

TERMS AND CONDITIONS

These are the terms and conditions that apply between you (the **Customer** or **you**) and Vital Limited (**Vital, Us** or **We**) in relation to the supply to you by Vital of the Services.

1. INTERPRETATION

1.1. In this Agreement, unless the context requires otherwise:
Agreement means this agreement between us and you, including the front page, these terms and conditions and the Service Descriptions.

Charges means our charges (exclusive of GST) for the Services, as set out in the Service Description/s, which may include fixed charges, usage charges, additional fees and/or one-off fees.

Force Majeure Event means any event or circumstances beyond our reasonable control, including (without limitation) any act of God, pandemic, fire, flood, storm, earthquake or other natural disaster, any act of a public enemy, sabotage, embargo, malicious damage, riot or war, any Government intervention and any defect in or failure of any third-party network or infrastructure.

GST means goods and services tax as defined in the Goods and Services Tax Act 1985.

Initial Term means, in relation to a Service, the initial term set out in the Service Description.

Late Payment Interest Rate means a rate 2% per annum above the rate charged by our bankers for unsecured overdraft facilities as at the Payment Date.

Network means the network or networks that we use to provide the Services to you (including any network to which we interconnect).

Our Equipment means any equipment (including software) (which we may or may not own) that we provide to you in connection with the provision of Services.

Payment Date means the payment date set out on each invoice we send to you.

PPSA means the Personal Property Securities Act 1999.

Security Agreement has the meaning set out in the PPSA.

Security Interest has the meaning set out in the PPSA.

Service means all or part of a service which we have agreed to provide to you and that is referred to in a Service Description and "Services" has a corresponding meaning.

Service Description means a schedule attached to this Agreement describing a Service, the Charges for that Service and any additional terms applying to that Service.

Service Level means in relation to a Service any service levels set out in a Service Description.

Working Day means a day other than Saturday or Sunday on which registered banks are open for business in Auckland, Wellington and Christchurch.

Your Equipment means the equipment that you provide so that you can use the Services.

1.2. In interpreting this Agreement:

- (a) references to either party include its respective successors in title and permitted assigns; and
- (b) a reference to any date, which is not a Working Day, will be deemed to be a reference to the next Working Day.

2. TERM OF AGREEMENT

2.1. This Agreement starts on the date it is signed by both parties and will continue until terminated in accordance with this Agreement.

3. COMMENCEMENT AND TERM OF SERVICES

- 3.1. We will use reasonable endeavors to begin providing each Service to you in accordance with the preferred ready for service date set out in a Service Description. This date is subject to equipment and installation availability.
- 3.2. We will continue to provide, and you will continue to purchase each Service during the Service's Initial Term and on a month by month basis following such Initial Term until such Service is terminated in accordance with this Agreement.

4. THE SERVICES

- 4.1. We will always use reasonable endeavours to:
 - (a) provide the Services to you with due care and skill;
 - (b) provide reliable and quality Services (although we do not guarantee that the Services will be continuous or fault free);
 - (c) meet any Service Levels; and
 - (d) ensure that all work that we perform in connection with the provision of the Services is carried out by competent and suitably qualified personnel and in a professional manner.
- 4.2. Subject to clause 13.2, you may request changes to your Services at any time by email to your account manager or our service desk at servicedelivery@vital.co.nz. Any change will be effective on our confirmation. We will advise you if a new Service Description is required.
- 4.3. From time to time we may temporarily suspend or restrict a service so that we can carry out maintenance and development work. We will always try to make sure that such suspensions or restrictions take place outside normal business hours.
- 4.4. We retain the right to vary the availability and location of the Service.

