

OURCLOUD TERMS AND CONDITIONS OF SALE AND PROVISION

DEFINITIONS AND INTERPRETATION

In this Agreement, capitalised terms have the meaning given to them in context or as set out here:

Agreement means this agreement including all appendices and schedules, as amended from time to time in accordance with this agreement.

Backup Management System means the system used by OURCLOUD to facilitate the daily backup of Customer Data.

Commencement Date is the date stated on the attached Schedule to this Agreement.

Confidential Information means all knowledge and information of which one Party, or its Representatives may become aware, relating to the business of the other Party, which is not publicly available, and includes, without limitation, the terms of this Agreement.

Customer Data means the data inputted by the Customer, Permitted Users, or OURCLOUD on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Derivative Product means any derivative work, technology, product, or service based on the Software or any other Intellectual Property of OURCLOUD.

DR Services Fee means the monthly fee payable by the Customer for the DR Services.

DR Services means the disaster recovery services provided by OURCLOUD, details of which are set out in the Service Schedules.

Equipment means equipment owned by OURCLOUD provided to the Customer under this Agreement (if any);

Establishment Fees means the Fees set out in the Service Schedules payable by the Customer for the establishment of the Network Service.

Fees means the fees for the Services specified in the Service Schedules.

Force Majeure Event means any circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform on time any obligation under this Agreement. Such circumstance includes but is not limited to any act of God, lightning strikes, earthquakes, floods, storms, explosions, fires and/or natural disasters.

Intellectual Property means all trademarks, inventions, patents, designs, copyrights, know-how and trade secrets, software products, brochures, documentation, all rights, and interests of licenses to use any of the foregoing and any other right or interest generally recognised as intellectual property.

Monthly Service Fees means the Fees payable by the Customer monthly in accordance with this Agreement for use of the Network Service, as set out in the Service Schedules.

OURCLOUD means Naki Host Limited.

Network means the provider of the third-party network connection procured for the Customer by OURCLOUD.

Network Service means the provision of services by OURCLOUD to the Customer under this Agreement where the Customer may access the Software hosted by OURCLOUD via the Network.

Network Service Availability means the amount of time the Network Service is available to the Customer, less any time the Network Service is not available to the Customer due to circumstances within OURCLOUD's control, calculated annually. Time of any outage will be calculated from the time the Customer notifies OURCLOUD of an outage until access to the Network Service is restored, excluding where the outage is caused by: (a) the Customer's applications or equipment; (b) acts or omissions of the Customer or any of its Representatives in breach of this Agreement; (c) by reason of a Force Majeure Event or other events outside the control of OURCLOUD, such as faults in the networks or infrastructure of third party suppliers to OURCLOUD; (d) 'Denial of Service' attacks; or (e) scheduled outages.

Offsite Backup Fee means the Fee payable by the Customer for OURCLOUD's maintenance of the Backup Management System.

Permitted Users means persons permitted by the Customer to access and use the Network Service being staff, employees of the Customer or consultants to the Customer.

Related Party means, in relation to a company, its related companies (defined in section 2(3) of the Companies Act 1993), its directors and shareholders.

Representatives means employees, agents, consultants, contractors and/or any other related party.

Service Schedules means the attached schedules to this Agreement containing a description of the Services and the Fees.

Services mean all services provided by OURCLOUD under this Agreement, including the Network Service and Support Services.

Service Levels means the service levels applicable to Support Services as provided by OURCLOUD to the Customer in the Service Schedules.

Software means the software applications to which access is provided by OURCLOUD pursuant to this Agreement, including software owned by OURCLOUD (OURCLOUD Software) and Third-Party Software.

Support Services means services provided by OURCLOUD under this Agreement in relation to support and maintenance of the Network Service and the Software.

Term means 36 months or as specified in the Services Schedule from the Commencement Date and 12 months for each Renewal Period thereafter.

Termination Fee is an amount equal to the balance of the Monthly Service Fees at the point of termination which would be payable for the remainder of the Term or as otherwise negotiated with and agreed by OURCLOUD.

