



Employee Confidence Pulse Terms of Use

1. EMPLOYEE CONFIDENCE PULSE TERMS (“TERMS”)

1.1 Employee Confidence Pulse is a software solution provided by KTech Development Limited in cooperation with K3 Consulting Limited, both limited liability companies incorporated in New Zealand (“us”, “we”).

1.2 Employee Confidence Pulse can be used to collect information from employees relating to their perceptions of the organisation they work for and its potential for future success (“employee confidence”).

1.3 By accessing Employee Confidence Pulse, the person or organisation entering into these Terms as a user of Employee Confidence Pulse, together with all individual users accessing Employee Confidence Pulse as part of that same organisation (together, “you”) accept and agree to be bound by these Terms. If you do not accept these Terms, you should not use Employee Confidence Pulse.

1.4 If a proposal from K3 Consulting or KTech Development to a client refers to these Terms but is in some way in conflict with the terms set out here, then the referring document (the proposal or agreement) will take precedence for those components / elements outlined in the proposal or agreement. All other terms as set out in these Terms will still apply.

2. AMENDMENT OF TERMS

2.1 We can amend these Terms at any time. Amendments will be effective immediately when posted on www.employeeconfidence.co.nz. You are responsible for ensuring you are familiar with the latest Terms. By continuing to use Employee Confidence Pulse, you agree to be bound by the Terms as amended. You can always find the current version of the Terms here www.employeeconfidence.co.nz/terms.

3. HOW TO USE EMPLOYEE CONFIDENCE PULSE

3.1 You agree to only use Employee Confidence Pulse in a way that complies with all applicable laws and regulations, that does not infringe our rights or other users’ rights, and that does not inhibit or restrict other users’ use of Employee Confidence Pulse.

3.2 To use Employee Confidence Pulse, you must provide us with your organisation’s overall headcount (unique employees as opposed to FTE calculation), your Industry Segment, and with your employees’ email addresses. You may provide us with your employees’ names and any other relevant business identifiers such as employee numbers (“Employee Information”). You agree that we may automatically send notification and survey emails relating to your business to the email addresses provided to us.

3.3 We will only use the Employee Information that you have provided to us for the purpose of obtaining employee feedback about you for the purposes of Employee Confidence, or to provide any other service that you have requested.

3.4 We will not sell or trade Employee Information provided by you to third parties. You are solely responsible for ensuring that your provision of Employee Information to us complies with all applicable privacy or data protection laws and agreements that you have entered into and that you are authorised to provide it to us.

3.5 You are responsible for all activity resulting from your use of Employee Confidence Pulse. You indemnify us, and will keep us indemnified, against all forms of liability, action, proceeding,

demand, cost, change and expense which we may incur or be subject to or suffer as a result of your use of Employee Confidence Pulse.

3.6 Without limiting any other rights and remedies available to us, if we believe you have breached or are in breach of these Terms, we may: (a) limit your activities on Employee Confidence Pulse; (b) issue a warning to you; (c) suspend or cancel your access to Employee Confidence Pulse; (d) cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity of or to locate anyone posting any content in breach of these Terms; and/or (e) disclose your identity and any other information we hold about you to any law enforcement authority if we believe this would assist to prevent the commission of any crime against a person or persons.

4. FEES FOR USING EMPLOYEE CONFIDENCE PULSE

4.1 If you have a written proposal or agreement from Employee Confidence Pulse then your contract term and Fees are as set out in that document. Otherwise the contract term is Three Months and our prevailing Fees as outlined at www.employeeconfidence.nz apply.

4.2 Fees are charged in advance at the start of the agreed contract term, and are non-refundable. Fees are subject to change from one contract term to the next, however we will give you at least 30 days' notice of Fee changes. We will not be liable to you or any third party for any changes to Fees. Fees are exclusive of all taxes and you indemnify and hold us harmless against any claims by any tax authority for any underpayment of any tax or levy, and any penalties and/or interest.

5. YOUR ACCOUNT INFORMATION

5.1 You warrant that you have provided complete, accurate and current personal information such as your full legal name and email address when registering for an account ("Account Information") and you agree to maintain and promptly update your Account Information to ensure it is kept current at all times.

5.2 We will take reasonable precautions and implement industry standard technical and organisational measures to keep your profile secure and protect it from unauthorised access, however you agree that we are entitled to rely on the authenticity and authority of your username, password and session-specific codes generated by your hardware device to process actions or requests you submit to Employee Confidence Pulse and that we may do so without further enquiry.

5.3 You agree to keep your log in details and password secure and agree not to share your password with anyone else. We will not be liable for any loss or damage if you fail to comply with this security obligation.

5.4 You acknowledge that the internet is inherently insecure. You accept the risk that any information stored or transmitted on the internet or through email may be intercepted or subject to unauthorised access or fraudulent behaviour. If you think someone is accessing your account without your consent or if you would like to report disclosure of your Account Information, please contact us at surveys@k3.co.nz.

6. CANCELLATION OF ACCOUNT

6.1 You can cancel your account at any time by emailing us at surveys@k3.co.nz.

6.2 If you cancel your account before the end of your current contract term, your cancellation will take effect immediately and you will not be charged again. You will not be entitled to a refund for any fees that you have already paid and cancellation is not effective unless and until no money is owing on your account.

6.3 We reserve the right to decline to register, suspend, or cancel your account and your use of Employee Confidence Pulse if we consider (in our absolute discretion) that you have breached any of these Terms. If you have registered under multiple aliases, all of these aliases will be disabled. If we suspend or cancel your account, you must not create another one without our prior approval. No refund or other credit is payable to you on cancellation unless we agree otherwise.

6.4 All of your data and content may be deleted from our systems immediately upon cancellation of your account. This content cannot be recovered once your account is cancelled. We are not liable for any loss or damage following, or as a result of, the cancellation of your account, and it is your responsibility to ensure that any content or data which you require is backed-up or replicated before cancellation.

6.5 You agree that you cannot transfer, sell, lease, lend or trade your account without our prior written consent.

7. OWNERSHIP OF CONTENT

7.1 We (and our licensors or suppliers, as the case may be) own all intellectual property rights existing in Employee Confidence Pulse, including all of the content of Employee Confidence Pulse (such as text, graphics, logos, icons and sound recordings), all software code underlying and forming part of Employee Confidence Pulse technology and any improvements, enhancements, modifications or adaptations to Employee Confidence Pulse.

7.2 An employee who provides employee feedback to you through Employee Confidence Pulse will own that employee feedback.

7.3 We are allowed to use (on a non-exclusive, royalty free and irrevocable basis) all data generated by Employee Confidence Pulse, including your Employee Confidence scores and other metrics, for our own purposes (eg benchmarking within industry sectors), but this information will not be used in such a way that will identify or be attributable to you or to any individual employee.

7.4 Unless you have received our prior written permission, you agree not to, and will not permit or encourage any third party to: (a) adapt, reproduce, modify, reverse-engineer, decompile, distribute, print, display, perform, publish or create adaptations from any part of Employee Confidence Pulse; or (e) commercialise, copy or on-sell any information or materials obtained from any part of Employee Confidence Pulse.

7.5 You may not publish or use the Employee Confidence Pulse brand, branding or logos without our prior written permission.

7.6 We do not claim ownership of any intellectual property rights in relation to the information or content you upload to Employee Confidence Pulse (such as your profile information or other content or data that you provide in connection with your use of Employee Confidence Pulse), however you grant us a non-exclusive, royalty free licence to collect, retain, use, copy, distribute or disclose it for the purposes of operating Employee Confidence Pulse.

7.7 You agree to grant us with a non-exclusive royalty free licence to use your name and logo for our marketing and promotional material, including marketing and promotional material featured on our website.

7.8 We welcome your feedback and ideas on how to improve Employee Confidence Pulse. If you choose to submit your ideas, you agree that we are free to use them and that you will not have rights to any intellectual property that may be generated as a result.

8. EMPLOYEE CONFIDENCE PULSE ENHANCEMENTS

8.1 Employee Confidence Pulse is provided on an “as is” and “as available” basis and use of it is at your sole risk. We will try to promptly address (during normal business hours) all technical issues that arise in connection with Employee Confidence Pulse, however there may be times when Employee Confidence Pulse is inaccessible.

8.2 From time to time, we may issue an update to Employee Confidence Pulse which may add, modify and/or remove features. We will endeavour to let you know about these changes in advance, but these updates may be pushed out automatically with little or no notice.

8.3 To the maximum extent permitted by law we disclaim and exclude all implied conditions and warranties. To avoid doubt, we do not warrant that: (a) Employee Confidence Pulse will meet your specific requirements; (b) Employee Confidence Pulse will be uninterrupted, timely, secure, or error free; (c) the results that may be obtained from the use of Employee Confidence Pulse will be accurate or reliable; (d) the quality of any products, services, information or other material purchased or obtained by you through Employee Confidence Pulse will meet your expectations; or (e) any errors in Employee Confidence Pulse will be corrected.

8.4 We will not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if we have been advised of the possibility of such damages), resulting from the use of, or the inability to use, Employee Confidence Pulse.

8.5 We may use third party suppliers to provide necessary hardware, software, networking, connectivity, storage and related technology required to provide Employee Confidence Pulse. The acts and omissions of those third party suppliers may be outside of our control, and we do not accept any liability for any loss or damage suffered as a result of any act or omission of any third party supplier.

8.6 In any event, you agree that the total liability of Employee Confidence Pulse under these Terms will not exceed the amount paid for use of Employee Confidence Pulse in the current or most recent contract period.

9. A LEGAL AGREEMENT

9.1 These Terms are governed by New Zealand law, and you submit to the exclusive jurisdiction of the New Zealand courts for any matter or dispute arising in relation to these Terms.

9.2 If an accepted proposal or agreement refers to these terms, then these Terms combined with the accepted proposal or agreement constitute our entire agreement. Otherwise, these Terms alone constitute our entire agreement. In both cases this entire agreement supersedes all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between us and you, in relation to these Terms or use of Employee Confidence Pulse.

9.3 If any provision of these Terms is found by a court or other competent authority to be invalid, unenforceable or in conflict with the law, that provision is limited or eliminated to the minimum extent so that these Terms otherwise remain in full effect.

9.4 If we do not exercise or enforce any right available to us under these Terms, it does not constitute a waiver of those rights.

9.5 The headings used throughout these Terms are provided for your convenience and do not affect the meaning of these Terms.

10. CONTACT US

10.1 If you have any questions about these Terms, the practices of Employee Confidence Pulse, or if you would like to give us feedback or notice, you can contact us at the following:

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