

Telesmart Terms and Conditions

General Terms

1 Introduction

1.1 When the Agreement applies

Unless we have expressly agreed otherwise in writing, the Agreement applies to all Products and Services that we provide or make available to you at any time.

1.2 Ordering Additional Products and Services

A Product and Services Addendum is used to order additional Products or Services from us. This has to be signed by both you and us to be effective under the Agreement.

1.3 Urgent or minor orders

We will generally not provide you with any additional Products or Services that are not the subject of a Product and Services Addendum. However, this may happen from time to time in response to a specific need or request. The Agreement still applies to all such Products and Services and, if no Charges have been agreed in writing, our then standard fees apply.

1.4 Supply of Products and Services

We will supply, and you will pay for, the Products and Services in accordance with the Agreement and any applicable Product and Services Schedule.

2 Our Products and Services

2.1 Provision of Products

Except to the extent expressly provided otherwise in the Agreement, you do not obtain ownership or title to any Products. If we have expressly agreed in the Product and Services Schedule that you will purchase from us (and obtain title to) any equipment, then title in that equipment passes to you when you have paid for it, except that in no circumstances will you obtain title to any software (including firmware or operating systems) as this is licensed and not sold.

2.2 Looking after our Products

Where Products are at your premises, or are otherwise in your possession or control, they will be at your risk and you will:

- (a) provide a safe and secure operating environment for them (including by protecting them from radio or electrical interference, power fluctuations or abnormal environmental conditions);
- (b) use and install (where required) the Products in accordance with the manufacturer's specifications and our written directions;
- (c) if requested by us, obtain and maintain insurance (to a value agreed by us) with a reputable insurance company against loss, theft or damage of the Products;
- (d) except to the extent expressly agreed to by us in writing, not sell, lease, dispose of, grant any security interest in or otherwise part with possession of, any Products;
- (e) not modify, move, configure, repair or otherwise interfere with any Products unless authorised by us and in accordance with our instructions; and
- (f) let us know immediately if any Products are lost, stolen or damaged and pay our charges for repairing or replacing any Products which have been lost, stolen or damaged.

We may also remove any Products from your premises if we reasonably consider that it is no longer required or it has been damaged or interfered with while under your control.

2.3 Separate Terms

Some of the Products and Services supplied to you may be subject to separate terms and conditions. You agree to be bound by, and will comply with, any separate terms and conditions that accompany the Products and Services (for example, an end user agreement presented as part of the installation process of any software), listed in a Product and Services Schedule or that we notify you of from time to time (in each case, Separate Terms) including any Separate Terms that are amended in accordance with their terms. Except to the extent expressly provided otherwise in a Product and Services Schedule you also acknowledge and agree that we exclude all liability for any defects or inadequacies in (or loss or damage caused by) any Products and Services that are subject to Separate Terms. For the avoidance of doubt, Separate Terms do not limit or prejudice clauses 2.10, 12, 13, and 14 nor any of our rights or remedies under the Agreement.

2.4 Software

If any software we supply is not subject to Separate Terms then, except where we have notified you otherwise, we grant you a non-exclusive, non-transferable and revocable licence to use the object code version of that software solely to enable your use of the Products and Services and subject to you complying with the Agreement and our directions in relation to that software. From time to time we may provide or make available to you modifications or updates to, or new versions of, software (in each case a Release). You must install each Release as soon as you reasonably can and at least within 5 Business Days if so requested by us.

2.5 Return of Product

When a Product or Service ends or is terminated for any reason then, except to the extent expressly provided otherwise in a Product and Services Schedule, you must at your own cost:

- (a) immediately stop using anything we have supplied to you in relation to the Products and Services (for example, equipment, documentation and software); and
- (b) when asked by us, let us recover any of these things from you or promptly return them to us in accordance with our instructions.

If you do not return or let us recover any of these things within 30 days of when we ask you must pay us on demand the full costs of replacing these things. However, you don't have to stop using or return any equipment for which title has passed to you.

2.6 When the Products and Services start

Except to the extent provided otherwise in a Product and Services Schedule, the Products and Services begin on the date we first supply them to you.

