



TimeTrak End User Licence Agreement

TimeTrak Hosted Subscription

TimeTrak is an online job management tool provided by Focus Technology Group (NZ) Limited (**Focus**).

This End User Licence Agreement (**Agreement**) creates a legal agreement between Focus and the organisation subscribed to use TimeTrak (**you**, and **your**). This Agreement supersedes any prior agreements or written representations between you and us in relation to TimeTrak.

By accessing or using TimeTrak you agree to accept and be bound by the terms of this Agreement.

Definitions

The following definitions apply to this Agreement, unless the context otherwise requires:

Charges means the fees and charges relating to the provision of TimeTrak, as set out in or referenced by an Order.

Confidential Information means all information obtained by one party (**Receiving Party**) from the other under this Agreement or in relation to TimeTrak in any form, but does not include information that is:

- a. already in the Receiving Party's possession without an obligation of confidentiality at the time of receipt of the information;
- b. was independently developed by the Receiving Party;
- c. is generally known or available to the public otherwise than through disclosure by the Receiving Party; or
- d. was disclosed to the Receiving Party by a third party who had the right to make such disclosure without an obligation of confidentiality.

Early Termination Fee means an amount equivalent to the total Charges that would otherwise be payable to us from the effective date of termination to the end of the Minimum Term.

Intellectual Property means, whether or not registered and in any jurisdiction, copyright, trademarks, all rights in relation to inventions (including patents), circuit layouts, designs, business, product and domain names, knowledge, ideas, concepts, know-how, confidential information and trade secrets, and all other rights anywhere in the world resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Minimum Term means the 12 months from the date of the first subscription invoice, or such other term as set out in an Order.

Order means work order or any other document (including an email or a form completed on the Website) agreed by the parties which describes the particulars of your subscription, including the product type, Charges, and user permissions.

TimeTrak means the bundle of features and services including the object code, interface design, database structures, documentation, training material, procedures and processes which Focus makes available to you from time to time.

TimeTrak Partner means a Focus channel partner, accredited by us, and which you have contracted with to provide you with implementation and support services in relation to TimeTrak.

Related Entities has the same meaning as the definitions given to 'Related Companies' under the Companies Act 1993 (as updated, replaced or amended from time to time).

User means a person authorised by you to use TimeTrak (including a TimeTrak Partner).

Website means timetrak.co.nz or any other website advised to you by Focus through which you access TimeTrak.

1. General Terms

1.2 Grant of licence

- a. Subject to your payment of the Charges, Focus grants you a non-exclusive, non-transferable, limited licence to access and use the TimeTrak functionality made available to you by Focus via the Website.
- b. The functionality available to you will depend on the product features and services you have purchased, as set out in an Order. The number and type of users included in your subscription are as set out in an Order.

1.2 Protecting your username and password

- e. You acknowledge that unless you take adequate security precautions, it could be possible for an unauthorised person to gain access to your TimeTrak account. You agree that you and your Users will take all reasonable precautions to ensure that usernames and passwords are not misused, and remain secure and confidential. In particular, you will ensure that all Users do not:
 - i. tell anyone their username or password, including any member of their family, or any other person within your organisation; or
 - ii. let anyone else, whether acting as your agent or not, access TimeTrak using their username and password.
- f. If you think anyone else might know a User's password, you must reset that password from within TimeTrak.
- g. You agree that you are liable if the login details of your Users are used by any unauthorised person.

1.3 Giving access to other Users

- a. Each User must have a unique password and username.
- b. You can set the access permissions for each User. Depending on the access rights you grant, each User may be able to view and modify your data.
- c. You are responsible for your Users' use of TimeTrak and their compliance with this Agreement.
- d. Unless otherwise agreed with Focus (at its sole discretion), only you and your Related Entities can be configured within TimeTrak. You must provide Focus with the basic details (such as company names, company/NZBN/ABN numbers and addresses) of any Related Entities that you wish to configure within TimeTrak and update Focus if any of these details change. Focus may cross-check this information from time to time against the company details recorded in TimeTrak.
- e. Focus may charge you at its standard hourly rates for any configuration work or any other services undertaken in relation to TimeTrak.

