

SCHEDULE 8 – BROADBAND TERMS

INTRODUCTION

These standard terms form the basis of our agreement with you and apply to all products and services we supply to you whether as principal or agent. Our agreement with you also includes your application or order form, which you complete and provide to us. You will be bound by a facsimile copy of our application or order form as if it was an original. If you complete an application or order form by telephone we will record our conversation with you and you will be bound in the same manner as if you had signed an application in writing. If you complete an application or order form on our web site or by email, we will retain a printed copy of the detail submitted to us and you will be bound in the same manner as if you had signed an application in writing.

INTERPRETATION

In this Agreement, unless the context requires otherwise:

“Agreement” means this agreement between us, which includes these standard terms and the Application Form(s).

“Application Form” means a form completed or otherwise authorised by you describing a Service, the site at which the Service is to be provided, the Charges and any additional terms applying to that Service (including any terms contained in any marketing materials provided to you which relate to that Service).

“Charges” means our charges (exclusive of GST, unless stated otherwise) for the Services, as set out in the Application Form(s), which may include fixed charges, usage charges, additional fees and/or one-off fees.

“Compass”, “we” and “us” means Compass Communications Limited.

“Connected” means connection to the Network so that you are able to receive the Services.

“Disconnected” means disconnection from the Network so that you are no longer able to receive the Services.

“Network” means the telecommunications network that we use to provide the Services to you and to other customers (including any network to which we interconnect).

“Network Operator” means any entity with whom we have entered into an interconnection agreement or arrangement (directly or indirectly) providing for the passing of customer generated or customer destined communications between us and that entity.

“Our Equipment” means any telecommunications and other electronic or related equipment (including PABXs, antenna, transmission equipment, routers, switches, power supplies and software), which we may or may not own, that we provide to you in connection with the provision of Services.

“Payment Date” means the payment date set out on each invoice we send to you.

“Phone Number” means a mobile telephone number or a landline telephone number which is either allocated to you by us or which you Ported or seek to Port.

“Port” means to transfer the Phone Number from one Telecommunications Service Provider to another according to the approved industry process (and words such as Porting, Ported and Porting Process shall be construed accordingly).

“Roll Over Term” means a term of twelve (12) months or that period during which the services have been used beyond the Term (whichever is the greater), which applies following the expiry of a Term as it applies to a Service.

“Service” means all or part of a service which we have agreed to provide to you at a specific site and which is described in the Application Form(s) and “Services” has a corresponding meaning.

“Software” means any software which we provide to you for the purpose of you accessing or using the Services.

“Telecommunications Service Provider” means a provider of telecommunications services to the public in New Zealand.

“Term” means the Term of this Agreement (including any Roll Over Term as applicable) as it applies to a particular Service, as set out in the Application Form(s) or subsequent variations.

“Working Day” means a day on which registered banks are open for business in Auckland, Wellington and Christchurch.

“Your Equipment” means the equipment (including a mobile telephone or other telecommunications device) that you provide so that you can use the Services.

“Your Premises” means the location at which Our Equipment is situated.

In interpreting this Agreement:

- references to either party include its respective successors in title and permitted assigns; and
- a reference to any date, which is not a Working Day, will be deemed to be a reference to the next Working Day.

Headings in this Agreement do not affect their interpretation.

1. COMMENCEMENT OF SERVICES

1.1 Every Application Form received by us shall be subject to our acceptance and we will notify you after you submit an Application Form whether we have accepted an Application Form.

1.2 Subject to our acceptance in 1.1 above, we will begin providing Services to you in accordance with the timeframe that the parties agree in writing or, if no timeframe is agreed, within a reasonable timeframe.

1.3 Each service under term commences from the first month of active billing to allow for services to be installed.

2. OUR COMMITMENT TO YOU

2.1 We will:

- provide the Services to you with reasonable care and skill. We will use all reasonable efforts to ensure that the Services are reliable at all times although we do not guarantee that the Services will be continuous or fault free;
- ensure that all work that we perform in connection with the provision of the Services is carried out by competent and suitably qualified personnel and in a professional manner;
- endeavour to remedy any fault or outage with the Service within the timeframe specified in the Application Form or otherwise within a
- reasonable timeframe.