Third Party Service Provider means a provider of a Third-Party Service

Third Party Service means any third-party service (i.e., connectivity services) that constitutes part of the Network Service.

Third Party Software means any third-party software that the Customer will have access to through the Network Service.

User Subscriptions means the user subscriptions purchased by the Customer pursuant to clause 3; and

Warranty Period means the period defined in the Services Schedule in relation to Equipment.

INTERPRETATION

In this Agreement, unless the context otherwise requires:

- a) words denoting the singular shall include the plural and vice versa.
- b) words denoting persons shall include any individual, principal, corporation, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government, or any statutory body in each case whether having separate legal identity.
- c) references to sections, clauses and schedules are references to sections, clauses, and schedules in this Agreement.
- d) references to this Agreement or any document or statement (however described) shall include references to that document as modified, novated, supplemented, varied, or replaced from time to time; and
- e) reference to any statute or regulation shall be deemed to extend to all statutes, regulations, ordinances, or bylaws amending, consolidating, or replacing the same.

1. TERM

- 1.1. This Agreement commences on the Commencement Date and continues for the Term, unless terminated earlier under clause 1.3 or clause 13.1.4
- 1.2. Unless a Party notifies the other in writing no less than three months prior to the expiry of the Initial Period (or any Renewal Period) that it wishes to terminate the Agreement at the expiry of the Initial

Period (or the then-current Renewal Period), the Term will renew automatically in accordance with clause 1.3.

- 1.3. If the Agreement has not been terminated by either party in accordance with clauses 22, 13.1.3 or 13.1.4 the Term shall automatically renew for the Renewal Period.

2. SERVICES

- 2.1. OURCLOUD shall, during the Term:
 - 2.1.1. provide the Customer with the Services on the terms of this Agreement, including access to the Network Service in accordance with clause 3;
 - 2.1.2. procure licences or assist the Customer to obtain licences required for required Third Party Software.
- 2.2. OURCLOUD will use reasonable efforts to provide reliable and quality Services. However, the Customer acknowledges that:
 - 2.2.1. there may be times when the Network Service becomes unavailable due to Third Party Services being unavailable.
 - 2.2.2. OURCLOUD may need to interrupt the Network Service so that it can maintain, repair, and upgrade the Network Service, including any part of OURCLOUD's Backup Management System, or so that any Third-Party Service Provider may maintain, repair or upgrade its Network Service provided by it after due notice of any proposed outage is communicated to the Customer.
- 2.3. OURCLOUD will respond to, and attempt to remedy, any fault in the Network Service reported by the Customer as soon as reasonably possible.
- 2.4. OURCLOUD will use reasonable endeavours to provide the Support Services in accordance with the Service Levels.
- 2.5. The provision of the Backup Management System and the DR Services will include daily backup of the Customer Data.
- 2.6. Subject to clause 12, OURCLOUD may provide a credit to the Customer for a period (if any) during which the Network Service is not available due to a fault for which OURCLOUD is responsible. This credit may include a pro-rated amount of the Monthly Service Fees applicable in relation to the affected Service for the period beginning at the time the Customer notified the fault to OURCLOUD until the Network Service is fully restored.
- 2.7. The remedies provided in this clause 2 constitute the Customer's only remedies for breach of the obligations contained in this clause 2.

3. USER SUBSCRIPTIONS

- 3.1. OURCLOUD grants to the Customer a non-exclusive, non-transferable right to permit the Permitted Users to use the Network Service during the Term solely for the Customer's internal business operations.
- 3.2. In relation to the Permitted Users, the Customer shall ensure that the number of Permitted Users shall not exceed the number of User Subscriptions it has purchased from time to time.
- 3.3. The rights provided under this clause 3 are granted to the Customer only, and not to any Related Party of the Customer.

4. CUSTOMER'S OBLIGATIONS

- 4.1. The Customer shall:
 - 4.1.1. co-operate with OURCLOUD in relation to this Agreement and give all necessary access to information and equipment as may be required by OURCLOUD in order to provide the Services, including but not limited to Customer Data, security access information and configuration.
 - 4.1.2. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner.

