

GENERAL

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words have the following meanings:

- (a) "Agreement" means these Conditions, the Rate Schedule and any Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods or Services by David Feist Consulting Limited;
- (b) "Bill Rate" means in respect of any rate of interest to be calculated pursuant to this agreement the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45 am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter at intervals of 90 days from that Business Day.
- (c) "Business Day" means Monday to Friday inclusive but excludes any public holidays in New Zealand.
- (d) "Business Hours" means 08:30 to 17:00 on a Business Day;
- (e) "Commencement Date" means the date that this Agreement has been signed by both parties or a Quote has been approved, whichever is earlier.
- (f) "Committed Services" means Services in respect of which We have entered into a contract with a third party to supply to You that has a minimum term (or renewed term as relevant) or notice period for termination of 12 months or greater.
- (g) "Conditions" means these terms and conditions;
- (h) "Fixed Service Period" means a particular number of half-days, days, weeks, fortnights, months, or any other period, at a specified time, as may be agreed between Us and You as the period during which specified Services will be provided;
- (i) "Force Majeure" has the meaning given to it in clause 16.1.
- (j) "Goods" means any goods sourced or provided by Us including computer hardware and Software;
- (k) "Minimum Term" the minimum term of this Agreement as specified in the Quote, beginning on the first day of the month after the date of signing or approving the Quote;
- (l) "Order" means any order requested by You to Us for Goods or Services in any form;
- (m) "Plan" means any arrangement between Us and You (whether alone or in conjunction with any other person) for Services (including unlimited support) and/or the provision of Goods provided by Us under an arrangement in connection with Work agreed to be done or progressed for or on behalf of You or any other person at Your request, including as set out in a Plan Schedule;
- (n) "Plan Schedule" means the key terms applicable to Plans as set and as may be varied by Us, from time to time in Our absolute discretion without notice to You;
- (o) "PPSA" means the Personal Property Securities Act 1999;
- (p) "Quote" means a quote provided to You by Us for Goods or Services in any form;
- (q) "Rates" means the hourly rates and other charges for Goods and/or Services (including any call-out fees and any Return/Cancellation Fees) set out in the Agreement, and includes any monies payable to Us on a quantum meruit basis for any work We have done;
- (r) "Rate Schedule" means the schedule of rates, charges and conditions for the Services as set, and as may be varied, by Us from time to time in Our absolute discretion without notice to You;
- (s) "Return/Cancellation Fee" means a fee charged pursuant to clause 8.6 as set by Us from time to time;
- (t) "Service Request" means a request for Us to provide Services;
- (u) "Services" means services provided by Us including (without limitation) technical assistance, advice, testing, troubleshooting, installation and configuration of new equipment or software, consulting, scoping, planning, documenting and quoting for complex items;
- (v) "Software" includes software and any installation, update, associated software and any services provided in connection with any of these things;
- (w) "Us", "Our", "We" or "DFC" means David Feist Consulting Limited and its successors and assigns;
- (x) "Work" means anything We may do, provide, customise, produce or acquire for You or Your use or benefit, and includes testing, troubleshooting, installation and configuration of new equipment or software, consulting, scoping, planning, documenting and quoting for complex items; and
- (y) "You" or "Your" means a person who enters into this Agreement with Us, and includes both a person whose name is on the Order or on an email attached to which is an Order, a person who places an Order, and a person on whose behalf an Order is placed or on whose behalf it appears and order is placed, and in any case each of their successors and assigns.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words denoting the singular number only, shall include the plural number and vice versa;
- (b) reference to any gender shall include every other gender;
- (c) reference to any Act of Parliament, Statute or Regulation shall include any amendment currently in force at the relevant time and any Act of Parliament, Statute or Regulation enacted or passed in substitution therefore;
- (d) headings and words put in bold are for convenience of reference only and do not affect the interpretation or construction of these Conditions;
- (e) all references to dollars (\$) are to New Zealand Dollars;
- (f) a reference to time is to Wellington, New Zealand time;
- (g) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (h) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to these Conditions;
- (i) a recital, schedule, annexure or description of the parties forms part of these Conditions;
- (j) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- (k) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (l) a reference to "includes" means includes without limitation;
- (m) a reference to "will" imports a condition not a warranty; and
- (n) a reference to bankruptcy or winding up includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration, being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction and to the procedures, circumstances and events which constitute any of those conditions or matters.