2.2 Owing to operational or other reasons, we may from time to time restrict or suspend a Service. In those circumstances, we will give you as much notice as reasonably possible and will endeavour to ensure that suspensions or restrictions take place outside of normal business hours. Where we are restricting or suspending a Service in the case of an emergency or in order to protect people or property, or due to events beyond our reasonable control, we may not be able to give you any notice prior to such restriction or suspension, but will endeavour to inform you as soon as reasonably possible.

2.3 While we will do our best to provide quality Services, because of the nature of telecommunications, it is impossible to provide a fault-free service and the quality and coverage of the Services depends partly on Your Equipment, partly on our Network and partly on other Telecommunication Service Providers and telecommunications networks to which our Network is connected or connects.

2.4 In the event that we provide a temporary solution, prior to contractually committed services, these are best effort based and therefore are excluded from general SLA's.

2.5 The Services can be adversely affected by radio interference, atmospheric conditions, geographic factors, network congestion, maintenance, outages on other networks and provider sites, the configuration or limitations of your, or your intended recipient's equipment, or other operational or technical difficulties which means that you may not receive some or all of the Services in certain areas or at certain times

2.6 The Services can also change with network expansion or reconfiguration.

3. YOUR COMMITMENT TO US

3.1 You agree:

- not to use or permit the Services to be used in any way which is illegal, in any way abusive or which constitutes harassment or which causes harm or damage of any sort or contravenes the "Reasonable Use Policy" or other specific terms of use in relation to that Service, as notified by us to you from time to time;
- not to use or permit the Services to be used in any way that could interfere with or damage our Network or that of any other operator;
- to follow our reasonable instructions about the use of the Services;
- only to use the Services for the purpose for which they are provided.

3.2 You will ensure that all information you provide us is accurate and complete. This includes advising us promptly if you change premises or postal address.

3.3 You acknowledge that you are responsible for any use of the Services by yourself or by any third party, whether authorised by you or not.

3.4 You will, if we ask you to, obtain any third party authorisation, license or consent that we may reasonably require in connection with the provision of the Services.

3.5 You agree to follow our instructions about the use of the Services and ensure that everyone who uses our Services in connection with the provision of our Services to you also meets your responsibilities when using the Services. You agree to keep us protected against any legal action taken against us and to meet any losses we may incur as a result of such use of the Services. You are responsible if anyone else, whether authorised by you or not, uses or misuses our Services.

3.6 Using or agreeing to use the Services does not give you any rights in any part of the Services. You must not resell, in any way whatsoever, the whole or any part of the Services.

4. CHARGES, INVOICING AND PAYMENT

4.1 Our Charges and the basis of those Charges for the Services are set out in our Application Form or otherwise as notified to you in writing or through our website from time to time and are subject to amendment as set out in our Application Form or as otherwise notified to you from time to time.

4.2 You agree to pay our Charges for the Services, regardless of who ultimately uses them. The Charges will apply from the date you are Connected. You also agree to pay any GST that may be payable in addition to the Charges.

4.3 We will invoice you for the Services we provide you at intervals applicable to the Service. Our Charges are structured so that fixed charges are normally payable in advance and other charges will normally be payable in arrears.

4.4 Where applicable, we may charge for some Services or certain Charges in arrears depending on when charges come through from other Network Operators and Telecommunications Service Providers.

4.5 A minimum invoice value of \$10 plus GST per month applies. If the amount being invoiced to you in any given month is below this value, a top up charge will apply.

4.6 You agree to pay each invoice on or before the Payment Date and without set-off, counterclaim or deduction.

4.7 If any invoiced amount remains unpaid after the Payment Date we may charge you a late fee of the greater of \$15.00 or 1.6% + GST per month or part month on that amount until it is paid in full and you will also have to pay any reasonable expenses (including solicitor and own client costs) we incur in collecting any money that you owe to us or in exercising any of our other legal rights. You must advise us when you change your address.

