

EAGLE TECHNOLOGY GROUP – GENERAL TERMS

1 WHERE THESE TERMS APPLY

1.1 **Application:** Unless otherwise agreed writing, these general terms (**General Terms**) apply to, and are incorporated into, any agreement (each an *Agreement*, which term includes these General Terms) in any form concerning the supply of any product (including hardware and software, and the licence to any software (**Products**) or services (**Services**) provided by or on behalf of Eagle Technology Group Limited (NZCN 249100) to the person (jointly and severally if more than one) (**Customer**) acquiring the Products or Services (together, the **Deliverables**)).

1.2 **Precedence:** In the event of any inconsistency between the various parts of an *Agreement*, the following descending order of priority will apply:

- (a) Any specific contract for Deliverables (including any schedules);
- (b) Any statement of work;
- (c) Any order confirmation;
- (d) These General Terms.

2 EAGLE'S OBLIGATIONS

2.1 **Provision of Services:** Eagle will use reasonable endeavours to provide the Services in a manner in accordance with professional standards of diligence, care and attention which would reasonably and ordinarily be expected of professionals in New Zealand engaged in the same type of undertaking in similar circumstances, using personnel with suitable skills, education and experience. Eagle does not guarantee that the Services will be continuous or error-free.

2.2 **Timelines:** Unless expressly agreed otherwise, stipulations as to time are not of the essence. Eagle will use reasonable endeavours to provide the Deliverables in accordance with any timelines or milestones agreed in writing by the parties but will not be liable for any loss or damage arising from any delay, however caused.

3 CUSTOMER'S OBLIGATIONS

3.1 **Access:** If Eagle is to perform the Services at the Customer's premises, the Customer will provide the following at the Customer's expense:

- (a) Access to and the right to use the Customer's facilities reasonably necessary for Eagle to perform its obligations under the Agreement, including Internet access, computer systems and other IT infrastructure;
- (b) Access to and sufficient time with the Customer's technical, management and other personnel necessary for Eagle to perform its obligations under the Agreement;
- (c) A safe working environment to all Eagle personnel in compliance with all relevant legislation and regulations, including the Health & Safety at Work Act 2015.

3.2 **Defective Deliverables:** If any Deliverables or part of them are damaged or defective, the Customer must notify Eagle in writing within 5 working days of delivery or:

- (a) The Customer will be deemed to have accepted the Deliverables; and
- (b) If not otherwise excluded under the Agreement, to the maximum extent permitted by law Eagle will not have any liability in respect of the damage or defect.

4 PRODUCTS

4.1 **Risk:** Risk of loss of or damage to Products purchased by the Customer will pass to the Customer upon delivery, which takes place when the goods are delivered to the delivery address specified by the Customer or the Customer or its agent takes possession of the Products (as applicable).

4.2 **Title:** Notwithstanding the passing of risk in the Products or any other provision of the Agreement, until Eagle receives payment in full for the Products and all other amounts owing to Eagle:

- (a) Title and property in the Products remain vested in Eagle and will not pass to the Customer;
- (b) The Customer will hold the Products as Eagle's fiduciary agent and bailee, keep the Products apart, not part with possession of the Products and, if requested when payment is overdue, deliver the Products to Eagle or its nominee;
- (c) Without prejudice to any of its other rights, the Customer irrevocably authorises Eagle to (at Eagle's discretion):
 - (i) Enter upon any premises where Eagle suspects the Products may be stored and repossess the Products;
 - (ii) Resell any of the Products in which property has not passed and apply the proceeds in or towards payment of any amounts owing by the Customer to Eagle,

in each case without notice, and the Customer indemnifies Eagle from and against all costs, claims, demands, or actions by any party arising from that action.

4.3 **End User Licence:** By using Product that is software, the Customer accepts the terms and conditions of any end user licence agreement relating to that software, and will comply with all those terms and conditions.

5 CHARGES AND PAYMENT

5.1 **Charges:** The amounts payable by the Customer to Eagle for Deliverables (*Charges*) will be calculated at Eagle's standard prices/rates from time to time.

5.2 **Notice of Variation:** Eagle may vary any regular on-going Charges for Services by giving the Customer 20 working days' prior notice.

5.3 **Increased Prices:** Prior to delivery Eagle may vary any quote or estimate of Charges Eagle has provided to the Customer to compensate Eagle for:

- (a) Any increases in the cost price to Eagle of the Product or provision of Services. Where this applies, the Customer will be notified by Eagle in advance and given the right to change or cancel the supply;
- (b) Any adverse exchange rate movement.

5.4 **Estimates and Quotes:** All indications of price are estimates only unless clearly labelled as a quote. Quotes are valid only for the period specified on the quote or, if no period is specified, for 10 working days.

5.5 **Expenses:** In addition to the Charges, Eagle may charge the Customer for any expenses reasonably incurred by Eagle in providing the Deliverables.

5.6 **Invoices and Payment:** Eagle will invoice on the despatch of Products and/or supply of Services, provided that the Customer may be required by Eagle, in Eagle's sole discretion, to pay for any Products on invoicing by Eagle in advance of the Products being ordered by Eagle from its suppliers or in advance of delivery to the Customer. Other costs will be invoiced as they are incurred. The Customer will make payment on or before the date specified in the relevant invoice or (if not specified) within 7 days of the date of Eagle's invoice. Time for payment is of the essence.

5.7 **GST & Other Taxes and Duties:** The Charges are exclusive of goods and services tax (GST) and other taxes (excluding income tax), duties and levies levied or assessed in connection with the supply of the Deliverables or the payment of the Charges, unless otherwise expressly stated. The Customer will pay to Eagle all such GST duties, taxes, levies or fees.

5.8 **Interest on Late Payment:** If any Charge is in arrears, the Customer will pay to Eagle interest calculated and compounded daily on the

outstanding sum from the date payment was due until the actual date of payment at the rate of 5% per annum above the then current interest rate on business overdraft facilities charged by Eagle's trading bank. If any late payment is the subject of a genuine dispute then the Customer will only pay interest under this clause on the amount that is ultimately determined to be payable by the Customer whether by agreement, dispute resolution process or Court order.

- 5.9 **Disputed Invoices:** If the Customer has a genuine dispute in relation to all or any portion of an invoice submitted by Eagle, it may withhold payment of the amount subject to the dispute. Either party may refer the disputed payment for dispute resolution set out in these General Terms. The Customer will pay the undisputed amount when it becomes due and Eagle will continue to perform its obligations under the Agreement while the dispute is being resolved.
- 5.10 **No Set Off:** The Customer may not set off any monies claimed to be owed by Eagle to the Customer against sums due to Eagle.
- 5.11 **Costs:** All fees and expenses incurred by Eagle (including solicitor-client legal fees) in connection with the enforcement of the Agreement because of a default of any provision of the Agreement by the Customer are payable by the Customer.

6 CONFIDENTIALITY

- 6.1 **Confidentiality:** Each party agrees to keep the Confidential Information of the other party disclosed to it strictly confidential and to use that Confidential Information solely for the purpose of performing its obligations or obtaining the benefits under the Agreement and to immediately notify the other party of any breach or possible breach of confidentiality. Each party will be responsible and liable for the acts and defaults of its directors, employees, contractors or agents (*Personnel*) and advisers in respect of the other party's Confidential Information.
- 6.2 **Confidential Information:** For the purposes of these General Terms, **Confidential Information** means all information, know-how or material in any form relating to, or confidential or proprietary to, or provided by or on behalf of, a party (**Owner**) which becomes known by or is provided to the other party (**Recipient**) as a result of the course of dealings between them in relation to the Agreement, is designated by a party as confidential or which the recipient ought reasonably know is confidential, including any non-public, commercially sensitive or secret information relating to the Owner's business, trade secrets, data, operations, customers, stakeholders, activities, planning, investigations, products, services, research and development and the contents of the Agreement, but excludes any information to the extent the recipient can show the relevant information:
- Is now or becomes publicly available (other than through breach of an obligation of confidentiality); or
 - Is required by law or pursuant to the listing rules of any applicable stock exchange to be disclosed, provided that prior to making the disclosure the Recipient has given the Owner notice of the request for disclosure.

7 INTELLECTUAL PROPERTY

- 7.1 **Definitions:** For the purposes of these General Terms:
- Developed IP** means all Intellectual Property (excluding any Eagle Materials) forming part of the Deliverables that are specifically developed by Eagle or its Personnel solely for the Customer in connection with the performance of the Agreement;
 - Eagle Materials** means all Intellectual Property owned by or licensed to Eagle (and any derivatives and modifications thereof), including software, source code, development tools and routines other than that which has been developed after the date of the Agreement solely and specifically for the Customer under the Agreement;
 - Intellectual Property** means all worldwide intellectual property and associated rights and interests (including common law rights and interests) in any jurisdiction (whether protectable by registration or not) including:
 - Copyright, patents, trade marks, trade names, service marks, registered designs, circuit layouts, domain names, symbols and logos and all goodwill rights associated with such works, layouts;
 - Patent applications and applications to register trade marks, service marks and designs; and

- Know-how, Confidential Information, ideas, concepts, tools, techniques, computer program code (being both object code and source code unless expressly stated otherwise), data, inventions, discoveries, developments, trade secrets, information and logical sequences (whether or not reduced to writing or other machine or human readable form).

- 7.2 **Developed IP:** Developed IP will, unless expressly provided otherwise in the Agreement, be the property of the Customer, provided that the Customer will have no ownership or other rights in or with respect to any Developed IP (or portion) until full payment has been made to Eagle for the Services relating to that Developed IP.
- 7.3 **Eagle Materials:** The Customer acknowledges that Eagle Materials constitute primary infrastructure in Eagle's business and any Eagle Materials used by Eagle or its Personnel in the provision of the Deliverables (whether or not incorporated into or made a part of any of the Deliverables) remain the exclusive property of Eagle. Except as expressly agreed in writing by the parties, the Customer will not copy, modify, distribute or transfer (by any means), display, sublicense, rent, reverse engineer, decompile (other than as permitted by law), or disassemble the Eagle Materials.
- 7.4 **Licence to Use Eagle Materials:** To the extent of Eagle's own rights to them, Eagle grants to the Customer a perpetual, New Zealand wide, royalty-free, non-exclusive, non-transferable irrevocable licence to use any Eagle Materials supplied by Eagle incorporated into, made a part of, or necessary for the use of any of the Deliverables, provided the Customer is not in breach of its payment obligations under the Agreement. Eagle may suspend or terminate the licence granted under this clause 7.4 on any suspension under clause 11.3 or any termination of the Agreement by Eagle due to a breach by the Customer of its payment obligations under the Agreement.
- 7.5 **Residuals:** Eagle and its Personnel will be free to use and employ their general skills, know-how, methods, techniques, or skills gained or learned during the provision of any Services (if they have general applicability beyond the specific Services delivered under the Agreement), so long as they apply that information without disclosure of any Confidential Information of the Customer and without unauthorized use or disclosure of the Customer's Intellectual Property.
- 7.6 **Third-Party Properties:** The Customer will provide, at the Customer's expense, all necessary consents and licences for Eagle to use the Customer's and third party products and services which are necessary for the successful provision of the Deliverables which are not specifically identified in the Agreement as to be provided by Eagle.

8 RELATIONSHIP

- 8.1 **Independent Contractor:** The relationship between the Customer and Eagle is, and will be for all purposes, that of a company and independent contractor, and nothing in these General Terms or any Agreement will be taken as constituting any other relationship, including an agency, joint venture or partnership.
- 8.2 **Sub-contracting Permitted:** Eagle may sub-contract the provision of the Deliverables. The sub-contracting will not relieve Eagle from its responsibility for performance of the Agreement.

9 LIABILITY

- 9.1 **Exclusion of Liability:** In no event will the measure of damages against Eagle for any breach of the Agreement, or any negligence or other action or contravention of any statutory or common law include, nor will Eagle be liable for:
- Any breach of the Agreement to the extent that the breach is attributable to the negligence, misconduct or breach of the Customer or its Personnel; or
 - Any loss or damage that results from a Force Majeure Event; or
 - Any loss of profit or revenue, exemplary damages, deletion or corruption of electronically or digitally stored information, or without limiting the foregoing, any indirect or consequential loss or damage howsoever described or claimed.
- 9.2 **Limitation of Liability:** If Eagle's liability is not excluded under the Agreement, to the extent permitted by law, Eagle's liability in relation to the supply of Deliverables is limited to any one or more of the following as Eagle in its sole discretion considers appropriate:
- In the case of Products:

- (iv) The replacement of the Product or the supply of equivalent Product;
 - (v) The repair of the Product;
 - (vi) The payment of the cost of replacing the Product or acquiring equivalent Product;
 - (vii) The payment of the cost of having the Product repaired.
- (e) In the case of Services:
- (i) The supplying of the Services again; or
 - (ii) The payment of the cost of having the Services supplied again.

To the extent the foregoing limitation does not apply or is not effective in accordance with its terms, then in no event will the aggregate liability of Eagle to the Customer arising from all breaches of the Agreement, tort (including negligence) or other action or contravention of any statute or otherwise, exceed the total amounts paid by the Customer to Eagle under the applicable Agreement to which the breach or action relates over the 12 months preceding the Customer's claim.

- 9.3 **No Third Party Claim:** Eagle is not liable to any party other than Customer in connection with the Agreement or the Deliverables. The Customer will indemnify Eagle and keep Eagle indemnified against all and any demands, claims, actions and proceedings made by any party other than the Customer against Eagle in connection with or arising out of the Customer's receipt or use of any Deliverable.
- 9.4 **Responsibility for Results:** The Customer will be responsible for the results obtained from use of the Deliverables.
- 9.5 **Manufacturer's Warranties:** To the extent permitted under the applicable third party warranty, Eagle will use reasonable endeavours to pass on to the Customer the benefit of any third party warranty for Products provided by Eagle under the Agreement. The Customer acknowledges that most third party manufacturer's warranties require the Customer to return any defective Products to the manufacturer's service centre and the Customer will be responsible for the costs of transport. Unless expressly agreed otherwise, to the extent permitted by law, Eagle does not provide any warranty for Product created, manufactured or developed by a third party and is not liable to the Customer in any way whatsoever for any defect in Products created, manufactured or developed by a third party. Eagle strongly recommends that the Customer detach and retain the third party manufacturer's warranty card on delivery of the Products.
- 9.6 **Exclusion of Warranties:** All representations, terms, warranties, guarantees or conditions (whether implied or by statute, common law or custom of the trade or otherwise) in respect of any Deliverables supplied or to be supplied in accordance with the Agreement, not expressly included in the Agreement are expressly excluded to the maximum extent permitted by law, including implied warranties, guarantees or conditions of merchantability and fitness for a particular purpose. The Customer accepts that to the extent that anything supplied to it by Eagle under an Agreement is for the purposes of a business, the Consumer Guarantees Act 1993 does not apply.
- 9.7 **Customer's Acknowledgement:** The Customer acknowledges that the Deliverables are purchased relying solely upon the Customer's skill and judgment and not on Eagle's representations or other conduct. The purpose of this clause 9.7 is to expressly contract out of the Fair Trading Act 1986 to the maximum extent possible, and the parties agree that it is fair and reasonable to do so.

10 DISPUTE RESOLUTION

- 10.1 **Stay Of Proceedings:** If a dispute arises out of or relates to the Agreement including any claim in tort, in equity or pursuant to any statute (**Dispute**) a party may not commence any proceedings relating to the Dispute unless it has complied with the following clauses of this section, except where the party seeks urgent interlocutory relief.
- 10.2 **Dispute Resolution:** A party to the Agreement claiming that a Dispute has arisen must give written notice to the other party specifying the subject matter and details of the Dispute and the relief sought. After written notice of Dispute being given, the parties must then for a period of 20 working days endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques (such as negotiation, mediation, expert evaluation or determination or similar techniques) as agreed by them.

- 10.3 **Other Remedies:** If the Dispute is not resolved within 20 working days of the written notice of Dispute being given the parties are free to pursue their legal remedies as they choose.

11 TERMINATION

- 11.1 **Termination By Either Party:** Either party may terminate the Agreement immediately by notice in writing if the other party:
- (a) Assigns its rights or obligations under the Agreement otherwise than in accordance with these General Terms;
 - (b) If an application to wind up the other party has been made;
 - (c) If a liquidator, receiver or administrator or statutory manager has been appointed to all or substantially all of the property of the other party; or
 - (d) Is insolvent or presumed to be insolvent under any applicable laws.
- 11.2 **Termination by Non-Defaulting Party:** If one party defaults in a material manner in the performance of any of its obligations under the Agreement and:
- (a) The default is capable of being remedied, and, within 20 working days of notice by the non-defaulting Party specifying the default, is not remedied; or
 - (b) The default is not capable of being remedied,
- the non-defaulting Party may by notice in writing immediately terminate, or at its sole discretion, temporarily suspend the operation of the Agreement, until the default is remedied.
- 11.3 **Suspension by Eagle:** If the Customer defaults in the payment of any sum due, Eagle may, at its discretion, suspend the provision of all or any part of the Deliverables under the Agreement, and under any other Agreement between Eagle and the Customer, immediately by notice in writing to the Customer. Any such suspension by Eagle will not affect any other right or remedy of Eagle, or any obligation or liability of the Customer under the relevant Agreement.
- 11.4 **Consequences of Termination:** Following the expiry or termination of all or any part of the Agreement:
- (a) All Charges and other payments outstanding or incurred prior to the date of expiry or termination under the terminated part of the Agreement will become immediately due and payable;
 - (b) Each party will either promptly deliver to the other or, at the other party's option, destroy and certify the destruction of, all of the other party's property and Confidential Information (in any reasonable format requested by the other party) under the terminated part of the Agreement, as and when reasonably requested in writing by the other party;
 - (c) Except in the case of termination by Eagle, Eagle will upon payment of applicable Charges, promptly deliver to the Customer all work in progress on any Deliverable in Eagle's possession or control under the terminated part of the Agreement.
- 11.5 **Accrued Rights:** The expiry or termination of all or any part of an Agreement will be without prejudice to the rights of the parties accrued up to the date of such expiry or termination.
- ## 12 FORCE MAJEURE
- 12.1 **No Liability:** Notwithstanding any other provision of the Agreement, neither party will be liable for any failure or delay in complying with any obligation under any Agreement (excluding any payment obligation) if :
- (a) The failure or delay arises from a Force Majeure Event;
 - (b) That 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) That party uses its best endeavours to:
 - (i) Mitigate the effects of the Force Majeure Event on that party's obligations under the Agreement;
 - (ii) Perform that party's obligations which are not affected by the Force Majeure Event; and

- (iii) Perform that party's obligations under the Agreement on time despite the Force Majeure Event.

12.2 **Resumption of Performance:** Performance of any obligation affected by a Force Majeure Event will be resumed as soon as practicable after the termination or abatement of the Force Majeure Event.

12.3 **Definition:** For the purpose of these General Terms, Force Majeure Event means any Act of God or act of nature, fire, smoke damage, earthquake, storm, flood, water damage, or landslide; unavoidable accident, explosion, public mains electrical supply failure, or nuclear accident; sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not); requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity; or any other cause beyond the reasonable control of the party concerned; but does not include strike, lockout, work stoppage or other labour dispute or a lack of funds for any reason or any other delay or inability in relation to any payment.

13 PRIVACY

13.1 **Use of Personal Information:** The Customer and each guarantor (where applicable) acknowledge and agree that Eagle may collect, retain and use information that is *Personal Information* as defined in the Privacy Act 1993 for the purpose for which it is provided, including assessing the Customer's or guarantor's creditworthiness, disclosing information to any credit provider or any credit reporting agency, or to any debt collection agency, and/or providing information about products and services that Eagle thinks might be of interest to the Customer or the guarantor. Our privacy policy can be found on our website www.eagle.co.nz.

13.2 **Marketing Material:** If the Customer or the guarantor (as the case may be) asks Eagle not to provide them with marketing material relating to Eagle's Products or Services, Eagle will comply with that request.

13.3 **Access to and Correction of Information:** The Customer and any guarantor may ask Eagle to show the Customer or the guarantor (as the case may be) the Personal Information it holds about the Customer or the guarantor themselves (but not about the other) and to make corrections to it.

14 GENERAL

14.1 **Assignment by Eagle:** Eagle may at any time assign any of its rights or obligations under any Agreement.

14.2 **Assignment by the Customer:** The Customer must not assign any of its rights or obligations under any Agreement except with the prior written consent of Eagle, which will not be unreasonably delayed or withheld. A change in control or in the beneficial ownership of the Customer will be deemed to be an assignment.

14.3 **Waiver:** No waiver of any breach of the Agreement by either party will be effective except an express waiver in writing signed by the party

against whom enforcement of the waiver is sought. A waiver of either party's rights or remedies due to any particular breach of any provision of the Agreement will not be construed as a waiver of any other breach of the same or any other provision. Termination of an Agreement will not operate as a waiver of any rights, powers or remedies of either party in respect of any breach giving rise to such termination or otherwise arising under that Agreement prior to termination.

14.4 **Notices:** All notices to be given under an Agreement must be in writing and will be properly given if sent by email, facsimile or by prepaid post to the last address and contact details of the addressee provided by the addressee to the other party. Any notice sent pursuant to this clause will be deemed to have been received on the third working day following posting or on confirmation of successful transmission (as applicable).

14.5 **Unenforceability:** If any provision of these General Terms or any Agreement is held to be unenforceable under any law, that provision will be deemed modified to the extent necessary to comply with such law, or if the modification would be impracticable, will be deemed deleted and none of the other rights or obligations in these General Terms or the Agreement (as the case may be) will be affected or prejudiced.

14.6 **Entire Understanding:** The Agreement embodies the entire understanding of the parties relating to the matters referred to in it. The Agreement supersedes all prior understandings and agreements with respect to the matters contemplated in the Agreement.

14.7 **Survival:** All the obligations contained in these General Terms or the Agreement which are by their nature intended to and are capable of surviving the termination of an Agreement will continue in full force and effect according to their terms.

14.8 Amendments:

(a) No amendment to an Agreement will be effective unless it is in writing and signed by the parties.

(b) Eagle reserves the right to review these General Terms at any time. Eagle will notify the Customer of any changes. The Customer will be deemed to have accepted those changes if the Customer makes a further request for Eagle to provide Deliverables, and in that case the General Terms (as amended) will apply to each subsequent supply of Deliverables.

14.9 **Counterpart Copies:** An Agreement may be signed in two or more counterparts (including email or facsimile copies), all of which when taken together will constitute one and the same document and a binding and enforceable agreement between the parties.

14.10 **Governing Law:** These General Terms and each Agreement will be governed by and construed in all respects in accordance with the laws of New Zealand. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.