

NZ TAXI COMMUNICATIONS LIMITED

SERVICE AGREEMENT

STANDARD TERMS AND CONDITIONS

FOR PROVISION OF SERVICES

1. STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

- 1.1 These terms and conditions are the standard terms and conditions for the provision by NZTAXICOM of Services.
- 1.2 They are, except to the extent expressly varied in any Service Agreement, incorporated by reference in and form a part of all NZTAXICOM Service Agreements.
- 1.3 These terms and conditions may be varied at any time by NZTAXICOM giving 20 Business Days' notice of such variation on its website or by using any other means to notify the Customer of such variation.
- 1.4 These terms and conditions appear on NZTAXICOM's website (www.nztaxicom.net.nz).

2. DEFINITIONS

These terms govern the relationship between the customer and NZTAXICOM and form part of the agreement. In these terms:

Business Day means any day other than a Saturday or a Sunday on which trading banks are open for banking business in New Zealand;

Commencement Date means the date specified in paragraph 4 of the Service Agreement;

Confidential Information means information not in the public domain obtained by one party from the other party, that is, or is acquired in connection with,

(a) the terms and conditions or subject matter of any Service Agreement;

(b) the performance of any Service Agreement;

(c) the negotiations relating to any Service Agreement (including negotiations prior to the date of the agreement); or

(d) the other Party's business including but not limited to:

(i) the names, addresses or telephone numbers of shareholders, Operators, members, Drivers, contractors, employees or lessees;

(ii) the names, addresses or telephone numbers of customers;

(iii) any material information contained or recorded in databases or systems belonging to, or provided by, the other Party; or

(iv) information relating to the other Party's processes, trade secrets, marketing and merchandising methods, finance, business systems, techniques, costs, prices, pricing structures and intellectual property;

Customer means the customer identified in the Service Agreement;

Customer's contact number(s) and address(es): means the contact number(s) and website URL address(es) specified in paragraph 9 of the Service Agreement;

Drivers means those persons who are drivers employed by or contracted to the Customer from time to time;

Equipment means either the Managed Equipment or the Provided Equipment, or both;

Extended Term means the term of months specified in paragraph 4 of the Service Agreement;

Fees means the fees for the Services in the amount specified in paragraph 5 and schedule 2 of the Services Agreement, and adjusted from time to time in accordance with the Service Agreement;

Force Majeure means, in relation to NZTAXICOM, an event outside the reasonable control of NZTAXICOM affecting its ability to perform any of its obligations under the Service Agreement including an act of God, fire, flood, lightning, war, act of terrorism, riot or civil commotion, strike, lock out or other industrial action, whether of NZTAXICOM's own employees or others, failure of supplies of power, the NZTAXICOM's Infrastructure, the failure or non-availability of any telecommunications services or infrastructure, fuel, transport, equipment, raw materials or other goods or services (to the extent that such failure could not have been avoided by exercising reasonable foresight). To avoid doubt, a lack of funds is not a Force Majeure event, but any event or circumstance beyond NZTAXICOM's reasonable control is;

GST means goods and services tax under the Goods and Services Tax Act 1985, as amended from time to time;

Initial Term means the term of months specified in paragraph 4 of the Service Agreement;

Insolvent means:

(a) an inability (whether actual or deemed by law) to pay debts when they fall due;

(b) being bankrupt, in receivership and/or management, in liquidation, in interim or provisional liquidation, under official management or

administration, wound up, dissolved, struck off or removed from the register, or subject to any insolvent arrangement;

(c) making or proposing any assignment or composition with or for creditors;

(d) having committed any act of bankruptcy;

(e) being subject to statutory management pursuant to any legislation or protected from any creditors, or declared at risk, under any legislation;

Intellectual Property means all intellectual property and industrial property, or equivalent property rights and interests of any person (including common law rights and interests) including:

(a) inventions whether patented or not, patents, branding, trademarks, service marks, copyright, designs (whether registered or not), trade names, symbols and logos and layout design rights;

(b) patent applications, applications to register trademarks, service marks and designs; and

(c) knowhow, tools, techniques, computer program code, Confidential Information, trade secrets (whether or not- reduced to writing or other machine or readable form);

Managed Equipment means any equipment that NZTAXICOM manages or maintains as part of any service for the Customer, specified in schedule 1 paragraph 1 of the Service Agreement;

NZTAXICOM means NZ Taxi Communications Limited, and every related company of NZ Taxi Communications Limited, and all officers, employees and contractors of any of those companies, and everyone else any of those companies is responsible for;

NZTAXICOM's Infrastructure means all core communications facilities owned by the NZTAXICOM which NZTAXICOM uses to provide the Services for the Customer and for other NZTAXICOM customers, excluding Provided Equipment and Managed Equipment;

Provided Equipment means any equipment that NZTAXICOM has provided to the Customer under a Service Agreement, specified in schedule 1, paragraph 1 of the Service Agreement, but does not include any equipment that is owned by the Customer;

Radio Rules means the general rules and processes of the Customer concerning radio and booking communications;

Service and **Services** means all services and goods NZTAXICOM supplies to the Customer, specified in schedule 1, paragraph 1 of the Service Agreement;

Service Agreement means any agreement for services entered into by the Customer and NZTAXICOM in the form of, or similar to, the Service Agreement attached to the agreement;

Term means the term of the Services Agreement which shall, subject to the terms and conditions of the Service Agreement, be for the Initial Term as specified in the Service Agreement, and, if extended by the Customer in accordance with the Service Agreement, any Extended Term; and

Vehicles means the vehicles which are used by any of the Customer's operators to provide a taxi service, as approved from time to time in writing by NZTAXICOM.

