

This Digital Island General Terms Agreement ("Agreement") sets out the terms and conditions on which Digital Island will provide Products and Services to you.

## 1. AGREEMENT STRUCTURE

The Agreement is made up of the following:

- a) These terms and conditions ("Digital Island General Terms") which contain general provisions that apply to all Product and Services provided to you under the Agreement.
- b) Service Description(s) and/or Statement(s) of Work which describe the Products and Services we will provide to you;
- c) Any other documents referenced in the Service Descriptions (for example, vendor Terms, acceptable use policies); and
- d) any other schedules which we may agree are relevant to you.

Terms used in this Agreement are defined in clause 19.

## 2. PRECEDENCE

In the event of inconsistency or conflict between any parts of the Agreement, the following order of precedence shall apply (in descending order of priority):

- a) Service Schedule(s) and/or Statement(s) of Work;
- b) Service Description(s); and
- c) Digital Islands General Terms.

## 3. COMMENCEMENT AND TERM

The Agreement will commence as specified in the Order Form or, where not specified, when we start providing the Services and will continue until terminated in accordance with this Agreement. Service Schedule(s) and Statement(s) of Work will have a separate term ("Initial Term") for the provision of the specific Products and Services they describe.

## 4. DIGITAL ISLANDS RESPONSIBILITIES

**4.1 Services:** We will provide the Products and Services to you;

- a) in accordance with any applicable Product Description(s) and Service Levels, although we do not guarantee that the Products and Services will be continuous or fault free;
- b) using reasonable care and skill; and
- c) using people who have the necessary qualifications and experience; and
- d) safe, durable, and in good condition; and
- e) approved for connection to Our Network; and
- f) tested for known software viruses; and
- g) passing on the full benefit of any manufacturer's warranty you are eligible for in respect of Products you purchase from us; and
- h) in accordance with all applicable laws.

**4.2 Faults:** If you report a fault to us, we will respond in accordance with any standard or specified Service Levels within a reasonable period of time. We may charge you, on a time and materials basis, at our standard rate for the relevant work, or at such rate as otherwise advised by us if:

- a) we agree to work outside the hours agreed in any Service Levels or, if none apply, outside Business Hours; or

- b) we find there is no fault or that you caused or contributed to the fault.

## 5. CUSTOMER'S RESPONSIBILITIES

**5.1 Co-operation and access:** You will provide reasonable cooperation and access to enable us or our agents or Service Providers to install, provide, monitor, repair, remove, replace and maintain Products, Services and Our Network. You will obtain any required permissions and/or approvals from third parties (including the owner of your premises if you are not the premises owner) to enable us to do this. If you don't we may not be able to provide you with the affected Products and Services and we will not be liable to you for any failure to do so. You agree that if asked you will provide us with written evidence of the premises owner's consent.

**5.2 Customer equipment:** Unless otherwise agreed in writing, you are responsible for any of your equipment and any item not provided, managed or maintained by us, and you must ensure that any such equipment or item:

- a) is technically compatible with the Products and Services and will not harm Our Network, a third party network or another customer's equipment; and
- b) is used in accordance with any relevant instruction, standard or law.

We may be unable to provide the Products and Services to you if these requirements are not met and, in this event, we will not be liable to you for failing to do so.

**5.3 Supply and Care of Equipment:** Digital Island or a third party may supply Equipment in connection with use of the Services. Unless agreed otherwise, you will have no ownership rights to any Equipment and must not damage or interfere with the Equipment. You agree to look after all Products and to pay for any repair or replacement if they are 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:

- a) protect them from power fluctuations, radio or electrical interference or abnormal environmental conditions, theft and any other risks of loss or damage; and
- b) not alter, repair or recalibrate them; and
- c) let us know immediately if they are lost, stolen or damaged; and
- d) agree with us where to install them; and
- e) not move them without first obtaining our permission, which we will not unreasonably withhold.

**5.4 Use of Product and Services:** You agree to:

- a) follow our, and any manufacturer's, reasonable directions about the use of the Products and Services; and
- b) only use the Products and Services for lawful purposes and not for fraudulent or destructive purposes or to defame anyone, infringe anyone's property rights, invade anyone's privacy or access or alter anyone's private records and data;
- c) adhere to any specific policies and/or terms and conditions described in any Additional Schedule for our Products and Services; and
- d) to only access or use the Service using your own valid login credentials through interfaces provided by Digital Island and to keep all login credentials, security methods, PIN numbers and other information provided to access the Service confidential and secure, and to promptly notify us in the event an unauthorized person has accessed the Service or any information in it; and
- e) not knowingly allow the Products and Services to be affected by any virus, worms or other destructive media; and

- f) not to bypass or breach any security device or protection, perform any testing that may impact, impair or otherwise affect the Service, or use the Products and Services in any manner that causes interference with the use of Our Network; and
- g) not sell, rebill or otherwise provide the Products and Services to any third party without first obtaining our permission; and
- h) take full responsibility for any transactions entered into through use of the Services.

We will take reasonable precautions to preserve security although we will not be responsible for ensuring that the Products and Services will not or cannot be misused by you or any third party.

**5.5 Use of Third Party Services:** You will agree to such end user licences or other terms as are provided by any third party supplier (including in respect of Reseller Products and Services) as specified in the Service or Product Description. If you use any Services subject to Third Party Terms, then those terms form a legal agreement between you and the third party supplier. If you do not accept the Third Party Terms, you agree that you will notify us as soon as possible and we will use all reasonable endeavours to terminate the service. If we are unable to terminate the service without incurring cost, this will be treated as termination during the Service Initial Term and any applicable Early Termination Charges will be charged, notwithstanding that the Service Initial Term may not have commenced.

