

## Part 1: General Terms

### INTRO

These Purchase Terms are in 5 Parts. The parties acknowledge that Parts 2 to 4 will only apply to the extent Goods and Materials, Services and/or Software are actually being supplied and acquired. Definitions and interpretation are contained in Part 5.

### 1 AGREEMENT

1.1 **Formation** From time to time Connect 8 and Supplier may enter into an Agreement for the supply of one or more Deliverables, incorporating these Purchase Terms. These Purchase Terms do not create any rights or obligations except as part of such an Agreement.

1.2 **No other terms** Except to the extent the parties expressly agree otherwise in writing, the Agreement will exclude all other terms, including any terms appearing on Supplier's invoices or other paperwork. No conduct by Connect 8 will constitute acceptance of any other terms put forward by Supplier in relation to the Deliverables.

1.3 **Precedence** Subject to clause 1.4, the various parts of the Agreement will be read in the following descending order of precedence: first, if applicable, the Letter Agreement; then, if applicable, the PO; then Parts 2 to 4 of these Purchase Terms; and then Part 1 of these Purchase Terms.

1.4 **Modifications** The provisions of a Letter Agreement or PO will not detract from the rights or remedies that Connect 8 would otherwise have under or in connection with these Purchase Terms, except to the extent that the Letter Agreement or PO clearly identifies the specific clauses in these Purchase Terms that are to be modified or overridden.

1.5 **Acknowledgement** The Agreement is not an exclusive supply arrangement. Except where the Agreement expressly provides otherwise, Connect 8 makes no purchase commitment, whether in terms of dollar value, volume of deliverables, or otherwise.

### 2 SUPPLIER OBLIGATIONS

2.1 **Deliverables** Supplier agrees to supply, and Connect 8 agrees to acquire, the Deliverables subject to and in accordance with the terms of the Agreement.

2.2 **Performance standards** Supplier will perform its obligations under the Agreement in a timely manner and in accordance with Good Industry Practice.

2.3 **Laws, licences and approvals** In carrying out its activities in connection with this Agreement, Supplier will comply with all applicable Laws and will not commit any act or omit to do anything that causes or has the potential to cause Connect 8 to breach any Laws. Supplier will have all the licences, consents and approvals needed to supply the Deliverables and perform and observe its other obligations in accordance with the Agreement.

2.4 **Requirements** Supplier will provide the Deliverables to Connect 8 free of Defects and in accordance with all applicable Requirements, Service Levels and timeframes for delivery set out in a Side Letter or PO.

2.5 **Co-operation** Supplier will co-operate in good faith and in a timely manner with other Connect 8 suppliers, and if reasonably requested by Connect 8, will provide information and assistance as necessary to facilitate the supply of goods or services to Connect 8 by those suppliers. A breach of this clause will be deemed a material breach of the Agreement.

2.6 **Policies** Supplier will use its best endeavours to follow Connect 8's applicable policies as provided to Supplier in writing from time to time, and a persistent or material breach of any of those policies will constitute a material breach of the Agreement. Supplier will advise Connect 8 immediately that it becomes aware that it has breached or

is likely to have breached any of Connect 8's policies including if Connect 8's security has been compromised.

2.7 **Key Personnel** Supplier will assign the Key Personnel to the corresponding roles specified in the Agreement, and will not re-assign those Key Personnel without Connect 8's prior written consent, not to be unreasonably withheld or delayed.

2.8 **Documentation** Accompanying each Deliverable, Supplier will provide Connect 8 with corresponding Documentation. Supplier will ensure that the Documentation includes a complete set of operating, technical and user manuals with a level of specificity to enable a reasonably competent user to make effective use of each Deliverable. If Connect 8 discovers any error in the Documentation, Connect 8 may notify Supplier in writing of the error and Supplier will promptly correct it and provide Connect 8 with amended Documentation at no additional cost to Connect 8. Connect 8 may copy Documentation as reasonably necessary to enable Connect 8 to enjoy the benefit of the Deliverables in accordance with the Agreement.

2.9 **Information** Supplier will prepare, and retain during the term of the Agreement and for a reasonable period afterwards, accurate records and accounts in relation to all material aspects of its activities under the Agreement, including the Charges and Deliverables, in each case to a level of detail, completeness and accuracy consistent with Good Industry Practice and any relevant terms in this Agreement.

2.10 **Audit Rights** On receipt of 5 Working Days' prior written notice from Connect 8, Supplier will promptly provide Connect 8 with any access or assistance Connect 8 reasonably requires to audit Supplier's compliance with its obligations under the Agreement, subject to Connect 8 agreeing to comply with Supplier's reasonable confidentiality and security requirements.

### 3 HEALTH AND SAFETY

#### 3.1 Obligations of both parties

(a) Each party will comply with the Health and Safety in Employment Act 1992 (and any successive health and safety legislation) in all respects in performing its obligations under or in connection with this agreement.

(b) Supplier warrants that prior to execution of this Agreement it has provided to Connect 8, and Connect 8 has approved in writing, Supplier's health and safety policy (including such reasonable recommendations as Connect 8 may suggest).

(c) Each party will use reasonable efforts to promptly advise the other party of changes to its relevant health and safety policies, programmes and identifiable hazards, to assist the other party to comply with this clause 3.1.

3.2 **Supplier's obligations:** Subject to the provisions of this clause 3, Supplier will be responsible for the health and safety performance of its Personnel. Without limiting the foregoing, Supplier will:

(a) comply with any Connect 8 health and safety policy notified to Supplier (or of which Supplier is aware) from time to time;

(b) have in place, implement and operate an appropriate safety programme which is compliant with all relevant legislation and which shall have the following features (as a minimum):

(i) it provides systems and procedures for the identification, control and elimination of existing and potential hazards in the workplace and for the development of appropriate control measures;

(ii) it identifies the training and experience of staff who will perform the work and the supervision arrangements for those staff;

(iii) it provides systems and procedures for monitoring the compliance of its Personnel;

(iv) it identifies equipment to be used;

- (v) it provides procedures for dealing with on-site emergencies;
- (c) ensure that safety information Connect 8 provides to Supplier is conveyed to, and implemented by Supplier's Personnel;
- (d) provide health and safety training to its employees, agents and sub-contractors involved in the performance of this Agreement;
- (e) promptly notify Connect 8 if any hazard exists at our sites, whether due to activities of Supplier's personnel and/or those of Supplier's third party providers or otherwise. This obligation does not apply to hazards which are already identified in our health and safety policies or plan; and
- (f) implement management systems to achieve the safety outcomes required by this agreement or applicable law.

3.3 **Health and Safety Audit:** Supplier will, at Connect 8's request, provide Connect 8 access to all material and documents relevant to Supplier's performance of this clause 3. Connect 8 may, on 30 days' notice, audit:

- (a) Supplier's health and safety policies; and
- (b) Supplier's implementation of those policies,

and make reasonable recommendations to Supplier with respect to those policies. If Connect 8 makes any such recommendations, then Supplier will use all reasonable endeavours to promptly comply with the recommendations.

3.4 **Incident reporting:** Supplier will:

- (a) notify Connect 8 immediately it becomes aware of any near miss incident or accident relating to performance of its obligations under this Agreement; and
- (b) assist in or carry out any reasonable subsequent investigation relating to that accident, as and when reasonably required by Connect 8 and provide a copy of its investigation report to Connect 8.

3.5 **Entering Connect 8 premises:** Supplier will ensure that any of its Personnel who enter any Connect 8 premises comply with all health and safety, security and any other processes and procedures notified to Supplier from time to time.

## 4 CONTRACT CHANGES

4.1 **Change Request** From time to time either Party may give notice to the other requesting a Contract Change (**Change Request**). If requested by Connect 8, following submission of a Change Request, Supplier will promptly prepare and provide to Connect 8 a report outlining the likely impact of the Contract Changes, along with any charges and/or terms and conditions required for the implementation of that Change (**Change Impact Report**). Supplier will prepare each Change Impact Report with due skill and care, and in so doing will use best endeavours to mitigate any adverse price consequences or delays, and Connect 8 will be entitled to rely on the Change Impact Report in deciding whether to approve or reject a Contract Change.

4.2 **Approval, rejection or withdrawal** Connect 8 will consider each Change Request submitted by Supplier, and each Change Impact Report. In the case of a Change Request submitted by Supplier, Connect 8 may approve or reject the Change Request at any time, by giving written notice to Supplier. In the case of a Change Request submitted by Connect 8, Connect 8 may withdraw the Change Request at any time, by giving written notice to Supplier. Supplier will not unreasonably withhold or delay its agreement to a Change Request from Connect 8, whether by demanding unreasonable charges, imposing unreasonable terms and conditions, or otherwise.

4.3 **Implementation** Neither Party will be bound by a Change Request unless and until approved in writing by both Parties, after which the Agreement will be deemed to have been amended in accordance with the approved Change Request.

## 5 CHARGES AND EXPENSES

5.1 **Charges** Supplier will ensure that all Charges are calculated and applied in accordance with the Agreement. Unless otherwise agreed in writing by Connect 8, no other fees or charges will be payable by Connect 8 in connection with the Agreement or Deliverables.

5.2 **Expenses** Supplier may not charge Connect 8 for any expenses or disbursements in connection with this Agreement (**Expenses**), unless agreed otherwise with Connect 8 in writing before the Expenses are incurred.

5.3 **Minimise costs** Supplier will complete each task that is to be charged (in whole or in part) on a time and materials basis in as reasonably economical and expeditious a manner as possible so as to minimise the associated Charges.

5.4 **Supporting information** Supplier will provide Connect 8 with all information Connect 8 may reasonably require from time to time to validate the time spent and charges for time and materials work, and the overall computation of the Charges and Expenses. Supplier acknowledges that Connect 8 will not be obliged to make payment for any Charges or Expenses for which Supplier fails to provide appropriate timesheets, third party invoices and/or any other supporting documentation reasonably required by Connect 8 for the purpose of verifying the Charges and Expenses.

5.5 **Taxes** All amounts set out in the Agreement are exclusive of GST, unless otherwise specified. Amounts specified in the Agreement as payable are inclusive of all other government taxes, value added taxes, withholding taxes, duties, imposts and levies of a similar nature (**Other Taxes**), however designated, assessed or levied on Supplier and including penalties thereon, and no further amounts shall be payable for these Other Taxes. If any amounts paid by Connect 8 to Supplier are subsequently assessed by the relevant taxation or other authority to be subject to Other Taxes, Connect 8 may in its discretion:

- (a) withhold an amount equal to the Other Taxes assessed so as to set off those amounts against any future payments to be made by Connect 8; or
- (b) require Supplier to pay an amount equal to the Other Taxes assessed in which case Supplier must pay the amount to Connect 8 on request and Connect 8 will pay the amount to the relevant authority.

5.6 **Rebates** Supplier will notify Connect 8 as and when Connect 8 is entitled to any rebates and/or commissions under the Agreement.

## 6 INVOICING AND PAYMENT

6.1 **GST invoices** Supplier will ensure that each invoice which it issues under the Agreement is a valid tax invoice complying with the requirements of the Goods and Services Tax Act 1985.

6.2 **Invoices to be itemised** Supplier will ensure that each invoice which it issues under the Agreement is fully itemised and includes all information reasonably required by Connect 8 in order to establish the accuracy of the invoice, including: (a) reference to the Letter Agreement or PO under which the invoice is issued; (b) full details of any pre-approved Expenses incurred by Supplier, together with copies of invoices for Expense items over \$1,000 plus GST; and (c) a separate line item for sums due in respect of GST.

6.3 **Addressing** Supplier will send each invoice directly to Connect 8's Accounts Payable team at PO Box 132 010, Sylvia Park, Auckland or via email to [accounts@connect8.co.nz](mailto:accounts@connect8.co.nz), copied to the Connect 8 Personnel who requested the Deliverables.

6.4 **Payment** Subject to clauses 6.6 and 6.7, Connect 8 will pay each invoice correctly issued by Supplier in accordance with this Agreement, no later than the 20<sup>th</sup> of the month that is two months following the month of Connect 8 receiving the Supplier's valid invoice.

- 6.5 **Effect of payment** Payment of an invoice will be taken only as payment on account and is not evidence or an admission that any Deliverable has been provided in accordance with the Agreement or otherwise accepted by Connect 8, or that Connect 8 agrees with any claim or allegation made by Supplier.
- 6.6 **Disputed invoices** If Connect 8 disputes in good faith any invoice submitted by Supplier, in whole or in part, Connect 8 may withhold payment of the amount in dispute. Connect 8 will pay the undisputed amount in accordance with clause 6.4. Supplier will continue to perform its obligations under the Agreement until the dispute is resolved. Disputed amounts finally determined to be payable will be paid within 30 days of that determination. Where finally determined that Connect 8 has overpaid Supplier, Supplier will immediately repay the amount of that overpayment to Connect 8.
- 6.7 **Set off** Connect 8 may set off any amounts it owes Supplier under the Agreement against any amounts owed to Connect 8 by Supplier under the Agreement, including any service level credits and liquidated damages.
- 7 **CONFIDENTIALITY**
- 7.1 **Confidentiality obligations** The Recipient will not use Confidential Information for any purpose other than to perform the Agreement. The Recipient will not disclose Confidential Information to anyone other than: (a) the Recipient's Personnel, authorised Subcontractors or Affiliates who have a need-to-know for the purposes of the performance of the Agreement; or (b) to the Recipient's professional advisors, after obtaining from them an undertaking of confidentiality consistent with the requirements of this clause 7.
- 7.2 **Exceptions** The Recipient's obligations of confidentiality under this Agreement will not prevent:
- (a) any use or disclosure by the Recipient undertaken with the prior written approval of the Discloser, and in accordance with the terms of that approval; or
  - (b) any use or disclosure by Connect 8 that is necessary to obtain the full intended benefit of the Agreement and/or any Intellectual Property or other rights acquired by Connect 8 under the Agreement;
  - (c) any disclosure required by law, by a competent authority pursuant to a power conferred by legislation or regulation, or by the listing rules of any applicable stock exchange, so long as before making the disclosure the Recipient (if permitted by law) notifies the Discloser of the requirement for disclosure and, where practical, provides any assistance reasonably requested by the Discloser for the purpose of obtaining an order or ruling protecting the relevant information; or
  - (d) the Recipient from disclosing information to a bona fide potential purchaser of a significant portion of the assets or shares of the Recipient or any of its Affiliates, as reasonably required for the purposes of a due diligence exercise conducted by that purchaser, provided that purchaser signs a confidentiality agreement in favour of the Discloser on terms consistent with this clause 7.
- 7.3 **Precautions** The Recipient will treat, and ensure that its relevant Personnel, Subcontractors and Affiliates treat, the Confidential Information in strictest confidence, applying at least the same standard of care as the Recipient exercises for its own information of a similar nature and sensitivity.
- 7.4 **Press releases** Regardless of the other provisions of this clause 7 (Confidentiality), Supplier will not make any media comment or issue any press release in connection with the Agreement without Connect 8's prior written consent.
- 7.5 **References** If a reference is sought from Connect 8 by an existing or potential customer of Supplier, Connect 8 may freely disclose information regarding the Deliverables and Supplier's performance under the Agreement, but Connect 8 may not disclose information regarding Supplier's charges or expenses.
- 8 **INTELLECTUAL PROPERTY**
- 8.1 **Pre-existing IP** Except where this clause 8 or the other provisions of the Agreement expressly provide otherwise, nothing in the Agreement will confer on either Party any rights, title, or interest in the Pre-existing IP.
- 8.2 **Supplier Developed IP** Subject to clause 8.3 and the provisions of the Letter Agreement and/or PO, all Supplier Developed IP will vest in Supplier or its nominee(s) as and when that Intellectual Property comes into existence, and if for any reason some or all of that Supplier Developed IP vests in Connect 8 despite this clause 8.2, Connect 8 hereby assigns that Supplier Developed IP to Supplier.
- 8.3 **Connect 8 Derivative IP** Subject to the provisions of the Letter Agreement and/or PO, all Connect 8 Derivative IP will vest in Connect 8 or its nominee(s) as and when that Intellectual Property comes into existence, and if for any reason some or all of that Connect 8 Derivative IP vests in Supplier or its Affiliates or Subcontractors despite this clause 8.3, Supplier hereby assigns that Connect 8 Derivative IP to Connect 8.
- 8.4 **Licence to Supplier** Subject to the provisions of the Agreement, Connect 8 grants to Supplier a non-exclusive, non-transferable, fully paid-up, irrevocable licence to any and all Intellectual Property owned or controlled by Connect 8 in any and all Connect 8 Materials, as required by Supplier from time to time to use, copy, modify and adapt those Connect 8 Materials, but only to the extent necessary for Supplier to perform its obligations in accordance with the Agreement, and subject to any restrictions which Connect 8 notifies to Supplier at the time those Connect 8 Materials are provided to Supplier.
- 8.5 **Licence to Connect 8** Subject to any restrictions expressly set out in the Agreement, Supplier grants Connect 8 and its Affiliates a non-exclusive, non-transferable, fully paid up, perpetual, irrevocable licence to any and all Intellectual Property owned or controlled by Supplier in Supplier Materials (excluding Third Party Software), as required by Connect 8 from time to time to use, copy, modify and adapt those Supplier Materials, but only for the purposes of: (i) performing Connect 8's obligations under the Agreement; (ii) operating, repairing, maintaining, enhancing and/or extending any Deliverables; (iii) integrating any Deliverables with other components of Connect 8's systems and/or (iv) enjoying the benefit of the Deliverables; in each case, subject to any restrictions expressly set out in the Agreement.
- 8.6 **Further assurances** Each party will at its own expense execute and deliver any document and do all things as may reasonably be required, in respect of matters within that party's control, in order to assist the other party to obtain the full benefit of this clause 8.
- 8.7 **Exercise by Connect 8 contractors** Connect 8 and its Affiliates may exercise any rights licensed to them under the Agreement through their respective contractors and subcontractors.
- 9 **IP INDEMNITY**
- 9.1 **Indemnity** Subject to clause 9.4, Supplier will indemnify Connect 8 and its Affiliates on demand against all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses (including reasonable legal expenses) suffered or incurred in relation to any actual or threatened third party claim that expressly or by implication alleges that Connect 8's use, copying, modification, distribution, compilation, sale, hire, import and/or export (together, **Use**) of a Deliverable infringes or will infringe the Intellectual Property rights of any third party (each a **Claim**).
- 9.2 **Notice and control** The party that first receives notice of a Claim must promptly notify the other party in writing providing reasonable details of the Claim. Except where Connect 8 has expressly waived its right to be indemnified under clause 9.1 in respect of a particular Claim, Connect 8 must not make any admission of liability or purport to settle that Claim without Supplier's prior written consent, and at Supplier's request and expense Connect 8 must allow Supplier to conduct and/or settle all negotiations and litigation resulting from the Claim, provided that:

- (a) Connect 8 will be entitled to be represented at, and consulted on, all such negotiations and litigation;
- (b) Supplier will not be entitled to make any admission of wrongdoing on Connect 8's behalf;
- (c) unless Connect 8 specifically agrees otherwise in writing, Supplier will not be entitled to compromise or settle the Claim on any basis that does not involve a complete release by the claimant(s) in favour of Connect 8, in respect of any and all liability in connection with the Claim; and
- (d) at Supplier's request, Connect 8 will provide reasonable assistance with such negotiations or litigation, and Supplier must reimburse Connect 8 for its reasonable staff costs and out of pocket expenses incurred for that purpose.
- 9.3 Remedies** If any Claim prevents or threatens to prevent the supply or Use of any Deliverable, then Supplier must (at its own election and expense): (a) obtain for Connect 8 the right to continue Using the Deliverable in accordance with the rights granted in the Agreement; or (b) modify the relevant Deliverable so that it becomes non-infringing; or (c) replace the relevant Deliverable with another non-infringing item; but in each case Supplier must ensure that the remedy does not adversely affect any Deliverables under the Agreement or any other Agreement, or Connect 8's use of them, except after consultation with Connect 8 and with Connect 8's prior written consent (at Connect 8's absolute discretion).
- 9.4 Exclusions** Supplier has no obligation under clause 9.1 (Indemnity by Supplier) or clause 10(g), to the extent that a Claim arises from:
- (a) Connect 8's Use of a Deliverable in a manner that breaches this Agreement, or Use of Third Party Software in a manner not permitted by the Third Party Licence Terms;
- (b) additions or enhancements to a Deliverable, carried out by a person other than Supplier or its Affiliates or Subcontractors;
- (c) Connect 8 unreasonably refusing to implement a modification if provided in accordance with clause 9.3, where Supplier is able to demonstrate that the fix or modification would have prevented the Claim and would have no discernable impact on pre existing use or operation;
- (d) combination, operation, or use of Deliverables with any good, software, product, data or business method that Supplier did not know of, provide, recommend or approve or was not within the reasonable contemplation of the Supplier.
- 10 SUPPLIER WARRANTIES**
- Supplier represents and warrants that:
- (a) all factual information provided by Supplier under the Agreement will be accurate and complete, and all advice provided by Supplier under the Agreement will be provided with reasonable skill, care and diligence;
- (b) Supplier will have and apply all the expertise, experience, personnel, premises and other resources necessary to supply the Deliverables in accordance with the Agreement;
- (c) on delivery to Connect 8, the Deliverables will be free from defects in design, materials and workmanship, and free of any other Defects;
- (d) the Deliverables will comply with all relevant laws, regulations and standards including any applicable national or international standards and applicable safety regulations;
- (e) where the Agreement or Documentation contemplates that a Deliverable will or can be used in combination with other Deliverables or particular software, hardware or firmware (or where the Supplier ought reasonably to contemplate such combination), the Deliverable will be fully capable of interoperating with the relevant Deliverables, software, hardware or firmware (as applicable);
- (f) on delivery to Connect 8, the Deliverables will be free from any charge, security, lien or other encumbrance; and
- (g) subject to clause 9.4, Connect 8's Use of any Deliverable or Supplier Material in accordance with the Agreement will not infringe the Intellectual Property of any third party.
- 11 LIABILITY**
- 11.1 Exclusion of liability** Subject to clause 11.3, neither party will be liable to the other (under the law of contract, tort, equity or otherwise) for any damages of any kind arising out of or in connection with the Agreement that are indirect or consequential, regardless of the cause of such damages or whether the other party had been advised of the possibility of such damage.
- 11.2 Limitation of liability** Subject to clause 11.3 and 11.4, each party's liability to the other party for damages (under the law of contract, tort including negligence, equity or otherwise) arising out of or in connection with the Agreement, and all other Agreements with Connect 8, will be limited in aggregate to the greater of: (a) 150% of the total combined amounts paid and/or payable to Supplier under all those Agreements; or (b) NZD\$10 million.
- 11.3 Exceptions to exclusions and limitations** Nothing in these Purchase Terms will limit or exclude any liability Supplier may have to Connect 8 under clause 9.1 (Intellectual Property Indemnity).
- 11.4 Exceptions to limitations** Subject to clause 11.1, nothing in these Purchase Terms will limit any liability either party may have to the other: (a) for wilful default or fraud; (b) in the case of damage to tangible physical property caused by Supplier; or (c) for any unauthorised use of the other party's Intellectual Property or Confidential Information.
- 11.5 Liquidated damages and service level credits** Where the Agreement entitles Connect 8 to claim service level credits and/or liquidated damages from Supplier, this will be without prejudice to any other right or remedy Connect 8 may have. The service credits and/or liquidated damages are genuine pre-estimates of the minimum loss that Connect 8 expects to incur or suffer in connection with Supplier's failure to comply with its relevant obligations, and Supplier acknowledges that those service level credits or liquidated damages (as applicable) are fair and reasonable.
- 12 INSURANCE**
- 12.1 Required insurance** Supplier will maintain for the term of the Agreement, and for six months following its termination or expiry, public liability and professional indemnity insurance cover with a reputable insurance company. Except where the Letter Agreement specifies a lower limit or a different type of insurance, each policy must have a limit of no less than NZD\$10 million or the maximum amount of Supplier's limitation of liability under clause 11.2, whichever is greater, for any one claim or series of claims arising out of one event.
- 12.2 Notice of claims** Supplier will promptly notify Connect 8 in writing if any material claims have been made on Supplier's insurance policy that may affect the ability of Supplier to claim under the insurance required under this clause 12.
- 12.3 Insurance by Connect 8** If Supplier fails to provide Connect 8 with reasonable evidence showing that Supplier has in place the insurance required by this clause 12, within 20 Working Days of Connect 8 requesting such evidence, Connect 8 may obtain that insurance on Supplier's behalf, and Connect 8 may either deduct the associated insurance premiums from amounts payable to Supplier under the Agreement or require that Supplier promptly reimburses Connect 8 for those premiums.

## 13 TERMINATION

13.1 **Default events** Either party may on written notice to the other party terminate the Agreement, if the other party:

- (a) has materially breached any of its obligations or breaches a material obligation under the Agreement, where either the breach is not capable of being rectified or has not been rectified within 20 Working Days of the first party giving written notice specifying that it has the right to terminate under this clause if the breach is not rectified;
- (b) has purported to assign its rights or obligations otherwise than in accordance with clause 16 (Assignment and Subcontracting);
- (c) goes into liquidation or has a receiver, administrator, statutory manager or similar officer appointed in respect of it (other than for the purpose of a solvent amalgamation or reconstruction);
- (d) is or is deemed to be unable to pay its debts as they become due, or proposes or enters into any arrangement, compromise or composition with its creditors; or
- (e) is subject to an event of Force Majeure that materially affects its performance of the Agreement and continues for more than 20 Working Days.

13.2 **Change of Control** Connect 8 may terminate the Agreement at any time on 14 days' notice, if any person acquires or relinquishes Control of Supplier.

13.3 **Convenience** Connect 8 may terminate the Agreement at any time on 20 Working Days' written notice to Supplier. In the event of such termination, after completing its obligations under clause 14.1 (Transition assistance), Supplier may invoice Connect 8 for: (a) a charge for all time reasonably expended by Supplier in relation to the Services provided under the Agreement up to the date of termination, less any amounts already charged or chargeable to Connect 8 for those Services; (b) a charge for all outstanding unavoidable, demonstrated reasonable expenses reasonably and necessarily incurred or committed by Supplier up to the date of termination. Supplier will take all reasonable steps to reduce the Charges under this clause 13.3, including by re-assigning its Personnel to other work wherever practicable. The total Charges payable to Supplier under this clause 13.3 will not exceed the total Charges and Expenses that Supplier could reasonably have expected to recover under this Agreement in the absence of the termination under this clause 13.3.

13.4 **Partial termination** Where Connect 8 has the right to terminate the Agreement, Connect 8 may, at its discretion, partially terminate the Agreement in respect of those parts which have not yet been performed by Supplier and can reasonably be severed from the remainder of the Agreement.

## 14 DISENGAGEMENT

14.1 **Transition assistance** Leading up to the expiry or effective date of termination of all or any part of the Agreement and for a reasonable time after, Supplier will provide such assistance and information as is reasonably necessary and requested by Connect 8 for an orderly transition of the Deliverables to Connect 8 or its nominated third party provider, and/or an orderly replacement of the Deliverables by Connect 8 or its nominated third party provider, including performing any transition or disengagement services specified in the Letter Agreement and/or PO. Except where Connect 8 terminates under clause 13.1 or 13.2, Connect 8 will reimburse Supplier its reasonable and demonstrable out-of-pocket costs and expenses in providing such information and assistance, and will pay Supplier at reasonable hourly rates for the work carried out by Supplier's employees for that same purpose such rates not to exceed the time and materials rates (if any) contracted for under the Agreement.

14.2 **Consequences of termination** Following the expiry or termination of all or any part of the Agreement:

- (a) subject to clauses 6.6 and 6.7, all Charges and other payments outstanding or incurred before the date of expiry or termination

under the terminated part of the Agreement will become immediately due and payable;

- (b) each party will either promptly deliver to the other or, at the other's option, destroy and certify the destruction of, all that other party's property and Confidential Information (in any reasonable format requested by the other party) under the terminated part of the Agreement, as and when reasonably requested in writing by the other party, although Connect 8 may retain any Confidential Information that Connect 8 reasonably considers will be required for it to obtain the full intended benefit of the Agreement and/or any Intellectual Property or other rights acquired by Connect 8 under the Agreement; and
- (c) except in the case of termination by Supplier under clause 13.1 (Default events), Supplier will promptly deliver to Connect 8 all work in progress on any Deliverables in the possession or control of Supplier or its Subcontractors under the terminated part of the Agreement.

14.3 **Survival** The expiry or termination of all or any part of the Agreement will not affect the rights of the parties accrued up to the date of expiry or termination. The following clauses will survive any termination or expiry: clauses 2.9 (Information), 2.10 (Audit Rights), 7 (Confidentiality), 8 (Intellectual Property), 8.7 (IP Indemnity), 11 (Liability), 12 (Insurance), 13 (Termination), 14 (Disengagement), 18 (Dispute Resolution), 19 (General), 21 (Title and licence), 28 (Software Licence), 29 (Maintenance), 31 (Defined Terms) and 32 (Construction).

## 15 FORCE MAJEURE

15.1 **Relief** Non-performance by either Party of any of its obligations under the Agreement will be excused, without liability, during the time and to the extent that performance of the obligation is delayed or prevented, wholly or substantially, by a Force Majeure Event.

15.2 **Notice** The party claiming relief under this clause 15 must promptly give written notice to the other party, outlining the nature and expected duration of the Force Majeure Event, its likely impact on the Agreement, and the measures which that party proposes to adopt to remedy, abate or mitigate the Force Majeure Event.

15.3 **Mitigation and resumption** The party claiming relief must take all reasonable steps to remedy, abate or mitigate the effects of the Force Majeure Event. Performance of affected obligations must be resumed as soon as reasonably possible, unless the Agreement has been terminated.

## 16 ASSIGNMENT, NOVATION, TRANSFER AND SUBCONTRACTING

16.1 **No assignment, novation or transfer** Subject to the other provisions of this clause 16, neither party will directly or indirectly assign, novate, transfer or otherwise dispose of any of its rights or obligations under the Agreement, except with the prior written consent of the other party, not to be unreasonably withheld or delayed.

16.2 **Assignment, novation or transfer to Connect 8 Affiliates** Connect 8 may assign, novate or otherwise transfer all or part of the benefits and burdens of this Agreement to any Connect 8 Affiliate or any third party providing services to Connect 8, provided that the assignee/novatee/transferee undertakes to Supplier to perform and be bound by the relevant terms of the Agreement and the assignee/novatee/transferee is not a competitor of Supplier and is able to pay any Charges as they become due and payable.

16.3 **Subcontracting by Supplier** Supplier may not subcontract any part of the Agreement (except for minor details, purchases of materials, and any Service for which the Subcontractor is named in the Agreement), except with Connect 8's prior written consent. Supplier will be responsible and liable for all acts and omissions of any Subcontractor.

## 17 CONNECT 8 AFFILIATES

17.1 **Affiliates** Supplier acknowledges that any Connect 8 Affiliate may enter into an Agreement with Supplier, in which case all references to Connect 8 in these Purchase Terms (whether as a "party" or "Connect 8" or otherwise) will be read as references to that Connect 8 Affiliate, except in this clause 17.

17.2 **Privity** Wherever this Agreement is expressed as conferring rights on one or more Connect 8 Affiliates, those rights will be enforceable by each Connect 8 Affiliate under the Contracts (Privity) Act 1982, provided that those Connect 8 Affiliates will not be entitled to bring proceedings against Supplier except with Connect 8's written consent. Where a Connect 8 Affiliate enters into an Agreement with Supplier, only the Connect 8 Affiliate incurs any obligation or liability to Supplier with respect to that Agreement.

## 18 DISPUTE RESOLUTION

18.1 **Notice and negotiation** If a dispute, disagreement, question, difference or claim arises between the parties in connection with the Agreement, or in relation to any question regarding its existence, breach, termination or validity (**Dispute**), either party may give the other written notice requiring that the Dispute be determined in accordance with this clause 18 (**Dispute Notice**). Within 10 Working Days of the Dispute Notice, the parties will enter into good faith negotiations with a view to resolving the Dispute.

18.2 **Arbitration** If the Dispute has not been resolved within 20 Working Days of the Dispute Notice being issued, either party may give notice referring the Dispute to arbitration by a sole arbitrator under the Arbitration Act 1996 (**Arbitration Notice**). The arbitration will be conducted in Auckland, New Zealand. If the parties cannot agree on an arbitrator within five Working Days of the Arbitration Notice, the arbitrator will be appointed at the request of either party by the president for the time being of the New Zealand Law Society or his/her nominee. Clauses 3 (Powers relating to conduct of arbitral proceedings) and 6 (Costs and expenses of an arbitration) of the Second Schedule of the Arbitration Act 1996 will apply. No other clauses in the Second Schedule will apply.

18.3 **Urgent relief** Nothing in the Agreement will prevent either party seeking or obtaining any order or relief by way of injunction or declaration or other equitable or statutory remedy against the other party where such party believes such order or relief is necessary for the urgent protection of its rights or property.

## 19 GENERAL

19.1 **Notices** Any notice or other communication to be given under the Agreement will be in writing and delivered by hand, registered mail or email to the relevant party at the addresses specified in the Letter Agreement and/or PO. If no such address is specified for Connect 8, the address is: Connect 8 Limited, PO Box 132 010, Sylvia Park, Auckland, 1060, New Zealand; Email: management@connect8.co.nz; Attention: Name of Relevant Connect 8 Employee. Where email is used the party receiving the email will acknowledge receipt however if receipt is not acknowledged within 1 Working Day of email transmission, a hardcopy of the email will also be posted to the above address. Receipt of notices under this clause will be presumed on delivery by hand, three Working Days after posting within New Zealand, or within 1 Working Day of email transmission unless during that time the sender receives an automated message advising that email may not have been delivered (whichever is applicable).

19.2 **Severability** If any provision of the Agreement is invalid, void, illegal or unenforceable, it will be amended to the minimum extent necessary to ensure it is not invalid, void, illegal or unenforceable, and, as far as is possible, to ensure that it is consistent with the intent and effect of the provision. If it is unable to be so amended, the provision will be severed and the validity, existence, legality and enforceability of the remaining provisions will not in any way be affected.

19.3 **Waiver** No term or condition of the Agreement will be deemed to have been waived in part or in full and no delay, breach or default will be deemed to have been excused in part or in full unless the waiver or excuse is in writing and signed by an authorised representative of

the relevant party. No waiver will constitute the waiver of any other breach of the same or any other term or condition.

19.4 **Entire agreement** The Agreement is the entire understanding between Connect 8 and Supplier concerning its subject matter and supersedes all previous agreements and understandings between the parties on its subject matter.

19.5 **Contract variations** The Agreement may not be modified or amended except in writing signed by a duly authorised representative of each party and no other act, document, usage, or custom will be deemed to amend or modify the Agreement.

19.6 **No agency** Nothing in the Agreement will be deemed to constitute either party as the agent, partner or joint venturer of the other. Supplier, in providing the Deliverables and Services to Connect 8 under the Agreement, is acting as an independent contractor.

19.7 **Counterparts** The Letter Agreement or PO may be executed in several counterparts (including facsimile copies), all of which when signed and taken together constitute a single agreement. A party can enter into the Agreement by signing any such counterpart.

19.8 **Further acts and documents** Each party will, at its own expense and when requested by the other party, promptly do, sign and deliver everything reasonably required for the purposes of and to give full effect to the Agreement, its provisions and any transactions contemplated by it.

19.9 **Governing law** The Agreement will be governed by the laws of New Zealand and, subject to clause 18 the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

19.10 **Remedies** Unless otherwise provided in the Agreement, all rights and remedies of the parties whether under the Agreement, in law or at equity, are non-exclusive, cumulative, and may be exercised concurrently or separately.

## Part 2: Goods and Materials

### 20 DELIVERY

20.1 **Packaging** Supplier must ensure that all Goods and Materials are adequately packed and protected for transport, and marked with identifying information as required by Connect 8. Supplier will provide packing slips setting out detailed descriptions of the delivered Goods and Materials accompanying the delivery of any Goods and Materials.

20.2 **Delivery** Except where the Letter Agreement and/or PO expressly provide otherwise, Supplier will deliver the Goods and Materials to Connect 8 in accordance with Incoterm 2010 DDP (Delivered Duty Paid) on the delivery date specified in the Agreement (or if none is specified, on a date notified by Connect 8, acting reasonably), and to the delivery location specified in the Agreement (or if none is specified, to a location within New Zealand notified by Connect 8). Delivery to a carrier will not constitute delivery to Connect 8. Supplier must promptly notify Connect 8 of likely delivery delays.

20.3 **Liquidated damages** Connect 8 will be entitled to liquidated damages from Supplier for the period from the agreed delivery date up to but excluding the date on which the Goods and Materials are actually delivered to Connect 8 in accordance with this Agreement, at the applicable rate(s) set out in the Letter Agreement and/or PO.

20.4 **Cancellation for delays** If Supplier fails to deliver the Goods and Materials within 5 Working Days' following the agreed delivery date, or it becomes clear that there is no reasonable prospect of Supplier delivering the Goods and Materials by that date, then (without prejudice to any other right or remedy) Connect 8 may give 5 Working Days' written notice of its intention to cancel, and unless the Goods and Materials are delivered before the end of that notice period, the purchase will be cancelled and Supplier must promptly refund to Connect 8 on demand any monies already paid to Supplier in respect of those Goods and Materials and Connect 8 may recover from Supplier any losses, costs or other expenses suffered or incurred as a direct result of Supplier's breach.

20.5 **Inspection** Connect 8 may inspect Goods and Materials at any time during the period of five Working Days following delivery. Without limiting any other rights or remedies Connect 8 may have, if Connect 8 finds any Goods and Materials are damaged or not in working order, Connect 8 may reject those Goods and Materials by notifying Supplier at any time during that period; and if more than 10% of the units in a single delivery are found to be damaged or not in working order, Connect 8 may reject the entire delivery by notifying Supplier at any time during that period.

20.6 **Return or refund** Connect 8 may return the rejected Goods and Materials to Supplier at Supplier's risk and cost, in which case Supplier must promptly refund to Connect 8 on demand all monies already paid to Supplier in respect of those Goods and Materials, or at Connect 8's option, Supplier must promptly provide a replacement for the rejected Goods and Materials.

## 21 TITLE AND LICENCE

21.1 **Title** Without limiting clause 21.3, title to Goods and Materials will pass to Connect 8 on payment of the Charges for those Goods and Materials or on delivery of those Goods and Materials to Connect 8, whichever occurs first. If Connect 8 rejects, or cancels the purchase of, any Goods and Materials in accordance with the Agreement, title and risk therein will remain with or revert (as the case may be) to Supplier.

21.2 **Undelivered Goods and Materials** Where title in Goods and Materials passes to Connect 8 while those Goods and Materials are still in the possession of the Supplier or its agents:

- (a) the Supplier will ensure that the Goods and Materials are clearly labelled as the property of Connect 8, and are stored in a manner which clearly separates them from any other Goods and Materials in the possession of the Supplier or its agents;
- (b) the Supplier will promptly notify Connect 8 where those Goods and Materials are being held pending delivery to Connect 8; and
- (c) the Supplier acknowledges that it holds those Goods and Materials solely as bailee for Connect 8.

The Supplier hereby grants Connect 8 an irrevocable licence to enter onto any premises owned or controlled by the Supplier or its agents for the purpose of uplifting those Goods and Materials, although Connect 8 may only exercise this right if the Supplier has become subject to one or more of the circumstances described in clauses 13.1(c) and 13.1(d), and has failed to deliver those Goods and Materials to Connect 8 within 5 days of Connect 8 requesting the same.

21.3 **Licence** Connect 8 acknowledges that all Intellectual Property in the Documentation and any firmware or other embedded software in the Goods and Materials will remain vested in Supplier or its licensors. Supplier grants Connect 8 and each subsequent owner of the Goods and Materials a perpetual, non-exclusive, transferable licence to:

- (i) use the firmware in combination with the Goods and Materials;
- (ii) use, copy and distribute the Documentation in connection with use of the Goods and Materials by any person; including through its contractors and personnel.

21.4 **Upgrades** Where the Goods and Materials include any firmware or other embedded software, Supplier will make available to Connect 8, at no additional cost, all upgrades, updates and patches for that firmware or software that are released at any time during the 12 months following delivery of the Goods and Materials (or any longer period specified in the Letter Agreement or PO).

## 22 WARRANTIES AND REMEDIES

22.1 **Warranty Period** If one or more of the Goods and Materials are found to be Defective within the applicable Warranty Period, then without limiting Connect 8's other rights or remedies, Connect 8 may give notice to Supplier requiring the Defect to be remedied, and Supplier will promptly remedy the Defect accordingly, at no cost to Connect 8. If the Defect has not been remedied within 10 Working Days of Supplier receiving that notice from Connect 8, then Connect 8 may

reject the Defective Goods and Materials, and any other Goods and Materials that Connect 8 reasonably considers cannot be used without the Defective Goods and Materials, and return them to Supplier at Supplier's risk and expense. In that case, Supplier must immediately refund to Connect 8 all monies paid in respect of the returned Goods and Materials, and Connect 8 may recover from Supplier any losses, costs or other expenses suffered or incurred as a direct result of Supplier's breach of warranty.

22.2 **Additional warranties** In addition to any other warranties and representations, Supplier warrants that:

- (a) at the time of delivery, the Goods and Materials will comply with the applicable Requirements, and will be new and unused;
- (b) the Goods and Materials will be fit for all purposes for which such items are normally acquired, and for all purposes which Connect 8 made known to Supplier before the date of the Agreement or which would have been within the reasonable contemplation of the parties, in each case subject to any limitations which Supplier advised to Connect 8 in writing prior to the date of the Agreement;
- (c) Supplier has the necessary rights and permissions to grant the licence in clause 21.3, Supplier has the right to sell the Goods and Materials to Connect 8, and title in the Goods and Materials will pass to Connect 8 in accordance with the Agreement and free of any charge, lien or other encumbrance;
- (d) Connect 8 will enjoy quiet possession of the Goods and Materials free from any interference by Supplier and its Affiliates or any person claiming through them; and
- (e) Connect 8 will receive the full benefit of all manufacturers' licences and warranties available to Supplier in relation to the Goods and Materials.

## Part 3: Services

### 23 SUPPLIER OBLIGATIONS

23.1 **Delivery** Supplier will deliver the Services to Connect 8, in a manner that meets the Requirements, at the location specified in the Agreement, and on Working Days unless otherwise specified in the Agreement. Supplier will carry out the Services in a manner that does not interrupt Connect 8's business, except for any interruptions approved in advance and in writing by Connect 8.

23.2 **Rates** Except as otherwise provided in the Agreement, all Charges for Services will be calculated in accordance with a "Rates Schedule" set out in or attached to the Letter Agreement and/or PO. If no such "Rates Schedule" has been provided to Connect 8, Connect 8 will not be liable for any Charges unless and until such a "Rates Schedule" has been provided by Supplier and approved by Connect 8 in writing.

23.3 **Service Levels** Supplier will deliver the Services so as to meet or exceed the Service Levels (if any), and otherwise in accordance with Good Industry Practice. If Supplier fails to meet a Service Level, Supplier will reduce the amount payable by Connect 8 under the Agreement by the amount equal to the corresponding service level credits (if any) calculated in accordance with the Letter Agreement and/or PO.

23.4 **Reporting** Supplier's Project Manager must report in writing to Connect 8's Project Manager at the frequency specified by Connect 8 from time to time (**Regular Report**). Each Regular Report must set out to a reasonable level of detail Supplier's progress on the work required by the Agreement, key items of work for the next reporting period, notification of delays, issues, risks and proposed mitigations, a cost breakdown for the last reporting period, and a cost forecast for the next reporting period.

23.5 **Meetings** The parties' Project Managers will meet as required by Connect 8's Project Manager from time to time, but no less than weekly, to discuss the Regular Report and any other matters requiring discussion relating to the Agreement.

## 24 CONTRACT MILESTONES

24.1 **Due Date** Supplier will meet each of its Contract Milestones on or before the corresponding Due Date, subject to any extensions allowed under clause 24.3 (Extensions of time).

24.2 **Slippage** If Supplier reasonably anticipates any delay (for any reason) in meeting any of its Contract Milestones, it will give Connect 8 written notice as soon as is reasonably practicable including the reasons for the delay. Both parties will then consult with a view to identifying ways to mitigate the delay. If this gives rise to a Change Request, the timeframe for preparation of a corresponding Change Impact Report will be no more than 2 Working Days. Notice under this clause will not excuse Supplier from its obligation to meet Contract Milestones or from any consequences of delay.

24.3 **Extensions of time** To the extent that a failure or inability of Supplier to meet a Contract Milestone is a direct result of a Force Majeure Event or Connect 8's breach of contract or negligence, Supplier will be entitled to a reasonable extension of time for that Contract Milestone and any other Contract Milestones that are similarly affected. This will be Supplier's sole remedy for the effects of any Force Majeure Event or any Connect 8 act or omission in terms of the cost, resource, time and effort required in order for Supplier to supply the Deliverables in accordance with the Agreement.

24.4 **Remedies for delay** If Supplier fails to meet a Contract Milestone, then subject to clause 24.3 (Extensions of time), but without prejudice to any other right or remedy of Connect 8:

- (a) subject to the other provisions of the Agreement, Connect 8 will be entitled to claim liquidated damages from Supplier for the period from the Due Date of the relevant Contract Milestone up to but excluding the date on which the Contract Milestone is met, at the applicable rate(s) set out in the Letter Agreement and/or PO;
- (b) if Supplier fails to meet the Contract Milestone by the end of the Milestone Remedy Period, then at any time thereafter, unless and until Supplier has met that Contract Milestone, Connect 8 may terminate the Agreement with immediate effect by written notice to Supplier, in which case Connect 8 may also terminate any other related Agreement with Supplier;
- (c) wherever Connect 8 terminates the Agreement and/or any related Agreement under this clause 24.4:
  - (i) Connect 8 will not be liable for any further charges under that Agreement;
  - (ii) Supplier must refund to Connect 8 on demand all charges for any deliverables that have not yet been provided to Connect 8 under that Agreement;
  - (iii) Connect 8 may (at its absolute discretion) return any deliverables already provided under that Agreement, in which case Supplier must refund to Connect 8 on demand all charges for those returned deliverables.

## 25 ACCEPTANCE TESTING

25.1 **Acceptance Tests** For each Stage, Connect 8 will be entitled to conduct such inspections and tests as Connect 8 reasonably considers necessary to satisfy itself that the Deliverables are suitable to be accepted and put into live operation for Connect 8 or its customers (**Acceptance Tests**). Connect 8 will ensure that the Acceptance Tests are objective, verifiable and compliant with any testing or acceptance requirements set out in the Letter Agreement and/or PO. Without limiting the foregoing, the Acceptance Tests may include any tests commonly conducted as a matter of Good Industry Practice for deliveries of comparable complexity, scale and risk.

25.2 **Factory testing** Supplier will not present a Stage to Connect 8 for Acceptance Testing unless Supplier is reasonably satisfied that the Stage is capable of passing its Acceptance Tests, and Supplier will carry out pre-delivery testing as necessary for that purpose.

25.3 **Submission and testing** Whenever Supplier considers that it has completed a Stage to the standard required by the Agreement, including after any re-submission under clause 25.4, Supplier will notify Connect 8 accordingly, and Connect 8 will perform Acceptance Tests on that Stage. Supplier will promptly provide any assistance and information reasonably requested by Connect 8 for the purpose of facilitating the Acceptance Tests.

25.4 **Test results and notification** Within 10 Working Days of the completion of Acceptance Tests for a Stage:

- (a) if the Stage has passed all its Acceptance Tests, Connect 8 will notify Supplier accordingly, and the Stage will be taken to be accepted;
- (b) if the Stage has not passed all its Acceptance Tests, Connect 8 will give notice to Supplier outlining the failures, and Supplier will correct each failure and resubmit the entire Stage to Connect 8 under clause 25.3 as soon as reasonably practicable thereafter;
- (c) if the Stage has passed all its Acceptance Tests other than specified faults which Connect 8 (in its absolute discretion) considers sufficiently minor to allow Supplier to remedy after Acceptance, Connect 8 will give notice to Supplier to that effect, accompanied by a list of the outstanding items, in which case the Stage will be taken to be accepted, and Supplier will promptly remedy each outstanding item to Connect 8's reasonable satisfaction, at no charge.

25.5 **Repeated failure** Without limiting any other rights or remedies Connect 8 may have, if a Stage fails its Acceptance Tests a second time after being resubmitted under clause 25.4(b), Supplier will be deemed to have missed a Contract Milestone and failed to remedy the delay within the Milestone Remedy Period, and Connect 8 will be entitled to terminate under clause 24.4 accordingly.

25.6 **Acknowledgement** Connect 8 will not in any circumstances be taken to have accepted any Stage except in accordance with this clause 25. Acceptance does not amount to acceptance by Connect 8 that Supplier has met its obligations under this Agreement, and Supplier will remain liable for the full period permitted by law for any unfulfilled obligations.

## Part 4: Software

### 26 SUPPLY OF SOFTWARE

26.1 **Initial copies** Supplier will supply Connect 8 with the number of copies of the Software and Documentation listed in the Letter Agreement or PO by the date specified in the Letter Agreement or PO, or if no date is so specified, as soon as practicable following the execution of the Agreement.

26.2 **Installation** If the Letter Agreement or PO requires Supplier to perform any installation services, Supplier will provide the installation Services in accordance with Part 3 of these Purchase Terms and certify to Connect 8 in writing when the Software is ready for use in accordance with the Requirements.

26.3 **Access to Connect 8's premises** Subject to Connect 8's reasonable security and operational requirements, Connect 8 will provide Supplier with all necessary access to Connect 8's premises for the purposes of carrying out the installation services required under the Agreement. In accessing those premises, Supplier will comply with all reasonable health and safety and security requirements notified to it by Connect 8 and/or the premises occupier.

### 27 SOFTWARE REVIEW PERIOD

27.1 **Testing** For Software that does not form part of a Stage for the purposes of clause 25, during the Software Review Period Connect 8 will be entitled to perform whatever tests it considers necessary to determine whether the Software is Defective.

27.2 **Remedy or rejection** If Connect 8 determines on reasonable grounds that this Software is Defective, then unless Connect 8 has



already accepted the Software, Connect 8 may give notice to Supplier requiring that the Defect be remedied within 10 Working Days of that notice. If the Defect has not been remedied by the end of that period, Connect 8 may reject the Software by notice to Supplier. If Supplier advises Connect 8 that the Defect has been remedied, the Software Review Period will restart.

