

Master Services Agreement



THIS AGREEMENT is made on [DATE]

PARTIES:

Plan B Limited (Company Number 952616) of 23 Arrenway Drive, Rosedale, Auckland ("us", "we", "our") ("**Plan B**");

AND

[**Company name**] (Company Number) of [address details]; ("**you**", "**your**") ("**the Customer**")

AGREEMENT:

1. Construction

Master Services Agreement (MSA)

1.1 The terms of this MSA apply to all Service(s) that we agree to provide to you, and are incorporated in each Services Agreement entered into pursuant to this MSA.

1.2 In the event of any inconsistency between the terms of this MSA and any Services Agreement, the terms of the Services Agreement shall prevail.

Services Agreement

1.3 Where it is agreed between us that we will provide certain Service(s) to you, we will prepare and deliver to you a completed Services Agreement setting out the specific terms applicable to our provision of particular Service(s) to you (each a "**Services Agreement**").

1.4 A Services Agreement will come into effect on the signing of the Services Agreement by both you and us, on the terms and conditions set out in this MSA and the Services Agreement.

1.5 Each Services Agreement constitutes a separate agreement for the provision of the relevant Service(s). Any Statement of Work in relation to any provision of Service(s) forms part of the relevant Services Agreement.

Definitions and Interpretation

1.6 The terms, words and expressions which are used in this MSA have the meaning given to them as set out in Schedule One. The rules of interpretation are also set out in Schedule One.

Service Terms

1.7 The current Service Terms applicable to any Service that we provide to you are attached to the relevant Services Agreement. By using any Service, you acknowledge and agree to use the Service in accordance with the Service Terms for such Service (as may be updated by us from time to time).

2. Term of Services Agreement

2.1 In respect of each Services Agreement, the term specified will commence on the date of the billing period start date, and will automatically renew for the renewal term specified in the Services Agreement or for a further 12 months (if none is specified) on expiration, unless terminated prior. Any such automatic extension shall be at our standard List Price rates for Fees for the supply of the relevant Service(s) i.e. no discount (if any) should be assumed or implied to continue upon renewal.

3. Fees and Payment

3.1 a. Subject to sub-clause c., clause 2.1 and clause 3.6, you will pay us our Fees detailed in the relevant Services Agreement for the provision of the applicable Service(s), in immediately available funds and without any set-off or deduction for any reason (whether by reason of set off, counterclaim or otherwise). The Fees detailed include monthly Fees and One-Off Fees payable for the relevant Service as at the date of the Services Agreement.

b. If any withholding or deduction is required by law to be made, the amount of any payment which you are required to make shall be increased to the extent such that we always receive the amount that we were intended to received.

- c. If you have a bona fide dispute in relation to any Fee invoiced to you:
- i. you must notify us within five Business Days of receipt of the relevant invoice that you dispute the relevant Fee and may withhold payment only of the amount subject to the dispute until the dispute is resolved;
 - ii. we will respond to such notice in writing within five Business Days of receipt of your notice whether by issuing an amended invoice or otherwise; and
 - iii. if you still dispute the Fee payable after receipt of our response, then you then must issue a dispute notice in accordance with clause 19.1 within five Business Days of receipt of our response.

3.2 Unless otherwise agreed or specified in the relevant Services Agreement, Services to which:

- a. a monthly Fee applies are payable by direct debit in advance no later than the first day of each calendar month.
- b. a "One-off" Fee applies are is payable by direct debit on the 20th of the month following the date of the invoice.

If any payment date is not a Business Day, payment of the relevant Fees must be made on the preceding Business Day.

3.3 We will invoice you for all Fees incurred. All Fees are exclusive of taxes unless otherwise specified in writing.

3.4 Where any amounts payable by you pursuant to the Agreement are overdue for payment or where all amounts have become due and payable by you as a result of termination, interest is payable at the Default Rate on those amounts accruing daily on a compounding basis from the due date until payment and we reserve the right to suspend any Service (as applicable).

3.5 Our List Price details our standard monthly Fees and One-Off Fees payable. The List Price may be updated by us from time to time and is available upon request.