**5.6 Third Party Terms and Precedence:** To the extent the Customer uses such Products or Services, the Customer agrees to comply with the applicable Third Party Terms. However, in the event of any inconsistency, conflict or ambiguity between:

- (a) this Agreement (including any Service Schedule, Statement of Work or Service Description); and
- (b) any Third Party Terms,

the provisions of this Agreement shall prevail and govern the relationship between Digital Island and the Customer.

Without limiting the foregoing, no Third Party Terms shall:

- (i) reduce or exclude any rights, remedies, warranties, service commitments or protections granted to the Customer under this Agreement;
- (ii) impose any greater liability, indemnity, risk allocation, limitation period, governing law, jurisdiction, data usage right or intellectual property licence than is expressly agreed under this Agreement;
- (iii) permit a third-party supplier to obtain rights to Customer data, Customer Content or personal information beyond those reasonably required to provide the relevant Products or Services; or
- (iv) create any direct contractual relationship between the Customer and the third-party supplier except to the extent expressly stated in the applicable Service Description, or end user agreement, and accepted by the Customer in writing.

Digital Island remains responsible to the Customer for the supply of the relevant Products and Services in accordance with this Agreement notwithstanding any Third Party Terms.

**5.7 Fair Use Policy:** All Digital Island service plans are subject to a Fair Use Policy. We have developed our Fair Use Policy by reference to average customer profiles and estimated customer usage of our Services. If, in Digital Island's reasonable opinion, your usage of our Services materially exceeds estimated use patterns over any month, or is inconsistent with normal usage patterns, then your usage will be excessive and/or unreasonable. In this event, we may contact you to advise you that your usage is in breach of our Fair Use Policy and

request that you stop or alter your usage. If your excessive or unreasonable usage continues after receipt of a request to stop or alter the nature of such usage, we may without further notice:

- a) apply charges to your account for the excessive and/or unreasonable element of your usage;
- b) suspend, modify or restrict your use of the Services or withdraw your access to the Services.

**5.8 Customer Information:** You will ensure that all information the customer gives Digital Island is correct. Where any information the customer has previously supplied to Digital Island changes (such as contact details), the customer must provide Digital Island with updated information as soon as possible.

## 6. ONLINE MANAGEMENT OF PRODUCTS AND SERVICES

If you use "My Digital Island" Portal to order or otherwise manage any of our Products and Services you:

- a) will comply with our "My Digital Island" Portal authorisation process as notified by us to you;
- b) agree to maintain the security of your login credentials in accordance with clause 5.4d; and
- c) acknowledge that:
  - (i) you are responsible for the actions of your administrator and users while they are accessing the "My Digital Island" Portal;
  - (ii) you are responsible for any orders placed on "My Digital Island" Portal using any of your log-in details (whether by your administrator or user or otherwise); and
  - (iii) if any order placed on "My Digital Island" Portal using your log-in details (whether by your administrator or user or otherwise) is accepted by us the order will be treated as an order under the Additional Schedule(s) you have with us which applies to the relevant Product or Service, and will be governed by the terms of this Agreement.

## 7. CHARGES AND CREDITS

**7.1 Our Fees:** You will pay all of our charges in relation to the Products and Services we provide you, plus any applicable goods and services or similar taxes ("Fees"). Fees will be detailed in the applicable Additional Schedule. If any Fee has not been detailed, the charge will be at our standard rate for the relevant Product or Service, or at such rate as otherwise advised by us. All charges are shown in New Zealand Dollars (NZD) unless otherwise stated.

**7.2 Commencement of Fees:** Upon acceptance of these terms and conditions, we may begin invoicing you:

- a) a 50% deposit of proposed one-off hardware, Professional Services and Installation charges for Products and Services will be applied to the first invoice after acceptance of the Agreement, with the remainder of the one-off charges charged at monthly milestones invoiced until completion of installation; and
- b) recurring fixed and variable monthly charges once the Products and Services have been made available to you.

**7.3 Monthly Invoicing:** Recurring or ongoing Fees that are fixed may be billed in advance, but otherwise Fees are normally billed in arrears. Your monthly invoice will be provided digitally to your nominated email address and available online in the "My Digital Island Portal". Digital Island does not provide paper invoices.

**7.4 Payment:** Unless otherwise agreed, you must pay all undisputed Fees by the date specified on the invoice, or if no date is specified then within 20 Business Days of the invoice date, without set-off or deduction. Payment may be made by cash, direct credit or as otherwise agreed with us. Payment by credit card will be subject to a surcharge.

**7.5 Late payment:** If the customer does not pay any invoice (less any disputed fees as below) on the due date, Digital Island may:

- a) suspend or restrict the customer's service; and/or
- b) charge the customer interest on the overdue amount as defined in clause 7.6c
- c) withhold any rebate, discount or similar incentive which would otherwise be available to the customer; and
- e) require the customer to put in place a direct debit or credit card payment arrangement for payment of the invoices

**7.6 Disputed Fees:** If you dispute a Fee in good faith, you must notify us within 20 days of the date of the relevant invoice. Should you fail to notify us of the dispute within this period you will not be entitled to dispute the Fee or make any claims against us in relation to the disputed Fee. You may withhold payment of that Fee if you:

- a) pay all undisputed Fees by the due date, or if no due date is specified within 20 Business Days of the invoice date; and
- b) co-operate with us to promptly resolve the disputed Fee.

If you maintain your dispute of the Fee, the procedure in clause 18.4 may be invoked. If the dispute relates to billing errors, we may credit or debit, as applicable, the net difference between any discovered overcharge or undercharge.

All Fees which are not subject to a genuine dispute but remain unpaid 20 Business Days after the due date for payment; or disputed, but for which we have determined do not contain an error, that remain unpaid 5 Business Days after the date of our notice to you under clause 7.5, are:

- c) subject to interest charged on a monthly basis from the due date until the date on which you make payment in full to us at the Bill Rate plus 4% per annum.
- d) In addition to such interest, you agree to pay any costs that are incurred by anyone (including agents) in recovering the money you owe or in exercising any other rights, including recovery of commissions and legal costs on a solicitor and client basis.