1.4 Other responsibilities

- a. You agree you will not, and will ensure your Users do not:
 - i. exceed or attempt to exceed any applicable access permissions within TimeTrak;
 - ii. copy, reproduce, translate, alter, adapt, vary, reverse engineer, decompile, disassemble, reassemble, modify, make error corrections for, create derivative works of, or attempt to obtain the source code for, TimeTrak, nor to communicate or publicly display any content from TimeTrak to any third party (other than your data), without Focus' prior express written permission;
 - iii. violate the security of TimeTrak, or interfere, damage or harm, or attempt to interfere, damage or harm TimeTrak, or any system connected to TimeTrak;
 - iv. use TimeTrak otherwise than in the way TimeTrak is designed to be used or use TimeTrak if you have no legitimate reason to do so or in a way that violates any law;
 - v. use TimeTrak in a way that could harm or impair anyone else's use of it;

- vi. use TimeTrak to gain unauthorised access to any service, data, account or network by any means;
 - vii. use TimeTrak to send spam or falsify any protocol or email header information (e.g. spoofing); or
 - viii. remove, modify, tamper with any regulatory or legal notice or link that is incorporated into TimeTrak.
- b. You agree to follow Focus' reasonable instructions in regard to the use of TimeTrak.
 - c. You agree to notify Focus immediately of any unauthorised access to your account, or suspicious or malicious activity relating to TimeTrak or Focus' Intellectual Property.

1.5 Charges

- a. Monthly charges will begin once you are "live" with TimeTrak or three months after the implementation has started whichever occurs earlier.
- b. Focus will invoice the Charges one month in advance
- c. You must pay all Charges due to Focus without deduction or set off, on the 20th of the month following the date stated on the face of the tax invoice or at such other time as set out in an Order.
- d. In addition to the Charges you are liable to pay goods and services tax and all other applicable taxes (other than taxes on Focus' net income), to Focus at the time of payment of the Charges.
- e. You agree that if you terminate your subscription for TimeTrak before the end of your Minimum Term, you will pay the Early Termination Fee to Focus immediately on termination, as well as any other amount that is due and payable to Focus under this Agreement.
- f. You acknowledge and agree that the Charges are not refundable.
- g. If you exceed the number of access permissions in any month, Focus will charge you for that excess access at its nominated overuse rate in your next invoice.
- h. Focus reserves the right to increase the annual charges at any time, by providing you with at least 90 days' notice of such an increase. In addition, if any third-party provider used by Focus to enable Focus to provide TimeTrak increases the amount it charges Focus for its services, Focus may also make an equivalent change to the Charges.
- i. You may request to vary the quantity of Users and/or product type, during the term of your subscription, and Focus may amend the Charges to reflect any variation made. Please note the Charges will not be decreased during the Minimum Term.
- j. You will be liable for all reasonable third-party costs (including collection costs and legal costs on a solicitor-client basis) in relation to Focus enforcing or attempting to enforce this Agreement.

1.6 Intellectual Property

- a. All Intellectual Property owned by, or developed by, either party independently of this Agreement remains the property of that party.
- b. Unless expressly agreed otherwise, Focus or its licensors shall retain all Intellectual Property in TimeTrak or otherwise created in the course of this Agreement. If TimeTrak comprises or contains any third-party Intellectual Property nothing in the Agreement transfers any ownership in such third-party Intellectual Property or software to either party.
- c. Any use of TimeTrak not expressly permitted by this Agreement is a breach of this Agreement and may also violate copyright, trademark and other laws.

1.7 Confidential Information

- d. All Confidential Information that is supplied to a party in connection with this Agreement, or of which a party becomes aware as a result of that party's dealings in connection with the operation of this Agreement, remains the property of the originating party.
- e. Subject to clause 1.7(g), each party agrees to treat the other party's Confidential Information as strictly confidential and not to use or attempt to use any of the other party's Confidential Information

in any manner or for any purpose other than to fulfil its obligations described in, or exercise its rights under, this Agreement.

