

ALCHEMY NETWORKS TERMS OF SERVICE

1 APPLICATION OF THESE TERMS

- 1.1 These Terms set out the terms on which Alchemy Networks Limited (**we, our or us**), provides Services (as defined below) to its customers (**you or your**).
- 1.2 Each Quote or Proposal, the Service Descriptions and these Terms together make up the Agreement.
- 1.3 In the event and to the extent of any inconsistency between two or more documents which form part of the Agreement, those documents will, unless expressly stated otherwise, be interpreted in the following descending order of precedence (from high priority to low priority):
- a these Terms;
 - b the Quotes or Proposals; and
 - c the Service Descriptions.
- 1.4 By authorising us to proceed with the provisioning of the Services set out in a Quote or Proposal, you accept, and agree to be bound by, the Agreement.

2 CHANGES

- 2.1 By giving at least 14 days' notice, we may change these Terms from time to time. We will notify you of any change and the effective date of the change by email or by posting a notice on the Website.
- 2.2 In addition to clause 2.1, we reserve the right to urgently change these Terms if required by law or where necessary for security reasons, to prevent fraud or for technical reasons. We will notify you of the change as soon as practicable.
- 2.3 **These Terms were last updated on [insert] and are available on our Website.**

3 INTERPRETATION

- 3.1 **Definitions:** In the Agreement, the following terms have the stated meaning:

Term	Meaning
Agreement	each Quote or Proposal, the Service Descriptions and these Terms.
Content	all data, information and content (including Personal Information) owned, held, used or created by or on behalf of you that is transmitted or stored using the Services.

Term	Meaning
CPE	means any equipment owned, operated or controlled by us that we provide to you for installation on your premises, excluding any equipment that you purchase from us and pay for.
Early Termination Fee	any early termination fee set out in the Quote or Proposal.
Fees	the fees set out in the Quote or Proposal, as updated from time to time in accordance with clause 12.5.
Force Majeure	<p>an event that is beyond the reasonable control of a party, excluding:</p> <ul style="list-style-type: none"> ▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or ▲ a lack of funds for any reason.
Intellectual Property Rights	<p>includes copyright and all worldwide rights conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know how, and all other rights resulting from intellectual activity.</p> <p>Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.</p>
Internet Services	includes ADSL, VDSL, wireless and fibre services.
Network Operator	has the meaning given to it in the Telecommunications Act 2001.
Objectionable	includes being objectionable, defamatory, obscene, harassing, threatening, or unlawful in any way.
Permitted Users	any person who you authorise to access and use the Services on your behalf or using your account.
Personal Information	has the meaning given in the Privacy Act 1993.
Privacy Policy	the privacy policy available on our Website.

Term	Meaning
Quote or Proposal	a quote or proposal that we have provided to you in writing (including by email).
Service Description	the descriptions of the Services available on our Website.
Services	the services set out in the Quote or Proposal, as further described in the Service Descriptions.
Start Date	unless otherwise specified in the Quote or Proposal, the date that we provision the Services for you to use.
Terms	these terms titled <i>Alchemy Networks terms of service</i> .
Underlying Systems	the IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks.
User ID	any user ID used to access your account and/or the Services.
Website	the Internet site at www.alchemynetworks.co.nz , or such other site notified to you by us.
Year	a 12 month period starting on the Start Date or the anniversary of that date.

3.2 **Interpretation:** In the Agreement:

- a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- b words in the singular include the plural and vice versa;
- c a reference to:
 - i a **party** to the Agreement includes that party's permitted assigns;
 - ii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
 - iii **including** and similar words do not imply any limit; and

- iv a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them; and
- d no term of the Agreement is to be construed against a party because the term was first proposed or drafted by that party.

4 PROVISION OF THE SERVICES

4.1 General: We will provide the Services:

- a in accordance with the Agreement and New Zealand law;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

4.2 Non-exclusive: Our provision of the Services to you is non-exclusive. Nothing in the Agreement prevents us from providing the Services to any other person.

4.3 Availability:

- a Not all Services are available to all customers or in all areas.
- b We will use reasonable efforts to ensure the Services are available on a 24/7 basis. However, due to the nature of telecommunications services, we cannot promise that the Services will always be available or fully-functioning. It is possible that on occasion the Services may be unavailable to permit maintenance or for other development activity to take place, or in the event of Force Majeure.
- c We will use reasonable efforts to restore any Service outages or faults as soon as possible. If there is a problem with the Services, please contact us at *[insert]*.
- d We are not liable or responsible for anything which occurs as a result of a failure of the systems or network infrastructure of the Network Operators that we use to provide the Services.

