



Master Service Agreement

Client:

Dated:



Client Details	
Company Legal Name	
Trading As	
Business Sector	
Primary Physical Address	
Primary Fixed Line Contact Number	
Postal Address	

Primary Contact			
Name	Position	Phone	Email

Accounts Contact			
Name	Position	Phone	Email

Partner/Director/Principals/Trustees		
Name	Email Address	Phone Number

Trade References (include three, excluding utility suppliers)			
Company	Contact Person	Address	Phone Number

Focus Contact Details	
Client Relationship Manager	
CRM Contact Numbers	
CRM Email	
Lead Engineer	



These Terms and Conditions are presented as a Master Services Agreement to cover all the services you may purchase from us. This may make them appear quite voluminous if you are only engaging with us for a single service. We have detailed a Contents Page below so you see the clauses that may be most relevant to you currently. If we are presenting you with a specific proposal (work schedule) then it may have its own Terms and Conditions specific to that proposal also.

Contents

Terms and Conditions	4
1. DEFINITIONS AND INTERPRETATION.....	4
2. SCOPE & ENGAGEMENT	5
3. CHARGES AND PAYMENT.....	5
4. YOUR OBLIGATIONS.....	7
5. DELIVERY AND INSTALLATION.....	8
6. DELAY IN CONNECTION WITH SERVICES	8
7. ACCEPTANCE TESTING	8
8. RETURNS, CANCELLATIONS AND VARIATIONS.....	9
9. DISASTER RECOVERY	9
10. SOFTWARE.....	9
11. WARRANTIES	10
12. INCIDENTS AND FAULTS.....	10
13. LIABILITY	11
14. INTELLECTUAL PROPERTY.....	11
15. CONFIDENTIAL INFORMATION.....	11
16. FORCE MAJEURE.....	12
17. DISPUTES	12
18. TERMINATION	12
19. NOTICES.....	13
20. GUARANTEE.....	14
21. GENERAL.....	14

Terms and Conditions

These Terms and Conditions (**Terms**) apply to the supply of software and and/or the provision of services by Focus Technology Group (NZ) Limited (**Focus**) to the Client signing these Terms (**you** or the **Client**).

Focus may change these Terms from time to time and you will be notified via Focus's website or email or in writing of such changes. The changes take effect 60 days after notification, or such longer period of time as Focus specifies in the notice. If you reasonably consider that the changes, as they relate to an Agreement, adversely affect you in a material way, you must raise your concerns with Focus prior to the changes taking effect. If the parties are not able to resolve your concerns within 30 days of you raising them, then you may terminate the affected agreement by giving a further 30 days' notice to Focus (and the notified changes will not apply to that agreement).

1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions:** In these Terms, any Supplemental Terms and any Work Schedule, unless the context otherwise requires:

Agreement means an agreement under which Focus is to provide Products, Deliverables and/or Services to you, comprised of these Terms together with any Supplemental Terms, and (if applicable) any Work Schedule;

Charges means the charges payable by you to Focus as set out in an Agreement;

Cloud Services means the software as a service offering to which you are granted access by Focus under an Agreement;

Confidential Information means all information obtained by one party (**Receiving Party**) from the other under an Agreement or in relation to the Services in any form, but does not include information that is:

- (a) already in the Receiving Party's possession without an obligation of confidentiality at the time of receipt of the information;
- (b) was independently developed by the Receiving Party;
- (c) is generally known or available to the public otherwise than through disclosure by the Receiving Party; or
- (d) was disclosed to the Receiving Party by a Third-party who had the right to make such disclosure without an obligation of confidentiality.

Deliverable means anything agreed to be supplied or made available by Focus to you under or in connection with an Agreement, but excludes Products and Cloud Services;

Focus Software means the object code version of a software application owned by Focus and provided by Focus to you under an Agreement, and includes all Updates that are provided by Focus to you;

Force Majeure means an act, event or cause (other than lack of funds) which is beyond the reasonable control of the concerned party, including acts of God, war, sabotage, riot, national emergency, fire, lightening, flood, cyclone, earthquake, landslide, storm, explosion, epidemic, pandemic, power shortage, a failure in telecommunication services, a failure or delay by any Third-party on which Focus depends (where Focus is the concerned party), strike or other labour difficulty (whether or not involving the employees of the party concerned), but does not include any event or cause which can be, or could have been, avoided, prevented or circumvented by the non-performing party exercising a reasonable standard of care;

GST means any goods and services tax paid or payable in accordance with the Goods and Services Tax Act 1985;

Intellectual Property means, whether or not registered and in any jurisdiction, copyright, trademarks, all rights in relation to inventions (including patents), circuit layouts, designs, business, product and domain names, knowledge, ideas, concepts, know-how, confidential information and trade secrets, and all other rights anywhere in the world resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Product means Hardware, Software and/or CPE;

Services means installation services, consulting services, managed services, connectivity services, support services or any other services provided by Focus to you in connection with an Agreement or following your request for those services under these Terms, including any Cloud Services;

Software means Focus Software and Third-party Software;

Supplemental Terms means a document setting out additional terms and conditions that apply to a particular Service, Deliverable or Product being provided by Focus, which may be included in or as a part of a Work Schedule;

Third-party Licensing Terms means the terms under which Third-party Software is licensed to you, or under which you are granted access to use Third-party Software or the services provided by it on a software as a service basis, in each case, by the third-party owner or licensor of that Third-party Software;

Third-party Software means:

- (a) any on-premise Third-party owned software that is provided to you via Focus under an Agreement, including any updates, upgrades, new versions or new releases of that software that are provided to you under the applicable Third-party Licensing

Terms;

- (b) any Third-party owned software in respect of which you are granted access to use on a software as a service basis via Focus under an Agreement.

Updates means modifications to the Focus Software in the nature of improvements made to correct program faults or other defects, or to effect changes to the functionality of the Focus Software;

Work Schedule means a statement of work, Work Schedule, proposal, or any other document (including an email) agreed by the parties which describes the Products, Services and/or the Deliverables to be provided by Focus, as may be varied under clause 9;

Working Day means a day, other than a Saturday or a Sunday, on which trading banks are open for general banking business in the town or city in New Zealand in which the Focus office from which management of the agreement is located.

