



**vertech**  
IT SERVICES

**Terms and Conditions of Trade**

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## Acceptance of Terms and Conditions

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### Terms of Trade

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**1. Application**

- 1.1 These terms of trade (“Terms”) will apply to any service which Censyne Limited trading as Vertech IT Services (“us, we, our”) provides to you including the delivery of software, provision of managed print services, third party services and hardware (“Services”). Any references to you include you, your staff or any third party contracted to provide other products and/or services to you. If these Terms conflict with any other agreement between you and us, then these Terms will prevail.
- 1.2 You understand that we are a reseller and do not produce the hardware and software we supply. You may therefore be governed by other agreements, licences and conditions imposed by the manufacturer/developer (“Other Conditions”) and you confirm that you have read and agree with the Other Conditions. Please let us know if you are unsure whether there are Other Conditions.
- 1.3 These Terms include:
  - (a) Schedule 1.0 being the details specific details related to this Agreement;
  - (b) Schedule 2.0 being the Services to be provided at the initiation of this Agreement, but which may be varied overtime under these Terms; and
  - (c) Appendix 1.0 being a description of how we operate and will provide you the Services.

**2. Term**

- 2.1 This Agreement commences on the date that the Agreement is executed.
- 2.2 Unless stated otherwise in Schedule 1.0, the Services to be provided under this Agreement will commence from the date we first provide any Service to you (“Commencement Date”).
- 2.3 Unless stated otherwise in Schedule 1.0, the Agreement will run for a period of either 12 months from the Commencement Date, the minimum period required to cover any liability We enter in to on behalf of you, or any lease term under which any Service is provided, whichever is greatest (the “Term”). Such liabilities could include, but are not limited to, the provision of hardware under lease or rent to buy option, or our entry in to any contract with any third party so that we can provide you with a particular Service.
- 2.4 Any change in the Services provided that extends or adds a liability in 2.3 will extend the Term of the Agreement so that clause 2.3 is followed.
- 2.5 At the expiry of the Term the Agreement will continue to operate until either party provides the other with 90 days’ written notice of the Agreement being terminated. The Agreement will then terminate at the end of that written notice period.
- 2.6 All flat-rate plan pricing, including but not limited to subscription based services, are subject to a 3% increase on each anniversary of the Commencement Date. Any hourly based rate may be reviewed annually. All other prices may change if there is a more than insignificant change in price outside of our control, such as, but not limited to, an increase in price from an external service provider. You will be given at least 30 days’ notice of any price increase.
- 2.7 If you have an undisputed amount that is more than 60 days overdue, we may suspend this Agreement and all services due under it. At that point all future payments that were due to be paid under this Agreement will become payable. Payment of all then outstanding amounts, or entry into a payment plan that we, in our sole discretion approve, will be required before Services can be resumed. In either case, you will reimburse us for any costs we incur as a result of your failure to pay amounts owed under this Agreement.
- 2.8 Either party may, but is not required to, terminate this Agreement at any time by giving written notice if the other party commits a material breach of the Agreement that is incapable of being rectified, commits a material breach that is not rectified 30 days after it is brought to the other party’s attention by written notice, the other party goes in to liquidation or bankruptcy or receivership, the other party has a received or statutory manager appointed or is removed from the Companies Register.

**3. SSA and Estimates**

- 3.1 Unless it is clearly written otherwise, any pricing information we provide to you is to be considered an estimate and not a quote.