5. YOUR USE OF THE SERVICES

- 5.1. You will:
- (a) ensure your use of the Services is on a reasonable use basis, we will advise you if we consider your use to be unreasonable and may ask you to pay additional charges in relation to such use. We will always discuss your usage with you prior to applying such additional charges;
 - (b) not use the Services in any way which is unlawful;
 - (c) not use the Services in any way which could interfere with or damage our Network, any other operator's network, or another customer's enjoyment of our services;
 - (d) give us and our third-party suppliers such access to your premises as is reasonably necessary to enable us or our third party suppliers to fix any fault with the Services;
 - (e) follow our reasonable instructions about the use of the Services;
 - (f) only use the Services for the purposes for which they are provided; and
 - (g) only use the Services for your own internal business requirements and not sell, rebill or otherwise provide any of the Services to anyone else without our prior written consent.
- 5.2. You will make sure that all information you give to us is complete and accurate and will advise us promptly if you change premises or notice address.
- 5.3. You will, if we ask you to, obtain any third party authorisation, licence or consent that we reasonably require in connection with the provision of the Services (such as building consent).
- 5.4. You acknowledge that you are responsible for any use of the Services by any third party, whether authorised by you or not.
- 5.5. If you breach clause 5.1 and we incur costs, you will, if we ask you to, reimburse us for our reasonable costs.
- 5.6. We may charge you on a time and materials basis for diagnosing and/or fixing faults reported by you that fall outside our responsibilities under this Agreement or are not attributable to our Equipment, software or network.

6. INVOICING AND PAYMENT

- 6.1. You will pay our Charges for all the Services we provide to you, irrespective of who ultimately uses them. You will pay any GST that may be payable in addition to the Charges.
- 6.2. Any work which we undertake at your request that is not part of the Services will be paid for by you at our then current rates.
- 6.3. We will invoice you at approximately monthly intervals for the Services we provide to you. Fixed charges will normally be invoiced in advance and other charges will normally be invoiced in arrears.

- 6.4. We may charge an administration fee where you elect to have invoices sent by post rather than electronic means.
- 6.5. Subject to clause 7.1, you will pay each invoice by the Payment Date and without set-off, counterclaim or deduction.
- 6.6. If any invoiced amount remains unpaid after the Payment Date we may charge you interest at the Late Payment Interest Rate on that amount until it is paid in full.
- 6.7. If we have to spend money on collecting overdue amounts from you, then you will reimburse us for those costs.
- 6.8. In relation to a Service, except during the Initial Term for such Service, we may amend the Charges at any time by giving one month's notice in writing to you.
- 6.9. Unless agreed otherwise, after every anniversary during the term of our agreement with you, Vital may, at its sole discretion, adjust the charges by the **CPI Increase**. The term **CPI Increase** means the percentage increase in the Consumer (All Groups) Price Index (CPI) issued by Statistics New Zealand (or if Statistics New Zealand does not exist on the relevant date, issued by the then equivalent authority), from the quarter immediately preceding the anniversary date. In the event of any such CPI Increase adjustment, we will give you one month's prior notice in writing.

7. DISPUTED ACCOUNTS

- 7.1. If you believe that an invoice contains a mistake, please advise us in writing by the Payment Date the reasons why and we will investigate the matter. You may withhold payment of any such disputed amount, although you must still pay by the Payment Date any undisputed amount.
- 7.2. If we agree that there is a mistake, we will correct the invoice immediately. If we find that there is no mistake, and the Payment Date has already passed, you will pay the outstanding amount straight away plus interest that we may charge you under clause 6.6.

8. CREDIT ARRANGEMENTS

- 8.1. We are not obliged to begin providing Services to you until we have satisfied ourselves that you will be able to pay the Charges. If we have already begun providing Services to you and we then receive an unsatisfactory credit check, we may stop providing any Services straight away.
- 8.2. You agree that we may pass on your information to credit reporting organisations.

9. OUR EQUIPMENT

- 9.1. If we provide Services that require location of our Equipment on your premises then you will give our representatives safe access to the premises so that we can install, inspect, maintain, replace or remove our Equipment.

- 9.2. We will always make sure that our Equipment is safe, free from material defects and fit for the specific written purpose for which it is provided. You will:
- (a) provide a safe and secure operating environment for our Equipment;
 - (b) take reasonable precautions to protect our Equipment from radio or electrical interference and power fluctuations;
 - (c) not attach our Equipment to any vehicle or other property you do not own without our written permission; or
 - (d) not, and will not attempt to, mortgage, sell or otherwise encumber or deal with our Equipment;
 - (e) not damage or interfere with our Equipment;
 - (f) pay our charges for repairing or replacing any of our Equipment that is lost or damaged while located on your premises; and
 - (g) if we ask you, obtain and maintain insurance (to a value agreed by us) with a reputable insurance company against any loss or damage to our Equipment while under your control.
- 9.3. If our Equipment is no longer required, or if you damage or interfere with our Equipment, then we may remove it from your premises.
- 9.4. Our Equipment remains the property of Vital at all times (notwithstanding that it may have become attached to or be part of any vehicle or other property in which it is installed).
- 9.5. In relation to our Equipment, or anything else we have provided you that you have not purchased outright and paid for, you agree that this Agreement constitutes a Security Agreement and you hereby grant to us a Security Interest in all such items and in any proceeds (the **Collateral**) and agree that the following provisions shall apply with respect to the Collateral:
- (a) we may at any time register a financing statement in respect of all or any of the Collateral and you waive your right to receive a copy of a verification statement in respect of any financing statement;
 - (b) you will, at our request, provide all information necessary to enable us to perfect our interest in the Collateral;
 - (c) you will not sell or dispose of any of the Collateral or permit any other person to have or obtain a security interest in any of the Collateral;
- 9.6. If you are in breach of any of your obligations under this Agreement in respect of the Collateral:
- (a) you will promptly upon receiving a written request from Vital, at your own cost and expense, deliver all or any of the Collateral to Vital at such place or places as Vital directs; and
 - (b) If you fail to deliver any of the Collateral as required under this Agreement, we may at any time, either itself or through an agent, enter into any place where the Collateral is located and remove the Collateral.

10. YOUR EQUIPMENT

- 10.1. You will ensure that all of your Equipment that is connected to the Network and/or to our Equipment meets, and is installed in accordance with, our requirements.
- 10.2. Notwithstanding anything else in this Agreement, if your Equipment causes a fault in the operation of a Service then you will, if we ask you to, pay us the reasonable costs of restoring that Service.

11. EQUIPMENT SALES

- 11.1. Ownership of Purchase Equipment shall pass to you on payment of such equipment in full without set off or deduction.
- 11.2. Risk in Purchase Equipment shall pass to you when we deliver such equipment to you and you shall be responsible for any damage, liability, loss, expense, cost or similar caused by, or in relation to such equipment.
- 11.3. Unless we have agreed otherwise, you are responsible for installation of Purchase Equipment. Such installation must be undertaken in accordance with any specifications we provide.
- 11.4. We will pass through any manufacturers warranty in the Purchase Equipment to you.
- 11.5. Further, we warrant that as at the delivery date the Purchase Equipment is:
- (a) of merchantable quality; and
 - (b) compliant with all mandatory applicable professional and regulatory standards applying to the Purchase Equipment in New Zealand; and
 - (c) free from defects.
- 11.6. If the Purchase Equipment does not comply with the warranty set out in clause 11.4 other than by reason of misuse, use other than in accordance with this Agreement or damage caused by you, we shall, at our sole option, either repair or replace the Purchase Equipment. You shall be responsible for delivering such Equipment to our nominated repair location.
- 11.7. Except as expressly provided in clause 11.5, we shall have no liability for any breach of warranty in respect of any of the Purchase Equipment.
- 11.8. You acknowledge that you have made your own independent enquires into the Purchase Equipment and therefore waive any claim you may have against us or our advisers, employees, officers or agents (whether arising in tort, in contract, by operation of law or otherwise) in respect of any information or statements provided by us.
- 11.9. Except as set out in a Service Description, you will be responsible for all licences or approvals required to operate the Purchase Equipment.

12. SUSPENSION

- 12.1. We may suspend the provision of Services at any time if you breach, or we consider that you have breached, this Agreement.
- 12.2. If we suspend the provision of Services to you at any time, we may require you to pay a temporary disconnection charge and/or a reconnection charge (as a condition of lifting any such suspension).

