

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. 'Consultant,' 'we', or 'us' means Jepsen Enterprises Limited trading as Matrix Business Consulting (our successors and assigns) or any person acting with the authority of Jepsen Enterprises Limited.
- 1.3. 'Client,' 'you', or 'your' means the Client purchasing the Services from us or any person acting on your behalf (including authorised agents).
- 1.4. 'Services' means all Incidental Items (including any printed material, samples, designs, reports, drawings, data, files, information or other associated documentation and goods) or any health and safety systems, human resources, business consulting, advice, recommendations, integration of strategies, analysis or project management provided by us at your request from time to time (and where the context permits, the terms 'Incidental Items' or 'Services' shall be interchangeable for the other).
- 1.5. 'Incidental Items' means any goods, documents, or materials supplied by us incidentally in providing you with any Services.
- 1.6. 'Price' means the Price of the Services (in accordance with clause 6).
- 1.7. 'Agreement' means these terms & conditions of trade, as may be amended from time to time (including our privacy policy and any SLA, orders, purchases or schedules as applicable).
- 1.8. 'Amounts Owed' 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 Owed by you.
- 1.9. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
- 1.10. '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 Incidental Items or 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.
- 1.11. 'Event of Default' means your failure to comply with this Agreement (including your obligations in clause 6).
- 1.12. '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.
- 1.13. 'SLA' means the Service Level Agreement detailing the regular maintenance or repair Services (including any Incidental Items where appropriate) to be carried out at the designated location and timeframes as agreed between both parties.
- 1.14. 'Fixed Term' means an agreement for ongoing Services as set out in our SLA, where the initial Fixed Term shall be specified in our SLA documentation and agreed upon between both parties.
- 1.15. 'Personnel' means directors, officers, employees, agents and contractors.
- 1.16. 'FTA' means the Fair Trading Act 1986.
- 1.17. 'CGA' means the Consumer Guarantees Act 1993.
- 1.18. 'CCLA' means the Contract and Commercial Law Act 2017.
- 1.19. 'PPSA' means the Personal Property Securities Act 1999.
- 1.20. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
- 1.21. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.
- 1.22. '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. All requests are subject to our acceptance, and we may (at our sole discretion) accept any order in whole or in part by issuing an invoice in respect of the applicable Services, delivering the Incidental Items or Services or otherwise confirming the order in writing.
- 3.2. If you place an order for or accept any provision of Services from us, you are taken to accept this Agreement and are immediately 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).
- 3.3. Your acceptance to 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 (provided both parties have complied with sections in Part 4, subpart 3 and all other relevant sections in Part 4 of the CCLA).
- 3.5. This Agreement may only be amended with our written consent and shall supersede any other document or agreement between both parties.

4. AUTHORISED AGENTS

- 4.1. We are under no obligation to enquire as to 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 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. Unless otherwise agreed by us in writing, the Price shall be:
 - (a) indicated on invoices provided to you in respect of the Services; or
 - (b) the Price at the date of delivery of the Services according to our current price list;
 - (c) where you are on a SLA, you are required to pay an agreed amount for the ongoing provision of the Services by us as stipulated under that Agreement; or
 - (d) your quoted Price, which will be binding subject to your acceptance of our quotation in writing within thirty (30) days.
- 6.3. If the Price is not set out in quotations or other documentation, the Price for the relevant Incidental Items or Services will be at our standard rate according to our current Pricelist or at a rate notified to you.
- 6.4. The Price is charged annually and will be paid monthly on the dates determined by us (at our sole discretion), which may be:
 - (a) by way of progress payments in accordance with our agreed progress payment schedule, and such progress payment claims may include the value of any authorised variations and the value of any Incidental Items that have been delivered to you;
 - (b) due twenty (20) days following the end of the month in which a statement or invoice is sent to your address or address for notices; or
 - (c) seven (7) days following the date of any invoice given to you by us if there is no notice to the contrary.