- 3.2 Our estimates are based on the information you provide us. Any missing, incorrect, or incomplete information may result in a change to our estimate. You are solely responsible for the accuracy of any information upon which an Standard Service Agreement (“SSA”) or estimate is based.
- 3.3 Any changes to the Services required subsequent to any SSA or estimate provided by us shall constitute a variation and shall be paid for in addition.
- 3.4 If we provide an estimate, we are not bound to supply the Services at the estimated price and you are liable for the actual price of any Services purchased as invoiced by us, subject to these Terms, and at the previously notified rate.
- 3.5 Any estimate provided should be considered out of date within 28 days of it being provided.
- 3.6 You agree that any price provided under this Agreement is based on the information provided by you in Schedule 1.0. You agree that by signing this Agreement you are agreeing to any small alteration to amount due, based on a correction to the numbers provided, provided that the change will not be substantial.
- 3.7 After signing this Agreement, we may ask you for further information so that we can properly setup and transfer any required information (“Onboarding”) and provide the services, and this information may be used to finalise the cost payable under this Agreement. This information may include:
- (a) User list (Full Names, email addresses, contact numbers and Role)
  - (b) Existing documentation (ideally, with diagrams of the network environment)
  - (c) Server and workstation specifications
  - (d) Account passwords for all systems and equipment eg ISP details, switch Logins, & WAP passwords)
  - (e) Business-specific details (for example, working hours for each location, or information about which production computers must not be restarted during working hours)
  - (f) Instructions for emergency responses so that you will know whom to contact if, for instance, a server fails during off-hours
  - (g) Third-party details regarding support for line-of-business applications, hardware warranties, and ISP accounts
- 3.8 As part of the Onboarding process and on an Annual Basis thereafter, we reserve the right to inspect your systems and network for the purpose of creating a diagram of the network and/or conducting a diagnostic scans and vulnerability testing of the network. Unless stated otherwise, said inspection shall be charged against the account using our standard hourly billing rates. If, during the Term, we reasonably believe that changes have been made to the network without our knowledge, which may impact the Services, you agree that we may audit your network, and you will provide access to allow us to audit the network. If a change in the network is found, and that change was made without our knowledge and has a more than insignificant impact on our Services, you agree that you will pay for our time in conducting the audit, updating our Services to account for the change, any additional Services that the change creates and, if requested, our time in reversing the change.
- 4. Authorisation and Your Order**
- 4.1 You agree that we do not need to inquire into the authority of any person placing orders on your behalf.
- 4.2 All orders must be made in writing and will not be valid until we accept it.
- 4.3 As we will act on any order accepted, you may not cancel an order without our written consent and special terms will apply.
- 5. Delivery and Risk**
- 5.1 To allow us to successfully provide the Services, we require your full cooperation in good faith. This means that we need you to provide us with accurate information on your technology, computers, computer software, business processes, network infrastructure as well as any other information we reasonably may need. You agree to provide this information in good faith, and in a timely manner, and authorise us to access your personnel, facilities, information technology, computers, computer software, data, and related hardware so we can provide the requested Services.
- 5.2 While we will try and finish on time, any date we provide is an estimated date only. If time is of the essence then please let us know and we may be able to provide a firm commitment, which will be provided clearly in writing.
- 5.3 You must strictly comply with any instructions, directions or applications and any cautions and/or warnings (“our Instructions”) we give you relating to the Services. The instructions will be provided to guide you in using the Services correctly. You cannot hold us liable for any damage, loss or expense caused by your failure to follow our Instructions.
- 5.4 You understand that we will remain the owners of all hardware and/or software licences until you have full paid our invoices.
- 5.5 You acknowledge that all risk and liability for any hardware and/or software licences passes to you on delivery, even if we remain its owners under clause 5.4.
- 5.6 You agree that you will not hold us liable, and will pay all additional costs incurred, due to your failure to fulfil any part of clause 5. This includes, but is not limited to, providing us with sufficient access to your IT infrastructure, staff, and buildings as we require to successfully install and provide the Services.
- 5.7 Unless otherwise notified by us, we will carry out all maintenance works during 0830 to 1700, Monday to Friday, excluding Public holidays.
- 6. Limitation of Liability**
- 6.1 You acknowledge that you are solely liable for:
- (a) ensuring that the equipment that the Services will be supplied on are sufficient for the task. If we supplied the equipment, then we will know its capabilities. If not, then we can provide Services to look at your current hardware and requirements;
  - (b) ensuring that you are requesting the correct Services for the desired outcome;
  - (c) any delay caused by your not meeting the payment requirements of clause 9;
  - (d) any additional costs if the equipment, machinery and/or staff are not ready for our Services as previously agreed, unless it is due to our action or inaction. These additional costs will be charged out of standard rate. If you believe that this may occur, then please let us know as soon as possible and we will try and minimise any such costs;
  - (e) any additional costs incurred because of incorrect information which you have supplied to us.
- 6.2 Except for as provided in clause 6.3, you agree that we are not liable for any direct or indirect loss or damage including, but without limitation, economic loss, loss of profits or savings (or for any indirect or consequential loss or damage).
- 6.3 If we do breach our obligations under these Terms, or we breach an SSA, or we act or fail to act in a way that causes loss or damage, our liability is limited to the lesser of:

- (a) resupplying you with the services;
- (b) payment to you of the reasonable cost of supplying the services; and
- (c) refunding you the price you paid for the affected Services.

