SafetyNest Terms and Conditions

SafetyNest agrees to provide, and you agree to buy, the SafetyNest software as a service offering, on these terms and conditions (**Terms**). These Terms are binding on any use of the Service and apply to you from the time that SafetyNest provides you with access to the Service.

Before using the Service, you must review and accept these Terms and the SafetyNest Privacy Policy. By accepting them you acknowledge that you have read and understood, and expressly agree to, these Terms and the SafetyNest Privacy Policy, and have the authority to act on behalf of any person for whom you are using the Service. You are deemed to have agreed to these Terms on behalf of any entity for whom you use the Service.

1. SERVICE

1.1. **Grant**: SafetyNest grants you the right to access and use the Service with the particular user roles available to you according to your subscription type. This right is non-exclusive, non-transferable, and limited by and subject to these Terms.

1.2. **General**: SafetyNest will use reasonable efforts to provide the Service:

(a) in accordance with these Terms and New Zealand law;

(b) exercising reasonable care, skill and diligence; and

(c) using suitably skilled, experienced and qualified personnel.

1.3. **Availability**:

(a) Subject to clause 1.3(b), SafetyNest will use reasonable efforts to ensure the Service is available on a 24/7 basis. However, it is possible that on occasion the Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. SafetyNest will use reasonable efforts to notify you by email with advance details of any unavailability.

(b) Through the use of web services and APIs, the Service interoperates with a range of third party service features. SafetyNest does not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, SafetyNest may cease to make available that feature to you. To avoid doubt, if SafetyNest exercises its right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.

2. CLIENT OBLIGATIONS

2.1. **General use**: You and your personnel must:

(a) use the Service in accordance with these Terms solely for:

(i) your own internal business purposes; and

(ii) lawful purposes; and

(b) not resell or make available the Service to any third party, or otherwise commercially exploit the Service.

2.2. **Access conditions**: When accessing the Service, you and your personnel must:

(a) not impersonate another person or misrepresent authorisation to act on behalf of others or SafetyNest;

(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 Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Service;

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

(i) that which you are authorised to access; and

(ii) to the extent necessary for you and your personnel to use the Service in accordance with these Terms;

(f) neither use the Service 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; and

(g) comply with the SafetyNest Acceptable Use Policy and any terms of use on the Website, as updated from time to time by SafetyNest in accordance with clause 10.7.

2.3. **Personnel**:

(a) You may authorise any member of your personnel to be a Permitted User, in which case you will provide SafetyNest via your SafetyNest Partner with the Permitted User's name (or a pseudonym or other identifier, where the Service permits) and the minimum other information that SafetyNest reasonably requires in relation to the Permitted User.

(b) You must procure each Permitted User's compliance with clauses 2.1 and 2.2 and any other reasonable condition notified by SafetyNest to you.

(c) A breach of any term of these Terms by your personnel is deemed to be a breach of these Terms by you.

2.4. **Authorisations**: You are responsible for procuring all licences, authorisations and consents required for you and your personnel to use the Service, including to use, store and input Data into, and process and distribute Data through, the Service.

2.5. **Acceptable use and complaints**: SafetyNest will publish, and keep up to date, an Acceptable Use Policy for the Service written in plain language (and, where students use the Service, in language suitable for them). You, your personnel or any affected person may make a complaint about the Service or its use (including any complaint about child safety) to contact@safetynest.co.nz. SafetyNest will acknowledge each complaint within two business days, investigate it promptly and respond within 10 business days. SafetyNest will escalate any complaint involving the safety of a child to you, and to the relevant authorities where required by law, without delay.

3. DATA

3.1. **SafetyNest access to Data**:

(a) You acknowledge that:

(i) SafetyNest may require access to the Data to exercise its rights and perform its obligations under these Terms; and

(ii) to the extent that this is necessary but subject to clause 6, SafetyNest may authorise a member or members of its personnel to access the Data for this purpose.

(b) You must arrange all consents and approvals that are necessary for SafetyNest to access the Data as described in clause 3.1(a).

3.2. **Analytical Data**: You acknowledge and agree that:

(a) SafetyNest may:

(i) use Data and information about your use of the Service to generate de-identified and aggregated statistical and analytical data from which no individual can reasonably be identified (**Analytical Data**); and

(ii) use Analytical Data solely for SafetyNest's internal research and product development purposes and to conduct statistical analysis and identify trends and insights, provided that SafetyNest will not share, publish or provide access to Analytical Data or Data to any third party (other than its sub-processors, to the extent necessary to provide the Service), will not use Data or Analytical Data for advertising, marketing, market research or profiling purposes, and will not use Data or Analytical Data to train or develop any artificial intelligence or machine learning model without your prior written consent and, where required, the explicit consent of the relevant individuals.