5 CPE

5.1 CPE loan: Where we provide you with CPE, this clause 5 will apply.

5.2 Conditions: You must:

- a use the CPE solely in connection with the Services;
- b not, except as expressly provided for in the Agreement:
 - i rent, sell, lease, sublicense, or otherwise transfer the CPE to any third party; or
 - ii modify or service the CPE;

- c ensure the CPE is protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
- d maintain all proprietary notices on the CPE;
- e not grant a security interest in the CPE;
- f immediately notify us if the CPE is lost or stolen; and
- g if the CPE is damaged, faulty or breaks down, immediately:
 - i notify us; and
 - ii cease using the CPE and return the CPE to us.

5.3 **Title:** Legal and beneficial ownership of the CPE remains with us at all times.

5.4 **PPSA:** You agree that the supply of CPE under the Agreement creates a security interest over the CPE, and all of your present and future rights in relation to the CPE and any proceeds, in our favour that may be registered on the personal property securities register under the Personal Property Securities Act 1999 (**PPSA**).

5.5 **Further acts:** You must provide all information and do all things, including executing documents, as we may require for the purpose of ensuring that we have a perfected first ranking security interest in the CPE and any proceeds under the PPSA.

5.6 **Contracting out:** You agree that sections 114(1)(a), 133 and 134 of the PPSA do not apply to the enforcement by us of any security interest created or provided for by the Agreement to which Part 9 of the PPSA applies. You waive any right you may have under sections 116, 120(2), 121, 125, 127, 129 and 131 of the PPSA on such enforcement.

5.7 **Statements:** You waive any right you may have 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 the CPE.

5.8 **Care:** You must:

- a use all reasonable efforts to protect our rights in the CPE, including making it clear to others that we (and not you) own the CPE;
- b not allow the CPE to become subject to any security, encumbrance or lien of any kind; and
- c not allow the CPE to be used or installed in a way that results in it becoming a fixture to any land, including real property.

5.9 **Risk:**

- a Risk in the CPE passes to you on delivery of the CPE to you.

- b Risk in the CPE passes back to us when the CPE has been returned to us.
- 5.10 **Returns:** The CPE must be returned to us on or before the termination or expiry of the Agreement in the same order and condition as at the date we provide it to you (fair wear and tear excepted). If the CPE (or any part of it) is damaged, lost, stolen or otherwise not returned in accordance with this clause, we may charge you for the CPE at the higher of:
 - a the purchase price at the Start Date; and
 - b then-current replacement value.

6 YOUR OBLIGATIONS

6.1 General use: You and your Permitted Users must:

- a use the Services in accordance with the Agreement solely for:
 - i your own internal business purposes; and
 - ii lawful purposes (including complying with the Unsolicited Electronic Messaging Act 2007); and
- b not resell or make available the Services to any third party, or otherwise commercially exploit the Services.

6.2 Access conditions: When accessing and using the Services, you and your Permitted Users must:

- a not impersonate another person or misrepresent authorisation to act on behalf of others or us;
- b correctly identify the sender of all electronic transmissions;
- c not attempt to undermine the security or integrity of the Underlying Systems;
- d not use, or misuse, the Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Services;
- e not attempt to view, access or copy any material or data other than:
 - i that which you are authorised to access; and
 - ii to the extent necessary for you to use the Services in accordance with these Terms;
- f neither use the Services in a manner, nor transmit or store any Content, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and
- g comply with the Acceptable Use Policy.

- 6.3 **Your information:** You must provide true, current and complete information in your dealings with us (including when setting up an account), and must promptly update that information as required so that the information remains true, current and complete.
- 6.4 **Account information:** If you are given a User ID, you must keep your User ID secure and:
- a not permit any other person to use your User ID, including not disclosing or providing it to any other person; and
 - b immediately notify us if you become aware of any disclosure or unauthorised use of your User ID, by sending an email to *[insert]*.
- 6.5 **Permitted Users:** Subject to clause [15.3](#):
- a you are liable for all charges accrued using your account or User ID; and
 - b you indemnify us against all loss we suffer or incur as a direct or indirect result of your failure to comply with the Agreement, including any failure of a person who accesses and uses the Services using your User ID.

