



**THE
WAREHOUSE
GROUP**
BUSINESS



Master Relationship Agreement

Agreement Construct

The core of our agreement with you is the Master Relationship Agreement. It is designed to be the 'hub', making it easy to tie in additional services schedules as they become relevant to your business.

Parties

Noel Leeming Group Ltd trading as The Warehouse Group Business (**TWGB, we, us, our**)

Client Name – Client Address (**Client, you**)

Agreement

We agree to provide, and you agree to pay for, the Goods and Services on the terms of this Agreement, together with any Service Schedules.

Term

This Master Relationship Agreement comes into effect from the date signed by both Parties and continues until terminated in accordance with the Termination Clauses in this Agreement.

Services

The Initial Service Schedules are attached to this Agreement. The parties may agree in writing to change or add further Service Schedules to this Agreement from time to time.

Service Fees

The Charges for the Services are set out in the relevant Service Schedule and may be amended in accordance with Clause 7.

Where we are extending credit to you, The Noel Leeming Group – Terms and Conditions of Trade for Business Customers, as stated in our Credit Account Application form ("Credit Account Application Terms") also apply under this agreement.

Signed for and on behalf of [Client Name] by its authorised signatory:

Signed: _____

Name: _____

Position: _____

Date: _____

Signed for and on behalf of Noel Leeming Group Ltd by its authorised Solutions signatory:

Signed: _____

Name: _____

Position: _____

Date: _____

STANDARD TERMS OF TRADE

1. TERM OF AGREEMENT

- 1.1 Term: This Agreement commences on the Commencement Date and will continue until terminated in accordance with this Agreement.
- 1.2 Standard Terms: These Standard Terms apply to all the Goods and Services we provide to you during the term of this Agreement. These terms will prevail over any document issued by you or on your behalf, even if purported to be accepted by us.

2. PROVISION OF SERVICES

- 2.1 Provision: We will begin providing the Goods and Services to you in accordance with the timeframe that the parties agree in writing or, if no timeframe is agreed, within a reasonable time.
- 2.2 Services: The Services are described in the Service Schedules. We will determine how to provide the functionality of a Service. We are free to choose and change the manner in which and the technologies by which we provide a Service. Subscription software is deemed to be a service for the purposes of this Agreement.
- 2.3 Goods: Goods will be quoted and provided separately to the Services Schedules.

3. OUR COMMITMENT TO YOU

- 3.1 General responsibilities: We will provide the Services to you:
 - (a) using all reasonable care and skill;
 - (b) in accordance with the applicable Service Schedules although we do not guarantee, and our suppliers do not guarantee, that the Services will be continuous or fault free;
 - (c) in a competent and professional manner.
- 3.2 Documentation: We will document information on your systems and processes as required for the purposes of providing the agreed services to you. This information can be provided to you on request.
- 3.3 Reasonable Assistance: We will provide you with reasonable assistance in responding to requests for information by third parties pursuant to clause 4.1(k) below, to the extent we hold information that you do not otherwise have access to (via a Platform or otherwise), in order for you to comply with your obligations referenced in that clause. We may charge you for providing such assistance, depending on the nature and extent of assistance required in a particular case.

4. YOUR COMMITMENT TO US

- 4.1 General responsibilities: You will:
 - (a) not use the Goods or Services in any way which is unlawful, and you will use the Goods and/or Services in accordance with good industry standards and codes of practice -;
 - (b) not use the Goods and/or Services in any way which could interfere with or damage our Network, our suppliers Network, the Services, any other operator's network, or another customer's use of our services;
 - (c) give us and our third party suppliers such access to your premises as is reasonably necessary, either remote or physical access, to enable us or our third party Suppliers to deliver your Goods and/or Services, fix any fault with the Services or implement any change of technology as provided for in clause 2.2;
 - (d) follow our and any manufacturer's or Supplier's reasonable instructions about the use of the Goods and/or Services;
 - (e) only use the Goods and/or Services for the purposes for which they are provided (as described in the relevant Service Schedule or Supplier documentation);
 - (f) ensure you have any necessary authorisation or licence for any computer software you use in your computer systems, equipment or facilities;
 - (g) ensure that suitable back-ups are carried out on a regular basis and are stored appropriately;

- (h) not infringe or otherwise diminish our intellectual property rights in the Services;
 - (i) provide all information and assistance we may reasonably require in order to meet our obligations under this Agreement;
 - (j) ensure that all information you give us is complete, accurate and is consistent with your obligations under the Privacy Act; and
 - (k) in relation to the Services, be responsible for all obligations imposed by law on network operators and/or service providers.
- 4.2 Consents: At our request, you will obtain any third party authorisation, licence, acknowledgement or consent, or make any notification to a third party, that we reasonably require in connection with the provision of the Services and location of the Equipment (such as your landlord's consent or any building consent).
- 4.3 Third parties: You are responsible for any use of the Goods and/or Services by your customers, End Users and any other third parties (whether authorised by you or not). We are not responsible for ensuring that the Goods and/or Services are unable to be misused by you, your customers, End Users or any other third party.
- 4.4 Ensure compliance: You will use all reasonable endeavours to ensure that your customers and End Users comply with the obligations under this clause 4.
- 4.5 Audit: If we reasonably request, you will, at no cost to us, allow us, our auditors and applicable regulators to access any premises and systems you use to receive (or manage) the Services, interview any of your personnel or contractors and copy any relevant records, in each case to audit your compliance with this Agreement.
- 4.6 Restoration costs: If you breach this clause 4 and we incur costs as a result of your breach, you will, if we ask you to, reimburse us for our reasonable costs in relation to that breach.

5. SERVICE SCHEDULES

- 5.1 Service Schedules: Each Service Schedule ("Service Schedule") commences on the date specified in that Service Schedule and will continue for the term of this Agreement unless it expires or is terminated earlier in accordance with this Agreement.