(b) SafetyNest's rights under clause 3.2(a) above will survive termination or expiry of these Terms; and

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

3.3. **Agent**:

(a) You acknowledge and agree that to the extent Data contains Personal Information, in collecting, holding and processing that information through the Service, SafetyNest is acting as your agent for the purposes of the Privacy Act 2020 and any other applicable privacy law.

(b) You must obtain all necessary consents from the relevant individual to enable SafetyNest to collect, use, hold and process that information in accordance with these Terms.

3.4. **Backups of Data**: SafetyNest will take standard industry measures to back up all Data stored using the Service, including retaining encrypted backups for a minimum of 3 months and testing the full restoration of backups when initially implemented, each time major information technology infrastructure changes occur, and at least annually. You agree to keep a separate back-up copy of all Data uploaded by you onto the Service.

3.5. **Third Party Service**: Where you request that SafetyNest integrate the SafetyNest Software with a third-party service, SafetyNest will do so. You agree that:

(a) As a result of the integration the third-party service may access certain information about your account with SafetyNest.

(b) SafetyNest does not send, receive or store your passwords for the SafetyNest Software or any third-party service.

(c) You are responsible for determining which Data may be shared with the third-party service and the purposes for which the third-party service requires access. SafetyNest will ensure that an enforceable written agreement is in place with each third-party service with which the Service natively integrates, covering the purpose, scope and scale of data sharing, the security and privacy controls in place in the recipient system and ownership of data, and that such agreements are updated to reflect any changes. SafetyNest will notify you as soon as possible after it becomes aware of a data breach or data loss event affecting Data in a third-party service and provide all relevant details available to it. Subject to the foregoing, SafetyNest will not be responsible for any use, disclosure, creation, modification or deletion of Data that is transmitted to, accessed or enacted by, a third-party service.

3.6. **International storage of Data**: You agree that SafetyNest may store and process Data (including any Personal Information) in secure servers in Australia and Singapore and may access that Data (including any Personal Information) in Australia and Singapore and New Zealand from time to time. SafetyNest will notify you in writing at least 30 days in advance if the cloud infrastructure or data hosting environment for the Data, or any personnel with access to unencrypted Data, is to be relocated or expanded into any other country.

3.7. **Inactive users and retention**: SafetyNest will delete Data relating to any Permitted User who has not accessed the Service for 12 months, after giving you at least 30 days' notice (during which you may export that Data or tell SafetyNest to keep it).

3.8. **Indemnity**: You indemnify SafetyNest against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by SafetyNest's solicitors) and loss of any kind arising from any 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.

4. FEES

4.1. **Fees**: You must pay the Fees.

4.2. **Increases**: SafetyNest and your SafetyNest Partner may increase the Fees as follows:

(a) By giving at least 90 days' notice, SafetyNest may increase the Fees once each Year (but not the first Year) by the percentage change in the New Zealand Consumer Price Index (or similar or equivalent index if that index ceases to be published) over the 12 months preceding the last quarterly publication of that index issued by Statistics New Zealand prior to the date of the notice. Fees updated under this clause are deemed to be the Fees.

(b) If you do not wish to pay the increased Fees, you may terminate these Terms on no less than 60 days' notice to your SafetyNest Partner. If you do not terminate these Terms in accordance with this clause, you are deemed to have accepted the increased Fees.

5. INTELLECTUAL PROPERTY

5.1. **Ownership**:

(a) Subject to clause 5.1(b), title to, and all Intellectual Property Rights in, the Service, the Website, and all Underlying Systems is and remains the property of SafetyNest (and its licensors). You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

(b) Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of you. You grant SafetyNest a non-exclusive, fully paid up, non-transferable (other than to its sub-processors to the extent necessary to provide the Service) licence, for the term of these Terms, to use, store, copy, modify and make available the Data solely to the extent necessary to provide the Service to you and to exercise its rights and perform its obligations in accordance with these Terms.

5.2. **Know-how**: To the extent not owned by SafetyNest, you grant SafetyNest a royalty-free, transferable, irrevocable and perpetual licence to use for SafetyNest's own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by SafetyNest in the provision of the Service.

5.3. **Feedback**: If you provide SafetyNest with ideas, comments or suggestions relating to the Service 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 SafetyNest; and

(b) SafetyNest may use or disclose the feedback for any purpose.

6. CONFIDENTIALITY AND SECURITY

6.1. **Security**: 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, the provisions of clauses 6.1(a) and 6.1(b).

6.2. **Permitted disclosure**: The obligation of confidentiality in clause 6.1 does not apply to any disclosure or use of Confidential Information:

(a) for the purpose of performing these Terms or exercising a party's rights under these Terms;

(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 to these Terms from a third party without restriction and without breach of any obligation of confidentiality; or

(e) by SafetyNest 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 SafetyNest enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 6.