- 4.1.3. comply with all instructions given by OURCLOUD in respect of the use of the Services, Software and Equipment including, without limitation, any instructions reasonably limiting or restricting use of the Services or Equipment so as not to interfere with the reasonable expectations of other persons using the Network or any third-party network.
- 4.1.4. ensure that the Permitted Users use the Network Service in accordance with the terms and conditions of this Agreement and shall be responsible for any Permitted User's breach of this Agreement.
- 4.1.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for OURCLOUD, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services, to the extent that these are not provided by OURCLOUD.
- 4.1.6. ensure that its network and systems comply with the relevant specifications provided by OURCLOUD from time to time, and
- 4.1.7. unless stipulated otherwise by OURCLOUD, procure, and maintain its network connections and telecommunications links from its systems to OURCLOUD's data centres; and
- 4.2. The Customer shall be solely responsible for all problems, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.
- 4.3. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Network Service and, in the event of any such unauthorised access or use, shall promptly notify OURCLOUD.
- 4.4. The Customer shall use, and shall procure that its Permitted Users use, the Network Service only in the manner contemplated in this Agreement and otherwise in accordance with the OURCLOUD's reasonable instructions, and that it is not used for any unlawful purpose or in a manner which interferes with the provision of services to third parties.
- 4.5. The Customer shall notify OURCLOUD immediately on becoming aware of any unauthorised use of the Software.

5. CUSTOMER RESTRICTIONS AND INDEMNITY

- 5.1. The Customer shall not, and will ensure the Permitted Users shall not:
 - 5.1.1. access, store, download, upload, distribute or transmit any viruses or other material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially offensive, and OURCLOUD reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause 5.1.1.
 - 5.1.2. except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create a Derivative Product from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means.
 - 5.1.3. commit any act or omission that adversely affects OURCLOUD's good name or reputation, or which act or omission could reasonably be expected to have or does have a material and adverse effect on OURCLOUD's interests.
 - 5.1.4. access all or any part of the Software or Services to build a product or service which competes with the Software or Services; or
 - 5.1.5. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Network Service available to any third party except the Permitted Users.
- 5.2. The Customer indemnifies OURCLOUD and OURCLOUD's Representatives and Related Parties (each an Indemnified Person) from and against any liability, damage, loss, cost, or expense suffered or incurred as a direct or indirect result of any act of or omission by the Customer, the Customer's Representatives

or Permitted Users in breach of this Agreement or any other illegal act, negligence or recklessness of the Customer or its Representatives. The Customer acknowledges that for the purposes of the Contracts (Privity) Act 1982, the indemnity in this clause 5.2 has been inserted for the benefit of each Indemnified Person and is enforceable by each of them.

6. DATA SECURITY

- 6.1. The Customer will own the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2. The Customer authorises OURCLOUD to:
 - 6.2.1. collect and store the Customer Data and information about the Customer.
 - 6.2.2. use any information it holds about the Customer.
 - 6.2.3. disclose information about the Customer to any person in the course of OURCLOUD's business, including credit assessment, debt collection, direct marketing and for assessing customer satisfaction; and
 - 6.2.4. disclose, copy, mirror or transfer the Customer Data to other Related Parties of OURCLOUD in the event that DR Services are required.
- 6.3. OURCLOUD shall follow industry best practice archiving procedures in relation to the storage, handling, security and use of Customer Data. However, if loss or damage to Customer Data occurs, the Customer's sole and exclusive remedy shall be for OURCLOUD to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by OURCLOUD. OURCLOUD shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by OURCLOUD to perform services related to Customer Data maintenance and back-up).