3. SERVICE AGREEMENTS

3.1 The Customer and NZTAXICOM expect to enter, from time to time, Service Agreements.

3.2 Each Service Agreement will:

- (a) commence on the Commencement Date;
- (b) subsist for the Initial Term and, if extended in accordance with its terms, any Extended Term;
- (c) describe the Service or Services;
- (d) set out the Fee or Fees to be paid for the Service or Services;
- (e) describe the applicable reporting requirements for NZTAXICOM; and
- (f) describe any other agreed arrangements concerning the Service or Services.
- (g) Each Service Agreement will be substantially in the form set out in the Schedule.

4. ACCOUNT MANAGEMENT AND REVIEW

4.1 NZTAXICOM will from time to time assign an account manager to the Customer who will:

- (a) be the Customer's first point of escalation for any issues; and
- (b) be responsible for the overall management of the relationship between NZTAXICOM and the Customer.

4.2 NZTAXICOM will appoint service representatives for the Customer who will:

- (a) act as an interface at the operations management level, with responsibility for delivery of the Services;
 - (b) consult and communicate with the Customer's appropriate personnel on a day-to-day basis; and
 - (c) be an employee of NZTAXICOM, but will be the Customer's advocate within NZTAXICOM for the Customer's service needs.
- 4.3 NZTAXICOM will ensure that the Customer have access to appropriate NZTAXICOM senior representatives, to enable discussion of important issues arising out of the Service Agreement.
- 4.4 NZTAXICOM will provide monthly reports on the Services.

5. NZTAXICOM TO PROVIDE THE SERVICES

- 5.1 Whenever NZTAXICOM provides the Customer with a Service or Services, NZTAXICOM will;
- (a) provide the service with care and skill;
 - (b) begin providing the Services by no later than the Commencement Date;
 - (c) make sure the Service meets any specifications in the Service Agreement, or in any other documents, such as service level agreements, although NZTAXICOM does not guarantee the Service will be continuous or fault-free;
 - (d) where practicable, give the Customer reasonable notice, via e-mail, of major works by NZTAXICOM which are likely to adversely affect the Services; and
 - (e) keep the customer informed about NZTAXICOM's services and any new services which may benefit the Customer's business.
- 5.2 Whenever NZTAXICOM provides the Customer with Provided Equipment, it will make sure:
- (a) the Provided Equipment is safe, durable and of good appearance;
 - (b) any software forming part of the Provided Equipment has been tested for known viruses at the time NZTAXICOM provides the software; and
 - (c) the Provided Equipment is approved for connection to the rest of NZTAXICOM's Infrastructure at the time NZTAXICOM provides the Provided Equipment.

- 5.3 The Customer may at any time request upgrades of the Provided Equipment or the Services and NZTAXICOM will advise the Customer of any additional costs associated with the upgrade.
- 5.4 If there is, from time to time, a fault:
- (a) NZTAXICOM will fix any fault in NZTAXICOM's Infrastructure as soon as it reasonably can. No additional fees are payable for this Service. NZTAXICOM will endeavour to fix faults in any of the Equipment that NZTAXICOM manages. The standard Fees payable by the Customer under the Services Agreement cover the cost of NZTAXICOM fixing, during its normal service hours, those faults which occur through normal wear and tear, or a defect in design, materials or manufacture; and
 - (b) if the Customer wants NZTAXICOM to investigate or fix anything not covered by the standard Fees, then the Customer will need to pay additional fees at NZTAXICOM's standard rates for that work.
- 5.5 NZTAXICOM will employ all staff necessary to provide the Services.
- 5.6 NZTAXICOM will provide the training Services in accordance with the Service Agreement.

6 THE CUSTOMER'S RESPONSIBILITIES

- 6.1 Whenever NZTAXICOM provides a Service or Services for the Customer, the Customer will;
- (a) follow NZTAXICOM's reasonable directions about the use of the Service (including despatch procedures which may be varied from time to time by NZTAXICOM);
 - (b) do its best to make sure that all information it gives NZTAXICOM is correct and complete;
 - (c) use the Services only for the Customer's own business purposes;
 - (d) not sell, rebill or otherwise provide the Service or Services to any third party without NZTAXICOM's consent;
 - (e) use the Services only for the Permitted Use of the Services and for lawful purposes and without being a nuisance to anyone;
 - (f) never interfere with the reasonable use of the Service or Services by NZTAXICOM's other Customers;
 - (g) be responsible for anyone else who uses the Customer's service, or does anything unauthorised relating to the Service or Services; and

- (h) if required by NZTAXICOM, obtain any third party authorisation, licence or consent necessary or prudent for NZTAXICOM to provide the Service or Services (such as resource management or building consents).