4.8 Part payment of your invoice will not amount to a full and final settlement unless we have agreed to this in writing.

4.9 If you make a payment by direct debit that is dishonoured, we may charge you a dishonour fee in addition to a late fee.

5. DISPUTED ACCOUNTS

5.1 If you believe that an invoice contains a mistake you must contact us as soon as possible and we will investigate. All disputes must be submitted in writing clearly detailing the actual dispute. You must pay any undisputed amount by the Payment Date.

5.2 You will need to notify us within 90 days of receiving an invoice of any dispute. We will not accept a dispute greater than 90 days after the invoice on which that disputed item is charged.

5.3 If we agree that there is a mistake, we will correct the invoice as soon as reasonably possible. If we find that there is no mistake, you must pay the outstanding amount immediately on being notified of our finding, or on or by the Payment Date, whichever is the later.

6. CREDIT ARRANGEMENTS

6.1 We are not obliged to begin providing Services to you until we have satisfied ourselves that you will be able to pay the Charges. If we have already commenced providing Services to you and we then receive an unsatisfactory credit check, we may stop providing any Services. You agree that we may pass on your information to credit reporting organisations so that they can run credit checks on our behalf at any time. We may also let those organisations know if you have not paid our Charges. You agree that at any time those organisations may pass on to us information about you that they hold. We will use that information to make decisions about providing or continuing to provide you with Services. You also agree that those organisations may keep any information about you that we have passed on to them and use it for the purposes of their businesses, which may include supplying it to other entities that use their services. In respect of our access to and use of such information, we will comply with our obligations under clause 16.3 and otherwise with the Privacy Act 1993.

6.2 Where required by our credit policy, we may at any time require you to make an advance payment or provide some other form of security to cover amounts payable by you under this Agreement. If this Agreement is terminated we will return to you any security not required to cover outstanding amounts.

6.3 We reserve the right to impose a credit limit on your account, and will advise you if you get close to this limit. You agree that if at any time you exceed your credit limit we will be entitled to suspend the provision of our services to you, and any costs incurred by us as a result of such suspension and any recommencement shall be payable by you upon demand.

7. OUR EQUIPMENT

7.1 It may be necessary for us to install and maintain Our Equipment and/or Software at Your Premises to provide Services to you. You agree to give us access to Your Premises at all reasonable times and with reasonable notice (subject to compliance with your reasonable security requirements and where applicable, health and safety requirements) to install, inspect, remove, replace and maintain Our Equipment and/or Software.

7.2 Ownership of Our Equipment or any replacement for Our Equipment or replacement component of Our Equipment remains with us at all times and you shall not make any claim in respect of such ownership.

7.3 We will ensure that Our Equipment and Software is safe, free from defects and fit for the purpose for which it is provided.

7.4 You agree:

- Not to damage or interfere with Our Equipment or Software in any way;
- To provide a safe and secure operating environment for Our Equipment;
- To take reasonable precautions to protect Our Equipment and Software from theft or other loss or damage;
- To follow our reasonable directions when using Our Equipment and / or Software;
- To take reasonable precautions to protect Our Equipment and Software from electromagnetic interference, electrical interference or power fluctuations;
- To pay our Charges for repairing or replacing any part of Our Equipment that is lost or damaged while located on your premises;
- To obtain and maintain insurance to a value determined by us with a reputable insurance company against loss or damage to Our Equipment and Software while it is under your control or on Your Premises. You will ensure that our interest is noted on the insurance policy.

7.5 You authorise us to disconnect any equipment that may be connected by other Telecommunications Service Providers and to reconfigure existing equipment to enable the Services to be provided.

7.6 We may remove Our Equipment and Software from Your Premises upon termination of this Agreement or earlier if Our Equipment is no longer required for the provision of Services or if you damage or interfere with it . You agree that we may enter into premises where Our Equipment is located at any time for the purpose of repossessing Our Equipment and you will indemnify us, upon demand, for all costs and expenses we incur in arising from such enforcement action.

