

1. DEFINITIONS

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. 'Supplier,' 'we', or 'us' means Evolution Networks Limited trading as Evolution Networks (our successors and assigns) or any person acting with the authority of Evolution Networks Limited.
- 1.3. 'Client,' 'you', or 'your' means the Client purchasing Services from us (specifically the individual or organisation provided to us for purposes of administering your account, whether verbally or in writing) or any person acting on your behalf (including authorised agents).
- 1.4. 'Services' means the Internet services provided by us to you.
- 1.5. 'Price' means the Price of the Services (in accordance with clause 6).
- 1.6. 'Agreement' means these terms & conditions of trade, as may be amended from time to time (including our privacy policy and any orders, purchases or schedules as applicable).
- 1.7. 'Amounts Owing' means any amount you owe to us, from time to time, including the Price, any interest payable, any of your liability under this Agreement and any enforcement expenses incurred by us in seeking payment of any Amounts Owing by you.
- 1.8. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
- 1.9. 'Confidential Information' means all information that could be reasonably regarded in the circumstances as confidential, including information that relates to the business, interests or affairs of a party, this Agreement, the Services (as applicable), and intellectual property rights, but excludes information which is:
 - (a) in the public domain, other than as a result of a breach of this Agreement;
 - (b) in possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
 - (c) is independently developed or acquired by a party prior to the commencement of this Agreement without relying on information that would itself be Confidential Information.
- 1.10. 'Event of Default' means failure to comply with this Agreement (including your obligations in clause 6).
- 1.11. 'Insolvency Event' means an event of insolvency, including bankruptcy; the appointment of an insolvency administrator, manager, receiver or liquidator; any action related to winding up or making a material arrangement in relation to creditors; applying for any type of protection against creditors; being unable to pay your debts as they fall due; or taking or suffering any similar or analogous action in any jurisdiction as a consequence of debt.
- 1.12. 'Reseller' means any Client who purchases Services to resupply or resale such Services to others.
- 1.13. 'Prohibited Content' means any content on any media (including advertising, posts, or comments) that:
 - (a) is, or could reasonably be considered to be in breach of the Broadcasting Act 1989, the CGA, the FTA or any other applicable law or applicable industry code of practice;
 - (b) contains, or could reasonably be considered to have any misrepresentations or is, or could be deemed to be misleading, deceptive, likely to mislead, deceive or is otherwise unlawful; or
 - (c) is in breach of any person's intellectual property rights.
- 1.14. 'Client Premise Equipment' means the equipment supplied to you by us into which the Services operate at your premises.
- 1.15. 'Improper Use' means any use of the Services that contains Prohibited Content, is illegal, infringes anyone's rights (including intellectual property rights), is malicious, obscene, or offensive or otherwise causes detriment to us or our other clients (or any other person or entity).
- 1.16. 'Excessive Use' means activities that significantly exceed normal client usage patterns (including mail bombing, excessive downloading, pings or other means of causing excessive internet traffic, in relation to unlimited internet plans).
- 1.17. 'Fixed Term' means an agreement for ongoing Services, where the initial Fixed Term shall be specified in the documentation provided and agreed upon between both parties.
- 1.18. 'Personnel' means directors, officers, employees, agents and contractors.
- 1.19. 'FTA' means the Fair Trading Act 1986.
- 1.20. 'CGA' means the Consumer Guarantees Act 1993.
- 1.21. 'CCLA' means the Contract and Commercial Law Act 2017.
- 1.22. 'PPSA' means the Personal Property Securities Act 1999.
- 1.23. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
- 1.24. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.
- 1.25. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.

2. INTERPRETATION

- 2.1. In this Agreement, unless the context otherwise requires:
 - (a) headings are for convenience only and do not affect interpretation;
 - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (c) a reference to 'in writing' includes by email;
 - (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
 - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and

(f) a word importing the singular includes the plural and vice versa.

