



YäRKEN User Licence Agreement

1 Introduction

- 1.1 These terms and conditions (**Terms**) are entered into between Yarken Ltd NZBN 942 904 851 8741 (**we, us or our**) and you, together the **Parties** and each a **Party**.
- 1.2 We provide a cloud-based, software as a service platform known as “YäRKEN,” an information technology cost transparency software based on a technology business management framework, allowing you to connect your accounting data and map it onto the platform (**Platform**).
- 1.3 In these Terms, **you** means the person or entity using the Platform. If you are agreeing to these Terms not as an individual but on behalf of your company, government, or other entity for which you are acting (for example, as an employee or governmental official), then **you** means your entity and you are binding your entity to these Terms.

2 Acceptance and Platform Licence

- 2.1 You accept these Terms by using the Platform.
- 2.2 We may amend these Terms at any time, by providing written notice to you. By clicking “I accept” or continuing to use the Platform after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment, you may cease accessing the Platform.
- 2.3 Subject to your compliance with these Terms, we grant you a personal, non-exclusive, royalty-free, revocable, worldwide, non-transferable licence to use our Platform in accordance with these Terms. All other uses are prohibited without our prior written consent.
- 2.4 When using the Platform, you must not do or attempt to do anything that is unlawful or inappropriate, including:
 - (a) anything that would constitute a breach of an individual’s privacy (including uploading private or personal information without an individual’s consent) or any other legal rights;
 - (b) using the Platform to defame, harass, threaten, menace or offend any person, including using the Platform to send unsolicited electronic messages;
 - (c) tampering with or modifying the Platform (including by transmitting viruses and using trojan horses);
 - (d) using data mining, robots, screen scraping or similar data gathering and extraction tools on the Platform; or
 - (e) facilitating or assisting a third party to do any of the above acts.

3 YäRKEN Services

- 3.1 We agree to use our best endeavours to make the Platform available at all times. However, from time to time we may perform reasonable scheduled and emergency maintenance, and the Platform may be unavailable during the times we are performing such maintenance.
- 3.2 Should you be unable to access the Platform, or should you have any other questions or issues impacting on your use and enjoyment of the Platform, you must contact our support desk via email: – support@yarken.com.
- 3.3 You acknowledge and agree that the Platform may be reliant on, or interface with third party systems that are not provided by us (for example, cloud storage providers, your software services, CRM systems, and internet providers) (**Third Party Services**). To the maximum extent permitted by law, we shall have no Liability for any Third Party Services, or any unavailability of the Platform due to a failure of the Third Party Services.
- 3.4 You acknowledge and agree that data loss is an unavoidable risk when using any software. To the extent you input any Data into the Platform, you agree to maintain a backup copy of any Data you input into the Platform.
- 3.5 To the maximum extent permitted by law, we shall have no Liability to you for any loss or corruption of Data, or any scheduled or emergency maintenance that causes the Platform to be unavailable.

4 Access to the Platform

- 4.1 You must register on the Platform to access the Platform’s features.
- 4.2 You must provide basic information when registering for the Platform including your contact name and email address.
- 4.3 All personal information you provide to us will be treated in accordance with our Privacy Policy.
- 4.4 You agree not to share your login details with any other person. Your login is personal and you must not transfer or provide it to others.

- 4.5 You are responsible for keeping your login details and your username and password confidential and you will be liable for all activity via your login. You agree to immediately notify us of any unauthorised use of your login.
- 4.6 You acknowledge and agree that we and any personnel within the Yarken Group may access your account and Data as necessary for the purposes of providing the Platform, including, but not limited to, identifying and resolving issues, or as part of our routine internal operations such as data management and data backup. All Data accessed will be kept confidential and not used for any purposes other than as set out in this clause.
- 4.7 Access to Data within the Platform is strictly controlled and monitored. Only authorized personnel who require access to the Data to support the Platform, customer, or reseller services are granted access, and this is on a temporary basis.
- 4.8 Access permissions are assigned based on the principle of least privilege, meaning individuals are only given access to the Data and resources necessary for their specific role or task.
- 4.9 We will use reasonable endeavours to ensure any information or Data we monitor, analyse and compile based on and/or related to your use of the Platform is in an aggregated and anonymised format.
- 4.10 You acknowledge and agree that we may store your Data in New Zealand and Australia.

