

ADROIT GENERAL TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1 Definitions: In this Agreement, unless the context indicates otherwise:

“Additional Services” means any implementation services, support services, installation services and/or IoT Data Services to be provided by Adroit to the Client pursuant to any Order.

“Additional Services Fees” means the fees payable by the Client for the General Services, as set out in the relevant Order (or, if no fees are so specified, on the Website).

“Adroit” or **“us”** means Adroit Marketing Limited.

“Adroit Pricebook” means the pricebook provided to the Client by Adroit setting out the Purchase Price for Equipment (as updated or replaced by Adroit from time to time by notice in writing to the Client).

“Agreement” means this Agreement, which is comprised of:

- (a) The Specific Terms (if any); and
- (b) These General Terms.

“Business Day” means a day (other than a Saturday, Sunday or public holiday) on which trading banks are open for normal banking business in Auckland.

“Client” or **“you”** means the person or entity signing this Agreement.

“Connection” a connection to the Network by an appropriately configured SIMcard, and **“Connected”** shall have the same meaning.

“Confidential Information” means:

- (1.a) all information, data, drawings, specifications, documentation, know-how and commercially sensitive information that either party may have imparted and may from time to time impart to the other party relating to the subject matter of this Agreement;
 - (1.b) all reports created in the course of this Agreement;
 - (1.c) all commercial information concerning the business of either party;
 - (1.d) the terms of this Agreement; and
 - (1.e) any other information that is, by its nature, confidential or that either party advises the other in writing to be confidential;
- but does not include any information that:
- (1.f) the parties agree in writing is not Confidential Information;
 - (1.g) is, after the date of disclosure, received in good faith by one party from a third party who is lawfully in possession of that information and has a right to disclose it.

“Data” means all data, content, and information owned, held, used or created by or on behalf of the Client that is stored using, or inputted into, or using, the Subscription Services or Underlying Systems.

“Delivered” means delivered by Adroit to:

- (1.a) in the case of Orders for which the Delivery Address is in New Zealand, the Delivery Address;
- or
- (1.b) in all other cases, delivered by Adroit ex works (Incoterms 2010).

“Delivery Address” means the Client's address for delivery, as set out in Order or otherwise agreed between the parties in writing.

“Deposit” has the meaning given to that term in clause **Equipment**.

“Developed IP” means all Intellectual Property developed or generated by Adroit in connection with the performance of the Services.

“Device” means a modem or other such device with Permission to Connect to the Network and which, in combination with a SIMcard, is capable of establishing a Connection.

“Equipment” means the equipment to be sold by Adroit to the Client as set out in the Order.

“Fees” means together the Subscription Services Fees, Additional Services Fees and Purchase Price.

“GST” means goods and services tax under the Goods and Services Tax Act 1985.

“General Terms” means these general terms and conditions.

“Installation” means installation of the Ordered Equipment at the Delivery Address.

“IoT Data Services” means services provided by Adroit pursuant to which Equipment (or other hardware) is Connected to the Network.

“Intellectual Property” means all rights and interests (including common law rights and interests) in and to trade marks, inventions, patents, designs, copyrights, moral rights, plant variety rights, database rights, know-how, data and confidential information, business names, trade names, service marks, trade dress and livery, domain names, layout designs, copyright in software (including, without limitation, in source and object code form) and any similar rights in any part of the world (including any registration of such rights and applications for such registrations).

“Manufacturer Warranties” means any warranties given by the manufacturer of Ordered Equipment to Adroit in respect of that Ordered Equipment.

“Network” means the communications system owned and operated by the Network Provider, through which the IoT Data Services (and other Services) are provided.

“Network Provider” means service provider which owns and operates the Network.

“Order” means an order, submitted by the Client to Adroit, for Services and/or Equipment, whether in the form of a proposal agreed between the parties, an electronic order placed on the Website, or other written agreement between Adroit and the Client.

“Ordered Equipment” means Equipment ordered by the Client pursuant to a Purchase Order that has been accepted by Adroit.

“Permission to Connect” has the meaning given to that term in clause Terms relating to Devices and Permission to Connect. If requested by Adroit, the Client will (at its own cost) provide Adroit with six exact, complete and accurate samples of each Third Party Device it proposes to use on the Network (each a “Sample”), together with all relevant technical specification documentation relating to the relevant Sample(s). After receiving the Sample(s), Adroit will (at its sole discretion) either: grant permission to connect (“Permission to Connect”) to that proposed Device, or.

“Purchase Price” means the purchase price for Equipment, as set out in the relevant Order (or, if no fees are so specified, on the Website).

“Purchase Order” means an Order for Equipment, in a form acceptable to Adroit, and either signed by the Client or placed on the Website.

“Privacy Policy” means Adroit’s privacy policy, as available on the Website and updated by Adroit from time to time.

“Related Service” has the meaning given to that term in clause Additional Related Services:.

“Service” or **“Services”** means the services to be provided by Adroit pursuant to the Order any other services agreed between you and us from time to time.

“Subscription Services” means ongoing subscription services ordered by the Client from Adroit, as detailed in any Order.

“Subscription Services Fees” means the fees for the Subscription Services as set out in the relevant Order (or, if no fees are so specified, on the Website), and as amended from time to time on accordance with clause Subscription Services: Error: Reference source not found.

“Specific Terms” means the specific terms (if any) agreed between the parties in writing as a part of the Order.

“Technical Specifications” means 3GPP (3rd Generation Partnership Project) specifications (and any specifications that may replace those specification or any other standards or specifications Adroit may notify the Client of from time to time).

“Underlying Systems” means the software, IT solutions, systems and networks (including software and hardware) used to provide the Subscription Services, including any third party solutions, systems and networks.

“Website” means Adroit’s, website, www.adroit.nz.

1.2 **Interpretation:** In this Agreement, unless the context indicates otherwise:

- (1.a) **Clauses, Schedules:** References to paragraphs, sub-clauses, clauses and schedules are to paragraphs, sub-clauses, clauses and schedules of this Agreement. Each Schedule forms part of this Agreement;
- (1.b) **Headings:** All headings in this Agreement have been inserted for convenience only and do not limit or govern its construction or interpretation;
- (1.c) **Plural and Singular:** Words importing the singular are deemed to include the plural and vice versa;

- (1.d) **Gender:** Words importing any gender are deemed to include all other genders; and words importing persons are deemed to include all associations, authorities and bodies, corporate or unincorporated;
- (1.e) **Legislation:** References to any legislation, or to any section or provision of any legislation, include any statutory modification or re-enactment or any substituted statutory provision and rules, regulations, laws and other statutory instruments issued or promulgated under or pursuant to such legislation;
- (1.f) **Currency:** References to money are references to the lawful currency of New Zealand unless otherwise specified;
- (1.g) **General construction:** No term or condition of this Agreement is to be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision; and
- (1.h) **Inclusive Expressions:** References to the words "including" and "include" are to be construed without limitation.

