

**1. Definitions**

- 1.1 “We”, “Us”, “Our” means Amuri Net Ltd, its successors and assigns or any person acting on behalf of and with the authority of Amuri Net Ltd (including, but not limited to, Our suppliers or the wholesale / carrier or third party provider of a service)
- 1.2 “You”, “Your” means the person/s, or any person acting on Your behalf and with Your authority, requesting Us to provide the Services to You, as specified in any invoice, order, or other documentation and:
- (a) if there is more than one person requesting the Services, is a reference to each person jointly and severally; and
  - (b) if You are a part of a Trust, You shall be bound in Your capacity as a trustee; and
  - (c) includes Your executors, administrators, successors and permitted assigns.
- 1.3 “Services” means interactive access to the Internet provided by Us to You (for Your use), including any computer resources, software, data storage, computer communications facilities, goods, IP address and/or any other equipment supplied ancillary to the Services (“**Products**”) in order to facilitate the provision of Services. Where the context so permits the terms ‘Services’ or ‘Products’ shall be interchangeable for the other. Any Products supplied to You by Us on a loan basis (for the duration of the Services):
- (a) remains Our sole property;
  - (b) may be changed, substituted, revoked or repossessed by Us at Our sole discretion at any time; and
  - (c) are not transferable.
- 1.4 “Charges” shall mean the cost of the Services and any associated costs or fees (plus any Goods and Services Tax (“GST”) where applicable) as agreed between You and Us, subject to clause 5 of this contract, and are quoted, and payable, in New Zealand Dollars (\$NZ).

**2. Acceptance**

- 2.1 By requesting, or using, the Services, You confirm that You have read, understood and accept and agree to the following terms and conditions. These terms and conditions form a binding contract between You and Us for the provision of the Services.
- 2.2 You warrant that You are at least eighteen (18) years of age and acknowledge that there are some areas of the Internet which are unsuitable for minors. You shall be responsible for the use of the Services by a minor authorised by, or the responsibility of, You, and the costs arising from such use.
- 2.3 These terms and conditions may only be amended with the consent of both You and Us in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the You and Us.
- 2.4 Where this contract states that the Services are provided for a particular purpose, You must only allow the Services to be used for that purpose. You may not use the Services to commit an offence or allow anybody else to do so. You are responsible for ensuring that no one interferes with the operation of the Services or make it unsafe. You must follow Our reasonable instructions if We determine that Your use of the Services interferes, or threatens to interfere, with the efficiency of Our network or Our supplier’s networks.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6 These terms and conditions may be meant to be read in conjunction with Our ‘Loan Form’, and if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.7 We agree to take no less than a reasonable time to process subscriptions and act on any notification by You, however the date upon which a subscription, renewal or selection of a plan is processed, shall be reasonably determined by Us.
- 2.8 You acknowledge that Your plan can be increased at any time, however it cannot be decreased within three (3) billing periods of such increase, and cannot be decreased to a plan below that which You started on.

**3. Errors and Omissions**

- 3.1 You acknowledge and accept that We shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made Us in the formation and/or administration of this contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Us in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to Our negligence and/or wilful misconduct; You shall not be entitled to treat this contract as repudiated nor render it invalid.

**4. Change in Control**

- 4.1 You shall give Us not less than fourteen (14) days prior written notice of any proposed change of ownership and/or any other change in Your details (including but not limited to, changes in Your name, address, contact phone or fax number/s, or business practice). You shall be liable for any loss incurred by Us as a result of Your failure to comply with this clause.
- 4.2 You must notify Us immediately of any change to the details of Your designated credit card (including where the card has been lost, stolen or cancelled, or the card has expired, exceeded its limit or is no longer valid, or if there has been a breach of security of the card details).

**5. Charges and Payment**

- 5.1 At Our sole discretion, the Charges shall be:
- (a) as indicated on any invoice/s furnished to You by Us;
  - (b) fixed for the duration of any fixed contract term;
  - (c) Our quoted Charges (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 5.2 We reserve the right to amend the Charges (upon written notice to You):
- (a) if a variation to the Services, specifications of any Products, or Your information and instructions, is requested (including, but not limited to, additional work required due to hidden or unidentifiable difficulties not evident prior to provision of the Services, any request to investigate and/or repair any faults or defects outside Our normal business hours, etc.); or
  - (b) as a result of increases beyond Our reasonable control in the cost of materials or labour (e.g. third-party suppliers’ costs, etc.), or due to currency exchange rates; and
  - (c) such variations will be detailed in writing, and shown as variations on Our invoice. You shall be required to respond to any variation submitted by Us within twenty-four (24) hours. Failure to do so will entitle Us to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time specified in Our invoice, or in accordance with sub-clause 5.3(d).
- 5.3 Time for payment for the Services being of the essence, the Charges will be payable by You on the date/s determined by Us, which may be:
- (a) for Rural Broadband Initiative (RBI): due ten (10) days following the end of each month; or
  - (b) for Wireless Service: due fourteen (14) days following the end of each month; or
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice/s furnished to You by Us.