2.7 The Products and Services are for you only

The Products and Services are intended for your own use only and you must never assign, transfer, re-sell, sub-licence or otherwise provide any Products and Services to anyone else, except where we have expressly agreed otherwise in writing.

2.8 Our general commitments to you

Unless provided otherwise in a Product and Services Schedule, we will always:

- (a) provide the Products and Services using reasonable care and skill;
- (b) use our reasonable endeavours to ensure that the Products and Services we supply are safe, free from material defects and suitable for the specific purpose it is intended; and
- (c) use our reasonable endeavours to provide the Products and Services using appropriately skilled and experienced Personnel.

2.9 Timetable

We will always use our reasonable endeavours to provide the Products and Services by the dates specified in a Product and Services Schedule or, if no dates have been specified, by the dates agreed in writing with you. We will always try and notify you if we are unable to install the Products and Services by the target installation date, and we will consult with you to set a new date. Any dates or timeframes (including start dates) for the Products and Services are estimates only and not binding. Unless expressly provided otherwise in a Product and Services Schedule, we will charge you on a time and materials basis for all work you ask us to perform outside our standard business hours.

2.10 Responding to Faults

Where you report any fault in relation to the Products and Services we will always use our reasonable endeavours to respond to you within any applicable Service Levels. If there are no applicable Service Levels then we will always endeavour to respond to you within a reasonable period of time. We are not responsible for faults in Your Environment or for fixing faults that have been caused by you, Your Environment or any third party. We may charge you on a time and materials basis for investigating or working on any faults that fall outside our responsibilities under the Agreement.

2.11 Acceptance

A Product or Service is subject to acceptance to the extent expressly provided for in the applicable Product and Services Schedule. Where a Product or Service is subject to acceptance it will be considered to be accepted on the date that we have demonstrated to you, by way of our acceptance tests or otherwise, that the Product or Service substantially conforms to its Acceptance Criteria. However, if our testing is delayed for more than 5 Business Days for any reason that is not attributable to us, then the Product or Service is considered to be accepted on that 5th Business Day. Regardless of the above, a Product or Service will be considered to be accepted on the date that you use that Product or Service, or any results from that Product or Service, for your operational or business purposes.

2.12 The nature of the Products and Services

We aim to provide reliable Products and Services to you. However, the nature of the Products and Services means that, despite any other provision of the Agreement, we cannot and do not promise or guarantee that the Products and Services will be completely secure or free of faults, that they will operate continuously (including at a certain speed or location) or will always be accessible, that all faults can or will be corrected or that the Service Levels will always be achieved. This is in part because of the reliance of the Products and Services on systems, services and networks that are not owned or controlled by us.

2.13 Temporary Suspension

We may temporarily suspend or restrict one or more Products or Services if we consider it necessary or reasonable to do so (for example, to carry out repairs or maintenance work or to protect the Network). Where practicable, we will always try to:

- (a) schedule any major outages for maintenance or repair work at times that are outside of normal business hours; and
- (b) provide you with 2 Business Days' advance notice of any scheduled maintenance or repair work that is likely to disrupt your use of the Products or Services.

We may also temporarily suspend or restrict one or more Products and Services if we have reason to believe that you are in breach of the Agreement or causing us to breach any law or agreement. We may charge you a reconnection fee for the restoration of any Products and Services that have been suspended or restricted due to your breach of the Agreement.

Except to the extent expressly specified otherwise in a Product and Services Schedule, the Charges remain payable during the period of any suspension or restriction.

2.14 The technologies we use

We or the relevant Suppliers will determine how to provide the functionality of a Product or Service and are free to choose and change the manner in which, and the technologies by which, a Product or Service is provided. We may also modify or substitute any Product or Service if we believe such modification or substitution is reasonably required to provide a Product or Service.

2.15 Numbers, codes and addresses

Except to the extent specified otherwise in a Product and Services Schedule, any addresses, numbers and other codes that we or a Supplier allocate to you (including IP addresses and IP address schema) do not become your property and you must not transfer or sell any of them. We may change any address, number or code allocated to you, but will always try to give you as much prior notice as we reasonably can of any such change.

