

STANDARD TERMS AND CONDITIONS

These General Terms contain general provisions that apply to all Equipment and Services provided to you under the Agreement. The General Terms form part of the Agreement between you and Business Mechanix.

1 Agreements

- 1.1 Agreements. All Services requested by you shall require a Services Schedule or a Statement of Work to be executed by both parties. Any such Services Schedule or Statement of Work, on their execution, will be deemed part of this Agreement.
- 1.2 Precedence. In the event of any conflict between the various parts of this Agreement, the following descending order of precedence shall apply, unless the context otherwise requires:
- the relevant Services Schedule or Statement of Work;
 - this Master Services Agreement (excluding the Schedules);
 - the Proposal

2 Business Mechanix's Responsibilities

- 2.1 Services. We will provide Services to you:
- in accordance with any Specifications and Service Levels;
 - by any time agreed in writing with you, or otherwise within a reasonable time;
 - using reasonable care and skill; and
 - using people who have the necessary experience and qualifications.
- 2.2 Equipment. When we provide Equipment to you, it will be:
- safe, durable, and in good condition;
 - tested for known viruses if it contains software.
- We will pass on the full benefit of any manufacturer's warranty you are eligible for in respect of Equipment you purchase from us.
- 2.3 Faults. If you report a fault, we will respond in accordance with any Service Levels or otherwise within a reasonable period of time. You will be required to pay our standard charges if:
- no Services Agreement is in place; or
 - we agree to work outside the hours agreed
 - we find there is no fault; or
 - we find that you contributed to the fault.
- 2.4 Suspension or restriction of Services. We may suspend or restrict Services where reasonable or necessary, for example, to undertake repairs or maintenance. We will endeavour to give you at least 5 Business Days' notice of scheduled repairs or maintenance if this is likely to affect your Services. Where practical we will schedule any outage to minimise the impact on you.

3 Acceptance

- 3.1 Deliverables are provided throughout the project and you will test and provide feedback to us within 5 business days following delivery.
- 3.2 User Acceptance Testing. When applicable, you will develop test plans and tests that you will provide to us prior to commencement of the project that will be used by you in the acceptance of the deliverables. Both parties will agree to the content and context of the User Acceptance Tests.
- 3.3 At the conclusion of the project, when both parties reasonably consider that a Service or Equipment is capable of passing its User Acceptance Tests, either on first delivery in accordance with this clause, or following its correction in accordance with clause 3.6, we will deliver the Service or Equipment to you with a Delivery Notice.
- 3.4 User Acceptance Tests. Following Delivery for testing, you will perform the User Acceptance Tests on the Deliverable. No Deliverable will fail its User Acceptance Tests to the extent such failure relates to any modification to the Service or Equipment by you that was not approved by us.
- 3.5 Notification of pass/fail. Following completion of the User Acceptance Tests, you will notify us in writing whether the Service or Equipment has:
- passed its User Acceptance Tests, in which case the Deliverable will be taken to be accepted; or
 - failed its User Acceptance Tests, in which case the provisions of clause 3.7 will apply.
- 3.6 Deemed acceptance. You will be deemed to have accepted the Services or Equipment if you fail to notify us, within two weeks after Delivery, whether the Services or Equipment has passed or failed its User Acceptance Tests.
- 3.7 Acceptance failure and rework. If you notify us in accordance with clause 3.5 of any failure of a Service or Equipment to pass its User Acceptance Tests, we will correct all such failures and resubmit the Service or Equipment to you in accordance with clause 3.3.

4 Customer Responsibilities

- 4.1 Cooperation. You will provide reasonable cooperation to enable us or our agents to install, repair and maintain Equipment and Services.