6.3. **Data security, incidents and personnel**: Without limiting clause 6.1, SafetyNest will:

(a) encrypt all Data in transit using a minimum of TLS 1.2 (with TLS 1.3 preferred) and all Data at rest, including backups, using a minimum of AES 128 (with AES 256 preferred), and logically segregate your Data from the data of other customers;

(b) maintain a documented and implemented information security policy and incident response plan, conduct penetration testing of the Service at least annually and after

major changes, and apply security patches to the Service within two weeks of release, or within 48 hours where a known exploit exists;

(c) notify you as soon as possible, and in any event without undue delay, after becoming aware of any data breach or data loss or corruption event affecting the Data, and provide you with all relevant details, including the affected individuals and the information disclosed, and reasonable assistance to meet your notification obligations under the Privacy Act 2020;

(d) ensure that all of its personnel and contractors with access to Data undergo employment screening (including criminal history checks and, where they may interact with students, any child safety or safety checks required under applicable law, such as the Children's Act 2014), receive security, privacy and online safety training, and have their access removed on the same day it is no longer required (or immediately where malicious activity is detected); and

(e) maintain processes to identify, respond to and, where required, disclose any known instances of child-safety-related misconduct or offences involving its personnel or contractors.

7. WARRANTIES

7.1. **Mutual warranties**: Each party warrants that it has full power and authority to enter into and perform its obligations under these Terms which, when signed, will constitute binding obligations on the warranting party.

7.2. **No implied warranties**: To the maximum extent permitted by law:

(a) SafetyNest's warranties are limited to those set out in these Terms, 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, to the extent that they cannot be excluded, liability for them is limited to six months' Fees applicable to you; and

(b) SafetyNest makes no representation concerning the quality of the Service and does not promise that the Service will:

(i) meet your requirements or be suitable for a particular purpose; or

(ii) subject to clause 6.3, be secure, free of viruses or other harmful code, uninterrupted or error free.

7.3. **Consumer Guarantees Act**: You agree and represent that you are acquiring the Service, and entering these Terms, for the purposes 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 these Terms; and

(b) it is fair and reasonable that the parties are bound by this clause 7.3.

7.4. **Limitation of remedies**: Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, the liability of SafetyNest for any breach of that condition or warranty is limited to the Fees paid by you in the previous 6 months.

8. LIABILITY

8.1. **Maximum liability**: The maximum aggregate liability of SafetyNest under or in connection with these Terms or relating to the Service, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed an amount equal to the

Fees paid by you under these Terms in the previous six month period. The cap in this clause 8.1 includes the cap set out in clause 7.2(a).

8.2. **Unrecoverable loss**: Neither party is liable to the other under or in connection with these Terms or the Service 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.

8.3. **Unlimited liability**:

(a) Clauses 8.1 and 8.2 do not apply to limit SafetyNest's liability:

(i) under or in connection with these Terms for:

(A) personal injury or death;

(B) fraud or wilful misconduct; or

(C) a breach of clause 6.

(b) Clause 8.2 does not apply to limit your liability:

(i) to pay the Fees;

(ii) under the indemnity in clause 3.8; or

(iii) for those matters stated in clause 8.3(a)(i).

8.4. **No liability for other's failure**: Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.

8.5. **Mitigation**: 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 these Terms.

9. TERM, TERMINATION AND SUSPENSION

9.1. **Duration**: Unless terminated under this clause 9, these Terms start on the Start Date and end on the End Date.

9.2. **Termination for convenience**: You may terminate these Terms on at least 90 days' prior written notice to your SafetyNest Partner.

9.3. **Termination rights**:

(a) Either party may, by notice to the other party, immediately terminate these Terms if the other party:

(i) breaches any material provision of these Terms and the breach is not:

(A) remedied within 14 days of the receipt of a notice from the first party requiring it to remedy the breach; or

(B) capable of being remedied;

(ii) 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; or

(iii) is unable to perform a material obligation under these Terms for 30 days or more due to Force Majeure.

9.4. **Consequences of termination or expiry**:

(a) Termination or expiry of these Terms does not affect either party's rights and obligations that accrued before that termination or expiry.

(b) On termination or expiry of these Terms, you must pay all outstanding Fees for the Service provided prior to that termination or expiry.

(c) Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination or expiry of these Terms and subject to clause 9.4(d), 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.

(d) At any time prior to one month after the date of termination or expiry, you may request:

(i) a copy of any Data stored using the Service, at no cost to you. On receipt of that request, SafetyNest will provide a copy of the Data in a common, reusable electronic form. SafetyNest does not warrant that the format of the Data will be compatible with any software; and/or

(ii) deletion of the Data stored using the Service, in which case SafetyNest will delete that Data from its live systems within 30 days, and from its backups within 90 days (at the end of its backup retention cycle under clause 3.4), and automatically provide you with written confirmation of each deletion.