- 5.4 All invoices and receipts will be emailed to You. Paper copy will be provided upon request, but will incur an additional charge.
- 5.5 All payments, except Pay As You Go (PAYG) shall only be made by automatic payment from a valid account. It is Your responsibility to keep these payments up to date and correct. If You fail to stop these automatic payments when You cease to use the Services, or fail to notify Us of Your intention to terminate any Services, We will observe Our no refunds policy. We can, and will, withdraw or credit Your account each month if duly pre-authorised to do so.
- 5.6 PAYG customers may make payment by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between You and Us.
- 5.7 Unless otherwise stated the Charges do not include GST. In addition to the Charges You must pay to Us an amount equal to any GST We must pay for any provision of the Services by Us to You under this contract, or any other agreement. You must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as You pay the Charges. In addition You must pay any other taxes and duties that may be applicable in addition to the Charges, except where they are expressly included in the Charges.
- 5.8 Our receipt of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then:
- (a) Your subscription, renewal or selection of a plan will not be processed; and
  - (b) Our ownership or rights in respect of the Services, and under this contract, shall continue.
- 5.9 All pre-paid Services are to be paid for (and cleared) prior to the commencement of those Services offered or allocated to You. Pre-paid Services are purchased in a block form, are not automatically renewable and are not refundable under any circumstances.
- 5.10 If You pay any Charges in advance and they are varied, or the Services are terminated, We will (subject to clause 18) refund You any overpayment, and You have to pay Us any underpayment. This clause is strictly exclusive of all pre-paid plans and services, and does not detract from any obligations You may have to give notification to terminate the Services, or to pay early termination fees, where applicable.
- 5.11 At any time We can require You to provide some form of security, for example a security deposit, a charge or bank guarantee, or pay some or all of the Charge for the Services in advance. We will only do so if We have reasonable concerns about Your credit worthiness or have reasonable grounds for believing that We may not be paid for the provision of the Services to You. In the case of new customers, We can refuse to provide You the Services until We receive the security. In the case of existing customers, if You do not provide the security within seven (7) days of Our request, We can restrict, suspend or terminate the provision of the Services to You in addition to any other rights We may have. If You terminate the Services, We will return the security deposit or advance payment to You, less any outstanding Charges owing to Us within a reasonable time. Our acceptance of any form of security or advance payment does not affect any other rights or obligations under this contract.
- 5.12 Unless agreed to by Us, You shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to You by Us, nor to withhold payment of any amount because part of the Services are in dispute. If You believe a mistake has been made, contact Us as soon as possible so that We may investigate the error. If there has been a mistake, Your subsequent invoice will be adjusted.

## 6. Fixed Contract Term

- 6.1 The Services shall continue for the term stipulated in this contract and, upon expiration of this term, will continue on a monthly basis, unless terminated in accordance with clause 16.
- 6.2 Subject to clause 16.1, if You wish to terminate the Services during the term stipulated, We may charge You an early termination fee, the amount of which will depend on the Services acquired by You and the date of termination.
- 6.3 We may terminate the Services prior to the expiry of the fixed contract term at any time (without charging an early termination fee) if We get Your consent to do so, and:
- (a) We appropriately off-set the effect of the termination on You, e.g. credit or rebate; and/or
  - (b) We migrate You to alternative services for the remainder of the fixed contract term.