- f. Each party will maintain effective security measures, including at a minimum the same measures as that party uses to protect its own Confidential Information, which in any event must be not less than reasonable measures, to protect all of the other party's Confidential Information to which it may have access from unauthorised use, copying or disclosure.
- g. A party may not disclose the provisions of this Agreement or any of the other party's Confidential Information unless:
 - ix. such disclosure is:
 - i. required by this Agreement;
 - ii. to its own personnel, or the personnel of its related entities, so long as such personnel and related entities are made aware of the confidentiality obligations in this Agreement and are bound by a corresponding confidentiality obligation;
 - iii. to any sub-contractors used in connection with this Agreement, and the disclosure is for the purposes of this Agreement and a corresponding confidentiality obligation is in place;
 - iv. to its professional advisors, who are subject to a corresponding confidentiality obligation;
 - v. required by applicable law, a relevant stock exchange, or any court or government agency, but then only after consulting with the other party to the extent reasonably possible about the form and content of the disclosure; or
 - vi. required in connection with the enforcement of this Agreement; or
 - x. that party has obtained the prior written consent of the other party, such consent not to be unreasonably withheld.
- h. A party who discloses the other party's Confidential Information to any other person will be responsible for the acts and omissions of that other person as if they were its own acts and omissions.
- i. If a party discovers that an unauthorised person is in possession of the other party's Confidential Information, the party must immediately notify that other party and co-operate with that other party in every reasonable way to help that other party regain possession of its Confidential Information and prevent its further unauthorised disclosure.
- j. Neither party shall make or permit any public announcement or disclosure of any sort regarding this Agreement without the prior written consent of the other party.

2. Availability of TimeTrak

- a. You may only access TimeTrak using a device with a suitable Internet connection. You are responsible for obtaining and maintaining Internet access to enable you to use TimeTrak, and for using an Internet browser that is compatible with TimeTrak as stated on the Website from time to time. Focus is not responsible for notifying you of any upgrades, fixes or enhances to any browser software, or for any compromise of data transmitted using networks or facilities which are not owned or operated by us.
- b. TimeTrak relies on the availability of third-party technology and could be disrupted if system(s) failure occurs due to such technology. You acknowledge that cloud services such as TimeTrak are subject to interruption, breakdown, viruses, delays, interception, interference and other errors involving communications networks, computer systems, servers, third party providers and computer equipment and software.
- c. TimeTrak may also be unavailable for short periods because of necessary or desirable system maintenance or upgrades. If Focus considers this is needed, Focus will try to inform you beforehand.
- d. If Focus needs to restore or maintain the security of TimeTrak immediately, Focus may change your use and access to TimeTrak without advance notice.
- e. Subject to the rights you have under clauses 8 and 9 of this Agreement, Focus is not responsible or liable to you for any loss or claim arising from any use of TimeTrak or any part of it being delayed (including slow performance), disrupted or unavailable.

4. TimeTrak Partners

- a. If you elect to pay the Charges through a TimeTrak Partner, Focus will invoice the Charges to the TimeTrak Partner, and payment of those Charges by the TimeTrak Partner will be deemed payment by you. If Focus does not receive payment, Focus reserves the right to seek the Charges from you directly.
- b. You may as part of your implementation of TimeTrak separately engage the services of a TimeTrak Partner. Such services are supplied independently of Focus and Focus accepts no responsibility or liability whatsoever in respect of any services provided to you by any TimeTrak Partner.
- c. Focus maintain records of your contact, invoice history and subscription details that you've provided as part of your subscription to TimeTrak, and you acknowledge that your current authorised TimeTrak Partner will be given access to these details.

5. Other Applications

- a. Focus may offer or recommend applications or services developed by third parties to be used in conjunction with TimeTrak. Focus makes no warranties in relation to any such third-party applications.
- b. Focus is not responsible for any third-party application that you may obtain or connect to TimeTrak. If you install or enable a third-party application for use with TimeTrak, you consent to Focus allowing the third-party application to access your data as required to enable TimeTrak and the third-party application to operate together. Any exchange of data or other interaction between you and a third-party provider is solely between you and them. Focus is not responsible or liable for any disclosure, modification or deletion of your data as a result of any access to TimeTrak by a third-party application or any third-party provider.

6. Your Data

6.1 Compliance with Laws

- a. You are responsible for compliance with all local laws and regulations applicable to your use of TimeTrak. If you access TimeTrak from a country other than New Zealand you do so at your own risk. Focus is not liable for your failure to meet your retention obligations under applicable laws, in relation to any data that you input into TimeTrak.