6.2 Where NZTAXICOM supplies the Customer with any Provided Equipment, or manages or maintains any Managed Equipment, the Customer must:

- (a) arrange for the Provided Equipment to be installed in a suitable place agreed to by NZTAXICOM, leave it installed there and not interfere with it;
- (b) protect the Provided Equipment from radio or electrical interference, power fluctuations, abnormal environmental conditions, theft and any other risks of loss or damage; where NZTAXICOM supplies Provided Equipment, this responsibility applies from the time it is delivered to the Customer;
- (c) provide proper lighting, air conditioning and fire protection, an approved power supply and approved wiring, and meet any other special requirements set out in the Service Agreement;
- (d) make sure any software forming part of the Provided Equipment (other than software provided by NZTAXICOM) is not affected by any virus;
- (e) follow NZTAXICOM's reasonable directions, and any directions from the manufacturer of the Provided Equipment, when using the Provided Equipment and never use the Provided Equipment for purposes for which it is not designed;
- (f) only use the Provided Equipment at the site location agreed to by NZTAXICOM;
- (g) not damage the Provided Equipment; if the Provided Equipment is damaged or lost the customer will notify NZTAXICOM immediately;
- (h) not attempt to sell, assign, transfer, or otherwise dispose of (whether by security or otherwise) or encumber the Provided Equipment in any way;
- (i) not alter, modify, adjust, repair or recalibrate the Provided Equipment;
- (j) when any Provided Equipment is no longer required, NZTAXICOM may remove it and the Customer will get any consents required for NZTAXICOM to do this (such as landlord's consent); and
- (k) the Customer must return the Provided Equipment to NZTAXICOM in good order and condition (fair wear and tear excepted) in accordance with at a time and place nominated by NZTAXICOM within five (5) Business Days of the effective date of expiry or termination of the Service Agreement.

- 6.3 For the Customer's own safety, and so that Services to the Customer and other NZTAXICOM Customers are not disrupted, the Customer must help safeguard NZTAXICOM's Infrastructure and the Equipment. The Customer must:
- (a) let NZTAXICOM have reasonable, safe access to the Customer's premises, for the purpose of maintaining or developing NZTAXICOM's Infrastructure or the Equipment, or for any other reasonable purpose, provided that the people that NZTAXICOM sends will carry proof of their identity;
 - (b) follow NZTAXICOM's reasonable directions when connecting anything to NZTAXICOM's Infrastructure or the Equipment and make sure it is installed to NZTAXICOM's specifications;
 - (c) never interfere with NZTAXICOM's Infrastructure or the Equipment, and ensuring that only people NZTAXICOM authorises may work on it; and
 - (d) pay NZTAXICOM's fees for repairing or replacing any part of NZTAXICOM's Infrastructure or the Equipment, which is lost or damaged by the Customer, or by anyone the Customer is responsible for; there is no charge where damage occurs through normal wear and tear.

6.4 In relation to the Personal Property Securities Act 1999:

- (a) this agreement constitutes a security agreement which provides for a security interest in favour of NZTAXICOM for the purposes of the Personal Property Securities Act 1999 in all of the Provided Equipment (including PABXs, routers, switches and any particular items of Provided Equipment referred to in a Service Agreement or other relevant record maintained by NZTAXICOM, on the basis that such record is deemed to be assented to by the Customer and form part of the Service Agreement);
- (b) the Customer will promptly do anything that NZTAXICOM reasonably requires to ensure that NZTAXICOM has a perfected security interest in all of the Provided Equipment. The Customer waives its right to receive a copy of any verification statement in respect of any financing statement registered by NZTAXICOM; and
- (c) the Customer agrees that it will not:
 - (i) create, permit or allow to subsist any other security interest in the Provided Equipment; or
 - (ii) dispose of, or permit the disposal of any of the Provided Equipment.

6.5 The Customer must:

- (a) arrange for the de-installation of all pre-existing equipment and infrastructure in a manner so as to enable NZTAXICOM to provide and install the Provided Equipment in accordance with the Service Agreement;
- (b) provide NZTAXICOM and its staff and contractors with appropriate rights of access to its facilities, including to the Managed Equipment, at any time after the date of the Service Agreement (including before the Commencement Date);
- (c) hold the Customer's Radio Licences referred to in the Service Agreement in its own name for the Term at its own cost;
- (d) provide the Radio Rules to NZTAXICOM and ensure that during the Term they are not changed without the prior consent of NZTAXICOM; and
- (e) provide at its expense all necessary base station amenities and radio towers.

6.6 The Customer must use the Services only for:

- (a) the Vehicles; and
- (b) the carrying on by the Customer's members and operators of a taxi service using a small passenger service vehicles operated under a small passenger vehicle licence as a taxi pursuant to the Land Transport Act 1998 and the Land Transport Operator Licensing (or any other current legislation, rule or regulation from time to time) in the Permitted Service Use Area specified in paragraph 7 of the Service Agreement.