2. Term and Termination

- 2.1 **Term:** This Agreement will commence on the date of this Agreement and will continue until the earlier of:
 - (1.a) The date the Services are completed and the Equipment (if any) is Delivered;
 - (1.b) The date on which this Agreement is terminated in accordance with clause Termination for cause: Either party ("First Party") is entitled to terminate this Agreement: or clause Termination without cause: In addition to the rights of termination under clause Termination for cause: Either party ("First Party") is entitled to terminate this Agreement.; either party may terminate this Agreement for any reason, by notice in writing to the other party of not less than 30 Business Days.; or
 - (1.c) Such other date as the parties may agree in writing.
- 2.2 **Termination on non-payment:** Adroit may, by notice in writing to the Client, terminate this Agreement if the Client fails to pay Fees, or any other amount payable by the Client pursuant to this Agreement, when due and such default continues for a period of 10 or more Business Days.
- 2.3 **Termination for cause:** Either party ("First Party") is entitled to terminate this Agreement:
 - (3.a) Immediately by notice in writing to the other party if the other party has breached a material term of this Agreement and such breach is incapable of remedy (or if it is capable of remedy, the other party has failed to remedy such breach to the First Party's reasonable satisfaction within 10 Business Days' written notice from the First Party informing the other party of the breach and requiring it be remedied); or
 - (3.b) Immediately by notice in writing to the other party if an order is made or a resolution is effectively passed for the dissolution of the other party except for the purposes of reconstruction or amalgamation with the consent of the First Party (such consent not to be unreasonably withheld); or
 - (3.c) Immediately by notice in writing if a liquidator, trustee, manager, administrator, administrative receiver, receiver, inspector under any legislation or similar officer is appointed in respect of the other party or the whole or any part of the other party's assets or business; or
 - (3.d) Immediately by notice in writing if the other party is dissolved or makes an assignment for the benefit of or enters into an arrangement, composition or compromise with its creditors or stops payments or is unable to pay its debts as they fall due.
- 2.4 **Termination without cause:** In addition to the rights of termination under clause Termination for cause: Either party ("First Party") is entitled to terminate this Agreement.; either party may terminate this Agreement for any reason, by notice in writing to the other party of not less than 30 Business Days.
- 2.5 **Consequences of termination:** On termination or expiry of this Agreement for any reason whatsoever:
 - (5.a) The Client will immediately make payment to Adroit of Fees for all Services performed up to and including the date of termination or expiry and for all other Fees and amounts payable by the Client to Adroit in connection with periods up to and including the date of termination or expiry;
 - (5.b) The Client must immediately pay to Adroit any outstanding portion of the Purchase Price payable for Ordered Equipment.
 - (5.c) Each party shall cease to use all Confidential Information of the other party, shall return to the other party all such Confidential Information and other property of the other party in its possession or under its control, and shall delete all such Confidential Information from any computer system in its possession or under its control.
- 2.6 **Accrued rights and survival:** Termination or expiry of this Agreement will be without prejudice to the rights and remedies of the parties that have accrued prior to termination or expiry, including for any prior

breach of this Agreement. This clause **Term and Termination** and clauses **Liability and Indemnity** (Liability and Indemnity), **Confidentiality** (Confidentiality), **Intellectual Property** (Intellectual Property), **Disputes and Mediation** (Disputes and Mediation) and **General** (General) and any other clause intended to survive termination or expiry, will continue in effect after termination or expiry of this Agreement.

3. Orders for Equipment and Delivery

- 3.1 The Client may from time to time place Purchase Orders for Equipment with Adroit by providing a completed Order to Adroit.
- 3.2 Adroit reserves the right to accept any Purchase Order, or part of a Purchase Order, and to limit quantities of Equipment relating to any Purchase Order without being obliged to provide reasons for such actions.
- 3.3 Any time quoted for delivery is an estimate only. Adroit will arrange an estimated delivery date with the Client in advance. However, the Client must not defer the estimated delivery date without Adroit's prior written consent.
- 3.4 The Client is responsible for ensuring correct delivery address details are provided to Adroit at the time an Order is placed, and notify Adroit in advance if there will be difficulties accessing the Delivery Address.
- 3.5 Adroit reserves the right to deliver any Equipment ordered by the Client by instalments, in which case any instalment will comprise a separate contract and shall be paid for as if it was a separate Order.
- 3.6 Once placed, the Client may only cancel a Purchase Order if agreed in writing by Adroit.
- 3.7 Following receipt of the Deposit, Adroit will arrange for delivery (at the Client's cost) of the Ordered Equipment to the Delivery Address.
- 3.8 Adroit shall not be liable for any loss or damage suffered or incurred by the Client or by any third party as a result of any delay by Adroit in delivering Equipment.
- 3.9 If it becomes impracticable for Adroit to supply any Equipment ordered by the Client, Adroit shall use reasonable endeavours to obtain a substitute product reasonably suited for the Client's requirements, and may offer to supply that product in substitution, at Adroit's normal price of that substituted product. The Client shall be free to accept or decline that offer. The Client shall have no claim against Adroit in the event that it is impracticable for Adroit to supply certain Equipment.
- 3.10 All Equipment which is to be delivered to a courier for carriage to the Client shall be delivered upon the following terms:
 - (1.a) The Client accepts all risk relating to the Equipment following delivery to the courier; and
 - (1.b) The Client accepts that the terms of carriage will be the standard terms upon which the courier carries goods for Adroit or Adroit's customers from time to time.

4. Title and Risk in Equipment

- 4.1 Title in the Equipment shall pass to the Client only when the Client has paid for the relevant Equipment in full.
- 4.2 All risk in Equipment and other property provided to the Client by Adroit lies with the Client on and from the time the Equipment is Delivered, and the Client shall bear all costs and risks associated with insuring such Equipment on and from that time.

5. Installation of Equipment

- 5.1 Unless otherwise agreed in writing by Adroit or in the relevant Order, the Client will be solely responsible for the installation of the Equipment. When installing Equipment, the Client must follow all installation guidelines provided to it by Adroit, and hereby indemnifies Adroit and shall hold it harmless for any and all liability, claim, proceeding, cost, expense (including the actual legal fees charged by Adroit's solicitors) and

loss of any kind arising as a result of a breach by the Client of this clause Unless otherwise agreed in writing by Adroit or in the relevant Order, the Client will be solely responsible for the installation of the Equipment. When installing Equipment, the Client must follow all installation guidelines provided to it by Adroit, and hereby indemnifies Adroit and shall hold it harmless for any and all liability, claim, proceeding, cost, expense (including the actual legal fees charged by Adroit's solicitors) and loss of any kind arising as a result of a breach by the Client of this clause Unless otherwise agreed in writing by Adroit or in the relevant Order, the Client will be solely responsible for the installation of the Equipment. When installing Equipment, the Client must follow all installation guidelines provided to it by Adroit, and hereby indemnifies Adroit and shall hold it harmless for any and all liability, claim, proceeding, cost, expense (including the actual legal fees charged by Adroit's solicitors) and loss of any kind arising as a result of a breach by the Client of this clause 5.1...