7 INTERNET SERVICES

- 7.1 **Internet Services:** If you are using Internet Services, this clause 7 applies to you.
- 7.2 **Availability:** Internet Services are not available everywhere. We will confirm availability before we commence provisioning of Internet Services.
- 7.3 **Connection and installation Fees:** You will be required to pay the applicable connection and/or installation Fees (if any) for the Internet Services as set out in the Quote or Proposal.
- 7.4 **Routers:**
- a We will initially set up and configure your router for you. If you make unauthorised changes to the configuration of your router which affects the Internet Services, any reset performed by us will be at an additional cost.
 - b If you want the Internet Services transferred to a new copper or fibre line, you may have to pay for the new connection and installation. If you are using fibre services, you may not be able to change back to copper.
- 7.5 **Fibre installation:** If we are providing you with standard fibre services, a standard fibre installation includes the following:
- a the fibre cable from the street (up to 200m) to your business;
 - b the external termination point;
 - c the optical network terminal (**ONT**); and
 - d installation of a fibre enabled router.

7.6 **Non-standard installation:** If we are providing you with fibre, a non-standard installation includes the following:

- a where your business is more than 200m from the fibre access point on the street; or
- b where your router is installed at a separate location to the ONT and additional wiring is required.

7.7 **Speeds:** Connection speeds for the Internet Services vary due to various factors. The day-to-day performance will also be affected by the number of users of the Internet Services, our Underlying Systems or the network of third party providers that we use to provide the Internet Services to you.

7.8 **Limitations:**

- a The configuration of the systems you use to receive the Internet Services may affect, not only your use of the Internet Services, but our provision of it. For example, certain simple mail transfer protocol (SMTP) service configurations leave you vulnerable to relaying spam; spam may overload our systems.
- b The Internet Services will only be delivered to your relevant systems when you have the required connection to receive the Internet Services and will be subject to any service availability limitations and any functionality limitations of your systems.
- c Subject to clauses 10 and 16.7, we do not and cannot in any way supervise, edit or control the way in which you or other end users use the content, information or other material accessed through the Internet Services we provide to you.
- d We will not be responsible or liable in any way for the content, information or other material accessed or provided by means of the Internet Services. You are responsible for all content, information or other material that you upload, download, post, email, or otherwise transmit, access or make available through the use of the Internet Services.
- e We have not reviewed any or all of the sites accessible using the Internet Services and are not responsible for the content of any of those sites.

7.9 **Usage:**

- a Data usage is based on the amount of data transferred through the Internet Services (both uploading and downloading) and can be expressed as megabytes or gigabyte (1,000 megabytes = 1 gigabyte). This can include overhead data usage which is required for establishing and maintaining the connection.
- b It is your responsibility to monitor how many megabytes or gigabytes of data you have used. Some viruses can lead to unexpected use of data and this in turn can use up your monthly data allowance. This unwanted usage could lead to you reaching your monthly data allowance faster than you thought.

- c You are entirely responsible for all data usage that occurs under your account, whether or not the usage is caused by a virus, including denial-of-service attacks and any unauthorised usage and/or unrequested traffic. It is your responsibility to make sure you have sufficient security to meet your needs. We encourage you to contact us to find out what security options are available.

7.10 Service reliability:

- a We are unable to provide specific performance guarantees, however we are committed to providing consistent and reliable Internet Services.
- b While we always strive to provide a consistent service, there are a number of factors that influence reliability of our Internet Services. For this reason, we do not guarantee connection speed bandwidth, latency (delay) or bit rate through the network that we use to provide the Internet Services at any one point in time.
- c As the Internet Services can occasionally go down, you should take this into account when choosing this product and what you will want to use it for. We cannot guarantee how quickly we can arrange for resolution of any problems with the provision of the Internet Services.

7.11 Termination: There are certain things, that despite our best efforts, we cannot guarantee or provide in relation to the Internet Services. In some cases it may be unavoidable for us to change, withhold, suspend, restrict, replace or terminate any of the Internet Services where, for example, systems or the network are being maintained or otherwise worked on, unavailable or must be protected, to manage network traffic or access to network services (for example, to manage peer to peer traffic types), to improve functionality and attributes of the Internet Services, or for any other reason we think is reasonably necessary or desirable to do so.

