

1) AGREEMENT TO TAKE EFFECT

a) Effect

This Agreement is to take effect from the the "Service Start Date" as agreed between ICONZ and the Customer under and in accordance with the Contract Investment Summary.

2) TERM

a) Initial Term

Unless terminated earlier in accordance with this Agreement or at law, this Agreement shall commence on the "Service Start Date" as agreed between the Customer and ICONZ and shall continue for the term outlined in the Contract Investment Summary or Contract Variation Agreement (the minimum term). Thereafter, and subject to any contrary provision in the Contract Investment Summary, the service will continue until either party provides the other with thirty (30) days prior written notice of termination.

3) AMENDMENTS TO CONTRACT INVESTMENT SUMMARY

a) Amendment Process

- (1) A party, acting reasonably, may request an amendment to the Contract Investment Summary or Contract Variation Agreement to include a new service as one of the Services or to alter an existing Service as one of the Services;

at any time by submitting a change request to the other party. That change request shall include:

- (I) a description of the proposed change;
- (II) the reason for the proposed change; and
- (III) a need-by date that is reasonable in all the circumstances.

- ii) All amendments will only be implemented by mutual agreement in writing. As soon as practicable following that request, the parties shall consult in order to consider whether or not to proceed with the Contract Variation Agreement in this clause 3. Both parties must act reasonably in such consultation. If they agree not to proceed with the Amendment to the Contract Investment Summary in this clause 3 then neither party shall be required to do so. Unless the parties agree not to proceed with that process within 10 Business Days of the request being made, the following provisions of this clause 3 shall apply.

- iii) ICONZ must, as soon as reasonably practicable following the expiry of the 10 Business Day period referred to in clause (ii) (or within such greater period as may be agreed by the parties), provide The Customer with a statement setting out its assessment of:

- (1) how the proposed change would be implemented, including details of any proposed change to the Services or Service Levels (or, if relevant, any other term of the Agreement);
- (2) the cost of implementing the change (including ICONZ's estimated fees for implementation) and any changes to the Fee once the change has been implemented;
- (3) the impact of the change on the terms of the Agreement; and
- (4) any information within ICONZ's knowledge reasonably requested by The Customer in connection with the proposed change.

ICONZ must act reasonably in the preparation of that statement and (in particular) in relation to the cost of implementing the change and the changes to the Fee – for which purpose reasonableness shall be assessed by reference to (inter alia) the nature of the then current Services, the Fee then currently payable by The Customer for the Services, the then current Service Levels and the other obligations of ICONZ to The Customer. ICONZ shall not be required to proceed with a change request to the extent that ICONZ reasonably considers the implementation of that change request is outside ICONZ's technical or operational capacity, or would (or would be likely to) cause ICONZ to breach any law or

good industry practice or the rights of any third party. Each party shall be responsible for their own costs in complying with this clause 3.

4) **SERVICES TO BE PROVIDED BY ICONZ**

a) **Provision of Services**

Subject to and in accordance with this Agreement, ICONZ will provide to The Customer the Services set out in the Contract Investment Summary

b) **Service Obligations**

ICONZ shall (subject to the other provisions of this Agreement) perform the Services:

- i) in accordance with:
 - (1) this Agreement;
 - (2) the service level agreement, where applicable
 - (3) all laws, regulations, rules and good industry practice applicable to the Services, i.e. to the same standard expected of a reasonable, diligent and efficient provider of services similar to the Services in New Zealand;
 - (4) any specifications set out in the Contract Investment Summary or Contract Variation Agreement; and
- ii) exercising due care, skill and diligence at all times;
- iii) in a timely, efficient and cost effective manner and in accordance with any timeframes specified in the Service Levels; and
- iv) in compliance with all The Customer's reasonable directions and instructions, and shall apply sufficient resources to perform the Services.

c) **Information**

ICONZ shall provide to The Customer promptly any information The Customer reasonably requests in respect of the Services and shall use reasonable endeavours to ensure that all information it provides to The Customer under or in connection with this Agreement is accurate and complete. The Customer shall pay ICONZ at ICONZ's usual "time and materials" rates for retrieval, preparation and provision of any such information.

d) **Non-exclusivity**

ICONZ's engagement under this Agreement is non-exclusive.