- 5.2 If the Client requests the assistance of Adroit in connection with the installation of the Equipment such assistance will (unless otherwise agreed in writing) be charged to the Client on a time and materials basis at Adroit's then current rates (as advised to the Client from time to time).
- 5.3 Where Adroit is to install Equipment at the Client's premises:
- (3.a) Adroit will liaise with the Client's nominated representative to arrange a mutually agreeable time for the installation services to be provided; and
- (3.b) The Client:
- (3.b.i) Warrants that it has:
- (3.b.i.A) Full authority to authorise Adroit to install such Equipment; and
- (3.b.i.B) Obtained and holds all necessary consents and other authorisations required in connection with the installation of the Equipment; and
- (3.b.ii) Hereby indemnifies Adroit against the consequences of any claim by any third party following installation of the Equipment at the direction of the Client. Such indemnity extends to reasonable legal costs incurred by Adroit arising out of the claim by the third party.
- 5.4 The Client shall provide Adroit full access to premises in which Equipment is to be installed or Services are to be performed, and provide adequate services and amenities (including power, lighting, and other facilities) to allow Adroit (and/or its employees, agents or sub-contractors) to install such Equipment and perform such Services. Further, the Client will provide Adroit (and/or its employees, agents and sub-contractors) with all such assistance and support as they may reasonably require to enable them to complete the installation of the Equipment or provide the Services. Adroit may make further charges to the Client should there be any delay, or additional attendances as a consequence of lack of access to facilities or lack of adequate facilities.
- 5.5 The Client will provide Adroit with reasonable notice in advance if it is necessary for Adroit to co-ordinate with any other tradespersons in connection with the installation of Equipment or performance of Services.

6. Additional Services

- 6.1 **Services:** Adroit shall provide the Additional Services to the Client, and the Client agrees to accept the provision of the Additional Services, on the terms set out in this Agreement.
- 6.2 **Timetable:** Adroit will use its reasonable endeavours to complete the Additional Services in accordance with any timetable set out in the applicable Order, but, subject to the foregoing, will not be in breach of this Agreement solely by reason of any failure to adhere to that timetable.
- 6.3 **Adroit's obligations:** Adroit will:
- (3.a) perform the Additional Services in a professional and workmanlike manner and in accordance with recognised industry practice;
- (3.b) be responsible for all payment obligations in respect of its staff, including all costs associated with the recruitment and continuing employment of its staff and for its own day-to-day employment relations;
- (3.c) ensure that all of its staff and contractors who perform the Additional Services are suitably trained, qualified and registered for the tasks being performed by them; and
- (3.d) maintain complete and accurate records and accounts for all activities undertaken by Adroit under this Agreement.

6.4 **Support Services:** Where, pursuant to an Order, Adroit has agreed to provide you with support services ("Support Services"):

- (4.a) The Support Services will (unless provided otherwise pursuant to the relevant Order) be provided by way of telephone support, available during the hours of 8am to 5pm, Monday to Friday (excluding public holidays).
- (4.b) Adroit will use all reasonable endeavours to respond to all service calls, but makes no guarantee as to the time period for such a response.
- (4.c) Adroit is not required to provide Support Services if prevented from doing so by circumstances beyond its reasonable control.
- (4.d) In the event onsite support is required, the Client will be charged for such onsite support on a time and attendances basis at Adroit's then current rates (as advised to the Client from time to time).

7. Subscription Services

7.1 **General:** Adroit will use reasonable efforts to provide the Subscription Services (if any) to the Client:

- (1.a) In accordance with this Agreement and New Zealand law;
- (1.b) Exercising reasonable care, skill and diligence; and
- (1.c) Using suitably skilled, experienced and qualified personnel.

7.2 **Availability:**

- (1.a) Subject to clauses Availability: The Subscription Services interact with a range of third party service features ("Third Party Feature"). Adroit does not make any warranty or representation on the availability of those features. In the event a Third Party Feature provider ceases to provide any feature(s) or ceases to make the feature(s) available on reasonable terms, Adroit may cease to make available that feature to the Client. For the avoidance of any doubt, if Adroit exercises its right to cease the availability of a Third Party Feature, the Client is not entitled to any refund, discount or other compensation but shall have a right, on notice in writing to Adroit, to terminate its subscription for Subscription Services if the cessation of the availability of the Third Party Feature materially adversely affects the performance of the Subscription Services. and Suspension of Subscription Services, Adroit will use reasonable efforts to ensure the Subscription Services are available on a 24/7 basis. However, it is possible that on occasion the Subscription Services may be unavailable to permit maintenance or other development activity to take place, or in the event of a Force Majeure Event (as defined in clause Force Majeure: If a party ("Affected Party") is prevented from performing any of its obligations under this Agreement by reason of (i) flood, storm, earthquake, fire, explosion, or other event of nature, (ii) act or restraint of any local Authority, government department, court order or any order or restraint issued or imposed by any other regulatory or quasi-regulatory body, (iii) strike, lockout or other industrial action, or (iv) any other event outside the reasonable control of the Affected Party (each, a "Force Majeure Event"), then the relevant obligation(s) shall be suspended for the duration of the Force Majeure Event provided that the Affected Party: (a) notifies the other party of the nature and extent of the Force Majeure Event and the obligation(s) impacted as soon as practicable after the Affected Party becomes aware of the Force Majeure Event and its impact on its obligations; and (b) the Affected Party uses its reasonable endeavours to perform its obligations on time notwithstanding the Force Majeure Event(s). Nothing in this clause will operate to suspend any obligation of the Client to make payment of Fees or other monies under this Agreement when the same become due. If a Force Majeure Event prevents a party from performing their obligations under this Agreement for a period of more than 60 consecutive days the other party may terminate this Agreement on notice in writing to the Affected Party.), or for other reasons outside of Adroit's reasonable control (for example internet unavailability). Adroit will use reasonable efforts to notify the Client of any unavailability in advance (by email, notification on the Website or otherwise), but will have no liability to the Client as a result of any downtime.