3.6 Subject to clause 2.1, you agree that we may review and amend the monthly Fees up to once per Service in each twelve-month period by written notice to you setting out the changes. Any such change will not be effective until at least three months after the date of such notice.

3.7 Notwithstanding any commitment to price, we may pass on any additional charges or price increases imposed by third party vendors on 3 months' notice. Such additional charges or price increases will be applied to the pricing from the date that is 3 months' after notice.

3.8 If any monthly Fee increase pursuant to clause 3.6 is more than an increase by reference to the Consumer Price Index for the previous twelve months, you may reject the change by notice in writing to us before the proposed date of such change. Upon receipt of such notice, we may:

- a. agree a new mutually acceptable monthly Fee; or
- b. terminate the relevant Services Agreement upon three months' written notice to you.

3.9 You agree to pay the current One-Off Fees set out in the List Price at any time notwithstanding the amounts of any such One-Off Fees set out in the relevant Services Agreement.

4. Services

4.1 We will provide the Service(s) to you in accordance with the relevant Services Agreement and this MSA.

4.2 You agree that our ability to provide any Service(s) may depend on your providing us with any required information, participating promptly in reviewing material we have produced or otherwise providing us with the inputs and actions we need from you.

4.3 You agree that you are responsible for ensuring that the Service(s) fit your business needs and generally meet your requirements.

4.4 We will perform the Service(s) with all due care and skill in accordance with accepted industry practice. We will:

- a. use reasonable efforts to ensure that our servers and systems are available at all times (subject to scheduled maintenance) and that you can access them;
- b. ensure that there are appropriate back-ups to our servers and systems;

- c. use industry accepted procedures and practices to protect unauthorised access and data loss; and
- d. generally execute the relevant Service(s) with all due care and skill, in accordance with accepted industry practice.

5. Insurance

5.1 We undertake to hold, inter alia, the following minimum insurances during the term of any Services Agreement:

- a. Technology Liability Insurance \$20,000,000.
- b. General (Public) Liability \$30,000,000

6. Equipment

6.1 We may provide Equipment to you in order to provide the relevant Service(s).

Equipment undertakings

6.2 You will:

- a. not damage, sell, dispose of or encumber the Equipment in any way;
- b. not make any addition or modification to the Equipment (including any identifying markings on the Equipment);
- c. permit us to inspect the Equipment or maintain, upgrade or replace the Equipment, at any time during usual business hours upon one day's prior notice unless in an emergency situation whereby we may access the Equipment at any time;
- d. not move the Equipment from the installed location without our prior written consent or use or install the Equipment in any manner that would render the Equipment a fixture or result in the equipment being kept in an unsuitable environment;
- e. agree to comply with all relevant laws relating to the use, regulation or licensing of the Equipment and to pay all requisite fees and charges relating to the Equipment; and
- f. promptly notify us of any damage to or loss of Equipment.
- g. If the Equipment is lost or damaged while located on the customer's premises, the Customer shall pay all the charges for repairing or replacing it as required.

6.3 Upon the expiry or termination of the relevant Services Agreement, you will agree a time with us to decommission and at your cost (where applicable) retrieve any Equipment located at the site.

- 6.4 a. If we are entitled under this MSA, or at law, to repossess any Equipment from you or if you do not return the Equipment to us when required and/or requested, we may enter any premises where we reasonably believe the Equipment is located to enable us to repossess the Equipment.
- b. You release us from any liability relating to such repossession.
- c. You will indemnify us for any expenses which we incur, acting reasonably, in repossessing or attempting to repossess the Equipment in accordance with this clause.

No ownership rights

6.5 You acknowledge and agree that:

- a. you do not have any ownership rights or any title to any Equipment; and
- b. you have no right to acquire any Equipment, unless specifically provided for in the relevant Services Agreement or agreed to by us at our sole discretion.

Personal Properties Security Act "PPSA"

6.6 You:

- a. acknowledge that, where we have rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA;
- b. agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to this MSA; and
- c. waive your right to do any of the following:
 - i. receive notice of your proposal to retain any Equipment under section 120(2) of the PPSA or object to such proposal under section 121;
 - ii. not have any Equipment damaged when you have an accession under section 125 of the PPSA;
 - iii. receive notice of the removal of an accession under section 129 of the PPSA;
 - iv. apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA;
 - v. to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by this MSA.