6.2 Your access to your data

- a. Your data will be backed up on a regular basis (every night) with backup's being kept for 7 days.
- b. Should a disaster occur in relation to the TimeTrak Focus will use reasonable endeavours to restore TimeTrak and your data from the most recent back up available. However, it is possible that your data may still be lost or corrupted in such a case. You acknowledge and agree that Focus is not responsible or liable to you for any loss or corruption of data as a result of a disaster, any failure of the backup or for any other reason, including as a result of needing to restore TimeTrak or your data from a backup.
- c. If you decide to terminate your subscription for TimeTrak, it is your responsibility to extract your data in its entirety as soon as possible. Focus may delete your data after termination of your subscription as set out in clause 7.4.

6.3 Focus' access to your data

- a. You grant Focus a licence to access, use, copy, transmit, store and back-up data for the purpose of enabling us to provide and support TimeTrak, for the purposes set out at clause 6.2(b), and as otherwise necessary for Focus to perform its obligations under this Agreement. You must ensure that you have all necessary rights to grant Focus such licence. Where your data contains personal information, Focus will not use such personal information for its own purposes.
- b. Focus may:
 - i. collect usage information in relation to your use of TimeTrak for operational purposes and to assist with making improvements to TimeTrak and Focus' other products and services. This may involve generating aggregated, statistical or reasonably de-identified data relating

to the use of TimeTrak by you and your Users, which may then be used by Focus for any purpose in connection with its business. Such data does not contain any information specific to a particular individual or business. An example of aggregated data is statistical trends in an industry sector; and

- ii. access your TimeTrak configuration and your data for the purpose of delivering, supporting, maintaining and updating the service being provided to you.
- c. Focus will notify you if it becomes aware of any unauthorised access to your data stored within TimeTrak.

7. Termination and Suspension

7.1 Ending your subscription for TimeTrak

- a. You may terminate your subscription for TimeTrak by giving Focus at least 90 days' written notice. During the notice period you:
 - xi. will continue to have full access to TimeTrak; and
 - xii. are still liable for any Charges in relation to your use of TimeTrak.
- b. If you terminate your subscription before the expiry of the Minimum Term, you will incur the Early Termination Fee.

7.2 Suspending access to TimeTrak

Focus may suspend your access to TimeTrak for the following reasons:

- a. If you commit a material breach of this Agreement or where Charges are overdue.
- b. If in Focus' opinion:
 - i. the ongoing operation of TimeTrak is rendered substantially unworkable or non-functional;
 - ii. the actions of a regulator or a change in law makes ongoing operation of TimeTrak substantially unworkable or non-functional; or
 - iii. it is necessary to protect the security, integrity, operations or reputation of TimeTrak, or any TimeTrak function, or service, or otherwise protect Focus' interests.
- c. Focus will make reasonable attempts to notify you in writing (which includes by email) of any suspension.
- d. If you become aware that a circumstance which would permit Focus to suspend or terminate your use of TimeTrak, you must advise Focus in writing as soon as possible.

7.3 Termination by Focus

- a. Focus may terminate your subscription for TimeTrak by notice to you:
 - i. if you commit a material breach of this Agreement, which is incapable of remedy or, if capable of remedy, is not remedied within 20 days of the date on which notice specifying the breach and requiring its remedy is served on you.
 - ii. if any Charges owing to Focus are overdue by more than 30 days;
 - iii. where it has previously suspended your access to TimeTrak for one of the reasons set out in clause 7.2(b) above;
 - iv. if Focus is withdrawing TimeTrak from its customers generally (Focus will give you at least three months' notice in such a case);
 - v. if a receiver or manager is appointed over any or all of your assets;
 - vi. if you or your director or directors, principal or principals go into liquidation, bankruptcy, receivership, administration or insolvency or it appears any of these events are likely;
 - vii. if you are removed from the Companies Office register; or
 - viii. if in Focus's reasonable opinion, there has been a relationship breakdown, or doing business with you is likely to, or there is a risk that it will, cause damage, data loss, or loss of service to Focus or Focus' other customers.