- 1.2. **Interpretation:** In these Terms, any Supplemental Terms and any Work Schedule, unless the context otherwise requires, a reference to:

- (a) 'including' (and its similar expressions) shall be interpreted as if followed by 'without limitation'.
- (b) any legislation shall (except where expressly stated otherwise) be construed as a reference to that legislation as amended, replaced, consolidated or re-enacted;
- (c) dollars and \$ refers to New Zealand dollars (NZ\$) exclusive of GST;
- (d) times of day or dates are to New Zealand times and dates respectively;

- 1.3. **Contra proferentem:** These Terms, and any Agreement must not be construed adversely against a party if a reason for doing so is that the party prepared those Terms or that agreement or caused it to be prepared.

2. SCOPE & ENGAGEMENT

- 2.1. In consideration of the payment of the Charges, Focus will provide Products, Deliverables and Services to you, as set out in an Agreement.
- 2.2. An Agreement arises any time you engage Focus to provide Products, Deliverables or Services to you and Focus agrees to do so. To avoid doubt, if you request Focus to provide Products, Deliverables or Services and that request does not relate to an existing Agreement, and Focus agrees to your request, then a new Agreement arises in relation to that request.
- 2.3. Any estimation of Charges provided by Focus in relation to any Products, Deliverables or Services is valid for 30 days, and remains subject to variation if there are any changes to the Products, Deliverables or Services required before an Agreement under which they are to be provided is agreed by the parties. Such quotation is also subject to any other provisions stated on the quotation. Charges stated in a proposal or a draft statement of work or Work Schedule are deemed to be a quotation unless otherwise stated.
- 2.4. Later documentation created under a Work Schedule supersedes earlier documentation, unless otherwise agreed by the parties.
- 2.5. All Charges and timeframes set out in a Work Schedule are subject to an assumption that no unforeseen circumstances or unknown factors arise or are discovered in the course of providing Services and Deliverables. Focus may adjust such Charges and/or timeframes to address any such circumstance or factor that arises or is so discovered.
- 2.6. Focus shall determine the team used to provide Services and Deliverables, which may be Focus staff or contractors engaged by Focus. Focus may change the composition of its team at any time. Focus may also appoint any sub-contractor to provide services and/or deliverables in connection with an Agreement. Despite the appointment of any sub-contractor in connection with an Agreement, Focus shall remain principally liable to you for the performance of its obligations under that Agreement.
- 2.7. If requested by you, Focus will comply with your security protocols when accessing your premises or technology systems, provided that Focus shall not be responsible for any delays to the timeframes set out in a Work Schedule resulting from delays in obtaining access. You are responsible for any additional costs incurred by Focus as a result of its compliance with such security protocols.

3. CHARGES AND PAYMENT

- 3.1. You will pay Focus the Charges, any expenses and disbursements reasonably incurred by Focus in providing Products, Deliverables and Services, and any other amount chargeable under an Agreement. The Charges will be as set out in an Agreement. However, if an Agreement does not state the Charges that apply, then Focus's standard charges for such Products, Deliverables and Services shall apply.
- 3.2. If Focus undertakes Services that are outside the scope of an Agreement at your request (or such Services need to be provided in connection with other work Focus undertakes), then the Charges for those Services shall be calculated at Focus's standard hourly rate. Focus's standard rates apply to the following Services, unless otherwise agreed:
 - (a) Services required to comply with your security protocols when accessing your premises or technology systems; and/or
 - (b) Services arising as a result of any breach of an Agreement by you, any inadequacy or inaccuracy in information provided by you, any delay in any of your obligations, or due to your acts or omissions or those of any Third-party engaged by you; and/or