8. YOUR EQUIPMENT

8.1 You will ensure that all of Your Equipment that is connected to the Network and/or to Our Equipment is Telepermitted and is installed in accordance with our specifications.

8.2 You agree to follow our reasonable instructions about modifications that you may need to make to Your Equipment so that you can use the Services.

8.3 Notwithstanding anything else in this Agreement, if Your Equipment causes a fault in the operation of a Service then you will, if we ask you to, pay us the reasonable costs of restoring that Service.

9. TELEPHONE NUMBERS AND NUMBER PORTABILITY

9.1 We or another Telecommunications Service Provider may allocate telephone numbers to you to enable you to use the Services. Allocation of telephone numbers does not confer any ownership rights in those telephone numbers and you may not transfer those numbers to anyone else.

9.2 You may Port the Phone Number to another Telecommunications Service Provider. If you wish to do so, you must contact the Telecommunications Service Provider to whom you wish to Port and you will be responsible for completing the Porting requirements of that Telecommunications Service Provider. We will comply with our obligations under the "Terms for Local and Mobile Number Portability" in relation to the Porting of the Phone Number to the other Telecommunications Service Provider. You will be responsible for all costs associated with Porting the Phone Number (including any applicable early termination charges owed to us).

9.3 We may be required by law, under contracts with other Network Operators or for other reasons to change the Phone Number(s). We will do our best to give you notice of any change required. We will not be liable for any costs which you, or anyone else, may incur as a result of such change.

9.4 If you or we disconnect your connection(s) to the Services, and you have not Ported or otherwise transferred the Phone Number(s) prior to disconnection, we may reallocate the Phone Number(s) to another customer.

10. DIRECTORY ASSISTANCE AND LISTING

10.1 Where applicable, we may include your personal information in any telephone or similar directory or directory enquiry service provided or operated by us or by a third party subject to any objection or preference you may have indicated to us. We will give you an opportunity to express any objection or preference. If you indicate that you wish to be listed in the white/yellow pages and/or for directory assistance, your name(s), telephone number(s) and address details will be given to the directory assistance service provider for listing at your cost.

10.2 Any arrangement you make to be listed will be a matter between you and that directory listing service only.

11. NETWORK OPERATORS AND OTHER SUPPLIERS

11.1 We have certain obligations towards other Network Operators, agents and suppliers. Those persons (and their officers, employees, contractors and agents) will not 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 provider's site or Network Operator's networks. This paragraph creates an obligation that other Network Operators, agents and suppliers can enforce, whether as a defence or otherwise.

12. TOLLS

12.1 Without limiting any other provision of this Agreement, you acknowledge that the provision of any toll service provided by us may be dependent upon other Network Operators' network and related infrastructure, and that we will at no time be liable to you for any failure on the part of any other Network Operator.

12.2 From time to time, and due to technical constraints which flow from the use of other networks, our tolls service may not allow certain functions or facilities to be accessed or used, or the use of such functions or facilities may be impaired. We will endeavour to inform you of any such limitations by publishing the same on our website or by some other means. We will at no time be obliged to rectify such limitations or find a workaround solution to such limitations (even though we may endeavour to do so if requested), and at no time will we be liable to you in relation to such limitations.

13. SUSPENSION

13.1 We may suspend provision of Services at any time if you breach this Agreement, including where you have failed to pay any undisputed amount by the relevant Payment Date.

13.2 We may require you to pay a reconnection charge as a condition of lifting any suspension imposed under this clause.

14. TERM AND TERMINATION

14.1 Unless terminated early as a result of provisions herein provided for, this Agreement will continue for the Term. At the expiry of the Term this contract will automatically roll on for further Roll Over Terms of twelve (12) months.

14.2 If either party does not notify the other party in writing not less than sixty (60) days prior to the expiry of the Term, this Agreement will be deemed to be extended automatically for successive twelve (12) month periods (Terms) on each subsequent anniversary of the Commencement Date (subject to each party's right to terminate this Agreement with effect on each subsequent anniversary of the Commencement Date by not less than 60 days' prior written notice to the other party prior to the date of that anniversary).