- 4.2 Access. Where reasonable or necessary for us to meet our obligations to you, give permission to access property and land and you will obtain permission if we need to cross other people's land or put Equipment on their property (for example a neighbour or landlord) or require anything from a third party to provide, repair and maintain Equipment or Services).
- 4.3 Customer equipment. Unless otherwise agreed in writing, you are responsible for any of your equipment or any item not provided, managed or maintained by us, and must ensure it is technically compatible with the Services based on technical requirements you have been specifically supplied for this purpose, such technical requirements to be based on systems that you advise us of or that we have been able to identify.
- 4.4 Care of Equipment. You agree to look after all Equipment for which title has not yet passed under clause 6.2 and to pay for any repair or replacement if it is damaged while located on your premises. However, you will not be liable for wear and tear or damage caused by us or anyone acting on our behalf. This requires you to, without limitation:
- protect it from power fluctuations, radio or electrical interference or abnormal environmental conditions;
 - not allow it to be affected by any virus;
 - not alter, repair or recalibrate it;
 - let us know immediately if it is lost or damaged;
 - agree with us where to install it; and
 - not move it without first obtaining our permission, which we will not unreasonably withhold.
- 4.5 Internet policies. If you purchase any Equipment or Services that connect to or function over the Internet, you will adhere to the agreed policies on usage.
- 4.6 Abuse and fraud. You will use the Equipment and Services for lawful purposes only and will not use the Services or Equipment yourself, or allow anyone that has access to or uses your Services or Equipment to use them for fraudulent or destructive purposes
- 4.7 Responsibility for others. You acknowledge that you are responsible for anyone who accesses or uses the Services or Equipment, and will ensure that anyone you are responsible for also meets your obligations and responsibilities under the Agreement. We will take reasonable precautions to preserve security although we will not be responsible for ensuring that the Services will not or cannot be misused by you or any third party.
- ## 5 Charges and Credits
- 5.1 Our Fees. You will pay all of our charges in relation to the Services and Equipment, plus any applicable goods and services or similar taxes ("Fees"). Fees will be calculated at our Schedule of Standard rates, unless otherwise agreed, and using the details recorded by us.
- 5.2 Commencement of Fees. We may begin invoicing you once we have commenced working on the deliverable and in either weekly or monthly instalments based on the work performed in that week or month. Equipment and Recurring Fees that are fixed may be billed in advance, but otherwise Fees are normally billed in arrears.
- 5.3 Payment date. Unless otherwise agreed, you must pay all undisputed Fees by the agreed date. We will provide you with a weekly or monthly invoice for the Services rendered each week or month. You will pay all invoices by the 20th of the month following the date of the invoice. We will invoice you for equipment and software on receipt of your order, delivery will only be made following your payment of those invoices.
- 5.4 Disputed Fees. If you dispute a Fee in good faith, you may withhold payment of that Fee if you:
- Have notified Business Mechanix in writing to [PO Box 3122 Shortland Street Auckland 1140](mailto:business@mechanix.co.nz) or by email with clear details of your dispute to business@mechanix.co.nz within 5 working days of invoice issue date.
 - Cooperate with us to promptly resolve the disputed Fee.
 - Pay all undisputed Fees by the due date, or if no due date is specified within 10 Business Days of receiving the relevant invoice;
- 5.5 If we determine, in good faith, that the disputed Fee does not in fact contain an error, we will notify you and, within 5 Business Days of receiving notice, you must pay the Fee. If the dispute relates to billing errors, we may credit or debit, as applicable, the net difference between any discovered overcharge or undercharge.
- 5.6 Late payment. All Fees not subject to a genuine dispute that are unpaid 10 Business Days after the due date, or 5 Business Days after our notice under

clause 5.5 in the case of a disputed Fee that we have determined does not in fact contain an error, are subject to interest equal to 5% of the original invoice, per month or part thereof, until payment is made and you will be required to pay all of the costs incurred by us in collecting any late payment from you. These costs will be at-cost where an external agency is used or at an applied rate of \$125/hr for internal collections time.