7. FEES & PAYMENT TERMS

- 7.1. The Customer must pay to OURCLOUD all Fees specified for the Services in the Service Schedules on the date specified in any valid invoice (Due Date). Goods and services tax (GST) is not included in the Fees and shall be payable by the Customer in addition to the Fees.
- 7.2. Direct Debits will be done on the 20th of the month (or the next working day where it falls on a weekend/public holiday). Any amount of an invoice queried must be raised no later than two working days prior to the 20th of the month following invoice date.
- 7.3. The Customer must pay the Monthly Service Fees monthly, in advance by electronic transfer by the 20th day of the month following the date of invoice for the duration of the Term.
- 7.4. If the Customer does not comply with the payment terms for any Fees, then OURCLOUD may charge Default interest on all sums owing for the period from the Due Date to and including the date the relevant Fees are paid. The default interest rate will be 5% per annum above the rate charged by OURCLOUD's bankers for unsecured overdraft facilities as at the Due Date.
- 7.5. If any Fee payable by the Customer under this Agreement remains unpaid for 14 days after it is due, OURCLOUD may discontinue the Services after giving 14 days' notice to the Customer. Discontinuance of the Services will not:
 - 7.5.1. Relieve the Customer from having to pay any Fee owed to OURCLOUD; or
 - 7.5.2. Restrict any other right or remedy of OURCLOUD, including under the termination provisions in clause 13.
- 7.6. Should annual increases of disk utilisation of more than 10% occur, OURCLOUD reserves the right and to increase Monthly Service Fees in line with any disk utilisation greater than the average predicted increase, but only after full consultation with the Customer.
- 7.7. Work that OURCLOUD undertakes at the Customer's request that is outside the scope of the Services will be paid for by the Customer at OURCLOUD's current rates.

- 7.8. Installation of systems will be charged on a time and materials basis. For travel time and associated travel expenses associated with these installations, all direct costs (including airfares and accommodation) will be recharged at cost to the Customer by OURCLOUD.
- 7.9. A progress claim invoice will be completed where a project is not fully completed by the end of a calendar month. A progress claim will only be made where a solution/task within a project has been fully completed.

8. OURCLOUD EQUIPMENT

- 8.1. All Equipment provided to the Customer or used for the provision of the Services will remain the property of OURCLOUD.
- 8.2. The Customer is responsible for ensuring that any Equipment in its possession or control is in a secured environment.
- 8.3. Subject to Clause 8.5, OURCLOUD warrants that all Equipment supplied by OURCLOUD and all OURCLOUD Equipment will, at the date of delivery:
 - 8.3.1. Be new unless otherwise agreed and of merchantable quality.
 - 8.3.2. Comply with all professional and regulatory standards applying in New Zealand and/or Australia,
 - 8.3.3. Be suitable for the purposes for which it is intended; and
 - 8.3.4. Be free from defects.
- 8.4. The warranty set out in Clause 8.3 will be in effect for the Warranty Period.
- 8.5. If any Equipment fails to comply with Clause 8.3 during the Warranty Period other than by reason of misuse, use other than in accordance with this Agreement or any applicable specifications or instructions from OURCLOUD, or damage caused by the Customer, OURCLOUD shall, at its option, either repair or replace the Equipment at a time convenient to the Customer.
- 8.6. Except as expressly provided in Clause 8.3, OURCLOUD shall have no liability in respect of the Equipment.
- 8.7. The Customer will not permit any of the Equipment to be used to access any services other than the Services.
- 8.8. Any on-site Equipment must be installed by an Authorised OURCLOUD Engineer.
- 8.9. If any Equipment installed on-site is lost or stolen the Customer must contact OURCLOUD immediately. The Customer will be responsible for all additional charges relating to the use of that Equipment up to the time the Customer advises OURCLOUD of any loss or theft and the Customer will continue to be responsible to pay the any such charges.