27.3 **Return** If Connect 8 rejects the Software in accordance with this clause 27, Connect 8 will promptly return to Supplier all copies of the Software and associated Documentation in Connect 8's possession. On Supplier's receipt of these items, the licence of that Software under the Agreement will be deemed to have ended, Connect 8 will not be liable for any Charges for that Software, and Supplier will refund to Connect 8 all amounts already paid for the licensing and/or installation of that Software under the Agreement and any other Agreement. This does not relieve Supplier from its other obligations under the Agreement.

27.4 **Deemed acceptance** For the purposes of this clause 27, Connect 8 will be taken to have accepted Software if and only if:

- (a) Connect 8 notifies Supplier in writing that the Software has been accepted; or
- (b) Connect 8 uses the Software in a live operating production environment for a continuous period of 10 Working Days or more (other than for testing, limited piloting, training, conversion or data migration, as provided in the Agreement, or as otherwise agreed by Supplier); or
- (c) at the end of the Software Review Period, Supplier gives notice to Connect 8 requesting that it accept or reject the Software and advising that the Software will otherwise be deemed accepted, and Connect 8 has not rejected the Software within 10 Working Days of receiving that notice.

## 28 SOFTWARE LICENCE

28.1 **Licence grant** From the Software Delivery Date, Supplier grants a non-exclusive, perpetual licence to use the Software in accordance with the terms and conditions specified in the Licence Model for that Software. If no specific Licence Model is specified in the Letter Agreement or PO, the Licence Model will include the right to install and use an unlimited number of instances of the Software, for Connect 8's internal and external business purposes, although this does not include any right to issue installable copies of the Software to Connect 8 customers or allow those customers to install instances of the Software.

28.2 **Ancillary rights** Supplier acknowledges that Software may be required to interface and interoperate with Connect 8's Operating Environment. Accordingly, Connect 8 may carry out any integration work necessary for that purpose, and Supplier will provide Connect 8 with any information or assistance reasonably necessary for this purpose. Connect 8 may make additional copies of any Software for the purposes of back-up, disaster recovery and archive purposes, in addition to the copying permitted by law.

28.3 **No security mechanism** Supplier will not at any time include in any Software any security mechanism (including password, CPU serial number validation or dependency, electronic initialisation protection and the like) that hinders Connect 8's ability to physically and electronically transport that Software within Connect 8's computing facilities (as permitted under the Agreement), or Connect 8's ability to Use that Software in accordance with the Agreement.

28.4 **Right to modify** If under the Agreement Connect 8 is provided with the Source Code for any Software, Connect 8 will be entitled to copy, modify and use the Source Code (and any compiled or interpreted versions of the Source Code) for the purpose of repairing, maintaining, extending and/or enhancing the Software as it sees fit, so long as any Use of the resulting Software is within the bounds of the applicable Licence Model. As between the parties, Connect 8 will be entitled to ownership of all Intellectual Property arising from such repairs, maintenance, extensions and/or enhancements.

28.5 **Other Terms** Unless expressly provided otherwise in a written agreement signed by Connect 8, Connect 8 will not be bound by any so called "click-wrap", "shrink wrap" or "browser wrap" terms and conditions put forward by Supplier in relation to the Software, and except in the case of Third Party Software, Supplier will ensure that Connect 8 is able to Use the Software without any requirement to accept such terms and conditions.

28.6 **Open source software** Supplier will not incorporate into any Deliverable any Open Source Software, except with Connect 8's specific written consent. If Supplier does intend to incorporate Open Source Software into the Deliverables, Supplier must provide Connect 8 with the licence terms for the Open Source Software, and details of which components of the Deliverables will incorporate the Open Source Software. On receipt of such information Connect 8 will assess the Open Source Software on a case by case basis to determine (at Connect 8's absolute discretion) whether it is acceptable for incorporation into the Deliverables.

28.7 **Escrow Agreement** If requested by Connect 8 in relation to any particular Software, Supplier will promptly enter into an escrow agreement with Connect 8 and a reputable software escrow agent of Connect 8's choosing, on terms consistent with Connect 8's standard escrow agreement, a copy of which was provided to Supplier before it entered into this Agreement.

## 29 MAINTENANCE

29.1 **Maintenance Term** Except where the Letter Agreement or PO expressly provides otherwise, the Charges include a Maintenance Subscription for the first Maintenance Term, and the Maintenance Fee will be payable only for subsequent Maintenance Terms if and when taken up by Connect 8.

29.2 **Renewal** Connect 8 may renew the Maintenance Subscription for an additional Maintenance Term, by giving notice to Supplier at any time, in which case Supplier may invoice Connect 8 for the Maintenance Fee for that renewed Maintenance Term, at any time after the start of that Maintenance Term.

29.3 **Reinstatement** Where the Maintenance Subscription has lapsed, Connect 8 may reinstate the subscription by giving notice to Supplier, in which case Supplier may invoice Connect 8 for the Maintenance Fee for the next Maintenance Term, and so long as the version of the Software in use at Connect 8 at the time is no more than two Major Releases behind the latest Major Release, Connect 8 will not be required to pay any additional Charge for that reinstatement.

29.4 **Releases** During each Maintenance Term, Supplier will notify Connect 8 promptly upon each new Release of the Software becoming generally available to Supplier's customer base. Supplier will promptly provide Connect 8 with a copy of the Release (including release notes and installation instructions) at no extra charge to Connect 8. Each Release implemented by Connect 8 will be licensed to Connect 8 as part of the Software under this Agreement, at no extra charge to Connect 8. Except where the Agreement expressly provides otherwise, Connect 8 will not be obliged to implement any future Release, and failure to do so will not affect any rights or remedies Connect 8 may have.

29.5 **Operating Environment** Supplier will ensure that each Release that becomes available during the first Maintenance Term will be compatible with the Operating Environment. Thereafter, Supplier will ensure that subsequent Releases require no more than one update of the Operating Environment in any rolling 12 month period.

## 30 WARRANTIES

Supplier warrants that:

- (a) upon installation in accordance with the Documentation, the Software will be ready to be operated in accordance with its standard user manuals and technical documentation;
- (b) the Software will contain no viruses, spyware or Trojan horses, or any other code which would have the effect of materially disrupting, impairing, disabling or otherwise adversely affecting,

shutting down or denying Connect 8 or its Affiliates access to all or any part of any Software or any other Connect 8 software, hardware, network or system; and

- (c) the Software will be compatible with each other individual element or module of the Deliverables and the Operating Environment as described in the Agreement.

## Part 5: Interpretation

### 31 DEFINED TERMS

In this Agreement, unless the context requires otherwise:

**Affiliate** of a person, means any other person directly or indirectly Controlling, Controlled by or under common Control with the first person at the relevant time.

**Agreement** means an agreement between Connect 8 and Supplier for the supply of goods, services and/or software, which expressly incorporates these Purchase Terms by reference. Such an agreement may take the form of a Letter Agreement or PO.

**Change Request** and **Change Impact Report** have the meanings given in clause 3 (Contract Changes).

**Charges** means amounts payable by Connect 8 to Supplier for the Deliverables, as specified in the Agreement.

**Confidential Information** of a party (**Discloser**) means all information (in any form) acquired by the other party (**Recipient**) in connection with the Agreement (whether before or after the date of the Agreement), in circumstances such that the Recipient ought reasonably to have regarded that information as confidential to the Discloser. For this purpose, all information acquired by Supplier in connection with the Agreement regarding Connect 8's network, systems, products, premises, staff, suppliers, plans, business, procedures and methodologies is confidential to Connect 8. However, Confidential Information excludes any information which the Recipient can show: (a) is in the public domain other than as a result of a breach of the Agreement or any other obligation of confidentiality; (b) is already or lawfully comes into the unrestricted possession of the Recipient without any breach of any obligations of confidentiality owed by a third party; (c) has been independently developed by the Recipient (as evidenced by records in its possession); or (d) is not intended to be confidential as evidenced by the written agreement of the Discloser.

**Connect 8** subject to clause 17.1, means Connect 8 Limited.

**Connect 8 Derivative IP** means Intellectual Property arising on the creation of Material that is a derivative or adaptation of, or a modification or enhancement to, any Connect 8 Material, regardless of whether the new Material is created by Connect 8 or Supplier or its Subcontractors.

**Connect 8 Material** means any Material which Connect 8 provides, or has provided, to Supplier for the purposes of the Agreement, excluding any part of that Material which was originally obtained by Connect 8 from Supplier or its Affiliates or Subcontractors.