- (c) Services required as a result of any assumptions not being correct or dependencies not being completed when required, work being more complicated than envisaged, or due to a risk arising (whether or not that risk was known).
- 3.3. If Focus gives you an estimate of any Charges, you acknowledge that the actual Charges payable by you may be higher. Focus will use reasonable endeavours to advise you if the actual Charges will exceed the estimate advised.
- 3.4. If a Work Schedule includes providing Third-party Software (whether on-premise or on a software as a service basis) and sets out Charges for such Third-party Software, then your payment of those Charges to Focus discharges your payment obligations under the applicable Third-party Licensing Terms. You acknowledge that the Charges for Third-party Software may comprise a one-off fee and/or recurring or subscription-based fees (typically on a monthly or annual basis). Some Charges for Third-party Software may also apply for a minimum period of time (such as 12 months), and you must pay them for that minimum period even if you are no longer using the Third-Party Software. In some cases you must enter into the applicable Third-party Licensing Terms and make payment of the relevant fees directly to the Third-party owner or licensor of the Third-party Software. Focus will advise you if that is the case and any fees stated in a Work Schedule for such Third-Party Software are merely indicative of the fees that will be payable and do not form a part of the Charges payable to Focus.
- 3.5. Unless stated otherwise in Supplemental Terms or a Work Schedule, the Charges and any other amounts chargeable under an Agreement will be invoiced as follows:
- (a) Charges for Cloud Services will be invoiced one calendar month in advance and will apply from the date they are available for you to access them.
- (b) Subject to clause 3.7, Charges for Products or Services (other than Cloud Services), together with any other amounts chargeable under an Agreement, will be invoiced monthly in arrears.
- 3.6. Subject to clause 3.7, all amounts payable by you to Focus must be paid in full, without set-off or deduction, on the 20th of the month following the date stated on the face of the tax invoice or at such other time as set out in the Supplemental Terms or Work Schedule. If any amount payable is in dispute, the Client must promptly raise the dispute (before the due date for payment) and still pay the undisputed amount in accordance with this clause 3.6.
- 3.7. If you are a new Client or do not have an established credit record with Focus, Focus may invoice you for the Products in advance, and may require payment in full, without set-off or deduction, prior to delivery of the Products.
- 3.8. You may be required to complete a direct debit authority, depending on the nature of the engagement.
- 3.9. Without prejudice to any other rights under an Agreement, if payment is not made in full by the due date, Focus is entitled to:
- (a) charge interest on the unpaid overdue balance at the rate of 8% per annum. Interest will be compounding monthly on the unpaid balance owing on the first day of each month;
- (b) withhold access to or the provision of any data, information, documentation, passwords, or intellectual property to be provided under any Agreement; and
- (c) suspend any or all Services or disable access to some or all Cloud Services (and while Focus will endeavour to give you warning before doing so, it may do so without warning if that is not feasible),
- until payment is received in full by Focus. During any such action, you will continue to be responsible for any ongoing Charges under any existing Agreement.
- 3.10. All amounts set out in an Agreement are excluding GST unless otherwise stated. You must pay to Focus any applicable GST, and any other taxes (other than taxes on Focus's net income), duties, levies or imposts that arise or are imposed on or incurred by Focus in relation to the provision of Products, Deliverables and Services under an Agreement. You are liable to pay the appropriate amount of GST to Focus at the time of payment of the invoiced amount, subject to Focus having furnished you with a tax invoice (as that term is defined in the Goods and Services Tax Act 1985).
- 3.11. You agree to pay for Products, Deliverables and Services regardless of who ultimately uses them.
- 3.12. If you supply Focus contact details to any Third-party and this third-party requests Products, Deliverables and/or Services on your behalf, Focus may act upon this request unless you have advised Focus in writing not to do so prior to the request being made. You are liable to pay for the Charges and other amounts arising from such a request.
- 3.13. Mileage may be charged for, where travel is required to your premises. Travel time, expenses and mileage may be charged for where travel is required outside the Invercargill, Gore, Queenstown, Wanaka, Dunedin, Christchurch or Timaru town/city boundaries.
- 3.14. Under no circumstances will Focus be responsible for Third-party service charges, including telecommunication charges, or amounts arising under Third-party Licensing Terms, whether billed directly to you by the Third-party or via Focus. You must pay Focus any amounts that are billed via Focus.
- 3.15. Focus may revise the Charges on an annual basis by giving at least one month's notice of the change. In addition:
- (a) If any Cloud Services involve the provision of any Third-party services and the Third-party provider increases the amount it charges Focus for those services, Focus may make an equivalent change to the Charges.
- (b) If Charges in respect of your use of or access to Third-party Software are billed via Focus and the Third-party owner or licensor of the Third-party Software increases the amount it charges Focus in respect of your use or access to that Third-party Software, Focus may make an equivalent change to the Charges.

- (c) If Products are being sourced from outside of New Zealand and Focus is required to pay for them in a foreign currency, Focus may pass on any additional costs it incurs arising from a change in exchange rates between the time Focus orders the Products and the date the invoice to the supplier of the Products is due for payment.
- 3.16. You will be liable for all reasonable Third-party costs (including collection costs and legal costs on a solicitor-client basis) in relation to Focus enforcing or attempting to enforce an Agreement.

4. YOUR OBLIGATIONS

4.1. You agree that you will:

- (a) not use any Product, Deliverable or Cloud Service in any way that is illegal, considered in any way abusive, or for the purpose of harassment;
- (b) not use any Product, Deliverable or Cloud Service in a way that may be damaging or could interfere with Focus's network or equipment or its ability to deliver services to Clients;
- (c) use the Products, Deliverables and Cloud Services for only the purposes intended and for which they were supplied and in accordance with all applicable laws;
- (d) ensure that your personnel who use any Product, Deliverable or Cloud Service are appropriately trained;
- (e) provide Focus with any information reasonably required from you and will ensure that such information is accurate and complete;
- (f) be responsible for the use of the Products, Deliverables and Cloud Services by you or any Third-party whether authorised by you or not;
- (g) if required obtain any Third-party authorisation, consent or license that may be required to use the Products, Deliverables and Cloud Services, or for Focus to provide the Products, Services or Deliverables (including where Focus needs to access any technology system, software, Intellectual Property or data used by you and which is not provided by Focus);
- (h) ensure that any of your third parties with which Focus must work in providing the Products, Services or Deliverables co-operate with Focus and otherwise work with Focus in such manner as Focus requires;
- (i) make timely decisions where required in relation to the Products, Services and Deliverables and ensure that all of your obligations on which Focus is dependent are completed within the timeframes required by Focus;
- (j) make available to Focus in a timely manner (and in accordance with any agreed timeframes) all assistance, including personnel, information, facilities, services, equipment, resources, and access to your facilities and technology systems, including remote access, as reasonably required by Focus for it to perform its obligations under an Agreement;
- (k) consult, co-operate and coordinate with Focus in relation to health and safety matters;
- (l) follow Focus's reasonable instructions and any applicable manufacturer's instructions in regard to the use of the Products, Deliverables and Cloud Services; and
- (m) undertake any maintenance or upgrades or replacements to any device or associated software that is required to access and/or use the Cloud Services, access based Third-party Software or any other access based Services as is required from time to time. It is your responsibility to ensure access to services is available on suitable mediums.

4.2. Unless otherwise stated in the applicable Supplemental Terms or expressly agreed otherwise in a Work Schedule, it is your responsibility to ensure your technology systems and data are protected by appropriate security measures. Without limiting the generality of the previous sentence, you agree it is your responsibility to:

- (a) maintain the latest software and operating system updates on your technology systems;
- (b) maintain current versions of the Software;
- (c) use anti-virus and anti-malware software running the latest virus and malware pattern;
- (d) use appropriately secured and configured firewalls;
- (e) ensure password strength and security is appropriate and is updated regularly; and
- (f) notify Focus of any suspicious or malicious activity immediately, where such activity relates to the Software, Services, or Focus's Intellectual Property.

4.3. You also acknowledge, that unless otherwise agreed in a Work Schedule, Focus is not responsible for providing you with any advice in relation to the security of your technology systems and data or your use of Products, Deliverables or Services provided by Focus.