5) **THE CUSTOMER'S OBLIGATIONS**

The Customer shall:

- i) comply with its obligations set out in the Contract Investment Summary;
- ii) provide ICONZ or its representatives, where applicable (including its Personnel) with reasonable, safe access (free of charge) to relevant Customer premises to enable ICONZ to perform its obligations under this Agreement;
- iii) generally take such other actions as it is reasonable for it to take and as ICONZ reasonably requires in order to enable or facilitate the efficient or effective provision of the Services to The Customer; and
- iv) ensure at all times that it provides to ICONZ promptly any information ICONZ reasonably requests in order to provide any of the Services and that all information it provides to ICONZ under or in connection with this Agreement is accurate and complete.

6) **DECISION-MAKING**

Subject to any express provision to the contrary in this Agreement, each Party will ensure that where material approvals or decisions are required of a Party under this Agreement they are made and communicated to the other Party within the timeframe specified for such approval or decision or, if no timeframe is specified, as soon as reasonably practicable.

7) **PRICE AND PAYMENT**

a) **Payment for Services**

Subject to clause 7c, The Customer shall pay ICONZ:

- i) the Fees for the Services payable in accordance with the Contract Investment Summary or Contract Variation Agreement; and
- ii) the Customer agrees that ICONZ may, at any time, perform a credit reference check and/or a trade reference check with respect to the Customer's circumstances or status, whether financial or otherwise.

b) **Invoicing and payment**

Unless specified otherwise in the Contract Investment Summary, ICONZ shall invoice its monthly fees in advance and usage fees in arrears for any calendar month to The Customer in accordance with the requirements for a valid tax invoice under the Goods and Services Tax Act 1985. Subject to clause 7c and any conditions set out in the Contract Investment Summary relating to the Fee concerned, The Customer shall pay ICONZ's invoices within 20 Business Days of receipt of the invoice.

c) **Disputed invoices**

If The Customer has a bona fide dispute in relation to all or any portion of an invoice submitted by ICONZ, The Customer may withhold payment only of the amount subject to the dispute until the dispute is resolved.

d) **Interest on invoices**

If full payment of a charge has not been made on its Payment Due Date the Customer will be in default and in addition to the Customer being liable for the outstanding amount ICONZ may charge default interest on all sums outstanding at the rate of 2% per month on a daily basis from the Payment Due Date to the date full payment is received by ICONZ and charge the Customer any collection and handling fees incurred by ICONZ

e) **Goods and Services Tax**

All amounts payable under this Agreement are stated before the calculation of GST, which shall be due and payable at the same time as the payment to which it relates. Any invoices provided under this clause 7 shall specify the amount of GST and meet the requirements for a tax invoice in the Goods and Services Tax Act 1985.

f) **Other Taxes**

All government taxes (other than GST), duties, imposts and levies assessed or levied on ICONZ in relation to this Agreement (including penalties thereon) are included in the Fees.

g) **Service Credits**

ICONZ shall, in accordance with the Service Level Agreement (where applicable), be required to provide Service Credits to The Customer as a result of a failure to deliver Services to the required Service Levels.

- i) Each Service Credit shall constitute solely a credit against future Fees payable by The Customer to ICONZ under the Contract Investment Summary for Services provided by ICONZ to The Customer under this Agreement and may be set off against any fees owed or owing in the future by the customer. No Service Credit shall be redeemable for cash, transferable to any other person or available in relation to services outside this Agreement.
- ii) Subject to anything in the Contract Investment Summary, the aggregate amount of Service Credits which may be provided to The Customer in respect of any Service provided in any

calendar month shall not exceed 5% of the total fixed charge amount payable by The Customer to ICONZ in respect of the Services in respect of that calendar month (i.e. excluding amounts payable for Services for which the amount payable in any month is variable) and are otherwise to be calculated in accordance with clause 9 of the Service Level Agreement. In the event that Service Credits in excess of such maximum which, but for this clause, would be required to be provided to The Customer ICONZ shall not be required to provide such Service Credits (and, in particular, such additional Service Credits shall not be available to be carried over to any subsequent month).