6. ORDERING

- 6.1 Ordering Goods and/or Services: You will need to be set up in our system prior to commencement of any ordering of Goods or Services. A Credit Account Application form is required to be completed by you in order for us to set you up in our systems and to enable you to start ordering goods and services.
- 6.2 Establishing Services: In order to obtain Services under this Agreement, you must also agree a Service Schedule for the relevant Service with us in writing. After a Service Schedule is agreed, we will update your account with the different Service Variants available for you.
- 6.3 Ordering Service Instances: You may at any time increase or decrease the number of Service Instances for each service variant by following the process set out on the relevant Service Schedule. Subject to clauses 3.1, 132 and 143, we will continue to supply Services Instances that were validly ordered prior to the end of the Ordering Period.
- 6.4 Further information: We may request further information from you about any request for a move, addition, deletion or other change of a Service Instance submitted by an Authorised User via a Platform, email or phone call (including via an API call) (each, an "Order").
- 6.5 Decision: Our acceptance of an Order adds the relevant Service Instance to this Agreement. We will advise you if your Order has been accepted or declined, and any valid reasons for doing so.
- 6.6 Installation date: We will notify you if we are unable to install a Service Instance by the target installation date and will consult with you to set a new date. If you ask us to vary an Order, the target installation date will not apply. We will set a new target installation date if we accept the variation.
- 6.7 Cancellation: You may cancel an Order before we activate the relevant Service Instance by submitting a written cancellation request. If you do so, you must pay any costs that we have reasonably incurred.
- 6.8 Completion: We will tell you when we have activated a Service Instance pursuant to an Order. Except to the extent specified otherwise in a Service Schedule, you have 2 Business Days following activation to notify

us in writing of any issues with a Service Instance, otherwise you will be deemed to accept that Service Instance from the date of activation. We will start billing you for the Service Instance on the date following activation or from the date specified in the relevant Schedule.

- 6.9 Error: If we become aware of an error relating to a Service Instance or Service Variant (including in respect of the Charges) that has been agreed, we may notify you of the error and submit a correction to you that will apply from your next billing cycle onwards in respect of any Service Instance, and/or immediately update your Catalogue in respect of any Service Variant.

7. FAIR USE

- 7.1 You must use our services fairly. This means you agree to use them in a way that's not overly excessive or unreasonable. Fair Use is based on how most people use the service and helps us make sure we are able to support all our customers fairly. If we, acting reasonably and in good faith, believe your use is excessive and unreasonable, we may need to negotiate additional charges with you for our services based on your particular requirements.

8. CHARGES, INVOICING AND PAYMENT

- 8.1 Charges: You will pay the Charges for the Goods and/or Services we provide you under this Agreement regardless of who uses the Goods and/or Services and regardless of whether you have been paid by your customers or End Users, as applicable. You will also pay any GST payable on the Charges.
- 8.2 Payment: Subject to clauses 8.3 and 9.1, you will pay each invoice by the 20th of the month following the date of our invoice and without set-off, counterclaim or deduction. Where applicable, monthly fees for some Services are to be paid in advance as per the associated Service Schedule. We may apply any payments received from you in reduction of any amount you owe us and we may set off any amount you owe us against any amount payable by us to you. Part payment of your invoice will not amount to a full and final settlement unless we have agreed to this in writing.
- 8.3 Withholding Tax: If a law requires you to deduct an amount in respect of taxes, duties, or levies from a payment under this Agreement such that we would not actually receive on the due date the full amount payable under this Agreement, then:
- (a) you agree to deduct the amount for the taxes, duties or levies (and any further deduction applicable to any further payment under paragraph (c) below);
 - (b) you agree to pay the amount deducted to the relevant authority in accordance with the applicable law and give the original receipts to us; and
 - (c) the relevant payment is increased so that, after making the deduction and further deductions applicable to additional amounts payable under this clause, you pay us (at the time payment is due) the amount we would have received if no deductions had been made.
- 8.4 Invoices: We will invoice you for the Charges and GST each month. We will send invoices to the last billing address you notified to us in writing. You may be invoiced for Charges and GST before or after the month in which they occur however you remain liable for such Charges and GST at all times. We will not invoice you for any Charges more than 180 days after the date they were incurred unless previously agreed as part of the service charging schedule.
- 8.5 Late payment: If any amount is owing to us after the payment date set out in an invoice, we may charge you interest at a rate equivalent to fifteen per cent per annum from the date on which the payment was due to the date that we receive payment, such interest being payable solely as a result of your default.
- 8.6 Collection costs: If we have to spend money on collecting overdue amounts from you then you will reimburse us for those costs.
- 8.7 Standard Business Hours: Unless expressly provided otherwise in a Service Schedule, we will charge you on a time and materials basis for all work you ask us to perform outside our Standard Business Hours.
- 8.8 Changes to Charges: During the term of this Agreement we may:
- (a) change a recurring Charge in association with a Regulatory Event that, in our reasonable opinion, has the effect of: (i) requiring us to alter the terms of the Agreement; (ii) making the operation of the Agreement impracticable; (iii) materially altering the burden (financial or otherwise) of us providing Services under the Agreement; (iv) making us incapable of performing the Agreement; or (v) causing us (voluntarily or otherwise) to materially alter our operations or structure;

- (b) change a recurring Charge in association with a change in the price from a third party Supplier (such as a Software or Network Operator) of a direct input required for the Service;
 - (c) change a recurring Charge for any reason other than the reasons set out in clause 7.8(a) or 7.8(b); and/or
 - (d) change any Charge (other than a recurring Charge) or introduce other Charges at any time.
- 8.9 Notice of changes: Where we make a change to the Charges which we reasonably consider is likely to have a neutral or positive effect on you, we may make the change immediately without notifying you. Where a change is likely to have a material detrimental effect on you, we will provide you with at least 20 Business Days' written notice.
- 8.10 Right to terminate: If you can show us that a change under clause 7.8(a), 7.8(b) or 7.8(c) (but not a change under clause 7.8(d)) has a material detrimental effect on you, you may terminate the affected Service Schedule (which will terminate the Service Instances acquired under that Service Schedule, except where otherwise stated) on 20 Business Days' prior written notice to us. Such right must be exercised within 20 Business Days of receipt of our notice to increase the Charges. Outstanding charges as specified in the relevant Service Schedules will continue to apply.