These remedies are without prejudice to any of Digital Islands other remedies under the Agreement or otherwise.

**7.7 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 Products and Services without notice to you. However, you will remain liable for all Fees and any unpaid interest accrued pursuant to clause 7.6 incurred in excess of the credit limit.

**7.8 Estimates and quotes:** All prices stated in the Agreement are the correct prices unless it is stated that they are estimates. You acknowledge that an estimate does not foresee every circumstance. We will advise you in writing if we believe an estimate will be exceeded.

Where we give you a quote or proposal in relation to Products and Services, the quote or proposal will remain valid for 30 Business Days from the date it is given, unless stated otherwise in the quote or proposal. However, we may vary or withdraw a quote or proposal at any time before you accept it by notice in writing.

**7.9 Request for return:** We will accept requests for credits or returns of:

- a) Products that are faulty or non-conforming; or
- b) Software or Products that we incorrectly order or deliver, provided that they are returned in as new condition, in the original packaging and unsoiled and undamaged.

We may, in our sole discretion, accept requests for return and credit of other Software or Products provided they are in as new condition, in the original packaging and unsoiled and undamaged. However, where other Software or Products are accepted for return, you may be liable to pay us a restocking fee of 10% of our then current price for the Software or Products that are returned and you will be responsible for paying any return delivery costs.

## 8. SERVICE AND PRICING

**8.1 Allowed Changes:** We may change a Service or the Charges for a Service or end the availability of the Service, without notice, where we reasonably believe such a change will have no detrimental effect on you. We will use reasonable efforts to notify you of such a change where it is practicable for us to do so.

**8.2 Other Changes:** We may also change a Service or the Charges for a Service or end the availability of a Service:

- (a) to comply with, or respond to a change in, Applicable Law or regulation;
- (b) to respond to a change imposed because of action or change made by a third party supplier (including supplier price changes, and changes by a Network Operator);
- (c) because the Services are no longer viable or are to be withdrawn from general availability sale by us;
- (d) because any technology, system, process or Equipment or input used to provide the Services becomes obsolete or beyond economic use or support; or
- (e) for any reason during the Extended Term. We may also change these Business Terms during the Extended Term for any reason.

**8.3 Notice of change:** We will give you at least 30 Business Days' notice prior to a change under clause 8.2 except where it is not practicable for us to do so, in which case we will provide you as much notice as reasonably practicable.

**8.4 Right to terminate:** If a change under clause 8.1 or 8.2 will cause you detriment, you may terminate the affected Service by giving one month notice to us. This right must be exercised within 20 Business Days' of the change taking effect. Early Termination Charges will not apply where you terminate under this clause. We will provide to you a pro-rata refund of any prepaid Charges in respect of any Service terminated by you under this clause that were unused at the date of termination.

**8.5 Suspension or restriction of Services:** We may suspend or restrict Services where;

- a) it is considered by us to be reasonable or necessary, for example, to undertake maintenance or repairs.
  - (i) We will endeavour to give you at least 5 days' notice of scheduled maintenance or repairs, if this is likely to affect your Services.
  - (ii) Where practicable, we will schedule maintenance and repairs to minimise disruption to you.
- b) or we consider it necessary to protect or maintain their network or anyone else's network; or
- c) we believe that Products and Services a being used (or have been used or will be used) in violation of this Agreement; or
- d) that you have breached your obligations under this Agreement; or
- e) suspension is required by law.

Network charges will still apply during the period of any suspension, and if the Services are suspended because of a breach by the customer, Digital Island may charge the customer a reconnection fee if the Services are recommenced.

## 9. PROPERTY RIGHTS

**9.1 Passing of risk:** Unless otherwise agreed in writing between us, risk of any loss of, or damage to, Products will pass to you upon delivery to your premises, or receipt by you. If any Products are lost, stolen or damaged whilst on your premises you will pay the costs of repairing or replacing the Products, except where the loss, theft or damage was caused by us.

If requested by us, you will fully insure Products for their replacement value from the time when they are delivered to you or you otherwise take possession of them, until the time payment is made in full for them or they are returned to us.

**9.2 Security interest:** You grant a security interest to us in each and every part of the Products as security for payment for that part and of each other part or parts of the Products and for any other amounts owing by you to us from time to time, and for the performance by you of all of your other obligations to us from time to time. You agree that this Agreement constitutes a security agreement for the purposes of the PPSA which provides for a security interest in our favour in all of your present and after-acquired property, except for any item of personal property which is not provided by us to you under this Agreement. The following words and phrases (and grammatical variations of them) have the meanings given to them in, or by virtue of, the PPSA: 'after-acquired property', 'personal property', 'proceeds', 'security agreement', and 'security interest'.

## 10. INTELLECTUAL PROPERTY RIGHTS

**10.1 Ownership:** All Intellectual Property which is owned by, or proprietary to us or you or any third party as at the date of this Agreement will at all times remain owned by that party exclusively. Any new Intellectual Property which is created as a result of, or in connection with the provision of our Products and Services will be owned by us, unless specified otherwise in this Agreement.