- (1.b) The Subscription Services interact with a range of third party service features ("Third Party Feature"). Adroit does not make any warranty or representation on the availability of those features. In the event a Third Party Feature provider ceases to provide any feature(s) or ceases to make the feature(s) available on reasonable terms, Adroit may cease to make available that feature to the Client. For the avoidance of any doubt, if Adroit exercises its right to cease the availability of a Third

Party Feature, the Client is not entitled to any refund, discount or other compensation but shall have a right, on notice in writing to Adroit, to terminate its subscription for Subscription Services if the cessation of the availability of the Third Party Feature materially adversely affects the performance of the Subscription Services.

7.3 Additional Related Services:

- (1.a) Adroit may, from time to time, make available additional services to supplement the Subscription Services ("**Related Services**").
- (1.b) At the request of the Client and subject to the Client paying the applicable Fees, Adroit may agree to provide to the Client an additional Related Service on the terms of this Agreement.

8. System Access

8.1 System Access:

- (1.a) Adroit will provide the Client all necessary user accounts (including a password and login ID) in order for the Client to access the Subscription Services.
- (1.b) The Client will remain fully responsible for any unauthorised use of any account, log-ins, access codes or passwords issued to it.

9. Security of the Subscription Services

- 9.1 **Adroit's Security Measures:** Adroit will take all commercially reasonably technical and organisational measures to protect the security of the Data, but does not guarantee that those security measures will be error-free, or guarantee the security and confidentiality of any Data. Adroit will not be responsible or liable for any breaches of security or unauthorised access beyond its reasonable control.

10. Client Obligations regarding the Subscription Services

10.1 General use: The Client and its personnel must:

- (1.a) Use the Subscription Services in accordance with this Agreement solely:
 - (1.a.i) To allow the Client to make full use of the Services and Equipment provided by Adroit;
 - (1.a.ii) For the Client's own internal business purposes; and
 - (1.a.iii) For lawful purposes;
- (1.b) Not resell or make available the Subscription Services to any third party, or otherwise commercially exploit the Subscription Services;
- (1.c) Comply with any third-party terms applicable to the Subscription Services and any Related Services, and to any Third-Party Feature provided via the Subscription Services, which it has been made aware of by Adroit; and
- (1.d) Cooperate in good faith with Adroit's investigations into any outages of the Subscription Services, security breaches, or suspected breaches of the terms of this Agreement by the Client or any of its personnel.

10.2 Access conditions: When accessing the Subscription Services, the Client and its personnel must:

- (1.a) Keep (and must ensure that any of its personnel using its user account(s) keep) all user accounts, user log-ins and passwords secure at all times;
- (1.b) Keep all account details, user logins and passwords it has in its possession secure at all times, and shall treat such information as with the utmost confidence;
- (1.c) Use reasonable endeavours to prevent unauthorised access to or use of the Subscription Services and must not (and must ensure that any of its personnel using its user account(s) do not) disclose account, user log-in or password information relating to the Subscription Services to any other person (except with Adroit's prior approval);
- (1.d) Notify Adroit promptly upon becoming aware of any actual or suspected unauthorised access or use;
- (1.e) Not impersonate another person or misrepresent authorisation to act on behalf of others or Adroit;
- (1.f) Correctly identify the sender of all electronic transmissions;
- (1.g) Not attempt to undermine the security or integrity of the Underlying Systems;
- (1.h) Not use, or misuse, the Subscription Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Subscription Services;
- (1.i) Not attempt to view, access or copy any material or data other than:
 - (1.i.i) That which the Client is authorised to access; and
 - (1.i.ii) To the extent necessary for the Client and its personnel to use the Subscription Services in accordance with this Agreement;
- (1.j) Comply with the terms of this Agreement, the Privacy Policy and any other terms set out on the Website, in each case as updated from time to time by Adroit; and

- (1.k) For security purposes, change the access codes and passwords it uses to access the Subscription Services, as directed by Adroit from time to time.
- 10.3 **Authorisations:** The Client is responsible for procuring all licences, authorisations and consents required for it and its personnel to use the Services, including to use, store and input Data into, and process and distribute Data through, the Services.
- 10.4 **Restrictions:** The Client must not:
- (1.a) Licence, sublicense, sell, resell, rent, lease, transfer, distribute or otherwise exploit the Subscription Services;
 - (1.b) Replicate, duplicate, copy, decompile, reverse engineer, disassemble, translate, or otherwise seek to obtain or derive the source code, underlying ideas or algorithms of any part of the Subscription Services (including the Underlying Systems); or
 - (1.c) Take any action that imposes an unreasonable or disproportionately large load on the infrastructure used to deliver the Subscription Services, the Underlying Systems of the Website.

11. IoT Data Services

11.1 Terms relating to Devices and Permission to Connect

- (1.a) SIMcards are supplied by us for use only with IoT Data Services. The Client hereby agrees that Adroit and/or the Network Provider may send updates or upgrades to the SIMcards by any means.
- (1.b) In the case of Devices not supplied to the Client by Adroit ("**Third Party Device**"), the Client must ensure that all Third Party Devices do not interfere with the Network, or operate in a way that causes interference to any of the Services. If required to do so by Adroit, the Client must power off any relevant Third Party Device(s), and keep them powered off until Adroit advises the Client that they may power them on again. A failure by the Client to do so may lead to further damage or interference with Adroit's Network, or interferes with the provisions of services by Adroit to the Client or other Adroit customers.
- (1.c) The Client hereby expressly acknowledges and agrees that Adroit has no responsibility or liability regarding any Third Party Devices.
- (1.d) In certain circumstances Adroit may be required to suspend the IoT Data Services. Adroit will use reasonable endeavours to give the Client notice of its intention to suspend the IoT Data Services, however it will not always be possible for Adroit to do so, and (to the extent permitted by law) Adroit shall have no liability to the Client for the suspension of the IoT Data Services.
- (1.e) If requested by Adroit, the Client will (at its own cost) provide Adroit with six exact, complete and accurate samples of each Third Party Device it proposes to use on the Network (each a "**Sample**"), together with all relevant technical specification documentation relating to the relevant Sample(s). After receiving the Sample(s), Adroit will (at its sole discretion) either:
 - (1.e.i) grant permission to connect ("**Permission to Connect**") to that proposed Device, or
 - (1.e.ii) reject the proposed Device on the basis of lack of compliance with the Technical Specifications and/or compatibility with the Network. If a Third Party Device is rejected, the Client may not use the proposed Third Party Device (or any equipment of the same type) on the Network.
- (1.f) Adroit will use commercially reasonable endeavours to provide the Client with notice of its decision under subclause (d) above within 20 Business Days of receipt of the Samples. All decisions made by Adroit in this regard are final.
- (1.g) Where Adroit does not grant Permission to Connect in respect of any Third Party Device, and the Client use the proposed Device (or equipment of the same type) on the Network, the Client will be liable for, and hereby irrevocably indemnifies Adroit for, all costs, damages, loss and expenses which Adroit suffers or incurs as a result.
- (1.h) The granting of Permission to Connect by Adroit in respect of any Third Party Device is not confirmation by Adroit that any particular Device will connect to the Network; will operate as intended by the Client; or is otherwise compliant with this Agreement. Granting Permission to Connect does not limit Adroit's rights or remedies under this Agreement.