3. ACCEPTANCE

- 3.1. You acknowledge and accept that:
 - (a) the supply of Goods on credit shall not take effect until you have completed a credit application with us and it has been approved with a credit limit established for the account;
 - (b) if the supply of Goods requested exceeds your credit limit or the account exceeds the payment terms, we reserve the right to refuse further delivery;
 - (c) where necessary, this Agreement will be modified or amended to the extent required to comply with any applicable legislation; and
 - (d) this Agreement shall supersede any other document or agreement between both parties.
- 3.2. If you place an order for or accept any Services from us, you are taken to accept this Agreement and are bound jointly and severally (including if you are part of a trust, in which case you shall be bound in your capacity as a trustee). You do not need to sign any formal documentation to indicate your acceptance. It will be assumed from you continuing to order any Goods or Services.
- 3.3. Your acceptance of this Agreement shall continue to all future orders, purchases or schedules (as applicable), and this Agreement will be, or is deemed to be incorporated into, and form part of, each order, purchase or schedule as if this Agreement was set out or implied therein in full.
- 3.4. Both parties shall accept electronic signatures (including acceptance by a receiving mail server) provided both parties have complied with sections in Part 4, subpart 3 and all other relevant sections in Part 4 of the CCLA.

4. AUTHORISED AGENTS

- 4.1. We are not obligated to inquire about the authority of any person placing an order on your behalf.
- 4.2. If you introduce any third party to us as your authorised agent, you agree that the agent shall have your full authority to order any Services on your behalf, and such authority shall continue until the Services have been completed or you notify us in writing that the third party is no longer your authorised agent.
- 4.3. Where your authorised agent is to have only limited authority to act on your behalf, you must explain the parameters of the limited authority to us in writing.

5. CHANGES TO DETAILS

- 5.1. You agree that you will give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change to your name and any other changes to your details (including but not limited to changes to the ownership of the company, address, email, contact phone or business structure).
- 5.2. Should you fail to comply with clause 5.1, you agree that you will breach this Agreement and shall be liable for any expense or loss of profit suffered by us (including any Related Company).

6. PRICE AND PAYMENT

- 6.1. You will pay us the Price set out in any quotation or documentation that we provide to you under this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
- 6.2. You agree to pay us the Price as advertised when ordering the Service. We may increase the Price at any time by providing thirty (30) days prior written notice to you. The Price does not include any applicable sales or other tax imposed by any authority with respect to the Service. All such taxes will be added to our invoices as separate charges to be paid by you.
- 6.3. You agree to pay the amount owed in full by the due date for all Services billed to your account. If you fail to pay by the due date, you will have five (5) working days from notification by us of the account becoming overdue to make payment, after which your account may be suspended until payment has been received. Notification of an account becoming overdue will be made by email. You are responsible for ensuring that we know your current email address (in accordance with clause 5.1) and for checking your email account regularly.
- 6.4. Upon suspension of the Services, you will become liable for a further setup fee (at our discretion, which shall be at the current advertised setup fee for that type of account) to re-activate the Service.
- 6.5. Where payment is to be made via a direct debit arrangement (as agreed between the parties), you accept that:
 - (a) if a deduction falls due on a non-business day, it will be debited to your account on the next business day following the scheduled withdrawal date;
 - (b) we will give you not less than thirty (30) days written notice when changes to the initial terms of the arrangement are made. This notice will state any other changes to the initial arrangement; or
 - (c) if you wish to discuss any changes to the initial arrangement, contact our representative directly. The changes may include: (i) deferring the monthly deduction; (ii) stopping an individual direct debit; (iii) suspending the direct debit; or (iv) cancelling the direct debit.
- 6.6. We may (at our sole discretion) allocate any payment received from you towards any invoice that we determine and may do so at the time of receipt or at any time afterwards. We may re-allocate any previously received and allocated payments on any default by you. In the absence of any payment allocation by us, payment will be deemed to be allocated in a manner that preserves the maximum value of our Security Interests in the Services.
- 6.7. Payment may be made by electronic banking or any other method that we agree to in writing.

- 6.8. Payment in any form other than cash shall not be taken as payment for the Amounts Owing, and all ownership rights of the Services remain with us until that form of payment has been cleared and received (in accordance with clause 26.1).
- 6.9. You shall not withhold payment of any Amounts Owing because part of the Services are disputed, and if part of the Services is disputed, you agree that you will:
- perform all of your obligations to us under this Agreement and pay in full any Amounts Owing except for the amount that is in dispute; and
 - provide a specific and detailed explanation of the dispute in writing within seven (7) days from delivery.
- 6.10. If an Insolvency Event occurs, all Amounts Owing will (whether or not due for payment) immediately become due and payable.