5 Security and Privacy

- 5.1 We will use reasonable endeavours to comply with your information security policies notified to us from time to time.
- 5.2 We will take all reasonable steps to prevent security breaches, loss of, unauthorised use or disclosure, or destruction of or damage to, and any other misuse relating to of your Data. If we become aware that any:
- (a) unauthorised use of your data has occurred;
 - (b) unauthorised person has obtained, attempted to obtain, or may obtain access to your operating environment or any Data;
 - (c) unauthorised access or other incident (including compromise or unauthorised exfiltration of data) has occurred or may occur that threatens or may threaten the security or integrity of your operating environment or Data,
- 5.3 we will notify you as soon as reasonably possible; and if you reasonably request, assist you to undertake your own investigation. In the event of any loss or damage to your Data in our possession, we will use best endeavours to restore the lost or damaged Data.
- 5.4 We will:
- (a) use reasonable endeavours to prevent the contamination and spread of any Malware into your operating environment and not knowingly use equipment, software and parts which contain any form of Malware;
 - (b) except with your written permission, not introduce into or use magnetic media, flash drives or any other form of portable data storage in your operating environment; and
 - (c) promptly notify you if we become aware that any Malware has entered your operating environment.
- 5.5 We agree to comply (and procure the compliance of all our personnel) with the requirements of all applicable laws when accessing, storing, processing or transmitting your Data, including any applicable data protection laws such as the Privacy Act 2020.
- 5.6 Unless you otherwise instruct us in writing, we will securely dispose of or return any Data to the extent it is held by us on your instructions, once it is no longer required for the purposes of the provision of the Platform and upon you providing notice following expiry or termination. Where the Data is to be destroyed, we will use reasonable endeavours to destroy it in a manner that ensures it can no longer be recovered or reconstructed, including wiping Data from any of our equipment, and in a manner that is independently verifiable.
- 5.7 We acknowledge that you own the Data.

6 Our Intellectual Property

- 6.1 You acknowledge and agree that any Intellectual Property or content (including copyright and trademarks) available on the Platform, the Platform itself, and any algorithms or machine learning models used on the Platform (**Our Intellectual Property**) will at all times vest, or remain vested, in us.
- 6.2 We authorise you to use Our Intellectual Property solely for your limited commercial use. You must not exploit Our Intellectual Property for any other purpose, nor allow, aid or facilitate such use by any third party.
- 6.3 You must not, without our prior written consent:
- (a) copy, in whole or in part, any of Our Intellectual Property;
 - (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of Our Intellectual Property to any third party; or

- (c) breach any intellectual property rights connected with the Platform, including (without limitation) altering or modifying any of Our Intellectual Property, causing any of Our Intellectual Property to be framed or embedded in another website, or creating derivative works from any of Our Intellectual Property.

7 Warranties

7.1 You represent, warrant and agree that:

- (a) you will not use our Platform, including Our Intellectual Property, in any way that competes with our business;
- (b) if you are agreeing to these Terms not as an individual but on behalf of your company, government, or other entity for which you are acting (for example, as an employee or governmental official), then you access and use the Platform on behalf of that entity;
- (c) there are no legal restrictions preventing you from entering into these Terms;
- (d) all information and documentation that you provide to us in connection with these Terms is true, correct and complete; and
- (e) you have not relied on any representations or warranties made by us in relation to the Platform (including as to whether the Platform is or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms.

8 Liability

8.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) you agree to indemnify us for any Liability we incur due to your breach of the Acceptance and Platform Licence clause and the Intellectual Property clause of these Terms;
- (b) neither Party will be liable for Consequential Loss;
- (c) each Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party or any of that Party's personnel, including any failure by that Party to mitigate its losses; and
- (d) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to us resupplying the Platform to you.

9 Access

9.1 Should we suspect that you are in breach of these Terms, we may suspend your access to the Platform while we investigate the suspected breach. Should we determine that you are in breach of these Terms, your access to the Platform will be terminated immediately.

10 General

- 10.1 **Assignment:** You must not assign or deal with the whole or any part of your rights or obligations under these Terms without our prior written consent.
- 10.2 **Disputes:** A Party may not commence court proceedings relating to a dispute without first meeting with the other Party to seek (in good faith) to resolve the dispute, failing which the Parties agree to engage a mediator to attempt to resolve the dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 10.3 **Entire Terms:** These Terms contains the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 10.4 **Force Majeure:** To the maximum extent permitted by law, we shall have no Liability for any event or circumstance outside of our reasonable control.
- 10.5 **Governing law:** This Agreement is governed by the laws of New Zealand. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New Zealand and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 10.6 **Notices:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you at the details provided when you sign up to the Platform. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 10.7 **Privacy:** We agree to comply with the legal requirements of the New Zealand Privacy Principles as set out in the Privacy Act 2020, and any other applicable legislation or privacy guidelines.

- 10.8 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

11 Definitions

- 11.1 **Authorised Reseller** means the reseller of the Platform, who you have purchased your licence to the Platform from, and who we have authorised to sell licences to the Platform.
- 11.2 **Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- 11.3 **Data** means all of your data, information (including personal or confidential information) and other material made available to us by you or accessed by us in relation to the provision of the Platform and includes, without limitation, any information about your business, systems or networks, personal information, information relating to employees, contractors or any other third parties, and any other such information necessary for system administration, network operations and related purposes.
- 11.4 **Intellectual Property** means any domain names, know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.
- 11.5 **Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.
- 11.6 **Malware** means a virus or other software designed to modify, damage, destroy, record or transmit information within a computer, computer system or network without the permission of the owner, including ransomware, spyware, backdoor software, time bombs, Trojan horses, worms, drop dead devices or similar items.
- 11.7 **Yarken Group** means Yarken Limited and its related companies (as defined in section 2(3) of the Companies Act 1993 or equivalent legislation in any other jurisdiction).

For any questions or notices, please contact us at:

Yarken Ltd NZBN 942 904 851 8741

Email: support@yarken.com

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