9. DISPUTED ACCOUNTS

- 9.1 Invoice errors: If you believe, acting reasonably and in good faith, that an invoice contains a mistake, you must comply with the process in the Documentation to report the mistake to us ("Dispute Process"), giving us details of the mistake before the due date for payment of the invoice and we will investigate the matter. You may withhold payment of the disputed amount provided you have raised a dispute in writing using the Dispute Process. You must still pay any undisputed amount by the payment date set out in the invoice. You may not, at any time more than 180 days after the date of the invoice, dispute the invoice, or bring any claim howsoever arising regarding the invoice, including any dispute or claim regarding over billing, billing at a rate higher than the Charges or billing for Services which you have sought to terminate.
- 9.2 Investigation: If we agree that we have made a mistake then we will correct the invoice immediately. We will inform you in writing ("Our Notice") if we find that there is no mistake or a reduced amount is payable and our Credit Account Application Terms will apply to payments due.
- 9.3 Further action: If you do not agree with the results of our investigation under clause 9.2, you must advise us in writing within 20 days of receiving Our Notice ("Billing Dispute"), and the Billing Dispute will be resolved as follows:
- (a) the Billing Dispute shall be referred to your representative and our representative for resolution; and
 - (b) if the Billing Dispute is not resolved by our representatives within 5 days of such a referral in accordance with clause 9.3(a), either party may refer the Billing Dispute to the dispute procedure set out in clause 22.

10. CREDIT ARRANGEMENTS

- 10.1 Condition: We are not obliged to start providing Goods or Services to you until we have satisfied ourselves that you will be able to pay the Charges. If we have already started providing Services to you and we then receive an unsatisfactory credit check, we may suspend or stop providing Services to you straight away.
- 10.2 Security: We may at any time require you to make an advance payment or provide some other form of security to cover amounts payable by you under this Agreement. We may suspend the provision of Services immediately if you fail to provide or maintain such security. If this Agreement is terminated we will return to you any security not required to cover outstanding amounts.

11. YOUR EQUIPMENT

- 11.1 Connecting to our Network: You must comply with any applicable laws and industry standards and codes when establishing or maintaining a connection to our Network.
- 11.2 Your equipment: You are responsible for selecting, supplying and maintaining the equipment and software you and your End Users use to access and connect to a Service. You must follow our directions when connecting your equipment. You will ensure that all your equipment that is connected to any of our or our third-party Suppliers' environments is installed in accordance with our specifications.
- 11.3 Modifications: You will follow our reasonable instructions about modifications that you may need to make to your equipment so that you can use the Services, including modifications to avoid any danger or

interference your equipment may cause to the Services, our Equipment or our third party Suppliers' Equipment or environments.

- 11.4 Service back-up: You are responsible for maintaining sufficient equipment, processes and capacity (including spares and redundancy capacity) to back-up your network and services.
- 11.5 Restoration costs: If your equipment causes a fault in the operation of a Service or our or our third party Suppliers' environments then you will, at our request, pay us the reasonable costs of restoring that Service or our or our third party Suppliers' environments.

12. FAULTS

- 12.1 Responsibility for faults: We are responsible for fixing faults which are in our Network or our Equipment, except for faults which are due to any act or omission by you or any person you are responsible for under clause 4.3. Where Equipment is covered by a manufacturer's warranty we will endeavour to ensure these are attended to quickly by the manufacturer. We are not responsible for faults in your equipment or your network. However, you may ask us to fix such faults on your behalf, at your cost.
- 12.2 Fault reporting service: We will log faults reported to us whether they come from you or your customers or end users and these may be charged to you as per any charges shown in the relevant Service Schedule.
- 12.3 Fixing faults: We will fix faults during the hours specified in the relevant Service Schedule. We will use our reasonable endeavours to meet the Response and Target Resolution time for a Service. The Resolution Time is subject to us having appropriate access to your premises or the premises of your customers or End Users.
- 12.4 Access: Where an on-site visit is required, we will arrange an appointment time with you, your customer or End User (as appropriate). You will give us and our third party Suppliers such access to your premises as is reasonably necessary to enable us or our third party suppliers to fix any reported fault. You will use reasonable endeavours to ensure that your customers and your End Users do the same.
- 12.5 Costs: We may charge you on a time and materials basis for diagnosing and/or fixing faults reported by you, your end users or your customers that fall outside our responsibilities under this Agreement and any relevant Service Schedules or are not attributable to our Equipment, software or Network.

13. SUSPENSION

- 13.1 Suspension: We may suspend or restrict any or all of the Services (including specific Service Variants and/or Service Instances) at any time:
 - (a) if we consider it necessary to protect or maintain our Network, the Services or the network of another Network Operator or service provider;
 - (b) if we are required or instructed to do so by a governmental authority or reasonably believe this required following a Regulatory Event;
 - (c) if we reasonably believe that you have breached any of the terms of this Agreement;
 - (d) during an emergency which could endanger the safety or health of any person or cause damage to any property;
 - (e) if your primary business activities are suspended or cease for more than 5 consecutive Business Days;
 - (f) if you (or your directors or principals) go into liquidation, bankruptcy or receivership or if you have a receiver, trustee, administrator or statutory manager appointed over any or all of your assets (or it appears that any of these events is likely to happen);
 - (g) if you (or your directors or principals) enter into a scheme of arrangement or composition with, or an assignment for the benefit of, any class of your creditors;
 - (h) if you are unable to pay your debts as they fall due, or are deemed to be unable to pay your debts within the meaning of section 4(1)(a) of the Companies Act 1993; or
 - (i) if you are removed from the Companies Register (other than as a result of a solvent amalgamation), are dissolved or die.
- 13.2 Charges: You must pay the Charges for any of the Services that have not been suspended, even if you are unable to use part of a Service as a result of the suspension of another part of a Service. We may charge you a reconnection fee if we decide, at our discretion, to recommence the Services.