14.3 We may stop providing any Service or terminate this Agreement at any time by giving you not less than thirty (30) days prior written notice. We may end a Service at any time if we are withdrawing it from general availability or replacing it with a new service.

14.4 Subject to clause 15.2 below, you may give up any Service or terminate this Agreement at any time by giving us not less than sixty (60) days prior written notice.

14.5 Notwithstanding clauses 14.3 and 14.4 we may terminate this Agreement immediately where:

- you commit a material breach of this Agreement which is incapable of being rectified;
- you commit a material breach which is not rectified within thirty (30) days of written notice of that breach having been given to you by us;
- you commit three or more material breaches of this Agreement where notice has been given as stipulated immediately above in any twelve (12) month period;
- a receiver or manager over any or all of your assets is appointed;
- you or your director(s) or principal(s) go into liquidation, bankruptcy or receivership (or it appears that any of these events is likely to happen); or
- you are removed from the Companies Register.

15. CONSEQUENCES OF TERMINATION

15.1 When this Agreement is terminated:

- you will be Disconnected;
- clauses 3.5 – 29 (inclusive), together with other provisions of this Agreement which are required to give effect to those clauses, will remain in effect;
- each party must immediately return to the other any information, equipment or any other item which is in its possession and which belongs to the other party; and
- we may access Your Premises to remove Our Equipment. If we are unable to gain access we may invoice you and you agree to pay the
- standard replacement charge for the Equipment in question.

15.2 You acknowledge that:

the Charges for some Services are set based on the Term which you have agreed for that Service; and

if you give up any Service or terminate this Agreement under clause 14.2 or we terminate all or part of this Agreement under clause 14.3 prior to the expiry of the Term:

- (i) we may charge you (in which case you will be liable to pay) the monthly charges, as specified for that Service, for the period from the date of termination to the expiry of the Term, as compensation to us for the revenue which we would otherwise have expected to receive from you in respect of that Service over the Term;
- (ii) you will repay to us any credit, equipment subsidy or installation subsidy we have given against your account, and
- (iii) any credit remaining on the account will not be used to set off any Charges or early termination charges.

15.3 Termination and the rights set out in clause 15.2 are without prejudice to any other rights or obligations either party may have under this Agreement.

16. CONFIDENTIALITY, PUBLICITY AND PRIVACY

16.1 Each party agrees not to reveal any information concerning the provisions of this Agreement or information provided under it to any third party, other than:

- as required to perform its obligations or exercise its rights under this Agreement;
- as required by law or by the rules of any stock exchange;
- to its employees, agents and contractors in order to give effect to the purpose for which the information was provided;
- where the information is already in the public domain (but not where it is in the public domain as a result of a breach of this clause); or
- with the other party's written consent.

16.2 Each party agrees not to issue any press release or public announcement concerning this Agreement without the other party's prior written approval.

16.3 If you are an individual, you agree that we can collect, retain and use any information about you and can pass it on to our employees, contractors, agents and suppliers for a range of lawful purposes connected with our business operations, such as checking your creditworthiness, providing the Services and keeping you informed about new products and services.

You may ask to see the information that we hold about you at any time and you may ask us to correct any

errors. Where you disclose to us any information about a director, partner, principal or contact person, you confirm that:

- you are authorised by that person to make that disclosure for the purposes described above;
- that person has agreed that we can collect, retain and use any information about him or her and can pass it on to our employees, contractors, agents and suppliers for a range of lawful purposes connected with our business operations, such as checking his or her creditworthiness, providing the Services and keeping him or her informed about new products and services; and
- that person understands that he or she may ask to see the information that we hold about him or her at any time and he or she may ask us to correct any errors.

17. SECURITY

17.1 We may require you to provide a Personal Identification Number ("PIN") to us which will enable us to verify the identity of those who are authorised to have access to your account details and to make changes to your Compass account. You are entirely responsible for maintaining the security of your PIN. We are entitled to rely on the provision of your PIN without further enquiry, as evidence of authority to access your account details and to make changes to your Compass account.

