



Master Service Agreement

THIS AGREEMENT is made the _____ day of _____

20[year]

PARTIES

1. **INTELLIUM TECHNOLOGY LIMITED**
("We, Us and Our")
2. **company name here**
("You" and "Your")

BACKGROUND

- A. We are pleased to be the provider of Support, Cloud and Connect information technology services to you.
- B. Please take the time to read this agreement. It is an important document. It is referenced in in our Estimates and Service Schedules. It sets out the details of our relationship with you.
- C. If you have any queries about this agreement, please raise them with us before you sign or ask your lawyer to review them.

HOW TO NAVIGATE THIS AGREEMENT

- A. To help you navigate this agreement, it is divided into the following parts:
 1. Our services;
 2. Equipment;
 3. Payment arrangements;
 4. Important legal details;
 5. Definitions.
- B. As this agreement is a Master Service Agreement, it applies to all of our services and to any equipment you may access through us.
- C. This agreement is referred to in our Estimates and our Service Schedules. The terms of our Estimates and Service Schedules will prevail over this agreement.

PART 1 – OUR SERVICES

1. SUPPLY OF THE SERVICES

Services

- 1.1 The terms applying to the Services are recorded in:
 - (a) the Estimates;
 - (b) the Service Schedules (if any); and
 - (c) this agreement.

2. TERM AND RENEWAL OF TERM

Term

2.1 We will provide the Services for 3 years ("the Term").

Renewal of Term

2.2 Please give us 30 working days' notice before the Term expires if you would like us to renew your agreement with us. If you don't give us notice and provided you are not in breach, this agreement will be automatically renewed for subsequent terms of 1 year.

3. THINGS YOU MUST DO

Username and passwords

3.1 Please keep all passwords confidential. Let us know if you become aware of any unauthorised use of your or your Users' usernames and passwords or any other breach of security.

Software

3.2 If you use any Software in connection with the Services, you must comply with the terms of any licence provided to you for the use of the Software.

Your equipment

3.3 We expect you to make sure that your equipment:

- (a) does not harm the Services, our network or infrastructure; and
- (b) connects to our infrastructure, our network and the Services; and
- (c) all operating systems and applications running on your equipment are currently supported by the manufacturer or licensor.

Restrictions

3.4 You must not:

- (a) in any way interfere with the Services or their normal operation;
- (b) use the Services to violate any laws or restrictions of any kind;
- (c) send us Data which is corrupt;
- (d) enter into or upload onto the Services anything which infringes the rights of others or which contains a virus, malware or other harmful item or which is unlawful, indecent, threatening or offensive or which could in any way create any liability on or loss to us or to our other customers and users;
- (e) undermine, or attempt to undermine, the security or integrity of our systems or networks, or where the Services are hosted by a third party, that third party's computing systems and networks.

4. DATA

Licence to use

- 4.1 You grant to us and our third party providers a licence to use the Data for the purpose providing the Services to you.

Warranty

- 4.2 You warrant that your Data does not infringe or conflict with the rights of third parties.

Removal of Data at end of agreement

- 4.3 Immediately following the end of this agreement, we will remove all of your Data from the Service. We will not be liable to you for any loss you incur or suffer as a result of this.

Security

- 4.4 We will use our reasonable endeavours to ensure the security of the Data. Regardless of the security measures taken by us, no data transmission over the internet and no security software or other security feature can be guaranteed as secure. We cannot guarantee that our computer system or any electronic communication from us to you is free of viruses, protected fully against cyber-attacks or other harmful content.

5. MODIFICATIONS AND UPGRADES

Our modifications and upgrades

- 5.1 We may from time to time modify or upgrade the Services if our third party providers provide us with modifications or upgrades.

6. WARRANTIES AND LIABILITY

Warranty

- 6.1 We warrant that the Services will be fit for the purpose made known to us by you prior to you accepting an Estimate for the Service.

Service Levels

- 6.2 We will use our reasonable endeavours to make the Services available to the Users between 8.30am and 5pm on Working Days, excluding (where applicable):
- (a) routine system maintenance of up to 4 hours per month, which will be scheduled by us outside of 8.30am and 5pm wherever possible;
 - (b) downtime to address critical Software issues;
 - (c) external local area network connectivity;
 - (d) disaster recovery situations;
 - (e) hardware failure;

- (f) compromises from cyber exploits, e.g. malware infections;
- (g) downtime caused by circumstances beyond our control.

If you consider we have not met our service levels

6.3 We are proud of our commitment to provide services within our service levels. Please let us know if you consider we have fallen short of your expectations. We will do our best to resolve any issues in good faith and promptly.

Limitations

6.4 While we will use all reasonable endeavours to supply the Services:

- (a) we will not be responsible for any loss or damage of any kind whatsoever, including, without limitation, interruption of business, access delays or data mis-delivery or destruction incurred by you in your use of the Services;
- (b) we will not be in any way liable for any direct, indirect, incidental, special or consequential damages incurred by you or any third party arising from any access to, reliance on or use of the Services;
- (c) all implied warranties are excluded;
- (d) you have acquired the Services for business purposes and the Consumer Guarantees Act 1993 does not apply to this agreement.

7. THIRD PARTY APPLICATIONS

7.1 The Services may utilise third party applications. You agree that third-party applications:

- (a) are able to be used by you for the purposes of this agreement;
- (b) will be subject to the third party's end user terms and conditions and you agree to comply with all such terms and conditions;
- (c) are only licensed to you for use with the Services.

7.2 We may need to allow the providers of those third party applications to access your Data as required for the operation of their application. We will not be liable for any disclosure, modification or deletion of your Data resulting from any access by third party application providers.

PART 2 - EQUIPMENT

8. EQUIPMENT

Installation

8.1 We will use reasonable endeavours to deliver and install the Equipment to you at the Site on the Installation Date. The Installation Date may change or the Installation may be delayed. For that reason we cannot guarantee that the installation will happen or be completed on the Installation Date.

- 8.2 On or before the Installation Date, you will provide us with all information we require in order to provide the installation of the Equipment.
- 8.3 On the Installation Date, you will provide us with access to the Site so that we can provide install the Equipment.
- 8.4 In installing the Equipment, we will adopt our standard procedures and standard test routines. Any additional installation service requested by you or otherwise caused by a failure on your part to meet your obligations under this agreement must be paid for by you at our then current prices or rates.

Return of the Equipment

- 8.5 When this agreement ends, you must at your own expense immediately return the Equipment to us, in good order and repair (normal wear and tear excepted), at the place we nominate.
- 8.6 If not, we may retake possession of the Equipment and you will continue to be liable for the Fees associated with the Equipment until it is returned to us or we retrieve it.

What you must do before we install the Equipment

- 8.7 You must:
- (a) prepare the Site prior to delivery of the Equipment and provide such electric power supplies, environmental conditions, telecommunications facilities and cabling as required in advance in writing by us;
 - (b) provide us with access to the Equipment and make available appropriate staff and suitable working space and facilities;
 - (c) follow our instructions and advice on matters dealing with the maintenance and operation of the Equipment and will provide proper care for the Equipment, housing it in suitable premises and in a suitable environment;
 - (d) keep the Equipment in good order and repair (normal wear and tear excepted);
 - (e) comply with the manufacturer's instructions and recommendations relating to the Equipment;
 - (f) allow us to access to the Equipment for testing or inspection;
 - (g) comply with all laws relating to the registration and licensing of the Equipment or the use of it; and
 - (h) provide us with all the information required for us to register and maintain a legally effective financing statement in respect of the security interest created by this Agreement.
- 8.8 You must not:
- (a) alter, add to or install anything on the Equipment;
 - (b) use the Equipment for any purpose which is unlawful or which might prejudice our interest in the Equipment or invalidate any insurance or warranty in relation to the Equipment;
 - (c) create any lien, security interest or other encumbrance over the Equipment; or
 - (d) alter or cover up any insignia, number or mark on the Equipment or any identifying plate or

mark attached by us.

Title and risk

- 8.9 Risk in the Equipment passes to you once the Equipment has been delivered to the Site.
- 8.10 Title to the Equipment remains with us.

Security interest

- 8.11 You acknowledge that this Agreement creates a security interest in the Equipment as security for your obligations to us under this Agreement and that the security interest is registrable on the PPSR. You indemnify us against any costs we incur in maintaining our security interest in the Equipment and exercising any of our rights under Part 9 of the PPSA.

PART 3 – PAYMENT ARRANGEMENTS

9. FEES

Payment of fees

- 9.1 We will invoice you the Fees. The Fees are payable on the date specified in our invoice, unless provided otherwise on an Estimate. You must pay us the Fees on time without set-off or deduction.

Default in payment

- 9.2 If you don't pay our accounts on time, we may charge you interest on your outstanding account at the Default Rate. We may also stop providing the Services and suspend your access to Data. We may also cease making any payments on your behalf to third party suppliers. This may mean that you lose Data and that it may not be capable of being retrieved.
- 9.3 Where any Fees are payable on the basis of time spent by us, you will pay us for that time based on the Hourly Rate. Our time is recorded in 15 minute increments and rounded up to the nearest 15 minutes.
- 9.4 We may charge for travel time to the Site and out of pocket expenses relating to the provision of the Services.

Changes to Fees

- 9.5 Our Fees may change if:
 - (a) the Services we provide change;
 - (b) you want to increase the number of Maximum Users; or
 - (c) our costs to provide the Services are increased by our suppliers. If that happens we will give you at least one month's prior notice;
 - (d) The Term is renewed.

PART 4 – IMPORTANT LEGAL DETAILS

10. PRIVACY POLICY

10.1 We agree to comply with the Privacy Policy which we may update from time to time.

11. OUR STAFF - RESTRAINT

11.1 We value our employees and contractors highly and we expect you will too. It is a term of their employment agreements that they must not provide services to you in any capacity other than through us. You too must not during the Term and for a period of twelve (12) months following expiry of the Term, solicit or entice from us, or attempt to do so, any of our employees or contractors. If you do so, you must pay to us the sum of \$30,000 to compensate us for our loss. This amount has been calculated by taking into account our costs of recruitment and the time taken to train our employees.