- 6.4 Where you have a claim against a third party, you must make a claim against that third party. We will not be liable for any direct or indirect loss or damage. You will not hold us liable for any direct or indirect loss or damage caused by a third party's action or inaction.
- 6.5 You must make any claim in writing to us within one month of completion of the Services, and the claim will be subject to our verification.
- 6.6 You agree that you will not hold us liable for any form of loss arising from alterations, additions, adjustments or repairs which have been made to the Network other than by our authorized representatives.

## 7. Price

- 7.1 Unless otherwise stated, all prices are estimates and are exclusive of GST.
- 7.2 The price specified in our invoice excludes our travel costs, freight and expenses (where applicable). Any such additional expenses will be itemised separately.
- 7.3 All pricing offered under the Managed Print Services Program is provided based on an average page coverage of 5% per toner (CMYK). If the average page coverage is, in our sole opinion, substantially greater than 5% then we reserve the right to increase the pricing to you in line with the coverage used by providing 30 days' notice.

## 8. Exclusions

- 8.1 For the sake of clarity, this Agreement does not include any Service which is not listed in this Agreement; it does not include any hardware not listed, covered or referred to in this Agreement; it does not include failure or issues caused by any related or attached equipment which is not listed, covered or referred to in this Agreement; it does not include neglect or misuse of hardware or software that goes against either our advice or the manufacturers advice; it does not include any changes to any Service of which we are not aware and have not approved; and it does not include any issue caused by Force Majeure although we will use our reasonable endeavours to assist you in such a situation.

## 9. Payment

- 9.1 If we require you to pay a deposit then this must be paid immediately on acceptance of the order and is non-refundable;
- 9.2 If you are unable to provide access to your staff and/or equipment that we need so that we can provide any of the Services, you may cancel your order of that Service. However, no refund will be paid for the cancellation of a Service;
- 9.3 Payment of any amounts owed to us must be in full, and be free of any counterclaim, set-off, deduction or any other claim whatsoever.
- 9.4 While we will provide many customers with an ability to pay after services have been provided, we need to be confident that we will be paid. If we believe, in our reasonable sole opinion, that you may have difficulty paying a future invoice, then we may require full or partial payment to be made in advance, or for some form of security to be provided that you may in the future have difficulty in paying your invoices then we may require full or partial payment of those future invoices or a form of security that is acceptable to us. If you are unable, or unwilling, to meet this request then make such payment or provide us with adequate security then you agree that we can refuse to supply a service, or to stop supplying a service, to you; and
- 9.5 If you will be unable to make any payment on time then we ask that you contact our accounts team at [accounts@vertech.co.nz](mailto:accounts@vertech.co.nz) at least three business days prior to the due date to arrange a late payment.
- 9.6 You agree that, if any amount is not paid on the day it is due, and no late payment has been arranged with us, we may charge a fee of \$35 to cover our costs in handling the missed payment. Default interest, calculated daily, at a rate of 3% per annum above our bank's commercial overdraft rate, will also be payable on any missed payment. If we need to pursue payment further, then you agree to pay for any actual legal or other costs (including debt collection costs) and expenses that we may incur. This includes any costs we may incur in defending all or any of our rights.
- 9.7 Any subscription-based service that you have will be invoiced monthly in advance.
- 9.8 Unless we agree with you in writing to different terms, all other invoices must be paid by the 20th day of the month following the costs being incurred.
- 9.9 As our subscription-based services are billed to spread the cost out across the term, you agree that you will be liable for the entire term even if you no longer use such a service. If any agreement between us is terminated, then you agree to pay us the remaining agreed subscription within 14 days of the agreement's termination.
- 9.10 All payments are to be paid by direct debit or direct credit (bank transfer) only, with the exception of Internet/VOIP Services which must be paid by direct debit unless otherwise agreed. Unfortunately, we are not able to accept cheques or credit card payments.
- 9.11 Where payments are being made by direct debit, any deliberate removal of the direct debit facility will be a breach of these terms.
- 9.12 Hardware Invoices are payable immediately on receipt of an invoice from us.