17.2 Some Services are available via the internet or other systems operated by third parties and, although we will endeavour to maintain the security of information, we cannot guarantee that information you receive or supply when using the Services will be secure at all times. You acknowledge that we are unable to exercise control over and make no representations or warranties concerning, the security or content of data or information passing over our network, any systems operated by third parties, and the internet.

17.3 We will not be responsible for any harm you suffer from a virus or other manipulating program which infiltrates Your Equipment, whether it was transmitted via the Services or otherwise. In accordance with clause 4 you remain responsible for all Changes applied to your account for the use of any services activated by such a virus or program.

18. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that all rights to intellectual property contained in the Services and in Our Equipment (including any improvements or changes to any Service or to Our Equipment) belong to us or to our licensors or third party suppliers, and are retained by us when we provide the Services or Our Equipment to you. These intellectual property rights include, but are not limited to, all copyright, trade mark and design rights relating to the Services.

19. PERSONAL PROPERTIES SECURITY ACT 1999

19.1 You agree that this Agreement constitutes a security agreement 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 (or which is exclusively the proceeds of any item of personal property which is not) provided by us to you under these terms. In addition, references in this Agreement to 'Equipment' and 'Software' means the goods and software described or referred to in the relevant records we maintain (or any other relevant document we may produce), on the basis that such record or other document is deemed to be assented to/by you and to be included in and form part of this Agreement.

19.2 On request by us, you will promptly do all things (including signing any other documents) and provide all information necessary to enable us to perfect and maintain the perfection of any security interest you grant to

us under this Agreement (including by registration of a financing statement). You waive your right to receive a copy of any verification statement in respect of any financing statement we register and you agree to indemnify us, upon demand, for all costs and expenses we incur in registering and maintaining any financing statement.

19.3 Where used in this clause, the following words and phrases (and grammatical variations of them) have the meanings given to them in, or by virtue of, Personal Property Securities Act 1999: 'after-acquired property', 'financing statement', 'goods', 'perfection', 'personal property', 'proceeds', 'security agreement', 'security interest', and 'verification statement'.

19.4 The Customer is the lessee of the Equipment. Nothing in this agreement confers on the Customer any other right of property or interest in or to the Equipment or any replacement of the Equipment, including, without limitation, any right to purchase the Equipment at any time during the currency of, or after the expiration or termination of, this agreement, or any right of ownership or future ownership of the Equipment.

19.5 Ownership in the Equipment or any replacement for the Equipment or replacement component of the Equipment remains with Compass at all times and the Customer shall not make any claim in respect of such ownership.

19.6 The Customer agrees that

- a. this Agreement creates a security interest under the Personal Property Securities Act (PPSA) in the Equipment;
- b. the Customer must do all things and execute all such documents as Compass may require to ensure that Compass has perfected first ranking security interest(s) in the Equipment.
- c. Compass may register a financing statement to perfect its interest in the Equipment;
- d. the Customer will indemnify Compass for any costs Compass incurs in doing any of the above; and
- e. the Customer waives its right to receive a copy of any verification statement(s) under the PPSA and agrees that as between Compass and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the PPSA; and where Compass has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.

19.7 The Customer will not affix the Equipment to land unless Compass consents in writing. If the Equipment is so affixed to land, and the land is owned by the Customer, the Customer agrees that the Equipment is personal property and hereby grants to Compass an interest and right of entry in such land to the extent of its right in the Equipment, including without limitation for the purpose of removing the Equipment. The Customer will where relevant obtain an acknowledgement from all mortgagees of the land, and, if the Customer is not the owner of the land, from the owner, that the Equipment is regarded for all purposes as personal property and not as a fixture.

20. SOFTWARE

If we provide you with any software in connection with the provision of the Services, you agree:

- not to copy, modify or reverse assemble the software; and
- that you are licensed by us to use the software only for the purposes, and in accordance with the terms, of this Agreement and any terms upon which the software is ordinarily licensed or which we notify to you.