**Contract Change** means a proposed change to the Agreement, including any change to the Agreement's specifications or requirements for the Deliverables.

**Contract Manager** in relation a party, means the "Contract Manager" appointed by that party from time to time and notified to the other party.

**Contract Milestone** means all or any of the delivery and/or performance milestones and their associated dates specified in the Agreement by which Supplier must complete them, as extended from time to time pursuant to clause 24 (Contract Milestones).

**Control** means the power to exercise 50% or more of the voting interests of an entity, or ownership of 50% or more of the beneficial

interests in income or capital of an entity. Control may be direct or indirect, and where one entity Controls another, the first entity is deemed to Control each other entity Controlled by the second entity. **Controlled** and **Controlling** shall have corresponding meanings.

**Defect** in relation to Deliverable, means a failure of the Deliverable to comply with a requirement of the Agreement, and **Defective** shall be construed accordingly.

**Deliverable** means any Goods and Materials, Services and/or Software provided or to be provided under the Agreement, including all items described as "Deliverables" in the Agreement. A Deliverable may also consist of an outcome described in the Agreement, which Supplier is required to bring about through performance of a Service.

**Delivery Date:**

- (a) in relation to Goods and Materials, means the date on which the Goods and Materials are delivered to Connect 8 in accordance with clause 20.2;
- (b) in relation to Services, means the date on which the Services are provided to Connect 8; and
- (c) in relation to Software, means the date of delivery of a copy of the Software to Connect 8 (if Connect 8 is responsible for installing the Software), or the date on which Supplier provides the certification in accordance with clause 26.2 (if Supplier is responsible for installing the Software).

**Documentation** means all or any documentation that Supplier provides (or is required to provide) to Connect 8 pursuant to the Agreement.

**Force Majeure Event** means any event beyond the reasonable control of the party claiming relief, excluding: (a) any event which that party could have avoided or overcome by exercising a reasonable standard of care at a reasonable cost; (b) a lack of funds for any reason; and (c) a strike or other labour dispute involving that party or its agents, sub-contractors or suppliers.

**Goods and Materials** means the goods and materials to be supplied under the Agreement, as described in the Letter Agreement and/or PO, and where relevant including any Hardware and Documentation.

**Good Industry Practice** means the application of at least the level of skill, care, diligence, experience, efficiency and judgement that would be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances, applying the best standards and practices currently applied in the New Zealand ICT industry.

**GST** means New Zealand goods and services tax, payable in accordance with the New Zealand Goods and Services Tax Act 1985.

**Intellectual Property** means all intellectual property rights and interests whether registered or unregistered, and whether conferred by statute, at common law or in equity, and all rights or forms of protection having equivalent or similar effect in any jurisdiction, whether those rights currently exist or arise in the future.

**Key Personnel** means the Supplier Personnel (if any) identified in the Letter Agreement and/or PO as "Key Personnel".

**Laws** means all applicable legislation, regulations and bylaws, and all mandatory codes, standards and orders having the force of law, in New Zealand and any other jurisdiction in which the Deliverables are delivered under the Agreement.

**Letter Agreement** means a letter agreement which has been signed by Connect 8 and Supplier, and states that it incorporates or is subject to these Purchase Terms.

**Licence Model** means the terms and conditions of use for any Software licensed to Connect 8 under the Agreement, as set out in these Purchase Terms and/or the Letter Agreement and/or PO.

**Maintenance Fee** means the fee required to renew the Maintenance Subscription for a further Maintenance Term, being the amount specified in the Letter Agreement or PO, or if none is specified, then Supplier's standard list price.

**Maintenance Subscription** means the right to receive and use subsequent Releases of the Software, on terms set out in the Agreement.

**Maintenance Term** means the term of the Maintenance Subscription, as specified in the Letter Agreement or PO, or if none is specified, a period of 12 months, commencing on the date of final acceptance of the Software under clause 25 (if applicable), and otherwise on the Software Delivery Date.

**Major Release** means a Release that adds significant new functions or features to the Software, as opposed to a Release which makes cosmetic changes or merely remedies defects or bugs from a previous Release.

**Material** means information or instructions stored in any medium, and includes software, firmware, databases and any other forms of computer code and electronic data, as well as reports, manuals, specifications, plans, layouts, schema, formulae, diagrams, video recordings, audio recordings, photographs, drawings and other images.

**Milestone Remedy Period** means the applicable "Milestone Remedy Period" specified in the Letter Agreement or PO, or if none is specified, then 5 Working Days for a Contract Milestone identified in the Letter Agreement or PO as "critical", and 15 Working Days for any other Contract Milestone.

**Open Source Software** means any software available on so called "open source" or "copyleft" licence terms, including any version of the GNU General Public License, the Apache or BSD licence, or any other any license granted, created or administered by the Free Software Foundation.

**Operating Environment** means the approved hardware and/or software environment for the operation of the Deliverables, as specified in the Agreement. The Operating Environment for subsequent Releases of the Software will be as notified by Supplier for its customer base from time to time, subject to clause 29.5.

**Personnel** of any entity means any director, officer, employee, or contracted staff member of that entity or that entity's Affiliates.

**Pre-existing IP** means Intellectual Property subsisting in Material which a Party has created or acquired wholly independently of the Agreement.

**Project Manager** means a party's project manager appointed under the Agreement.

**PO or Purchase Order** means a purchase order issued by Connect 8 and accepted by Supplier (acceptance may be express, or may be implied by Supplier confirming the underlying order or commencing work on the relevant deliverables).

**Release** means a subsequent version of the Software.

**Requirements** in relation to a Deliverable, means Connect 8's applicable business, functional, non-functional, operational, performance and other requirements and specifications for that Deliverable, as set out or referred to in the PO or Letter Agreement.

**Service Levels** means the applicable "service levels" and "KPIs" (if any) specified in the Letter Agreement and/or PO.

**Services** means the services provided (or to be provided) by or on behalf of Supplier pursuant to the Agreement (including any incidental services), as described in the Letter Agreement and/or PO.

**Software** means all or any software provided (or to be provided) by Supplier to Connect 8 as described or referred to in the Letter Agreement and/or PO.

**Software Review Period** in relation to any Software, means the applicable "Software Review Period" specified in the PO and/or Letter Agreement or, if no such period is specified, the period of 90 days immediately following the Delivery Date for that Software.

**Source Code** in relation to Software, means that Software in the preferred form for making changes to that Software.

**Stage** means each Deliverable or group of Deliverables identified in the Letter Agreement and/or PO as a "Stage" to be subjected to "acceptance tests".

**Subcontractor** means any person that performs, or is engaged to perform, any of Supplier's obligations under the Agreement; but to avoid doubt excludes Supplier's employees.

**Supplier** means the party contracting with Connect 8 under the Agreement.

**Supplier Developed IP** means Intellectual Property that arises on the creation of Material created wholly or predominantly by Supplier: (i) in the course of, or for the purposes of, performing its obligations under the Agreement; (ii) or facilitating the performance of Connect 8's obligations under the Agreement.

**Supplier Material** means any Material which Supplier provides, or has provided, to Connect 8 for the purposes of the Agreement, excluding any part of that Material which was originally obtained by Supplier from Connect 8 or its Affiliates.

**Third Party Software** means Software specifically identified in the Letter Agreement and/or PO as "Third Party Software".

**Third Party Licence Terms** means the licence terms for Third Party Software, as set out in or attached to the Letter Agreement and/or PO.

**Use** has the meaning set out in clause 9.1 (Indemnity by Supplier).

**Warranty Period** in relation to a Deliverable, means the applicable "Warranty Period" for that Deliverable as specified in the Letter Agreement and/or PO, or if none is specified, then a period of 12 months from the Delivery Date. To avoid doubt, Supplier's repair, correction or replacement of a Deliverable will give rise to a separate Warranty Period commencing on the completion of the repair or correction, or on delivery of the replacement (as the case may be).

**Working Day** means any day (other than a Saturday, Sunday or a public holiday observed in Auckland, New Zealand) between the hours of 8:30am and 5:30pm New Zealand time.

## 32 CONSTRUCTION

In the Agreement, unless the context requires otherwise:

- (a) a reference to any document, enactment or regulation includes a reference to that document as amended or replaced from time to time;
- (b) headings appear as a matter of convenience and do not affect the meaning or construction of the Agreement;
- (c) the word "includes" or "including" does not limit the meaning of words preceding it;
- (d) a reference to any monetary amount is a reference to New Zealand dollars;
- (e) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporated; and
- (h) the singular includes the plural and vice versa, and words importing one gender include the other genders.