7. VARIATIONS

- 7.1. We reserve the right to vary the Price:
- if a variation to the plan of scheduled Services or specifications is requested (including additional work required due to hidden or unidentifiable difficulties not evident prior to commencement of the Services);
 - any information supplied by you is inaccurate; or
 - as a result of increases beyond our reasonable control in the cost of materials or labour (including any variation resulting from fluctuations in currency exchange rates, increases in the cost of taxes, insurance charges or increases in third-party network operator costs).

8. SCOPE OF SERVICE

- 8.1. We reserve the right to modify and withdraw the Services and alter policies and guidelines. We strive to provide a reliable twenty-four (24) hour Service, although we do not guarantee that this will be continuous or fault-free. If you experience a quality problem with our Services, we will do our best to resolve it to your satisfaction as soon as possible after notification of such issues. We agree to monitor servers, network routers and other critical components of our network and to attend to any faults with our hardware or software as a matter of urgency.
- 8.2. We are not responsible for fixing faults that occur:
- in your computer or communications equipment, including any software used or stored in them;
 - in communications networks owned or controlled by other internet service providers or telephone service providers;
 - in anything else not forming part of our network;
 - because you misuse the Service; or
 - through any other event beyond our reasonable control.
- 8.3. Whilst we shall endeavour to enable the Services to be provided at the time and place as was arranged between both parties (subject to our regular service hours on Business Days), you acknowledge that any time specified for the provision of the Services is an estimate only. We will not be liable for any expenses or losses incurred due to your reliance on our estimated time for delivery, nor can you cancel any order for any delay in delivery that is less than three (3) days after our estimated time for delivery, or any delay in delivery due to any event beyond our control.
- 8.4. We may supply Client Premise Equipment to you where it is required for the provision of Services, and it is agreed that:
- delivery of the Client Premise Equipment is taken to occur at the time that we (or our nominated carrier) deliver the Client Premise Equipment to your nominated address, even if you are not present at the address; and
 - risk of damage to, or loss of, the Client Premise Equipment passes to you on delivery, and you must insure the Client Premise Equipment on, or before, delivery.
- 8.5. We may deliver the Client Premise Equipment in separate instalments.

9. ERRORS AND OMISSIONS

- 9.1. You agree that we have no liability in respect of any errors or omissions:
- resulting from an inadvertent mistake made by us in the formation or administration of this Agreement; or
 - contained in any documentation supplied to you by us regarding the Services.
- 9.2. If such an error or omission occurs and is not attributable to our negligence or wilful misconduct, all obligations or rights under or in connection with this Agreement shall continue in full force and effect.

10. TRAFFIC MANAGEMENT

- 10.1. Our unlimited broadband plans are managed differently than our 'Don't lose it if you don't use it' and packaged plans. Unlimited plans have no data caps and no excess data charges (subject to Excessive Use). This means that Clients on unlimited broadband plans can download unlimited amounts of data, but it also can mean some congestion, typically between 3pm and 11pm, but sometimes at other times. We manage the congestion by controlling the traffic for users on all unlimited plans during this time and when our system shows congestion. During managed periods, priority is given to email and web browsing. All other traffic will see reduced speeds.

11. YOUR USE OF OUR SERVICE

- 11.1. You agree to ensure our Services are not used for any activity that is illegal in New Zealand or the country you connect to the Internet from or which could open us up to potential litigation including, but not limited to, copyright or trademark infringement, publication of obscene or defamatory material or material which is blatantly harmful to others, infringes the rights of others, or is likely to be misleading, deceptive or otherwise breaches the Fair Trading Act 1986 (or any other applicable legislation).