21. LIABILITY

21.1 Where you are acquiring any Services for the purposes of a business, you will not assert or attempt to assert any rights or claims against us under the provisions of the Consumer Guarantees Act 1993 in respect of the supply of those Services to you.

21.2 No claim for damage, loss or injury direct or indirect against us in respect of any Services supplied by us shall in any case exceed either the re-supply or the cost of re-supply of the Services giving rise to the claim against us and we reserve the right to elect either option at our absolute discretion.

21.3 In respect of Our Equipment, our liability shall be limited to the replacement of Our Equipment only.

21.4 Notwithstanding any other clause in this Agreement we will not be liable to you in tort (including negligence), contract or otherwise for any economic loss, loss of profit, loss of savings, loss of anticipated profit or savings, or for any indirect, special or consequential loss or damage, however caused, whether arising in relation to the supply or non-supply of any Services, any breach by us of this Agreement or otherwise.

21.5 No other Network Operator and/or third party supplier (including their officers, employees, contractors and agents) will be liable to you for loss or damage of any kind arising from your use of the Services. This clause is intended to be for the benefit of, and enforceable by, each such Network Operator and third party supplier in terms of the Contracts (Privity) Act 1982.

21.6 Apart from the warranties expressly given to you in this Agreement, all other warranties, express or implied, are excluded (to the extent permitted by law).

21.7 You will indemnify us against all claims of any kind whatsoever however caused or arising (including without limitation all sums paid to compromise or settle claims, proceedings and actions out of court) brought by any person in connection with:

- any use by you of the Services other than in the manner contemplated by this Agreement; or
- any failure by you to meet your obligations under this Agreement.

21.8 You will reimburse us on demand for any expenses, disbursements and legal costs incurred by us in the enforcement of any of our rights contained in this Agreement (including any reasonable solicitor's fees and debt collection agency fees) where we are enforcing those rights as a result of your non-compliance with any of your obligations under this Agreement.

21.9 You acknowledge that you have not relied on any representation by us or any of our employees or agents as to the fitness for purpose, suitability or features of any Service, except where such representations are recorded in the relevant Application Form or this Agreement.

22. DISPUTE RESOLUTION

22.1 If any dispute arises out of this Agreement, neither party is to commence proceedings relating to the dispute (except where urgent interlocutory relief is sought) unless that party has first complied with this clause 22.

22.2 A party claiming a dispute has arisen is to give written notice to the other party specifying the nature of the dispute. On receipt of that notice, the parties will use all reasonable endeavours to resolve the dispute by discussion, negotiation or other informal means.

22.3 If the parties do not resolve the dispute within 10 Working Days of the receipt of the notice then either party can, by writing to the other, require that the dispute be mediated in accordance with the standard mediation agreement of LEADR New Zealand, and the then current Chair of LEADR New Zealand will select the mediator and determine the mediator's fee.

23. NOTICES

23.1 Any notice given pursuant to this Agreement must be in writing and be delivered, or sent by post, by email or by facsimile, to the other party's contact address, as set out below.

Compass Communications Limited
Compass House
162 Grafton Road
Grafton, Auckland

PO Box 2533
Shortland Street
Auckland

Facsimile: 09 965 2270

You

As set out in the relevant Application Form.

23.2 Any such notice will be deemed to be validly given:

- in the case of delivery, when received;
- in the case of facsimile transmission, when a correct facsimile confirmation receipt slip is received;
- in the case of posting, on the second Working Day following posting; or
- in the case of email, on receipt of delivery confirmation.

24. ENTIRE AGREEMENT, VARIATION AND CONFLICT

24.1 This Agreement contains all of the terms, representations and warranties made between the parties and supersedes all prior discussions and agreements covering the subject matter of this Agreement.

24.2 No variation or waiver of any provision of this Agreement shall be recognised or binding on us unless it is in writing and signed by our authorised representative.

24.3 If there is any inconsistency between the terms contained in this Agreement and in the Application Form(s), then the terms contained in the Application Form(s) will take precedence.