## 7. Terms of Use

- 7.1 When You use the Services, You must:
- (a) comply with all laws, all directors by a regulator, all notices issued by authorisation of, or under, law (e.g. Copyright Act 1994, the Privacy Act 1993 and the Defamation Act 1992) and reasonable directions by Us; and
  - (b) keep Your account information, password, data and Products confidential and secure. You remain responsible for any use or misuse of such; and
  - (c) follow any reasonable instructions provided by Us in relation to the Services; and
  - (d) access and use the Services solely in accordance with these terms and conditions and any reasonable instructions provided by Us; and
  - (e) employ back-up power and surge protectors at Your premises; and
  - (f) respond promptly to Our communications in relation to the Services; and
  - (g) provide accurate and prompt responses to Our requests for any information or documentation reasonably required by Us to provide the Services, and that such information will be correct and complete.
- 7.2 You must not:
- (a) use, or attempt to use, or permit another person to use or attempt to use, the Services:
    - (i) so as to cause offence, to defame, abuse, communicate obscenities, menace or annoy;
    - (ii) for any purpose or activity of an illegal or fraudulent nature in any jurisdiction, including damaging any property or injuring or killing any person, to breach the security of any computer network (hacking), to breach any persons privacy, or to distribute unsolicited software or junk mail;
    - (iii) for advertising purposes without Our express written consent;
    - (iv) to breach any of the intellectual property rights held by Us or any third party;
    - (v) to transmit, publish or communicate materials which is defamatory, offensive, abusive, indecent, menacing or unwanted;
    - (vi) to expose Us to liability (including any claims for damages);
    - (vii) in any way which damages, interferes with or interrupts the Services, or a supplier's network used to provide the Services;
    - (viii) to intercept or attempt to intercept any communication not otherwise intended for You; and
    - (ix) contact Our suppliers or the wholesale / carrier or third party provider of a service in relation to the Services or service faults. The supplier may impose a fee for doing so and this fee will be passed onto You. They may, however, contact You in relation to any reported service difficulties in relation to appointment making and service restoration, and for this reason We will need to provide Your contact details to such parties.
- 7.3 If, in Our opinion, the Services are being used by anyone in breach of these terms and conditions (including clause 7) or Internet etiquette, We may:
- (a) refuse to post such infringing information to public areas;

- (b) remove, review or edit such infringing information from any computer on Our network, with the exception of private electronic messages;
  - (c) discontinue any infringing communication;
  - (d) suspend the Services indefinitely, or for a specific period;
  - (e) terminate the Services, and refuse to provide the Services to You, or Your associates, in the future;
  - (f) inform appropriate government and regulatory authorities of suspected illegal or infringing conduct.
- 7.4 You authorise Us to delete without notice or liability any information or materials found on the Products (or equipment controlled by Us) that is found to be of an obscene nature, unauthorised, unlawful, uncollected for an excessive period of time or excessive in volume.
- 7.5 You acknowledge and agree that You will be responsible for:
- (a) ensuring any other person using the Services We provide to You, or doing anything in relation to them, also meets the obligations imposed in accordance with clauses 7.1 and 7.2;
  - (b) Your relationships with other suppliers. If You have a problem with someone else's service or equipment, You are required to request them to solve it, and not Us.

## 8. Provision of the Services

- 8.1 We shall provide the Service to You at such times and in such a manner as We, from time to time, decides at Our absolute discretion. We make no expressed or implied warranties whatsoever as to the fitness of the Services for a particular purpose or as to any other aspect of the Services.
- 8.2 We will use reasonable care and skill in providing the Services to ensure You receive continual, uninterrupted and fault-free Services for the duration of this contract. However, given the nature of telecommunications systems, including Our reliance on systems, equipment and services We do not own or control (including third party network or service suppliers), We will endeavour to make sure that the Services do everything We claim they will do for a reasonable time after they have been provided to You, but we cannot guarantee the continuous availability of the Services at all times (or that they will be fault-free), which shall be subject to regularly scheduled maintenance cycles, and any events/circumstances beyond Our control. We shall not be responsible for any failure or delay by Us to provide the Services (promptly or at all) due to circumstances beyond Our reasonable control and/or caused by a third party, and such shall not itself constitute a default by Us under this contract. Where necessary for commercial, technical or other reasons:
- (a) a network or service supplier connected to this contract may suspend or terminate its connection to any services provided; and
  - (b) those services may suspend or terminate their connection to another network or service provider.
- 8.3 We shall make all reasonable endeavours to ensure that any Services that are disrupted are restored as soon as We are reasonably able.
- 8.4 We have no responsibility:
- (a) to provide training in the use of the Services and/or related applications; or
  - (b) for any failure in providing the Services where attributable to a fault in Your phone line, and no credit or refund in relation to the Charges will be considered for such outages.
- 8.5 No guarantee is given by Us as to the availability (at any or all times) of the Services (including stability and connection speeds of data transmitted when using the Services) as advertised, as such may vary depending on the service kind and delivery infrastructure, including:
- (a) whether You are located in a coverage area;
  - (b) the number of users sharing the network;
  - (c) the computer hardware and software You use;
  - (d) general activity on the Internet;
  - (e) speed and capacity of the server being accessed.
- 8.6 You acknowledge that:
- (a) only basic spam filtering is provided as part of the Services; and
  - (b) mail system quota of 500MB is allocated per mailbox; where a mailbox has not been activated (i.e. checked) for a period of six (6) months or more will be removed from Our server.
- 8.7 Whilst We may supply Products in order to facilitate the provision of Services (e.g. routers, etc.), subsequent replacement of such should any failure thereof occur beyond its warranty period is Your responsibility and at Your cost.
- 8.8 You acknowledge that (and indemnify Us), where We provide software for the Services:
- (a) We do not make any warranty or representation regarding the performance of the software as it operates on Your computer; and
  - (b) the software may not be compatible with some operating systems, including older versions;
  - (c) You shall not disassemble, decompile, reverse engineer or modify the software.
- 8.9 You have no intellectual property rights in the domain name, email address, User ID or password allocated by Us, and these are not transferable to You once the Services are terminated.
- 8.10 For PAYG accounts, We may apply an automatic disconnection of a connection to the Services after thirty (30) minutes of non-activity/idle time or twenty-four (24) hours of activity/continuous use.
- 8.11 When calling for technical support, We require You to be in front of Your computer and note that as this is a free service, technical call are limited to fifteen (15) minutes. Any calls exceeding the time limit or resulting from abuse of Your system may incur additional charges.
- 8.12 We will only provide support to mainstream and current versions of operating systems and devices.