- 5.7 Credit approval. In some cases, you may need to pay a deposit or provide a guarantee as security for paying future charges. If you exceed any credit limit applied by us, we may restrict or suspend all or part of the Services without notice to you, however, you will remain liable for all Fees incurred in excess of the credit limit. The default credit limit that will apply is \$2,000.00 however you may request a larger credit limit which we may, at our discretion, grant to you.
- 5.8 Changes to Fees. We may change the Fees:
 - a. if we agree to change the Services at your request;
 - b. after any specified Initial Term for a particular Service, on 3 month's notice to you.
- 5.9 Estimates. All prices stated in the Agreement are the correct prices unless it is stated that they are estimates. Where it is stated that an amount is an estimate, you acknowledge that an estimate does not foresee every circumstance. We will advise you in writing if we believe an estimate will be exceeded and you will remain liable for all Fees incurred in excess of the Estimate.
- 5.10 Quotes. Where we give you a quote in relation to Services or Equipment, the quote will remain valid for 20 Business Days from the date it is given, unless stated otherwise in the quote. However, we may vary or withdraw a quote at any time before you accept it by notice in writing.
- 5.11 Request for Return. We will accept requests for credits or returns of Equipment that is faulty, non-conforming, or that we incorrectly order or deliver, but only if the return is made within 7 days of delivery. No restocking fee is payable for the return of faulty or non-conforming Equipment. We will not accept requests for credits or returns of software which you have opened.
- 5.12 Travel. Travel required to provide requested services is not charged for sites within a 20km radius of Business Mechanix 124 Nelson Street Auckland 1010 – charges of \$0.77 per km apply to sites attended outside this area. Travel time is charged at half the agreed hourly rate for sites outside a 20km radius of Business Mechanix 124 Nelson Street Auckland 1010.
- 5.13 Minimum Onsite Hours. Where a resource of Business Mechanix has been requested to be onsite and the location of the site is greater than 100km from Auckland CBD a complete working day of 8 hours minimum will be charged regardless of the time spent onsite. Travel time will also be applied as per clause 5.12.

6 Property Rights

- 6.1 Passing of risk. Risk of any loss of, or damage to, Equipment will pass to you upon delivery to your premises or receipt by you. Where requested by us, you will fully insure Equipment in both your and our name for its replacement value from the time when it is delivered to you or you otherwise take possession of it, and until the time payment is made in full for it or it is returned to us.
- 6.2 Passing of title. We will retain all legal and beneficial ownership of all Equipment unless and until we receive payment in full for it. Until Equipment has been paid for in full, you must not sell, dispose of, grant any interest in or otherwise part with possession of it.
- 6.3 Intellectual property. We either own, or are licensed to use, the intellectual property rights in the Services provided to you, including all copyright, trade mark and design rights relating to the Services, and any software used in providing the Services.
- 6.4 Copyright, title to software, Equipment and numbers. Unless specifically stated in any agreement to which we are a party, we or our suppliers retain copyright, title and all property rights in and to, and you do not own and will not acquire any right of ownership to, any Service, Equipment, goods, intellectual property or software provided by us. This includes, but is not limited to, any copies of improvements, developments, modifications or changes to them, or to any patents, copyrights, trademarks, Internet Protocol or other electronic addresses, numbers or codes allocated to you. You may not sell, licence or provide any of these to anyone else without our permission.
- 6.5 Changes to addresses, numbers or codes. After giving you not less than 1 month's notice, we may change any electronic address, number or other code allocated by us to you, but only if it is necessary to do so.
- 6.6 Software license. We or our licensors grant you a non-exclusive and non-transferable license to use software provided with the Equipment or Services, including any related documentation, solely for your own internal business use and the purposes for which it is provided, and otherwise in

accordance with the applicable licensing requirements. We may suspend, block or terminate your use of any software if you fail to comply with any applicable licensing requirement.