2. APPLICATIONS OF THESE CONDITIONS

- 2.1 Unless otherwise agreed by Us in writing, these Conditions are deemed incorporated in and are applicable to (and to the extent of any inconsistency will prevail over) the Agreement.
- 2.2 The invalidity or enforceability of any one or more of the provisions or documents of this Agreement will not invalidate, or render unenforceable, the remaining provisions or documents of this Agreement.

3. TERM AND TERMINATION

- 3.1 This Agreement will continue until terminated in accordance with this clause 3.
- 3.2 You may terminate this Agreement upon ninety (90) days' written notice to DFC if We:
 - (a) fail to fulfil Our obligations under this Agreement in any material respect and fail to remedy such failure within thirty (30) days of receipt of written notice requesting such remedy;
 - (b) breach any material term or condition of this Agreement and fail to remedy such breach within thirty (30) days of receipt of written notice requesting such remedy; or
 - (c) terminate or suspend our business operations, unless it is succeeded by a permitted assignee under this Agreement.
- 3.3 Except where clause 3.2 applies, you may terminate this Agreement upon ninety (90) days' written notice to DFC subject to:
 - (a) you paying DFC for all Committed Services for the balance of the then remaining term for those Committed Services; and
 - (b) if termination takes effect prior to expiry of the Minimum Term, you paying to Us all amounts which would otherwise have become owing to us under this Agreement had this Agreement been terminated with effect at expiry of the Minimum Term.
- 3.4 We may terminate this Agreement upon ninety (90) days written notice to you.
- 3.5 If either party terminates this Agreement, we will assist you in the orderly termination of Services, including timely transfer of the Services to another designated provider. You agree to pay Us for rendering such assistance at our normal rates as outlined in Our current Rate Schedule.

4. REPRESENTATIONS

- 4.1 You acknowledge that no employee or agent of Ours has any right to make any representation, warranty or promise in relation to the supply of Goods or Services other than subject to and as may be contained in these Conditions.

5. VARIATION OF THESE TERMS AND CONDITIONS

- 5.1 We may at any time vary these Conditions by publishing the varied Conditions on Our website. You accept that by doing this, We have provided You with sufficient notice of the variation. We are under no other obligation to notify You of any variation to these terms and conditions.

GOODS AND SERVICES

6. QUOTES

- 6.1 Quotes will be valid for 7 days unless otherwise specified in the Quote or earlier revoked by Us. A Quote is Our offer to provide the specified Goods and/or Services to You at the specified price, which You can accept by placing an Order for such Goods and/or Services prior to expiry of the Quote (upon which time a binding contract will be formed).
- 6.2 Following expiry of a Quote, the offer to provide the specified Goods and/or Services to You at the specified price is revoked. You will need to request another Quote if you wish to receive another offer for such.
- 6.3 Should you request any variation to the Goods and/or Services specified in the Quote, the price in the Quote may vary, and a binding contract will be formed in respect of such once both parties have provided written agreement to the variations.
- 6.4 We reserve the right to vary the price, Goods and/or Services specified in the Quote prior to your acceptance of the Quote.
- 6.5 Quotes shall be deemed to correctly interpret the original specifications and are based on the price at the time the Quote is given. If You later request any changes to the Quotes, and We agree to the changes requested, then these changes will be charged at Our prevailing rate.
- 6.6 Quotes do not include costs associated with freight or delivery unless otherwise stated. Where applicable, these costs will be added to the quoted price when invoiced.
- 6.7 The general minimum turnaround time for a Quote request to be actioned is usually 24 hours. If a Quote is required urgently, please let us know so that we can respond accordingly.
- 6.8 When a special price or discount offer has been applied to a Quote, no other special promotion, discount or bonus offer will be applicable.
- 6.9 If Goods included in the Quote are subject to any price and supply fluctuations that are outside of Our control, We reserve the right to update the price and/or Goods in the Quote accordingly. If the cost for Us to obtain a Good has increased or decreased, we may adjust the Quote accordingly. Any increase in the price of Goods pursuant to this clause 6.9 is subject to Your prior approval.
- 6.10 Unless specified otherwise, all Goods included in a Quote are covered by manufacturer's warranty covering parts and labour for hardware on a return to depot basis only.