**10.2 Indemnification:** Subject to the limitations in this clause and the exclusions set out in clause 14.3, each party will indemnify the other ("Indemnified Party") and keep the Indemnified Party fully and effectively indemnified against all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses (including all legal costs and expenses on a solicitor and own client basis) suffered or incurred by the Indemnified Party arising out of, or in connection with, any claim that, the Indemnified Party's use or possession of any Intellectual Property provided by the other party infringes the Intellectual Property rights of any third party (a "third party intellectual property right claim"). Notwithstanding the foregoing, the Indemnified Party will not be entitled to indemnification with respect to:

- a) in your case:
  - (i) any modification of any Products (including Software) and Services provided by us by anyone other than us or our Related Companies or approved third parties; or
  - (ii) the combination, operation or use of our Products (including Software) and Services with any goods, software, product, data or business method that we didn't know of, provide, recommend or approve, or was not within our reasonable contemplation;
- b) any claim of infringement based on the use of any Intellectual Property provided by us where a replacement or upgrade to that Intellectual Property has been made available to the Indemnified Party and the infringement would not have occurred if the Indemnified Party had used the replacement or upgrade provided by us;
- c) any claim of infringement based on the use of any Intellectual Property outside the scope of this Agreement.

**10.3 Procedure:** The procedure for handling a third party intellectual property right claim will be as follows:

- a) the Indemnified Party must promptly notify the other party in writing of any allegations of infringement of which it has notice, or becomes aware, and must not make any admission, or purport to settle any such claim without the other party's prior written consent (which will not be unreasonably withheld or delayed);
- b) the Indemnified Party will, at the other party's request and expense, allow the other party to conduct and/or settle all negotiations and litigation resulting from any such claim, provided always that the Indemnified Party will be entitled to be represented at, and be consulted on, all such negotiations; and
- c) the Indemnified Party must, at the request of the other party, afford all reasonable assistance with such negotiations or litigation and keep the other party informed of all developments relating to the third-party intellectual property right claim.

**10.4 Remediation Rights:** If we are required to indemnify you under clause 10.2 we may, at our sole option:

- a) obtain the right to continue providing the relevant Products and Services to you;
- b) modify the relevant Products and Services so that they become non-infringing; or
- c) replace the relevant Products and Services with another non-infringing item or service.

## 11. NUMBERS, ELECTRONIC ADDRESSES AND OTHER CODES

We will arrange for appropriate telephone numbers, electronic addresses and other codes to be allocated to you. Unless we have agreed with anybody else, all addresses, numbers and other codes allocated to you remain the property of Digital Island and you must not transfer or sell your address, number or code to anyone else. We may change any number we have allocated and allocate you a new number, but we will always give you as much notice as we reasonably can before making any change.

Numbers assigned to you or ported-in to Digital Island to use on a Service can be ported to another provider on Termination of this agreement.

## 12. SOFTWARE

**12.1 Software License:** We grant you a non-exclusive and non-transferable licence to use Software provided with the Products and Services, solely for your own internal business use and in accordance with any terms upon which the Software is ordinarily licensed or which we notify to you. You are not granted any right to sub-licence, copy, modify or reverse assemble the Software. We may suspend, block or terminate your use of any Software if you fail to comply with any such terms.

**12.2 Upgrades:** As long as an upgraded or new version of Software we provide to you does not adversely affect any Products and Services we provide to you, or your use of our Products and Services, you must install the upgrade or new version as soon as you reasonably can and not later than six months after we provide it to you, or immediately if we notify you that the Products and Services may be adversely affected if the upgrade or new version is not installed. If you fail to do so, we may not be able to provide you with the affected Products and Services and we will not be liable to you for any failure to do so. At the end of the Initial Term of each Service, we may review the Products and Services provided to you and at our discretion may require you to migrate to a new version of the Products and Services.

## 13. ARTIFICIAL INTELLIGENCE

Each party acknowledges and agree that:

- a) the Services or Products supplied directly by

us to you may utilise and/or incorporate artificial intelligence technologies (AI) at the time of supply or in the future (including by way of updates). Where we are aware that those Digital Island Products utilise and/or incorporate AI, we will take reasonable measures to ensure your data is

not used to train the underlying AI models, unless stated otherwise in the applicable Service or Product Description or with your prior consent;

b) the Services or Products may be resold by us to you in our capacity as a reseller or distributor of those Services or Products (Reseller Products and Services). Reseller Products and Services may, at the time of supply or in the future (including by way of updates), utilise and/or incorporate AI. Where we are aware at the time of initial supply that those Reseller Products and Services utilise and/or incorporate AI, we will inform you of this in the applicable Service or Product Description. These Reseller Products and Services may also be subject to separate terms between you and the third party we are reselling or distributing for. We will provide you with details of the third party terms in accordance with clause 4.3; and

c) if you choose to use a Service or Product that utilises or incorporates AI (including a product or service you or your Users access through the Product or Service we provide to you) you accept there is a risk that the AI undertakes an unexpected action or provides an incorrect output. It is your responsibility to:

- (i) carry out your own due diligence on any Products or Services you elect to purchase to assess whether they are suitable for your requirements and deal with your data in a manner acceptable to you;
- (ii) complete your own AI governance and risk assessment; and
- (iii) accept the possibility of errors in any outputs provided by the Products or Services and to complete such checks for accuracy as you consider necessary, before using such outputs.

## 14. TERMINATION

**14.1 Termination at any time:** Subject to clause 8.2, any Additional Schedule may be terminated in full or in part:

- a) at any time by you on 30 days written notice to us, following which clause 14.4 will apply; or
- b) at any time after the Initial Term of that Additional Schedule, by us on 30 days written notice to you.

**14.2 Breach and insolvency:** Either Party may immediately terminate (or in the case of Digital Island, may also suspend) all or any part of the Agreement by written notice to the other Party if the other Party:

- a) commits a material breach of the Agreement which is incapable of remedy;
- b) fails to remedy any material breach of the Agreement which is capable of remedy within 20 Business Days after receiving written notice of the breach; or
- c) is Insolvent.

Termination or suspension under this clause 14.2 may be of the entire Agreement or of any of the Products and Services affected by the material breach or Insolvency.

**14.3 Ending Services and Products:** We may cease providing all or part of any Products and Services if:

- a) the Products and Services are no longer viable, are to be withdrawn from general availability by us, cannot be provided, or are to be replaced with new Products and Services;
  - b) equipment or property used to provide the Products and Services becomes obsolete or beyond economic use or support;
- or

- c) a Regulatory Event has occurred.