- 6.5. Where we pay any subcontractor's account on your behalf, you agree to reimburse us for the payment of the subcontractor's account within seven (7) days (unless otherwise agreed in writing).
- 6.6. You shall obtain (at your expense) all licences and approvals that may be required for the Services.
- 6.7. We reserve the right at any time to alter any Price lists. Any alterations to any Price list will be effective from the date specified by us and apply to all orders or purchases we accept on or after that date.
- 6.8. Payment may be made by cash, electronic/online banking, or any other method we agree to in writing.
- 6.9. Payment in any form other than cash shall not be taken to be payment for the Amounts Owed, and all ownership rights of the Incidental Items or Services remain with us until that form of payment has been cleared and received (in accordance with clause 20.1).
- 6.10. We may require that you pay a deposit or provide a guarantee as security for paying any Amounts Owed.
- 6.11. You shall not withhold payment of any Amounts Owed because part of the Services are disputed, and in the event that part of the Services are disputed, you agree that you will:
 - (a) perform all of your obligations to us under this Agreement and pay in full any Amounts Owed except for the amount that is in dispute; and
 - (b) provide a specific and detailed explanation of the dispute in writing within seven (7) days from delivery.
- 6.12. If an Insolvency Event occurs, all Amounts Owed will (whether or not due for payment) immediately become due and payable.

7. VARIATIONS

- 7.1. We reserve the right to vary the Price:
 - (a) if a variation to the plan of scheduled Services or specifications is requested (including any additional Services required due to format incompatibility);
 - (b) any information supplied by you is inaccurate; or
 - (c) as a result of increases beyond our reasonable control in the cost of Incidental Items or labour (including any variation resulting from fluctuations in the cost of materials, currency exchange rates or increases in the cost of taxes, insurance charges or third-party costs).
- 7.2. Variations will be charged on the basis of our quotation, detailed in writing, and shown as variations on the invoice. You shall be required to respond to any variation submitted by us within seven (7) days. Failure to do so will entitle us to add the cost of the variation to the Price.
- 7.3. The Price will be adjusted to reflect any extra cost or expense incurred by us because of any instruction received from you (or your authorised agent) or any action or inaction on your part.
- 7.4. All systems and advice are provided to you for the activities disclosed at the time of engagement. Any additional entities or changes in business activities will require a reassessment of the SLA and an adjustment in the Price.
- 7.5. If we are required to provide the Services urgently, which may require us to work outside regular business hours (including working through lunch breaks, weekends or public holidays), we reserve the right to charge additional costs unless otherwise agreed between the parties (at twice the regular charge out rate for after hour requests).

8. REIMBURSABLE EXPENSES

- 8.1. We shall be reimbursed for all expenses reasonably and appropriately incurred in connection with the provision of the Services, except where such expenses are expressly stated in the quotation or in writing by us as being non-reimbursable. All reimbursable expenses (including travel, accommodation, communications, or couriers) will be charged at the cost (including GST) to you, plus an administration fee that reflects the time involved with performing such Services.

9. PROVISION OF SERVICES

- 9.1. Both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. Whilst we shall make every 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 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 fourteen (14) days after our estimated time for delivery (or any delay in delivery due to any event beyond our control).
- 9.2. In the event we are unable to provide the Services as agreed solely due to any action or inaction of you, we shall be entitled to charge a reasonable fee for providing the Services at a later time and date.

- 9.3. We may supply Incidental Items to you where it is required for the provision of Services, and it is agreed that:
 - (a) delivery of the Incidental Items is taken to occur at the time that we (or our nominated carrier) deliver the Incidental Items to your nominated address, even if you are not present at the address; and
 - (b) risk of damage to, or loss of, the Incidental Items passes to you on delivery, and you must insure the Incidental Items on, or before, delivery.
- 9.4. We may deliver the Incidental Items in separate instalments, which will be invoiced and paid as individual transactions under this Agreement.

10. EXTENSION OF AGREEMENT PERIOD

- 10.1. We shall be entitled to claim an extension to the term of the Agreement in the event of delays resulting from any matter which is out of our control, including delays caused by:
 - (a) you not responding to information requests;
 - (b) information from consultants, Regulators or other third parties not being available when required;
 - (c) changes to the original Services at your request; or
 - (d) any other variation to this Agreement.
- 10.2. After the initial Fixed Term of one (1) year, this Agreement shall continue as a month-to-month Agreement (unless a further fixed term is agreed upon between both parties).