2.16 Collection of information

We may collect information about you and your users. You agree to our collection, storage, disclosure and use of information in accordance with our Privacy Policy. The information we collect about or from you or your users may also be disclosed to and used by Suppliers in connection with providing, maintaining, operating or improving the Products, Services or Network. This may include disclosure by us or Suppliers to external organisations which assist in billing, installation, repair and maintenance, credit reference agencies and law enforcement agencies.

3 Your General Responsibilities

3.1 Responsibility for use of the Products and Services

You are responsible for anyone who accesses or uses the Products and Services (including third parties), whether authorised by you or not, and for any consequences of such access or use (including any failure to comply with the Agreement).

3.2 Your Content

You are solely responsible for Your Content. You will ensure that Your Content does not infringe the rights of any third party and is not offensive, harmful, upsetting, unlawful or otherwise objectionable.

3.3 Your instructions

We may take instructions from any person who we think with good reason is acting with your permission.

3.4 Access to your premises

You will provide us, our Personnel and Suppliers with safe and reasonable access to your premises in relation to the Products and Services (for example, in relation to faults or to install, inspect, maintain, replace or remove Products). We will endeavour to give you advance notice of such access where it is practicable for us to do so. You must provide all reasonable cooperation and assistance to enable such access. Each party must meet the other party's reasonable requirements in relation to access to your premises.

3.5 Obtaining permissions

You must obtain, and assist us to obtain, all the consents, licences and permissions that we consider are necessary or prudent for us to obtain to provide the Products and Services to you (for example, consents to cross land, access and use premises and systems, make alterations to install equipment).

3.6 Your Environment

You acknowledge and agree that we do not have complete information about Your Environment and the provision of the Products and Services is dependent on there not being any changes, shortcomings, problems or unexpected things in Your Environment or any information that you provide to us. Except to the extent expressly provided otherwise in a Product and Services Schedule:

- (a) you are responsible for Your Environment, including supplying, maintaining and repairing Your Environment and ensuring that it functions properly and securely and remains compatible with (and will not harm) the Products, Services and Network;
- (b) you will follow our reasonable instructions in relation to any modifications that you may need to make to Your Environment so that you can use the Products or Services, including to avoid any danger or interference to the Products, Services or Network; and
- (c) if Your Environment causes a fault in the operation of a Product, Service or Network then you will, at our request, pay us the reasonable costs of restoring the Product, Service or Network.

3.7 General responsibilities

You must:

- (a) provide all of the information, cooperation and assistance that we may reasonably require in connection with the Products, Services and the Agreement;
- (b) comply with our reasonable directions and restrictions regarding the Products and Services and follow any of the policies and operational documentation that we supply to you;
- (c) follow our directions, and comply with the Telecommunications Act 2001 and other applicable laws and industry standards and codes, when establishing or maintaining a connection to the Products, Services or Network;
- (d) ensure all equipment that you connect to the Network is telepermitted and installed in accordance with our specifications or those of the applicable Supplier;

- (e) use the Products and Services for your own lawful purposes, and then only for the purpose they were provided and never in a way that infringes or contravenes any applicable laws, regulations or industry codes, infringes our or anyone else's rights or is a nuisance to anyone else;
- (f) ensure that all information you give to us, our Personnel and any Supplier is current, correct and complete and, when it changes, we are given updated information as soon as reasonably possible;
- (g) ensure that we have at all times all of the rights to Your Content that are reasonably required for us and the relevant Suppliers to provide, operate and maintain the Products, Services and Network, and perform the obligations in the Agreement, without infringing anyone else's rights or otherwise obligating us or any Supplier to you or any third party;
- (h) notify us immediately upon becoming aware of any actual or potential breach of security or unauthorised access or use of any part of the Products, Services or Network;
- (i) never use the Products and Services, or do anything else, that interferes with or damages the Products, Services or Network, or any underlying systems or data or that otherwise impairs the enjoyment of the Services by anyone else;
- (j) ensure that your user IDs, codes and passwords are kept confidential and secure and are properly used by authorised people, and immediately tell us whenever you have reason to believe that this has not happened;
- (k) never reproduce, modify, adapt, create derivative works from or commercially exploit all or any part of the Products and Services without first obtaining our written approval;
- (l) never disassemble, decompile, reverse engineer or otherwise try to discover any source code from any Products or in any software, files or systems underlying our Services, except to the extent expressly permitted by law (despite this limitation); and
- (m) ensure that your Personnel and service providers, and anyone else you are responsible for, comply with your obligations and responsibilities under the Agreement as if they were you.