## 10. General Terms for Services

- 10.1 If we are providing you with VOIP, Internet, equipment rental, or HaaS Services, the following terms apply:
  - (a) If we are providing any equipment for the Services, and you are purchasing the equipment as part of the cost of the Services, then you are aware that we are spreading the cost of the equipment over the term of the Services;
  - (b) You agree that you must pay that cost for the entire term;
  - (c) You agree that, if you are to breach these Terms, all future payments for the remainder of the Term will become payable immediately at our sole discretion. This includes the cost of the equipment if it is being purchased;
  - (d) You agree that you may not remove any equipment provided as part of the Services from your premises without written consent. We will act reasonably in giving that consent;
  - (e) You acknowledge that any equipment or consumables provided as part of the Services remains our property until, if it is being purchased by you, all amounts payable for the term of the Services, including the equipment and consumables, have been paid in full;
  - (f) You agree that you will not, and will not attempt to, sell or relinquish control over any of our equipment provided as part of the Services;

- (g) You agree that you will be liable for any costs we may experience from a third party should you wish to cancel your Services before the end of the term;
- (h) You agree that, should we be providing Services related to the monitoring of equipment, that you will provide us with remote access to that equipment at all times, and allow us to run software on the equipment to do so (where applicable). If on-site maintenance is required, we will use our reasonable endeavours to arrange access with you at a time during Business Hours that meets your schedule. You agree that you will not hold us accountable for the failure to provide the Services should such access not be given;
- (i) Unless otherwise agreed in writing, all setup costs are payable in advance of any Services being provided;
- (j) If any terms in this general clause conflict with terms from the specific clauses below, the specific clause is to be followed;
- (k) For Services that are priced per staff member, computer or device, or per location, the total will be adjusted up to match the changes in the organization. Any reduction in the Services required will be at our sole discretion, as a price may have been given based on the number of staff members, computers or devices, or locations;
- (l) If the Client wishes to relocate, add or remove locations, the Client must give us written notice at least sixty days before the change. As per subclause (k) above, any reduction in price due to a reduction in locations will be at our sole discretion. Any other change will be actioned with when reasonably possible; and
- (m) We reserve the right to renegotiate service terms with respect to any relocation and/or addition of locations by the Client. Such right includes the right to refuse, acting reasonably, to provide Services at the relocation and/or new site; and
- (n) We reserve the right to renegotiate services terms with respect to any other change requested by the Client where that change will mean a more than negligible change to our costs or services. Unless we agree otherwise, we must receive 30 days written notice of any such requested change.

## 11. Print Services

11.1 If we are providing you with a printer(s) or copier(s) with Managed Print Services on a fixed term with regular scheduled payments ("Managed Print Services") then the following terms apply:

- (a) You agree that, if you are to breach these Terms, all future payments for the remainder of the Term will become payable immediately at our sole discretion;
- (b) All printer(s), copier(s), and any unused consumables, are to be returned to us immediately upon the completion of the contract.
- (c) We will install monitoring software on a computer you designate within your network. Any monitoring software must remain installed and running on that computer within your network with access to all relevant printers and copier at all times. This software allows us to proactively provision consumables for your printers and/or copiers and monitor the device(s) for Service issues.

## 12. Voice Over IP Services

12.1 If we are providing you with Voice over IP ("VOIP") Services, or any other digital communications service, the following terms apply:

- (a) You agree that any costs for any calls related to the VOIP Services will be payable by you, and will become part of the amount owed for the VOIP services;
- (b) We will provide our reasonable endeavours to assist you in moving your phone number(s) to or from our VOIP Services. However, we cannot guarantee that this will always be possible. You acknowledge that you will not hold us liable if such a move is not possible; and
- (c) Any costs incurred by line providers at your request will become part of the amount owed for the VOIP Services.

## 13. Provision of Internet Services

13.1 If we are providing you with a connection to the internet ("Internet Services"), the following terms apply:

- (a) Any costs incurred by line providers at your request will become part of the amount owed for the Internet Services;
- (b) If your Internet Services are provided without a data cap, please note that a fair use provision does apply. While no set figure is applied, we will notify you if your usage is unreasonably higher than the average use of other users. If, after receiving our notification, your usage continues to remain at unreasonable, we reserve the right to, at our sole discretion, constrain your connection speed, move you to an Internet Services plan with a fixed data amount (changing the cost of your base Internet Services to match that plan), or end our provision of Internet Services to you. In rare situation where usage is so excessive that we need to stop providing you Internet Services, you will remain liable for the cost of any equipment which you were purchasing, and for any third party costs; and
- (c) You will not use the Internet Services for any illegal purpose. This includes, but is not limited to, the provision of child sexual abuse material, any other offensive material, breach of copyright, sending out of unsolicited emails, distributed attacks, unlawful access to other systems, or threatening or harassing any person or party.