We will use all reasonable endeavours to give you at least 1 months' notice of any intended cessation under this clause.

**14.4 Charges for early termination:** If you terminate any Additional Schedule in full or in part in accordance with clause 14.1(a) prior to the expiry of the Initial Term of that Additional Schedule, or if we suspend or terminate all or any part of the Agreement or Products and Services in accordance with clause 14.2, you must pay us Termination Charges (as defined in clause 20).

If you cease taking all or any part of our Products and Services before the end of the relevant Initial Term for those Products and Services without providing us with notice then you will be deemed to have terminated such Products and Services from the date on which you last obtained the Products and Services and we will be entitled to claim Termination Charges in respect of them.

You acknowledge and agree that our Termination Charges in these circumstances are a genuine pre-estimate of our loss arising from early termination by you and reflect the fact that the pricing and payment profile has been structured based on the service Initial Term.

Termination Charges are without prejudice to any other rights, remedies or obligations either party may have under the Agreement or at law.

**14.5 Return of Equipment:** Upon termination or expiry of the Agreement, or when Equipment in which title has not passed to you are no longer needed, or we reasonably consider any Equipment is at risk (as defined in section 109 of the PPSA), you will surrender and immediately return the Equipment, to us or provide us or our agents access to your premises to reclaim the Equipment. If you fail to do this within 10 Business Days of our request, you agree that we may either:

- a) charge you a reasonable amount for rental of the Equipment from the date on which we first requested the return until the date that you actually return it to us; or
- b) act (or send our agents to act) as your agent to enter any premises we reasonably believe contains the 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.

**14.6 Continuing rights and responsibilities:** Termination 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.

## 15. LIABILITY

**15.1 Warranties Excluded:** Unless otherwise expressly stated in the Agreement, all warranties, representations or conditions relating to Products and 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.

**15.2 Maximum Liability:** Subject to clause 15.4, the combined maximum liability of one Party in respect of claims in connection with this Agreement in contract, tort (including negligence) or otherwise (each a "Claim"), shall be limited to the lower of:

- a) the total Fees for the affected Products and Services in the 3 month period preceding the month in which the relevant event or circumstance or series of related events or circumstances arose; and
- b) \$100,000 in the aggregate in respect of all events and circumstances in any 12 month period,

Provided that the claiming Party notifies the other Party of its Claim within 12 months after the relevant event or circumstance becomes reasonably discoverable.

**15.3 Exclusion of liability:** Subject to clause 15.4, no Party shall be liable in connection with a Claim for:

- a) any breach of this Agreement to the extent that the breach is attributable to the prior default, negligence, misconduct or breach of the other Party, its employees or agents; or
- b) any indirect or consequential loss, or for any loss of revenue, profits, goodwill, business or anticipated business, anticipated savings or for any business interruption or loss of data, whether direct or indirect and whether or not that loss was, or ought to have been, contemplated by the Party in breach.

**15.4 Network Operators and other suppliers not liable:** None of our officers, employees or contractors, nor any other Network Operator, any third party supplier (including their officers, employees and contractors), or any other provider of an input to the Services will be liable to you or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Services we provide or from your use of those Services and our Network, including (without limitation) your access to and use of any service provider's site or Network Operator's networks.

The benefits of this clause are intended to extend to Network Operators, agents, suppliers and providers and to be enforced by them under the Contract and Commercial Law Act 2017 Part 2, Subpart 1.

**15.5 Unlimited liability:** The limitation on liability set out in clause 15.2 and the exclusions of liability set out in clause 15.3 shall not apply with respect to:

- a) any loss, liability, damage and expense, including solicitor's fees on a solicitor and own client basis, that is suffered by us and/or our Related Companies as a result of any actual or threatened claim by a third party (including a claim in defamation, infringement of property rights, invasion of privacy or access to or alteration of private records and data) arising from the transmission of data or messages over Our Network by you, or by your customers or agents using Products and Services provided to you; or
- b) any obligations for the payment of Fees or Termination Charges (including any interest on outstanding Fees or Termination Charges) under this Agreement.

The limitation of liability set out in clause 14.2 shall not apply with respect to the Intellectual Property indemnity in clause 10.2.

**15.6 Force Majeure:** Despite any other provision in this Agreement, neither Party will be liable for any failure or delay in complying with any obligation under this Agreement (excluding any payment obligation) if:

- a) the failure or delay arises from a Force Majeure Event;
- b) the affected Party, on becoming aware of the Force Majeure Event, promptly notifies the other Party in writing of the nature of, the expected duration of, the obligation(s) affected by, and the steps being taken by that Party to mitigate, avoid or remedy, the Force Majeure Event; and
- c) the affected Party uses its best endeavours to:
  - (i) mitigate the effects of the Force Majeure Event on that Party's obligations under this Agreement;
  - (ii) perform that Party's obligations which are not affected by the Force Majeure Event; and
  - (iii) perform that Party's obligations under this Agreement on time despite the Force Majeure Event. Performance of an

obligation affected by a Force Majeure Event will be resumed as soon as practicable after the termination or abatement of the Force Majeure Event

**15.7 Mitigation:** Each Party shall take reasonable steps to mitigate any loss or damage it may suffer under this Agreement.

**15.8 Consumer Guarantees Act:** You confirm that you are acquiring all Products and Services for the purposes of a business as defined in the Consumer Guarantees Act 1993. The provisions of that Act do not apply to the Products and Services we provide under this Agreement.