4 Charges

4.1 Charges

You must pay the Charges without deduction or setoff of any kind and regardless of who uses the Product and Services. Unless expressly stated otherwise in a Product and Services Schedule, all Charges are exclusive of GST and all other taxes and duties, and these taxes and duties are payable by you. The Charges may change from time to time. For example, some of the Charges are determined by network operators and other third parties that we use (for example, international calling rates). However, we won't change any fixed charges during any minimum period for which we have agreed in a Product and Services Schedule that the charges will not change.

4.2 Excessive or unusual usage

If you exceed any usage threshold specified in a Product and Services Schedule we may charge you for the extra usage or upgrade you to a plan that better fits your usage. If your use of the Services is excessive or unusual and does not fit with the usage patterns that we usually expect of our business customers we may also restrict, suspend or end the Services on notice to you.

4.3 Invoicing and payment

Unless specified otherwise in a Product and Services Schedule, we will usually invoice you for fixed charges monthly in advance and other charges (including usage-based charges) in arrears. Charges will normally appear on your next invoice, but sometimes there may be a delay. You must pay all Charges using the payment method that we may approve from time to time. We may send our invoices to you by email. You must pay each invoice we send you by the due date specified on the invoice. This will be at least 14 days after the date we send the invoice. If you do not pay by that due date you will, if asked by us, pay interest, at the rate of 2% above the overdraft interest rate charged by our primary bank, on the amount due from the due date for payment until full payment has been made and pay all expenses (including legal costs on a solicitor-client basis) incurred by anyone in the recovery of the amounts owed to us.

4.4 Invoice errors

If you genuinely think there is an error in one of our invoices you must tell us about it before the due date for payment. You don't have to pay any part of the invoice that you think is in error while we investigate the situation, but the undisputed part of the invoice will remain payable by the due date for payment. This is the only time that you may withhold any of the Charges. If there is an error we will make the necessary adjustment to your next invoice. If we find that there is no error (or a reduced amount is payable) we will tell you and you must pay the full outstanding amount by the due date. If the due date has passed you must pay the outstanding amount straight away plus any interest that we may charge you under clause 4.3. You may not dispute an invoice more than 90 days after the date of the invoice. If any dispute in relation to an unpaid amount is not resolved within 2 months of the invoice date we may suspend provision of the Services until the matter has been resolved.

5 Intellectual Property

5.1 Intellectual Property

All rights, title and interest, including all intellectual property rights, in and to the Products, Services and Network (including in any underlying software, hardware, systems or materials), and in any changes or improvements to them, are owned by us or our third party licensors (collectively, Our IP). Except to the extent that we specifically grant you a licence under the Agreement, we do not grant you any rights, title or interest in or to Our IP. Your intellectual property remains yours, specifically but not limited to Access Controller.

5.2 Business names

We do not grant you any rights to any of our trademarks, logos, business names, product names, domain names or other brand features, or those of any Supplier.

6 Confidentiality

6.1 Confidential information

Except to the extent specifically permitted by the Agreement or approved in writing by the other party, each party:

- (a) will keep confidential all information obtained from the other party, in any form, that is confidential in nature or expressed to be confidential (Confidential Information) and not disclose it to any third party; and
- (b) will use the other party's Confidential Information solely for the purposes of the Agreement or otherwise for the purposes for which it was disclosed (in each case a, Permitted Purpose).

You acknowledge and agree that the Agreement, and any pricing, solution or design information that we have supplied to you, whether before or after the Start Date, is our Confidential Information.

6.2 Disclosure to Personnel

Either party may disclose the other party's Confidential Information to its Personnel that need to know that information for any Permitted Purpose, but must take all reasonable steps to ensure that they are informed of the confidential nature of the information and comply with obligations of confidentiality and use that are no less restrictive than this clause 6.

6.3 Disclosure to Suppliers

We may disclose or make available your Confidential Information to Suppliers, but only in connection with the Products, Services, Network or the Agreement. We will, to the extent required in a Products and Services Schedule, inform the relevant Suppliers of the confidential nature of your Confidential Information and take such other steps that are required by the Products and Services Schedule.