11.2 **Service Limitations:** The Client hereby acknowledges that coverage of the Network can be affected by a number of factors, including radio interference, atmospheric conditions, geographic factors, network congestion, maintenance, outages on other networks and provider sites, the configuration or limitations of Devices or other operational or technical difficulties which means that it may not receive some or all of the Service in certain areas or at certain times.

11.3 **The Client's responsibilities:** The Client is responsible for (at its own cost):

- (3.a) Ensuring that all Third Party Devices are compatible with the Network (as it evolves) at all times, and that each Third Party Device operates correctly as intended;

- (3.b) Ensuring that all Third Party Devices and the application on each Device that enables connectivity to the Network are certified (and remain certified) as complying with the Technical Specifications.
- (3.c) Providing any application or modem firmware updates that may be required to ensure that any Third Party Device(s) and the application on each Third Party Device that enables connectivity to the Network continue to meet the requirements of clause **Terms relating to Devices and Permission to Connect** (Devices and Permission to Connect) and this clause **The Client's responsibilities: The Client is responsible for (at its own cost):**.

12. Suspension of Subscription Services

12.1 **Suspension of Service:** Adroit may suspend the Client's access to the Subscription Services at any time if:

- (1.a) Any payment of Subscription Services Fees is overdue; or
- (1.b) Adroit (acting reasonably) determines that:
 - (1.b.i) the Client has breached the terms and conditions of this Agreement; or
 - (1.b.ii) Suspension is necessary to prevent harm or liability to other clients or to third parties, or to preserve the security, stability, availability or integrity of the Subscription Service.

12.2 **Liability:** Adroit will have no liability for any suspension of the Subscription Services in accordance with clause **Suspension of Service: Adroit may suspend the Client's access to the Subscription Services at any time if:** and, for the avoidance of doubt, the Client will remain responsible for payment of fees during any such suspension period. However, the Client shall have a right, on notice in writing to Adroit, to terminate its subscription for Subscription Services if the suspension of the Subscription Services continues for a period of more than 5 Business Days.

13. Data

13.1 **Supplier access to Data:**

- (1.a) The Client acknowledges that:
 - (1.a.i) Adroit may require access to the Data to exercise its rights and perform its obligations under this Agreement; and
 - (1.a.ii) To the extent that this is necessary, Adroit may authorise a member or members of its personnel to access the Data for this purpose.
- (1.b) The Client must arrange all consents and approvals that are necessary for Adroit to access the Data as described in subclause **The Client acknowledges that:** above.

13.2 **Analytical Data:** The Client acknowledges and agrees that:

- (1.a) Adroit may:
 - (1.a.i) use Data and information about the Client's use of the Subscription Services to generate anonymised and aggregated statistical and analytical data (**Analytical Data**);
 - (1.a.ii) use Analytical Data for Adroit's internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
 - (1.a.iii) supply Analytical Data to third parties;
- (1.b) Adroit's rights under subclause **Adroit may:** above will survive termination of expiry of this Agreement; and
- (1.c) Title to, and all Intellectual Property Rights in, Analytical Data is and remains Adroit's property.

13.3 **International storage of Data:** The Client agrees that Adroit may store Data (including any personal information) on secure servers hosted by Amazon Web Services, and may access that Data (including any personal information) in New Zealand from time to time.

13.4 **Indemnity:** The Client indemnifies Adroit against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by Adroit's solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is incorrect or misleading.

14. Payment Terms

14.1 **Equipment:**

- (1.a) Unless otherwise set out in an Order, the prices for Equipment are as set out in the then-current Adroit Pricebook as at the date of the Order.
- (1.b) Payment for Equipment is to be made by the Client as follows:
 - (1.b.i) A deposit equal to 50% of the total Purchase Price payable pursuant to the relevant Purchase Order (the "Deposit") is payable immediately upon acceptance of that Purchase Order

by Adroit in accordance with clause **Payment terms:** All Fees payable by the Client to Adroit under this Agreement;

- (1.b.ii) The remainder of the Purchase Price payable pursuant to the relevant Purchase Order is payable by the Client prior to Delivery of the Equipment.

14.2 Additional Services and Subscription Services:

- (1.a) The Client must pay to Adroit the Additional Services Fees for any Additional Services provided.
- (1.b) All Additional Services Fees payable pursuant to this Agreement must be paid by the Client on or before the 20th of the month following the date of invoice.

14.3 Subscription Services:

- (3.a) The Client must pay to Adroit the Subscription Services Fees for any Subscription Services provided.
- (3.b) All Subscription Services Fees payable pursuant to this Agreement must be paid by the Client on or before the 20th of the month following the date of invoice.
- (3.c) Adroit may from time to time, by not less than 30 days' notice in writing to the Client, increase the Subscription Services Fees. In the event that Adroit exercises its right to increase the Subscription Services Fees, the Client shall have a right, on notice in writing to Adroit, to terminate its subscription for the Subscription Services. For the avoidance of any doubt, the Client is not entitled to any refund, discount or other compensation as a result of any increase in the Fees or the termination by the Client of the Agreement in accordance with this clause.

14.4 Invoices: Adroit shall provide the Client with monthly GST invoices for the Fees. Each invoice shall be itemised and include all information reasonably required in order to enable the Client to establish the accuracy of the invoice.

14.5 Payment terms: All Fees payable by the Client to Adroit under this Agreement:

- (1.a) are stated exclusive of GST. The Client shall pay to Adroit GST on the Fees, at the then applicable rate, at the same times as it is required to make payment of the Fees;
- (1.b) will be paid in full without deduction, withholding, counterclaim or set-off of any kind;
- (1.c) are payable in New Zealand dollars to the credit of a bank account designated in writing by Adroit; and
- (1.d) unless specified otherwise in this Agreement, will be paid by the Client to Adroit on the 20th of the month following the date of invoice.

14.6 Default Interest: If the Client fails to make payment of any amount by the due date, interest (calculated on a daily basis from the due date until the date that payment is made in full to Adroit) shall accrue and be payable on the overdue amount at a rate per annum equal to 5% above the then current unsecured overdraft lending rate charged by Adroit's primary bankers. Such interest shall compound monthly at such a rate after as well as before any judgment. Interest payable under this clause shall be payable immediately on demand.

15. Equipment Warranties

15.1 Manufacturer Warranties: The Client acknowledges that Adroit is not the manufacturer of the Equipment. Notwithstanding the forgoing, Adroit will pass on any Manufacturer Warranties it receives in respect of the Ordered Equipment to the Client.

15.2 Warranty: Subject to clause **Limitations:** The warranties set out in clause **Warranty:** Subject to clause 14.3, Adroit warrants that, at the date on which the Equipment is delivered to the Delivery Address, the Ordered Equipment: above do not extend to, and the Client will be solely responsible for any loss, damage, destruction or breakdown of the Equipment found to be caused by any of the following:; Adroit warrants that, at the date on which the Equipment is delivered to the Delivery Address, the Ordered Equipment:

- (1.a) Will be free from liens, charges, encumbrances, mortgages or other defects in title;
- (1.b) (Other than repaired Equipment returned to the Client) will be in a new and unused condition; and
- (1.c) Will, for a period of 12 months from Installation, be free from any defect of fault.

15.3 Limitations: The warranties set out in clause **Warranty:** Subject to clause **Limitations:** The warranties set out in clause 14.2 above do not extend to, and the Client will be solely responsible for any loss, damage, destruction or breakdown of the Equipment found to be caused by any of the following:; Adroit warrants that, at the date on which the Equipment is delivered to the Delivery Address, the Ordered Equipment: above do not

extend to, and the Client will be solely responsible for any loss, damage, destruction or breakdown of the Equipment found to be caused by any of the following:

(1.a) Unauthorised attempts by others to repair, maintain, modify, relocate or reconfigure the Equipment;

(1.b) A Force Majeure Event (as defined in clause Force Majeure: If a party ("Affected Party") is prevented from performing any of its obligations under this Agreement by reason of (i) flood, storm, earthquake, fire, explosion, or other event of nature, (ii) act or restraint of any local Authority, government department, court order or any order or restraint issued or imposed by any other regulatory or quasi-regulatory body, (iii) strike, lockout or other industrial action, or (iv) any other event outside the reasonable control of the Affected Party (each, a "Force Majeure Event"), then the relevant obligation(s) shall be suspended for the duration of the Force Majeure Event provided that the Affected Party: (a) notifies the other party of the nature and extent of the Force Majeure Event and the obligation(s) impacted as soon as practicable after the Affected Party becomes aware of the Force Majeure Event and its impact on its obligations; and (b) the Affected Party uses its reasonable endeavours to perform its obligations on time notwithstanding the Force Majeure Event(s). Nothing in this clause will operate to suspend any obligation of the Client to make payment of Fees or other monies under this Agreement when the same become due. If a Force Majeure Event prevents a party from performing their obligations under this Agreement for a period of more than 60 consecutive days the other party may terminate this Agreement on notice in writing to the Affected Party.); or

(1.c) Vandalism, burglary, impact damage, water damage, power surges, or any other damage resulting from the Equipment being used for other than its intended use or other than in accordance with any user guides and user instructions provided to the Client by Adroit.

15.4 Adroit is not liable in any circumstances for any damage, injury or loss to any person or property arising from the possession, operation or use of the Equipment.

15.5 By entering into this agreement and placing Purchase Orders for Equipment, the Client acknowledges and agrees that:

(1.a) The Equipment is being acquired for business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993; and

(1.b) All warranties, conditions and other terms implied by the Consumer Guarantees Act 1993 are excluded from these terms to the fullest extent permitted by law and that such exclusion is fair and reasonable.

16. Liability and Indemnity

16.1 **For Equipment:** Subject to this clause For Equipment: Subject to this clause For Equipment: Subject to this clause 15.1, all liability on Adroit under or in connection with this Agreement (whether in contract, tort (including negligence), equity or otherwise) for any reason is excluded or, if it cannot be excluded then to the maximum extent permitted by law Adroit's maximum liability for any reason shall be (at Adroit's option) limited to: all liability on Adroit under or in connection with this Agreement (whether in contract, tort (including negligence), equity or otherwise) for any reason is excluded or, if it cannot be excluded then to the maximum extent permitted by law Adroit's maximum liability for any reason shall be (at Adroit's option) limited to: all liability on Adroit under or in connection with this Agreement (whether in contract, tort (including negligence), equity or otherwise) for any reason is excluded or, if it cannot be excluded then to the maximum extent permitted by law Adroit's maximum liability for any reason shall be (at Adroit's option) limited to:

(1.a) the replacement or cost of replacement or re-supply of the relevant Ordered Equipment or services with the same or equivalent equipment or services; or

(1.b) the repair or cost of repair of the relevant Ordered Equipment; or

(1.c) the amount paid by the Client to Adroit as the Purchase Price for the relevant Ordered Equipment during the twelve month period prior to the event which gave rise to the claim occurring.

16.2 **For Additional Services and Subscription Services:**

(1.a) The aggregate liability of Adroit and its directors, officers, employees and agents for all losses, claims, costs or damages suffered or incurred by the other party arising out of or in connection with this Agreement, and the performance or non-performance of the Subscription Services, whether based

on an action or claim in contract, tort (including negligence or breach of statutory duty), breach of statute or otherwise, is limited to the greater of:

(1.a.i)

\$1,000; and

(1.a.ii)

In the case of:

(1.a.ii.A) Subscription Services, the amount of Subscription Services Fees received by Adroit from the Client under this Agreement over the previous six completed calendar months of the term of this Agreement; or

(1.a.ii.B) Any of the Additional Services, the amount of Additional Services Fees received by Adroit from the Client under this Agreement over the previous six completed calendar months of the term of this Agreement.

(1.b) Where legislation or the rule of law implies into this Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in this Agreement. However, the liability of Adroit for any breach of that condition or warranty is limited, at Adroit's option, to:

(1.b.i) supplying the Subscription Services again; and/or

(1.b.ii) paying the costs of having the Subscription Services supplied again.

16.3 **Consequential Loss:** Neither party will be liable to the other party, in any way related to this Agreement, or the Services, whether that liability arises in contract, tort (including negligence), equity, under statute or otherwise, for:

(3.a) Loss of profits or loss of revenue (in each case whether direct or indirect); or

(3.b) Any indirect, special or consequential loss or damage whatsoever (except in instances of fraud or wilful concealment).

16.4 **Indemnities:**

(4.a) Subject to clause Consequential Loss: Neither party will be liable to the other party, in any way related to this Agreement, or the Services, whether that liability arises in contract, tort (including negligence), equity, under statute or otherwise, for: the Client agrees to indemnify and hold Adroit harmless from and against any and all losses, expenses (including legal costs on a solicitor and own client basis), liabilities, actions, proceedings, claims or demands that Adroit may suffer or incur as a result of any breach or alleged breach by the Client of its obligations under this Agreement.

(4.b) By entering into this agreement and placing Purchase Orders for Equipment, the Client indemnifies Adroit against Loss or liability for any death, injury or damage to any person or property arising directly or indirectly from the Equipment, its possession or use.

16.5 **Exclusions:** None of the exclusions or limitations set out in this Agreement will have the effect of limiting or excluding any form of liability:

(5.a) Arising from a breach of clause Confidentiality (Confidentiality) or Intellectual Property (Intellectual Property); or

(5.b) To the extent such liability results from wilful default or cannot be so limited or excluded under applicable law.

17. Compliance with Laws

17.1 Each party shall comply with all applicable laws and regulations in relation to the performance of its obligations under this Agreement.

18. Confidentiality

- 18.1 **Confidential Information:** Except as permitted under clause Disclosure: The Recipient may divulge Confidential Information to those of its employees, agents and contractors who are directly involved in fulfilling the Recipient's obligations under this Agreement and will ensure that such employees, agents and contractors are made aware of and comply with these obligations as to confidentiality. The Recipient shall be responsible for any breach of such obligations of confidentiality by its employees, agents and contractors. or Limits: The obligations of confidentiality in clause Confidential Information: Except as permitted under clause 17.2 or 17.3, each party (the "Recipient") will keep confidential all Confidential Information obtained from the other and will not divulge the same to a third party without the written consent of the other party or otherwise use any Confidential Information of the other party in a manner which could be detrimental to the interests of the other party. will not apply to information that:, each party (the "Recipient") will keep confidential all Confidential Information obtained from the other and will not divulge the same to a third party without the written consent of the other party or otherwise use any Confidential Information of the other party in a manner which could be detrimental to the interests of the other party.
- 18.2 **Disclosure:** The Recipient may divulge Confidential Information to those of its employees, agents and contractors who are directly involved in fulfilling the Recipient's obligations under this Agreement and will ensure that such employees, agents and contractors are made aware of and comply with these obligations as to confidentiality. The Recipient shall be responsible for any breach of such obligations of confidentiality by its employees, agents and contractors.
- 18.3 **Limits:** The obligations of confidentiality in clause Confidential Information: Except as permitted under clause Disclosure: The Recipient may divulge Confidential Information to those of its employees, agents and contractors who are directly involved in fulfilling the Recipient's obligations under this Agreement and will ensure that such employees, agents and contractors are made aware of and comply with these obligations as to confidentiality. The Recipient shall be responsible for any breach of such obligations of confidentiality by its employees, agents and contractors. or Limits: The obligations of confidentiality in clause 17.1 will not apply to information that:, each party (the "Recipient") will keep confidential all Confidential Information obtained from the other and will not divulge the same to a third party without the written consent of the other party or otherwise use any Confidential Information of the other party in a manner which could be detrimental to the interests of the other party. will not apply to information that:
- (3.a) The Recipient can clearly show was independently available to it from a third party having the right to disclose it; or
 - (3.b) At the time of execution of this Agreement is in the public domain, or subsequently enters the public domain, through no fault of the Recipient or any other person to whom it discloses the information; or
 - (3.c) The Recipient is obliged to disclose by law, court order or order of any governmental or regulatory body having the power to compel disclosure, provided that, to the extent practicable and permissible, the Recipient has first (i) advised the other party of this obligation, (ii) allowed the other party reasonable time to avoid the disclosure having to be made, and (iii) given the other party such assistance (at the other party's cost) as the other party reasonably requests to avoid the disclosure; or
 - (3.d) Is disclosed by a party to its advisers advising that party with respect to its rights and/or obligations under this Agreement; or
 - (3.e) Is disclosed in connection with the enforcement of any rights or obligations under this Agreement.
- 18.4 **Reasonable care:** Each party will take all necessary actions to maintain the security of the Confidential Information, including restricting and controlling access to the premises and equipment on or in which Confidential Information is stored.
- 18.5 **Notice of breach:** Each party will immediately notify the other in writing of any actual, presumed or threatened breach of confidence or loss of secrecy in respect of Confidential Information as soon as possible after such breach of confidence or loss of secrecy occurs, including any breach of the security measures taken under clause Reasonable care: Each party will take all necessary actions to maintain the security of the Confidential Information, including restricting and controlling access to the premises and equipment on or in which Confidential Information is stored..

18.6 **Equitable relief:** Each party acknowledges that, in the event of any alleged breach of this clause Confidentiality, damages may not be an adequate remedy, and each party shall be entitled to seek equitable relief (including an injunction) in addition to damages.

18.7 **Onus:** In the case of any dispute as to whether information is Confidential Information, the onus will be on the party seeking to use or disclose that information to prove that it is not Confidential Information.

19. Intellectual Property

19.1 **Pre-existing IP:** Each party shall retain ownership of all of its Intellectual Property in existence as at the date of this Agreement. Nothing in this Agreement confers on either party any ownership, usage or other rights in respect of any pre-existing Intellectual Property owned by or licensed to the other party.

19.2 **Developed IP:** Unless otherwise agreed by the parties in writing, Developed IP which is created as a part of, or which is consequential to, the performance of Services shall vest in and be owned by Adroit. The Client undertakes to execute all documents and to do all acts reasonably requested by Adroit to carry out and give effect to this clause Developed IP: Unless otherwise agreed by the parties in writing, Developed IP which is and the ownership of the Developed IP as specified above.

19.3 **Equipment:**

(3.a) By entering into this Agreement, the Client acknowledges that at all times all Intellectual Property in the Equipment including, but not limited to, designs, techniques, methods of manufacture, photographs, specifications, artwork, text, patented inventions and registered designs are and remain (as between the parties) the property of Adroit.

(3.b) The Client must not knowingly allow any Intellectual Property belonging to Adroit to be reverse engineered, pirated or copied or breached in any other manner. Adroit may be entitled to compensation for any loss of royalties, damages and/ or costs arising from the breach of Adroit's intellectual property rights.

19.4 **Subscription Services:**

(1.d) Subject to subclause Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the Client. The Client grants Adroit a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of its rights and performance of its obligations in accordance with this Agreement. below, title to, and all Intellectual Property Rights in, the Subscription Services, and all Underlying Systems is and remains the property of Adroit (and its licensors). The Client must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

(1.e) Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the Client. The Client grants Adroit a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of its rights and performance of its obligations in accordance with this Agreement.

(1.f) To the extent not owned by Adroit, the Client grants Adroit a royalty-free, transferable, irrevocable and perpetual licence to use for Adroit's own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by Adroit in the provision of the Services.