- 13.3 Notice: We will give you at least 5 Business Days' notice of our intention to suspend or restrict the Services under clause(c) (except where we consider the breach to be material), otherwise we can suspend without notice.

14. TERMINATION

- 14.1 Immediate termination: Either party may immediately terminate this Agreement or a particular Service Schedule (which will terminate the Service Instances acquired under that Service Schedule, except where otherwise stated) at any time by giving the other party notice in writing where:
- (a) the other party commits a material breach of this Agreement which is incapable of being rectified;
 - (b) the other party commits a material breach of this Agreement that is capable of being rectified but which is not rectified within 30 days of that party receiving written notice of the breach from the terminating party;
 - (c) the other party (or its directors or principals) goes into liquidation, bankruptcy or receivership or has a receiver, trustee, administrator or statutory manager appointed over any or all of its assets (or it appears that any of these events is likely to happen);
 - (d) the other party (or its directors or principals) enters into a scheme of arrangement or composition with, or an assignment for the benefit of, any class of its creditors;
 - (e) the other party is unable to pay its debts as they fall due, or is deemed to be unable to pay its debts within the meaning of section 4(1)(a) of the Companies Act 1993; or
 - (f) the other party is removed from the Companies Register (other than as a result of a solvent amalgamation), is dissolved or dies.
- 14.2 Termination without cause:
- (a) We may terminate this Agreement at any time after the Initial Term by giving you not less than 90 days' notice in writing. We may terminate a particular Service Schedule (which will terminate the Service Instances acquired under that Service Schedule, except where otherwise stated) or one or more specific Service Instance(s) at any time after the Minimum Term for that Service by giving you not less than 60 days' notice in writing.
 - (b) You may terminate this Agreement, any Service Schedule (which will terminate the Service Instances acquired under that Service Schedule, except where otherwise stated) or one or more specific Service Instance(s) at any time by giving us not less than 90 days' notice in writing, but if you do so you will be required to pay the early termination charges set out in the relevant Service Schedules.
- 14.3 Availability: We may, without liability to you, end the availability of (i) any or all of the Services (i.e. by terminating the relevant Service Schedule(s)) or (ii) one or more Service Variants (including all existing Service Instances of those Service Variants) provided to you at any time if the relevant Service or Service Variant is no longer commercially viable, we are unable to provide it or we decide to withdraw it from general availability or replace it with a new Service or Service Variant. We will advise you before taking any of these steps.
- 14.4 Termination during a Minimum Term: Subject to clause 14.3, where:
- (a) we terminate this Agreement under clause (a); and
 - (b) immediately prior to that expiry or termination, we are providing any Service Instance to you that is subject to a Minimum Term,
 - (c) then, in relation to each Service Instance that is subject to such a Minimum Term, this Agreement will continue to apply, and we will continue to supply the relevant Service Instance, until the end of the relevant Minimum Term.
- 14.5 Licence suspension or termination: If any of our licences or rights required to operate the Network are terminated or suspended, or any agreement with any of our third party Suppliers expires or is terminated, and we cannot, as a result, continue to provide some or all of the Services or Service Variants (including all existing Service Instances of those Service Variants), we may cease providing any Service or Service Variant (including all existing Service Instances of those Service Variants) or terminate the Agreement immediately. If this happens we will give you written notice.

- 14.6 Termination for Regulatory Event: Without limiting clause 14.2, we may, at any time, by written notice to you, terminate this Agreement, any Service Schedule or any Service Variant (including all existing Service Instances of those Service Variants) where we form the view (acting reasonably) that:
- (a) the performance of any part of our obligations under this Agreement or the relevant Service or Service Variant is or is likely to become illegal due to a Regulatory Event; or
 - (b) a Regulatory Event prevents or restricts (or is likely to prevent or restrict) in a material manner either party from discharging a material obligation or receiving a material benefit under this Agreement,
 - (c) where we terminate this Agreement, a Service Schedule or a Service Variant (including all existing Service Instances of that Service Variant) under this clause 14.6:
 - (d) we will use all reasonable efforts to assist you with a smooth transition to another service provider (where requested by you in writing);
 - (e) your obligation to pay Charges will be limited to Charges for Services performed or in progress up to the date of termination of the Agreement or relevant Service Instance; and
 - (f) subject to clause 15.4, no party will have any liability to the other in connection with such termination.

15. CONSEQUENCES OF TERMINATION

- 15.1 Disconnection: When this Agreement is terminated, or Services have ceased to be provided to you:
- (a) you will be disconnected from the Network so that you are no longer able to receive the relevant Services;
 - (b) each party must immediately return to the other any information or other item which is in its possession and which belongs to the other party; and
 - (c) each party must provide any additional information to the other party as may be required in the relevant Service Schedule.
- 15.2 Early termination charges: If you terminate this Agreement or any Service Schedule under clause (b) or we terminate this Agreement under clause 14.1 and one or more Service Instance is within a Minimum Term; or, if you terminate a Service Instance at any time, then we may require you to pay (except to the extent that the relevant Service Schedule provides otherwise):
- 15.3 If you terminate prior to the agreed end date, any costs incurred or owing as per the relevant Service Schedules will be charged to and paid by you on our agreed payment terms.
- The parties acknowledge that the amounts payable by you pursuant to this clause are a reasonable and proportionate adjustment of the Charges if this Agreement or the relevant Service Instance is terminated in the circumstances contemplated above to protect our legitimate interests including recouping costs incurred to implement the Service Instances and to reflect the fact that the pricing and payment profile has been structured based on the Minimum Term. To avoid doubt, the early termination charges set out above are not payable if you terminate this Agreement, the relevant Service Schedules or the relevant Service Instances pursuant to clauses 9, 7.10, 13.1 or 22.5, or if we terminate this Agreement, terminate or vary the relevant Service Schedules or the relevant Service Instances pursuant to clauses (a), 13.3, 13.5, 13.6 or 22.5.
- 15.4 Without prejudice and survival: Termination and early termination charges will be without prejudice to any rights or obligations either party may have under this Agreement. Termination does not affect any rights or responsibilities under this Agreement which are intended to survive termination or that have accrued up to the date that this Agreement ends.