7. ORDERS

- 7.1 An Order can be placed by completing an Order form or by approving a Quote. An Order form will need to be signed by You or sent to Us from an email address or web based ordering system which identifies You or an authorised person of You as the sender of the email or submitter of the form respectively.
- 7.2 If we do not have any actual knowledge to the contrary, We may rely upon the apparent validity of an Order. If any Order is signed, sent by email or approved through the web based ordering system by a named person, that person warrants that the Order is, and it is acknowledged that the Order is deemed to be:
- (a) signed by, and duly authorised by, both the person who signed the Order and the person who sent the email; and
 - (b) duly authorised by the person on whose behalf the Order is placed or apparently placed.
- 7.3 An Order, other than one which involves approval of a valid Quote, is an offer to purchase the specified Goods and/or Services at the specified price and only forms a binding contract once it is accepted by Us in writing.
- 7.4 You cannot cancel an Order unless We agree to such cancellation in writing in Our absolute discretion. You acknowledge that, amongst other things, an Order cannot be cancelled once the manufacturer or supplier has despatched the relevant Goods and that such despatch often occurs the same day as the Order is placed.

8. PRICING AND RATES

- 8.1 All rates and amounts quoted for Goods and/or Services by Us are exclusive of Goods and Services Tax and any other applicable taxes or government charges (unless otherwise stated in writing by Us).
- 8.2 Delivery fees will be added to the amount invoiced for any given Order, unless otherwise agreed. If we include an amount for delivery fees in our Quote, it is an estimate only and subject to change.
- 8.3 You must pay for Goods and Services at the Rates set out in any applicable Plan and the Rate Schedule as applicable from time to time during the provision of the Goods and/or Services.
- 8.4 We reserve the right to vary any Rate and/or the Rate Schedule from time to time (subject to any fixed pricing for Fixed Service Periods in any Plan), in Our absolute discretion and without notice to You.
- 8.5 You acknowledge that call-out fees may be charged in addition to the Rates at Our absolute discretion and that the amount of the call-out fee will depend upon where the Services are provided.

- 8.6 Where We arrange a return or refund on behalf of You, or where an Order is cancelled by You after forming a binding agreement, We may charge You a fee to cover the administration costs to Us in processing the Order and cancellation, return or refund. We may deduct the Return/Cancellation Fee from out of any moneys otherwise due to be refunded to You by Us.
- 8.7 You must pay any out of pocket expenses incurred by Us in providing the Services to You in addition to the Rates, charges and call-out fees, upon written demand. Such expenses will include travel costs, flights, car hire, petrol, insurance, taxi fares, accommodation, meal allowance, tolls and car parking expenses. Where expenses exceed ten percent (10%) of the price for Goods and/or Services being provided, We will obtain prior written authorisation from You before such expenses are incurred.
- 8.8 Where a charge is calculated based on increments of time, for example by the hour or 30 minute period expended, We will charge the applicable rate for the whole increment of time even if work is done during part of, but not for the whole of, that increment of time.
- 8.9 Without prejudice to any of Our rights under these Conditions, where there is any increase in the underlying costs incurred by Us in connection with the supply of Goods or Services to You, We may, in our absolute discretion, vary any of Our Rates.
- 8.10 Where You agree to purchase a Fixed Service Period:
- (a) payment must be made in advance of such period at the applicable Rate, less any discount agreed in writing between Us and You;
 - (b) Services will only be provided during the specific period agreed between Us and You;
 - (c) any Services unused for that Fixed Service Period cannot be rolled over into any subsequent period; and
 - (d) We are not liable to refund, re-imburse, pay damages or otherwise compensate or indemnify You in respect of unused Services.

9. PAYMENT

- 9.1 We will, no later than the tenth day of each month, provide an invoice to You in respect of all Goods or Services provided to you in the preceding month. The invoice will include details of all costs associated with the Goods and Services, such as taxes, call out fees, delivery fees and out of pocket expenses.
- 9.2 We may in Our absolute discretion invoice you for Goods separately from Services or may charge for Goods and Services together.
- (a) You shall complete payment in accordance with any invoice We provide to You by the date specified on the invoice as the due date for payment;
- 9.3 Any payment You make to Us must be made by cash, direct credit, credit card, direct debit or as otherwise set out in a relevant invoice.
- 9.4 We are not obliged to deliver any Good or provide any Service until we have received payment in cleared funds from You for all amounts which you are obliged to pay in respect of such.
- 9.5 If You in good faith dispute the accuracy of any invoice, You shall, within 14 days after receipt of the invoice, give notice of that fact to Us. That notice shall state the basis of the dispute and give relevant supporting details. You shall pay the undisputed portion of the invoice and may withhold payment of the portion disputed. If You and DFC do not resolve the dispute within 20 Business Days of the date of the notice, the dispute shall be determined in accordance with 21.
- 9.6 If upon resolution of a dispute of the nature referred to in clause 9.5 either party has to make a payment to the other, that party shall pay to the other interest on that payment for the period from the due date for payment of the invoice in question to the date of actual payment, calculated at the Bill Rate.
- 9.7 Subject to clause 9.5, if you do not pay an invoice by its due date for payment:
- (a) You shall pay interest to Us on that amount:
 - (i) at the Bill Rate plus three percent (3%) per annum;
 - (ii) by instalments at intervals of 7 days from the due date; and
 - (iii) calculated on a daily basis from and including the due date until the unpaid amount is paid in full;
 - (b) You shall pay to Us any legal and other costs and expenses incurred in connection with the recovery of that amount; and
 - (c) Any amounts owing under any other invoice We have provided to You shall immediately become, if not already, due for payment and subject to this clause 9.7.
- 9.8 As security for payment of any amounts owing under this Agreement, You grant a security interest in favour of Us over all Your undertaking and assets (including any Goods supplied by Us), in which You now or in the future have any legal or beneficial interest, to secure payment of all money owed by You to Us.

10. PERSONAL PROPERTY SECURITIES ACT 1999

- 10.1 You and DFC agree that nothing in sections 114(1)(a) (notice of sale of collateral), 133 (debtor may reinstate security agreement) and 134 (limit on reinstatement of security agreement) of the PPSA shall apply to this Agreement.
- 10.2 You waive your rights as a debtor to:
- (a) receive a statement of account under 116;
 - (b) receive notice of the secured party's proposal to retain collateral under section 120(2);
 - (c) object to the secured party's proposal to retain under section 121;

- (d) not have goods damaged when a secured party removes an accession under section 125;
 - (e) not be reimbursed for damage caused when a secured party removes an accession under section 126;
 - (f) refuse permission to remove an accession under section 127;
 - (g) receive notice of the removal of an accession under section 129; and
 - (h) redeem any secured Equipment under section 131,
- of the PPSA.

10.3 Unless otherwise agreed to in writing Us, You waive your right to receive a verification statement in accordance with section 148 of the PPSA.

10.4 You shall unconditionally ratify any actions taken by Us in accordance with clauses 10.1 to 10.3.

11. SERVICES AND PLANS

- 11.1 We offer the Services and Plans referred to in the Rates Schedule and any Plan Schedule, as updated from time to time. We may withdraw the provision of, or vary the scope or terms of, or add to or change, the Services without notice to You, from time to time in Our absolute discretion.
- 11.2 We will provide You with a copy of the current Rates Schedule upon request. Plan Schedules are tailored for particular Plans and are available to clients participating in the Plan.

12. CONTRACTING

- 12.1 We may subcontract any or all of the Services to be performed without the need for Your approval or consent.
- 12.2 The subcontracting of any Services in accordance with 12.1 shall not extinguish any of our responsibilities or liability to you in respect of the Services unless otherwise agreed with you.

13. DELIVERY, TITLE AND RISK

- 13.1 An estimated time of arrival provided to you in respect of any Goods is based on an estimate given by our vendors and cannot be relied on as the actual date of arrival.
- 13.2 We will use all reasonable endeavours to deliver Goods within a reasonable amount of time, but do not accept any liability for non-delivery or failure to deliver in short order where this is caused by circumstances beyond Our reasonable control, including, for example, due to failures in supply to Us or delays caused by third parties, such as delivery companies or manufacturers.
- 13.3 You must be available to accept the Goods at Your nominated delivery address during Business Hours unless otherwise arranged.
- 13.4 Delivery is deemed to take place when the Goods are delivered to Your nominated address, whereupon risks of loss, breakage, damage and all other risks pass to You.
- 13.5 If Goods are delivered to You prior to Your payment for the Goods or of any other amounts owing by You to Us, then for the period commencing on delivery of Goods and ending on Our full receipt of such amounts:
 - (a) title to, and property in, the Goods remain vested in Us and does not pass to You;
 - (b) You must hold the Goods as fiduciary bailee and agent for Us;
 - (c) You must not sell the Goods;
 - (d) You must keep the Goods separate from other goods and maintain the Goods and their labelling and packaging intact;
 - (e) the proceeds of sale of any Goods sold in breach of clause 13.5(c) shall be held by You on trust for Us; and
 - (f) We may, without prior notice, enter into any premises where We suspect those Goods may be, take possession of those Goods and sever and remove those Goods (notwithstanding that they may have been attached to other goods not the property of Ours) and for this purpose, You hereby irrevocably authorise and direct Us (and Our employees and agents) to enter into such premises as its duly authorised agent and You hereby indemnify and hold harmless Us from and against any costs, claims, allegations, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal.
 - (g) You irrevocably appoint Us as Your attorney to do anything We consider necessary in order to enter such premises and repossess the Goods as contemplated by this clause 13.5.
 - (h) You must adequately insure the Goods.

14. RETURNS AND CLAIMS FOR GOODS AND SERVICES

- 14.1 You will inspect all Goods immediately upon their delivery and shall be entitled, by giving written notice to Us within seven (7) days of delivery, to return any Goods where, upon inspection, it becomes apparent that the Goods are different to what is described on the packaging or that the Goods are faulty. If no such notice is given, You will be deemed to have accepted the Goods and they shall be presumed to be free from any defect, damage or other matter or thing which might entitle you to a return, replacement, refund or claim.

- 14.2 Except where clause 14.1 applies, any return, replacement or refund of Goods or Services shall be at Our full discretion, to the extent permitted by law. Where you request the return, replacement or refund of any Goods or Services that we have procured from a third party for you, we will use reasonable endeavours to obtain the requested return, replacement or refund for you.
- 14.3 Should We accept any request for return, replacement or refund otherwise than in accordance with clause 14.1:
- (a) a restocking fee may apply; and
 - (b) You will pay all costs and expenses incurred by Us in arranging the return of the Goods to a manufacturer or supplier and/or the cancellation of any related Services unless that manufacturer or supplier pays such costs.
- 14.4 Without limiting Our discretion under clause 14.2, or the circumstances in which a request for return, replacement or refund can be refused, such request will not be accepted if:
- (a) Goods have some element of customisation for You;
 - (b) Goods are supplied pursuant to an Order that is in Our opinion special or unusual;
 - (c) Goods are obtained from overseas;
 - (d) Goods are obtained from a supplier who is no longer trading;
 - (e) Goods are otherwise not readily returnable by Us to the manufacturer; or
 - (f) any related services may not be cancelled.
- 14.5 Notwithstanding anything in these Conditions, You acknowledge that We supply Goods subject to all applicable conditions, including returns and claims policies, of any relevant manufacturer or supplier. You will accept Goods subject always to these Conditions and the terms of such conditions and will not hold us liable in respect of any further obligation or any failure or default on the part of that manufacturer or supplier.
- 14.6 We shall not be liable and You indemnify and hold Us harmless (as appropriate) in respect of all allegations and claims in respect of Goods once such Goods have been used, installed, customised or re-sold by You (without prejudice to the recourse of You or any third party against the manufacturer of the Goods).

15. COMPUTER UTILITY, FUNCTIONALITY AND FITNESS FOR PURPOSE

- 15.1 You acknowledge that a reasonable incident of the Services may involve trial and error and that it is a science applied often in novel or unknown circumstances and involving experiment. In particular, You acknowledge that the Services may involve tests, troubleshooting, advice and recommendations that may prove incorrect or inappropriate, particularly in an attempt to cure a problem You are having. While We will make what We consider (in Our absolute discretion) to be all reasonable endeavours to provide appropriate tests, troubleshooting, sound advice and good recommendations in order to assist You, You agree that we shall in no circumstance be liable for any damage cause or loss incurred in Our provision of Services to You.
- 15.2 We are only obliged to provide what We consider, in Our absolute discretion, to be reasonable assistance in the circumstances (including with the installation and customisation of new software or hardware for You or any other Work) under any Plan. You will pay for additional work beyond reasonable assistance in accordance with the Rates unless otherwise agreed. Without limiting Our discretion to determine what reasonable assistance is, reasonable assistance is typically limited to work done during Business Hours over a period of time not exceeding any period that which We have allowed or estimated for the Work prior to its commencement.
- 15.3 The parties acknowledge that:
- (a) We may recommend that You purchase Goods provided by third parties from time to time;
 - (b) Recommendations may be made in situations where You have made known to Us the purpose for which the Goods will be used, or some function sought to be fulfilled;
 - (c) You acknowledge that We have no control over many factors involved with the suitability, function or fitness for purpose of Goods in an existing or new computer environment, e.g.
 - (i) the compatibility or ability of the Goods to fit into or perform to expectations in the receiving computer/internet environment; or
 - (ii) the behaviour of third-party supplier, e.g. in relation to support;
 - (d) You acknowledge that for a several reasons outside of Our control, the Goods may fail to meet Your expectations, may not turn out to be fit for all or any of the purposes sought, may not be suitable or may not function properly in all or any respects;
 - (e) You acknowledge that the Services provided by Us may involve the very task of seeking to customise Goods so they may be fit for particular purposes and that customisation may be a very substantial project in itself;
 - (f) Accordingly, You will accept the sole responsibility for, and agree that we shall have no liability in respect of:
 - (i) decisions as to whether or not to follow recommendations by Us;
 - (ii) decisions as to whether or not to purchase or customise Goods or obtain Services for that or any other purpose; and
 - (iii) any failure or defect in suitability, function or fitness for purpose of any Goods and/or Services, including a responsibility to obtain Your own independent advice or second opinion from a suitably qualified person; and

- (g) Where We provide Services with a view to achieving Your purposes, suitability, function or fitness for purpose (whether expressed, agreed or otherwise), You must pay for those Services on time without any set-off or counter-claim, whether or not We are able to achieve any of such purposes, suitability, function or fitness for purpose, provided always that We have acted in good faith and have made what We consider, in Our absolute discretion, to have made all reasonable endeavours to achieve those outcomes.

15.4 You will follow Our instructions regard to testing or troubleshooting any problems and if those do not resolve the outstanding problems, We will, subject to these Conditions, allocate such resources as We consider reasonable in the circumstances towards their resolution.

16. FORCE MAJEURE

16.1 Force Majeure is an event or circumstance, or combination of events or circumstances, which:

- (a) is beyond Our reasonable control;
- (b) causes or results in default or delay in Our performance of any of Our obligations under this Agreement;
- (c) is without Our fault or negligence and could not reasonably have been prevented, avoided or overcome by Us.

16.2 Force Majeure includes the following events (provided that the requirements of clause 16.1 are satisfied in each case):

- (a) act of terrorism, riot, war, invasion, act of foreign enemies, hostilities (whether war is declared or not);
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) strikes or industrial disputes but excluding any industrial dispute which is specific to the performance of the Services;
- (d) an act of God, earthquake, lightning, cyclone, tsunami, fire, flood, landslide, drought or meteor; and
- (e) change in any law or its interpretation; and

16.3 If an event of Force Majeure delays or prevents Our performance of this Agreement, We will notify You as soon We become aware of the event of Force Majeure and will use reasonable endeavours to minimise the effects and duration of the event of Force Majeure.

16.4 If Our performance under this Agreement is prevented whether in whole or in part or delayed by any event of Force Majeure, We:

- (a) are not considered to be in default of this Agreement; and
- (b) are entitled to suspend performance of Our obligations under this Agreement, including cancellation of any affected Order, without liability.

17. PRODUCT SPECIFICATIONS

17.1 We make every effort to supply the Goods in accordance with the Order however if We cannot supply the Goods ordered by You, We may supply alternate Goods of equal or superior quality, subject to minor variations in actual dimensions and specifications (where these are changed by the manufacturer), provided that You will not pay a higher price than the price quoted or otherwise agreed for the Goods ordered unless your agreement to the price increase is obtained prior to supply of the Good(s).

17.2 Notwithstanding clause 17.1, if we cannot supply the Goods ordered by You, we may supply Goods of a lesser quality if you provide your prior written consent and have been made aware that such Goods being supplied are of lesser quality.

18. WARRANTIES

18.1 You are entitled to rely on the warranties provided by the manufacturer of any Goods and for any claims covered by such warranties will deal directly with the manufacturer.

18.2 We provide no warranty in respect of the Goods.

19. LIABILITY

19.1 Except as specifically set out herein and to the extent be permitted by law, any term, condition or warranty from Us in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

19.2 We shall not be held liable, and you indemnify and hold Us harmless, in respect of any allegation, claim, loss or expense of Yours or any third party for any program or data loss or damage suffered by You or that third party arising directly or indirectly from the supply of Goods or Services to You. You acknowledge You are solely responsible for backing up Your programs and data in order to mitigate Your own potential loss of programs and data.

19.3 We shall not be held liable, and you indemnify and hold Us harmless, in respect of any allegation or claim as to any indirect or consequential losses or expenses suffered by You or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to You or any third party.

19.4 We shall not be held liable, and you indemnify and hold Us harmless, for any allegation or claim for loss or damage by You or a third party where We have failed to meet any delivery date or have cancelled or suspended the supply of Goods or Services.

19.5 Except as otherwise expressly stated in these terms and conditions, We are not liable for any loss or damage of any kind however caused (including, but not limited to, by the negligence of Us) which is suffered or incurred by You in connection with:

- (a) Goods or Services provided to You or any Work;
- (b) these Terms and Conditions;
- (c) Your use of Our website (including the use of a credit card or other debit device) or any linked website; or
- (d) the non-availability of Goods or Services for any reason.

19.6 To the extent that any legislation implies a condition or warranty that cannot be excluded but can be limited, clause 19.5 does not apply to that liability and Our liability for any breach of that condition or warranty is limited to Our doing any one or more of the following (at Our election):

- (a) replacing the Goods, supplying the equivalent Services or completing the equivalent Work;
- (b) repairing the Goods or the Work;
- (c) paying You the cost of replacing the Goods, acquiring the equivalent Services or completing the equivalent Work; or
- (d) paying You the cost of having the Goods or the Work repaired.

19.7 Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.

19.8 If any provision contained in the Conditions is unlawful, invalid or unenforceable, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Conditions.

20. ERRORS AND OMISSIONS

We make every effort to ensure that all descriptions and prices quoted are correct and accurate. In the case of an error or omission, We may rescind the affected part of this Agreement by written notice to You, notwithstanding that We have already accepted Your Order and/or received payment from You. Our liability in that event will be limited to the return of any money You have paid in respect of the Order.

21. DISPUTES

- 21.1 If any dispute should arise between You and DFC in respect of this Agreement, both parties will use reasonable endeavours to resolve the dispute by negotiation in good faith within fourteen (14) days of a party notifying the other party of the dispute.
- 21.2 If You and DFC are unable to resolve the dispute within fourteen (14) days of notice of the dispute first being given, then either party may elect for the dispute to be determined by mediation by providing written notice to the other party. You and DFC will then have ten (10) days to agree on a mediator. If a mediator cannot be agreed during that time, then either party may apply to the chairperson for the time being of the Arbitrators' and Mediators' Institute of New Zealand (or his or her nominee) to nominate a mediator. Unless agreed otherwise, the cost of the mediator will be split evenly between the parties.
- 21.3 The mediation shall be conducted in accordance with the Arbitrators' and Mediators' Institute of New Zealand Mediation Protocol (or any protocol or mediation agreement which replaces it) operating at the time the matter is referred to mediation.
- 21.4 If the dispute is not resolved within forty-five (45) days of the mediation being given under clause 21.2 then either party may terminate the mediation and may then commence court proceedings.
- 21.5 Neither party is prevented from seeking injunctive relief from an appropriate court, where failure to obtain such relief would cause irreparable damage to the party concerned.

OUR RESPONSIBILITIES

22. OUR WEBSITE

We make no representations or warranties in relation to information available on Our website, including without limitation:

- (a) that the information on Our website is complete or correct;
- (b) that Our website will be continuously available or free from any delay in operation or transmission, virus, communications failure, internet access difficulties or malfunction in hardware or software; and that We endorse any internet site linked to Our website or any third party products or services referred to on Our website.

23. INSURANCE COVERAGE

We will maintain at Our own expense, commercial general liability insurance for personal injury and property damage for a general aggregate of \$1,000,000. At Your request We will provide You with certificates, including renewal certificates evidencing such coverage within thirty (30) days of commencing this Agreement, at every renewal and at other times as may be reasonably requested by You.

24. CONFIDENTIAL INFORMATION

24.1 We acknowledge that during this Agreement, We may obtain or learn of private, personal and otherwise confidential information relating to You and Your customers, consumers or employees. We shall regard all such information as confidential information, and receive and hold that information in strict confidence and good faith.

24.2 Clause 24.1 does not apply to any information which:

- (a) is or becomes publicly available otherwise than as a result of Our breach of this Agreement;

- (b) is independently acquired or developed by Us without breaching any of Our obligations under this Agreement or at law, and without the benefit or use of any information disclosed by You; or
- (c) is lawfully acquired by Us from a third party, provided such information is not obtained as a result of a breach by that third party of any confidentiality obligations owing to You.

YOUR RESPONSIBILITIES

25. LODGING OF SERVICE REQUESTS

In order for Us to provide You with Services, You agree to follow Our process for lodging of Service Requests as outlined in Appendix A.

26. ACCESS TO SYSTEMS, SITES AND PEOPLE

- 26.1 In order to provide You with the agreed Services, You agree to give Us access to various items of Yours including but not limited to, equipment, people and sites as and when required.
- 26.2 You agree to allow Us to install software on Your equipment that allows Our technicians to access Your systems at any time. This software allows Us to view system statuses, send monitoring information, see users' desktops and control Your PC's. This may require that devices are left on overnight or weekends.

27. THIRD PARTY AUTHORISATIONS

At times We may need to contact Your third party providers on Your behalf, such as Your internet provider. Some of these providers may require Your authorisation for Us to deal on Your behalf. It is Your responsibility to ensure that We are able to deal freely with these providers and that we have the requisite authorisations for these purposes.

28. NON-SOLICITATION

You agree that You will not, during the term of this Agreement and for a period of two (2) years thereafter:

- (a) solicit or employ any officer, employee or contractor of Ours otherwise than as a result of normal recruiting procedures which are not targeted at any particular officer, employee or contractor; or
- (b) except in the ordinary course of business under this Agreement contact directly or through anyone else any officer, senior employee, manager or contractor of Ours.

29. SOFTWARE

- 29.1 All Software licences are the responsibility of You and not Us. It is Your duty to store all licences for all Software used, so that that they can be reproduced if and when required. This includes all Software installed by Us.
- 29.2 You indemnify and hold Us harmless against any claim, allegation, loss, damage or expense arising directly or indirectly from:
 - (a) Your use of any unauthorised Software;
 - (b) Your breach of any Software licence in respect of Software provided to Us by You to be installed on one of Your computers;
 - (c) Our installation of Software at a location or in a way which You are not authorised to use the Software; and
 - (d) any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.

30. INTELLECTUAL PROPERTY

- 30.1 The right, title and interest in or related to any Work, whether created during completion of the Work or owned by Us prior, shall be Our exclusive property unless otherwise agreed in writing by Us and You.
- 30.2 You warrant that any information or intellectual property (of any kind and in any form held) that You provide to Us belongs to You. You indemnify and hold Us harmless in respect of any allegations, claims, loss, costs or expenses We suffer or incur in connection with a breach of this warranty.

31. CONFIDENTIAL INFORMATION

- 31.1 You acknowledge that all information disclosed by Us or which come to Your attention during the course of business and provided under this Agreement constitute information confidential to Us. You agree to take all commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of Your employees, agents, or representatives to do so for any purpose except as permitted in writing by the Us or as required by applicable law.
- 31.2 Clause 31.1 does not apply to any information which:
 - (a) is or becomes publicly available otherwise than as a result of Your breach of this Agreement;
 - (b) is independently acquired or developed by You without breaching any of Your obligations under this Agreement or at law, and without the benefit or use of any information disclosed by Us; or
 - (c) is lawfully acquired by You from a third party, provided such information is not obtained as a result of a breach by that third party of any confidentiality obligations owing to Us.

General

32. NOTICES

32.1 Any notices given under this Agreement shall be in writing and sent by e-mail to the last notified e-mail address of the recipient.

33. GOVERNING LAW

33.1 The Agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

34. ASSIGNMENT

34.1 You may not assign Your rights and obligations under this Agreement without Our prior written consent.

34.2 We are entitled to assign Our rights and obligations under this Agreement without Your consent.

APPENDIX A

SERVICE REQUEST LODGEMENT PROCESS

When you contact us to lodge a Service Request by phone or email:

- Include a short description of the problem and if emailing, any screenshots of errors to assist in the resolution of the issue.
- If the issue is being lodged by either phone or external email you must include your name, company name and return contact details.

SERVICE REQUESTS OUTSIDE OF OUR BUSINESS HOURS

Service Requests that you require to be addressed outside of Business Hours must be lodged by phone, or else the Service Request will not be viewed to until the next Business Day.

Additional charges will be incurred for any Service Requests that we agree to attend to otherwise than during Business Hours.