6.7 The Customer must take out insurance for the Provided Equipment on before taking delivery of it with an insurer acceptable to NZTAXICOM and maintain insurance over the Provided Equipment throughout the Term according to NZTAXICOM's directions at any time (for example, against fire, accident or theft) for the full insurable value of the Provided Equipment, and comply with the following:

- (a) the Customer must ensure that each insurance policy notes NZTAXICOM's interest as owner and that the terms and the amount insured are satisfactory to NZTAXICOM;
- (b) the Customer must immediately notify NZTAXICOM and the insurer if something happens to the Provided Equipment that is covered by an insurance policy (including any event or circumstance which would or will entitle the Customer to make a claim in relation to the Insured Equipment under the policy);

- (c) the Customer must make all insurance claims the Customer is entitled to make;
- (d) the Customer must produce evidence satisfactory to NZTAXICOM of current insurance cover whenever NZTAXICOM asks for it;
- (e) the Customer must ensure that the insurance cover is renewed when due and is not reduced or cancelled and must notify NZTAXICOM immediately if it is or is likely to be;
- (f) if NZTAXICOM notifies the Customer, the Customer must assign to NZTAXICOM the Customer's rights under the policy of insurance referred to in this clause;
- (g) the Customer must tell NZTAXICOM if an insurance claim is refused either in part or in full;
- (h) if NZTAXICOM notifies the Customer, NZTAXICOM may take over the Customer's rights to make, pursue or settle an insurance claim. NZTAXICOM may exercise those rights in any manner NZTAXICOM chooses;
- (i) NZTAXICOM is entitled to receive all amounts which are payable to the Customer by an insurer or other person for theft, loss of, or damage to, the Provided Equipment;
- (ii) if the Customer receives the proceeds from an insurance claim:
 - (i) the Customer must promptly notify the NZTAXICOM;

the Customer will hold the proceeds on trust for NZTAXICOM and the Customer must pay NZTAXICOM so much of them as NZTAXICOM requires as soon as NZTAXICOM asks the Customer; and

 - (ii) the Customer must use them as NZTAXICOM directs. NZTAXICOM may direct the Customer to use the proceeds to reinstate the Provided Equipment.
 - (iii) If NZTAXICOM receives the proceeds from an insurance claim, NZTAXICOM may, in its discretion, use the proceeds:
 - (i) if it considers that it is practicable, to repair or reinstate the Provided Equipment; or
 - (ii) towards payment of any amount owing to NZTAXICOM under the Service Agreement.

6.8 The Customer must ensure that all of its members and operators enter into a user agreement in favour of NZTAXICOM, in the form to have been made available in advance by NZTAXICOM.

7 FEES AND INVOICES

7.1 The following shall apply:

- (a) The Customer agrees to pay the Fees for all Services NZTAXICOM provides to the Customer, no matter who uses them without any set-off or deduction. The Customer also agrees to pay all GST or other similar taxes that may be payable on the Fees; and
- (b) Fees for any part of any Service are payable by the Customer for the period beginning on the date that part of the Service is capable of being used by the Customer. NZTAXICOM will advise the Customer when any part of a Service is capable of being used.

7.2 NZTAXICOM will invoice the Customer for all Fees, and the following shall apply;

- (a) the Customer will pay each invoice by the due date set out on the invoice, or if no due date is specified, within 20 days of the date of invoice. Ongoing Fees of a fixed amount are normally invoiced monthly in advance. Fees which vary are normally invoiced monthly in arrears;
- (b) if the Customer does not pay an invoice rendered by NZTAXICOM under the Service Agreement by the due date for payment, the Customer will be in default and NZTAXICOM may, in its discretion charge the Customer default interest on the unpaid amount on a daily basis from the due date until payment is made, provided there is no dispute in respect of the unpaid amount. The default interest rate will be the rate per annum equivalent to 5% above the average buying rate for 90 day bank bills published on Reuter's page BKBM, or a reasonable analogue of it, on the due date for payment; and
- (c) if the Customer considers there is a mistake in any invoice, it should notify NZTAXICOM as soon as possible after receiving the invoice. NZTAXICOM will promptly investigate the matter and report back to the Customer. While NZTAXICOM investigates, the Customer does not have to pay the disputed part of the invoice by the due date for payment. If there is a mistake, NZTAXICOM will adjust a later invoice or issue a credit note. If there is no mistake, and if the due date for payment has already passed, the Customer must pay the amount outstanding immediately.

7.3 NZTAXICOM may change the Fees for any Service or Services set out in a Service Agreement if:

- (a) there is an increase in the amount NZTAXICOM has to pay to any other network operator for any communications facility NZTAXICOM uses to provide Services for the Customer;

- (b) NZTAXICOM continues to provide the Services after the end of the Initial Term of the agreement and has given the Customer three months' notice of the changes; and
- (c) the Customer has requested a change to the Services to be provided and NZTAXICOM has agreed in writing to that change.

8 SERVICE DISRUPTION

It is agreed that:

- (a) NZTAXICOM may temporarily suspend or restrict any Service during any scheduled or agreed maintenance period. NZTAXICOM will endeavour to give the Customer at least five Business Days' notice of the scheduled maintenance that is likely to affect the Customer's service. Where practical, NZTAXICOM will endeavour to schedule the maintenance during the early hours of the morning, or at any other time that minimises disruption to the Customer's business; and
- (b) NZTAXICOM may also temporarily suspend or restrict any service if it thinks it reasonable or necessary, for example, to do urgent repairs to NZTAXICOM's Infrastructure. NZTAXICOM will make every reasonable effort to contact the Customer before the maintenance takes place and will do its best not to suspend or restrict any service during NZTAXICOM's normal service hours.