24.4 We may amend these standard terms at any time. This will vary our agreement with you. When we do this we will make a copy of the amended standard terms available to you on our web site at www.compass.net.nz. The amendments we make will apply seven days after we make the amended terms available to you. We may interpret your ongoing use of our services after that date as constituting your acceptance of the amendments.

25. ASSIGNMENT

25.1 You may not assign all or any of your rights or obligations under this Agreement without our written consent (such consent not to be unreasonably withheld).

25.2 We reserve the right to assign our rights under this Agreement without your consent.

26. FORCE MAJEURE

26.1 Notwithstanding any other provision in this Agreement, neither party is liable to the other for failing to meet any of its obligations under this Agreement to the extent that the failure was caused by an act of God or other circumstance beyond that party's reasonable control.

26.2 Nothing in clause 26.1 shall release you from any obligation to make payment of sums owing to us when those sums are due and owing to Compass under this Agreement.

27. NON-WAIVER

If either party delays or fails to enforce any of its rights or remedies under this Agreement, this will not constitute a waiver by that party of that or any other right or remedy available to it.

28. TERMS SEPARATELY BINDING

Each term of this Agreement is separately binding. If for any reason either party cannot rely on any term, all other terms remain binding.

29. JURISDICTION

This Agreement is governed by the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

30. APPLICATION OF THESE TERMS AND CONDITIONS

We each acknowledge that you may receive other products or services from us in respect of which specific terms and conditions (whether separately negotiated with us, or generally applicable in respect of that category of goods and service) might apply. In the event that such terms and conditions do not deal with any particular matter, the terms and conditions set out in this Agreement shall apply.

DEFINITIONS

Revive Service means the software and systems that enables the customers Protected Data to be backed up and retrieved from Revive servers in order for Compass to provide the Revive Service and includes Compass proprietary software and software licensed to Compass by 3rd party vendors.

Password (s) means any passwords, certificates, access codes, user ID's, encryption keys or any other login information that you provide or uses for the purpose of accessing and using the Revive Service.

Protected Data means the specific selected files, folders and databases as selected by you that is backed up through the Revive Service on the Protected Equipment.

Protected Equipment means your servers, workstations, PC's, laptops, computers, tablets or other hardware that uses Revive Service to store and protect Protected Data.

SERVICES AND CUSTOMER EQUIPMENT

During the term of this Agreement Compass will provide Revive Service to you. You are responsible for providing all equipment necessary for you to use Revive Services including the Protected Equipment, internet access and email services.

CUSTOMER CONTACT AND CUSTOMER USERS

You agree that you have the sole responsibility for all individual users including contractors or 3rd parties who access and/or use the Revive Service through your account.

You are required to provide a point of contact to receive both email reports from the Revive system as well as a point of contact in the event Compass need to contact you. You are also responsible for updating Compass with any new people's contact details.

DATA PROTECTION

As the initial backup may be over the internet which may take some time to complete you acknowledge that the Protected Data is not fully backed up and protected until the initial backup has been completed.

You acknowledge that no backup of Protected Data is complete unless a report confirms successful backup. There are a number of factors impacting on a successful backup which are outside of Compass's control including but not limited to power on of the Protected Equipment, working internet access and availability of data within the selected backup plan.

Compass agrees to store the Protected Data within New Zealand therefore making the service and the Protected Data subject to New Zealand law.

Compass agrees not to access or use your Protected Data other than the purposes of providing the Revive Service.

Compass agrees that upon termination of the Agreement it shall destroy all your Protected Data in a safe and secure manner.

PASSWORD PROTECTION

You agree that you alone have the sole responsibility for keeping and protecting your Password (s). You are the only party with knowledge of its Password (s). In the event you lose or forget your Password (s) Compass can supply a new Password (s) but any Protected Data up to this point is encrypted and therefore is non-retrievable.

INTERNET DEPENDENCY

You acknowledge that the Revive Service runs over the working internet and that the internet, consisting of many parties and networks, is a service outside of Compass's control. If the internet services are not working this does not impact of Compass's ability to charge for the Revive Service.