7. Undertakings

7.1 You undertake to us that you will:

- a. provide us with the required inputs for the relevant Service(s) (including any data communications connection as required);
- b. promptly notify us if you cannot access our servers or systems;
- c. keep all user names and passwords provided by us confidential and secure and notify us immediately if any user name or password becomes compromised or is suspected to potentially have become compromised;
- d. promptly notify us as soon as practicable prior to your location changing with such notice being not less than 60 days prior;
- e. if and while any of your devices are connected to our network and/or internet connection, take all reasonable measures to ensure that our environment is secure from external attack;
- f. ensure that you and your Associates using our Equipment or accessing our servers and systems comply with our Policies (as notified to you from time to time);
- g. ensure that the Service(s) are suitable for your business needs and generally meet your requirements; and
- h. only use our Service(s), network, Equipment, Software, servers and infrastructure for lawful purposes.

7.2 You are solely responsible and liable for:

- a. any activity that occurs through the use of your user names and passwords provided by us;
- b. all charges arising from the use of your account as a result of viruses, Trojan programs or other computer programs;
- c. your computer network (as opposed to ours) and the internet's performance; and
- d. your conduct and data, and any charges relating to usage of the Service(s).

8. On-site access

8.1 You will provide us and our suppliers with all reasonable access to, and facilities within, your premises and networks as we may require to execute the relevant Service(s).

8.2 Each Party will comply with the health and safety and security procedures notified to the other Party from time to time when on the other Party's premises to enable, without limitation, compliance with applicable health and safety legislation and regulation.

8.3 We may, at our sole discretion (acting reasonably), refuse or terminate access to our premises where we believe that there is a risk or a potentially detrimental impact to our Associates, property or our business generally. If you are aware or become aware of any such risk or potentially detrimental impact occurring you agree to notify us immediately.

9. Intellectual Property

9.1 Each Party's Intellectual Property is their property and all proprietary rights to this Intellectual Property resides solely with them. Each Party acknowledges that it:

- a. has no right or claim in the other Party's Intellectual Property; and
- b. will not dispute the other Party's ownership of its Intellectual Property in any way.

9.2 Subject to the other terms of this MSA, each Party acknowledges that any goodwill relating to the other Party's Intellectual Property which may result from its use of the other Party's Intellectual Property is and remains the property of the other Party.

9.3 No Party will during the term of this MSA or after termination:

- a. apply for registration as a trade mark or company of any words or logos that are identical with or deceptively or confusingly similar to the other Party's Intellectual Property; or
- b. directly or indirectly challenge or contest the validity of the other Party's Intellectual Property; or
- c. represent that it has any right, title or interest in the other Party's Intellectual Property except as expressly granted in this MSA.

9.4 No Party will be liable for any damage or loss arising from the infringement of any third party's intellectual property rights by its use of the other Party's Intellectual Property in accordance with this MSA.

10. Software licence

10.1 For the purposes of providing any Service(s), we grant you a non-exclusive, non-transferable licence to use:

- a. the Software (in machine readable form) together with any documentation required for the use of the Software;
- b. our other Intellectual Property in relation to such use,

subject to your compliance with this MSA, the relevant Services Agreement(s) and the terms of any licence applicable to any such Intellectual Property (including our reasonable directions relating to your use of such Intellectual Property).

10.2 You undertake not to:

- a. attempt to reverse engineer, modify or decompile the Software or otherwise discover the source code or algorithms of the Software;
- b. copy the Software (other than in accordance with this MSA); or
- c. resell, rent, lease, transfer or otherwise transfer any rights to the Software other than as expressly permitted in this MSA.

11. Costs

11.1 Each Party will pay its own costs and expenses incurred in connection with the preparation, negotiation and execution of this MSA and any Services Agreement.

11.2 You must pay or reimburse us for:

- a. all taxes (including GST but excluding income tax), stamp duties and other duties, if any, payable in connection with any Services Agreement or any payment, receipt or other transaction arising under a Services Agreement;

- b. any expenses which we may reasonably incur in retaking or attempting to retake possession of the Equipment;
- c. any costs or expenses (including legal costs) reasonably incurred by us in connection with the protection of the Equipment, the Software or the enforcement of our rights under a Services Agreement including, without limitation, debt collection service fees.

12. Indemnity and Liability

12.1 Subject to clause 12.4, each Party will indemnify the other Party and each of the other Party's Associates (each an "**Indemnified Party**") against any Claim which may be made or brought against an Indemnified Party, or which an Indemnified Party may sustain or incur, arising from or in connection with:

- a. any breach by the Party of the terms of this MSA;
- b. any negligent act or omission or act of fraud or dishonesty by the Party (or its employees or agents) in the performance of the Party's obligations under this MSA;
- c. any Claim by a third party caused or contributed to by the Party or its Associates;

except to the extent that any liability, loss, damage, cost or expense is solely and directly caused by the negligence or deliberate default of the Indemnified Party, and provided that, except in respect of any Claim for liability under or breach of clause 7.2, 9 or 17 where a Party's liability is unlimited, the Indemnified Party's aggregate liability under this clause at any time is limited to the aggregate of all Fees and other amounts payable under this MSA and the relevant Service Agreement(s) during the immediately preceding twelve month period.

12.2 To the full extent permitted by law, each of the Parties excludes all liability however arising for any indirect, special or consequential loss or damage (including without limitation, loss of profits or goodwill) arising in any way out of or in connection with this MSA except where the loss or damage is a result of its grossly negligent or wilful acts or omissions or those of its Associates.

12.3 In satisfaction of our liability to you under this MSA, we reserve the right at our discretion to repair, replace, re-provide Service(s) or to credit the portion of the Fees applicable to any Services Agreement in respect of any Claim accepted. For the avoidance of any doubt, if we are relieved of a failure to comply with an obligation under this clause, it shall not be in breach of such obligation, and we shall have no liability to you in respect of such failure.

12.4 In the case of any Claim pursuant to clause 9.4 alleging our performance of the Service(s) infringes the Intellectual Property rights of any third party, you must notify us promptly of such Claim. We may handle that Claim's defence. On request, you will provide us with all reasonable assistance with any such Claim and you agree not to do anything to prejudice the settlement or defence of any such Claim.

12.5 Any Party alleging a Claim shall take (and use its best endeavours to ensure that any third party take) all reasonable steps to mitigate any loss or liability which might give rise to a Claim against the other Party under this MSA.

12.6 You agree that you will not pursue any claims against us for any liability we may have under or relating to this MSA or any Services Agreement until you first make claims against your insurance provider(s) and such insurance provider(s) finally resolve(s) such claims.

12.7 We will not be responsible for damage to or loss of your data unless we were negligent in executing or failed in a material way to meet our obligations. We are not liable for data that was never sent by you or received by us.

12.8 We exercise no control whatsoever over the content of the information passing through our sites, and it is your responsibility to ensure that the information you transmit and receive complies with all applicable laws and regulations.

12.9 Nothing in this clause 12 shall limit or affect your obligation to make a payment (to avoid doubt, including under any express obligation to indemnify us) in accordance with the terms of this MSA.

13. Force majeure

- 13.1 Neither Party will be liable to the other Party for any delay or failure to execute its respective obligations under this MSA where the delay or failure is caused by a Force Majeure Event.
- 13.2 A Party whose performance under this MSA is affected by a Force Majeure Event must, where possible:
- a. promptly notify the other in writing with details and the likely duration of delay or any non-performance of its obligations; and
 - b. use all reasonable efforts to avoid or mitigate the effect of the event on the other and the performance of the affected Party's obligations, and resume full performance of its obligations as soon as reasonably possible, at no cost to the other Party.
- 13.3 Where you are impacted by a city-wide event or a where a state of emergency is declared such as following an earthquake or other Force Majeure Event, and we are unaffected, in the interests of servicing the maximum number of our customers during an event that falls outside of any Services Agreements, we reserve the right to modify distribution of any Service(s) to you and any other customers.

14. Notices

- 14.1 Each Party will give any required notice under this MSA to the other Party at the address or email details as last notified to the other.
- 14.2 Any notice will be effective once received, and will be deemed to be received:
- a. if posted in New Zealand on the third day after posting;
 - b. if posted from overseas, seven days after posting; or
 - c. if emailed, when successfully sent from the sender's mail server.

15. Termination

- 15.1 An Event of Default occurs if:
- a. you fail to pay on time any undisputed Fees or other monies payable under any Services Agreement or this MSA; or
 - b. either Party ceases or threatens to cease carrying on business;
 - c. an Insolvency Event occurs in relation to a Party;
 - d. you attempt to sell, dispose of or encumber any Standby Equipment or Software in any way or attempt, without our consent, to assign, transfer or dispose of or encumber any Services Agreement;
 - e. subject to clause 12.3, either Party fails to comply with any written notice served by the other Party on such Party requiring such Party to rectify any other breach by such Party of any provision of any Services Agreement (other than the Events of Default specified in clauses 15.1(a) to (d) inclusive and clause 15.1(f) for which no period of notice is required) within ten Business Days of service of that notice on such Party; or
 - f. any representation or warranty made by you in connection with this MSA or any Services Agreement is found to be materially incorrect or misleading.
- 15.2 Either Party may terminate a Services Agreement, upon notice to the other Party, if an Event of Default occurs in relation to such other Party.
- 15.3 Either Party may terminate a Services Agreement, upon the expiry of any term contained in it, upon three months' prior notice to such expiry date.

16. Effect of termination

- 16.1 If for any reason any Services Agreement is terminated during its term other than due to any default or voluntary termination by us (except for any voluntary termination pursuant to clause 3.8b or 15.3), you will pay early termination fees equal to the remaining number of months in the relevant term of the Services Agreement multiplied by the greater of the current monthly billing detailed in the most recent invoice or the monthly billing at the commencement of the Services Agreement
- 16.2 On termination of a Services Agreement and in respect of such Services Agreement:
- a. all rights granted by either Party shall terminate and revert to the relevant Party;

- b. the obligations of a Party which have accrued but have not been discharged at the date of termination will not be affected by termination;
 - c. all moneys owing or refundable by either Party to the other Party under this MSA or the Services Agreement as at the date of termination will become payable within seven days of the date of termination;
 - d. each Party will discontinue its use of the other Party's Intellectual Property and/ or software;
 - e. upon termination your access rights to the Service(s) will immediately terminate;
 - f. each Party will return or destroy (at each other's option) the other Party's Confidential Information (including, without limitation, any of our software), and all copies of it (other than that information required to be retained for audit or regulatory purposes or where it is commercially impractical to return or destroy);
 - g. you may wish to retrieve data held by us by requesting we restore the data onto media provided by you. The fees for this service shall be at our standard time and materials rates; and
 - h. each Party will return to the other Party any property provided to the other Party (including Standby Equipment and Software) and in respect of such Services Agreements.
- 16.3 This clause and clauses 6.6, 7.2, 8, 9, 10, 11, 12, 13, 14, 15 and 17 shall survive termination of this MSA.
- 16.4 This MSA shall automatically terminate 90 days after the last Services Agreement has expired or has been terminated, other than any rights or obligations (including prospective and contingent ones to which a Party has become entitled to or subject before termination) which shall remain effective, and those clauses in the MSA which are intended to remain in full force and effect shall so remain.
- 17. Confidential Information**
- 17.1 Each Party must not disclose the other Party's Confidential Information, and will ensure that their employees, contractors and agents do not disclose it, to any other person except:
- (a) as required for the proper performance of a Services Agreement to a Party's professional advisors and on a confidential basis; or
 - (b) with the consent of the other Party.
- 17.2 Each Party will inform the other Party as soon as possible if:
- (a) it becomes aware or suspects that there has been any unauthorised disclosure of the Confidential Information; or
 - (b) it is required by law to disclose the Confidential Information.
- 18. General**
- Governing law and jurisdiction*
- 18.1 The laws of New Zealand govern this MSA and any Services Agreement, and both Parties submit to the exclusive jurisdiction of the New Zealand Courts.
- Entire agreement*
- 18.2 This MSA contains the entire agreement between both Parties in relation to the subject matter of this MSA, and any Services Agreement (inclusive of the terms of this MSA) contains the entire agreement between both Parties in relation to the subject matter of the Services Agreement, and each of the MSA or any Services Agreement supersedes all other discussions, representations, statements and prior agreements between the Parties.
- No Representations*
- 18.3 You have not relied on any representation, arrangement, understanding or agreement (written or oral, in any medium) not set out in this MSA or any Services Agreement (inclusive of any Statement of Work).
- Waiver and merger*
- 18.4 If either of us does not exercise a right at any time in connection with a default under this MSA, this does not mean that the right is waived or cannot be exercised later. Waiver in relation to any particular breach

shall not constitute waiver of rights in connection with any subsequent, or subsequently, discovered breach. The doctrine of merger is excluded.

Assignment

- 18.5 You will not assign, transfer or otherwise dispose of (whether by way of security or otherwise) any of your rights or sub-contract any of your obligations under this MSA or any Services Agreement without our prior written consent.
- 18.6 For the purposes of this clause, a reference to 'assign' includes any dealing, understanding, arrangement, or transaction, whereby there is a change in the management or control or beneficial or legal ownership of (or of any entity which owns or controls that Party and so on ad infinitum).

Severability & Waiver

- 18.7 This MSA is subject only to any mandatory contrary provision of law.
- 18.8 Where a mandatory contrary provision of law makes the whole or any part of this MSA void or unenforceable, such part shall be severed and shall not affect the validity or enforceability of any other part.
- 18.9 If either Party does not exercise a right at any time in connection with a default under this MSA, this does not mean that the right is waived or cannot be exercised later.

Variation

- 18.10 This MSA may only be varied if both Parties agree in writing.

Subcontractors

- 18.11 We may appoint any subcontractor or supplier to perform any of the Service(s) on our behalf at any time without your consent.

Consumer Guarantees Act

- 18.11 All conditions and warranties not expressly set out in this MSA are excluded to the extent legally permitted. You agree that you are obtaining the relevant Service(s) for the purposes of a business and accordingly the Consumer Guarantees Act 1993 will not apply.

Credit Checks

- 18.13 You acknowledge that at any time Plan B may:
- (a) collect, retain and use information as we may require for the purpose of this MSA from credit reporting agencies, and
 - (b) disclose any information that we hold to such credit reporting agencies.

19. Disputes

- 19.1 Without preventing either Party from seeking immediate injunctive relief in the case of any breach or threatened breach of this MSA, any dispute arising in relation to this MSA will be dealt with as follows:
- a. either Party may give written notice to the other Party stating the subject matter in detail of the dispute (the "**dispute notice**");
 - b. promptly after receiving the dispute notice, both Parties' representatives will try to resolve the dispute by good faith negotiations on a without prejudice basis;
 - c. if the Parties fail to negotiate a resolution to the dispute within 14 days after receipt of the dispute notice, the matter will be referred to mediation and either Party may apply to the Resolution Institute (formerly known as "LEADR" Lawyers Engaged in Alternative Dispute Resolution) to appoint a mediator following which the Parties will attempt to resolve the dispute by mediation. The costs and expenses of the mediator will be shared by the Parties equally; and
 - d. if the Parties fail to resolve the dispute by mediation within 14 days after the appointment of the mediator, either Party may, by written notice to the other Party, terminate the mediation process and may then refer the dispute to arbitration or commence court proceedings relating to the dispute.

SIGNED by

PLAN B LIMITED

Name of Director/Authorised Person

Signature of Director/Authorised Person

Date

SIGNED by

[FULL NAME OF CUSTOMER]

Name of Director/Authorised Person

Signature of Director/Authorised Person

Date

SCHEDULE ONE

DEFINITIONS

Activation Usage means you engaging sudden and unplanned use of a Service in accordance with the relevant Service Terms.

Associate means in respect of a Party, any employee, agent and/or contractor.

Business Day means any day on which banks are open for business in Auckland, New Zealand excluding a Saturday, Sunday or public holiday.

Claim includes, without limitation, any action, claim, demand or proceeding.

Confidential Information means any and all customer information and all the proprietary information, intellectual property (including patents and trademarks, registered and unregistered), trade secrets, know-how and data, technical, financial, administrative or commercial, which relates to the business and/or business practices of the Parties or any Related Company including (but not limited to) any drawings, plans, specifications, flow charts, market research material, documents (including but not limited to), operating system software, user manuals, audio or visual recordings, processes, techniques, details as to existing or intended business activities, details as to existing or prospective clients and the extent and scope of operations, and all other information whatsoever howsoever recorded or stored, but does not include any information which is or becomes:

- a. part of the public domain (other than through any breach of confidentiality by the recipient);
- b. lawfully known to the recipient on a non-confidential basis before being disclosed;
- c. available to the recipient from another person who is in possession of it lawfully and can disclose it on a non-confidential basis; or
- d. lawfully required to be disclosed.

Default Rate means 12% per annum.

Dispute Notice has the meaning set out in clause 19.1a.

Equipment means any equipment we provide to you in relation to the provision of any Service.

Event of Default has the meaning set out in clause 15.1.

Fees mean the fees and charges detailed in the relevant Services Agreement you are to pay us for the Service(s) and shall include any technical expertise rates.

Force Majeure Event includes any natural disaster, governmental intervention, war, fire, flood, explosion, theft of material items, breakdown of public utilities or services, civil commotion, armed hostilities, terrorist act or imminent threat (as declared by the applicable government in the jurisdiction affected), revolution, blockade, picket, embargo, strike, lock-out, sit-in, industrial or trade dispute, extreme adverse weather or epidemic disease, act or intervention of a competent judicial or regulatory authority, or any other event including any act or omission of any third party (other than any subcontractor).

GST has the same meaning as in the Goods and Services Tax Act 1985.

An **Insolvency Event** occurs when a person is unable to pay debts when they fall due, is placed in receivership and/or management, liquidation, provisional liquidation, under official management or administration, wound up, subject to any arrangement, or the assignment or composition with creditors or protected from any creditors under any legislation.

Intellectual Property includes all patents, copyright, Moral Rights, registered designs, registered and unregistered trademarks, trade secrets, know-how and confidential information and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

List Price means our schedule of standard Fees for Services, as may be amended or supplemented from time to time.

Moral Rights means any of the rights described in Article 6 of the Berne Convention for Protection of Literary and Artistic Services 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the Copyright Act 1994) or any other applicable law, that exist or that may come to exist, anywhere in the world.

MSA means this Master Services Agreement.

One-off Fee means a Fee that is payable once or ad hoc including but not limited to implementation fees unique statement of works or any other purchases of a non-recurring nature.

Party/ies means a party/ies to this MSA.

Planned Activation means you engaging use of a service in accordance with the relevant Service Terms and by mutual agreement with Plan B at least 7 days in advance.

Policies means our usage, security, access requirements and procedures, health and safety and any other of our policies from time to time.

PPSA means the Personal Property Securities Act 1999.

Related Company has the meaning set out in the Companies Act 1993.

Server Recovery Exercise means the process of executing the recovery of a server and accessing the backup information or replica as part of the Service.

Service Terms means the technical and operational terms applicable to a particular Service, as the same may be amended or supplemented from time to time.

Services means the services and other work to be provided by us to you, from time to time, as described in and in accordance with each Services Agreement and this MSA.

Services Agreement has the meaning set out in clause 1.3, in the form set out in Schedule Two.

Standby Equipment means an item of equipment that is owned by Plan B and provided to you as part of the Standby Equipment Service.

Standby Office Facilities means the office facilities that are owned or leased by Plan B and made available for your use as part of the Service.

Software means any software provided by us to you in performing the Services.

Statement of Work means the jointly agreed document or documents detailing particular Service(s) that we are providing to you pursuant to a Services Agreement, from time to time, and which is entitled 'Statement of Work'.

In this MSA:

- a. the singular includes the plural and vice versa;
- b. "person" includes a firm, body corporate, unincorporated association or any other body or entity;
- c. a reference to either Party includes that Party's successors and permitted assigns;
- d. a reference to a clause or schedule is a reference to a clause or schedule of this MSA;
- e. headings are inserted for convenience only and do not affect interpretation;
- f. monetary references are references to New Zealand currency; and
- g. a reference to any legislation is a reference to that legislation as amended or replaced from time to time, and includes any regulations or legislative instrument made under it.