11. ERRORS AND OMISSIONS

- 11.1. You agree that we have no liability in respect of any errors or omissions:
 - (a) resulting from an inadvertent mistake made by us in the formation or administration of this Agreement; or
 - (b) contained in any documentation supplied to you by us regarding the Services.
- 11.2. 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.
- 11.3. Any alleged fault, defect, shortage in quantity, errors, omissions or failure to comply with the description or quote of the Services which you detect must be reported to us as soon as is practically possible. You shall allow us to inspect the Services within a reasonable time of seven (7) days following such notification if you believe the Services are defective. If you fail to comply with clause 11.3, the Services shall be presumed to be free from any defect or damage.
- 11.4. 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).

12. FIXED TERM

- 12.1. You acknowledge and accept that the Price stated in the SLA will remain fixed for twelve (12) months from acceptance and be subject to revision.
- 12.2. 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.
- 12.3. Should you fail to maintain your SLA fees as agreed, we reserve the right to suspend the Services.

13. PRIVACY ACT 2020

- 13.1. 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.
- 13.2. Clause 13.1 is authority and consent from you in accordance with sections in Part 3 and all other relevant sections in the Privacy Act 2020.
- 13.3. 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.

- 13.4.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.
- 13.5.If you do not provide the personal information requested by us, we may not be able to perform our obligations under this Agreement.

14. CONFIDENTIAL INFORMATION

- 14.1.Each party must keep confidential all Confidential Information, however, nothing in clause 14 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.
- 14.2.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.

15. INTELLECTUAL PROPERTY

- 15.1.Copyright in all Incidental Items or Services (including any plans, specifications or other technical information) provided by us under this Agreement is vested in us, including any new intellectual property created as a result of or in connection with the provision of our Incidental Items or Services. If during the course of providing the Services, we design, develop, discover, or supply you with any Incidental Items, goods, information, ideas, documentation (including designs, plans, reports, proposals, programs, strategies, specifications or other materials) new concepts, products or processes which are capable of being copyrighted, then all copyright in that intellectual property shall be vested in us, and you must not reproduce, copy or use it in any manner without our prior written consent.
- 15.2.Notwithstanding clause 15.1, we grant you a non-exclusive and non-transferable licence, allowing you to reproduce in full any documentation we have supplied to you to provide to your clients as part of your business processes. You shall only grant your clients the right to retain a copy as a record of your dealings with the relevant client. Apart from the non-exclusive and non-transferable licence provided, you expressly agree not to supply any of our documentation to any person or entity for any other purpose without our written consent.
- 15.3.If, notwithstanding clause 15, any intellectual property rights in any of our Incidental Items 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.
- 15.4.Upon the completion of any Agreement with us, you must return all copies of any intellectual property (whether in hard copy, electronically saved or in another form), except as otherwise agreed with us. No copies of such intellectual property are to be retained, used or passed on to any third party.
- 15.5.You warrant that the use by us of any 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 expenses on a solicitor client-basis) that we may suffer or incur in the event of any such infringement.

16. CONSUMER GUARANTEES ACT 1993 & FAIR TRADING ACT 1986

- 16.1.Subject to clause 16.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under the CGA).
- 16.2.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 Incidental Items or 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 16.2.
- 16.3.If you are acquiring the Incidental Items or Services to resupply the Incidental Items or 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 customers; and

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

- 16.4.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 Incidental Items or 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 16.4.
- 16.5.You will indemnify us against any expenses or losses incurred by us as a result of your breach of clause 16.

17. CANCELLATION

- 17.1.We may cancel any contract to which this Agreement applies or cancel delivery of Services at any time before the Services are commenced by giving written notice to you. On giving such notice, we shall repay to you any sums paid in respect of the Price, less any Amounts Owed to us for Services already performed. We shall not be liable for any loss or damage arising from such cancellation prior to performing the Services.
- 17.2.Should you cancel all or part of any order, you shall be liable for all Amounts Owed to us prior to cancellation (including any direct or indirect expenses incurred by us due to you cancelling any part of any order).
- 17.3.We shall be entitled to cancel all or part of any order of yours which remains unperformed, and all Amounts Owed to us shall (whether or not due) become immediately payable if:
 - (a)any Amounts Owed to us becomes 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/bankrupt, convene a meeting with your creditors or a receiver/liquidator or similar person is appointed in respect of you or any of your assets.