6.4 When these obligations do not apply

A party is not required to comply with clauses 6.1, 6.2 and 6.3 to the extent that the relevant Confidential Information is:

- (a) already in its unrestricted possession, without an obligation of confidentiality, at the time of receipt of the Confidential Information;
- (b) independently developed by that party;
- (c) in the public domain through no fault of that party;

- (d) disclosed to it by a third party, who has the right to make such disclosure, without an obligation of confidentiality; or
- (e) required to be disclosed by law.

7 Termination

7.1 Our right to terminate for convenience

We may terminate the Agreement, or any Product or Service or Product and Services Schedule, for convenience on at least 30 days prior written notice to you, provided that the effective date for termination cannot occur during the Minimum Term of any Service that would be terminated as a result.

7.2 Your right to terminate for convenience

You may terminate the Agreement, or any Product or Service or Product and Services Schedule, for convenience on at least 30 days prior written notice to us. However, if you do so we may require you to pay Early Termination Charges in accordance with clause 7.6.

7.3 Termination for cause

Either party may terminate the Agreement or any affected Product(s) or Service(s) or Products and Services Schedule(s), by written notice to the other party, if the other party:

- (a) commits a material breach of the Agreement that is incapable of being remedied;
- (b) commits a material breach of the Agreement that is capable of being remedied, and has failed to remedy that breach within 20 Business Days of receiving notice from the terminating party requiring that breach to be remedied; or
- (c) is placed in receivership, or wound up, or goes or is put into voluntary administration, liquidation or any other form of insolvency administration (other than for solvent amalgamation or reconstruction).

7.4 Ending the services

We may also end the provision of all or any part of a Product or Service if we are replacing the Product or Service or withdrawing it from general availability, we consider that the Product or Service is no longer commercially viable or our ability or right to provide the Product or Service has been stopped, suspended or restricted. We will endeavour to provide you with 3 months' notice before ending the provision of a Product or Service under this clause 7.4. Also, you are not required to pay any Early Termination Charges in respect of a Service if we end the provision of that Service under this clause 7.4.

7.5 Effects of termination

Termination of the Agreement or any Product or Service or Product and Services Schedule does not affect:

- (a) clauses that are intended to survive termination (which includes clauses 2.12, 2.16, 2.5, 6, 7, 8, 9, 10 and 11); and
- (b) any rights or remedies that have accrued beforehand.

7.6 Early Termination Charges

If you exercise any right to terminate under clause 7.2, or we exercise any right to terminate under clause 7.3, (in each case, Early Termination) and that results in one or more Products or Services being terminated during its Minimum Term (each such Product or Service being a Terminated Product or Service) then you will pay us Early Termination Charges being the monthly instalment multiplied by the number of months remaining of the Minimum Term plus GST, except to the extent that the applicable Product and Services Schedule expressly provides otherwise. Any Early Termination Charges are without prejudice to any other rights or remedies we may have against you. If you cease taking all or any part of the Products or Services for more than 30 days then we may deem that to be a termination by you of the applicable Products and Services under clause 7.2 (with the date of termination being the date you last obtained the applicable Services from us), and this clause 7.6 will apply accordingly.

8 Liability

8.1 Exclusions

To the fullest extent permitted by law, we will not be liable to you or anyone else for any loss or damage to information or data from any cause, any breach of security, any economic loss, any loss of business, revenue, profit, goodwill, opportunity or anticipated saving or any incidental, indirect, special or consequential loss or damage.

8.2 Our maximum liability to you

Our maximum combined liability to you arising under or in connection with the Agreement or its subject matter is limited to the lower of:

- (a) \$50,000 in relation to any event or circumstance or series of related events or circumstances; and
- (b) \$200,000 in the aggregate in relation to all events or circumstances occurring in any 12 month period.

8.3 Suppliers and Personnel

The Suppliers do not provide, grant or confer any benefit, right or privilege on you or any other person under the Agreement. The Suppliers and Our Personnel have, to the fullest extent permitted by law, no liability to you or anyone else arising from or in connection with the Products and Services or the Agreement. This clause 8.3 is for the benefit of, and enforceable by, Suppliers and our Personnel, but the Agreement may be amended without their consent.