## 14. Hardware as a Service

14.1 If we are providing you with Hardware as a Service ("HaaS") Services, the following terms apply:

- (a) Any equipment provided under a HaaS Services is rented to you with the associated services. Any equipment provided is, and will remain, in the sole ownership of Veritech. You agree that you will not, and will not attempt to, sell or relinquish control over any of our equipment. This includes, but is not limited to, any server, managed firewall, PC, and networking equipment.

## 15. Termination

15.1 The following are considered Breach Events:

- (a) breach of any obligation you have under these Terms or any other contract with us;
- (b) you entering into any negotiations for any scheme of arrangement, composition, or compromise with your creditors;
- (c) you, in our sole opinion, being unable to pay your debts as they fall due;
- (d) you passing any resolution to liquidate or becoming the subject of any liquidation proceedings;

- (e) you have a receiver or manager appointed over the whole or part of your property or undertaking; or
  - (f) you, or any of your directors, becoming bankrupt or commit an act of bankruptcy.
- 15.2 If any Breach Event occurs then we may exercise all or any of the following rights:
- (a) delay delivery of any of the Services until the matter is resolved to our satisfaction;
  - (b) suspend or cancel in whole or in part any other contract. We will give you written notice of any such suspension or cancellation;
  - (c) recover from you all amounts for any damage, losses, costs (including debt recovery costs) or expenses including actual legal costs and expenses arising from your default or non-payment and obtaining payment; and
  - (d) requiring you to pay, on our written request, all amounts owed to us, whether due or not, immediately.
- 15.3 Any action we take under clause 11.2 is without prejudice to, and in addition to, any other rights or remedies we may have against you.
- 15.4 We reserve the right to suspend or terminate this Agreement if, in our sole discretion, conditions at the service site pose a health or safety threat to any of our representatives.

## 16. Non-Solicitation of Staff

- 16.1 You agree that during the term of any contract between us, and for a period of two years following the completion of any work we do for you, that you will not try and solicit, engage or contract any of our staff, contractors, or agents. You will also need to use your best endeavours to ensure that your directors, staff, agents, and contractors also agree to such a restraint, and you agree that we may require you to get them to sign a covenant of non-solicitation on the same terms as this clause.
- 16.2 #CLIENT# acknowledges that we are involved in a highly strategic and competitive business.

## 17. Security over unpaid items

- 17.1 If we are providing you with equipment, hardware or software licences ("our Products") before you have completely paid for them, then you agree that we may register our security interest over those items on the Personal Property Securities Register.
- 17.2 This security allows us to hopefully regain our possessions if something should happen to your company and you are unable to pay for the items. It makes us a secured creditor. It only applies to the items we have provided you which have not been fully paid for. It does not cover any other item.
- 17.3 To allow us to register this security you agree that you will sign and deliver any documents, and do anything else that we may reasonably require, to allow us to perfect a first ranking security interest for our Products under the Personal Properties Securities Act 1999 ("PPSA").
- 17.4 You agree that you don't require us to send you a verification statement of the registered security under the PPSA.
- 17.5 You agree that any rights we have, in addition to the registered security, will continue to apply and will not be limited by s109 of the PPSA.
- 17.6 To make the task of registering and maintaining the security simpler, you agree that you have contracted and waived sections 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA. These sections mostly deal with our right to reclaim items if you are unable to pay your invoice and is typically taken as a last resort. You also agree that, as the security information is publicly available, your right to receive a copy of the security information on registration under clause 148 has also been waived. We will provide this to you on request.

## 18 Client Responsibilities

- 18.1 You agree to provide adequate workspace, heat, light, ventilation, electric current and data outlets, internet, and remote access for use by our representatives.
- 18.2 You agree to inform us of any modification, installation, or service performed on your network by individuals not employed us in order to assist us in providing an efficient and effective support response time.
- 18.3 You will designate a managerial level representative to authorise all Services.
- 18.4 Whenever possible, said representative will be present whenever our service representative is on-site. This contact information shall be outlined in Schedule 1.0, and it is your responsibility to us of any changes made to this representation at least thirty days in advance if reasonably possible.
- 18.5 You agree that a maintenance window must be established and honoured to allow for proper system maintenance, patching and reboots.
- 18.6 You must ensure that your network is in good condition, and that our reasonable serviceability requirements/standards and site environmental conditions are met.

