

SOFTWARE AS A SERVICE ("SAAS")  
TERMS OF SERVICE FOR END-USERS

THE SERVICE PROVIDERS (DEFINED BELOW) ARE WILLING TO GRANT YOU RIGHTS TO ESTABLISH AN ACCOUNT AND TO USE THE WEB SERVICES (DEFINED BELOW) ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. PLEASE READ THE SERVICE AGREEMENT CAREFULLY. BY CLICKING ON "I ACCEPT", YOU WILL INDICATE YOUR AGREEMENT WITH THEM. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY OR PERSON, YOUR ACCEPTANCE REPRESENTS THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY OR PERSON TO THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, OR IF YOU DO NOT HAVE THE AUTHORITY TO BIND YOUR ENTITY OR PERSON, THEN THE SERVICE PROVIDERS ARE UNWILLING TO GRANT YOU RIGHTS TO ACCESS AND USE THE WEB SERVICES.

**SAAS TERMS OF SERVICE AGREEMENT**

Effective Date as of first day Results services commence.

1. Definitions.

1.1. Parties.

1.1.1. This is an agreement by and among the originator of the Web Services (the Primary Service Provider), the party that offered and sold you the Web Services (the, Secondary Service Provider, which will be Results.com or a Results.com authorized reseller), and you.

1.1.2. Both the Primary Service Provider and the Secondary Service Provider will be referred to collectively as the Service Provider, and both will have full rights to enforce this Agreement. All references to "we", "us", and "our, shall be construed to mean the Service Provider.

1.1.3. If you are not acting on behalf of yourself as an individual, then "you", "your", "customer", and "yourself" means your company or organization or the person you are representing. The company or organization you represent will be the one registered and paying for the web services specified as part of the Purchase Agreement.

1.1.4. Results.com includes Results.com Ltd (a New Zealand limited liability company), its subsidiary and joint venture partner companies. North American based clients will be deemed to have purchased the web service via Results.com USA Inc. a Results.com Ltd subsidiary.

- 1.2. "Web Services." The web services described and specified as part of the Purchase Agreement and any updates or upgrades to such services that may be generally released by Results to all customers from time to time.
  - 1.3. "Results Technology." The computer hardware, software and other tangible equipment and intangible computer code necessary to deploy and serve the Services via the Site.
  - 1.4. "Site." Results' [www.results.com](http://www.results.com) website including the Results Technology.
  - 1.5. "Authorized Users." The number of identifiable unique persons consisting of your personnel and outside consultants who are authorized to access and use the Services as determined by you but not exceeding the maximum number of users paid for. Authorized Users may include your third party consultants, outsourcers, contractors and other service providers.
  - 1.6. "Affiliate." With respect to you, any parent or Subsidiary Corporation, and any corporation or other business entity controlling, controlled by or under common control with you, which agrees in writing to be bound by all your obligations hereunder.
  - 1.7. "Customer Data." Customer's information or other data processed, stored or transmitted by, in or through the Services, including without limitation personal information relating to the Customer's personnel, customers, and prospective customers such that the identity of such persons is apparent or can reasonably be determined from such personal information.
  - 1.8. "Proprietary Rights." Any and all rights, whether registered or unregistered, in and with respect to patents, copyrights, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, confidential and proprietary information protected under contract or otherwise under law, trade names, domain names, trade dress, logos, animated characters, trademarks, service marks, and other similar rights or interests in intellectual or industrial property.
  - 1.9. "Purchase Agreement". Details of the purchase and Web Services required are agreed verbally and based on the terms, fees prevailing at that time on Results' website [www.results.com](http://www.results.com). Confirmation that the customer wishes to proceed and commit to an annual subscription service is deemed to have taken place when the periodic subscription fee has been paid.
2. Agreement.
    - 2.1. This Agreement between you and the Service Provider consists of this Terms of Service Agreement.

2.2. This Agreement between you and the Service Providers is also subject to their respective Privacy Policies. These can be viewed at their websites. The Primary Service Provider's Privacy Policy can be viewed at [www.results.com](http://www.results.com).

3. **Modification of Agreement.** We reserve the right to modify this Agreement at any time by posting an amended Agreement that is always accessible through links placed on one of the Web Services or login pages and/or by giving you prior notice of a modification. You should check this Agreement periodically for modifications by scrolling to the bottom of this page for a listing of material modifications and their effective dates. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED USE OF THIS SITE FOLLOWING OUR POSTING OF AN AMENDED AGREEMENT OR PROVIDING YOU NOTICE OF A MODIFICATION WILL CONSTITUTE BINDING ACCEPTANCE.
4. **Eligibility.** Web Services are not available to minors under the age of 18 years of age and any user that has been suspended or removed from the system.
5. **Web Services.** Web Services consist of Results.com software, rule-based, Business Execution Software, incorporating the Results strategy center that the Backend Services Provider provides through its website. We reserve the right to update and modify the Services from time to time.
6. **Use and Restrictions.** Subject to the terms and conditions of this Agreement, you may access and use the Web Services only through the login protocols provided to you, but only for your own internal purposes. All rights not expressly granted in this Agreement are reserved by the Service Providers and their licensors.
  - 6.1. You will be granted authorized login protocols for the Web Services, and you agree not to use the Web Services in excess of your authorized login protocols. You agree not to access (or attempt to access) the Web Services by any means other than through the login protocols we provide. You agree not to access (or attempt to access) the Web Services through any automated means (including use of scripts or web crawlers), and you agree to comply with the instructions set out in any robots.txt file present on the Web Services.
  - 6.2. You are not authorized to (i) resell, sublicense, transfer, assign, or distribute the Web Services or content; (ii) modify or make derivative works based upon the Web Services or content; (iii) "frame" or "mirror" the Web Services or content on any other server or Internet-enabled device, or (iv) reverse engineer, decompile the Web Services or their enabling software for any purpose.

- 6.3. You are not authorized to use our Web Services or servers for the propagation, distribution, housing, processing, storing, or otherwise handling in any way lewd, obscene, or pornographic material, or any other material which we deem to be objectionable. The designation of any such materials is entirely at our sole discretion.
7. **Inquiries Regarding Web Services.** You agree to make all inquiries regarding the Web Services and technical support directly to the Primary Service Provider.
8. **Ownership.** The software and technology used by the Primary Service Provider to generate and provide the Web Services are protected by law, including, but not limited to, United States copyright law and international treaties. The copyrights and other intellectual property rights in this material are owned by the Primary Service Provider and/or others. Except for the limited rights granted herein, all other rights are reserved.
9. **Termination.** You agree that we may terminate your account and access to the Web Services for cause without prior notice, upon the occurrence of any one of the following: (i) any material breach of this Agreement, or (ii) requests by law enforcement or other government agencies. Termination of your account includes (i) removal of access to all Web Services, and (ii) deletion of your login protocols. Further, you agree that all terminations shall be made in our sole discretion, and that we will not be liable to you or any third-party for any termination of your account or access to Web Services and/or data that you lose access too.
10. **Your Account-Related Responsibilities.** You are responsible for maintaining the confidentiality of your login protocols, and any additional information that we may provide regarding accessing the Web Services. If you knowingly share your login protocols with another person who is not authorized to use the Web Services, this Agreement is subject to termination for cause. You agree to immediately notify us of any unauthorized use of your login protocols or any other breach of security.
11. **Mutual Exchange of Confidential Information.** The parties anticipate that each may disclose confidential information to the other. Accordingly, the parties desire to establish in this Section terms governing the use and protection of certain information one party ("Owner") may disclose to the other party ("Recipient").
- 11.1. **Definition of Confidential Information.** For purposes hereof, "Confidential Information" means (i) the terms and conditions hereof, (i) non-public aspects of Results' Site and the operation thereof, Results Technology, and the Services and additional services provided by Results, and Results' business and technical information, and data, (iii) Customer Data, and non-public aspects of Customer's technology, computer programs, and business and technical information, and data. In

addition, Confidential Information includes information which, although not related to the Services or this Agreement, is nevertheless disclosed hereunder, and which, in any case, is disclosed by an Owner or its affiliate to Recipient in document or other tangible form bearing an appropriate legend indicating its confidential or proprietary nature, or which, if initially disclosed orally or visually is identified as confidential at the time of disclosure and a written summary hereof, also marked with such a legend, is provided to Recipient within fifteen (15) days of the initial disclosure.

11.2. Restrictions on Use and Disclosure. Recipient may use Confidential Information of Owner only for the purposes of this Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but in any case using no less than a reasonable degree of care. Recipient may disclose Confidential Information received hereunder only as reasonably required to perform its obligations under this Agreement and only to its employees who have a need to know for such purposes and who are bound by signed, written agreements to protect the received Confidential Information from unauthorized use and disclosure.

11.3. Exclusions. The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that: (i) is in the possession or control of Recipient at the time of its disclosure hereunder; (ii) is, or becomes publicly known, through no wrongful act of Recipient; (iii) is received by Recipient from a third party free to disclose it without obligation to Owner, (iv) is independently developed by a party as evidenced by its written and dated records and without any breach of this Agreement; or (v) is the subject of a written permission to disclose provided by Owner. The Recipient may disclose Confidential Information of Owner pursuant to the requirements of a governmental agency or by operation of law, provided that such Recipient gives Owner written notice thereof as soon as practicable and reasonably cooperates with Owner to contest such disclosure.

11.4. Confidential Information. You agree that all non-public information that we provide regarding the Web Services, including without limitation, our pricing, marketing methodology, and business processes, is our proprietary confidential information. You agree to use this confidential information only for purposes of exercising your rights as our affiliate while in strict compliance with this Agreement, and you further agree not to use or disclose this confidential information for a period of three (3) years after termination as our affiliate.

12. Disclaimer of Actions of Third Parties. Results do not and cannot control the flow of data to or from Results' Technology and other portions of the Internet. Such flow of data depends on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt customer's connections to the Internet (or portions thereof). Although Results will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Results cannot guarantee that such events will not occur. RESULTS DISCLAIMS

ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES.

13. Onward Transfer of Personal Information outside Your Country of Residence. Any personal information that we may collect on the Web Services will be stored and processed in our servers located only in Canada. If you reside outside of Canada, you consent to the transfer of personal information outside your country of residence to Canada.
  
14. Export Control. We provide Web Services and use software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. You acknowledge and agree that the Web Services shall not be used in, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to, countries to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Web Services, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.
  
15. Registration Data. Registration is required for you to establish an account at the Web Services. You agree (i) to provide certain current, complete, and accurate information about you as prompted to do so by our online registration form ("Registration Data"), and (ii) to maintain and update such Registration Data as required to keep such information current, complete and accurate. You warrant that your Registration Data is and will continue to be accurate and current, and that you are authorized to provide such Registration Data. You authorize us to verify your Registration Data at any time. If any Registration Data that you provide is untrue, inaccurate, not current or incomplete, we retain the right, in its sole discretion, to suspend or terminate rights to use your account. Solely to enable us to use information you supply us internally, so that we are not violating any rights you might have in that information, you grant to us a nonexclusive license to (i) convert such information into digital format such that it can be read, utilized and displayed by our computers or any other technology currently in existence or hereafter developed capable of utilizing digital information, and (ii) combine the information with other content provided by us in each case by any method or means or in any medium whether now known or hereafter devised.

16. **Monitoring.** We reserve the right to monitor your access and use of the Web Services without notification to you.
17. **Security.** You shall be solely responsible for acquiring and maintaining technology and procedures for maintaining the security of your link to the Internet. As part of the Web Services, the Service Provider shall implement reasonable and appropriate security procedures consistent with prevailing industry standards to protect data from unauthorized access by physical and electronic intrusion; provided, however, unless resulting from the failure of Service Provider to perform the forgoing obligations, the parties agree that Service Provider shall not, under any circumstances, be held responsible or liable for situations (i) where data or transmissions are accessed by third parties through illegal or illicit means, or (ii) where the data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to Service Provider at the time. Service Provider will promptly report to you any unauthorized access to your data promptly upon discovery by Service Provider, and Service Provider will use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access. In the event notification to persons included in your data is required, you shall be solely responsible for any and all such notifications at your expense.
18. **Backups.** At no additional charge to Customer, Results shall make daily incremental Backups (the "Incremental Backup") and weekly full backups (the "Full Backups") of Customer Data archived with the Results Technology. The prior day incremental backup and a copy of the weekly backup shall be stored off-site in a secure facility designed to store and maintain backups for emergency use. Upon storage of a weekly backup in the off-site facility, the prior weekly backup shall be made available to Customer by electronic delivery. Requests for Customer data need to be made to Results fourteen (14) days before the termination of this agreement at additional cost to the Customer on a times and materials basis. Customer data will be made available in a standard database document. Customer Data will be released only if Customer is current on all payments.
19. **No Commingling of Customer Data.** The Services shall be operated in an environment where (i) all Customer Data shall be stored on files totally separate from those of other customers of Results, or (ii) all files containing Customer Data are partitioned sufficient to protect the security and privacy of Customer Data.
20. **Subscription License Term; Fees**
- 20.1. **Subscription Term.** The initial term of this web service shall commence as of the Effective Date hereof and shall continue for a period of one year, unless specified otherwise. The initial term hereof shall automatically renew for successive one (1) year terms unless either party notifies the other in writing not less than thirty (30)

days prior to the expiration of the current term of its intention not to renew. Both the initial term and any renewal term are subject to earlier termination as otherwise provided herein. Either party may choose not to renew this Agreement without cause for any reason.

- 20.2. **Subscription Fees and Payment Terms.** The periodic subscription license fees shall be payable on an annual basis, in advance, unless agreed otherwise. Periodic subscription license fee payments shall be as per the rate on Results' website [www.results.com](http://www.results.com) at period commencement whether that be the initial term or renewal period. The subscription fee will be calculated based on the number of users required forming part of the Purchase Agreement. Sales are made in blocks of 5 users. The initial number of users can only be reduced at the renewal date providing you notify Results in writing not less than thirty (30) days prior to the expiration of the current term.
- 20.3. **Additional Users.** Additional users can be added in blocks of 5 users to the subscription fee during the initial term and subsequent renewal periods. The fee for additional users will be the rate on Results' website [www.results.com](http://www.results.com) at the time of requesting additional users. The fee for additional users remains in force until the end of the 12-month initial term or subsequent 12 months renewal term. Only at the annual renewal date can additional users be reduced back down. Fees for additional users are payable monthly in accordance with 20.2. At the renewal date, unless we are notified by you thirty (30) days prior to the renewal date, the additional users will be included in the subscription license fees and payable as per 20.2.
- 20.4. **Fee Increases.** Website operator may increase periodic subscription fees at any time with sixty (60) days prior notice to Customer.
- 20.5. **Late Charges.** If Customer does not make timely payment to website operator of any amount payable hereunder, in addition to the remedies available to website operator at law or equity, website operator may collect interest on the sum then owing at the rate of 1.5% per month from the due date until payment by Customer; provided, however, that in no event shall the aggregate interest charges exceed the maximum rate of interest which could be charged under applicable law.
- 20.6. **Termination For Cause.** If either party fails to comply with any of the material terms and conditions of this Agreement, including without limitation the payment of any subscription license fee or reimbursement due and payable to Results under this Agreement, the non-defaulting party may terminate this Agreement and any and all license rights upon fifteen (15) days' written notice to the defaulting party specifying any such breach, unless within the period of such notice, all breaches specified therein shall have been remedied.
- 20.7. There will be no refunds of any payments made in advance whatsoever. With appropriate notice the Service Provider will stop any future scheduled payments.



21. **Purchase of Additional Services.** Customer may elect to purchase rights for additional Authorized Users, Web services and/or any other Results products or services, and/ from time to time. Such additional purchases shall be governed by the terms and conditions hereof.
22. **Subscription Fees.** Customer shall pay to Results periodic subscription fees for the Services and technical support services provided hereunder in accordance with the website [www.results.com](http://www.results.com).
23. **Taxes.** All fees are exclusive of taxes or duties. If Results is required to pay or collect any federal, state, local, value added, tax or duty on any fees charged under this Agreement, or any other similar taxes or duties levied by any governmental authority, excluding taxes levied on Results' net income, then such taxes and/or duties shall be billed to and paid by Customer immediately upon receipt of Results' invoice and supporting documentation for the taxes or duties charged.
24. **Technical Support, Training, and Consulting Services.** During the term hereof, the service provider shall provide technical support in the form of responses to questions by email or telephone at no additional charge. If additional services are required for the proper use and operation of the Services or if training or consulting services are requested, the service provider shall provide such services on a time and materials ("T&M") basis; that is, (i) Customer shall pay the service provider for all the time spent performing such services (including all travel time), plus materials, taxes, and reimbursable expenses; and (ii) the rates for such services shall be the service providers then-current standard rates when such services are provided.
25. **Proprietary Rights Ownership.** Ownership of the Proprietary Rights embodied in the Site, Services, and Results Technology shall remain exclusively vested in and be the sole and exclusive property of Results and its licensors. In addition Customer hereby transfers and assigns to Results any rights Customer may have to any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer personnel relating to the Service. The [www.results.com](http://www.results.com) domain name, product names and logos associated with the Services are trademarks of Results or third parties, and no right or license is granted to use them.
26. **Customer Representations and Warranties.**
- 26.1. Customer represents and warrants that (i) the performance of its obligations and use of the Services (by Customer and its Authorized Users) will not violate any applicable laws, or regulations, including without limitation any and all laws and

regulations regarding the transfer of personal information of residents of the European Union outside the European Union, or (ii) cause a breach of any agreements with any third parties or unreasonably interfere with the use by other Results customers of Results services.

26.2. Customer acknowledges that (i) Results does not monitor the content of the information passing through the Services for purposes of verifying accuracy or legal compliance, and (ii) Customer will use commercially reasonable efforts to ensure that the information it and its Authorized Users transmit thereby complies with all applicable laws and regulations, whether now in existence or hereafter enacted and in force.

26.3. In the event of any breach by Customer of any of the foregoing representations or warranties, in addition to any other remedies available at law or in equity, Results will have the right to suspend immediately any Services if deemed reasonably necessary by Results to prevent any harm to Results and its business. Results will provide notice to Customer and an opportunity to cure, if practicable, depending on the nature of the breach. Once cured, Results will promptly restore the Services.

27. Intellectual Property Indemnity. Except for third party software including without limitation open source software, Results will indemnify, defend and hold harmless Customer and its Affiliates from and against any lawsuit, liabilities, loss, cost or expense arising out of a third-party claim made against Customer that the Results Technology or Services infringe on any U.S. intellectual property right of a third party; provided, however, that Results is notified in writing of such claim promptly after such claim is made upon Customer. Results shall have the right to control any defense of the claim. In no event shall Customer settle any such claim without Results' prior written approval. Results shall have no liability or obligation if the claim arises from (i) any alteration or modification to the Results Technology or Services other than by Results, (ii) any combination of the Results Technology or Services by Customer with other programs or data not furnished by Results, or (iii) any use by Customer of the Results Technology or Services that is prohibited by this Agreement or otherwise outside the scope of use for which the Results Technology or Services are intended.

28. Options for Infringement Claims. If any party is enjoined from using the Results Technology, or if Results believes that the Results Technology may become the subject of a claim of intellectual property infringement, Results, at its option and expense, may: (i) procure the right for Customer to continue to use the Services; (ii) replace or modify the Results Technology so as to make it non-infringing; provided, however, that the Services continue to conform to the descriptions and/or specifications provided in the applicable Purchase Order; or (iii) terminate this Agreement, in which case Results shall refund to Customer any and all subscription fees paid in advance by Customer for those Services not provided by Results and provide, at Customer's request and free of charge, the Customer Data in a database document format. This Section and the preceding Section sets forth the

entire liability of Results to Customer for any infringement by the Results Technology or Services of any intellectual property right of any third party. Notwithstanding the foregoing, this Section does not apply to third party software including without limitation open source software.

29. **Liability Cap.** Except for Results' indemnity expressly provided herein and Results' confidentiality obligations, in no event shall Results' aggregate liability, if any, including liability arising out of contract, negligence, strict liability in tort or warranty, or otherwise, shall not exceed the total of subscription fees payable by Customer for the three (3) billing periods immediately preceding the claim for such liability.
30. **Termination by Results for End of Life.** Results intends to continue to provide and support the Services for the term of this agreement; provided, however, if, Results determines in its sole discretion that it is no longer feasible to support the Services, Results may terminate this Agreement for end of life at any time by providing one hundred eighty (180) days written notice to Customer.
31. **Return of Materials.** Within ten (10) days of the expiration or termination of this agreement, Customer shall return to Results any materials provided by Results.
32. **Assignment.** Customer shall not assign this Agreement or any right or interest under this Agreement, nor delegate any work or obligation to be performed under this Agreement, without Results' prior written consent. Any attempted assignment or delegation in contravention of this Section shall be void and ineffective.
33. **Continuing Obligations.** The following obligations shall survive the expiration or termination hereof and the distribution grace period provided above: (i) any and all warranty disclaimers, limitations of liability and indemnities granted by either party herein, (iv) any covenant granted herein for the purpose of determining ownership of, or protecting, the Proprietary Rights, including without limitation, the Confidential Information of either party, or any remedy for breach thereof, and (v) the payment of taxes, duties, or any money to Results hereunder.
34. **Notices.** We may give notice to you by means of (i) a general notice in your account information, (ii) by electronic mail to your e-mail address on record in your Registration Data, or (iii) by written communication sent by first class mail or pre-paid post to your address on record in your Registration Data. Such notice shall be deemed to have been given upon the expiration of forty eight (48) hours after mailing or posting (if sent by first class mail or pre-paid post) or twelve (12) hours after sending (if sent by email). You may give notice to the Primary Service Provider (such notice shall be deemed given when received) at any time by any of the following: (a) by emailing [accounts@results.com](mailto:accounts@results.com); or

(b) by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail as follows: Results.com, P O Box 105811, Auckland City, 1143, New Zealand in either case, addressed to the attention of "President of the Company". Notices will not be effective unless sent in accordance with the above requirements.

### 35. Arbitration.

Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall be conducted by telephone or online. The arbitrator shall apply the laws of New Zealand to all issues in dispute. The controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Should either party file an action contrary to this provision, the other party may recover attorney's fees and costs up to \$1000.00.

36. **Applicable Law; Jurisdiction and Venue.** This Agreement shall be construed under the laws of New Zealand, without regard to its principles of conflicts of law. The courts of as determined by Licensor shall be the exclusive jurisdiction and venue for all legal proceedings that are not arbitrated under this Agreement.

37. **Severability.** If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

38. **Warranty Disclaimers.** EXCEPT AS MAY BE PROVIDED IN ANY SEPARATE WRITTEN AGREEMENTS SIGNED BY THE PARTIES, THE WEB SERVICES ARE PROVIDED "AS-IS", AND NEITHER WE NOR ANY OF OUR LICENSORS MAKE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO SUCH THE WEB SERVICES. THE SERVICE PROVIDER AND ITS LICENSORS SPECIFICALLY DISCLAIM, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE WEB SERVICES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, COMPLETENESS, TIMELINESS, CORRECTNESS, NON-INFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE. THE SERVICE

PROVIDERS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT THE WEB SERVICES: (A) WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, OR (C) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THESE DISCLAIMERS CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT. IF IMPLIED WARRANTIES MAY NOT BE DISCLAIMED UNDER APPLICABLE LAW, THEN ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE PERIOD REQUIRED BY APPLICABLE LAW. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. FURTHER, CUSTOMERACKNOWLEDGES AND AGREES THAT RESULTS HAS NO CONTROL OVER THE INTERNET, AND THAT RESULTS IS NOT LIABLE FOR THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET WHICH MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE SERVICES.

39. **Limitation of Liability.** IN NO EVENT SHALL THE SERVICE PROVIDER AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE WEB SERVICES, INCLUDING WITHOUT LIMITATION THE USE OR INABILITY TO USE THE WEB SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE WEB SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
40. **Force Majeure.** We shall not be liable for damages for any delay or failure of delivery arising out of causes beyond our reasonable control and without our fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures.
41. **Survival.** Those clauses the survival of which is necessary for the interpretation or enforcement of this Agreement shall continue in full force and effect in accordance with their terms notwithstanding the expiration or termination hereof, such clauses to include, without limitation, the following: Warranty Disclaimers, Limitation of Liability, Confidential Information, Security, Notices, Arbitration, Applicable Law, Jurisdiction and Venue, Severability, Force Majeure, and Miscellaneous.
42. **U.S. Government End-Users.** We provide the Web Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Web Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical

Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement. Unpublished- rights reserved under the copyright laws of the United States.

#### 43. Miscellaneous.

This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and merges all prior communications, understandings, and agreements. This Agreement may be modified only by a written agreement signed by the parties. The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. The application the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. This license is written in English, and English is its controlling language.