16. CONFIDENTIALITY AND PUBLICITY

- 16.1 Confidentiality: Each party will treat the contents of this Agreement, the arrangements contemplated by it and all information (in whatever form) provided under or in connection with it as confidential and must not disclose them to any person except:
- (a) as required by law or by the rules of any stock exchange, provided that (where legally permitted) the party required to disclose the information will notify the other party beforehand;
 - (b) to its employees, agents and contractors to the extent necessary to perform its obligations under this Agreement or exercise any rights under this Agreement;
 - (c) where the information is already in the public domain (but not where it is in the public domain as a result of a breach of this clause); or

- (d) with the other party's prior written consent.
- 16.2 Disclosure by us: Notwithstanding clause 16.1, we may disclose your confidential information to our Related Companies and/or to third party suppliers (including other Network Operators) to allow those suppliers to supply all or part of the Services, and in order to give effect to the purpose for which the information was provided, for billing purposes or for the purpose of planning, provisioning, operating, maintaining or reconfiguring our Network.
- 16.3 Announcements:
- (a) Neither party will issue any press release or public announcement concerning this Agreement without the other party's prior written consent. You won't use our Brand or the Brand of any of our licensors, without our or the relevant licensor's prior written consent, and where consent has been given your use must be consistent with the terms of that consent.
- (b) You agree that we may use your name, logo and any testimonial you provide in our promotional material and communications including but not limited to, proposals, presentations, website and corporate brochures or advertising. We will seek your prior written consent to any use described herein.
- 16.4 Ownership: The parties confirm and acknowledge that nothing in this clause shall assign or transfer to the other any Intellectual Property in the Confidential Information.
- 16.5 Security of Data: You acknowledge that we are unable to exercise control over, and make no representations or warranties concerning, the security or content of data or information passing over the Network, any systems operated by third parties and the internet.
- 16.6 Ensure compliance: Each party will ensure that its directors, employees, agents and contractors (if any) comply with the obligations under this clause 16.
- 16.7 Survival: The provisions of this clause 15 will survive the termination of this Agreement.

17. PRIVACY

- 17.1 Collecting and holding information: We and our third party Suppliers may collect and hold information about you and your customers and End Users (including Your Data and Your Customer Data) to the extent necessary to perform our obligations or exercise our rights under this Agreement. Such information may be obtained from you or generated within our Network when you or anyone else uses the Services. Where we hold any Personal Information, we will comply with our obligations under the Privacy Act 2020 and any other applicable law.
- 17.2 Sharing information: We may share the information we collect about you and your customers and End Users with our employees, contractors, agents, suppliers and Network Operators for a range of lawful purposes connected with our business operations, including providing and improving the Services.
- 17.3 Credit reporting: As part of managing our revenue streams, we may share your information with credit reporting organisations so that they can run credit checks on our behalf at any time. As part of using those credit checking services, we may also let those credit reporting organisations know if you have or have not paid our Charges. At any time, those credit reporting organisations may pass on to us information about you that they hold. We will use that information to assist us in making decisions about our relationship with you and the Services we are able to provide or continue to provide to you. The credit reporting organisations may keep any information about you that we have passed on to them and use it for the purposes of their businesses, which may include supplying it to other entities that use their services.
- 17.4 De-identified data: You grant us, and will procure for us, the right to collect, store, process and use information generated from your, your customer's and/or the End User's use of the Services and the Network. This information will be collected, stored, processed and used on a de-identified and/or aggregated basis for our own and your purposes including:
- (a) Supporting your environment, including providing the services to you as outlined in the relevant Service Schedules;
- (b) enhancing or developing the Services, our other products and services and/or the Network; and
- (c) performing data analysis, machine learning, and/or analytics (including providing insights and information to third parties).
- 17.5 Access: You may ask to see the information that we hold about you at any time and you may ask us to correct any errors.

17.6 Disclosure: Where you disclose Your Data to us, or where we obtain Your Customer Data:

(a) you confirm that:

- i. you are authorised by the relevant person to make that disclosure and/or permit us to obtain that data for the purposes described in clauses 17.1 and 16.2;
- ii. the relevant person has agreed that we can collect, hold and use information about him or her and can pass it on to our employees, contractors, agents, suppliers and Network Operators for the purposes described in clauses 16.1 and 16.2; and
- iii. the relevant person understands that he or she may ask to see information that we hold about him or her at any time and may ask us to correct any errors; and

(b) we will take reasonable steps to ensure that we do not identify or facilitate the identification of any individual whose identity has not been directly disclosed by you (including through any form of re-identification of anonymised or de-identified information).

17.7 Data Incident: Where we are aware that a Data Incident has occurred, we will, as soon as practicable notify you of that Data Incident. Where you have obligations in relation to information included in the Data Incident under the Privacy Act we will provide you with all reasonable assistance to enable you to comply with those obligations, and where we have obligations under the Privacy Act we will comply with those obligations. This assistance may incur a fee based on the time spent to assist you with the Data Incident.

17.8 Marketing and promotional material: We may use your Personal Information to provide you with newsletters and promotional material. You expressly consent to receiving marketing, promotional and other material both in the post and by way of electronic messages from us.