## 9. Electricity Ashburton 'EA' Rural Fibre Unlimited

- 9.1 You acknowledge:
- (a) and agree to adhere to Our 'Fair Usage Policy', which is meant to be read in conjunction with this contract;
  - (b) 100/50Mbps is Our only EA Rural Fibre Unlimited offering;
  - (c) a minimum contract term of:
    - (i) twenty-four (24) months shall be applicable for new connections on EA Rural Fibre Unlimited;
    - (ii) twelve (12) months shall be applicable for existing customers upgrading to EA Rural Fibre Unlimited, excluding customers inside their first (1<sup>st</sup>) year who are subject to a minimum contract term equal to paragraph (i) above.
  - (d) the following restrictions apply: Bring Your Own Device (BYOD) is prohibited, traffic management, single dwelling only and shared connections are prohibited and monitored;
  - (e) VoIP is not included, but is available for additional cost;
  - (f) all new connections include Our standard managed router; an ATA is available for VoIP connections (included in the hardware package only if a phone is selected);
  - (g) a upgrade to routers is available for higher performance and WiFi range for an additional cost;
  - (h) standard installation:

- (i) Urban Ashburton UFB zone – shall be included in the Charges, subject to a site visit and confirmation from EA networks; this is not available outside the Ashburton UFB zone;
- (ii) Urban Mid-Canterbury – shall be additionally charged additionally to You, the cost of which shall be subject to a site visit and confirmation from EA networks; this does not apply to Ashburton UFB zone;
- (iii) Rural (rate card) – shall be additionally charged additionally to You, the cost of which shall be subject to a site visit and confirmation from EA networks, and:
  - (A) limited rate card access – minimum wholesale product Light 5.1; or
  - (B) unlimited rate card access – subject to individual tariff restrictions.

#### 10. Wireless Broadband

- 10.1 The Services provide access to the Internet and other data related services via a wireless connection, subject to available coverage areas and network availability. In areas where the Services are available, We do not offer any warranty or guarantee:
- (a) that the Services will be available in each place within the area where there is coverage;
  - (b) as to the quality of the Services, which may be affected by others involved in delivering the Services to You, or by the hardware and/or software You are using – You are responsible for Your arrangements with any third parties providing You with software or hardware;
  - (c) that drop-outs will not occur;
  - (d) that there will be no delays in transferring data when switching between bearer networks;
  - (e) that there will be no congestion on the network.
- 10.2 Service difficulties experienced with the Services provided to You by Us must be reported to Us immediately. The date and the time the fault is reported to Us will mark the commencement time of the fault occurring, and the restoration targets will be based on this information.

#### 11. Access

- 11.1 We may need to access the property in order to provide the Services. You agree to provide us safe access to the property to:
- (a) install any Products to facilitate the provision of Services to You;
  - (b) inspect, test, maintain and repair or replace the Products; and
  - (c) recover the Products after the Services have been terminated. We shall not be liable for any costs of removing the Products or remediation of the property.
- 11.2 If You do not own the property, it is Your responsibility to get the owner's permission for Us to access the property and install any Products.
- 11.3 You owe Us the value of the Products as a debt due if We cannot access the property to recover it, or in the event the Products are lost or damaged.
- 11.4 We have not and will not at any time assume any obligation as You or Your agent or otherwise which may be imposed upon You from time to time pursuant to the Health & Safety at Work Act 2015, including any subsequent regulations (the "HSW Act") arising from the engagement of Services under this contract. Unless otherwise agreed, the parties agree that for the purposes of the HSW Act, We shall not be the person who controls the place of work in terms of the HSW Act.