8.4 When these limitations and exclusions apply

The limitations and exclusions of liability in the Agreement (including in this clause 8) apply however any liability arises, whether in contract, under indemnity, in tort (including negligence) or otherwise and even if we knew or should have known about the possibility of loss or damages.

8.5 Warranties excluded

Except as expressly set out in the Agreement, we exclude all warranties, representations and conditions (whether express or implied and however arising) to the fullest extent permitted by law. You also agree that you are acquiring the Products and Services for the purposes of a business and the provisions of the Consumers Guarantees Act 1993, and sections 9, 12A and 13 of the Fair Trading Act 1986, do not apply in connection with the Products and Services.

8.6 Your indemnity

You indemnify us, our Personnel and each Supplier (each an Indemnified Person) from and against any claim, liability, damage, loss, cost or expense (including damage to the Network) suffered or incurred by an Indemnified Person, at any time, as a result of:

- (a) your use of the Products or Services; or
- (b) any act or omission by you or your Personnel, end users or service providers that is negligent or is as a breach of the Agreement.

We will also at all times use reasonable endeavours to mitigate our losses, expenses, damages and costs giving rise to the indemnity. The indemnity in this clause 8.6 is for the benefit of, and enforceable by, our Personnel and each Supplier, but the Agreement may be amended without their consent.

9 Dispute resolution

9.1 Step One: Dispute notice

If at any time a party considers that a dispute has arisen in connection with the Agreement or its formation (a Dispute), the disputing party may give written notice to the other party that a Dispute has arisen (Dispute Notice).

9.2 Step Two: Negotiation

Following a Dispute Notice the parties must promptly enter into negotiations with a view to resolving the Dispute.

9.3 Step Three: Mediation

If the Dispute has not been resolved within 10 Business Days of the Dispute Notice (or such other period that you and we may agree), then either party may refer the Dispute to mediation by written notice to the other (Mediation Notice). Promptly following the Mediation Notice, the parties shall attempt to agree the appointment of a mediator approved by LEADR New Zealand Incorporated (LEADR) and attempt to resolve the Dispute by mediation in Wellington, applying the then current LEADR mediation agreement or rules (as the case may be), subject to any variation agreed by the parties. If the parties are unable to agree on a mediator within 5 Business Days of the Mediation Notice, a mediator may be appointed by LEADR. The mediation will be discontinued if either party gives an Arbitration Notice as set out below.

9.4 Step Three: Arbitration

If the Dispute has not been resolved within 40 Business Days of the Dispute Notice (or such further time as you and we may agree), then either party may refer the Dispute to arbitration by written notice to the other (Arbitration Notice). The arbitration will be determined by a sole arbitrator (being a New Zealand resident) as soon as possible in Wellington. If the parties cannot agree on an arbitrator within five Business Days of the giving of the Arbitration Notice, the arbitrator will be the President for the time being, or his or her nominee, of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration will be conducted in accordance with the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule to that Act). The award in the arbitration will be final and binding.

9.5 No court proceedings

All Disputes will be resolved in accordance with this clause 9, although nothing in this clause prevents a party from seeking or obtaining any urgent interim or interlocutory relief.

10 General Provisions

10.1 Changes to the Agreement

Except to the extent that the Agreement otherwise provides that we may change an aspect of it or the Products or Services (for example, where we have a right to change the Charges or how we provide the Services), any variation to the Agreement must be in writing and signed by the authorised representatives of both parties. Where either you or us request a variation to the Agreement the other must not unreasonably withhold or delay their agreement to that variation.

10.2 Dependencies

The provision of the Products and Services is subject to any assumptions and dependencies that are detailed in the Agreement. If any assumption or dependency proves to be invalid or inaccurate or you otherwise fail to perform your responsibilities, (each a Dependency Failure) then, without limiting any of our other rights or remedies:

- (a) we will not be liable for any delay or failure to perform our obligations that is caused or contributed to by the Dependency Failure; and
- (b) we will be entitled to a variation to the relevant Products and Services provided in a Product and Services Schedule to the extent reasonably required to reflect the impact of the Dependency Failure (including to increase the Charges and extend timeframes) (each such variation being a Resulting Variation).