7.12 Changing or replacing Internet Services: Where we change or replace an existing Internet Service we will give you as much warning as we reasonably can. Where we have changed or replaced an existing Internet Service, and we have to do this without providing you with prior notice of the change in order to protect our network, we will advise you of the changes and the impact on you as soon as practicable following the change.

7.13 Inactivity: You acknowledge that we may suspend, sign out, disconnect, terminate, or delete your Internet Service account (including sub accounts) or any communication session for any particular Internet Service that is “inactive” for a period of time. “Inactive” means that you have not used a particular Internet Service or your account for a period of time, as determined by us, acting reasonably.

7.14 Interception: We may intercept communications for the purposes of the Department of Internal Affairs’ Digital Child Exploitation Filtering System or otherwise required by law and by using the Internet Services, you acknowledge and consent to this.

7.15 **Support:**

- a The stability and performance of the Internet Services can be affected by a number of potential faults. A fault can originate from our network, a Network Operators' network, your router, or your computer. If the Internet Services are not meeting your expectations, our Customer Support team are trained to help you identify where the potential fault lies.
- b Occasionally network outages do occur. There is no charge for fixing such faults during our normal business hours except where you, or anyone you are responsible for, cause the fault or if the fault lies with your own equipment
- c If we arrange for a service technician to visit your premises and the technician finds that there are no problems with the network, you will be required to pay the cost of the service technician being sent out. We will let you know in advance what the potential charges to you could be.

7.16 **End User Terms:** If you are receiving the Internet Services over fibre, you agree that you will be bound by these Terms and the terms of your local fibre company's End User Terms (which can be found at <https://www.crownfibre.govt.nz/crown-partners/>). The local fibre company End User Terms relate to, amongst other things, the provision (including installation) and use of that part of the local fibre company's network which is located on your premises.

8 **VOICE SERVICES**

8.1 **Voice Services:** If you are using voice Services, this clause 8 applies.

8.2 **Porting:** You may contact us to port any telephone number another telecommunication provider has assigned to you to us. We will comply with our obligations under the then-current Terms for Local and Mobile Number Portability in New Zealand published by Commerce Commission (**LMNP Terms**) in relation to such porting.

8.3 **Porting to other providers:** You may port your telephone number from us to another voice services provider and we will comply with our obligations, in relation to such porting, under the LMNP Terms.

8.4 **Transfer of voice services:** You will be responsible and liable for any costs for transferring your voice services from another telecommunications provider to us or vice versa.

8.5 **Telephone number:** Subject to the LMNP Terms, the telephone number we provide to you will not be your property. We may change the number we have provided to you and give you a new number. If this is necessary, we will give you as much notice as reasonably possible of any such change. We are not responsible or liable for any costs involved with the change.

9 **MOVING ADDRESS**

9.1 **Changing your address or phone line:** If you change your address or phone line, you may be able to take the Services with you. You will need to contact us at least [30] days prior to

moving address or phone line so we can discuss the move, Fees for the change (if any) and any additional Fees for installation and/or reconnection of the Services.

- 9.2 **Interim services:** If you fail to provide us with the notice set out in clause 9.1, we may be required to implement interim services to ensure you can access Internet Services at the new address on the moving date. You must pay any additional costs incurred by us for providing the interim services.
- 9.3 **Network Operator costs:** If you move address during the minimum or fixed term, you will be required to pay for any additional costs we may incur from Network Operators.
- 9.4 **Alternative solution:** If the Services you are currently receiving are not available at the new address, we may provide you with an alternative solution, which may require that you enter into a new contract and minimum term.

10 FAIR USE

- 10.1 **Business use:** The Services are offered for your normal business use only. We do not allow for activities aimed at making a profit from the Services, reselling the Services, or using the Services in an unfair or excessive way and any such use of the Services is a breach of these Terms.
- 10.2 **Fair use policy:** Your use of the Services is subject to fair use. We have developed a fair use policy by reference to average business customer profiles and their usage of the Services. If your use of the Services materially exceeds estimated customer usage patterns over any month, or is inconsistent with normal usage patterns, then your usage is deemed to be excessive or unreasonable.
- 10.3 **Breach:** If your use is deemed to be excessive or unreasonable, we may contact you to tell you that your usage is in breach of our fair use policy. We may then request that you stop or alter your usage of the Services to come within our fair use policy.
- 10.4 **Consequences of breach:** If you continue to engage in excessive or unreasonable use after we have requested you to come within our fair use policy, we may, without further notice, charge you for the excessive and/or unreasonable element of your usage or suspend, modify or restrict your use and access to the Services, or terminate the Services.