#### 12. Advice and Recommendations

- 12.1 None of Our employees, agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by Our director, in writing, nor are We bound by any such unauthorised statements.
- 12.2 Any advice, recommendations, information, assistance or service provided by Us in relation to Services provided is given in good faith, is based on information provided to Us, and Our own knowledge and experience. Whilst it shall be Your responsibility to confirm the accuracy and reliability of the same in light of the use to which You make, or intend to make, of the Services, human error is possible under these circumstances, and We shall make all effort to offer the best solution to You.
- 12.3 There are many ways that undesirable content could reach Your computer, including through web browsing, email, instant messenger applications and physical access to Your computer by other people. We cannot guarantee that Your connection will be free of viruses, worms, Trojan horses or any other harmful materials and We recommend that You take reasonable precautions to protect Your computer and data, including:
- (a) operating firewall to filter Internet traffic;
  - (b) running and regularly updating anti-virus and anti-spyware software; and
  - (c) taking reasonable precautions with passwords, credit card numbers and allowing physical access to You hardware by other people.
- 12.4 You must prepare and maintain sufficient back-up files and data storage capacity for all Your files and data, including websites, emails and any other electronic data. We shall not be held responsible or liable for any loss, corruption, or deletion of files or data.

#### 13. Usage

- 13.1 Other than circumstances where We have incorrectly charged You for the use of the Services, You are responsible for and have to pay for any use of the Services, whether You authorise it or not. You are in the best position to monitor and control the usage of the Services and must ensure that they are not being used without Your authorisation by reviewing usage regularly. If You believe the Services are being used without Your authorisation, please contact Us immediately.
- 13.2 The calculation of Your service time shall be determined solely by Us. Any itemisation and/or statement signed by Our manager, attesting to the service time use by You, shall be conclusive and irrefutable evidence of that service time. Unless You notify Us of any discrepancies in the Charges within thirty (30) days of them having been recorded on Your statement, the Charges will be deemed to have been accepted by You. Any account in the + or – hours, and not used for six (6) months, will be removed from the system unless notice is received from You. If an account is left at 0 or – hours without payment and without notification for three (3) months, it will be removed from the system.
- 13.3 If You do not disconnect the Services when You vacate the property, You have to pay for any use of the Services by any subsequent occupants or other parties. We therefore suggest You make every effort to ensure the disconnection of the Services when You vacate the property.
- 13.4 You acknowledge that, in some circumstances We (or the network supplier) may:
- (a) monitor usage of the Services for excessive or unusual usage patterns, but We do not promise to do so. You remain responsible for monitoring the use of the Services in accordance with this clause 13; and
  - (b) be required to intercept/monitor communications sent over the Services.

#### 14. Your Equipment

- 14.1 Where You use equipment that does not belong to Us in the course of utilising the Services:

- (a) You are responsible for maintaining and repairing that equipment. We will not be responsible for any faults resulting from Your failure to maintain and repair that equipment;
  - (b) Where the equipment causes a fault in the Services that We need to repair, We may charge you for repairing the fault. We will advise You of the call-out fee and hourly rates applicable prior to commencing work on the fault;
  - (c) You must only connect equipment that complies with relevant technical standards and other relevant requirements;
  - (d) You must make all reasonable changes to the equipment when We request You to do so to avoid damage or interference;
  - (e) You must advise Us of any changes to the equipment and/or telecommunications services that may affect Our ability to provide the Services to You;
  - (f) it remains Your responsibility to contact the manufacturer directly in the event of any defect, etc.
- 14.2 You are responsible for any equipment at the property (including any Products that belong to Us) and You must pay Us for any loss or damage to the Products at the property, fair wear and tear excepted.

**15. Default and Consequences of Default**

- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Our sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If You owe Us any money, You shall indemnify Us from and against all costs and disbursements incurred by Us in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Our collection agency costs, and bank dishonour fees).
- 15.3 Further to any other rights or remedies We may have under this contract, if You have made payment to Us, and the transaction is subsequently reversed, You shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Us under this clause 15, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to Your obligations under this contract.
- 15.4 Without prejudice to any other remedies We may have at law (and under this contract), We shall be entitled to suspend or terminate the provision of Services to You (this includes but is not limited to, terminating, suspending or restricting the Services or any of Our other obligations under these terms and conditions) under clause 16, and all amounts owing to Us by You shall, whether or not due for payment, become immediately payable if You are in breach of any obligation under this contract (including, but not limited to, where any money payable by You to Us becomes overdue, or in Our opinion You will be unable to make a payment when it falls due, or where You have exceeded any applicable credit limit provided by Us). We will not be liable to You for any loss or damage You may suffer because We have exercised Our rights under this clause.

**16. Termination, Suspension and/or Restriction**

- 16.1 Either You or Us may terminate the Services:
- (a) (subject to the payment of all outstanding Charges and clause 16.2) by providing the other with one months' written notice of the intention to do so; this includes where We decide to stop providing particular Services,
  - (b) at any time if the other is in material breach of this contract and:
    - (i) have been notified of such in writing and have failed to remedy it within fourteen (14) days of such notification; or
    - (ii) the material breach is something incapable of remedy, in which case the Services can be terminated upon immediate notification to the offending party.
  - (c) by providing the other with reasonable notice if:
    - (i) the other becomes bankrupt, insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or appears likely to do so; or
    - (ii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the other party, or any asset thereof; or
    - (iii) the law requires it; or
    - (iv) the provision of the Services becomes illegal, or either party has reasonable grounds to believe they may become illegal.
- 16.2 If You:
- (a) are on a fixed term contract, termination notice can only be given by You (without consequence) on the expiry of the contract term;
  - (b) terminate any Services during an invoice month, any fixed monthly Charges for the subsequent invoiced monthly period remains payable by You;
  - (c) terminate the Services prior to provision thereof to You, We may charge You any reasonable costs incurred by Us while preparing to provide the Services to You.
- 16.3 We can suspend or restrict the provision of the Services to You:
- (a) temporarily if We reasonably believe it is desirable to do so in order to maintain or restore part of a third party supplier's network. We will try and perform maintenance and repair work at time that will cause the least inconvenience to Our customers. We will not charge you for (and rebate if necessary) any Charges during any period of suspension exceeding twenty-four (24) hours. If We have no alternative but to cancel the Services due to necessary maintenance or restoration of any part of a third party supplier's network, We will not charge You any applicable termination fees; and
  - (b) during the period before We terminate the Services because You are in material breach of this contract. You will be in material breach of this contract if You:
    - (i) do not pay the Charges for the Services when they become due and payable;
    - (ii) use the Services in a way which We reasonably believe is fraudulent, poses an unacceptable risk to Our security or network capability (or that of Our suppliers or other customers), or is illegal or in contravention of this contract.
- 16.4 If You ask Us to reconnect the Services following any suspension or termination either by You or Us, You will have to pay Us a reconnection/set-up fee, in addition to any Charges that may be outstanding. We may also require You to pay a security bond pursuant to clause 5.11.
- 16.5 If any suspension lasts for more than seven (7) days, We will not charge You any Charges during the period of suspension, but We may charge You a reconnection/set-up fee to restore the Services.
- 16.6 We may terminate, suspend or restrict the Services:
- (a) in accordance with clause 16.1(c);
  - (b) You die;
  - (c) there is an emergency that affects Our ability to provide the Services;
  - (d) We are unable to provide the Services to You due to events outside Our reasonable control, such as failure in equipment that is not owned or operated by Us, or any force majeure event;

- (e) if We reasonably believe that providing the Services may cause death, personal injury or damage to property;
  - (f) We cannot enter the property because of Your actions or omission when We need to do something in connection with the Services, in order to provide the Services or make the Services (or related Products) safe;
  - (g) You vacate the property to which the Services are connected;
  - (h) there is excessive or unusual use of the Services that is in breach of this contract; or
  - (i) We reasonably consider that You pose an unacceptably high credit risk to Us.
- 16.7 You acknowledge and accept that the expiry, termination, suspension or restriction of this contract does not affect any rights and responsibilities which are intended to continue or come into force afterwards.

#### 17. Limitation of Liability

- 17.1 You acknowledge that the Internet is separate from this contract, and that use of the Internet is at Your own risk and subject to any applicable legislation. We have no responsibility for any goods, services, information (including the accuracy or appropriateness thereof), software, or other materials which You may obtain when using the Internet.
- 17.2 Whilst You and Us are liable to each other for breach of contract or negligence under the principles applied by the courts, neither You or Us are liable to each other for any loss to the extent that it is caused by the other, including negligence or breach of this contract, or failure to take reasonable steps to avoid or minimise the loss suffered.
- 17.3 We are not liable for any indirect, incidental, special and/or consequential loss and/or expense, claim or cost (including legal fees and commissions, loss of profit/income, business, contracts, opportunity, goodwill, reputation and/or anticipated saving), any loss or corruption of data, or other liabilities (howsoever arising) which You may suffer/incur as a result of Us failing to comply with Our obligations in relation to the Services (including resulting from, or in relation to, any failure or delay in Us providing the Services under this contract, or any loss or data), where that loss is caused by events outside Our reasonable control, such as the failure of any network services provided to Us by a third party, or failure in equipment that is not owned by Us, as a result of any incorrect information supplied by You to Us, or a suspension of services in accordance with clause 8.1 or any force majeure event under clause 25.4. Alternatively, Our liability shall be limited to damages which under no circumstances shall exceed the Charges (but only to the extent that such Charges shall take into account the nature or length of the breach in relation to this contract, and any contributory negligence on Your part).
- 17.4 The provisions set out in this clause 17 will continue unaffected by termination or suspension of the Services.
- 17.5 This clause does not affect Your rights under any statutory warranties that may be applicable.

#### 18. Defects/Faults or Damage

- 18.1 For Us to consider any claim for any alleged defect/fault or damage (including, but not limited to, shortage in quantity, errors, omissions or failure to comply with the description of the Services, or any quotation), You must submit (in writing) such claim to Us within one (1) month after the Services are affected, providing sufficient details of the claim. You shall afford Us an opportunity to investigate the claim within a reasonable time following Your submission thereof, and provide any further information (such information to be complete, accurate and up-to-date in all respects) which We may reasonably require in order to investigate the claim. If You fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with these terms and conditions and free from any defect/fault or damage.
- 18.2 For defective/faulty or damaged Services, which We have agreed in writing that You are entitled to reject, Our liability is limited to either (at Our discretion) rectifying/repairing, re-providing, or paying the cost of re-providing the Services, provided that You have complied with the provisions of clause 18.1. If We are unable to rectify/repair, re-provide, or pay the cost of re-providing the Services, then We may refund any money You have paid for the Services, but only to the extent that such refund shall take into account the value of Services which have been provided to You which were not defective.

#### 19. Title

- 19.1 Both You and Us agree that the Your obligations to Us for the provision of Services shall not cease (and where it is intended that ownership of any Products shall pass to You, such ownership shall not pass) until:
- (a) You have paid Us all amounts owing to Us for the particular Services; and
  - (b) You have met all Your other obligations due to Us in respect of all agreements between You and Us.
- 19.2 It is further agreed that, until ownership of the Products passes to You in accordance with clause 19.1:
- (a) You are only a bailee of the Products, and must return the Products to Us on request.
  - (b) You hold the benefit of Your insurance of the Products on trust for Us, and must pay to Us the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
  - (c) You must not sell, dispose, or otherwise part with possession of the Products, other than in the ordinary course of business and for market value. If You sell, dispose or part with possession of the Products, then You must hold the proceeds of any such act on trust for Us, and must pay or deliver the proceeds to Us on demand.
  - (d) You should not convert or process the Products, or intermix them with other equipment. But if You do, then You hold the resulting product on trust for Our benefit, and must sell, dispose of or return the resulting goods to Us as We so direct.
  - (e) You irrevocably authorises Us to enter any property where We believe the Products are kept and recover possession thereof, without Us being liable for any loss or damage caused thereby.
  - (f) You shall not charge or grant an encumbrance over the Products, nor grant nor otherwise give away any interest in the Products, while they remain Our property.
  - (g) We may commence proceedings to recover any Charges, notwithstanding that ownership of the Products has not passed to You.

#### 20. Personal Property Securities Act 1999 (“PPSA”)

- 20.1 Upon assenting to these terms and conditions in writing You acknowledge and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and a security interest is taken in all:
- (a) all Products previously supplied by Us to You; and
  - (b) all Products will be supplied in the future by Us to You; and
  - (c) collateral (account) – being a monetary obligation of You to Us for Services that have previously been provided, and that will be provided in the future by Us to You.
- 20.2 You undertake to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which We may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Us for all expenses We incur in registering a financing statement or financing change statement on the Personal Property Securities Register, or releasing any Products and/or collateral (account) charged thereby;

- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products and/or collateral (account) in favour of a third party without Our prior written consent.
- 20.3 Both You and Us agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 20.4 You waive Your right as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 20.5 Unless otherwise agreed to in writing Us, You waive Your right to receive a verification statement in accordance with section 148 of the PPSA.
- 20.6 You shall unconditionally ratify any actions taken by Us under clauses 20.1 to 20.5.

## 21. Security and Charge

- 21.1 In consideration of Us agreeing to provide the Services, You charge all of Your rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by You either now or in the future, to secure the performance by You of Your obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 21.2 You indemnify Us from and against all Our costs and disbursements, including legal costs on a solicitor and own client basis, incurred in exercising Our rights under this clause.
- 21.3 You irrevocably appoint Us, and each of Our directors, as Your true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 21 including, but not limited to, signing any document on Your behalf.