- 11.2. You agree to ensure our Services are not used in an attempt to circumvent user authentication or security of any host, network or account. This includes but is not limited to accessing data not intended for your use, logging into a server or account you are not expressly authorised to access, password cracking, probing the security of other networks in search of weakness, or violating any other organisation's security policy.
- 11.3. You agree to ensure our Services are not used in any way to attempt to interfere with or deny service to any user, host or network. This includes but is not limited to, flooding, merger mailing, or other deliberate attempts to overload or crash a host or network.
- 11.4. You agree to ensure our Services are not used in any way that might have a detrimental effect on performance or pose a security risk, including testing code or installing website content, code or data that presents an unacceptable security risk to us or degrades performance for other users.
- 11.5. You agree to ensure our Services are not used in connection with transmitting spam or substantially similar, unsolicited email messages. A message is considered unsolicited if sent to a recipient who has yet to request or invite the message. For this provision, merely making one's email address accessible to the public will not constitute a request or invitation to receive messages.

12. IMPROPER USE OF THE SERVICES

- 12.1. Specific activities that will be deemed Improper Use of our internet services include (without limitation): (i) illegal downloading, including but not limited to in breach of the Copyright Act 1994; (ii) sending unsolicited electronic messages (spam), including but not limited to in breach of the Unsolicited Electronic Messages Act 2007, offensive or objectionable messages or publications, threats, unsolicited bulk email chain letters, pyramid schemes or hoaxes; (iii) knowingly transmitting or distributing any spam, worms or viruses, or otherwise using Services in a way which is intended to or may damage or compromise the security of our network or anyone else's network; (iv) making any deliberate attempt to overload the network or anyone else's network, including mail bombing, excessive pings or otherwise causing excessive internet traffic; or (v) any downloading or sharing of Prohibited Content.

13. BREACH OF EXCESSIVE OR IMPROPER USE

- 13.1. If we become aware that you have breached this Agreement by engaging in Improper Use or Excessive Use, we may contact you and request that you refrain from engaging in further Improper or Excessive Use. Clients must promptly inform us of any breach of this Agreement by an End User that it is made aware of.
- 13.2. If you continue to engage in Improper Use or Excessive Use after we have requested you to stop doing so, we may, without notice (and at our discretion and or in accordance with our legal obligations), suspend, modify or restrict your use of the services, co-operate with and notify relevant authorities, terminate your account, or charge your account for any Excessive Use.

14. RIGHT TO REFUSE SERVICE

- 14.1. We may at any time and without notice suspend, cancel or refuse to continue providing you with our Services without liability if you or any other user on your connection fail to comply with any obligation in accordance with this Agreement. We agree that such rights will not be unreasonably exercised. Termination under this clause shall not release you from liability for any Amounts Owing.

15. RIGHT OF INSPECTION

- 15.1. We may, at any time and without notice, check how you use our Services to ensure that you are not breaching this Agreement or accessing any charges that may be payable by you.

16. DEFECTIVE SERVICES

- 16.1. Any alleged fault, defect, shortage in quantity, errors, omissions or failure to comply with the description or quote of the Services that you detect must be reported to us as soon as possible. You shall allow us to inspect the Services within a reasonable time following such notification if you believe the Services are defective. If you fail to comply with clause 16.1, the Services shall be presumed free from any defect or damage.
- 16.2. For defective Services, which we have agreed in writing that you are entitled to reject, our liability is limited to either (at our sole discretion) rectifying the Services or re-providing the Services (provided that you have complied with clause 6).

17. FIXED TERM

- 17.1. You acknowledge and accept that the Price stated in the documentation provided will remain fixed for the period stated from acceptance and be subject to revision.
- 17.2. Any Fixed Term shall revert to a monthly rollover basis automatically upon completion unless agreed otherwise and shall continue until terminated by either party by giving at least thirty (30) days written notice.
- 17.3. Should you fail to maintain your payments as agreed, we reserve the right to suspend the Services.

18. PROVISION OF INFORMATION

- 18.1. You agree to provide us with current and accurate information about yourself or your organisation. You agree to keep this information up to date by notifying us of any changes as soon as possible (in accordance with clause 5.1).
- 18.2. You also agree to provide us with any information we might reasonably ask for to help us provide you with Service, including:
- your full name, current street address, and home phone number;
 - how much you plan to use the Service;
 - evidence that you will be able to pay for our Services;

(d) the extent of your use of our Service, including the amount of data transferred and web pages visited (which may be logged by us).