9. PERSONAL PROPERTY SECURITIES ACT 1999

- 9.1. The Customer agrees, with regard to the Equipment (which includes any Equipment added at any time during the Term of this Agreement), this Agreement constitutes a Security Agreement, and the Customer hereby grants to OURCLOUD a security interest in all of the Equipment and any proceeds of the Equipment (both being "the Collateral") and agree that the following provisions shall apply with respect to the Collateral:
 - 9.1.1. OURCLOUD may at any time register a financing statement in respect of all or any of the Collateral and the Customer agrees to waive any right to receive a copy of a verification statement in respect of any financing statement.
 - 9.1.2. The Customer will, at OURCLOUD's request, provide all information necessary to enable OURCLOUD to protect its interest in the Collateral.
 - 9.1.3. The Customer will not sell or dispose of any of the Collateral or permit any other person to have or obtain a security interest in any of the Collateral.
 - 9.1.4. If the Customer is found to be in breach of any of the obligations under this Agreement in respect of the Collateral:

- 9.1.4.1. The Customer will promptly upon receiving a written request from OURCLOUD, at the Customer's own cost and expense, deliver all or any of the Collateral to OURCLOUD at such place or places as OURCLOUD directs; and
- 9.1.4.2. If the Customer fails to deliver any of the Collateral as required under this Agreement, OURCLOUD may at any time, either itself or through an authorised agent, enter into any place where the Collateral is located and remove the Collateral.
- 9.1.4.3. Terms used in this Clause which are used in the Personal Property Securities Act 1999 shall have the same meaning as in that Act.

10. INTELLECTUAL PROPERTY

- 10.1. The Customer acknowledges and agrees that:
 - 10.1.1. the Services and the OURCLOUD Software contain or will generate Confidential Information of OURCLOUD; and
 - 10.1.2. all Intellectual Property rights in the provision of the Services and the Software are the exclusive property of OURCLOUD or its licensors.
- 10.2. OURCLOUD (or the relevant licensors) retains ownership of the Software, and this Agreement does not transfer to the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software or the Services, other than the rights of access and usage granted pursuant to this Agreement. For the purposes of this clause 9.1.4.3, "ownership" includes any direct and/or indirect interests of OURCLOUD (or the relevant licensor) in and to the Software and/or any right (whether acquired under licence or otherwise) to deal with the Software under this Agreement.
- 10.3. The Customer shall not, and shall procure that the Permitted Users do not, at any time during or after the term of this Agreement, directly or indirectly challenge or contest OURCLOUD's ownership of the OURCLOUD Software.

11. THIRD PARTY PROVIDERS

- 11.1. As part of providing the Network Service, OURCLOUD will, if applicable, provide access to Third Party Software including by procuring if relevant a grant by way of sub-licence to the Customer of obtaining from the owner of the Third-Party Software, a Licence to use the Third Party Software solely for the Customer's internal business purposes.
- 11.2. The Customer acknowledges that the Network may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. OURCLOUD makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not OURCLOUD.
- 11.3. OURCLOUD does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Network.

12. WARRANTIES AND LIMITATIONS

- 12.1. Subject to clause 12.3, OURCLOUD warrants that it has the full right and entitlement to provide the Services to the Customer in accordance with this Agreement.
- 12.2. Subject to clause 12.3, OURCLOUD shall indemnify the Customer against any claim made against the Customer by any third party alleging that the provision of the Services infringes the copyright of that third party. This indemnity is the sole remedy available to the Customer for breach of clause 12.1.
- 12.3. OURCLOUD shall not be liable to the Customer under clause 12.1 and/or clause 12.2:

- 12.3.1. if the Customer's claim has arisen, directly or indirectly, out of the use of the Network Service in conjunction with any equipment, hardware and/or software not supplied or previously approved by OURCLOUD, or uses this in a manner or for a purpose not reasonably contemplated or authorised by OURCLOUD; or
- 12.3.2. in relation to any claim made against the Customer by any third party alleging that Software infringes the copyright of the third party, if any of the following applies:
 - 12.3.2.1. the third party's claim has arisen, directly or indirectly, out of the Customer's non-compliance with any aspect of this Agreement.
 - 12.3.2.2. the Customer does not authorise OURCLOUD to procure for the Customer, from the third party alleging the infringement of copyright, the right for the Customer to continue to access the Software in the manner contemplated under this Agreement notwithstanding any such alleged infringement.
 - 12.3.2.3. the Customer does not notify OURCLOUD of the other party's claim of infringement of copyright within seven days after becoming aware of the claim.
 - 12.3.2.4. the Customer does not give OURCLOUD reasonable assistance in defending the claim; and/or
 - 12.3.2.5. the Customer does not permit OURCLOUD to have full control of the defence of the claim and all related settlement negotiations.
- 12.4. Subject to clauses 2, 8 and this clause 12.3, all conditions, warranties, terms and undertakings, expressed or implied, statutory or otherwise in respect of the Services and the Software are excluded. Without prejudice to this, OURCLOUD:
 - 12.4.1. does not warrant that the Customer's use of the Network Service will be uninterrupted or error-free.
 - 12.4.2. does not warrant that the Network Service will meet the Customer's data processing, reporting, analytical or other requirements; and
 - 12.4.3. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communication.
- 12.5. No claim may be made by the Customer against OURCLOUD of any kind or nature unless the Customer first notifies OURCLOUD in writing within 30 days of the date on which the claim first arises.
- 12.6. OURCLOUD's maximum liability to the Customer will be no more than \$200 for each event or series of related events (subject to a maximum liability of \$2,000 in any calendar year).

13. TERMINATION

- 13.1. This Agreement shall terminate:
 - 13.1.1. at the sole discretion of OURCLOUD by notice in writing to the Customer within 5 working days after the executed Agreement is delivered by the Customer to OURCLOUD;
 - 13.1.2. at the expiry of the notice period of any notice given by the Customer to OURCLOUD under Clause 1; or
 - 13.1.3. immediately, at the sole discretion of OURCLOUD, if:
 - 13.1.3.1. the Customer fails to pay to OURCLOUD within 21 days of the Due Date for payment of the Monthly Service Fees or of any other due date for Fees;
 - 13.1.3.2. the Customer is in material breach of any obligation under this Agreement and such breach has not been remedied within 21 days of the date OURCLOUD notifies the Customer of such breach, requiring that the breach be remedied (or such longer period as OURCLOUD may stipulate);

- 13.1.3.3. OURCLOUD reasonably believes that the Customer or any of the Customer's Representatives have committed a fraudulent act or have been guilty of misrepresentation in their dealings with it;
- 13.1.3.4.a Force Majeure Event which precludes the Customer from complying with its obligations under this Agreement occurs and continues for more than 21 days; or
- 13.1.3.5. the Customer becomes, threatens or resolves to become, or is in jeopardy of becoming, subject to any form of insolvency administration.
- 13.1.4. immediately, at the sole discretion of the Customer, if:
 - 13.1.4.1. OURCLOUD is in material breach of any of its material obligations under this Agreement and such breach has not been remedied within 21 days of the date the Customer notifies OURCLOUD of such breach, requiring that the breach be remedied (or such longer period as the Customer may stipulate);
 - 13.1.4.2.a Force Majeure Event precludes OURCLOUD from complying its obligations under this Agreement occurs and continues for more than 21 days: or
 - 13.1.4.3. OURCLOUD becomes, threatens or resolves to become, or is in jeopardy of becoming, subject to any form of insolvency administration.