7.4 Consequence of Termination

- a. On termination or expiry of this Agreement:
 - i. You will immediately pay any outstanding amounts due to Focus.
 - ii. Except in relation to your data, which is dealt with below, each party will:
 - a. return to the other party all documents and materials that were provided to it by that other party for the purposes of this Agreement and which contain that other party's Confidential Information;
 - b. delete from its computer systems all of the other party's Confidential Information that was provided to it by that other party for the purposes of this Agreement (to the extent it is reasonably possible to do so),
provided that a party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent contained in board materials, or required by law or any applicable governmental or regulatory authority. The provisions of clause 1.7 shall continue to apply to any such documents and materials retained by a party.
- b. If you terminate your subscription to TimeTrak, you must extract your data during your 90-day notice period.
- c. If Focus terminates your subscription to TimeTrak you may still access your data and may download it for a period of 90 days following the effective date of termination.
- d. Focus may take steps to delete your data from its servers at any time after 150 days following the effective date of termination, whether or not you have extracted your data.
- e. Termination or expiry of this Agreement does not affect the provisions of this Agreement which expressly, or by their nature, survive termination or expiry.

7.4 Reinstatement

- f. Focus can reinstate a suspension or termination in its absolute discretion by written notice to you, provided that Focus is not required to provide notice where a suspension related to the matters set out in clause 7.2(b). Where notice of reinstatement is provided, such reinstatement takes effect on receipt of the notice or any later time specified in the notice, subject to you meeting any conditions set out in the notice.

8. Limited Warranty

- a. Focus warrants that TimeTrak when properly used, will perform substantially in keeping with its documentation, and that TimeTrak will be free from other material defects for a period of 90 days from the date of purchase.
- b. Focus does not warrant that your use of TimeTrak will be uninterrupted, or that TimeTrak is bug or error free (except to the extent set out in clause 8(a)).
- c. The availability of TimeTrak may be dependent on a third-party hosting provider and other factors outside of Focus's control. Focus is not responsible or liable for a failure of those third parties that prevents you from accessing and using TimeTrak.
- d. You acknowledge and agree that TimeTrak will not function if you are logged out of your account or your device is not connected to the Internet.
- e. If during the 90-day limited warranty period set out in clause 8(a), you discover that TimeTrak does not perform substantially in keeping with its documentation or you discover material defects in TimeTrak, then your sole remedy under the 90-day limited warranty shall be for, in Focus' sole discretion, either:
 - i. Focus to refund the price paid to Focus for your TimeTrak subscription; or
 - ii. Focus to correct the part of TimeTrak that does not meet the warranty.
- f. To claim under this limited warranty, you must write to Focus outlining the details of your subscription and claim to:

Focus Technology Group (NZ) Ltd
PO Box 1420, Invercargill 9840
Email: support@timetrak.co.nz
Phone: 0800 12 00 99

9. Limitation of Liability

- a. To the extent permitted by law and subject to the other provisions of this Agreement:
 - i. All warranties (including, without limitation, warranties and conditions as to fitness for purpose, merchantability, quality, title and non-infringement), whether express or implied by statute, common law or otherwise, are excluded to the extent permitted by law. Focus does not represent, warrant or guarantee that TimeTrak shall be free from loss, corruption, cyber-attack, viruses, interference, hacking, or other security intrusion.
 - ii. Where you are acquiring TimeTrak for the purposes of a business, you agree that Consumer Guarantees Act 1993 and the Fair Trading Act 1986 and any other consumer protection legislation does not apply.
 - iii. It is your responsibility to ensure that TimeTrak suits the purposes of your organisation. You agree that your decision to use TimeTrak has been made solely in reliance on your own skill and judgment and not in reliance on any statement, representation or warranty made by Focus or on its behalf.
 - iv. Focus shall not be liable for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of data, or pecuniary loss) arising out of the use of or inability to use TimeTrak, even if Focus has been advised of the possibility of such damages.
 - v. If Focus is held liable to you whether in contract, tort (including negligence) or otherwise, then its liability is limited, for all events in the aggregate, to the Charges paid under this Agreement, in the six months prior to the date of the event giving rise to the claim.
- b. You will reimburse us on demand for any expenses, disbursements and legal costs incurred by us in the enforcement of any of Focus' rights contained in this Agreement (including any reasonable solicitor's fees and debt collection agency fees) where Focus is enforcing those rights as a result of your non-compliance with any of your obligations under this Agreement.
- c. You may not bring any action or proceeding in relation to this Agreement in respect of an event that occurred more than 2 years before the date the action or proceeding is commenced.
- d. You will indemnify Focus against all claims of any kind whatsoever however caused or arising (including without limitation all sums paid to compromise or settle claims, proceedings and actions out of court) brought by any person in connection with:
 - i. any use by you of TimeTrak other than in the manner contemplated by this Agreement; or
 - ii. any failure by you to meet your obligations under the terms of this Agreement.