## 22. Privacy Act 1993

- 22.1 You authorise Us (or Our agent) to:
- (a) access, collect, retain and use any information about You:
- (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing Your creditworthiness; or
  - (ii) for the purpose of marketing products and services You.
- (b) disclose information about You, whether collected by Us from You through the equipment We use to provide the Services to You or directly obtained by Us from any other source (including surveys, forms, etc.), to:
- (i) any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by You; or
  - (ii) any of Our agents if We need to; or
  - (iii) any other service providers, if We need to do so as to allow You to use the Services; or
  - (iv) to law enforcement authorities (such as the Police or the Department of Internal Affairs) if We think that it is necessary.
- 22.2 Where You are an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.3 You shall have the right to request Us for a copy of the information about You retained by Us, so long as We can readily retrieve it, and the right to request Us to correct any incorrect information about You held by Us. Requests must be made in writing or by e-mail.

## 23. Service of Notices

- 23.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## 24. Trusts

- 24.1 If You at any time upon or subsequent to entering in to the contract are acting in the capacity of trustee of any trust ("Trust") then whether or not We may have notice of the Trust, You covenant with Us as follows:
- (a) the contract extends to all rights of indemnity which You now or subsequently may have against the Trust and the trust fund;
- (b) You have full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away Your right of indemnity of against the Trust or the trust fund. You will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) You will not without Our consent in writing (which We will not unreasonably withhold), cause, permit, or suffer to happen any of the following events:
- (i) Your removal, replacement or retirement as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

## 25. General

- 25.1 The Consumer Guarantees Act 1993 contains consumer safeguards, which may apply to the Services We provide to You if You are a consumer as defined under the Act, or if You are not a consumer, You acknowledge that the provisions of the Act are excluded. Any rights You may have under the Act if You are a consumer apply in addition to the rights set out herein.
- 25.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Christchurch Courts of New Zealand.
- 25.4 We may licence and/or assign all or any part of Our rights and/or obligations under this contract without Your consent.
- 25.5 You cannot licence, transfer or assign all or any part of Your rights and/or obligations under this contract without Our written approval.
- 25.6 We may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, You agree and understand that You have no authority to give any instruction to any of Our sub-contractors without the Our authority.

- 25.7 Neither You or Us shall be liable for any default due to fires, explosions, severe weather, industrial disputes, insurrection, requirements or regulations, or any civil or military authority, acts of war (whether declared or not), civil unrest, acts of God, earthquake, flood, riot, embargo, government act, strike, lock-out, storm, terrorism, DNS caching, propagation, or other DNS issues outside the reasonable control of either party, or failure or outage of any telecommunications links or other connections forming part of the Internet which are beyond the reasonable control of either party.
- 25.8 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.
- 25.9 You agree that We may amend these terms and conditions, and Our pricing structures, at any time, subject to the following:
- (a) if We reasonably believe that any proposed amendment will benefit You, or have a neutral impact on You, We can make the amendment immediately; We will take reasonable steps to bring the general nature of such changes to Your attention; or
  - (b) Where We reasonably believe that any proposed amendment will have a minor impact on You, We will provide You with thirty (30) days written notice of such change, and if the amendment will have more than a minor impact on You We will allow You to terminate this contract without incurring any early termination fees.
- 26. Scripts**
- 26.1 The term 'script' means a program written for Internet use and stored on Our server. We reserve the right to amend or remove any software and/or script at Our sole discretion without notice to You. Scripts written by other parties must be authorised by Us before being stored on Our server. You acknowledge that We are not responsible for maintaining any scripts that We are under no obligation to write, rewrite, or fix (where faulty). However, where We agree to undertake such work, We reserve the right to charge You additionally at Our standard hourly rate for work done.
- 27. Intellectual Property Rights**
- 27.1 We may have intellectual property rights in the Services or in the Products We supply to You, in Our website, including, for example, copyright, trademarks, etc. We retain all rights when We provide the Services to You.
- 28. Contacting Us**
- 28.1 If You need to contact Us for any reason You should send an e-mail to: [helpdesk@amuri.net](mailto:helpdesk@amuri.net) or You can call on: 0800 002 643. You acknowledge that any free Internet calling numbers listed on Our website may have a charge associated with its use in certain geographical areas within New Zealand and in such cases, You agree to be liable for those charges. Please note that some business premises charge for calls over their networks, e.g. hotels, motels, etc.