11 PRIVACY

- 11.1 **Personal information:** From time to time we may collect personal information from you. We will comply with our Privacy Policy, the Privacy Act 1993 and Telecommunications Privacy Code when collecting, using and storing your personal information.
- 11.2 **Privacy Policy:** Our Privacy Policy forms part of our Agreement with you and sets out how we collect, use and disclose personal information. It is important that you read our Privacy Policy.

12 FEES

12.1 **Fees:** You agree to pay the Fees for the Services provided by us.

12.2 **Internet Services and voice Services Fees:** The Fees for the Internet Services and voice Services will appear as part of your monthly bill. Fees include:

- a any applicable one-off installation, router and porting charges;
- b monthly service fees (billed one month in advance); and
- c if applicable, any additional data or phone calling charges (billed one month in arrears).

12.3 **Invoicing and payment:**

- a We will provide you with GST tax invoices on the dates set out in the Quote or Proposal, or if there are none, monthly in advance for recurring Fees and monthly in arrears for variable Fees. We will send your invoice to your contact email address.
- b The Fees exclude GST (unless stated otherwise), which you must pay on taxable supplies under the Agreement.
- c You must pay the Fees:
 - i by the 20th of the month in which the date of invoice was issued (or if the invoice is issued after the 15th of day of a month, the 20th day of the following month), unless otherwise agreed in writing; and
 - ii electronically in cleared funds without any set off or deduction.

12.4 **Overdue amounts:** If payment of any amount owed to us is not received by the due date, we may:

- a charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate of 18%; and/or
- b recover all costs incurred in recovering overdue amounts and interest from you, including the actual fees charged by our lawyers and any debt collection agency.

12.5 **Increases:**

- a Except as otherwise set out in the Quote or Proposal, we may, by giving at least 30 days' notice, increase the Fees from time to time for any of the Services. We will notify you of any Fee increase and the effective date of the Fee increase by emailing you at the email contact address that you have most recently supplied to us.
- b If you do not wish to pay the increased Fees, you may terminate the Agreement on no less than 10 days' notice, provided the notice is received by us before the effective date of the Fee increase. If you do not terminate the Agreement in accordance with this clause, you are deemed to have accepted the increased Fees.

- c If we increase the Fees during any minimum or fixed term, and you terminate the Agreement in accordance with clause 12.5b, you will not be required to pay any Early Termination Fee.

12.6 **Invoice disputes:** You may withhold payment of an invoice or part of an invoice that you dispute in good faith. You must notify us of the dispute within 14 days of the receipt of the invoice. You must pay any undisputed portion of the disputed invoice by the due date set out in clause 12.3c. Any disputed invoice under this clause must be dealt with in accordance with clause 17.1.

13 INTELLECTUAL PROPERTY

13.1 **Ownership:** Title to, and all Intellectual Property Rights in, the Services, the Underlying System and the Website is and remains our (and our licensors') property. You must not dispute that ownership.

13.2 **Content:** Title to, and all Intellectual Property Rights in, the Content is and remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Content for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with the Agreement.

13.3 **Feedback:** If you provide us with ideas, comments or suggestions relating to the Services (together **feedback**):

- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
- b we may use or disclose the feedback for any purpose.

14 WARRANTIES

14.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement, which constitute binding obligations on the warranting party.

14.2 **No implied warranties:** To the maximum extent permitted by law:

- a our warranties are limited to those set out in the Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded and, to the extent that they cannot be excluded, liability for them will not exceed the Fees paid by you relating to the Services in the one month period immediately preceding the first event giving rise to liability; and

- b we make no representation concerning the quality of the Services and do not promise that the Services will:
 - i meet your requirements or be suitable for a particular purpose; or
 - ii be secure, free of viruses or other harmful code, uninterrupted or error free.

14.3 Consumer Guarantees Act 1993: You agree and represent that you are acquiring the Services, and entering the Agreement, for the purposes of trade. The parties agree that:

- a to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Services or the Agreement; and
- b it is fair and reasonable that the parties are bound by this clause 14.3.