10. Changes to this Agreement

- a. Focus may change any terms of this Agreement (including the Charges, although in that case the change must be in accordance with clause 1.5).
- b. Focus will endeavour to give you at least 90 days' prior notice of any change that is likely to materially affect or disrupt the manner in which you use TimeTrak.

11. Miscellaneous

- a. **Notices:** Any notice or other communication to be given under this Agreement must be in writing, in English, and delivered by hand (including by courier), or sent by post or email to a named contact person at the relevant address set out in an Order, or such other address as advised in writing to the other party.

- b. **Force Majeure:** Focus does not have any liability for any failure of the TimeTrak, or any failure to comply with this Agreement if such a failure is due to an act, event or cause which is beyond its reasonable control, including acts of God, war, sabotage, riot, national emergency, fire, lightning, flood, cyclone, earthquake, landslide, storm, explosion, power shortage, telecommunication outages, pandemic, epidemic, strike or other labour difficulty.
- c. **Privacy:** Each party will comply with the Privacy Act 2020 in connection with its obligations under this Agreement. You agree that the contact details and associated information of your personnel may be collected and used by Focus in the course of carrying out its obligations under this Agreement. The following applies to such contact details and information:
 - iii. Focus will hold such details and information. Focus may use the details and information for any purpose in connection with this Agreement, to maintain the relationship between the parties (including providing marketing material to you), or as may otherwise be agreed by the parties or Focus and the relevant individual.
 - iv. Focus may disclose such information to third parties engaged by Focus to provide services on Focus' behalf.
 - v. You will ensure that the relevant personnel have provided consent to such collection and use, and are aware that Focus holds their contact details and information, the purposes for which it may be used and of any rights they have under the Privacy Act 2020. If your personnel do not provide the necessary contact details and information Focus may not be able to deal with them in relation to this Agreement.
- d. **Invalidity and Severance:** If any provision of this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions will not in any way be affected or impaired. The parties agree to negotiate in good faith in order to agree the terms of a mutually satisfactory provision that is valid, legal and enforceable, but otherwise achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be invalid, illegal or unenforceable.
- e. **Relationship with General Terms:** If you are also party to Focus' general terms, the general terms do not apply to your use of TimeTrak.
- f. **Assignment:** Neither party may assign any of its rights or obligations under this Agreement in whole or in part without the prior written consent of the other party.
- g. **Waiver:** No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by one party in respect of any breach of the other party's obligations under this Agreement is to:
 - i. operate as a waiver of, or prevent the subsequent enforcement of, that obligation; or
 - ii. be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.
- h. **No Partnership or Agency:** Nothing in this Agreement constitutes the parties as partners, trustees or agents for each other. Neither party has any authority to bind the other party or act on its behalf, except to the extent expressly provided for in this Agreement.
- i. **Governing Law:** This Agreement is governed by, and construed in accordance with, the laws of New Zealand and each party agrees to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

Your Action Required

Please indicate your acceptance of the terms as outlined in this End User Licence Agreement by signing below and returning a copy to Focus.

Any prices supplied by Focus are GST exclusive unless otherwise stated. Any pricing is subject to change.

| | |
|-------------------|--|
| For | |
| Name: | |
| Job Role: | |
| Date: | |
| Signature: | |

| | |
|-----------------------------------|--|
| For Focus Technology Group | |
| Name: | |
| Job Role: | |
| Date: | |
| Signature: | |