4.4. You must not use any malicious code, virus, Trojan horse, or other surreptitious instruction to attempt to interfere with the security of the Software, Services, or Focus's Intellectual Property.

4.5. While every effort is made to ensure the integrity of data managed by Focus, at times, unavoidable problems may arise. Unless otherwise agreed in a Work Schedule, it is your responsibility to maintain adequate backups of data at all times. You must ensure

that all backup data is held on standalone servers or media, or servers or media that is not connected to any of your production environments or any Internet connected devices. Focus accepts no liability for any loss of data or software.

- 4.6. If Focus facilitates the provision of mobile connectivity services by a Third-party provider, you acknowledge that Focus is not the provider of those services and has no responsibilities in relation to those services. Your rights in relation to such services lie solely with that Third-party provider. You must comply with the terms and conditions of the Third-party provider applying to such services.

5. DELIVERY AND INSTALLATION

- 5.1. Unless otherwise agreed in a Work Schedule, Focus may deliver any Software it agrees to provide to you for installation by you, by making it available for download by you.
- 5.2. If Focus has agreed to install any Software on your technology systems, then unless otherwise stated in a Work Schedule, such installation is limited to installing a copy of the Software on to an available server within your technology systems, and running the initial set up wizard to enable the Software to be installed. You must ensure that the server on which the Software is to be installed meets any minimum system requirements advised to you by Focus. Unless Focus has agreed to an on-site installation, all installation of Software will be done by remote access, and you will provide such access to your technology systems as Focus requires in order to complete the installation services.
- 5.3. If the provision of Third-party Software operating on a software as a service basis includes an initial set up by Focus, then unless otherwise stated in a Work Schedule, the initial set up is limited to the minimum level necessary to enable you to have access to the Third-party Software or the services provided by it. You must ensure that any technology systems or devices from which you access the Third-party Software meets any minimum system requirements advised to you by Focus. Unless Focus has agreed to undertake the initial set up on your site, the initial set up will be done by remote access, and you will provide such access to your technology systems as Focus requires in order to complete the initial set up services.

6. DELAY IN CONNECTION WITH SERVICES

- 6.1. Focus shall use reasonable endeavours to meet the timeframes specified in a Work Schedule, but you acknowledge that all timeframes are estimates only and time shall not be of the essence.
- 6.2. Focus may adjust any timeframes if those timeframes are affected:
- (a) by any breach of an Agreement by you, any inadequacy or inaccuracy in information provided by you, any delay in any of your obligations, or your acts or omissions or any Third-party engaged by you; and/or
 - (b) as a result of any assumptions not being correct or dependencies not being completed when required, work being more complicated than envisaged, or due to a risk arising (whether or not that risk was known).

7. ACCEPTANCE TESTING

- 7.1. Unless a Work Schedule states that a Product or Deliverable will be subject to acceptance testing, each Product or Deliverable is deemed to be accepted on delivery to you. Where Software is made available for download by you, delivery is deemed to occur when it is downloaded. Where Third-party Software is provided on a software as a service basis, delivery is deemed to occur when you are registered to access that Third-party Software or the services provided by it.
- 7.2. If a Work Schedule states that any Product or Deliverable is to be subject to acceptance testing:
- (a) the tests to be undertaken and the criteria against which the tests are to be measured (which must be objective) shall be as determined by Focus;
 - (b) once a Product or Deliverable is provided by Focus to you for acceptance testing, Focus will assist you to undertake the acceptance tests within a reasonable timeframe;
 - (c) a Product or Deliverable will pass acceptance testing if the tests demonstrate that the acceptance criteria have been met in all material respects;
 - (d) you must notify Focus within five Working Days of the tests having been completed if you consider that the acceptance criteria were not met in a material respect, specifying the manner in which such criteria were not so met;
 - (e) if Focus agrees that the acceptance criteria have not been met in a material respect, Focus will:
 - (i) in the case of a Deliverable or any Focus Software, correct the Deliverable or the Focus Software (or provide a workaround) and resubmit it for testing against the test that was not passed;
 - (ii) in the case of Third-party Software, assist you to escalate the matter to the Third-party owner or licensor of the Third-party Software in accordance with the Third-party Licensing Terms.
- 7.3. If you delay any aspect of the acceptance testing process then Focus may charge you at its standard rates for any additional time reasonably incurred by Focus as a result of the delay.

- 7.4. Product or Deliverable that is subject to acceptance testing will be deemed to be accepted if:
- (a) it passes acceptance testing in all material respects;
 - (b) you do not notify Focus within five Working Days of the tests having been completed that you consider that the acceptance criteria were not met in a material respect;
 - (c) the Product or Deliverable is installed in a production environment or you make any productive use of the Product or Deliverable; or
 - (d) 20 Working Days have passed since the later of the date Focus provides the Product or Deliverable for acceptance testing, or, where Focus has agreed that any acceptance criteria have not been met in a material respect, the date Focus complied with its obligations under clause 8.2(e).

8. RETURNS, CANCELLATIONS AND VARIATIONS

- 8.1. Product returns and order cancellations shall be at Focus's discretion. Focus may charge a fee in relation to agreeing to any return or cancellation. You agree to pay any freight charges in relation to the delivery of the returned Product to Focus.
- 8.2. You may request a change to all or part of the Products, Services and/or Deliverables provided under an Agreement, or to a Work Schedule by providing a written request to Focus.
- 8.3. Following such a request, the parties will discuss the requested change in good faith. Focus may charge you at its standard rates for any work required to assess any impact that the requested change has on Focus's obligations or to otherwise enable it to fully participate in such discussions.
- 8.4. If, as a result of the discussions, the parties agree to implement any change to the Products, Services and/or Deliverables or to the Work Schedule, the change must be agreed in writing by the parties. Focus has no obligation to undertake any changes requested by you that have not been so agreed in writing.
- 8.5. Focus will not unreasonably refuse any reasonable change requested by you, provided that all applicable timeframes are adjusted as required by Focus and you pay any additional fees that arise as a result of implementing the requested change.

9. DISASTER RECOVERY

- 9.1. Where Services rely on equipment or service delivery staff being available for multiple parties for disaster recovery purposes, unless otherwise set out in the applicable Supplemental Terms or a Work Schedule, you agree that disaster recovery assistance and restoration of services is on a best efforts basis.

10. SOFTWARE

- 10.1. If we provide any Software to you under an Agreement you agree:
 - (a) not to copy, sub-license or distribute the Software, other than as provided in the agreement or where permitted under clause 13.3;
 - (b) to only install and use the Software to the levels you have agreed to as part of any Agreement;
 - (c) not to alter, modify, enhance or reverse assemble or reverse compile the Software;
 - (d) not to sell, rent, lease, transfer, assign, commercially exploit, or otherwise deal in or grant a security interest in the Software;
 - (e) not to alter, remove or tamper with any trademarks, copyright notices, or any proprietary legend or notice, or any numbers, or other means of identification used on or in relation to the Software;
 - (f) to be bound by any applicable Third-Party Licensing Terms (for Third-party Software), or in any other case the associated licensing terms, agreements, or terms and conditions that accompany such Software, including any Supplemental Terms that may be applicable ("Licensing Terms");
 - (g) not to do any act that would or might invalidate or be inconsistent with the owner's Intellectual Property in the Software;
 - (h) immediately remove and cease to use any Software that has been supplied on a limited use or subscription basis on the expiry or termination of the applicable term.
- 10.2. If there are no separate Licensing Terms applicable to the Software, and it is on-premise Software, then clauses 13.3 to 13.9 shall be the applicable Licensing Terms. Those clauses shall not apply if there are separate Licensing Terms. You acknowledge that, in the case of Third-party Software, the applicable Third-party Licensing Terms may be embedded in the Third-party Software, set out on the Third-party's website or otherwise separately provided with the Third-party Software. Focus does not control Third-party Licensing Terms, which are determined by the Third-party owner or licensor of the Third-party Software. You agree that it is your responsibility to become familiar with those Third-party Licensing Terms before using or accessing the applicable Third-party Software (or the services provided by it).

- 10.3. Subject to the payment of the applicable licensing Charges, Focus grants to you a non-exclusive, non-assignable licence to use the Software on technology systems that you own, lease or otherwise control for your own internal business purposes only. This license is perpetual, unless terminated in accordance with clause 21. This license includes a right to make a copy of the Software for your own security, backup and archival purposes. If any documentation is provided with the Software, the Software must be used in accordance with that documentation. Focus or such other owner of the Software reserves all other rights in the Software.
- 10.4. You must not make the Software available to be accessed by any person other than your employees and contractors without the prior written consent of Focus, and all such access must be for your internal business purposes. Without limiting this obligation, you must not make the Software available to any Third-party or provide any services to any Third-party that uses the Software.
- 10.5. Focus will provide you with all Updates for the Focus Software generally made available to its Clients on the same basis on which it is made available to those Clients. Updates may be provided free of charge, subject to payment of applicable maintenance Charges, or subject to payment of a separate additional Charge at Focus's discretion. If you have not subscribed for Updates that are subject to an applicable maintenance Charge, and you wish to subscribe or re-subscribe to Updates at a later date, you must also pay all applicable maintenance Charges that would have been payable in the intervening period, had you continuously subscribed for all Updates from the initial installation of the Focus Software.
- 10.6. Unless Focus has agreed to provide installation services, you are responsible for the installation of the Software and any Updates made available to you by Focus.
- 10.7. Focus may stop providing Updates to the Focus Software by providing notice to you if it stops or intends to stop providing Updates to its Clients generally.
- 10.8. All information contained in or relating to the Software will be treated by you as confidential unless it is published by Focus or is in the public domain or generally known in the industry otherwise than by a breach of these Terms.
- 10.9. The Software is provided on an "as available" basis.
- 10.10. Where Focus provides Third-party Software to you it will register you as the licensee of that Third-party Software if that is required to enable you to use the Third-Party Software.
- 10.11. Focus does not warrant that the Focus Software will be wholly free from errors or bugs, or that any error or bug will be corrected in an Update. Focus does not provide any warranties in relation to Third-party Software, nor does it accept any responsibilities or liabilities to you for that Third-party Software. Any claims you have in relation to Third-party Software lie solely with the third-party owner or licensor. If the third-party owner or licensor of Third-Party Software provides any warranties, they will be contained in the Third-Party Licensing Terms. Your rights, if any, to receive any updates, upgrades, new versions or new releases of any Third-Party Software will be determined by the applicable Third-Party Licensing Terms.
- 10.12. Focus will not be liable or responsible for errors, bugs or incompatibilities that may arise from using any Software. Focus gives no warranty or representation that the Software will meet your expectations or achieve a particular result. You are solely responsible for reviewing any outputs generated using the Software (or the services using it) and making decisions in connection with such outputs. Focus is not responsible for the content or correctness of any such outputs.

11. WARRANTIES

- 11.1. Focus warrants that it will provide the Services using a reasonable standard of skill, diligence, and care.
- 11.2. Focus may provide other warranties in Supplemental Terms or a Work Schedule.

12. INCIDENTS AND FAULTS

- 12.1. Except as otherwise agreed in a Work Schedule, Focus is not responsible for assisting you with any incidents, errors, bugs or other faults arising in connection with your technology systems or any Products or Deliverables provided by Focus. However, you may request Focus to provide such assistance.
- 12.2. Where Focus is engaged by you in relation to an incident or fault that is occurring intermittently or which is not otherwise able to be reproduced by Focus, Focus will endeavour to eliminate the most likely reasons first. Because of the intermittent nature of many incidents or faults, it is often impossible to diagnose a cause other than by a series of replacements of different system components or software or environment changes, updates or upgrades. The non- appearance of an intermittent incident or fault during testing does not necessarily mean that the cause has actually been resolved. A successful resolution may therefore involve a long period with the incident or fault being checked several times (or more) before the cause is finally eliminated. In many cases, the cause may lie with a change to the environment or be due to Third-party or other external factors.
- 12.3. Focus reserves its right to charge for its time in assisting you with any incidents or faults at its standard rates unless otherwise agreed. If assistance with an incident or fault involves replacement of system components or software or environment changes, updates or upgrades you will pay any associated fees for the replacements, changes, updates or upgrades required where that work is undertaken by Focus. You acknowledge that you may also need to incur charges from your third-party providers in relation to the investigation and resolution of an incident or fault where Third-party systems or services are involved.