14.4 Limitation of remedies: Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, our liability for any breach of that condition or warranty is limited, at our option and to the extent permitted by law, to:

- a supplying the Services again;
- b paying the costs of having the Services supplied again; and/or
- c refunding the Fees for the Services.

15 LIABILITY

15.1 Our maximum liability: Our maximum aggregate liability under or in connection with the Agreement or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, will not exceed the Fees paid by you relating to the Services in the one month period immediately preceding the first event giving rise to liability. The cap in this clause 15.1 includes the cap set out in clause 14.2a.

15.2 Unrecoverable loss: Neither party is liable to the other under or in connection with the Agreement or the Services for any:

- a loss of profit, revenue, savings, business, use, data (including Content) and/or goodwill;
or
- b consequential, indirect, incidental or special damage or loss of any kind.

15.3 Unlimited liability:

- a Clauses 15.1 and 15.2 do not apply to limit our liability under or in connection with the Agreement for:
 - i personal injury or death; or

- ii fraud or wilful misconduct.
- b Clause 15.2 does not apply to limit your liability:
 - i to pay the Fees;
 - ii under clause 5.10 or 6.5b; or
 - iii for those matters stated in clauses 15.3ai and 15.3aii.

15.4 No Network Operator liability: No Network Operator or other third party supplier of ours will be liable to you for loss or damage of any kind arising from your use of the Services. This clause creates a right and benefit that such Network Operators and suppliers can enforce as a defence to any claim.

15.5 No liability for other's failure: Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its permitted users.

15.6 Mitigation: Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.

16 TERM, TERMINATION AND SUSPENSION

16.1 Duration: Subject to this clause 16, the Agreement and each Service:

- a starts on the Start Date; and
- b continues until we or you give 30 days' notice that the Agreement or a Service will terminate on the expiry of that notice.

16.2 Minimum/fixed term: Subject to clause 12.5, if a Quote or Proposal states that there is a minimum or fixed term for the Agreement or a Service, the earliest date either party may terminate the Agreement or the Service (as applicable) under clause 16.1b will be the expiry of the minimum or fixed term.

16.3 Termination of Agreement:

- a Either party may, by notice to the other party, immediately terminate the Agreement and the Services if the other party:
 - i breaches any material provision of the Agreement and the breach is not:
 - ▲ remedied within 10 days or the receipt of a notice from the first party requiring it to remedy the breach; or
 - ▲ capable of being remedied;

- ii becomes insolvent, liquidated, bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed or becomes subject to any form of insolvency action of external administration, or ceases to continue business for any reason; or
- iii is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.

16.4 Consequences of termination or expiry:

- a Termination or expiry of the Agreement does not affect either party's rights and obligations accrued before that termination or expiry.
- b On termination or expiry of the Agreement, you must pay all Fees for the Services provided prior to that termination or expiry.

16.5 Obligations continuing: Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 5.10, 6.5b, 13, 14, 15, 16.4, 16.5, 17.4, 17.6 and 17.8 continue in force.

16.6 No compensation: Subject to clause 16.4a, no compensation is payable by us to you as a result of termination of the Agreement for whatever reason, and you will not be entitled to a refund of any Fees that have already been paid.

16.7 Suspension: Without limiting any other right or remedy available, we may restrict or suspend your access to the Services if we consider:

- a that you, or a Permitted User, has:
 - i undermined, or attempted to undermine, the security or integrity of the Services or any Underlying Systems;
 - ii used, or attempted to use, the Services for improper purposes or in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Services; or
 - iii transmitted or stored any Content that breaches or may breach the Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is, or may be, Objectionable, incorrect or misleading; or
- b that you have:
 - i failed to pay the Fees when due; or
 - ii otherwise materially breached the Agreement.

16.8 Notice: We will notify you if we restrict or suspend your access to any of the Services in accordance with clause 16.7.

17 GENERAL

- 17.1 **Disputes:** If you have a dispute with us or relating to the Services, please contact us.
- 17.2 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure.
- 17.3 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.
- 17.4 **Notices:** If we need to contact you, we may do so by email or posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications.
- 17.5 **Severability:** Any illegality, unenforceability or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.
- 17.6 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to the Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 17.6.
- 17.7 **Assignment:** You may not assign, novate, subcontract or transfer any right or obligation under the Agreement without our prior written consent. You remain liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.
- 17.8 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement.