

## General terms and conditions for provision of products and services

These General Terms and Conditions set out the terms and conditions on which HCS New Zealand Limited provides Products and Services to you except to the extent they have been specifically modified on the face of the Agreement.

### Definitions

**"Millennium"** means HCS New Zealand Limited or any of its subsidiaries, "we", "our" or "us".

**"Client"** means the person/s or entity purchasing the Goods/Services as specified in any invoice, document or order, and if there is more than one client is a reference to each Client jointly and severally, "you", "your".

**"SOW"** means a statement of work, service schedule or addendum, quote, or order form.

**"Services"** means all services which are supplied by us to you and includes services described in any Statement of Work (SOW) or written agreement and any Products provided as part of a Service.

**"Products"** means all hardware or related equipment (including any Software) and all other goods or property which are supplied by us to you (or any of your Related Companies).

**"Software"** means all system software, application software, software tools and software utilities which are supplied by us to you (or any of your Related Companies) and includes any software provided as part of the Product or Service.

**"Agreement"** means a services agreement or agreement to supply product.

### The Agreement

- 1.1 We may vary this Agreement from time to time by notice in writing to you and any such amendment shall be binding upon receipt by you or a later date stated in the notice.
- 1.2 If any part of these Terms is found to be unenforceable, it will be deemed to be severed from the remainder of the Terms to the extent of its unenforceability, but the remainder of the Terms will remain in full force and effect.
- 1.3 We will use all reasonable endeavours to meet the timings agreed for completion of the installation of services and the delivery of products. You agree that our ability to meet these dates may depend on you providing us with any required information, participating promptly in reviewing material we have produced or otherwise providing us with the inputs and access we need from you.

### Supply of Products & Services

- 2.1 We will supply the Products and/or Services to you as agreed between us in writing or as set out in a SOW. Any amendment to Product or Service orders must be agreed by the parties in writing.
- 2.2 We will use all reasonable endeavours to meet the timings agreed for completion of the Services. You agree that our ability to meet these dates may depend on you providing us with any required information, participating promptly in reviewing material we have produced or otherwise providing us with the inputs and access we need from you.
- 2.3 We will comply with your reasonable on-site policies and procedures where applicable to the Services, and where these are notified to us in advance. We reserve the right to increase our charges where any policy causes us to incur additional costs.

### Delivery of Products

- 3.1 Unless otherwise agreed in writing, the Products will be delivered on the delivery date and at the location specified in the relevant SOW, and you agree to take possession of the Products at that time. We reserve the right to deliver the Products by instalment.
- 3.2 Where delivery is delayed for any reason, we use best endeavours to provide you notice of the delay. We will not be liable to you or any other party for loss sustained due to delay and we reserve the right to cancel delivery of Products or instalments without prejudice to our rights to recover all sums owing to us in respect of deliveries already made.
- 3.3 In the circumstances where we store Products for you or on your behalf and you fail to collect or accept any Product by the delivery date specified, you agree to pay our reasonable storage costs until you collect or accept those Products.

## **Responsibility and Title**

- 4.1 Responsibility for the Products we supply will pass to you on delivery. Title in Products supplied by us will not pass to you until you have fully paid us for the Products.
- 4.2 Until title to the Products passes from us to you in respect of any Products we supply you, you will:
- (a) be deemed to be acting as our bailee in respect of those Products;
  - (b) if required by us, store those Products in a manner that makes it clear that they are still owned by us, and keep them separate from any other Products;

## **Security Interest**

- 5.1 You:
- (a) grant us security interest in the Products (and the proceeds of sale of the Products) as security for all of your obligations to us (including the purchase price for the products), which we may register or perfect in any means possible in the applicable jurisdiction to ensure that we have an enforceable security interest against you and the Products (and any proceeds of the sale of the Products);
  - (b) agree to do all things and execute or arrange for execution all documents we require to ensure we perfect a security interest in the products in the relevant jurisdiction;
  - (c) will indemnify us for any costs we incur in registering, maintaining, discharging and/or enforcing the security interest created by these terms;
  - (d) agree that sections 114(1)(a), 117(1)(c), 133 and 134 of the Personal Property Securities Act 1999 (PPSA) shall not apply on the enforcement by us of any security interest created or provided for by these General Terms to which Part 9 of the PPSA applies. You waive any rights you may have under sections 116, 119, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement, and you waive any right you have under section 148 of the PPSA to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time in relation to these General Terms; and
  - (e) agree not to assign, charge, encumber, mortgage, or permit any lien to arise over, or any security interest (other than ours) to attach to the products, without our prior written consent.

## **Charges**

- 6.1 You must pay the full amount of all charges at the rate or rates specified for the services in our applicable pricing document as in effect from time to time ("the Charges") except to the extent any of the Charges have been specifically amended on the face of this Agreement in which case that becomes the applicable Charge.
- 6.2 We may amend the Charges at any time by notice in writing to you and any such amendment shall be binding upon receipt by you or any later date stated in the notice.
- 6.3 Any work which we undertake at your request and is outside the Service will be paid for by you at our current rates.
- 6.4 Goods and services tax is not included in the Charges, except where it is stated in writing that the Charges are including GST and are payable by you in addition to the Charges.

## **Returns**

- 7.1 Returns will only be accepted provided that:
- (a) you have complied with the provisions of clause 11.1; and
  - (b) we have agreed in writing to accept the return of the Goods/Services; and
  - (c) the Goods/Services are returned at your cost within fourteen (14) days of Delivery; and
  - (d) Millennium will not be liable for Goods/Services which have not been stored or used in a proper manner; and

- (e) the Goods/Services are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances;

7.2 Non-stocklist items or Goods/Services made to the Client's specifications are under no circumstances acceptable for credit or return.

### **Warranty**

8.1 For Goods/Services not manufactured by Millennium, the warranty shall be the current warranty provided by the manufacturer of the Goods/Services. Millennium shall not be bound by nor be responsible for any term, condition, representation, or warranty other than that which is given by the manufacturer of the Goods/Services. In the event that hardware is upgraded, or replaced, the standard manufacturer's warranty shall apply only to the applicable parts.

8.2 In the case of second-hand Goods/Services, you acknowledge that you have had full opportunity to inspect the same and that you accept the same with all faults and that no warranty is given by Millennium as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Millennium shall not be responsible for any loss or damage to the Goods/Services, or caused by the Goods/Services, or any part thereof however arising.

### **Intellectual Property**

9.1 Where Millennium has designed, drawn, created or developed Goods/Services for you, then the copyright in any designs, software, systems, solutions, drawings, specifications and documents shall remain the property of Millennium, and the client may use the Goods/Services only:

- (a) if you have paid for those Goods/Services in full; and
- (b) for the purpose for which they were intended and supplied by Millennium.

9.2 You warrant that all designs, specifications or instructions given to Millennium will not cause Millennium to infringe any patent, registered design or trademark in the execution of your order and you agree to indemnify Millennium against any action taken by a third party against Millennium, in respect of any such infringement.

9.3 You agree that Millennium may (at no cost) use for its own benefit for the purposes of marketing or entry into any competition, any designs, software, systems, solutions, drawings, specifications, documents, or Goods/Services which Millennium has created for you, unless we have reached a specific agreement in writing that we can not.

9.4 Where Millennium has supplied third-party computer software (and associated documentation, Millennium retains ownership of the computer software and documentation, but grants you a non-exclusive and non-transferable licence for use (solely in relation to the operation of your own business). You agree to use any third-party software supplied by Millennium, and identified as such, strictly in compliance with the terms of the licence under which it is supplied. You further agree that you will not:

- (a) use in any way, or rely on the software for any purpose other than what it was designed or is suitable for;
- (b) combine the software with any other software;
- (c) copy, reproduce, translate, adapt, vary, merge, modify, or create any derivative work based on the software;
- (d) reverse engineer, decompile, disassemble, reconfigure or otherwise attempt to discover the source code of the software, or assist another party to do the same;
- (e) sell, market, network, transfer, lease, licence, sub-licence, rent, lend or otherwise distribute, the software in any way whatsoever;
- (f) use the software to commit a crime (including, but not limited to, sending spam) and you agree to indemnify Millennium against any action taken by a third party against Millennium in respect of any such infringement.

9.5 If during the course of supplying the Goods/Services, Millennium develops, discovers, or puts into operation a new concept product or process which is capable of being patented, then such concept, product or process shall be and remain the property of Millennium and you shall not use or supply the same in any way whatsoever without first obtaining the written consent of Millennium.

9.6 Where Millennium has designed Goods/Services for your use, then you undertake to acknowledge Millenniums Intellectual Property in those Goods/Services. In the event that images of those Goods/Services are utilized in

advertising or marketing material by you. Further that you agree that Millennium itself may utilise images of Goods/Services so designed for the purposes of advertising, marketing, or entry into any competition.