17.9 Call Recording: You agree that we may monitor and/or record calls made between you and us for the purpose of maintaining and improving the quality of our service.

18. INTELLECTUAL PROPERTY RIGHTS

18.1 Our Intellectual Property: You acknowledge that all rights to intellectual property contained in or relating to the Services and/or the Equipment (including any improvements or changes to any Service or to the Equipment) ("Intellectual Property") belong to us or our licensors.

18.2 Licence: Where we provide you with Intellectual Property in connection with the provision of the Services:

- (a) any such Intellectual Property owned by a third party is licensed to you for the term of this Agreement, for the purposes set out in this Agreement and in accordance with the relevant third party's terms that we notify to you; and
- (b) where the relevant Intellectual Property is owned by us or where we do not notify you of the relevant third party's terms then that Intellectual Property is licensed to you on a non-exclusive and non-transferable basis for the term of this Agreement, for the purposes set out in this Agreement and in accordance with the terms of this Agreement.

18.3 Software: If we provide you with software in connection with the provision of the Services, you must not copy, modify or reverse assemble the software.

18.4 Warranty as to third party infringement: Each party warrants to the other that any materials proprietary to a party, and provided to the other party for the purposes of this Agreement, will not infringe the intellectual property rights of any third party, provided that the other party:

- (a) uses such materials in accordance with the terms of this Agreement (including the licence set out in clause 17.2) and any terms notified in writing by the disclosing party; and
- (b) does not in any way modify or alter the materials, other than as permitted under this Agreement.

18.5 New rights: Any intellectual property rights arising from or in connection with this Agreement or the Services belong to us, even if commissioned by you.

19. NO ADDITIONAL TERMS

19.1 Exclusions: All warranties, terms, guarantees and conditions that are not expressly set out in the Agreement are excluded to the extent permitted by law.

19.2 Fair Trading Act 1986 (FTA) and Consumer Guarantees Act 1993 (CGA): For the purposes of section 5D of the FTA and section 43 of the CGA, the parties acknowledge and agree that:

- (a) the Services and Equipment (as applicable) that we provide to you under the Agreement are being provided and acquired in trade; and
- (b) to the extent permitted by law, for all matters covered by this Agreement and the parties to it, the parties are contracting out of the CGA and sections 9, 12A and 13 of the FTA.

20. LIABILITY – EXCLUSION AND LIMITATION

- 20.1 Exclusion of liability: Subject to clauses 19.3 and 20.1, in no event will either party be liable under or in connection with the Agreement (whether in contract, tort (including negligence) or otherwise) for any loss of data, loss of profit, revenue, anticipated savings or goodwill or indirect, incidental damages or consequential losses regardless of whether such losses were contemplated.
- 20.2 Limitation on liability: Subject to clauses 19.3 and 20.1, in no event will either party's aggregate liability under or in connection with the Agreement (whether in contract, tort (including negligence) or otherwise) arising in any Contract Year exceed the total Charges paid by you in the 12 calendar months immediately prior to the occurrence of the event(s) in that Contract Year, or if the Agreement has not been in effect for 12 months prior to the occurrence of the event(s), the average monthly Charges paid by you for the months from the date of the Agreement until the occurrence of the event(s) giving rise to the first claim, multiplied by 12.
- 20.3 Exceptions: Nothing in this Agreement shall limit either party's liability (as applicable) to pay the Charges or any relevant Early Termination Charges which are payable in accordance with this Agreement, for a breach of clause 15 (confidentiality) (excluding a breach of clause 16 which will be managed in the manner set out in that clause and will continue to be subject to clauses 20.1 and 20.2), for a breach of clause 17.4 (warranty), for any loss or damage which is finally judicially determined to have resulted from that party's fraud, act or omission of that party.
- 20.4 Network Operators and other suppliers not liable: None of our officers, employees, contractors or agents, nor any other Network Operator and/or third party supplier (including their officers, employees, contractors and agents) will be liable to you or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Services we provide or from your use of those Services and our Network, including your access to and use of any third party's site or Network Operator's networks except where that party is found liable. The benefits of this clause extend to Network Operators, and our and their agents and suppliers, and are enforceable by them under the Contract and Commercial Law Act 2017.

21. INDEMNITY

- 21.1 Indemnity: You indemnify us, our directors, employees, agents, contractors, other Network Operators, our third party Suppliers and Related Companies (each an "Indemnified Person") from and against any liability, damage, loss, cost or expense (including legal and other professional costs) that an Indemnified Person incurs or suffers as a result of:
 - (a) any action, proceeding, claim or demand that is made, threatened or commenced by you or any user or customer of yours against an Indemnified Person, which, without prejudice to our commitments to you in relation to our Services, relates directly to the provision of the Services; and
 - (b) any fraudulent use of the Services or your services by any user or customer of yours.
- 21.2 The benefits of this indemnity apply to each Indemnified Person and are enforceable by them under the Contract and Commercial Law Act 2017.

22. FORCE MAJEURE

- 22.1 Liability: Neither party will be liable to the other party for any failure to perform its obligations under this Agreement (other than your obligation to pay the Charges for Services already provided) during the time and to the extent that such performance is prevented by reason of a Force Majeure Event.
- 22.2 Notice: The party seeking to rely on this clause will notify the other party as soon as practicable after the Force Majeure Event occurs and will endeavour to provide the other party with information regarding the extent of its inability to perform and an estimate of the time required to overcome the Force Majeure Event.
- 22.3 Mitigation: The affected party will use its reasonable endeavours to remedy or mitigate the effect of the Force Majeure Event and to complete its obligations under the Agreement as far as is reasonably practicable.