- iii) Subject to anything in the Contract Investment Summary, The Customer's sole remedy for a breach of ICONZ's obligation to provide any of the Services to the required Service Level/s shall be the provision of Service Credits in accordance with clause 9 of the Service Level Agreement and this clause 7g. Notwithstanding the foregoing, this sub-clause is without prejudice to The Customer's other rights under clause 14(Termination clause) in respect of any breach of ICONZ's Service Level obligations.

8) DISPUTE RESOLUTION

a) Notice and consultation

Where any dispute arises between The Customer and ICONZ as to the application or interpretation of this Agreement or any related question of fact or law (including whether or not there has been a breach of this Agreement) (in each case, a *Dispute*), either party may give written notice to the other setting out details of the Dispute and requesting a formal meeting with a view to resolving it (*Dispute Notice*), in which case both The Customer and ICONZ will promptly attempt to resolve the Dispute by consultation between the Parties' Relationship Managers.

b) Escalation

If the Dispute has not been resolved within 10 Business Days of receipt of the Dispute Notice (or any longer period agreed by the parties in writing), the Dispute shall immediately be referred to the Relationship Managers, and each party will use reasonable endeavours to ensure that the Relationship Managers work promptly in an endeavour to resolve the Dispute. If the Dispute remains unresolved after 15 Business Days from the receipt of the Dispute Notice (or any longer period agreed by the parties in writing), the Dispute shall immediately be referred to the Chief Executives of each party, and each party will use reasonable endeavours to ensure that those Chief Executives work promptly in an endeavour to resolve the Dispute.

c) Mediation

If the Dispute has not been resolved within 30 Business Days of receipt of the Dispute Notice (or any longer period agreed by the parties in writing), then either party may refer the Dispute to mediation by a single mediator, to be conducted in accordance with the then-current Standard Mediation Agreement of LEADR New Zealand Inc. The mediator and his or her fee will be agreed by the parties or, failing agreement within a reasonable time, determined by the Chair for the time being of LEADR New Zealand Inc (or his or her nominee). Each party will pay one half of the mediator's fee.

d) Not arbitration

To avoid doubt, the provisions of this clause 8 do not constitute a reference to arbitration (although this will not prevent the parties from referring a Dispute to arbitration by mutual written agreement).

e) Continued performance

While the procedures in this clause 8 are being followed, unless the Term has ended, The Customer shall continue to pay the charges not in dispute under this Agreement and ICONZ shall continue to provide the Services (including those affected by the Dispute) if required by The Customer. The above procedures will not prevent The Customer from exercising any rights or remedies available under this Agreement.

f) Jurisdiction

A party will not commence any court proceedings against the other in respect of any Dispute, other than to seek urgent equitable relief, unless the Dispute remains unresolved following mediation in accordance with clause 8c, or the other party has materially failed to comply with one or more requirements of this clause 8 in relation to the Dispute.

g) **Use of information**

Without limiting clause 11, each Party (the *Receiving Party*) must maintain the confidentiality of any documents or other information provided by, or coming to its knowledge from, the other Party in the course of negotiations or mediation to resolve a Dispute. Each Party may use this information in settling the Dispute, but not for any other purpose. The Receiving Party may not rely on, or introduce as evidence in any arbitral, judicial or other proceeding:

- i) views expressed or suggestions made by the other Party on a possible settlement of the Dispute;
- ii) admissions or concessions made by the other Party in the course of negotiations or any other agreed process to resolve the Dispute;
- iii) proposals made or views expressed by a neutral person employed by the Parties to the Dispute; or
- iv) the fact that the other Party had or had not indicated willingness to accept a proposal for settlement.

9) **MUTUAL WARRANTIES**

In entering into this Agreement, each Party represents to the other that:

- i) it has full power and authority to enter into and perform its obligations under this Agreement;
- ii) there is no other agreement, arrangement, understanding or requirement binding on it that would prevent or impede its entry into, and/or performance of, this Agreement.