13. TERMINATION

- 13.1. This Agreement may be terminated by either party by 30 days notice in writing to the other where we have ceased providing all Services.
- 13.2. We may cease providing any Service after the expiry of its Initial Term by giving you not less than 30 days notice in writing.
- 13.3. You may give up any Service or terminate this Agreement at any time, by giving us not less than 30 days notice in writing. Our charges are payable by you throughout the 30 day notice period even if you are outside the Initial Term. In addition, if you terminate a Service or this Agreement during the Initial Term of a Service you will be required to pay any early termination charges that are payable under clause 14.2.
- 13.4. Notwithstanding clauses 13.1 to 13.3, either party may terminate this Agreement or any particular Services, at any time by giving the other party notice in writing where the other party:
 - (a) commits a material breach of this Agreement which is incapable of being rectified;
 - (b) commits a material breach of this Agreement which is not rectified within 30 days of written notice of that breach having been given to the other party by the terminating party;
 - (c) (or its directors or principals) goes into liquidation, bankruptcy or receivership (or it appears that any of these events is likely to happen);
 - (d) has a receiver or statutory manager appointed over any or all of its assets; or
 - (e) is removed from the Companies Register (other than as a result of a solvent amalgamation), is dissolved or dies.
- 13.5. We may, without liability to you, end the availability of any or all of the Services provided to you or not commence the supply of any or all of the Services to you if:
 - (a) the relevant Service is not commercially viable; or
 - (b) we are unable to provide the relevant Service; or
 - (c) we decide to withdraw the relevant Service from general availability.We will consult with you before taking any of these steps.
- 13.6. To avoid doubt, clause 13.2 does not apply if we end the availability of any or all of the Services under clause 13.5.

14. CONSEQUENCES OF TERMINATION

- 14.1. When this Agreement is terminated or Services have ceased to be provided to you:
 - (a) clauses 13 to 23 (inclusive) together with the other provisions of this Agreement which are required to give effect to those clauses, will remain in effect;
 - (b) each party must immediately return to the other any information, equipment or any other item which is in its possession and which belongs to the other party and, in the case of cessation of particular Services, such information, equipment or items relating to the relevant Services; and
 - (c) we may access your premises to remove our Equipment. If we are unable to gain access we may invoice you and you will pay the standard replacement charge for the Equipment in question.
- 14.2. If you give up any Service or terminate this Agreement under clause 13.3 or we terminate this Agreement or any Service under clause 13.4 prior to the expiry of the Initial Term of a Service, then we may require you to pay in relation to such Service a disconnection fee equal to the balance of the Charges that would have been due under this Agreement had the Service remained in place for the entire Initial Term (you acknowledge that this recovery is in respect of our actual losses and does not amount to a penalty).
- 14.3. Termination and the rights set out in clause 14.2 are without prejudice to any other rights, remedies or obligations either party may have under this Agreement.

15. INFORMATION AND PRIVACY

- 15.1. You authorise us to collect, store use and disclose information about or provided by you (including personal information) in accordance with our privacy policy available at vital.co.nz.
- 15.2. You agree that we may monitor and/or record communications made between you and us for the purpose of maintaining and improving the quality of our service.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1. You acknowledge that all rights to intellectual property contained in or relating to the Services and/or the Equipment (including any improvements or changes to any Service or to the Equipment) belong to us or to our licensors. However, you are licensed by us to use that intellectual property on a non-exclusive and non-transferable basis for the term of this Agreement, for the purposes, and in accordance with the terms, of this Agreement.
- 16.2. Clauses 16.1 and 17.1 create a right and benefit enforceable by our licensors (including under the Contract and Commercial Law Act 2017).

17. SOFTWARE

- 17.1. If we provide you with any software in connection with the provision of the Services, you:
- (a) will not copy, modify or reverse assemble the software;
 - (b) are licensed by us to use the software on a non-exclusive and non-transferable basis for the term of this Agreement, only for the purposes, and in accordance with the terms, of this Agreement and any terms upon which the software is ordinarily licensed or which we notify to you.