13. LIABILITY

13.1. To the fullest extent permitted by law:

- (a) Focus will have no liability whatsoever for any loss of profits, loss of reputation, loss of opportunity, economic loss, loss of savings, or loss of anticipated profit or savings, any increased costs, any wasted expenditure, loss or corruption of data, or any indirect or consequential loss or damage of any kind arising out of or in connection with these Terms, any Agreement or the provision of the Products, Deliverables or Services pursuant to an Agreement; and
- (b) if Focus is held liable to you whether in contract, tort (including negligence) or otherwise, then its liability is limited:
 - (i) to, where the claim concerns the supply of Products, Services or Deliverables:
 - A. the re-supply of the relevant Product, Service or Deliverable;
 - B. the cost of the re-supply of the relevant Product, Service and/or Deliverable giving rise to the claim; or
 - C. if the relevant Product, Service or Deliverable cannot be re-supplied, the Charges paid in relation to the relevant Product, Service or Deliverable,and Focus reserves the right to elect any option at its absolute discretion; or
 - (ii) in any other case (or if the limitation in sub-paragraph (b)(i) does not apply for any reason), for all events in the aggregate, to the lesser of \$25,000.00 or an amount equal to the Charges paid under the relevant agreement or, if there is no relevant Agreement, the amount which you paid to Focus under all Agreements, in each case, in the six months prior to the date of the event giving rise to the claim.

13.2. Where you are acquiring any Products, Services or Deliverables for the purposes of a business, you agree that the Consumer Guarantees Act 1993 does not apply in respect of the supply of those Products, Services or Deliverables to you.

13.3. Focus will not be liable to you if the Products, Services or Deliverables are not used in accordance with the instruction or direction of Focus, any applicable manufacturer's or licensor's instructions, if any defect in the Deliverables is due to any action not directly and solely attributable to Focus, or for the impact of any risk arising in relation to the Services despite any mitigation being agreed by the parties in respect of that risk.

13.4. You will reimburse Focus on demand for any expenses, disbursements and legal costs incurred by Focus in the enforcement of any of Focus's rights contained in these Terms or an Agreement (including any reasonable solicitor's fees and debt collection agency fees) where we are enforcing those rights as a result of your non-compliance with any of your obligations under these Terms or an Agreement.

13.5. You may not bring any action or proceeding in relation to these Terms or an Agreement in respect of an event that occurred more than 2 years before the date the action or proceeding is commenced.

14. INTELLECTUAL PROPERTY

14.1. All Intellectual Property owned by, or developed by, either party independently of these Terms or an Agreement remains the property of that party.

14.2. Unless expressly agreed otherwise, Focus or its licensors shall retain all Intellectual Property in the Software, Cloud Services or Deliverables, or otherwise created in the course of an Agreement. Where Software, Cloud Services or Deliverables comprise or contain any third-party Intellectual Property or software, or involve configuration of any third-party software, nothing in the agreement transfers any ownership in such Third-party Intellectual Property or software to either party.

14.3. Subject to the payment of the Charges, Focus grants you a perpetual, sub-licensable, royalty free and non-exclusive license to use the Focus Intellectual Property contained within the Deliverables, to the extent reasonably required by you to use the Deliverables in your usual business practices.

14.4. You grant to Focus a non-exclusive limited license to use your Intellectual Property to the extent necessary for the provision of the Services and/or the Deliverables. This license includes the right to adapt, alter, or modify the Client's Intellectual Property for the sole purpose of providing the Services and/or Deliverables.

14.5. Focus retains all know-how and generic code relating to the Services and the Deliverables and may reuse such know-how and generic code for other Clients, despite any other clause in an Agreement stating or implying otherwise.

15. CONFIDENTIAL INFORMATION

15.1. All Confidential Information that is supplied to a party in connection with these Terms or during the term of an Agreement, or of which a party becomes aware as a result of that party's dealings in connection with the operation of an Agreement, remains the property of the originating party.

15.2. Subject to clause 18.4, each party agrees to treat the other party's Confidential Information as strictly confidential and not to use or attempt to use any of the other party's Confidential Information in any manner or for any purpose other than to fulfil its obligations described in, or exercise its rights under, these Terms or an Agreement.

15.3. Each party will maintain effective security measures, including at a minimum the same measures as that party uses to protect its

own Confidential Information, which in any event must be not less than reasonable measures, to protect all of the other party's Confidential Information to which it may have access from unauthorised use, copying or disclosure.

- 15.4. A party may not disclose the provisions of an Agreement or any of the other party's Confidential Information unless:
- (a) such disclosure is:
 - (i) required by an Agreement, or, in the case of Focus, necessary to enable Focus to undertake its obligations under that agreement;
 - (ii) to its own personnel, or the personnel of its related entities, so long as such personnel and related entities are made aware of the confidentiality obligations in these Terms and are bound by a corresponding confidentiality obligation;
 - (iii) to any sub-contractors used in connection with an Agreement, and the disclosure is for the purposes of an Agreement and a corresponding confidentiality obligation is in place;
 - (iv) to its professional advisors, who are subject to a corresponding confidentiality obligation;
 - (v) required by applicable law, a relevant stock exchange, or any court or government agency, but then only after consulting with the other party to the extent reasonably possible about the form and content of the disclosure; or
 - (vi) required in connection with the enforcement of these Terms or the terms of an Agreement; or
 - (b) that party has obtained the prior written consent of the other party, such consent not to be unreasonably withheld.
- 15.5. A party who discloses the other party's Confidential Information to any other person will be responsible for the acts and omissions of that other person as if they were its own acts and omissions.
- 15.6. If a party discovers that an unauthorised person is in possession of the other party's Confidential Information, the party must immediately notify that other party and co-operate with that other party in every reasonable way to help that other party regain possession of its Confidential Information and prevent its further unauthorised disclosure.
- 15.7. Neither party shall make or permit any public announcement or disclosure of any sort regarding these Terms or an Agreement without the prior written consent of the other party.

16. FORCE MAJEURE

- 16.1. Neither party will be liable to the other for any failure or delay to perform its obligations by reason of Force Majeure.
- 16.2. In the event that a party cannot perform its obligations under an Agreement as a result of Force Majeure, that party (Affected Party) shall:
- (a) notify the other party as soon as reasonably practicable of full particulars (including the nature, effects and expected duration) of the Force Majeure and the actions it will take;
 - (b) use all reasonable commercial endeavours to mitigate the effects or consequences of the Force Majeure; and
 - (c) regularly update that other party of the status of the Force Majeure and the actions it is taking in relation to the Force Majeure.
- 16.3. If, as a result of Force Majeure, the Affected Party is unable to perform its obligation under an Agreement for 90 days or more, the other party may, on giving written notice to the Affected Party, terminate the Agreement.

17. DISPUTES

- 17.1. If any dispute arises out of an Agreement, neither party is to commence proceedings relating to the dispute (except where urgent interlocutory relief is sought or to recover amounts owing under an Agreement) unless that party has first complied with this clause 20.
- 17.2. A party claiming a dispute that has arisen is to give written notice to the other party specifying the nature of the dispute. On receipt of that notice, the parties will use all reasonable endeavours to resolve the dispute by discussion, negotiation or other informal means.
- 17.3. If the parties do not resolve the dispute within 30 Working Days of the receipt of the notice, then either party can, by writing to the other, require that the dispute be referred to mediation in accordance with the standard mediation agreement of the Resolution Institute. If the parties cannot agree on a mediator, then you agree that the current chairperson of the Resolution Institute will appoint the mediator and determine the mediator's fee.
- 17.4. The parties must continue to perform their respective obligations under an Agreement pending the resolution of a dispute, subject always to either party's right to terminate that agreement.

18. TERMINATION

- 18.1. Focus reserves the right and full discretion to terminate any or all Agreements with you:
- (a) on five Working Days written notice to you, if you commit a material breach of these Terms, any Supplemental Terms or a Work Schedule, which is incapable of remedy or, if capable of remedy, is not remedied within 20 Working Days of the date on which notice specifying the breach and requiring its remedy is served on you;

- (b) immediately, on written notice to you, if:
 - (i) if a receiver or manager is appointed over any or all of your assets;
 - (ii) you or your director or directors, principal or principals go into liquidation, bankruptcy, receivership, administration or insolvency or it appears any of these events are likely;
 - (iii) you are removed from the Companies Office register; or
- 18.2. You may terminate an Agreement on five Working Days written notice to Focus if Focus commits a material breach of these Terms or the Supplemental Terms or Work Schedule that apply to that agreement which is incapable of remedy or, if capable of remedy, is not remedied within 20 Working Days of the date on which notice specifying the breach and requiring its remedy is served on Focus.
- 18.3. The Supplemental Terms or Work Schedule that apply to an Agreement may set out other circumstances that permit Focus or you to terminate that Agreement. If the Supplemental Terms or Work Schedule permit you to terminate an Agreement for convenience, you must give Focus at least 90 days written notice to exercise that right.
Under clause 21.3, if you decide to transition to a new IT Service Provider, Focus will engage professionally with your new provider and transfer relevant IT information with your written consent. You acknowledge that Focus will change hour standard hourly rate for this service.
- 18.4. Focus may terminate a Cloud Service if that Cloud Service is being withdrawn from Focus's Clients generally. Focus will give you at least three months' notice in such a case.
- 18.5. Focus may vary an Agreement related to a Cloud Service if a Third-party ceases to provide any product or service to Focus which affects Focus's provision of that Cloud Service, to the extent necessary to address the cessation of that Third-party product or service.
- 18.6. It is your responsibility to ensure your data is copied or moved from any Cloud Service or Focus servers where Focus holds that data on your behalf prior to termination or expiry. Focus will not be liable for data loss due to a Third-party migrating, copying or downloading the data from any Cloud Service or Focus servers.
- 18.7. You acknowledge that an Agreement may be subject to a minimum term. In the event of termination of an Agreement prior to the expiry of its minimum term, you agree to pay Focus the applicable Charges for that minimum term.
- 18.8. In the event of termination or expiry of an Agreement, you acknowledge and agree as follows:
 - (a) You will immediately pay any outstanding amounts due to Focus in respect of that agreement;
 - (b) any Services being provided under that agreement shall cease being provided;
 - (c) your access to any data held by Focus on your behalf will be removed;
 - (d) your data held by Focus on your behalf (including any backups held by Focus) will be deleted;
 - (e) each party will:
 - (i) return to the other party all documents and materials that were provided to it by that other party for the purposes of that agreement and which contain that other party's Confidential Information;
 - (ii) delete from its technology systems all of the other party's Confidential Information that was provided to it by that other party for the purposes of that agreement (to the extent it is reasonably possible to do so), provided that a party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent contained in board materials, or required by law or any applicable governmental or regulatory authority. The provisions of clause 18 shall continue to apply to any such documents and materials retained by a party;
 - (f) if Software has been provided under that agreement on the terms set out in clauses 13.3 to 13.9, the license granted under these Terms shall terminate immediately, you will cease to use the Software and must remove the Software from your technology systems;
- 18.9. Termination or expiry of an Agreement does not affect the provisions of that agreement which expressly, or by their nature, survive termination or expiry.