19. OUR USE OF THE INFORMATION PROVIDED

19.1. We agree to keep the information you provide private unless you consent to its disclosure or we are legally required to disclose it. We agree to use such information for no other purposes than to:

- (a) deliver Services you have ordered;
- (b) collect any money owed to us;
- (c) tell you about the Services we provide; and
- (d) improve our existing Services and develop new Services.

20. PRIVACY ACT 2020

20.1. You authorise us (and our agents) to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:

- (a) exercising our rights or performing our obligations under this Agreement;
- (b) using the services of credit reporting and debt collection agencies, and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
- (c) registering any Security Interest under this Agreement;
- (d) direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and
- (e) the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.

20.2. Clause 20.1 is authority and consent from you in accordance with sections in Part 3 and all other relevant sections in the Privacy Act 2020.

20.3. You (if you are an individual) have the right under information privacy principles 6 and 7, and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access and request correction of any of your personal information held by us, and if you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the relevant individual, and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.

20.4. If the Services are expected to involve the sharing of any data sets, or other personal information, to you by us or us to you, we will enter into a separate data protection agreement with you.

20.5. If you do not provide the personal information requested, we may be unable to perform our obligations under this Agreement.

21. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

21.1. Each party must keep confidential all Confidential Information, however, nothing in clause 21 prevents a party from disclosing Confidential Information:

- (a) in the circumstances expressly provided for in this Agreement;
- (b) if the disclosure is required by law or Regulator (but only to the extent necessary); or
- (c) if the disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.

21.2. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.

21.3. We own all right, title and interest (including all intellectual property rights) in the Client Premise Equipment or Services at all times.

21.4. Any new intellectual property created as a result of, or in connection with, the provision of our Client Premise Equipment or Services will be owned by us (unless otherwise agreed in writing).

21.5. If, notwithstanding clauses 21.3 and 21.4, any intellectual property rights in any of our Client Premise Equipment or Services vests in you, you assign those intellectual property rights to us with effect from creation and agree to do all things reasonably required by us to give effect to such assignment.

21.6. You warrant that the use by us of any designs, instructions, plans, specifications or other technical information provided by you will not infringe the intellectual property rights of any other person and indemnify us against any expenses or losses (including full legal costs on a solicitor-client-basis) that we may incur or suffer in the event of any such infringement.

22. CONSUMER GUARANTEES ACT 1993 AND FAIR TRADING ACT 1986

22.1. Subject to clause 22.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under the CGA).

22.2. For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Services in trade:

- (a) to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and
- (b) it is fair and reasonable for the parties to be bound by clause 22.2.

22.3. If you are acquiring the Services to resupply the Services in trade, you undertake that you will:

- (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your clients; and

(b) procure that your clients and each person in the distribution chain thereafter contract out of the CGA to the maximum extent permitted by law in their contracts with clients.

22.4. For the purposes of section 5D of the FTA, the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Services in trade:

- (a) to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and
- (b) it is fair and reasonable for the parties to be bound by clause 22.4.

22.5. You will indemnify us against any expenses or losses incurred by us due to your breach of clause 22.

23. CANCELLATION

23.1. You may cancel the Service at any time by providing thirty (30) days written notification to us. Where you have agreed to take the Service for a Fixed Term (or minimum period), charges for the Service will continue until the end of the Fixed Term.

23.2. We shall be entitled to cancel all or part of the Services, and all Amounts Owing to us shall (whether or not due) become immediately payable if:

- (a) any Amounts Owing to us become overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
- (b) an Insolvency Event occurs, and you become insolvent or bankrupt, convene a meeting with your creditors or a receiver, liquidator or similar person is appointed for you or any of your assets.

23.3. Orders made to your specifications or non-stock-list items cannot be cancelled once production has commenced.

24. EVENT OF DEFAULT

24.1. If an Event of Default occurs, you agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including but not limited to administration fees, debt collection agency fees and full legal expenses on a solicitor-client basis).

24.2. Unless waived by us in writing, we may charge interest at a rate of two and a half percent (2.5%) per calendar month on the outstanding amount from the due date of payment until the date the outstanding amount is paid (and any interest shall compound monthly at such a rate).