### **Term and termination**

- 10.1 The term of this Agreement is the term specified in the Managed Services Agreement unless extended by the agreement in writing signed by you and by us (in which case reference to the "Term" includes any extended term).
- 10.2 If the Term is:
- (a) Monthly, this Agreement will continue from month to month until it is terminated by either party on one month's notice in writing to the other; and
  - (b) If the Term is for a specified period, this Agreement will terminate at the end of that period. However, if you continue to use the Service after the end of the Term, the service will continue on a monthly basis at the Charges then current in effect for monthly contracts.
- 10.3 If you stop using the Service before the end of the Term then you must pay a termination fee equal to 50% of the balance of the Charge due under this Agreement had the service remained in place for the entire Term.
- 10.4 Where installation or one-off fees have been waived over the initial term of the agreement, and the customer relinquishes the service before the end of the Initial Term, the customer will reimburse Millennium for the waived one-off fees on the following basis.  $\text{Cost to Pay} = \text{Total Waived Fees} \times (\text{remaining months of the initial term} / \text{total initial term})$ .
- 10.4 From time to time it is necessary for Millennium to purchase annual licences from 3<sup>rd</sup> parties in order to provide the Service. The cost of these licences is amortised in the monthly fee. In the event that the client terminates the service before the fee is fully amortised the client will be liable for any outstanding fees.

### **Payment**

- 11.1 You must, without deduction or set off of any kind, pay the Charges for the Services and Products by the 20<sup>th</sup> of the month following the date of each invoice ("the Due Date").
- 11.2 If you do not pay all of the Charges by the Due Date, then you will pay:
- (a) Interest shall be paid at 2% per month calculated monthly on all outstanding amounts from the date on which the payment was due until actual date of payment.; and
  - (b) Any fees and expenses incurred by us in respect of the recovery of any overdue charges.
  - (c) We reserve the right to suspend access to our services without notice. To reinstate the account, you must pay all overdue fees plus a reinstatement fee of \$499 which covers administrative and engineering costs.
- 11.3 If any sum payable by you under this Agreement remains unpaid for 14 days after the Due Date, we may suspend or discontinue the Service without giving notice to you. A suspension or discontinuation fee of \$499 will be charged at the time of suspension or discontinuation. Suspension or Discontinuance of the Service will not:
- (a) Relieve you from having to pay any sum due and owing to us, and will not remove your obligation pursuant to Clauses 7 and 8 to pay the Charges for the Service to the end of the Term; or
  - (b) Restrict any other right or remedy of Millennium.
- 11.4 We shall use best endeavours to resolve any dispute concerning the Charges within 60 days of being advised by you that there is a dispute. You will make payment of all amounts which are not disputed in good faith by the Due Date.

### **Steps to resolving disputes.**

- 12.1 The parties agree to use their best endeavours to resolve any dispute or difference that may arise under this Contract. The following process will apply to disputes:
- (a) a Party must notify the other if it considers a matter is in dispute;
  - (b) the Parties will attempt to resolve the dispute through direct negotiation;

- (c) if the Parties have not resolved the dispute within 20 Business Days of it being referred to them, the Parties shall refer the dispute to mediation or some other form of alternative dispute resolution.

12.2 If a dispute is referred to mediation, the mediation will be conducted:

- (a) by a single mediator agreed by the Parties or if they cannot agree, appointed by the chair of LEADR NZ inc.
- (b) on the terms of the LEADR NZ Inc. standard mediation agreement, and
- (c) at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Chair of LEADR NZ Inc.

12.3 Each Party will pay its own costs of mediation of alternative dispute resolution under this clause.

### **Obligations during a dispute**

13.1 If there is a dispute, each Party will continue to perform its obligations under this Agreement as far as practical given the nature of the dispute.

### **Taking court action**

14.1 Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 12, unless court action is necessary to preserve a parties rights.

### **Notices**

15.1 A notice shall be deemed to have been validly given if it is in writing (which includes email) and is sent to the relevant party at any address, or email listed in this Agreement of 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 second 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 email, when transmitted to the correct address with no indication of incomplete transmission by such address,

**PROVIDED THAT** if a notice if 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.

15.2 A notice sent by e-mail from a party's e-mail domain that states on its face that it is from a particular person shall be "signed" by that person for the purposes of this Agreement.

### **Consumer Guarantees Act**

16.1 You acknowledge that:

- (a) You are acquiring, or holding yourself out as acquiring, the Services for the purposes of business; and
- (b) The provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement.

### **No representations and warranties**

17.1 We shall not be bound by any representation, warranty, description, or condition as to the suitability, fitness or otherwise (whether express or implied) except as stated in these Terms or as stated in writing by an authorised officer of Millennium.

### **Limits of liability**

18.1 We will attempt to remedy any fault in the Service reported by you as soon as reasonably possible.

18.2 In entering into these Terms, the Client acknowledges that we have no liability to the Client for any indirect or consequential loss or damage or for any loss of revenue or loss of actual or anticipated profit (or any other form of economic loss) arising in connection with these Terms (whether in contract or in tort).