- 6.7 Restrictions. Unless expressly permitted under the applicable licensing terms and conditions, you are not granted any right to:
 - a. use software or Services provided by us for or on behalf of third parties;
 - b. any source code, and you will not reverse engineer, decompile, modify, enhance, or copy software provided by us, or prepare any derivative works from such software; or
 - c. modify Equipment or Services, or combine Equipment and Services with any other goods or services not provided by us.
- 6.8 Breach of licensing requirements. You will indemnify, defend and hold us, our Related Companies and suppliers harmless from and against any third party claims arising out of your breach of the licensing requirements in this clause.
- 6.9 IP indemnity. We indemnify you against any claim, suit, action or proceeding (together, "Action") brought against you to the extent that the Action is based on a claim that your use of the Services in accordance with the Agreement constitutes a breach of a New Zealand patent, copyright, trade secret or other proprietary right existing at the date of the Agreement, provided that we may at our option and cost defend or settle the Action and you must fully co-operate at all times in defending or settling the Action. Where you fail to comply with your obligations under this clause, we will not be liable to indemnify you against the Action. If an Action is threatened or commenced, we will have the option of doing any one or more of the following:
 - a. obtain the right for you to use the Services which are the subject of the claim;
 - b. modify the Services to make them non-infringing; or
 - c. grant to you the right to use a different service of equal value and worth.
- 6.10 Exclusion from IP indemnity. We are not liable for, and you indemnify us against, any loss (including, without limitation, loss of profits, data or business opportunity), cost, expense, demand or liability whether direct, indirect, consequential or other, and whether arising in contract, tort, equity or otherwise, which results from a claim by a third party alleging infringement of that third party's intellectual property rights due to:
 - a. use of the Services or Equipment in combination by any means and in any form with software or equipment not specifically approved by us or in a manner or for a purpose not reasonably contemplated or authorised by us;
 - b. modification or alteration of any part of the Services or Equipment by any person other than us without our prior written consent; or
 - c. use of any materials or software provided by any person other than us ("Third Party Materials").
 - d. We provide no warranty or indemnity for Third Party Materials
 - e. Notification of infringement. You will notify us as soon as possible of any actual, threatened or suspected infringement of our intellectual property rights and of any claim that use of the Services or Equipment infringes the rights of any other person.

7 Termination

- 7.1 Termination at any time. The Agreement may be terminated in full or in part:
 - a. at any time by you on 3 month's written notice to us, following which clause 7.3 will apply
 - b. at any time after the Initial Term, by either party on 3 month's written notice to other, following which clause 7.3 will not apply.
- 7.2 Termination by you. You may immediately terminate the Agreement by written notice to us if we:
 - a. fail to remedy any material breach of the Agreement within 20 Business Days after receiving your written notice of the failure; or
 - b. are Insolvent.

Termination under this clause may be of the entire Agreement or of any part affected by the material breach or Insolvency.
- 7.3 Charges for early termination. If the Agreement ends before the Initial Term, you must pay us the Cancellation Charges, unless you have terminated the Agreement by written notice under clause 7.2 because of our default or Insolvency. You acknowledge and agree that our Cancellation Charges in these circumstances are a genuine pre-estimate of our loss arising from early termination of the Agreement during the Initial Term. Cancellation Charges are payable in the same manner as Fees under clause 5.
- 7.4 Return of Equipment and software. Upon termination or expiry of the Agreement, or when Equipment in which title has not passed to you is no longer needed or we reasonably consider any of such Equipment is at risk (as defined in section 109 of the Personal Property Securities Act 1999), you will surrender and immediately return any of that Equipment, including all copies, to us or provide us or our agents access as provided for under clause 4.2 to reclaim that Equipment. If you fail to do this, you agree that we (or our agents) may act as your agent to enter any premises

we reasonably believe contains that Equipment to recover it, without incurring any liability to you or anyone else, and in that case you must pay our costs, including legal costs on a solicitor and client basis, in exercising this right.