(1.g) If the Client provides Adroit with ideas, comments or suggestions relating to the Services or Underlying Systems (together **feedback**):

(1.g.i) all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by Adroit; and

(1.g.ii) Adroit may use or disclose the feedback for any purpose.

19.5 **No disputing ownership:** A party will not, either during or at any time after completion, expiry or termination of this Agreement, in any way question or dispute the other party's ownership (if any) of Intellectual Property as set out in this clause Intellectual Property.

19.6 **Use of Intellectual Property:** Each party agrees not to use or permit to be used by any other person, any Intellectual Property that belongs to the other party except in connection with providing, or receiving the benefit of, the Services and in particular, neither party will use any of the other party's Intellectual Property for its own purposes or for any purpose which is adverse to the interests of the other party.

20. Disputes and Mediation

20.1 **Notice of dispute/Mediation:** The parties agree to immediately notify each other in writing of any dispute arising out of or in connection with this Agreement, including any question regarding its existence,

validity or termination ("Dispute Notice"), and to initially attempt to settle any dispute arising out of this Agreement by full and frank discussions.

(1.a) In the absence of agreement within 21 days of a Dispute Notice being issued by one party to the other, the matter will be referred to a suitable mediator to be agreed upon between the parties. If the parties are unable to agree upon and appoint a mediator within 30 days of the date of the Dispute Notice, either or both parties will immediately ask the Arbitrators' and Mediators' Institute of New Zealand Inc to appoint a mediator and the mediation will be held in Auckland.

(1.b) The parties agree that all costs and expenses of the mediation will be borne equally between the parties to the dispute.

(1.c) The mediation will be terminated by:

(1.c.i) the signing of a settlement agreement by the parties; or

(1.c.ii) notice to the parties by the mediator, after consultation with the parties, that further efforts at mediation are no longer justified; or

(1.c.iii) notice by one or more of the parties or the mediator that further efforts at mediation are no longer justified; or

(1.c.iv) the expiry of 40 Business Days from the mediator's appointment, unless the parties expressly consent to an extension of that period.

20.2 **Other action:** If the mediation is terminated as provided in clause The mediation will be terminated by:, then either party shall be free to take such legal action with respect to the subject matter of the Dispute Notice as it thinks fit.

20.3 **Urgent relief:** Nothing in this clause prevents a party from issuing proceedings in relation to any dispute where the nature of the dispute is such that the party requires urgent interim relief.

21. Notices

21.1 **Notice:** Any notice or other communication to be given to or by a party under this Agreement by or to the other party:

(1.a) May be given by post, personal service or email;

(1.b) Must be in writing, legible and addressed to the person at the address or email address (as applicable) as may be notified to the sender from time to time;

(1.c) Must be signed by the sender or an officer or authorised representative of the sender; and

(1.d) Will be deemed to be given by the sender and received by the addressee:

(i) if delivered in person, when delivered to the addressee; or

(ii) if sent by post, 5 Business Days after the notice is placed in the post with postage prepaid in full; or

(iii) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purpose of this

clause Notice: Any notice or other communication to be given to or by a party under this Agreement by or to the other party:),

but if the delivery or receipt is on a day which is not a working day in the place of intended receipt or is after 5.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next working day in that place.

22. General

22.1 **Force Majeure:** If a party ("Affected Party") is prevented from performing any of its obligations under this Agreement by reason of (i) flood, storm, earthquake, fire, explosion, or other event of nature, (ii) act or restraint of any local Authority, government department, court order or any order or restraint issued or imposed by any other regulatory or quasi-regulatory body, (iii) strike, lockout or other industrial action, or (iv) any other event outside the reasonable control of the Affected Party (each, a "Force Majeure Event"), then the relevant obligation(s) shall be suspended for the duration of the Force Majeure Event provided that the Affected Party: (a) notifies the other party of the nature and extent of the Force Majeure Event and the obligation(s) impacted as soon as practicable after the Affected Party becomes aware of the Force Majeure Event and its impact on its obligations; and (b) the Affected Party uses its reasonable endeavours to perform its obligations on time notwithstanding the Force Majeure Event(s). Nothing in this clause will operate to suspend any obligation of the Client to make payment of Fees or other monies under this Agreement when the same become due. If a Force Majeure Event prevents a party from performing their obligations under this Agreement for a period of more than 60 consecutive days the other party may terminate this Agreement on notice in writing to the Affected Party.

22.2 **Entire Arrangement:** This Agreement records the entire understanding and agreement of the parties relating to the matters dealt with in this Agreement. This Agreement supersedes all previous understandings or agreements (whether written, oral or both) relating to such matters.

- 22.3 **Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this Agreement.
- 22.4 **No Waiver:** No waiver of any breach, or failure to enforce any provision of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.
- 22.5 **Severability:** If any provision of this Agreement is or becomes unenforceable, illegal or invalid for any reason, it shall be deemed to be severed from this Agreement without affecting the validity of the remainder of this Agreement and shall not affect the enforceability, legality, validity or application of any other provision of this Agreement.
- 22.6 **No partnership, joint venture:** Nothing in this Agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have authority to act for, or to incur any obligation on behalf of the other party, except as expressly provided for in this Agreement.
- 22.7 **Costs:** Subject to any other provision of this Agreement, each party shall pay its own costs of, and incidental to, the negotiation, preparation, execution and amendment of this Agreement.
- 22.8 **Amendment:** This Agreement may only be amended by written agreement, signed by a duly authorised representative of each party.
- 22.9 **Assignment:** Neither party may directly or indirectly assign or transfer any of its rights or liabilities under this Agreement to any other person without obtaining the prior written consent of the other party (which consent may not be unreasonably withheld).
- 22.10 **Successors and assigns:** Subject to any provision to the contrary, this Agreement will enure to the benefit of, and be binding upon, the parties and their successors, trustees, permitted assigns or receivers.
- 22.11 **Governing Law and Jurisdiction:** This Agreement is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 22.12 **Counterparts:** This Agreement is deemed to be signed by a party if that party has signed or attached that party's signature to an original, a photocopy, a PDF or email image copy of this Agreement and if each party has signed or attached that party's signature to any such format of this Agreement and delivered it in any such format to the other party, the executed formats shall together constitute a binding Agreement between the parties. Signing this Agreement by appropriate electronic means is acceptable.
- 22.13 **Non Solicitation:** During the term of this Agreement and for six months after its termination or expiry no party will solicit for employment, either directly or indirectly, any person who is employed or contracted by the other party who is involved in the provision of the Services, provided that a party may employ or contract any such person who responds to a public advertisement for a role with that party or who is referred to that party by a recruitment agency.