9 COMPENSATION AND LIABILITY

9.1 No liability of any kind whatsoever will be accepted by NZTAXICOM to the Customer or anyone else that uses the Services provided to the Customer except where:

- (a) the Customer's service is adversely affected because of a default under the applicable Service Agreement by NZTAXICOM or NZTAXICOM causes physical damage to the Customer's property by not taking reasonable care;
- (b) the Customer reasonably incurs expenses as a direct result of the default by NZTAXICOM or NZTAXICOM's failure to take reasonable care, except that NZTAXICOM will not be liable for expenses that result from any liability to a third party, loss or corruption of data, or loss of profit, goodwill or anticipated saving; and
- (c) the Customer has notified NZTAXICOM in writing of the Customer's claim for expenses within 20 Business Days after the Service is first adversely affected or the Customer's property is damaged.

In these circumstances, NZTAXICOM will refund the expenses reasonably incurred by the Customer but only to the extent that NZTAXICOM is at fault and subject to clause 9.

- 9.2 The maximum combined amount for which NZTAXICOM will be liable to the Customer and anyone else who uses the Services provided to the Customer (together) is limited to, for any event or for any series of related events, a maximum aggregate amount equivalent to the Fees paid by the Customer to NZTAXICOM under the applicable Service Agreement during the immediately preceding 12 month period.
- 9.3 Where the Customer does not meet its responsibilities to NZTAXICOM and NZTAXICOM has notified the Customer in writing of NZTAXICOM's claim for expenses within 40 Business Days after NZTAXICOM pays the expenses, the Customer must pay the reasonable expenses incurred by NZTAXICOM in exercising any of NZTAXICOM's legal rights. The compensation payable by the Customer to NZTAXICOM under this clause is limited to the same maximum amounts as stated in clause 9.
- 9.4 Neither the Customer nor the NZTAXICOM will be liable to pay compensation to each other for not meeting any responsibility under the applicable Service Agreement because of events beyond their reasonable control. The failure of any facilities made available to NZTAXICOM by other network operators or by strikes and lockouts will be regarded as an event beyond NZTAXICOM's reasonable control.
- 9.5 The Customer irrevocably indemnifies NZTAXICOM against, and the Customer must therefore pay NZTAXICOM immediately on demand for any liability, loss or costs (including consequential or economic loss) or any tax NZTAXICOM suffers or incurs in connection with:
- (a) loss of or damage to the Provided Equipment;
 - (b) NZTAXICOM's ownership of the Provided Equipment (for example, registering NZTAXICOM's interest as owner or releasing any security interest affecting the Provided Equipment);
 - (c) the Customer's possession, use and operation of the Provided Equipment, including death or injury to any person or damage to property or environmental damage;
 - (d) NZTAXICOM's exercising a right under the Service Agreement or doing anything that the Customer should have done under the Service Agreement;
 - (e) the Customer's failure to do something that it should have done under the Service Agreement;
 - (f) the Customer's breach or repudiation of the Service Agreement;
 - (g) any third party claim arising or threatened by virtue of the Parties having entered into the Service Agreement; or

- (h) the Service Agreement terminating in relation to some or all of the Provided Equipment before the scheduled end of the Term.

10 PROPERTY RIGHTS

- 10.1 Acquiring the Services from NZTAXICOM does not give the Customer any property rights in any part of NZTAXICOM's Infrastructure. The supply to the Customer of the Provided Equipment, or the Customer's use of the Provided Equipment, does not give the Customer any property rights in that Provided Equipment.
- 10.2 The Parties agree the following in relation to Intellectual Property:
 - (a) any Intellectual Property owned by NZTAXICOM, the Customer or any third party prior to entry into the Service Agreement will continue to be owned by NZTAXICOM, the Customer or that third party, as the case may be;
 - (b) NZTAXICOM either owns the Intellectual Property rights in the Services provided to the Customer, or where NZTAXICOM uses any Intellectual Property belonging to anyone else, NZTAXICOM has a licence to do so. The Customer acknowledges that none of these Intellectual Property rights are transferred to it;
 - (c) all Intellectual Property rights in any improvements or changes to any Service devised or made by anyone during the time NZTAXICOM is providing the Service for the Customer, belong exclusively to NZTAXICOM; and
 - (d) the Customer must not use or display any of NZTAXICOM's Intellectual Property except as explicitly authorised by NZTAXICOM.
- 10.3 Where NZTAXICOM provides the Customer with any software to use:
 - (a) NZTAXICOM remains the owner or licensee of the software and has the right to allow the customer to use it;
 - (b) the Customer may use the software for its own internal business use and only for the purposes for which it is provided;
 - (c) the Customer's right to use the software is personal to the Customer and may not be transferred to anyone else;
 - (d) the Customer will not change or interfere with the software in any way;
 - (e) the Customer will not use the software to recreate any source code;

- (f) the Customer will not copy any part of the software except for the purposes of NZTAXICOM-approved backup or testing procedures, any such copies will be subject to this clause 10;
- (g) NZTAXICOM may at any time provide upgrades or new versions of the software free of charge. So long as an upgrade or new version does not adversely affect any service provided to the Customer, or the Customer's use of the Service, the Customer will install the upgrade or new version as soon as it reasonably can and no later than 6 months after NZTAXICOM provides it;
- (h) on termination or expiry of the applicable Service Agreement the Customer will on request return to NZTAXICOM the software any all copies of the software in its possession; and
- (i) where any software belongs to a third party, the Customer acknowledges that the provisions of the agreement are intended to confer benefits on that third party (in relation to the software only) and to create obligations on the part of the customer which are enforceable by that third party whether by way of defence or otherwise pursuant to the provisions of the Contracts (Privity) Act 1982.

11 CONFIDENTIAL INFORMATION

11.1 The following shall apply in relation to Confidential Information:

- (a) The Customer and NZTAXICOM must always keep each other's Confidential Information confidential. Neither party (the **Recipient**) will:
 - (i) use the Confidential Information for any purpose other than for the reason it was provided; or
 - (ii) copy or reproduce any of the Confidential Information in any way;
 - (iii) without the other's prior written consent;
 - (iv) on receiving a request from the other party, the Recipient must promptly return all Confidential Information (including any copies of it) in its possession or control. The Recipient may only disclose the other party's Confidential Information to its employees and contractors who need it to enable the Recipient to carry out the purpose for which the Confidential Information was provided, but the Recipient must first inform its staff and permitted contractors of the confidential nature of the Confidential Information;

- (v) If the Recipient is legally required to disclose any of the other party's Confidential Information, the Recipient must advise the other Party of this before disclosing it and the Recipient must only disclose that part of the Confidential Information which its legal advisers reasonably believe is necessary to disclose by law.
- (b) The Customer and NZTAXICOM acknowledge that:
 - (i) neither party owns or acquires any Intellectual Property rights in the other's Confidential Information; and
 - (ii) the obligations in this clause are in addition to the duties of confidentiality under the general law.
- (c) In this clause, Confidential Information includes all information and other material relating to the disclosing Party's business, employees and customers which:
 - (i) the disclosing party makes available to the Recipient; or
 - (ii) comes or has come to the Recipient's knowledge, or which the Recipient develops or produces, as a direct result of any work it carried out for the other Party, but excluding that which:
 - (A) is generally available to the public (but not because the Recipient or anyone the Recipient is responsible for has disclosed it or allowed it to be disclosed); or
 - (B) the Recipient or a third party have independently developed; or
 - (C) if the Recipient is unsure of the confidentiality of any information or material, it must treat it as confidential until the disclosing Party advises the Recipient in writing that it is not.

11.2 The following shall apply to the Customer's information:

- (a) During the Customer's relationship with NZTAXICOM, NZTAXICOM may collect information about the Customer. The information may be obtained from the Customer and others or generated within NZTAXICOM's Infrastructure when the Customer or anyone else uses NZTAXICOM's services. NZTAXICOM may:
 - (i) hold the information and share it with its employees, contractors and other agents, but only where this is necessary to enable NZTAXICOM to provide the Customer with Services, send the customer bills, check that the Customer's

responsibilities are being met, or otherwise to administer and enforce the Service Agreement;

- (ii) use the information to register and maintain financing statements under the Personal Property Securities Act 1999; and
- (iii) use any information about the customer for statistical purposes, so long as the Customer is not identified.

11.3 The Customer will:

- (a) allow NZTAXICOM to use its existing phone number(s), electronic address(es) and any other codes during the Term for the purposes of providing the Services, but on the basis that they will at all times remain the property of the Customer and that NZTAXICOM will pay for all re-routing costs; and
- (b) pay for the number(s), electronic address(es) and any other codes during the Term.

12 RESOLVING DISAGREEMENTS

12.1 Any failure, refusal or inability by either Party to meet any material responsibility under the Service Agreement is referred to in this clause as a "**default**".

12.2 Where either Party considers there has been a default, it will give written notice to the other setting out details of the default and giving the other Party a reasonable period to remedy the default (which must be at least 5 Business Days). The Customer and NZTAXICOM will use their best endeavours to resolve the problem amicably.

12.3 Where any disagreement arises between the customer and NZTAXICOM, such as whether or not there is a default, or about the meaning of any of the terms of the Service Agreement, both the Customer and NZTAXICOM will attempt to resolve that disagreement by consultation at the lowest possible level of escalation.

12.4 If the dispute is unable to be resolved at a low level of escalation, it may be referred to the senior management or executives of the Parties. The Parties will use their best endeavours to resolve the dispute within a maximum of 20 Business Days.

12.5 While the above procedures for resolving the disagreement are being followed and the agreement has not ended, the Customer will continue to pay the Fees and any interest payable under the Service Agreement and NZTAXICOM will continue to provide the Services it is responsible for providing under the Service Agreement.

13 TERM AND TERMINATION

- 13.1 NZTAXICOM will provide the Services covered by the Service Agreement for the Term the Service Agreement is terminated in accordance with its provisions.
- 13.2 The Service Agreement shall subsist for the Initial Term and, provided that the Customer notifies NZTAXICOM of its intention to renew the Service Agreement for the Extended Term not less than 90 days prior to the scheduled expiry date of the Initial Term, the Extended Term. The Customer may only notify NZTAXICOM that it wishes to extend the Term so as to include the Extended Term if it is, at the time of such notification, in compliance with all of the terms and conditions of the Service Agreement. If there is to be an extension, NZTAXICOM will document the agreed arrangements with the Customer, and these arrangements must be finalised and executed by the Parties before the beginning of the Extended Term.
- 13.3 The Customer will be in default and in breach of the Service Agreement, or NZTAXICOM may treat the Customer as being unwilling or unable to perform the Service Agreement if:
- (a) the Customer does not pay on time each amount payable under the Service Agreement;
 - (b) the Customer does not keep to the other terms of the Service Agreement or the terms of any security;
 - (c) a guarantor or security provider is in default under any security given in connection with the Service Agreement;
 - (d) the Customer or another person gives NZTAXICOM incorrect or misleading information in connection with the Service Agreement, before or after NZTAXICOM enters into the Service Agreement;
 - (e) any Provided Equipment is stolen, lost, destroyed or damaged beyond repair;
 - (f) any person seizes the Provided Equipment;
 - (g) the Customer is or becomes Insolvent;
 - (h) any of the Customer's present or future debts become due and payable before their intended maturity as a result of default, or the Customer does not pay the Customer's debts when they are due or the Customer ceases to carry on business, or any of those things happen in relation to a Guarantor or security provider;
 - (i) any event occurs or circumstance arises which, in NZTAXICOM's opinion, constitutes a material adverse change in the Customer's financial condition or makes it likely that the Customer will be unable to perform its obligations under the Service Agreement; or

- (j) at any time, the number of the Customer's directors comprising the Guarantors falls below the number of Guarantors specified in the Service Agreement.

13.4 If the Customer is in default, and NZTAXICOM chooses to enforce the Service Agreement, NZTAXICOM will use its reasonable endeavours to give the Customer a notice before doing so. The notice will:

- (a) tell the Customer the nature of the default;
- (b) require the Customer to fix the default (if it can be fixed) within the period stated in the notice; and
- (c) contain any other information the law requires NZTAXICOM to give the Customer.

13.5 If NZTAXICOM has given the Customer a notice under clause 13.4 and:

- (a) the Customer does not fix the default within the time allowed in the notice; or
- (b) the default cannot be fixed,

then, at any time after the time stated in the notice elapses NZTAXICOM may decide, without further notice to the Customer, to terminate the Service Agreement and the Customer's right to possession of the Provided Equipment. The Customer must then do everything necessary to make sure NZTAXICOM is able to recover possession of the Provided Equipment. In addition, NZTAXICOM may do any or all of the following things in any order:

- (i) cancel any other Service Agreement;
- (ii) stop the provision of a Service or Services, or Provided Equipment, under a Service Agreement;
- (iii) refuse to consent to any dealings with any security by the Customer any security provider, authorised officer or agent; and
- (iv) NZTAXICOM may reclaim the Provided Equipment by giving the Customer notice that it wishes to reclaim the Provided Equipment. If, after receiving this notice for the return of the Provided Equipment, the Customer has refused or failed to return the Provided Equipment, or to allow NZTAXICOM to recover the Provided Equipment, NZTAXICOM (as the Customer's agent only in relation to this clause) may enter any premises where NZTAXICOM believes the Provided Equipment may be located, during normal business hours, to recover that Provided Equipment without in any way being liable to any person. Provided NZTAXICOM acts with reasonable care in exercising this right, the Customer must pay NZTAXICOM for any costs incurred (including reasonable legal costs on a solicitor-client basis) by NZTAXICOM in

exercising this right, whether relating to the entry onto premises, or the repossession of the Provided Equipment, or otherwise.

- 13.5 If the Customer is in default and NZTAXICOM is not required to give the Customer notice to fix it, then at any time NZTAXICOM may do any of the things set out in clause 13.6.
- 13.6 If at any time during the Term either party terminates a Service Agreement in accordance with its terms, before the expiry of the Term, then:
- (a) NZTAXICOM will have the right to require the Customer to purchase the Provided Equipment;
 - (b) If NZTAXICOM exercises such right then it will notify the Customer of this at the time that it exercises its right to terminate the Services Agreement or, if the Services Agreement is terminated automatically, as soon as practicable after the date of such termination, and notify the Customer of the Purchase Price (which will be NZTAXICOM's determination of the written down book value of the Provided Equipment at the time, plus the unavoidable costs incurred by NZTAXICOM as a result of the early termination) and the effective date of the termination;
 - (c) NZTAXICOM's only obligation under such transfer will be to provide clear title to the Provided Equipment to the Customer as from the relevant transfer date;
 - (d) The Customer must, before the effective date of such transfer, pay to NZTAXICOM, without deduction or set off or withholding, the Purchase Price to have been notified by NZTAXICOM; and
 - (e) The transaction will be documented by NZTAXICOM and the Customer must provide any signed documents to NZTAXICOM on or before the effective date of termination of the relevant transfer Agreement.
13. The termination or expiry of the Service Agreement does not affect any rights and responsibilities under the Service Agreement which are intended to continue or come into force after the Service Agreement ends.

14 GENERAL

- 14.1 The Customer and NZTAXICOM will comply with each other's reasonable requirements for security, health and safety, when working at each other's premises. Where practical, these requirements will be communicated to each other in writing.
- 14.2 The Customer confirms that it is acquiring all NZTAXICOM services for the purposes of a business as defined in the Consumer Guarantees Act 1993.

The provisions of that Act do not apply to Services NZTAXICOM provides under the Service Agreement.

