on the total amount payable to TG under the terms of this Agreement at the rate of 1.2% per month.
- 6.5 Debt recovery: If any amount due and payable under this Agreement remains unpaid more than 45 days after the due date for payment, TG may (without prejudice to its other rights and remedies) engage the services of a debt recovery agency, and the Licensee agrees to pay all costs incurred by TG in doing so (including in particular any commission or fees charged by such agency) in addition to the amount being recovered.

7. THE LICENSEE'S RESPONSIBILITIES

- 7.1 General Responsibilities: The Licensee acknowledges that it is solely responsible for the use, management and control of the Products licensed to it under this Agreement, and must:
- a) Ensure that the Products are used by competent trained employees of the Licensee or of contractors or consultants to the Licensee, or by persons under the supervision of such persons;
 - b) Utilise new releases, versions and updates provided by TG as part of the Enhancement and Support Services;
 - c) Co-operate with TG personnel in respect of any reasonable request made by TG for the purposes of TG fulfilling its obligations under this agreement.
- 7.2 Use of Content: To support the provision of services to its own clients, the Licensee may copy, modify, alter or adapt the Product, but in doing so must always ensure that TG's Intellectual Property rights subsisting in the Product are fully protected. In particular, whenever requested by TG, the Licensee must incorporate in any copied, modified or altered Content, any statement specified by TG claiming Intellectual Property rights.

8. WARRANTIES AND LIABILITY LIMITATIONS

- 8.1 Business purposes and the Licensee's own investigations: The licensee acknowledges that it enters into this Agreement for business purposes; that it has undertaken its own investigations into the Product; and that it enters into this Agreement in reliance on those investigations and not on the basis of any warranty or representation by TG (except for any warranty or representation expressly set out in this Agreement).
- 8.2 No Warranty: TG does not warrant that the Product is free of error, omission or other defects.
- 8.3 Remedy of Defects: If, during the term, the Licensee discovers any error, omission or other defect in relation to the Product as and in the form supplied by TG, then TG shall, as part of the Enhancement and Support Services, diagnose and remedy such error, omission or other defect.
- 8.4 No Breach of Third Party Rights: TG warrants that, to the best of its knowledge, no part of the Product or the granting by TG of rights pursuant to this Agreement, shall breach the intellectual property rights of any third party, provided that:
- a) The Licensee notifies TG in writing as soon as practicable of any actual, suspected or alleged infringement ("Claim") and provides all reasonable assistance to perform its obligations under clause 8.4;
 - b) TG has sole control of the defence or settlement of any Claim;
 - c) The Licensee has not, through any admission, statement or conduct, prejudiced TG's defence of any Claim;
 - d) The Claim does not result from any modification, alteration or adaption of the Product by the Licensee; and
 - e) The Claim does not result from any failure by the Licensee to perform any of its obligations under this Agreement.

- 8.5 Warranties Excluded/Liability Limited: Except as set out in this agreement, all warranties implied by customary practice, at law or under statute are excluded to the extent legally permitted. TG shall not be responsible for any cost, loss, damage or claim arising directly or indirectly in relation to this Agreement or the Product (whether arising in contract, tort, (including negligence), statute or otherwise) except for damages under contract only suffered by the Licensee as a result of breach by TG of the terms of this Agreement up to a maximum of the total amount of fees paid to TG under clause 6.1. Without limiting the foregoing, TG shall not be liable for consequential loss, punitive, exemplary or general damages. This clause shall prevail over the other clauses in this Agreement to the extent of any inconsistency.

9. INTELLECTUAL PROPERTY

- 9.1 Rights reserved: The licensee acknowledges that all Intellectual Property rights and proprietary rights subsisting in, or relating to, the Products (including any Product that is modified, altered or adapted by the Licensee) shall at all times remain the exclusive property of TG.
- 9.2 Licensee to assist TG: The Licensee will do everything reasonably required by TG in order to protect TG's Intellectual Property, including acknowledging TG's Intellectual Property rights in appropriate documents it produces that contains TG Intellectual Property.
- 9.3 No use of Trade Names: The Licensee shall not use or permit to be used any of TG's trademarks or trade names except with the prior written consent of TG.
- 9.4 Upon termination: Upon expiry or termination of this Agreement for any reason, clauses 14.3 (b), (c) and (e) shall apply in relation to TG's Intellectual Property.

10. CONFIDENTIALITY

- 10.1 Confidential Information: Each party acknowledges and agrees that all Confidential Information which is disclosed to, prepared, made available or otherwise received by it, or on its behalf by any advisor or agent, as a result of performance of this Agreement constitutes commercially sensitive and valuable information and will be held by the receiving party in the strictest confidence.
- 10.2 Non-disclosure: Each party agrees that it will not directly or indirectly disclose, nor permit the disclosure by its directors, employees, agents and advisors (if any) of, any of the other party's Confidential Information whether verbally or in writing to any person other than permitted pursuant to this Agreement or with the prior written consent of that other party. Each party's Confidential Information will at all times remain that party's exclusive property.
- 10.3 Covenants: In consideration of one party disclosing or otherwise disclosing Confidential Information to the other party, that other party covenants that it will keep indemnified and

hold harmless the disclosing party against all losses, damages, costs or expenses which it may incur as a result of any unauthorised disclosure or use of the Confidential Information by the other party.