- 18.3 The Client acknowledges that the Service Provider has recommended certain best security practices to protect the Client's IT infrastructure and data. The Client agrees to hold harmless and indemnify the Service Provider from any and all claims, damages, losses, liabilities, and expenses (including reasonable attorney's fees) arising out of or in connection with the Client's failure to implement the recommended security practices. This includes, but is not limited to, any data breaches, cyber-attacks, or unauthorized access resulting from such failure.
- 18.4 Subject to the exclusion of liability above, the maximum aggregate liability of Millennium for all claims made by the Client, whether as a result of any breach of these Terms or on any other ground or terms whatsoever (including liability as a result of tort, including negligence) will not exceed the invoice value of the Services provided and subject to the claim.
- 18.5 The Client indemnifies Millennium against any liability, losses, damages, or expenses incurred or suffered by Millennium as a result of any claim made by a third person against Millennium in respect of any loss or liability arising from the provision of Services to the Client under these Terms. The Client further indemnifies Millennium for all reasonable costs (including legal fees) incurred as a result of any claim brought by the Client against Millennium, whether at the Disputes Tribunal, Courts or otherwise.
- 18.6 Subject to the provisions of this Clause 12, Millennium will give a credit to you for a period (if any) during which the Service did not function due to a fault for which we are responsible. The credit will be equal to the Charge applicable in relation to the affected Service for the period beginning at the time you notify the fault to Millennium until the Service is restored.
- 18.7 No claim may be made by you against us of any kind or nature unless you notify us in writing within 30 days of the date on which the claim first arises.
- 18.8 Except as provided in this Clause 12, we will not be liable to you in any way whatever and however arising (whether in contract, tort, or otherwise, and whether for direct, indirect, consequential or any other type of loss) (including loss of profits, claims against by third parties, and any type of loss or damage resulting from failure of the Service).

#### **Assignment**

- 19.1 You cannot transfer your benefits and obligations under this Agreement without our prior written permission, which will not unreasonably be withheld.
- 19.2 We may assign its benefits and obligations under this Agreement.

#### **Force majeure and delay in the provision or standard of service**

- 20.1 We shall not be in breach of this Agreement and shall not be liable for any delay or reduction in the Service (or inability to provide the Service) caused by any of the following:
- (a) force majeure (including fire, earthquake and adverse weather conditions);
  - (b) late delivery of equipment or materials to us for reasons beyond our control;
  - (c) industrial or legal action which obstructs or prevents continuation of the Service;
  - (d) operational and technical difficulties such as internet and power outages and maintenance, outages beyond our control;
  - (e) any other cause beyond the control of Millennium.

#### **No solicitation**

- 21.1 During the term of the Agreement and for a period of 6 months after the End Date neither party shall, without the other's written consent, deliberately solicit for employment or hire any person who is or has been employed by the other and involved in the delivery of the Services. This does not apply where a person has responded to a legitimate advertisement.

#### **Client information**

- 22.1 You authorise us to:
- (a) collect and store information about you; and
  - (b) use any information we hold about you for the supply of goods and services to you or on behalf of you to third parties (vendors involved in the supply chain); and

- (c) disclose information about you to third parties (if needed) for the purpose of establishing credit worthiness and debt collection.
- (d) send you emails for the purposes of marketing and assessing client satisfaction.

### **Confidential information**

- 23.1 Both parties may only use each other's confidential information for the proper performance of respective obligations under these General Terms. Each of us must keep the other's confidential information secure in accordance with usual security practices.
- 23.2 Each of us must not disclose each other's confidential information, and will ensure that their employees, contractors and agents do not disclose it, to any other person except as required for the proper performance of respective obligations under these General Terms and on a confidential basis.
- 23.3 Each of us will inform the other as soon as possible if they:
  - (a) become aware or suspect that there has been any unauthorised disclosure of the confidential information; or
  - (b) are required by law to disclose the confidential information.
- 23.4 At the end of any contract or if requested earlier, each of us will return or destroy (at each other's option) the other's confidential information, and all copies of it (other than that information required to be retained for audit or regulatory purposes).

### **Waiver**

- 24.1 If a Party breaches this Contract and the other Party does not immediately enforce its rights resulting from the breach that:
  - (a) does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future, and
  - (b) does not prevent the other Party from exercising its rights resulting from the breach at a later time.

### **New Zealand law, currency and time**

- 25.1 This Agreement will be governed and interpreted in accordance with laws of New Zealand. All money is in New Zealand dollars, unless otherwise stated in writing. Dates and times are in New Zealand Standard Time.