14. CONSEQUENCES OF TERMINATION OR EXPIRY

- 14.1. On termination of this Agreement pursuant to clause 1.3 during the Initial Period, the Customer shall pay to OURCLOUD the Termination Fee.
- 14.2. On termination of this Agreement pursuant to clause 4 the Customer shall not be obliged to pay OURCLOUD the Termination Fee.
- 14.3. If the Customer wishes to terminate the Agreement for convenience, the Customer shall pay OURCLOUD the Termination Fee.
- 14.4. The Customer shall, within 14 days of the termination of this Agreement, at the sole option of OURCLOUD:
 - 14.4.1. return and make no further use of any Equipment, property, documentation, and other items (and all copies of them) belonging to OURCLOUD; or
 - 14.4.2. destroy and/or permanently delete all such software, material and/or documentation from any media in or on which they are stored, and shall certify in writing to OURCLOUD that they have been so destroyed and/or deleted.
- 14.5. On termination or expiry of this Agreement for any reason, OURCLOUD:
 - 14.5.1. may provide such assistance as is reasonably requested by the Customer to transfer the Services being provided to the Customer at the time of termination or expiry to another service provider, subject to payment of OURCLOUD's reasonable expenses for such assistance; and
 - 14.5.2. may destroy or otherwise dispose of any of the Customer Data in its possession unless OURCLOUD receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. OURCLOUD shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by OURCLOUD in returning or disposing of Customer Data.
- 14.6. Any termination of the Agreement shall not affect any accrued rights or liabilities of either party to this Agreement, nor shall it affect any provision of this Agreement which is expressly or by implication intended to continue in force after such termination.
- 14.7. Clauses 10, 12, 13, 15, 19 and 21 will survive the expiry or termination of this Agreement.

15. CONFIDENTIALITY

- 15.1. A Party must not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- 15.2. A Party will not be in breach of clause 15.1 where it is legally compelled to disclose any of the other Party's Confidential Information in which event the disclosing Party will immediately notify the other Party in writing of that fact and of all relevant surrounding circumstances.
- 15.3. Each Party will take all reasonable steps to ensure that its employees and agents, and any sub-contractor engaged for the purposes of the Service Agreement, do not make public or disclose the other Party's Confidential Information.
- 15.4. Notwithstanding any other provision of this Agreement, OURCLOUD and the Customer may disclose the terms of the Agreement to its affiliated or Related Parties, solicitors, auditors, insurers and accountants.

16. ASSIGNMENT

- 16.1. The Customer may not transfer its benefits and/or obligations under this Agreement without the prior written permission of OURCLOUD which will not unreasonably be withheld.
- 16.2. OURCLOUD may assign its benefits and/or obligations under this Agreement without the consent of the Customer.

17. PUBLICITY

- 17.1. During the Term and for 24 months after termination or expiry, neither Party may make any representation, express or implied, which is negative, disparaging, or derogatory to any other person about the other Party or any matter related to this Agreement.

18. NOTICES

- 18.1. All notices related to this Agreement must be in writing and delivered by hand, by registered or certified mail, by fax or by nationally recognised commercial delivery service addressed to the Customer Contact of the party concerned at the address set out on Page 1 or at such other address as the intended recipient has notified the other party. Notices will be effective when delivered to such addresses and in the case of fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

19. GENERAL

- 19.1. Any change to the Services required by the Customer or OURCLOUD will be effective only if contained in a written variation agreement signed by the Parties.
- 19.2. Any term of this Agreement held to be illegal or invalid will be held as if it had never existed, and the remainder of this Agreement will remain legal and valid.
- 19.3. The Customer acknowledges that it is acquiring, or holding as acquiring, the Services for the purposes of a business and the provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement.
- 19.4. OURCLOUD acknowledges and agrees that it is an independent contractor, and not an agent of the Customer, and that OURCLOUD has no authority to bind the Customer by contract or otherwise.
- 19.5. This Agreement, comprises the entire agreement between the parties in relation to OURCLOUD's provision of the Service to the Customer and no earlier agreement, whether oral or written, in relation to any matter dealt with in this Agreement will have any effect.
- 19.6. A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

20. DISPUTES

- 20.1. OURCLOUD shall use its best endeavours to resolve any dispute it may have with the Customer within 60 days of being advised by the Customer that there is a dispute. The Customer will advise OURCLOUD within 7 days of the receipt of the invoice that an amount is disputed.
- 20.2. The Customer must make payment of all Fees which are not disputed in good faith by the Due Date.
- 20.3. Pursuant to section 13 of the Disputes Tribunal Act 1988, it is agreed that a Disputes Tribunal shall have jurisdiction to hear and determine any claim arising out of this Agreement where the total amount in respect of which an order of the Tribunal is sought does not exceed the maximum amount permissible under section 13(2) of that Act.

21. GOVERNING LAW

- 21.1. This Agreement is governed by the law in force in New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.