18. EVENT OF DEFAULT

- 18.1.If an Event of Default occurs, you agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owed (including but not limited to administration fees, debt collection agency fees and full legal expenses on a solicitor-client basis).
- 18.2.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).
- 18.3.Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment) under this Agreement, we may suspend or terminate the provision of the Services. We will not be liable for any loss or damage you suffer because we have exercised our rights under clause 18.

19. RETENTION OF TITLE

- 19.1.Ownership (including all right, title and interest) of the Incidental Items or Services remains with us and does not pass to you until:
 - (a)we have received all Amounts Owed; and
 - (b)you have performed all of your obligations under this Agreement.
- 19.2.It is further agreed that:
 - (a)you are only a bailee of the Incidental Items and must return the Incidental Items to us immediately upon request by us;
 - (b)you hold (to the benefit of us) an insurance policy for the Incidental Items on trust for us and must pay us the proceeds of any insurance claim should the Incidental Items be lost, damaged or destroyed;
 - (c)you shall not charge or grant an encumbrance over the Incidental Items nor give away any interest in the Incidental Items while they remain our property; and
 - (d)you irrevocably authorise us to enter any premises where we believe the Incidental Items are kept and recover possession of the Incidental Items.
- 19.3.If any Amounts Owed is overdue, or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Incidental Items may be stored, to remove any Incidental Items. 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 19.3, except where damages, expenses or losses are due to our negligence or fraud.
- 19.4.If any Incidental Items are damaged where full payment has not been received, and therefore ownership remains with us, you agree that we are entitled to:
 - (a)receive all insurance proceeds paid for the Incidental Items; and

(b) 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 Incidental Items, which we legally own under clause 19.1.

19.5. We may commence proceedings to recover the Price of the Services provided, notwithstanding that ownership of the Incidental Items or Services has not passed to you.

20. SECURITY AND LIEN

20.1. Subject to us providing any Incidental Items or 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 Owed) under this Agreement.

20.2. 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 20 of this Agreement (including signing any document on your behalf).

20.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights to secure the performance of your obligations under this Agreement.

20.4. It is fair and reasonable for the parties to be bound by clause 20.

21. PERSONAL PROPERTY SECURITIES ACT 1999

21.1. You acknowledge and agree that:

(a) this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Incidental Items or Services or the proceeds of such Incidental Items or Services; and

(b) the Security Interest granted to us secures the payment of all Amounts Owed (all present and after-acquired personal property) you may owe to us from time to time and at any time.

21.2. 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 Owed 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 Incidental Items or Services, or a Security Interest in the proceeds of any Incidental Items or Services (a Security Interest taken in all collateral and any proceeds of any collateral).

21.3. To the extent permitted by law, we each contract out of:

(a) sections 114(1)(a), 133 and 134 of the PPSA; and
(b) your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.

21.4. You waive your right to receive a verification statement under section 148 of the PPSA in respect of any financing statement relating to a Security Interest.

21.5. Nothing in this Agreement is to be construed as an agreement that: (i) a Security Interest in the Incidental Items (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; (ii) a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; (iii) a Security Interest in all after-acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and (iv) a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.

21.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.

21.7. You must provide us with information and any associated documentation reasonably requested by us from time to time relating to your financial status.

21.8. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interest(s) as security for the Amounts Owed, and we may suspend or cancel further supply of Incidental Items or Services until you have provided such Security Interest(s).

21.9. You shall unconditionally ratify any actions taken by us under clause 21.

22. INSURANCE AND RISK

22.1. You are responsible for ensuring that any subcontractors working under your direction are compliant with all health and safety requirements (in accordance with the systems we provide).

22.2. You indemnify us from any liability or loss resulting from any activities that are not undertaken in accordance with our instructions. Where we instruct you to perform actions (either through direct instructions or in an issued schedule of activities), and you fail to complete such activities, you indemnify us from any liability or loss.

22.3. Where we are instructed to incorporate previously completed work into any system, you warrant that this information will be made available in a usable format and that you have the legal right to use this information. Any time spent liaising with previous service providers or locating or reformatting the information will be charged as a variation (in accordance with clause 7).