- 7.5 Security interest. You acknowledge that we have a security interest in any goods as the term is defined in the Personal Property Securities Act 1999 provided by us under the Agreement until such time as you have paid for the goods in full. You acknowledge that any agreed goods purchase request constitutes a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999.
- 7.6 Personal Property Securities Act 1999 (PPSA). Legal and equitable ownership of all products supplied (as listed on invoices set to you) shall be retained by Business Mechanix Limited until payment is made in full. You acknowledge the right of Business Mechanix to register a security interest under the PPSA 1999 on the Personal Property Securities Register in respect of products which may not have been paid for by you. You acknowledge that this clause and this agreement:
- grants to Business Mechanix a security interest over the collateral and all your present and after-acquired property;
 - that the security interest relates to all goods (collateral) which have been supplied to you by Business Mechanix (as per Business Mechanix's invoice to you) but which you have not paid for;
 - Business Mechanix's costs of registering a Financing Statement or a Financing Charge Statement shall be paid by you;
 - on the request of Business Mechanix you will promptly execute any documents and do anything else required by Business Mechanix to ensure that Business Mechanix's Security Interest in the collateral created by this agreement constitutes a Perfected Security Interest over the goods comprising collateral.
 - you agree not to allow any person to file a Financing Statement over the collateral without prior consent of Business Mechanix and you will notify Business Mechanix immediately *in writing* if you become aware of any person taking steps to file a Financing Statement against any collateral which is subject to the Financing Statement of Business Mechanix
- 7.7 Continuing rights and responsibilities. The ending of the Agreement does not affect any rights and responsibilities under the Agreement which are intended to continue, or come into force after the Agreement ends.
- 7.8 Should you receive a Credit at any time for goods or services, this credit may only be off-set against another like product or service and is not refundable in cash at any time. This Credit is valid for a 12 month period only from date of Credit, after which the credit will be deemed expired. No further claims against the Credit can be lodged after expiry of any type.

8 Liability

- 8.1 Warranties excluded. Unless otherwise expressly stated in the Agreement, all warranties, representations or conditions relating to Equipment or Services (whether express, implied or whenever arising) whether originating in statute, law, trade, custom, or otherwise that would (but for this clause) apply, are expressly excluded to the fullest extent permitted by law.
- 8.2 Liability accepted by you. You accept liability to us for failure to meet any payment obligation and for expenses actually and reasonably incurred by us or anyone else (including in enforcing our rights or anyone else's rights) as a direct result of your material breach of the Agreement or failure to take reasonable care.
- 8.3 Exclusions and limitations. Neither Party (or any of its Related Companies) will be liable to the other Party, or to anyone else, under or in relation to the Agreement for any consequential, incidental, or indirect damages for any cause of action (whether in contract or tort or under statute) or for expenses or any other liability for loss or corruption of data, loss of business, revenue, profit or goodwill, or anticipated saving.
- 8.4 Unless otherwise expressly stated in any Service Schedule or Statement of Work, the maximum liability of either Party under or in relation to the Agreement for loss, liability, damages, costs and expenses to the other Party and its Related Companies for failure to perform obligations (whether under the Agreement or in tort or under statute) is limited to, in any 12 month period an amount equal to twice the total Fees for the affected Services and Equipment, but in any event not more than a total of \$100,000 in any 12 month period.
- 8.5 Neither Party will be liable to the other for failure to perform obligations under the Agreement because of events beyond the reasonable control of the Party affected (or its Related Companies and suppliers).

9 General

- 9.1 Safety and security. Each Party will meet the other's notified and reasonable safety and security requirements when on the other Party's premises. Each Party will also be responsible for complying with all applicable laws for maintaining safe premises, and in particular will comply with the Health and Safety in Employment Act 1992 and all regulations and codes of practice made under that Act.