To avoid doubt, SafetyNest is not required to comply with clause 9.4(d)(i) to the extent that you previously requested deletion of the Data.

9.5. **Obligations continuing**: Clauses which, by their nature, are intended to survive termination or expiry of these Terms, including clauses 3.8, 5, 6, 8, 9.4, 9.5, and 10, continue in force.

9.6. **Rights to restrict**: Without limiting any other right or remedy available to SafetyNest, SafetyNest may restrict or suspend your access to the Service and/or delete, edit or remove the relevant Data if SafetyNest considers that you (including any of your personnel) have:

(a) undermined, or attempted to undermine, the security or integrity of the Service or any Underlying Systems;

(b) used, or attempted to use, the Service:

(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, inputted or stored any Data that breaches or may breach these Terms or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable; or

(d) otherwise materially breached these Terms including failed to pay the Fees.

9.7. **Process**:

(a) SafetyNest will give you reasonable prior notice before it restricts or suspends your access, or deletes, edits or removes Data, under clause 9.6, except where immediate action is reasonably required to protect the security or integrity of the Service or the safety of any person, in which case SafetyNest will notify you as soon as practicable afterwards.

(b) Clause 9.4(d)(i) will not apply to the extent that it relates to Data deleted or removed under clause 9.6.

10. GENERAL

10.1. **Force Majeure**: Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure, provided that the affected party:

(a) immediately notifies the other party and provides full information about the Force Majeure;

(b) uses best efforts to overcome the Force Majeure; and

(c) continues to perform its obligations to the extent practicable.

10.2. **Rights of third parties**: No person other than SafetyNest and you have any right to a benefit under, or to enforce, these Terms.

10.3. **Waiver**: To waive a right under these Terms, that waiver must be in writing and signed by the waiving party.

10.4. **Independent contractor**: Subject to clause 3.3, SafetyNest is an independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.

10.5. **Notices**: A notice given by a party under these Terms must be delivered to the other party via email using the email address notified by the other party for this purpose.

10.6. **Severability:**

(a) If any provision of these Terms is, or becomes, illegal, unenforceable or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity.

(b) If modification under clause 10.6(a) is not possible, the provision must be treated for all purposes as severed from these Terms without affecting the legality, enforceability or validity of the remaining provisions of these Terms.

10.7. **Variation**: SafetyNest may vary these Terms or the Privacy Policy by written notice to you. Users will be required to review and explicitly accept the varied Terms or Privacy Policy before being able to continue using the Service.

10.8. **Entire agreement**: These Terms set out everything agreed by the parties relating to the Service, and supersede and cancel anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of these Terms that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the Start Date. 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 10.8.

10.9. **Subcontracting and assignment:**

(a) You may not assign, novate, subcontract or transfer any right or obligation under these Terms without the prior written consent of SafetyNest, that consent not to be unreasonably withheld. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.

(b) Where you are a company any change of control of that company is deemed to be an assignment for which SafetyNest's prior written consent is required under clause 10.9(a). In this clause change of control means any transfer of shares or other arrangement affecting you or any member of your group which results in a change in your effective control.

10.10. **Law**: These Terms are 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 these Terms.

11. DEFINITIONS

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, these Terms. SafetyNest's Confidential Information includes Intellectual Property owned by SafetyNest (or its licensors), including the SafetyNest Software. Your Confidential Information includes the Data.

Data means all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of you that is stored using, or inputted into, the Service.

Fees means the monthly fees payable by you as set out in your agreement with your SafetyNest Partner. Fees are based on the number of employees you enter into the Service. You will notify your SafetyNest Partner of any changes in the number of employees. Fees may be adjusted from time to time according to changes in numbers of employees.

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

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

(b) a lack of funds for any reason.

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.

Permitted Users means those personnel of you who are authorised to access and use the Service on your behalf in accordance with clause 2.3.

SafetyNest Partner means the human resources consultant who administers your access to the Service.

SafetyNest Software means the software owned by SafetyNest (and its licensors) that is used to provide the Service.

Service means SafetyNest's Health and Safety and Human Resources Information System that allows Health and Safety and Human Resources processes to occur electronically. Included in the Service are:

(c) Access to the SafetyNest Software;

(d) Reasonable use of technical support and support calls.

Start Date and **End Date** mean the dates stated in your agreement with your SafetyNest Partner.

Underlying Systems means the SafetyNest Software, IT solutions, systems and networks (including software and hardware) used to provide the Service, including any third party solutions, systems and networks.

Year means a 12 month period starting on the Start Date or the anniversary of that date.

Date Reviewed	Next Review Due
November 2026	November 2027

Approved by	Director
Version	11.26