- 22.4 Charges: You will not be required to pay any Charges for any Services to the extent such Services are not provided by us due to a Force Majeure Event.
- 22.5 Termination: Either party may terminate this Agreement by notice in writing to the other party, with immediate effect on the date specified in that notice, if a party has been unable to perform its obligations under this Agreement as a result of a Force Majeure Event for a continuous period of 60 Business Days.

23. DISPUTE RESOLUTION

- 23.1 Dispute procedure: If a dispute arises out of or in connection with the Agreement, neither you nor we will commence court proceedings (except where urgent interlocutory relief is required) until this clause 24 has been complied with.
- 23.2 Notice of dispute: If either party has a dispute with the other party which relates to, or arises from the Agreement, it will give the other party written notice of the dispute.
- 23.3 Management resolution: Upon receipt of such notice, senior managers from each party will meet within 10 Business Days of written notice being provided and in good faith attempt to resolve the dispute within a further 30 Business Day period.

24. NOTICES

- 24.1 Notices to us: Any notice you give to us under or in connection with this Agreement must be in writing and be personally delivered, sent by courier; or sent by email to our contact address below:
- The Warehouse Group Business
26 The Warehouse Way
Northcote
Auckland 0629
Attention: NLG Commercial Services
- Email: cstam@twgroup.co.nz; or
- 24.2 Notices to you: Any notice we give to you under or in connection with this Agreement will be in writing and be personally delivered, sent by courier or sent by email to your contact address, as set out on the execution page of this Agreement, or as appropriate be provided over the relevant Platform for the relevant Service using functionality expressly designated for that purpose.
- 24.3 Notice effective: No notice is to be effective until it is received or deemed to have been received in accordance with this clause. A notice will be deemed to have been received by the addressee:
- (a) in the case of personal delivery, when delivered;
 - (b) in the case of courier delivery, when delivered;
 - (c) in the case of email, at the time the email leaves the communications system of the sender, provided that the sender does not receive any error message relating to the sending of the email, or any automatic "out of office" (or equivalent) reply, at the time of sending; and
 - (d) in the case of notice provided via a Platform, when the notice is submitted through that Platform.

25. CONFLICT

- 25.1 If there is any conflict or inconsistency between the terms contained in these Standard Terms of Trade, a Service Schedule, Platform Terms (including Supplier Specific Agreements or Supplier End User License Agreements) or any Documentation, then unless expressly stated otherwise in the relevant document, the order of precedence will be:
- (a) any Platform Terms, including Supplier Specific Agreements or Supplier End User License Agreements;
 - (b) Service Schedules;
 - (c) Standard Terms of Trade; and
 - (d) any documentation which may apply.

26. ASSIGNMENT AND SUBCONTRACTING

- 26.1 Assignment: A party may assign any of its rights and obligations under this Agreement to any other person provided that it has obtained the prior written consent of the other party, with such consent not to be unreasonably withheld.
- 26.2 Change of control: Any change in the effective management or control of you or your parent company, through whatever means, will be deemed to be an assignment of this Agreement requiring our prior written consent.
- 26.3 Subcontracting: We may subcontract any or all of our obligations under this Agreement without your consent, provided that we will remain ultimately responsible to you for carrying out those obligations.

27. ENTIRE AGREEMENT, VARIATION AND WAIVERS

- 27.1 Entire agreement: This Agreement supersedes all prior discussions and agreements that you may have had with us regarding the subject matter of the Agreement and represents the entire agreement between the parties regarding such subject matter.
- 27.2 Variation: No variation or waiver of any provision of this Agreement will be recognised or binding unless it is in writing and signed by authorised representatives of both parties. For the avoidance of doubt we can always amend this Agreement (including a Service Schedule) at any time (both for existing and new services) to reflect any changes contemplated by clauses 2.2, 7.9 or 15.3.
- 27.3 Rights and waivers: No waiver by any party of its rights under this Agreement will be effective unless it is in writing and signed by that party. If either party delays or fails to enforce any of its rights or remedies under this Agreement, this will not constitute a waiver by that party of that or any other right or remedy available to it.

28. GENERAL

- 28.1 Relationship of the parties: Nothing expressed or implied in this Agreement will be deemed to constitute either party as the partner, agent or joint venturer of the other party.
- 28.2 Third parties: These Standard Terms of Trade do not create any obligations enforceable by any third party, including any End User.
- 28.3 Further assurances: Each party will (at its own expense) promptly do everything reasonably required to give full effect to the terms of this Agreement.
- 28.4 Remedies cumulative: The rights, powers and remedies in this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law. The exercise of any of the rights, powers and remedies provided in this Agreement will not prejudice the exercise of any other right, power or remedy under this Agreement or existing at law.
- 28.5 Severability: If the Agreement or any provision of the Agreement is held to be illegal, invalid, unenforceable or of no effect, then, to the extent permitted by law, the provision or provisions will be severed from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.
- 28.6 Governing law: This Agreement is governed by the laws of New Zealand. The parties agree to submit to the exclusive jurisdiction of the Courts of New Zealand.
- 28.7 Costs: Each party shall pay its own legal, accountancy and other costs arising out of and in connection with this Agreement.
- 28.8 Health and Safety: The parties will comply with each other's reasonable requirements for security, health and safety, when working at each other's premises. We will also comply with any reasonable requirements for security, health and safety when working at the premises of your customer or End User. Where practicable, these requirements will be communicated to each other in writing.
- 28.9 Anti-bribery: Each party shall act in accordance with all applicable laws on bribery and corruption and will not do or omit to do anything likely to cause the other party to be in breach of any of the applicable laws; not give, promise, receive or request any bribes (financial or other advantage), and each party will reasonably assist the other party to comply with obligations related to bribery and corruption required by the applicable laws.

28.10 Counterparts: This Agreement may be executed in several counterparts (including copies), all of which when taken together will constitute one single agreement between the parties. Each party consents to this Agreement being signed in electronic form in accordance with the Contract and Commercial Law Act 2017.