- 9.2 We may provide new services. We will have the first right to offer any Additional Services you wish to obtain, provided our offering is competitive as to price, quality and availability with offerings available to you from other providers. You agree to let us know if you can obtain a better offering of the Additional Services from another provider. We will then have 10 Business Days to amend our offering, which you agree to accept if it is equal to or better than the offering you can obtain from the other provider. We agree to review the Fees for our Services if, as a result of your obtaining Additional Services from another provider, your total payments to us are varied by 10% or more.
- 9.3 Confidentiality. Both Parties must always keep Confidential Information confidential and may not copy it, or use it for any purpose other than that for which it was provided, except with the other's written consent. A Party may disclose Confidential Information only to its Related Companies, employees, suppliers, agents and contractors who need it to enable the recipient to carry out the purpose for which it was provided, but only after first informing them of its confidential nature. You agree not to disclose Confidential Information to any third party engaged in reviewing costs and pricing, without first obtaining our permission. If requested, a Party must return the other Party's Confidential Information.
- 9.4 Compelled disclosure. If either Party is legally required to disclose Confidential Information of the other Party, the other must, if it is legally permitted and practical to do so, first be informed of this and all relevant circumstances before the Confidential Information is disclosed and disclosure must be restricted only to whatever the legal advisors of the Party being required to disclose the Confidential Information reasonably believe must be disclosed by law.
- 9.5 Password for online access. You will keep any passwords or codes ("Access Codes") used to access online information maintained by us confidential in accordance with clause 9.3 and will only disclose them to those of your employees and agents who need them to access the information for you. You will ensure that the online information is accessed only for your own business use.
- 9.6 Customer information. During our relationship, we may collect information about you and may:
- hold the information and share it with our employees, Related Companies, suppliers, contractors and other agents, but only where this is necessary to enable us to offer or provide you the Services, send you invoices, check that your responsibilities are being met, or otherwise to administer and enforce the Agreement;
 - use the information for case studies and marketing of our business;
 - obtain information by monitoring telephone calls for training purposes or other communications
 - use any information about you for statistical purposes, so long as you are not identified.
- 9.7 Benefit to our suppliers and Related Companies. You acknowledge and agree that the benefit of your obligations, and the limitations, exclusions and other provisions of the Agreement, extends to our Related Companies and suppliers of any services, equipment or software provided in connection with the Services, under the Contracts (Privacy) Act 1982.
- 9.8 Provision to Related Companies. Where we agree that any of your Related Companies may receive or use the Services provided under the Agreement, you acknowledge that the Related Companies do not obtain any direct right to enforce the Agreement against, or to recover any amount from, us. However, you may enforce that right against or recover those amounts from us on their behalf, to the extent that the right would otherwise be enforceable, or the amount recoverable, under the Agreement if it had been provided directly to you.
- 9.9 Supply by our Related Companies. Services and Equipment may be provided to you by us or any of our Related Companies. Notwithstanding anything else in the Agreement, only the Related Company named as the supplier under, or which signs, any Service Schedule or Statement of Work incurs any obligation or liability to you with respect to the Service Schedule or Statement of Work. All references to Business Mechanix in the Agreement refer equally to Business Mechanix Limited or the Business Mechanix Related Company providing Services or Equipment under any Service Schedule or Statement of Work.
- 9.10 Subcontracting. We may subcontract any of our responsibilities to our Related Companies and agents, in which case we will remain liable to you for meeting all those responsibilities.
- 9.11 Resolving disputes. Both Parties will attempt to resolve any dispute relating to the Agreement at the lowest possible level of escalation. If the dispute is not resolved at that level, the dispute may be referred by either Party to the senior management or executives of either or both Parties and both Parties will then use their respective best endeavours to resolve the dispute within a further 40 Business Days. While following the above procedures to resolve the dispute, neither Party is relieved from its obligations under the Agreement and the Agreement remains in full force and effect.

- 9.12 Consumer Guarantees Act. You confirm that you are acquiring all the Services and Equipment for the purposes of a business as defined in the Consumer Guarantees Act 1993. The provisions of that Act do not apply to Services we provide under the Agreement.
- 9.13 Notices. Notices required under the Agreement must be in writing and sent to the relevant contact addresses in the Agreement. If sent by post to that contact address, the notice will be assumed delivered 3 Business Days after it has been posted. If sent by fax or by email to that contact address, the notice will only be assumed delivered once a correct transmission confirmation slip or acknowledgement is received. Notifications for termination, breach or default may not be sent by email and if sent to us will be addressed to our company secretary.
- 9.14 Assignment. Neither Party may assign its rights or responsibilities under the Agreement without the other Party's written consent, which will not be unreasonably withheld or delayed. Consent should normally be given for an assignment to a Related Company unless there are good reasons not to do so and may also be granted subject to reasonable conditions (for example, the solvency of the assignee). However, we may assign this Agreement to any Entity which is a successor to our business.
- 9.15 Changes to General Terms. We may change the General Terms or any Product Specification at any time. We will publish details of changes at least 1 month before the change is to take effect. If you reasonably consider the change will have a major detrimental effect on the Services, then you may advise us of the details of this in writing. We may allow you, at our sole discretion, to:
- remain on the existing General Terms or relevant Product Specification;
 - in the case of changes to the General Terms, terminate the Agreement without becoming subject to the payment of Cancellation Charges under clause 7.3; or
 - in the case of changes to a Product Specification, terminate the Services under that Product Specification without becoming subject to the payment of Cancellation Charges under clause 7.3 in relation to those Services.
- 9.16 Other changes. Subject to clause 9.15 or any other variation process that the Parties have agreed under the Agreement, any significant variation to the Agreement must be recorded in writing and signed by the authorised representatives of both Parties.
- 9.17 Independent contractor. We provide our Services under the Agreement as an independent contractor. The Agreement does not create or evidence a legal partnership, employer/employee, principal/agent or joint venture relationship.
- 9.18 Governing law. The Agreement is governed by, and will be construed in accordance with, the laws of New Zealand. Both Parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- 9.19 No waiver. No failure, delay or indulgence by either Party in exercising any power or right conferred on that Party by the Agreement will operate as a waiver of that power or right. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights under the Agreement.
- 9.20 No responsibility for tax treatment. You acknowledge that you have not relied on any information from anyone in the Business Mechanix concerning the tax treatment of any payments under the Agreement, or any other matter relating to tax in relation to the Agreement, the Services or Equipment, and that you are responsible for determining the correct tax treatment of these matters.
- 9.21 Invalidity. Any provision of the Agreement that is invalid or unenforceable, will be deemed deleted from the Agreement and this invalidity will not affect the other provisions of the Agreement, all of which remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 9.22 Employment. You will not offer direct employment to or contract services directly with a resource we have provided, or take that resource through any third party, either during the term of the appointment or for 12 months after termination, without first obtaining our written consent. In the event of any resource taking a permanent role with you, Business Mechanix will charge you a placement fee amounting to 15% of the resources first year's salary package.
- 9.23 Promotion. The Customer consents to receiving periodic email and mail correspondence from Business Mechanix. The Customer grants the right to Business Mechanix to include the Customer its name, brand and images in any promotional material without notice or consent.
- 10 Definitions and Interpretations**
- 10.1 "Additional Services" means any services other than the agreed Services you are receiving from us.
- 10.2 "Agreement" means:
- the Business Mechanix Proposal;
 - related Service Schedules or Statements of Work;
 - related Product Specifications;
 - these General Terms; and
 - any written or electronic document that is incorporated into the Agreement by reference in one of the above documents.
- 10.3 "Business Days" means Monday to Friday inclusive, excluding national public holidays and the provincial anniversary day applicable to the affected customer site and the provincial anniversary day applicable to our office.
- 10.4 "Business Hours" means 8:30am to 5:00pm on Business Days.
- 10.5 "Cancellation Charges" means:
- Two times the amount of any fixed monthly Fees otherwise payable by you for the Services (or part of the Services) cancelled, from the date of cancellation to the end of the term in the Service Schedule(s) or Statement(s) of Work for the Services being cancelled; plus
 - 25% of the amount of any other Fees, including any other anticipated Fees ("variable Fees") otherwise payable by you for the Services (or part of the Services) cancelled, from the date of cancellation to the end of the term in the Service Schedule(s) or Statement(s) of Work for the Services being cancelled. This will be calculated based on your total average monthly variable Fees over the preceding 6 months for the Services (or part of the Services) cancelled; plus
 - reimbursement to us of any costs (for example, for installation, equipment or project management) and/or Fees (monthly or otherwise) that have been waived, or amortised under the Agreement on the following basis: Cost to pay = total cost (Business Mechanix Standard price) x (remaining months of relevant period over which the fees were waived or amortised / total months of relevant period over which the fees were waived or amortised).
- 10.6 "Confidential Information" includes, but is not limited to, all information and other material relating to the disclosing Party's business, employees and customers that the disclosing Party makes available to the recipient, or that comes to the recipient's knowledge, and includes the contents of the Agreement, but excludes information that is generally available to the public (but not because the recipient, or anyone the recipient is responsible for, has disclosed it), or that the recipient or a third party have developed independently.
- 10.7 "Customer", "you" or "your" means the customer as identified in the Agreement.
- 10.8 "Equipment" means equipment and hardware (including any software), cabling or other items of personal property sold, leased or otherwise provided for your use by or through us either as a separate item or bundled with a Service.
- 10.9 "Fees" is defined in clause 3.1 and includes Cancellation Charges.
- 10.10 "Initial Term" means the initial term defined in the written agreement between Business Mechanix and you, and includes any extension or addition to the initial term. If not specified anywhere else, the initial term will be 12 months and the term will extend by a further 12 months automatically unless terminated in conjunction with 7.1.
- 10.11 "Insolvent" means, in relation to a Party, that:
- a Party is, becomes, or is deemed to be, insolvent or bankrupt;
 - a Party makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors; or
 - a Party goes into receivership or has a receiver, trustee and manager (or either of them) (including a statutory manager) appointed in respect of all or any of its property;
 - any resolution is passed, or any proceeding is commenced, for the winding up or liquidation of a Party; or
 - that Party directly or indirectly assigns or transfers, or attempts to assign or transfer, any obligation, liability or interest of that Party under the Agreement in breach of the Agreement,
 - and "Insolvency" has a corresponding meaning.
- 10.12 "Party" means Business Mechanix or you (the customer), or both Business Mechanix and the customer, as the context requires.
- 10.13 "Product Specification" means any product specification or service specification for the Services, and includes any written or electric document incorporated by reference into any product specification or service specification.
- 10.14 "Related Company" has the meaning given in the Companies Act 1993.
- 10.15 "Service(s)" means all products and services that we (or any of our Related Companies) provide to you (unless any of those products and services are already covered by an existing agreement with you) and includes products and services described in any Service Schedule or Statement of Work, any Additional Services and any Equipment provided as part of a Service.

- 10.16 "Service Levels" means the service levels or targets expressly identified in the Agreement (if any) which are, unless expressly stated otherwise in the Agreement, targets which we will use all reasonable endeavours to ensure, but do not guarantee, will be achieved.
- 10.17 "Service Schedule" means any Service Schedule signed by Business Mechanix (or any of our Related Companies) and you.
- 10.18 "Statement of Work" means any Statement of Work signed by Business Mechanix (or any of our Related Companies) and you.
- 10.19 "Business Mechanix", "we", "us" or "our" means Business Mechanix Limited.
- 10.20 "Business Mechanix Proposal" means the written agreement that has been signed by you for the supply of Services or Equipment.
- 10.21 In the Agreement, unless the context otherwise requires:
- a. headings are for convenience only and do not affect interpretation;
 - b. the singular includes the plural and vice versa;
 - c. unless otherwise stated, all references to dollars, value and price are to the New Zealand currency and exclude goods and services tax;
 - d. a reference to any statute includes any amendments, re-enactments or replacements to that statute from time to time.
- 10.22 "User Acceptance Tests", in relation to any Services or Equipment, means assessment of the Service or Equipment by you to determine whether it meets its Requirements.
- 10.23 "Warranty Period" means 90 days following final Acceptance of all Services and Equipment under the relevant Services Schedule or Statement of Work.