11. FORCE MAJEURE

11.1 Obligations suspended: Where TG is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligation under this agreement and:

- a) Gives the Licensee immediate written notice of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
- b) Uses all reasonable endeavours to:
 - I. Mitigate the effects of the Force Majeure Even in TG's obligations under this Agreement; and
 - II. Perform TG's obligations under this Agreement despite the Force Majeure Event, then that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance.

12. ASSIGNMENT

12.1 Limitations of Assignment by Licensee: This License is personal to the Licensee. The Licensee shall not sell, transfer, subcontract, declare itself trustee of, or otherwise directly or indirectly transfer any interest in, this Agreement except with the prior written consent of TG.

12.2 Assignment by TG: TG shall be entitled to assign, transfer, subcontract or otherwise directly or indirectly transfer its interest in this Agreement to a third party.

13. TERM

13.1 Term: the term of this Agreement ("Term") shall comprise the Initial Term under clause 13.2, together with any Extended Terms under clause 13.3, unless this Agreement is terminated under clause 14.

13.2 Initial Term: This Agreement shall commence on the Commencement Date and shall continue for a period of 12 months ("Initial Term").

13.3 Extended Term: After the expiry of the Initial Term, this Agreement shall continue in full force and effect unless and until the Licensee gives written notice that it wishes to terminate the Agreement, in which case this Agreement shall terminate one month following receipt of such notice by TG. ("Extended Term").

14. TERMINATION

14.1 Default events: The Licensee shall be in default of this Agreement where:

- a) It breaches, or fails to properly or promptly perform, any of its obligations under this Agreement, and fails to remedy that failure within 30 Business Days after receiving written notice (inclusive of the date of receipt) from TG requiring the failure to be remedied; or
- b) It breaches a material obligation under this Agreement which is incapable of remedy; or
- c) It assigns, transfers or otherwise disposes of any right, interest, obligation, or liability in contravention of this Agreement.

14.2 Right to terminate on default: TG may terminate this agreement immediately on written notice to the Licensee if the Licensee is in default as specified in clause 14.1.

14.3 Termination: Upon expiry or termination of this Agreement for any reason, the Licensee shall:

- a) Pay all outstanding moneys in accordance with this Agreement;
- b) Uninstall, return to TG or destroy all Products and other TG Intellectual Property that has been saved down onto desktops, Laptops, devices, servers and other electronic storage systems and applications;
- c) Not make any further use of the Product or TG's Intellectual Property, including to the extent that any Intellectual Property resides in modifications, alterations or adaptations made by the Licensee to the Product, without prior consent from TG; and
- d) Provide TG with a written and signed confirmation that it has complied fully with clauses 14.3(b) and (c).

14.4 Survival: The provisions of this Agreement that are intended to continue beyond termination shall survive termination and continue in force including the following provisions of this Agreement: clauses 6. 1, 6.4, 6.5 (payment, default and debt recovery), 8 (warranties), 9 (intellectual property), 10 (confidentiality) and this clause 14 (termination).

15. NOTICES

15.1 Service: Every notice or other communication given under or in connection with this Agreement will be in writing and addressed to the relevant party and delivered, posted by pre-paid registered mail or sent by facsimile or email to the address, or facsimile number or email address of the relevant party.

15.2 Receipt: Every notice or other communication sent by prepaid letter will be deemed to have been received when personally delivered or three days after it has been put in the post.

15.3 Unsolicited Electronic Messages Act: The Licensee gives its consent for TG to send it electronic messages and community alerts containing commercial marketing and Product information. TG agrees not to disclose the Licensee's email address to any other person for commercial purposes.

16. MISCELLANEOUS

- 16.1 Compliance with laws: Each party will, in performing its respective obligations under and in connection with this Agreement, comply with all relevant statutes and other laws.
- 16.2 Entire Agreement: This Agreement constitutes the entire Agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this Agreement.
- 16.3 Where any provision of this Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions of this Agreement and the parties must attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' objectives.
- 16.4 Variations: This Agreement may only be amended, supplemented or novated in writing executed by both parties.
- 16.5 No waiver by action: Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or connection with, this Agreement, will not operate as a waiver of such right, power or remedy.
- 16.6 Waiver to be in writing: The waiver of any breach of any provision of this Agreement will not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.
- 16.7 Payments without deductions or set-off: All payments required to be made by the Licensee under the terms of this License shall be made without any set-off or deduction whatsoever.
- 16.8 Non-solicitation of employees: During the Term, neither party shall solicit for employment any person who is employed by the other party.
- 16.9 New Zealand Law. This Agreement is governed by New Zealand Law. New Zealand Courts have non-exclusive jurisdiction.

SCHEDULE 1

1. Enhancement and Support Fee:
 - a) For firms with between 1 and 11 team members: \$595 per month, plus GST if any.
 - b) For firms with between 12 and 31 team members: \$795 per month, plus GST if any.
 - c) For firms with between 32 and 71 team members: \$995 per month, plus GST if any.
 - d) For firms with more than 71 team members: the fee as negotiated between the parties.
2. Currency Charged:
 - a) Members located in New Zealand are charged in NZD.
 - b) Members located in Australia are charged in AUD.
 - c) Members located outside of Australasia are charged in USD.
3. Payment terms are as follows:
 - a) The first Enhancement and Support Fee is payable after Commencement Date, on receipt of invoice.
 - b) Subsequent Enhancement and Support Fees are payable monthly by direct debit to TG's nominated bank account.