## 16. CONFIDENTIALITY

**16.1 Confidentiality:** Subject to clause 15.2, a Party receiving Confidential Information (Recipient) of the other (Discloser) must:

- a) keep in strict confidence any Confidential Information; and
- b) take precautions to preserve the confidentiality of the Confidential Information; and
- c) not disclose the Confidential Information to any person (other than in accordance with this clause) including, for the avoidance of doubt, any third party engaged in reviewing costs and pricing;
- d) use the Confidential Information only for the purposes authorised in writing by the Discloser at any time;
- e) make copies or excerpts of the Confidential Information only to the extent strictly necessary for the purposes authorised in writing by the Discloser at any time;
- f) return to the Discloser or destroy all Confidential Information, including copies and digital files if requested by the Discloser, and if requested by the Discloser provide written confirmation that all files and copies have been destroyed or returned, provided that any Confidential Information which is contained in any of the Recipient's board papers, back-up tapes, or in any notes or records which the Recipient is otherwise required by law to retain does not have to be destroyed if the Recipient identifies the precise Confidential Information which has been retained and ensures that such information is only used for the purposes authorised under this clause 16.1; and
- g) take all necessary action to prevent any unauthorised person obtaining access to the Confidential Information.

**16.2 Confidentiality Exceptions:** Clause 15.1 applies except:

- a) where the Discloser has given written consent to specific Confidential Information being released to a specific person;
- b) if the Confidential Information is generally and publicly available other than as a result of a breach of this Agreement by the Recipient;
- c) to Confidential Information legally obtained from a third party who is free to disclose it; or
- d) if disclosure of the Confidential Information is required by law or a Stock Exchange requirement (in which case the Recipient must immediately notify the Discloser of this requirement).

The Recipient may disclose Confidential Information to its employees and professional advisors, but only to the extent necessary for the purposes authorised by the Discloser at any time and will procure that such employees and advisors will comply with the confidentiality obligations contained in clause 16.1.

**16.3 Password for online access:** You will keep confidential any passwords, codes or log-in details used to access online information maintained by us in accordance with clause 15.1 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.

## 17. CUSTOMER INFORMATION

**17.1 Collection:** During your relationship with us we may collect information about you. We may:

- a) hold the information and share it with our employees, third party suppliers, contractors, other agents and service providers approved by Digital Island for providing directory listing and directory assistance services but only where this is necessary to enable us to offer or provide you the Products and Services, send you invoices, check that your responsibilities are being met, or otherwise to administer and enforce the Agreement;
- b) obtain the information by monitoring telephone calls or other communications between Digital Island and the customer for training purposes;
- c) share with relevant third parties any information needed to enable you to send or receive messages or information of any kind through other networks;
- d) be required to:
  - (i) share information with Internet service providers and law enforcement agencies if we reasonably consider that unlawful activity is taking place using Our Network; and
  - (ii) disclose that information for legal or regulatory purposes or to help maintain the law;
- e) share information to the extent appropriate with credit reference and debt collection agencies.

**17.2 Data sovereignty:** You acknowledge that, in providing the Services to you, we may consume products and services based in non-New Zealand jurisdictions which may necessitate the need for us to transfer, store and/or host your data (which may include customer and personal information) outside of New Zealand. +

## 18. PRIVACY

**18.1 Personal Information:** The customer may at times provide Digital Island with Personal Information, for example, when the customer applies to become a customer of Digital Island. Digital Island may also obtain Personal Information from the customer's use of the Services.

**18.2** The customer agrees that Digital Island may use the customer's information (which may include Personal Information) to:

- a) for credit checking and collections; and
- b) to provide the Products and Services; and
- c) to communicate about Digital Island's service notifications, current and future services; and
- d) comply with interception, capability, security, fraud investigation co-operation or emergency response requirements as permitted under the Privacy Act 2020; and
- e) as part of the sale or transfer of any part of Digital Island's business or assets.

**18.3** Digital Island's third party suppliers may be required to use information about the customer and their use of the Services for the purposes described in b), c) and d) above.

**18.4** The customer is entitled to see any Personal Information Digital Island holds about them and to request that any incorrect information be corrected.

**18.5** Digital Island will notify the customer if Digital Island is made aware of any Notifiable Privacy Breach that affects any information you have provided to us and where the Privacy Act 2020 requires individuals and/or the Privacy Commissioner to be notified. The parties will co-ordinate and consult with each other on the contents of any such notification(s). Where Digital Island considers it necessary, Digital Island may notify individuals and/or the Privacy Commissioner directly.

**18.6** In providing the Services, Digital Island will comply with the Privacy Act 2020 where applicable.

## 19. GENERAL

**19.1 Health and Safety:** 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.

**19.2 Provision to your Related Companies:** Where we agree, by the addition of a Related Companies Schedule to the Agreement, that any of your Related Companies may receive or use the Products and Services provided under the Agreement, you acknowledge that your 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 us 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.

**19.3 Subcontracting:** We may subcontract any of our responsibilities, in which case we will remain liable to you for meeting all those responsibilities.

**19.4 Resolving disputes:** Both Parties will attempt to resolve any dispute relating to the Agreement at the lowest possible level of escalation, in accordance with the provisions of this clause.

If a dispute arises, either Party may serve on the other Party a notice setting out, in summary, the nature of the dispute ("Dispute Notice"). Representatives of the Parties will meet within 10 Business Days of the Dispute Notice to attempt to resolve the dispute. If the dispute is not resolved within that time period, the dispute may be referred by either Party to the senior management or executives of both Parties and both Parties will then seek to resolve the dispute within a further 10 Business Days. For the avoidance of doubt, nothing in this clause will prevent either Party from seeking urgent injunctive relief where damages alone would be an inadequate remedy.

**19.5 Notices:** Notices required under the Agreement must be in writing and sent to the relevant contact person for each Party, at the address advised by each Party to the other. If sent by post to that contact address, it will be assumed delivered 3 Business Days after it has been posted. If a notice is sent by email to that contact address, the notice will only be assumed delivered once an acknowledgement is received.