## 19 Warranties

- 19.1 We will provide you with a 45-day warranty period ("Warranty Period") for all Services we provide. We will investigate and resolve any Defects caused by us which are brought to our attention during the Warranty period.
- 19.2 However, we cannot provide a warranty for a fault which we have not caused such as:
- (a) an issue caused by a flaw within software we didn't create. The software vendor/producer may be able to provide a solution. We will be able to assist in installing that solution, but this will be done at your cost;
  - (b) any fault where it is found that you caused the fault;
  - (c) a fault in hardware we didn't manufacture. The manufacturer may be able to provide repair/replacement. We will be able to assist in installing that repair/replacement, but this will be done at your cost; and
  - (d) any Services provided which were quoted on a time and materials basis, and it is found that additional Services are required.
- 19.3 We will do our best to make sure that the Services we provide over our facilities and communication lines are error-free, uninterrupted and in accordance with the service standards that have been agreed between you and us. However, as we do not own or control all the facilities and communication lines necessary to provide the Services, you agree that we cannot guarantee that the services provided will be error-free or uninterrupted.
- 19.4 We expressly exclude (to the extent permitted by law) all other statutory, express, or implied warranties including, without limitation, the implied warranties of merchantability and fitness for any particular purpose.
- 19.5 Any warranty defined under this clause 19 does not restrict any other warranty we may provide to you in writing.
- 19.6 Except as otherwise provided above, you agree that we do not provide any warranty, express or implied, over the Services and all warranties of merchantability and fitness for a particular purpose are expressly excluded. In no event will you require

ourselves or any of its directors, employees or other representatives to be responsible for any special, incidental, indirect, or consequential damages of any kind including, without limitations, those resulting from loss of data, income, profit, and on any theory of liability, arising out of or in connection with the services or use thereof even if it has been advised or has knowledge of the possibility of such damages. You agree to assume full responsibility for the overall effectiveness and efficiency of the operating environment in which the Services are to be provided.

19.7 You hereby agrees to indemnify and defend at your sole expense: Vertech IT Services, its employees, agents, representatives, directors and shareholders, from and against any and all claims arising out of or based upon your use of all Services, software or hardware provided or serviced under this Agreement, including, but not limited to, claims based on software licensing violations, copyright infringement, trademark infringement and patent infringement. In addition, you agree to pay any judgment and costs associated with such claim, including legal costs in defending such a claim.

## 20 Privacy Information

20.1 You, and any Guarantor you may have, agree that we may use any information you provide to us at any time for any purpose connected with our business. This information will be required to help in the operation of our business and may be used in, but limited to, direct marketing, debt collection and credit reporting or assessment. You agree that we may pass your information to any third party for credit information and assessment purposes, and that the third party can use and continue to use that information as part of their business services.

20.2 At the completion of any work provided under this or any other agreement, we will only retain information provided by you where required to do so by law. At no point will we provide your information to any party unless required to by law, required to provide you any services you have asked us to provide, or to provide you with information about our services.

20.3 Any personal information we hold on you is stored in a secure and encrypted Data Centre and hosted in the cloud and you have certain right of access to your personal information under the Privacy Act 1993.

## 21 Unsolicited Electronic Messages Act 2007 / Consumer Guarantees Act 1993

21.1 We comply with the Unsolicited Electronic Messages Act 2007. We believe that all of our customers wish to receive our commercial electronic messages which allow us to notify you of new Services we offer. However, if you do not want to receive these then please let us know and we will do our best to remove you from our mailing lists. The email address for unsubscribing to commercial electronic messages is hello@vertech.co.nz.

21.2 You agree that where the Services are being supplied for the benefit of a business then the Consumer Guarantees Act 1993 will not apply.

## 22 Intellectual Property

22.1 We own and retain title and all rights to all proprietary information including all copyrights, trademarks, and trade secrets in and about our Services. We also retain all rights in any software we have created, procedures we have developed and material we provide.