12. TERMINATION

Termination by notice

12.1 We may terminate this agreement or the provision of any Service under this agreement by giving you 3 calendar months' notice in writing at any time.

Termination for cause

12.2 This agreement and your use of the Services under this agreement may be suspended or terminated immediately by us if:

- (a) you breach this agreement and such breach is not remedied within 5 working days of you receiving notice in writing from us;
- (b) you become insolvent, cease trading, enter into a compromise or arrangement with your creditors, are placed into receivership, liquidation, bankruptcy or administration or have any of your assets compulsorily disposed of for the benefit of a creditor (in each case other than as part of a solvent reconstruction or amalgamation to which the other party has consented); or
- (c) you do or permit anything that causes significant and material harm to the Services or our reputation or goodwill.

Early termination fee

12.3 If you purport to terminate this agreement or the provision of any Service under this agreement prior to the expiry of the Term for that Service, we may, in addition to any other remedy available to us, charge you an early termination fee which is the greater of:

- (a) the Fees for the balance of the Term that remains outstanding plus an administration fee of \$50.00 plus GST; or
- (b) a sum equal to the mean average of the last three full calendar month's invoices multiplied by the number of complete calendar months left in the Term after the date of termination (including the month in which the date of termination falls) plus an administration fee of \$50.00 plus GST.

13. CONSEQUENCES FOLLOWING TERMINATION OR EXPIRY

13.1 Following termination or expiry of the Term for a Service:

- (a) you will immediately cease use of that Service;
- (b) all Fees, including any applicable early termination fee, will become immediately due and payable to the end of the month following termination. Please be aware that we will not apportion fees where the termination occurs during a month as opposed to month end.

13.2 Following termination or expiry of this agreement:

- (a) you will immediately cease use of all Services under this agreement;
- (b) all Fees, including any applicable early termination fee, and any other monies due to us under this agreement up to the date of termination will become immediately due and payable;
- (c) you will not be entitled to a refund or part refund of any Fees already paid by you.

14. DISPUTE RESOLUTION

14.1 If a dispute arises out of or relates to this agreement:

- (a) a party to this agreement may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following sub clauses of this clause except where the party seeks urgent interlocutory relief;
- (b) a party to the agreement claiming the dispute ("Dispute") has arisen under or in relation to the agreement must notify the other party as to the nature of the Dispute;
- (c) on receipt of that notice by the other party, the parties must endeavour in good faith to promptly resolve the Dispute;
- (d) if the parties does not resolve the Dispute within fourteen (14) days of receiving notice of the Dispute, the parties must mediate the Dispute in accordance with the procedures of LEADR New Zealand, and the Chair of the New Zealand Chapter of LEADR (or the Chair's nominee) will select the mediator and determine the mediator's remuneration (which shall be paid equally by the parties);
- (e) if a binding agreement has not been reached as a result of that mediation process, then any party may (at its option) commence proceedings.

15. GENERAL

Assignment

15.1 You may not assign, convey, subcontract, sub-licence or delegate any of your rights, duties or obligations under this Agreement without our express prior written consent.

15.2 We may assign our rights, duties and obligations under this Agreement.

PART 5 – DEFINITIONS

16. DEFINITIONS

Definitions

16.1 In this agreement, unless the context requires otherwise:

"Data" means any data entered or uploaded by you or your Users or otherwise entered or uploaded with your express authority or using your username and password or your Users' usernames and passwords.

"Default Rate" means 12%

"Equipment" means the equipment to be supplied by us as described in an Estimate.

"Estimate" means the estimate document provide by us to you which sets out the fees and terms applying to the provision of the Service.

"Hourly Rate" means the hourly rate specified on an Estimate. If no hourly rate is specified on an Estimate, the hourly rate of \$180.00 plus GST shall apply.

"Installation Date" means the date we install the Equipment at the Site.

"Material" means information or instructions stored in any medium, and includes software, firmware, databases and any other forms of computer code and electronic data, as well as reports, manuals, specifications, plans, layouts, schema, formulae, diagrams, video recordings, audio recordings, photographs, drawings and other images.

"Maximum Users" means the maximum users (if any) for a Service as specified in an Estimate.

"Minimum Users" means the minimum users (if any) for a Service as specified in an Estimate.

"PPSA" means the Personal Property Securities Act 1999.

"PPSR" means the Personal Property Securities Register.

"Privacy Policy" means our privacy policy found at <http://www.intellium.co.nz/privacy-policy>.

"Services" means the services described in the Estimates or in a Service Schedule.

"Service Schedule" is a document which sets out the details of the Services we will provide to you.

"Site" means the site described in an Estimate.

"Software" means any and all software that is made available to you by us in connection with the Services, including mobile applications.

"Supplier Material" means any Material which we provide, or have provided, to you for the purposes of this agreement.

"Users" means your agents, employees, contractors and invitees using the Services.

"Working Day" means a day other than a Saturday, Sunday or public holiday but excludes the period between 24 December and 5 January inclusive in any year.

SIGNED for and on behalf of
company name here.

By signing you confirm you have
authority to do so