25. CLIENT PREMISE EQUIPMENT

25.1. Ownership of the Client Premise Equipment will at all times remain with us, and you must not: (i) sell, lease, dispose of, lend or otherwise part with possession of, or modify in any way, the Client Premise Equipment; (ii) use the Client Premise Equipment for any purpose other than receiving our Services in accordance with the relevant Services and this Agreement; or (iii) do any other act that may adversely affect or prejudice the ownership of the Client Premise Equipment in any way.

25.2. We will install the Client Premise Equipment at your address as provided to us. We reserve the right to supply you with Client Premise Equipment that may have been refurbished, provided that such refurbished Client Premise Equipment shall be of equivalent quality and functionality as a new Client Premise Equipment.

25.3. The Client Premise Equipment is configured to work only with our services. You may not use it to obtain broadband services other internet service providers provide. The Client Premise Equipment may be impaired when you upload or download data using broadband while trying to make a telephone call.

25.4. We do not provide any warranty as to the level of performance of the Client Premise Equipment or your wireless network, which may be affected by conditions outside of our control, including, without limitation, the location of the Client Premise Equipment, the layout of your premises, the materials used in the construction of your premises, the distances between the Client Premise Equipment and any wireless device that you use with the Client Premise Equipment and any interference with radio signals that may arise in your premises.

25.5. We may automatically upgrade the software in the Client Premise Equipment through a download via the Internet. You will need to permit access to the Client Premise Equipment for such downloads to keep your Client Premise Equipment up-to-date.

25.6. We are not responsible for the reliability or availability of your wireless network and cannot provide you with support in this regard. We strongly recommend using a WPA key to prevent unauthorised users from accessing the network. We are not liable for any loss you suffer due to unauthorised access to your wireless network.

25.7. If you have a fault with the Client Premise Equipment, please get in touch with us. The warranty covers all claims in relation to the Client Premise Equipment, if any, offered by the manufacturer. We shall not be liable to you for any fault that you cause, including, but not limited to, your failure to comply with any instructions. If the Client Premise Equipment is faulty, we shall replace or repair such defective equipment at our option, provided that such fault is not caused by your failure to keep the Client Premise Equipment safe.

25.8. You must immediately return the Client Premise Equipment to us on termination or cancellation of the relevant Services Agreement. If you fail to return the Client Premise Equipment in accordance with this clause, we may require you to pay us on demand an amount determined by us.

25.9. You shall be liable for any loss (including by fire) or theft of, or damage however caused to, the Client Premise Equipment during the continuance of your Services Agreement. It is your responsibility to effect insurance coverage if you elect to do so against potential liability under this clause.

25.10. During the continuance of this agreement, we have the right to enter your premises to maintain, replace or repossess the Client Premise Equipment or where we have reasonable grounds to believe that you are not complying with your

obligations under any Services Agreement. We will always provide reasonable notice of the above.

- 25.11. We may at any time (at our absolute discretion) require that you exchange any Client Premise Equipment for any new equipment provided or specified by us for us to continue to provide the Services to you.
- 25.12. We shall not be liable to you for any loss or damage arising out of any loss of data.

26. RETENTION OF TITLE

- 26.1. Ownership (including all right, title and interest) of the Services remains with us and does not pass to you until:
- we have received all Amounts Owing; and
 - you have performed all of your obligations under this Agreement.
- 26.2. It is further agreed that:
- we own the Client Premise Equipment;
 - you are only a bailee of the Client Premise Equipment and must return the Client Premise Equipment to us immediately upon request;
 - you hold (to our benefit) an insurance policy for the Client Premise Equipment and must pay us the proceeds of any insurance claim should the Client Premise Equipment be lost, damaged or destroyed;
 - you shall not charge or grant an encumbrance over the Client Premise Equipment nor give away any interest in the Client Premise Equipment while they remain our property; and
 - you irrevocably authorise us to enter any premises where we believe the Client Premise Equipment is kept and recover possession of the Client Premise Equipment.
- 26.3. If any Amounts Owing is overdue, or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere the Client Premise Equipment may be stored to remove any Client Premise Equipment. We shall not be liable in contract, tort or otherwise for any damages, expenses, or losses incurred by you or any third party, and you indemnify us against any liability we may have to any third party (including full legal expenses on a solicitor-client basis), as a result of us exercising our rights under clause 26.3 (except where damages, expenses or losses are due to our negligence or fraud).
- 26.4. If any Client Premise Equipment is damaged, you agree that we are entitled to:
- receive all insurance proceeds paid for the Client Premise Equipment; and
 - supply this Agreement as a binding legal agreement which is sufficient evidence for us to deal directly with the insurance company to receive all proceeds for the Client Premise Equipment, which we legally own.
- 26.5. We may commence proceedings to recover the Price of the Services provided, notwithstanding that ownership of the Services has not passed to you.

27. SECURITY AND LIEN

- 27.1. Subject to us providing any Services, you charge all of your right, title and interest (whether joint or several) in any land, real estate or other assets capable of being legally charged with a lien owned by you either now or in the future, to secure the performance of all obligations (including full payment of all Amounts Owing) under this Agreement.
- 27.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 21.1 of this Agreement (including signing any document on your behalf).
- 27.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 21 to secure the performance of your obligations under this Agreement.
- 27.4. In accordance with Part 5, subpart 5 of the CCLA, we hold a lien for work done and may sell at public auction any property that has been left by you for Services if any Amounts Owing are outstanding.
- 27.5. It is fair and reasonable for the parties to be bound by clause 27.

28. PERSONAL PROPERTY SECURITIES ACT 1999

- 28.1. You acknowledge and agree that:
- this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Services or the proceeds of such Services; and
 - the Security Interest granted to us secures the payment of all Amounts Owing (all present and after-acquired personal property) you may owe us from time to time and at any time.
- 28.2. You agree that you will sign any further documentation and provide any information which we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement, including by registration of a financing statement and ensuring that we have a first ranking perfected Security Interest in the Services, or a Security Interest in the proceeds of any Services (a Security Interest taken in all collateral and any proceeds of any collateral).
- 28.3. To the extent permitted by law, we each contract out of:
- sections 114(1)(a), 133 and 134 of the PPSA; and
 - your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.
- 28.4. You waive your right to receive a verification statement under section 148 of the PPSA regarding any financing statement relating to a Security Interest.
- 28.5. Nothing in this Agreement is to be construed as an agreement that a Security Interest in the Client Premise Equipment (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; a Security Interest in all after-acquired property attaches at the time specified in Part 4, section 44(1)

of the PPSA; and a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.

- 28.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.
- 28.7. You must provide us with information and any associated documentation reasonably requested by us from time to time relating to your financial status.
- 28.8. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interests as security for the Amounts Owing, and we may suspend or cancel further supply of Services until you have provided such Security Interests.
- 28.9. You shall unconditionally ratify any actions taken by us under clause 28.

29. HEALTH AND SAFETY AT WORK ACT 2015

- 29.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act and all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 29.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as inform us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.
- 29.3. Each party must consult, cooperate and coordinate activities with all other persons with a health and safety duty in relation to the same matter in providing the Services (including in connection with the delivery of the Services).

30. RESELLERS

- 30.1. Resellers (and their clients) are bound by this Agreement (including all policies, guidelines and disclaimers). By reselling and purchasing the Services, you agree that we will not be held liable for any promises or failure of the same that you extend to your clients (including the quality of service, financial obligations, financial losses, or any other claim not provided to the Reseller in writing by us). It is the legal duty and obligation of the Reseller to provide this Agreement to all clients and ensure that it is accepted.

31. NOMINATED CONSULTANTS

- 31.1. We may (if we consider it appropriate to do so) recommend the engagement of third-party consultants, whom you shall engage at your expense. We do not warrant the accuracy or quality of the consultant's work or warrant that the consultants' recommendations are appropriate or adequate, fit for their purpose, or are not given negligently. You accept that you shall not make any demand on us or commence any legal proceedings against us, and we shall have no liability to you in relation to any Services performed by the consultants.

32. INDEMNITY

- 32.1. You agree to indemnify us and our employees, servants and agents from and against any lawsuits, demands, liabilities or costs resulting or arising from or connected with your use of the Services or by any person with knowledge of a username allocated to your account.

33. LIABILITY

- 33.1. To the extent permitted by law, we shall have no liability whatsoever to you for any direct or indirect expense or loss of profit suffered by you arising out of a breach by us of this Agreement (including any unintentional misrepresentation made to you by us regarding any of the Services). None of our agents or representatives is authorised to make any representations, statements, conditions or agreements not expressed by our manager in writing, nor are we bound by any such unauthorised information.
- 33.2. To the extent permitted by law, we will not be liable to you if we are prevented from providing the Services by any adverse weather conditions or any other circumstance (including a network failure) beyond our reasonable control. If such an event occurs, we will advise you of the event's existence and its effect on the provision of the Services.
- 33.3. To the extent permitted by law, we shall not be liable for any damages suffered by any user of the Services, nor be liable for any claims or damages whatsoever or howsoever caused (including property damage, loss of profits, interruption of business, loss of data, intellectual property infringement, personal injury, or for any special, consequential or incidental damages) whether arising out of your inability to use the Service, breaches of warranty, contract, liability or otherwise.
- 33.4. To the extent permitted by law, our total liability under or in connection with this Agreement and the Services is limited to, at our option:
- in the case of the Client Premise Equipment, any one or more of the following:
 - the replacement of the Client Premise Equipment or the supply of equivalent Client Premise Equipment;
 - the repair of the Client Premise Equipment;
 - the payment of the expense of replacing the Client Premise Equipment or of acquiring equivalent Client Premise Equipment; or
 - the payment of the expense of having the Client Premise Equipment repaired; or
 - in the case of Services: (i) resupplying the Services; or (ii) the payment of the expense of having the Services resupplied.
- 33.5. If, notwithstanding, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:
- our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid by you to us for the applicable Services; or (ii) the actual loss or damage suffered by you; and

- (b) we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, clients, opportunities or loss of or damage to reputation; and
- (c) this exclusion applies to any claim you may have for any damages whatsoever and applies for the benefit of the following: (i) us and any of our related companies; (ii) our employees, contractors, officers and agents; and (iii) any network operator or other person whose services we use to provide the Services to you (or any of their employees, contractors, officers and agents).
- 33.6. To the extent permitted by law, our liability shall not exceed the Price of the Services provided by us under this Agreement.
- 33.7. The limitations and exclusions on liability in this clause 33 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.
- 33.8. In no circumstances will we have any liability whatsoever under or in connection with this Agreement:
- (a) for the acts or omissions of any third party;
 - (b) any act or omissions performance in accordance with your instructions (or instructions from your authorised agents); or
 - (c) to any third party.

34. GENERAL

- 34.1. **Governing law:** This Agreement is governed by and to be construed in accordance with the laws of New Zealand, and each party submits to the exclusive jurisdiction of the courts of New Zealand.
- 34.2. **Entire Agreement:** This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.
- 34.3. **Priority:** To the extent of an inconsistency between:
- (a) this Agreement;
 - (b) all other schedules to this Agreement;
 - (c) any privacy or data agreement (if applicable); and
 - (d) the order of priority set out above will apply (with (a) having the highest priority).
- 34.4. **Subcontracting:** We may subcontract the performance of our obligations (including to a Related Company) on the basis that we remain solely liable to you for the performance of our obligations.
- 34.5. **Assignment:** You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld at our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign to any other person all or part of the Amounts Owed by you.
- 34.6. **Amendments:** Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws, in which case we can give you notice of any such amendments required, and you will be bound by the same.
- 34.7. **Notices:** Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the sender's email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.
- 34.8. **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).
- 34.9. **Severability:** If any part of this Agreement is illegal or unenforceable, you agree that part shall be amended to the extent permitted by law to allow the enforceability of any rights, and if it is not able to be amended, then it will be severed, and all remaining rights in this Agreement will continue in full force and effect.
- 34.10. **Waiver:** A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 34.11. **Termination:** Either party may terminate this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.
- 34.12. **Survival:** Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive termination of this Agreement by either party.
- 34.13. **Rights of third parties:** This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.
- 34.14. **Relationship:** We will provide the Services to you as an independent contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.
- 34.15. **Non-exclusive:** This Agreement is not exclusive, and you agree that we are not restricted from providing any Services to any other person.
- 34.16. **Counterparts:** This Agreement may be executed in any number of counterparts (including by electronic signature or email exchange of pdf copies), constituting one instrument.