Notifications concerning termination, breach or default of the Agreement may not be sent by email and must be addressed you at your physical address given and to us as follows:

Digital Island  
Level 3  
8 Nugent Street  
Grafton  
Private Bag 92028  
Auckland 1010

**19.6 Assignment:** You may not assign your rights or responsibilities under the Agreement without Digital Islands written consent, which will not be unreasonably withheld or delayed.

**19.7 Changes to General Terms and Service Descriptions:** We may change Digital Islands General Terms or any Service Description at any time. We will publish details of changes on our website [www.digitalisland.co.nz](http://www.digitalisland.co.nz) at least 30 days before the change is to take effect. If you reasonably consider any change to Digital Islands

General Terms will have a material effect on your commercial position, or in the case of any change to a Service Description that it will have a major detrimental effect on your Products and Services, then you may advise us of the details of this in writing. In this case, we may allow you to:

- a) in the case of changes to Digital Islands General Terms
  - (i) remain on Digital Islands existing General Terms; or
  - (ii) terminate the Agreement, subject to the payment of the Fees detailed in the definition of Termination Charges in clause 20; and
- b) in the case of changes to a Product Specification, terminate the Products and Services under that Product Specification; subject to the payment of the fees detailed in of the definition of Termination Charges in clause 20.

**19.8 Other changes:** Subject to clause 19.7 and any other variation process that the Parties have agreed in any Additional Schedule, you may request changes to the Products and Services in one of the following ways:

- a) standard service requests
  - (i) you may request some new or additional Products and Services from us over the phone, without recording anything further in writing between us. Generally these changes are restricted to minor changes to voice Services.
  - (ii) you may request a move, add or change for a number of our Products and Services via email. If we accept your request we will provide our confirmation by email with details of applicable costs ("Confirmation"). If you do not wish to proceed you must advise us within 24 hours of the Confirmation being sent. Where other information comes to hand e.g. as a result of a site visit, we may revise any pricing provided with the Confirmation if required, however any revised pricing will only apply if you have confirmed your acceptance of it (whether by email or otherwise).
- b) non-standard service requests will be carried out on a time and materials basis, at the rates advised by us to you, and will be agreed and recorded in a Statement of Work.
- c) any other variation to the Agreement must be recorded in writing and signed by the authorised representatives of both Parties.

**19.9 Independent contractor:** We provide our Products and 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.

**19.10 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.

**19.11 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.

**19.12 No responsibility for tax treatment:** You acknowledge that you have not relied on any information from anyone in Digital Island concerning the tax treatment of any payments under the Agreement, or any other matter relating to tax in relation to the Agreement, the Products and Services, and that you are responsible for determining the correct tax treatment of these matters.

**19.13 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.

**19.14 Counterpart, electronic and scanned copies:** The Parties may sign counterpart copies of the Agreement, all of which when signed and taken together will constitute a single agreement between the Parties. Transmission by scanning of a signed counterpart copy of the Agreement by one Party to the other, or electronic execution by Docusign e-signature will be deemed proof of signature of the original by such Party and the electronically signed or scanned copy transmitted will be deemed an original.

**19.15 Entire agreement:** The Agreement constitutes the entire agreement between the Parties relating to the provision of Products and Services by us to you, and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.

**19.16 No reliance:** Each Party:

- a) acknowledges that it has made its own independent enquiry and investigations in relation to the subject matter of this Agreement and has entered into this Agreement solely in reliance on its own judgement, and has not relied and is not relying on any statement or representation (written or oral) made by or on behalf of any party, or any director, employee, representative or advisor of any party except to the extent that such a statement or representation is expressly recorded in this Agreement; and
- b) agrees that (to the extent permitted by law) all implied representations or warranties of all other parties are excluded; and
- c) unconditionally waives any right to commence any proceeding against any Party, or any director, employee, representative or advisor of any Party, directly or indirectly arising from any statement or representation not expressly recorded in this agreement and made or given in connection with the transaction recorded by this Agreement.

This clause is intended to be for the benefit of, and to be enforceable under the Contracts (Privity) Act 1982 by, any director, employee, representative or advisor of each Party. However, this Agreement may be varied by the parties to it without the approval of those divisions and Related Companies.

## 20. DEFINITIONS AND INTERPRETATION

**"Additional Schedule"** means any Service Schedule, Statement of Work, Service Description or other schedule that we may agree with you.

**"Agreement"** means this Digital Island Business Agreement under which we provide Products and Services to you.

**"Bill Rate"** means in respect of any rate of interest to be calculated pursuant to this Agreement the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45 am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period.

**"Business Days"** means Monday to Friday inclusive, excluding national public holidays and the provincial anniversary day applicable to the affected Customer site.

**"Business Hours"** means 9:00am to 5:00pm on Business Days.

**"Confirmation"** is defined in clause 19.8(a)(ii). "Confidential Information" regardless of the form of disclosure or the medium used to store it, means any information received by a Party relating to the other Party or its Related Companies, or their business

(current and future), and includes information provided before the date of this Agreement and any copies of the above information or material derived from that information, any passwords or codes used to access online information maintained by us, and also includes the terms of this Agreement.

**"Dispute Notice"** is defined in clause 19.4

**"Equipment"** as defined in clause 5.3 means any hardware provided by Digital Island for use with the relevant Product or Service during the term of this Agreement.

**"Fees"** is defined in clause 7.1 and includes Termination Charges.

**"Force Majeure Event"** means anything outside the reasonable control of a Party, including acts of God, strikes by employees of a third party, acts or omissions (including laws, regulations, disapprovals or failures to approve) of any government or government agency and includes (unless expressly stated otherwise by other terms of the Agreement):

- a) unavoidable accident, explosion, public mains electrical supply failure, or nuclear accident;
- b) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
- c) requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity;
- d) Service Providers', or any other third party's acts or omissions (including failure to deliver) outside of Digital Island's reasonable control; and
- e) any other similar cause beyond the reasonable control of the Party concerned.