22.4. You waive any right to rescind or cancel any Agreement with us, sue for damages or claim restitution arising out of any inadvertent misrepresentation made to you by us, and you acknowledge the Services are bought relying solely upon our skill and judgment. Any advice, recommendations, information, or assistance provided by us in relation to the Services provided is given in good faith and is based on information provided to us and our knowledge and experience. Whilst we will take all care when providing our Services, human error is possible under these circumstances. We shall make all efforts to offer the best solution to you in these circumstances (in accordance with clause 16).

22.5. Unless otherwise instructed, you agree that we may communicate with you via electronic means (including by email and attached files), and you accept this form of communication may be subject to inherent hazards such as delays, errors or loss of data. You agree that to the maximum extent permitted by law, we will not be liable for any inherent hazards in electronic communication beyond our reasonable control that cause any delays, errors or loss of data.

22.6. We shall not be held liable for any loss, corruption, or deletion of files or data (including the unintended introduction of viruses) resulting from our Services. It is your sole responsibility to back up any data you believe to be important, valuable, or irreplaceable prior to us providing the Services (and any time spent recreating or reestablishing lost data will be charged as a variation in accordance with clause 7).

23. HEALTH AND SAFETY AT WORK ACT 2015

23.1. 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.

23.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as notify 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.

23.3. Each party must consult, cooperate and coordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Incidental Items or Services (including in connection with the delivery of the Incidental Items or Services).

24. NON-SOLICITATION

24.1. You agree that during the term of the Agreement and for a period of six (6) months following the termination of the Agreement for any reason, you will not:

(a) attempt to encourage or persuade any of our contractors, employees or consultants to terminate their contract or employment with us or utilise in any way an employee or past employee of us (other than through us); and

(b) you agree that the restraints are fair and reasonable for the proper preservation of our goodwill and business.

25. NOMINATED CONSULTANTS

25.1. 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 that they 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.

26. LIABILITY

26.1. We accept no liability for any defect, error or omission in any Services approved by you. We will not be responsible for any costs or losses incurred by you because of any error in the Services after the proofreading/revision stage (including offering no refund or credit).

26.2. 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.

- 26.3. 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 Incidental Items or Services).
- 26.4. To the extent permitted by law, our liability shall not exceed the Price of the Services provided by us under this Agreement.
- 26.5. To the extent permitted by law, our total liability under or in connection with this Agreement and the Incidental Items or Services is limited to, at our option:
- (a) in the case of Incidental Items, any one or more of the following: (i) the replacement of the Incidental Item(s) or the supply of equivalent Incidental Item(s); (ii) the repair of the Incidental Item(s); (iii) the payment of the expense of replacing the Incidental Item(s) or of acquiring equivalent Incidental Item(s); or (iv) the payment of the expense of having the Incidental Item(s) repaired; or
 - (b) in the case of Services: (i) supplying the Services again; or (ii) the payment of the expense of having the Services supplied again.
- 26.6. If, notwithstanding clause 25, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:
- (a) 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 Incidental Items or 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, customers, opportunities or loss of or damage to reputation.
- 26.7. The limitations and exclusions on liability in this clause 26 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.
- 26.8. 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.

27. GENERAL

- 27.1. **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.
- 27.2. **Entire Agreement:** This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.
- 27.3. **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).
- 27.4. **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.
- 27.5. **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.
- 27.6. **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.
- 27.7. **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.
- 27.8. **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).

- 27.9. **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.
- 27.10. **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.
- 27.11. **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.
- 27.12. **Dispute resolution:** All disputes between the parties touching and concerning this Agreement shall be referred to arbitration (as defined in section 2 of the Arbitration Act 1996), under an arbitral tribunal of a single arbitrator agreed upon by both parties or failing such agreement, by two arbitrators (one to be appointed by each party and their umpire appointed by them prior to arbitration). Such arbitration is to be carried out in accordance with provisions of the Arbitration Act 1996.
- 27.13. **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.
- 27.14. **Rights of third parties:** This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.
- 27.15. **Relationship:** We will provide Incidental Items or Services to you as an independent contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.
- 27.16. **Non-exclusive:** This Agreement is not exclusive, and you agree that there are no restrictions on us to provide any Incidental Items or Services to any other person.
- 27.17. **Counterparts:** This Agreement may be executed in any number of counterparts (including by electronic signature or email exchange of pdf copies), which will constitute the one instrument.