29. DEFINITIONS AND INTERPRETATION

29.1 Definitions: In these Standard Terms, unless the context requires otherwise:

“Agreement” means these Standard Terms of Trade, the Service Schedules, Platform Terms including Supplier Specific Agreements or Supplier End User License Agreements and any Documentation, as may be amended from time to time.

“Billing Dispute” has the meaning set out in clause 9.3.

“Brand” means the name, logo, trade mark or other brand material of an entity.

“Business Day” means any day other than a Saturday, Sunday or public holiday in Auckland or Wellington.

“Charges” means the charges payable under this Agreement and as set out in the Service Schedules or advised to you at the time of placing an Order, in each case as amended in accordance with the Agreement from time to time.

“Commencement Date” means the date specified as such in the Specific Terms.

“Contract Year” means the 12 month period commencing on either the Commencement Date or the relevant anniversary of the Commencement Date.

“Data Incident” means a privacy breach (as defined in the Privacy Act 2020) relating to Your Data, Your Customer Data and/or to Our Data.

“Dispute Process” has the meaning set out in clause 9.1.

“Documentation” means (as applicable) any Operations Manuals available from us on request, any service guide relevant to the applicable Service and relevant instructions on the Platform that direct how you can engage with us or our third party Suppliers (each as amended from time to time).

“End User” means a person who is the ultimate recipient of a Service (or of another service whose provision is dependent on that Service).

“Equipment” means any hardware owned by us or our third party suppliers that we provide to you in connection with the provision of the Goods or Services under this Agreement.

“Fair Use Policy” means our Fair Use Policy as included in our Managed Services Addendum as may be amended from time to time.

“Force Majeure Event” means any event or circumstance beyond the reasonable control of the party claiming force majeure, including any act of God, fire, flood, storm, earthquake or any natural disaster, any act of a public enemy, terrorism, sabotage, embargo, malicious damage, riot or war, pandemic or any Government intervention and any defect in or failure of any third party network or infrastructure.

“GST” means goods and services tax as defined in the Goods and Services Tax Act 1985 as amended from time to time.

“Initial Term” means the initial term of this Agreement as set out in these Terms.

“Minimum Term” means the minimum term for a Service Instance (or all Services under a particular Service Schedule, if specified) as set out (i) in the relevant Service Schedule, (ii) on the relevant Platform or, (iii) if no minimum term is specified, 12 months from the Start Date.

“Network” means our networks including any third party networks and all Equipment, infrastructure, system, applications, connectivity and services provided by us or any third parties that we may use.

“Network Operator” means any entity with whom we have: (a) an interconnection agreement or arrangement (directly or indirectly) to provide for the transfer of your generated or destined data or voice communications between the Network and any other network operated by or on behalf of that entity; or (b) an arrangement to resell wholesale services.

“Order” has the meaning set out in clause 6.4.

“Our Notice” has the meaning set out in clause 9.2.

“Personal Information” has the meaning given to that term in the Privacy Act 2020.

“Platform” means any online platform made available to you by us as part of the Services which enables you to interact with us (including to order Service Instances) pursuant to this Agreement.

“Platform Terms” means the terms and conditions for the Wholesale Portal and the terms and conditions for any other Platform, each as made available to you by us from time to time (and as amended or replaced from time to time).

“Privacy Act” means the New Zealand Privacy Act 2020 (as amended or replaced from time to time).

“Regulatory Event” means any legislative or regulatory change (including, any determination, direction or decision by a regulatory authority, or the introduction of or change to any regulations, reference offer or undertaking).

“Related Company” has the meaning set out in the Companies Act 1993.

“Response Time” is the time taken to start diagnosis of your Incident.

“Target Resolution Time” is the time taken to restore service after an incident has been responded to.

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“Schedule Date” means the date the parties agree in writing to add a Service Schedule to this Agreement.

“Service” means all or part of a service (as the context requires) which we have agreed to make available to you in a Service Schedule (including access to the relevant Platform, where applicable) and “Services” has a corresponding meaning.

“Service Instance” means an individual instance of a Service Variant that you order from us.

“Service Schedule” means a schedule to this Agreement in the form specified by us from time which sets out the matters relating to the procurement of a particular Service.

“Service Variant” means the different service options available for a relevant Service.

“Standard Business Hours” means 9.00am to 5.00pm on a Business Day.

“Standard Terms of Trade” means these standard terms, being clauses 1 to 28.

“Start Date” means the start date for a Service Instance (i) as set out in the relevant Service Schedule or (ii) as notified to you on the Platform after completion of the relevant Order.

“Supplier” means a third party supplier or vendor of goods and/or services.

“Wholesale Portal” means the Wholesale Portal that may be made available to you by us from time to time in relation to certain Services.

“Your Customer Data” means all Personal Information about your customers and/or End Users;

“Your Data” means any Personal Information that you have shared with us in relation to you, your employees, contractors, directors and/or other personnel.

29.2 Interpretation: In interpreting this Agreement:

- (a) references to either party include its respective successors in title and permitted assigns;
- (b) references to any statute or code include any amendment to, or replacement of, that statute or code and any subordinate legislation made under it;
- (c) the singular includes the plural and vice versa;
- (d) all currency references are to New Zealand dollars and all amounts payable are payable in New Zealand dollars unless otherwise stated;
- (e) the words include and including are deemed to be followed by the words “without limitation”;
- (f) references to ‘in writing’ include (as applicable) statements made on the relevant Platform by us and actions taken by our and/or use via the relevant Platform using functionality expressly designated for that purpose;

- (g) a person includes an individual, body corporate, association of persons (whether corporate or not), governmental and regulatory bodies and other entities, in each case, whether or not having separate legal personality or not;
- (h) headings are inserted for convenience only and do not affect the interpretation;
- (i) where a word is defined, its other grammatical forms have a corresponding meaning; and
- (j) a reference to any day, which is not a Business Day, will be deemed to be a reference to the next Business Day.