A Force Majeure Event does not include:

- f) any event which the affected party could have avoided or overcome by exercising a standard of reasonable care at a reasonable cost;
- g) a lack of funds for any reason or any other inability to pay; or
- h) strike, lockout, work stoppage or other labour hindrance by employees of a Party or its Related Companies unless the strike is part of an industry wide campaign which does not arise out of a dispute between that Party or Related Company and its employees.

**"Initial Term"** is defined in clause 3 and means the initial term defined in each Additional Schedule between Digital Island and you.

**"Insolvent"** means, in relation to a Party, that:

- a) a Party is, becomes, or is deemed to be, insolvent or bankrupt and is incapable of performing its obligations;
- b) a Party makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors; or
- c) 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
- d) any of its property; any resolution is passed, or any order is made in a proceeding, for the winding up or liquidation of a Party; or
- e) 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.

**"Intellectual Property"** means all intellectual property rights, including:

- a) patents, designs, trademarks, service marks, copyright material, registered designs trade names, symbols and logos;
- b) patent applications and applications to register trademarks, service marks and designs; and
- c) all formulae, methods, plans, data, drawings, specifications, characteristics, algorithms, source and object code, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, costings, brochures and other information.

**"LFC(s)"** means the Local Fibre Companies contracted by Crown Fibre Holdings Limited to deploy UFB fibre in New Zealand. Information relating to LFCs can be found at <http://www.crownfibre.govt.nz/crown-partners/>

**"LFC End User Terms"** means the terms and conditions relating to the provision (including installation) and use of that part of the relevant LFC's network located on your premises.

**"My Digital Island"** means the online self-service portal where Digital Island customers, authorised dealers and relevant third parties may collaborate, manage and order selected Products and Services.

**"Our Network"** means all core communications facilities utilised to provide services to you.

**"Party"** means Digital Island or the Customer, or both Digital Island and the Customer, as the context requires.

**"PPSA"** means the Personal Property Securities Act 1999.

**"Products"** means all computer and telecommunications hardware or related equipment (including any Software) and all other goods or property which are supplied by us (or any of our Related Companies) to you (or any of your Related Companies) and includes products and software described in any Additional Schedule.

**"Regulatory Event"** means any legislative or regulatory change (including any determination, direction or decision by a regulatory authority, or the introduction of or change to any regulations or undertaking) that directly or indirectly has the effect of:

- a) altering the terms of this Agreement;
- b) making the operation of this Agreement impracticable;
- c) materially altering the burden (financial or otherwise) of Digital Island providing Services under this Agreement;
- d) making Digital Island incapable of performing this Agreement; or
- e) causing Digital Island (voluntarily or otherwise) to materially alter its operations or structure.

**"Related Company"** has the meaning given in the Companies Act 1993, read as if the expression includes any body corporate and any company incorporated under the law of any jurisdiction.

**"Services"** means all services which are supplied by us (or any of our Related Companies) to you (or any of your Related Companies) and includes services described in any Additional Schedule and any Products provided as part of a Service.

**"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.

**"Service Provider"** means any third party provider of services required for Digital Island to provide Products and Services, including LFCs.

**"Service Schedule"** means any Service Schedule signed by Digital Island and you which describe the Products and Services we will provide to you.

**"Software"** means all system software, application software, software tools and software utilities which are supplied by us (or any of our Related Companies) to you (or any of your Related Companies) and includes software described in any Additional Schedule and any software provided as part of a Product or Service.

**"Digital Island General Terms"** is defined in clause 1 and means these terms and conditions which apply to all Products and Services which Digital Island provides to you.

**"Statement of Work"** means any Statement of Work signed by Digital Island and you which describes the Products and Services we will provide to you.

**"Digital Island"** means Digital Island Limited.

**"Termination Charges"** unless specified differently in a Service Schedule(s) and/or Statement(s) of Work; Termination Charges means:

a) For all Products and Services with fixed monthly Fees; 75% of the amount of any fixed monthly Fees otherwise payable by you, from the date of termination to the end of the Initial Term for the Products and Services (or part of the Products and Services) being terminated; plus

b) For all Products and Services with variable monthly Fees; 75% of the amount of any fixed and variable monthly Fees (for example usage, calling). This will be calculated based on your total average monthly variable Fees over the preceding 6 months for the Products and Services (or part of the Products and Services) terminated, or such shorter period if you have not been receiving the Products and Services for 6 months; plus

c) reimbursement to us of any costs (for example, for installation, equipment or project management) or Fees (monthly or otherwise) that have been waived, or amortised under the relevant Additional Schedule on the following basis:  $\text{Cost to pay} = \text{total cost} \times (\text{remaining months of relevant period over which the Fees were waived or amortised} / \text{total months of relevant period over which the Fees were waived or amortised})$ .

**"Third Party Terms"** means means any end user licence agreement, terms of service, acceptable use policy, privacy policy, product-specific terms, supplier requirements, service conditions, operating requirements, or other contractual terms imposed by a third-party manufacturer, supplier, licensor, software provider, cloud service provider, network operator or other third-party provider in connection with any Products or Services supplied under this Agreement. Third Party Terms may form a separate agreement between the Customer and the relevant third-party provider. For the avoidance of doubt, Third Party Terms are incorporated into this Agreement only to the extent expressly stated in the applicable Product Specification, Service Schedule, Statement of Work or Service Description and remain subject to the precedence provisions of this Agreement.

**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;
- e) the use of the words "includes" or "including" is not to be taken as implying any form of limitation; and
- f) the following words and phrases (and grammatical variations of them) have the meanings given to them in, or by virtue of, the PPSA: 'after-acquired property', 'personal property', 'proceeds', 'security agreement', and 'security interest'.