- 14.3 Except as otherwise expressly stated in the Service Agreement, all warranties, representations or conditions relating to the Equipment or the 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 of the law.
- 14.4 In relation to the assignment of the Service Agreement:
- (a) the Customer may not assign its rights and responsibilities under the Service Agreement to anyone else without first obtaining NZTAXICOM's written consent to the assignment. This consent may be given or withheld in NZTAXICOM's sole discretion. However, where the Customer proposes to assign the agreement to a related company (as that term is defined in the Companies Act 1993), NZTAXICOM will not unreasonably withhold or delay its consent, although NZTAXICOM may grant its consent subject to reasonable conditions; and
 - (b) NZTAXICOM may assign its rights and responsibilities under the Service Agreement to any company within the NZTAXICOM group without needing to obtain the Customer's consent but may not assign any rights or responsibilities under the Service Agreement to anyone else without first obtaining the Customer's written consent. The Customer will not unreasonably withhold or delay its consent.
- 14.5 Any variation to the Service Agreement must be recorded in writing and signed by the authorised representatives of the Customer and NZTAXICOM.
- 14.6 NZTAXICOM may use subcontractors or other agents to meet any of its responsibilities under the Service Agreement but NZTAXICOM will remain liable to the Customer for meeting all those responsibilities. Where NZTAXICOM has a subcontractor or other agent meet any responsibility under the Service Agreement, the subcontractor will have the same benefits and responsibilities as NZTAXICOM under the Service Agreement.
- 14.7 No legal partnership, employer/employee, principal/agent or joint venture relationship is created or evidenced by the Service Agreement.
- 14.8 These terms apply to any Service Agreement entered into between NZTAXICOM and the Customer. If there is any conflict between these terms and a term in any Service Agreement, the terms in that Service Agreement will prevail, to the extent of such conflict, unless the contrary is expressly indicated.
- 14.9 The Service Agreement is the entire agreement between the customer and NZTAXICOM in relation to its subject.

- 14.10 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 Service Agreement.
- 14.11 Notices and invoices must be in writing and must be delivered or sent to the relevant contact addresses in the Service Agreement. A party may change the contact address or details for notices by giving the other Party 5 Business Days' notice of such change. Any notice delivered by hand to the address in the Service Agreement will be deemed to have been served on the Party on the Business Day on which such delivery was made or, if delivered after 5.00pm on a Business Day or any day which is not a Business Day, on the next Business Day. Any notice or invoice sent by post to that contact address will be deemed to have been delivered 3 Business Days after it is posted. A notice may be sent by fax to any relevant contact fax number in the Service Agreement. Any notice sent by fax to that contact number will be deemed to have been delivered on the Business Day on which it was sent or, if sent after 5.00pm on a Business Day or any day which is not a Business Day, on the next Business Day, once a correct transmission confirmation slip is received.
- 14.12 The Customer acknowledges that it has not relied on any information from anyone in NZTAXICOM concerning the tax treatment of any payments under the Service Agreement, or any other matter relating to tax in relation to the Service Agreement, the Services or Equipment, and that the Customer is responsible for determining the correct tax treatment of these matters.
- 14.13 Any provision of the Service Agreement that is invalid or unenforceable, will be deemed deleted from the Service Agreement and this invalidity will not affect the other provisions of the Service Agreement, all of which remain in force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 14.14 It shall not be a default of the Service Agreement by NZTAXICOM, and NZTAXICOM shall not be liable to the Customer for any loss or damage to the Customer, caused by a failure to provide the Services or Provided Equipment as a result of a Force Majeure event. Despite this clause, if as a result of a Force Majeure event, NZTAXICOM fails to provide the Services to the Customer for longer than a continuous period of seven (5) Business Days, then the Customer may terminate the Service Agreement upon thirty (20) Business Days' written notice to NZTAXICOM.
- 14.15 The Service Agreement shall be governed by, and construed in accordance with, the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

- 14.16 If the Service Agreement provides that the Customer's obligations are to be guaranteed then the following shall apply:
- (a) The Guarantors shall, at all times during the Term, comprise of not less than three directors from the customer's Board of Directors. Wherever a director resigns, or is removed from the customer's Board of Directors there must first be a replacement director who is acceptable to NZTAXICOM (acting reasonably) who must have first provided to NZTAXICOM an executed deed of assumption of guarantee, in the form acceptable to NZTAXICOM at its absolute discretion, assuming all the Guarantor's obligations under the agreement, in favour of NZTAXICOM.
 - (b) In consideration of NZTAXICOM entering into the agreement at the Guarantors' request, the Guarantors:
 - (i) guarantees payment of the Fees and the performance by the Customer of all its obligations under the Service Agreement; and
 - (ii) indemnifies NZTAXICOM against any loss NZTAXICOM might suffer should the Service Agreement be lawfully disclaimed or abandoned by any liquidator, receiver or other person.
 - (c) The Guarantors covenant with NZTAXICOM that:
 - (i) no release, delay or other indulgence given by NZTAXICOM to the Customer shall release, prejudice or affect the liability of the Guarantors as a guarantor or as indemnifier; and
 - (ii) as between the Guarantors and NZTAXICOM, the Guarantors may for all purposes be treated as the Customer and NZTAXICOM shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantors;
 - (b) the guarantee is for the benefit of, and may be enforced by, any person entitled for the time being to receive the payment of fees;
 - (c) an assignment of the Service Agreement shall not release the Guarantors from liability; and
 - (d) their liability under the guarantee shall be joint and several.
 - (d) None of the Guarantors is to be discharged, nor are any obligations of any of the Guarantors to be affected, by anything which, but for this clause, would or might have discharged a Guarantor or affected the Guarantor's obligations including the release of a party from their obligations as

Guarantor under the agreement or another security interest, guarantee, indemnity or other agreement.