18. COMPENSATION AND LIABILITY

- 18.1. You acknowledge that
- (a) you are acquiring, or holding yourself out as acquiring, the Services for the purposes of a business;
 - (b) the provisions of the Consumer Guarantees Act 1993 (the **CGA**) do not apply to this Agreement; and
 - (c) you agree that it is fair and reasonable that the CGA does not apply.
- 18.2. Our liability to you under or in connection with this Agreement for any loss or damages in a 12 month period that you incur as a direct result of our failure to meet any of our obligations under this Agreement or otherwise, will be limited to the Charges paid by you under this Agreement in such 12 month period.
- 18.3. No claim may be made by you against us of any kind or nature unless you notify us in writing within 60 days of the date on which the claim first arises.
- 18.4. Notwithstanding any other clause in this Agreement we will not be liable to you in tort, contract or otherwise for any economic loss, loss of profit, loss of revenue, loss of anticipated profit or savings, or for any indirect, special or consequential loss or damage, however caused.
- 18.5. No other network operator and/or third-party supplier (including their officers, employees, contractors and agents) will be liable to you for loss or damage of any kind arising from your use of the Services. This clause creates a right and benefit that other network operators and/or suppliers can enforce as a defence to any claim.
- 18.6. Apart from the warranties expressly set out in this Agreement, all other warranties, express or implied, are excluded to the extent permitted by law.
- 18.7. You acknowledge that you are relying on your own assessment of the Service and coverage to be provided.

19. DISPUTE RESOLUTION

- 19.1. If any dispute arises out of this Agreement, neither party will commence proceedings relating to the dispute (except where urgent interlocutory relief is sought) unless that party has first complied with this clause 19.
- 19.2. A party claiming a dispute has arisen is to give written notice to the other party specifying the nature of the dispute. On receipt of that notice, the parties will use all

reasonable endeavours to resolve the dispute by discussion, negotiation or other informal means.

- 19.3. If the parties do not resolve the dispute within 20 Working Days of the receipt of the notice then either party can, by writing to the other, require that the dispute be referred to mediation. If the parties cannot agree the mediator or terms of the mediation, the President of the New Zealand Law Society will appoint the mediator, who will determine the terms of mediation.

20. NOTICES

- 20.1. A notice shall be deemed to have been validly given if it is in writing (including by e-mail) and is sent to the relevant party at any address listed in this Agreement or subsequently notified by either party to the other in writing and shall be deemed to have been duly given or made:
- (a) if by mail, on the fifth working day after being posted by mail correctly addressed and stamped;
 - (b) if by hand, on personal delivery to the recipient or to such address; and
 - (c) if by e-mail, when transmitted to the correct address with no indication of incomplete transmission to such address,

PROVIDED THAT if a notice is given by hand or e-mail after 5PM on a working day or on a day which is not a working day it shall be deemed to have been received at 9AM on the next following working day.

21. ENTIRE AGREEMENT AND VARIATION

- 21.1. This Agreement supersedes all prior discussions and agreements that you may have had with us regarding the subject matter of this Agreement and represents the entire agreement between the parties regarding such subject matter.
- 21.2. No variation or waiver of any provision of this Agreement shall be recognised or binding unless it is in writing and signed by authorised representatives of both parties.

22. CONFLICT

- 22.1. If there is any inconsistency between the terms contained in different parts of this Agreement, the parts of this Agreement will apply in the following (descending) order of precedence:
- (a) the front page of this Agreement;
 - (b) Service Descriptions;
 - (c) these terms and conditions.

23. GENERAL

- 23.1. You may assign any of your rights and obligations under this Agreement to any other person provided that you have obtained our prior written consent (such consent not to be unreasonably withheld).
- 23.2. From time to time we may assign any of our rights and obligations under this Agreement without your consent.
- 23.3. We may subcontract any or all of our obligations under this Agreement without your consent, but we will remain ultimately responsible to you for carrying out those obligations.
- 23.4. We will not be liable to you for any failure to perform our obligations under this Agreement during the time and to the extent that such performance is prevented by reason of a Force Majeure Event. We will notify you as soon as practicable after the Force Majeure Event occurs and endeavour to provide you with information regarding the extent of our inability to perform and an estimate of the time likely to be required to overcome the Force Majeure Event. We will use our reasonable endeavours to remedy or mitigate the effect of the Force Majeure Event and to complete our obligations under the Agreement as far as reasonably practicable. You will not be required to pay any charges for any services to the extent that such services are not provided by us due to a Force Majeure Event.
- 23.5. No amendment to this Agreement will be valid unless it is recorded in writing and signed by both parties.
- 23.6. If either party delays or fails to enforce any of its rights or remedies under this Agreement, this will not constitute a waiver by that party of that or any other right or remedy available to it.
- 23.7. This Agreement may be executed in several counterparts (including copies), all of which when taken together shall constitute one single agreement between the parties.
- 23.8. The laws of New Zealand govern this Agreement. The parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.