22.2 You agree that you will not, and you will not allow others to, reverse engineer, decompile, disassemble, translate or access with third party software any software or script we provide without our prior written consent.

22.3 You acknowledge that you will use your best endeavours to protect our intellectual property and will not use, nor allow the use of, our intellectual property without our written consent.

## 23 Confidentiality

23.1 Each party will maintain as confidential at all times, and will not at any time, directly or indirectly, disclose or permit to be disclosed to any person, use for itself or use to the detriment of the other party, any confidential information, except:

- (a) as required by law;
- (b) as is already or becomes public knowledge, otherwise than as a breach by the party disclosing or using that confidential information of any provision of this agreement;
- (c) as authorised in writing by the party to which that information relates; or
- (d) to the extent reasonably required by the SSA (and, without limiting the effect of this clause, a party may disclose Confidential Information only to such or its officers, employees, or professional advisers, on a "need to know" basis, as is reasonable required for the implementation of the SSA).

23.2 You will immediately notify us if you are aware of any breach, failure, possible breach or possible failure of your security (both IT and physical). Similarly, we will immediately notify you of any breach, failure, possible breach or possible failure of your IT security. Both parties acknowledge the need for confidentiality around such breaches, and will not make any public statement about any such breach or failure, possible or actual, without gaining the consent of the other party.

## 24 Disputes

24.1 If any dispute should arise between us, both parties will endeavour to resolve the dispute by negotiation in good faith.

24.2 If the parties are unable to resolve the dispute within 14 days of notice of the dispute first being given, then either party may elect for the dispute to be determined by mediation by written notice ("Mediation Notice") to the other party. The parties will then have 10 days to agree on a mediator. If a mediator cannot be agreed during that time then either party may apply to the Chairperson, or other proper office, of the New Zealand Law Society to nominate a mediator. Unless agreed otherwise, the cost of the mediator will be split evenly between the parties.

24.3 If the dispute is not resolved within 45 days of the Mediation Notice being given then either party may terminate the mediation and may then commence court proceedings.

24.4 Neither party is prevented from seeking injunctive relief from an appropriate court, where failure to obtain such relief would cause irreparable damage to the party concerned.

24.5 These dispute resolution procedures will not apply to events giving rise to rights to the termination of any agreement between the parties under clause 11.

## 25 General

25.1 You agree that time is of the essence in respect of your obligations to us.

25.2 We will not be prevented from enforcing any of our rights under these Terms because on an earlier occasion we did not enforce those rights.

25.3 You shall not assign all or any of your rights or obligations under these Terms without our prior written consent. We may assign our rights at our sole discretion.

- 25.4 The law that governs these Terms is New Zealand law.
- 25.5 All notices to be given pursuant to these Terms will be given in accordance with sections 185 to 189 of the PPSA.
- 25.6 We may need to vary these Terms from time to time, at our sole discretion, and will provide you with written notice if that occurs.
- 25.7 If any provision of these Terms is held to be invalid or unenforceable, then that provision will be severed from the Terms and the remaining provisions will remain in place.
- 25.8 You agree that these Terms express the entire understanding between us and that there have been no representations made by or on behalf of us that have been relied upon by you that are not contained in these Terms
- 25.9 If either party is unable to fulfil an obligation due to Force Majeure it will not be seen as a breach of this Agreement. If that inability continues for more than 20 working days, then the other party may terminate this Agreement. On such termination, you will be required to pay all future amounts owed for Services already provided to you, and we will refund any amounts paid for Services that have not been provided.

## **26 Definitions**

- 26.1 "Force Majeure" means any act of God, strike, lockout, work stoppage, or other labour hindrance, confiscation or expropriation, embargo, blockage, insurrection, public mains electrical supply failure, fire, floods, storm, explosion, nuclear accident, sabotage, revolution, riot, act of war whether declared or not, warlike operations, earthquake, slide, epidemic, quarantine, restriction, chemical attack or incident or any other similar cause beyond our reasonable control which prevents, hinders or interferes with any obligation under this Agreement.
- 26.2 "Server" means any server instance where a single operating system is being operated. For example, four virtualised servers running on one physical server is counted as five separate server instances. This is because each must be largely monitored separately in the same way as a physical server.
- 26.3 "Business Hours" means the hours between 8:30am and 5:00pm which is not a weekend or public holiday in Auckland, New Zealand.