10) **INTELLECTUAL PROPERTY**

a) **Pre-existing Intellectual Property**

All Pre-existing Intellectual Property shall continue to be owned by ICONZ, or The Customer, or any third party, as the case may be.

b) **Licence to Pre-existing Intellectual Property**

The Party who provides or procures the provision of the Pre-existing Intellectual Property to the other Party under this Agreement grants (or shall ensure that the owner of Pre-existing Intellectual Property grants) to the other Party (and to the extent necessary, its Subcontractors) for the term of this Agreement, a non-exclusive, non-transferable, irrevocable and limited licence to use the Pre-existing Intellectual Property solely to the extent necessary to perform its obligations in accordance with this Agreement for the Term. Such licence shall be royalty-free.

c) **New Intellectual Property**

Subject to clause 10a any Intellectual Property developed by ICONZ solely for the purposes of providing any Service after the Service Start Date shall vest in ICONZ from the time it is developed.

d) **Licence to new Intellectual Property**

Unless specified otherwise in a Schedule, ICONZ shall grant to The Customer for the term of the Agreement a non-exclusive, non-transferable, royalty-free and limited licence for use of the Intellectual Property developed under clause 10c to the extent necessary for The Customer to receive the Services in accordance with this Agreement. ICONZ may revoke such licence immediately upon notice if The Customer breaches the terms of this licence.

e) **Trade Marks**

Except as provided in this Agreement, neither Party shall use any trade mark owned by the other Party, without first obtaining the other Party's written consent. Neither Party shall register any domain name or company similar to any trading name or trademark of the other party without that other party's prior written consent.

f) **No rights in data**

Nothing in this Agreement shall confer upon ICONZ or its Personnel any Intellectual Property or other rights in any data or other information of, or relating to, The Customer on ICONZ's servers or

systems that are the subject of the Services or that ICONZ otherwise processes under this Agreement in the course of providing the Services.

11) INFORMATION

a) Confidential Material defined

In this Agreement, Confidential Material means the existence and contents of this Agreement, all information and other material relating to a Party's affairs (including, in respect of a Party, business, officers, contractors, agents and employees) which:

- i) that Party (*the Disclosing Party*) makes available to the other Party (*the Recipient*) and is marked as confidential and/or proprietary, or ought reasonably to be considered confidential; or
- ii) comes or has come to the Recipient's knowledge, or which the Recipient develops or produces, as a direct result of any work it carried out for the Disclosing Party,

but excluding that which:

- iii) was known to the Recipient prior to the date of receipt from the Disclosing Party;
- iv) is generally available to the public (but not because the Recipient or anyone the Recipient is responsible for has disclosed it); or
- v) is provided to the Recipient's professional advisors for advice in relation to this Agreement; or
- vi) the Recipient or a third party has independently developed; or
- vii) is required to be disclosed by law.

b) Obligations regarding Confidential Material

Subject to clause 11e, The Customer and ICONZ must always keep each other's Confidential Material confidential. The Recipient will not:

- i) use the Confidential Material for any purpose other than for the reason it was provided; or
- ii) copy or reproduce any of the Confidential Material in any way, unless the copying or reproduction is required to enable the Recipient to use the Confidential Material for the reason for which it was provided,

without the Disclosing Party's prior written consent.

c) Delete or return upon request

On receiving a request from the Disclosing Party following the expiry or termination of this Agreement, the Recipient must use best endeavours to delete any of the Disclosing Party's Confidential Material which is held electronically and must promptly return all other Confidential Material (including any copies of it) in its possession or control.

d) Disclosure to employees

The Recipient may only disclose the Disclosing Party's Confidential Material to those of its employees and contractors who need it to enable the Recipient to carry out the purpose for which the Confidential Material was provided, and then only if those employees and contractors maintain the confidential nature of the Confidential Material.

e) Required disclosure

If the Recipient is required to disclose any of the Disclosing Party's Confidential Material for the purposes of:

- i) in the case of the The Customer, complying with an obligation to supply information for governmental or judicial purposes or under the Official Information Act 1982 or any other applicable statute or regulation; or
- ii) in the case of ICONZ, complying with any disclosure requirements mandated by any holding company (which has agreed to be bound by equivalent confidentiality restrictions) or with an obligation to supply information for judicial purposes or under any applicable statute or regulation,

the Recipient must:

- iii) advise the other Party of this before disclosing it;
- iv) consult with the other Party as to how much (if any) of that information should be disclosed; and
- v) disclose only that part of the Confidential Material which its legal advisers reasonably believe is necessary to disclose by law, having regard to the Disclosing Party's advice (if any) in relation to such disclosure (and, in particular, the harm which may result to it from such disclosure).

f) Acknowledgement

The Customer and ICONZ acknowledge that:

- i) neither Party owns or acquires any Intellectual Property in the other's Confidential Material;
- ii) the obligations in clauses 11a to 11e inclusive are in addition to the duties of confidentiality that the law imposes.

g) No press releases

- h) Subject to clauses 13e and 13.h, neither Party shall make any press release, public announcement (including postings on blogs or similar) or make any reference to the other Party (or any related entity of the other party) in relation to this Agreement or otherwise without the other Party's prior written consent, which may be withheld, or granted on such conditions as the other Party in its absolute discretion determines.

12) LIABILITY

a) Exclusion of Liability

Except as otherwise expressly specified in clauses 11 and 12b, and in clause 9 of the Service Level Agreement in respect of Service Credits, to the maximum extent permitted by law neither Party shall be liable to the other for any Loss, whether arising:

- i) directly or indirectly from any breach of this Agreement; or
- ii) from any act or omission of any of its Personnel; or
- iii) in contract or tort (including negligence).

b) Liability for breach

Subject to clauses 12c to 12g, if a Party is in breach of its obligations under this Agreement then that Party will be liable to the other for that other Party's direct Loss suffered as a result of such breach.

c) No liability for consequential loss

Except as otherwise specified in a Schedule, in no circumstances will a Party be liable to the other under this Agreement for any consequential or indirect Loss, or for any loss of profits, anticipated savings, revenues or goodwill arising under or in connection with this Agreement, whether or not that Loss was or ought to have been known by the Party in breach.

d) No Liability for the Other's Failure

Neither party shall be responsible, liable, or held to be in breach of this Agreement for any failure to perform its obligations under this Agreement or otherwise (and, for the avoidance of doubt, ICONZ shall not be required to provide any Service Credits resulting from a failure to meet any Service Levels), to the extent that such failure is directly attributable to the other party failing to comply with its obligations under this Agreement, or to the negligence or misconduct of the other party or its personnel.

e) Additional Exclusions

A fault, defect, delay or other deficiency in the provision of any of the Services will not constitute a breach of this Agreement and/or a failure to provide Services to required Service Levels, where applicable (and accordingly will not give rise to any liability for ICONZ, whether for Service Credits or otherwise) to the extent it is due to correction of errors caused by The Customer's failure to provide, where clearly contemplated by this Agreement, suitably qualified and adequately trained operating staff in relation to the Services.

f) **Maximum Liability**

If a Party is liable under this clause 12, then in no event shall a Party's aggregate liability to the other under this Agreement in respect of all events or circumstances that occur or arise in any Year exceed the Fees (to avoid doubt, excluding the amount of any GST) paid in the preceding three months except to the extent that such liability:

- i) results from bad faith, fraud, or deliberate and wilful default;
- ii) constitutes liability for the cost of repairing or replacing damaged physical property;
- iii) results from a breach of clause 11.

g) **Each limitation separate**

Each provision of this clause 12 is to be construed as a separate limitation applying and surviving even if any other provision of this clause 12 is held to be invalid or inapplicable in any circumstance.

h) **No effect on payment obligations**

Nothing in this clause 12 shall limit or affect The Customer's obligation to make a payment (to avoid doubt, including under any express obligation to indemnify the other Party) in accordance with the terms of this Agreement.