19. NOTICES

- 19.1. Any notice or other communication to be given under an Agreement must be in writing, in English, and delivered by hand (including by courier), or sent by post or email to a named contact person at the relevant address set out in a Work Schedule (or to the registered office of the addressee if there is no address set out in a Work Schedule).
- 19.2. A party may change its physical, postal or email address, or its contact person for whose attention notices are to be addressed, by serving a notice on the other party in accordance with this clause 23.
- 19.3. All notices given in accordance with an Agreement will be deemed to have been delivered as follows:
 - (a) at the time of delivery, if it is delivered by hand (including by courier) and accepted by a person authorised to accept deliveries on behalf of the receiving party;

- (b) if posted, at the expiration of five Working Days (or 20 Working Days if posted to or from a country other than New Zealand) after the pre-paid envelope containing the same was delivered into the custody of the postal authorities; or
- (c) if communicated by email, at the time the sender's email system records that the email was successfully delivered to the named recipient, provided that where any such delivery or transmission occurs after 5.00 pm on a Working Day or on a day which is not a Working Day, delivery will be deemed to occur at 9.00 am on the next following Working Day.

20. GUARANTEE

- 20.1. If requested by Focus the directors, principals and/or shareholders of the Client may be required to provide a separate guarantee of the Client's obligations under these Terms and the Agreements entered into between Focus and the Client.
- 20.2. If a separate guarantee is provided, the guarantor is deemed a principal party to these Terms and the Agreements and is jointly and severally liable with the Client to perform and/or observe all the Client's obligations expressed or implied in these Terms and the Agreements.
- 20.3. In the event of a default by the Client to pay any moneys due to Focus for goods or services supplied by Focus, Focus agrees first to proceed to recover from the Client. In the event that Focus is unable to recover the total amount owing from the Client to Focus, then Focus will proceed to recover any balance owing and any further costs of recovery from the guarantor(s).

21. GENERAL

- 21.1. **Privacy:** Each party will comply with the Privacy Act 2020 in connection with its obligations under these Terms and an Agreement. You agree that the contact details and associated information of your personnel may be collected and used by Focus in the course of carrying out its obligations under an Agreement. The following applies to such contact details and information:
 - (a) Focus will hold such details and information. Focus may use the details and information for any purpose in connection with these Terms or an Agreement, to maintain the relationship between the parties (including providing marketing material to you), or as may otherwise be agreed by the parties or Focus and the relevant individual.
 - (b) Focus may disclose such information to third parties engaged by Focus to provide services on Focus's behalf or with whom Focus must engage in order to perform its obligations under an Agreement.
 - (c) You will ensure that the relevant personnel have provided consent to such collection and use, and are aware that Focus holds their contact details and information, the purposes for which it may be used and of any rights they have under the Privacy Act 2020. If your personnel do not provide the necessary contact details and information Focus may not be able to deal with them in relation to these Terms or an Agreement.
- 21.2. **Non-solicitation:** Neither party shall (and shall procure that no related entity shall) directly or indirectly approach or solicit for employment, engage or contract any person who is employed or contracted by the other party (or any related entity of it) during the term of any Agreement or for a period of six months following its termination or expiry.
- 21.3. **Entire Agreement:** An Agreement contains the whole agreement between the parties in respect of the subject matter of that agreement, and supersedes and replaces any prior written or oral agreements, representations, proposals, statements or understandings between them relating to such subject matter. By entering into an Agreement, the parties confirm that they have not entered into that agreement on the basis of any representation or statement made by a party that is not expressly incorporated into that agreement. Neither party has any liability to the other in respect of any representation or statement made in relation to an Agreement that that is not incorporated into that agreement.
- 21.4. **Invalidity and Severance:** If any provision of an Agreement is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions will not in any way be affected or impaired. The parties agree to negotiate in good faith in order to agree the terms of a mutually satisfactory provision that is valid, legal and enforceable, but otherwise achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be invalid, illegal or unenforceable.
- 21.5. **Further Assurance:** Each party to an Agreement will sign, execute and do all deeds, documents, acts and things as may reasonably be required by the other party to effectively carry out and give effect to the terms and intentions of that agreement.
- 21.6. **Amendment:** Except as otherwise provided for in these Terms, no modification, variation, alteration or amendment to an Agreement will be effective unless it is in writing and signed by each party.
- 21.7. **Health and Safety:** The Client holds responsibility for ensuring Focus staff are inducted into their Health and Safety practises and are made aware of any hazards the Focus employee may encounter while working on site.
- 21.8. **Assignment:** Neither party may assign any of its rights or obligations under an Agreement in whole or in part without the prior written consent of the other party.
- 21.9. **Waiver:** No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by one party in respect of any breach of the other party's obligations under an Agreement is to:
 - (a) operate as a waiver of, or prevent the subsequent enforcement of, that obligation; or
 - (b) be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.

- 21.10. **No Partnership or Agency:** Nothing in an Agreement constitutes the parties as partners, trustees or agents for each other. Neither party has any authority to bind the other party or act on its behalf, except to the extent expressly provided for in an Agreement.
- 21.11. **Costs:** Each of the parties will pay its own costs, charges and expenses incurred in connection with the preparation, negotiation and execution of these Terms and any Agreement entered into and the transactions contemplated by that agreement.
- 21.12. **Counterparts:** These Terms, and any Agreement may be executed:
 - (a) in two or more counterparts each of which will be deemed an original, but all of which together will constitute one and the same instrument; and
 - (b) by copies signed by the parties and then scanned into a portable document format (PDF) or Joint Photographic Experts Group (JPEG) electronic file, and PDF or JPEG file copies of the executed Terms or Agreement will constitute sufficient evidence that an original of these Terms or that agreement has been executed.
 - (c) These Terms and Conditions and any Agreement may be executed by electronic signature (using DocuSign or any other solutions) and that signing in this manner will constitute sufficient evidence that an original of these Terms or that agreement has been executed.
- 21.13. **Governing Law:** These Terms and any Agreement entered in relation to these Terms are to be governed by, and construed in accordance with, the laws of New Zealand and each party agrees to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

Executed as an agreement

The client agrees to all terms and conditions, including credit terms as documented in this agreement.

Signed on behalf of Focus Technology Group (NZ) Ltd

Signed on behalf of the Client

Signature

Signature

Name and Position of Authorised Person

Name and Position of Authorised Person

Date

Date