We may from time to time submit to you in writing any Resulting Variation we think is required and, unless you notify us within 5 Business Days that you disagree with the submission, the Agreement will be deemed to be varied in accordance with that submission.

If you have so notified us of your disagreement, the Resulting Variation will be resolved by you and us, acting reasonably, under clause 9 and we may, without limiting any of our other rights or remedies, suspend some or all of the Services until a Resulting Variation has been agreed. If the Resulting Variation has not been agreed within 15 Business Days of our original submission, or we otherwise consider that the Dependency Failure will have a material adverse impact on us or the Services, we may also terminate the relevant Product or Service provided in the a Product and Services Schedule by notice in writing to you.

10.3 Non-solicitation

Neither party may, during the term of the Agreement or for six months afterwards, directly or indirectly employ or hire any Personnel of the other party with whom the first party has had contact in relation to the Agreement, unless:

- (a) the other party consents in writing; or
- (b) the last such contact was more than 6 months before such employment or hiring.

10.4 Monitoring

We are entitled, but not obliged, to monitor your use of the Services to check your compliance with the Agreement, in connection with the provision or improvement of the Services or as required by law.

10.5 Subcontracting

We may subcontract any of our obligations under the Agreement, in which case we will remain responsible to you for meeting those obligations.

10.6 Assignment

You may transfer or assign any of your rights or obligations under the Agreement provided you have obtained our prior written consent. We may transfer or assign all or any part of our rights or obligations under the Agreement without your consent.

10.7 Causes beyond our control

We are not liable for any failure or delay in complying with the Agreement where such failure or delay has been caused by any event or circumstances beyond our reasonable control. This includes power outages, severe weather, the acts or omissions of the government or any agencies or regulatory authorities or any defects or failures in third party electricity network or infrastructure.

10.8 Notices

Anything either you or us is required to notify or tell the other under this Agreement (a Notice) must be in writing and sent by email, hand or direct mail to the relevant address or number detailed on the cover page of this Master Product and Services Agreement, or such other address or number specified in writing by the other from time to time for that purpose. Any Notice under the Agreement will be deemed to be received:

- (a) in the case of hand delivery, at the time of actual delivery to the recipient's address;
- (b) in the case of delivery by post, 3 Business Days after posting; or
- (c) in the case of delivery by email, at the time the email was sent (unless the sender receives a delivery failure notification).

However, if a Notice is received or deemed to be received after 5.00pm on a Business Day in the place that it is sent, or on a day which is not a Business Day in that place, it will be deemed not to have been received until the next Business Day.

10.9 Non-restrictive relationship

Despite any other provision in the Agreement, nothing in the Agreement restricts us from providing the same or similar Products or Services to, or entering into similar agreements with, other parties or entities or in any way transferring or exploiting any intellectual property rights owned by us or our third party licensors.

10.10 Our relationship to you

No agency, partnership or joint venture relationship is intended or created by the Agreement. Except as expressly provided for in the Agreement, only you and us have any benefit under the Agreement and any right to enforce the Agreement.

10.11 These terms are our entire agreement

The Agreement constitutes the entire agreement and understanding between you and us in respect to its subject matter and replaces all previous agreements, promises, assurances, understandings and representations relating to that subject matter (whether written or oral, express or implied) and any additional or different terms that you may provide to us (including on any purchase orders). Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, term or assurance (whether made innocently or negligently) that is not set out in this Agreement.

10.12 Waiver

No waiver by any party of its rights under the Agreement will be effective unless it is in writing and signed by that party. Any delay or failure by a party to exercise any rights or remedies under the Agreement does not prevent that party from exercising that right or remedy, or any other right or remedy, on that or any other occasion.

10.13 The rights and remedies are not exclusive

Except as expressly provided otherwise in the Agreement, any right or remedy under the Agreement is cumulative and does not limit any other rights or remedies under the Agreement or at law.

10.14 Invalidity

If any provision of the Agreement is found to be invalid or unenforceable, the remaining provisions will be enforced to the fullest extent possible, and the remaining provisions will remain in full force and effect.

10.15 New Zealand law applies

These terms are governed by the laws of New Zealand and you and us both submit to the non-exclusive jurisdiction of the New Zealand courts.

11 Definitions and interpretation

11.1 Definitions

In the Agreement, unless the context requires otherwise:

Acceptance Criteria in relation to a Product or Service, means any acceptance criteria for those Products or Services described in the applicable Product and Services Schedule. If there are no acceptance criteria so described then the acceptance criteria is the absence of any material reported faults in the relevant Service during a period of 2 days from the date that we have notified you that the Service has been activated or implemented.

Agreement has the meaning given on the first page of the Master Products and Services Agreement.

Business Day means any day excluding a Saturday, Sunday, New Zealand public holiday and Wellington Anniversary Day.

Charges means our charges in relation to the Products and Services as described in the Agreement or, if they are not so described, as set out in our then current list of charges for the applicable Products or Services.

Early Termination has the meaning given in clause 7.6.

Early Termination Charges means an amount equal to:

- (a) the fixed Charges that would otherwise have been payable for each Terminated Product or Service from the date of termination of the Terminated Product or Service until the expiry of the Minimum Term for that product or Service; plus
- (b) to the extent not included in (a) above, any additional charges we have to pay any Supplier as a result of Early Termination; plus
- (c) to the extent not included in (a) or (b) above, any other costs we reasonably incur as a result of Early Termination (for example, in relation to the recovery or de-installation of Products) together with any unrecovered costs that have been waived or amortised under the relevant Product and Services Schedule (which includes any costs incurred in preparing to provide the Service to you).

Minimum Term means the minimum term for a Product or Service as specified in the applicable Product and Services Schedule.

Network means the telecommunications infrastructures, systems and facilities used by us or any Supplier to provide Services to you.

Products means any equipment, software (including software provided as part of any equipment), documentation and other goods or property that we provide to you, including as described in any Product and Services Schedule. Products may or may not be owned by us.

Product and Services Schedule refers to the Product and Services Schedule contained in this Agreement and any Product and Services Addendum to this Agreement.

Personnel means officers, employees, contract staff and agents.

Separate Terms has the meaning given in clause 2.12.

Services means any and all services that we supply or make available to you, including the services described in any Product and Services Schedule.

Service Levels means any service levels, performance standards, KPIs or other targets specified in a Service Level Agreement (SLA).

Supplier means any network operator, supplier, service provider or contractor that we use in connection with the Products, Services or the Agreement, together with their Personnel.

Terminated Product or Service has the meaning given in clause 7.6.

Your Content means any information, data or other materials (including all documentation, software and text, sound, image and video files) that you or your Personnel, users or service providers provide to us or otherwise send, receive, store, communicate, generate or make available by using the Products or Services.

Your Environment means your facilities, infrastructure and information technology and telecommunications environment (including software, hardware, systems and networks) and anything else that is not provided by us.

11.2 Inconsistencies between documents

(a) **Between key documents:** In the event of any conflict or ambiguity between any of the following documents, they will be interpreted in the following descending order of priority:

- (i) Master Product and Services Agreement;
- (ii) Products and Services Addendum

(b) **Within key documents:** In the event of any conflict or ambiguity between any of the following parts of any document in sub-clause (a), they shall be interpreted in the following descending order of priority:

- (i) the body of the document;
- (ii) any attachment to the document; and
- (iii) any document referenced in that document (and that is not otherwise attached).

(c) **Overriding the general rules.** The interpretation rules in sub-clause (a) and (b) apply unless a part of the Agreement expressly provides otherwise.

11.3 Interpretation rules

In the Agreement, unless the context otherwise requires: words in the singular number include the plural and vice versa; where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; unless otherwise stated, all references to dollars, value and price are references to the New Zealand currency; a reference to a party includes its successors and permitted assigns; any examples in the Agreement, and references to “including” and similar words, are illustrative only and do not imply any limitations; any references to a person includes a company, trust, university, body of persons (corporate or un-incorporate), government department, agency or body, ministry, crown entity or municipal authority; any reference to any statute is a reference to that statute as from time to time amended, re-enacted or replaced, and includes any regulation, order-in-council or other instrument or subordinate legislation from time to time issued or made under that statute; clause and other headings are for ease of reading only and do not affect the interpretation of these terms; and any document may be a web page at a specified URL. We may from time to time provide you with an updated URL to replace any URL referred to in the Agreement