13) FORCE MAJEURE

a) **Force Majeure meaning**

In this Agreement, Force Majeure means any:

- (a) act of God, fire, earthquake, storm, flood, or landslide;
- (b) strike, lockout, work stoppage or other labour hindrance;
- (c) explosion, public mains electrical supply failure, or nuclear accident;
- (d) acts of war, acts of terrorism, sabotage, riot, epidemic, national emergency (whether in fact or law);
- (e) civil disturbance or insurrection;
- (f) requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity;
- (g) unavoidable accident; and
- (h) any other similar cause beyond the reasonable control of the Party claiming the benefit of this clause 13 and which that Party is unable to overcome by the exercise of reasonable diligence,

but does not include:

- (i) any event which the Party affected could have prevented or overcome by exercising a standard of reasonable care; or
- (j) a lack of or inability to access or disburse funds for any reason.

b) **Relief for Force Majeure**

Notwithstanding any other provision of this Agreement, non-performance by either Party of any of its obligations under this Agreement shall be excused, without liability for non-performance (including for the avoidance of doubt, in respect of ICONZ, without giving rise to any obligation on ICONZ to provide Service Credits to The Customer), during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure.

c) **Notice of Force Majeure**

The Party claiming the benefit of this clause shall promptly give written notice to the other specifying (to the extent it has relevant knowledge) the cause and extent of its inability to perform any of its obligations under this Agreement and its good faith estimate of the likely duration of such non-performance. In the meantime, such Party shall take reasonable steps to remedy or abate the Force Majeure and mitigate the effects on the other Party.

d) **Resumption of performance**

Performance of any obligation affected by Force Majeure shall be resumed as soon as practicable after the termination or abatement of the Force Majeure.

14) BREACH AND TERMINATION

a) **Termination by The Customer**

Subject to clause 14b and 14c, The Customer may terminate this Agreement immediately by notice in writing to ICONZ if ICONZ:

- (a) commits a material breach of any of its material obligations under this Agreement, the breach is capable of being remedied, The Customer has given ICONZ notice (no later than 30 Business Days after becoming aware of it) of the breach and that The Customer regards that breach as material, and ICONZ has failed to remedy the breach, or failed to provide a plan to remedy the breach acceptable to The Customer (acting reasonably), within a period of 10 Business Days of that termination notice, or such longer time as may be specified in that notice for remedying that breach; or
- (b) commits a material breach of any of its material obligations under this Agreement and that breach is incapable of being remedied, provided The Customer gives ICONZ such notice of termination no later than 30 Business Days after becoming aware of the breach; or
- (c) commits a series of related or similar breaches of any of its obligations under this Agreement which, when considered collectively, amount to a material breach, provided:
 - (1) The Customer gives ICONZ such notice of termination no later than 30 Business Days after becoming aware of the last of such breaches;
 - (2) The Customer, no later than 30 Business Days after becoming aware of the second to last of such breaches, gave notice to ICONZ that a further related or similar breach would result in The Customer being entitled to terminate this Agreement under this clause (c); and
 - (3) ICONZ has failed to remedy the breaches, or failed to provide a plan to remedy the breaches acceptable to The Customer (acting reasonably), within a period of 10 Business Days of that termination notice, or such longer time as may be specified in that notice for remedying that breach;

or

- (d) is the subject of an Insolvency Event;

b) **Termination by ICONZ**

ICONZ may terminate this Agreement immediately by notice in writing to The Customer if The Customer:

- i) fails to pay ICONZ a charge by its payment due date (other than any amount the subject of a bona fide dispute), ICONZ has given The Customer notice (not later than 60 Business Days after the amount became due and owing to ICONZ) in writing of that breach and of ICONZ's intention to terminate this Agreement if such payment is not made within the timeframe specified in that notice (which shall not be less than 5 Business Days from the delivery date of that notice), and The Customer has failed to make that payment within that timeframe; or
- ii) commits a material breach of any of its material obligations under the Agreement (except in respect of a bona fide payment dispute), the breach is capable of being remedied, ICONZ has given The Customer notice of the breach and that it regards it as material, and The Customer has failed to remedy the breach or failed to provide a plan to remedy the breach acceptable to ICONZ (acting reasonably) within a period of 10 Business Days from the date of that termination notice or such longer time as may be specified in that notice; or
- iii) commits a material breach of any of its material obligations under this Agreement and that breach is not capable of being remedied, provided ICONZ gives The Customer such notice of termination no later than 30 Business Days after becoming aware of the breach; or
- iv) commits a series of related or similar breaches of any of its obligations under this Agreement which, when considered collectively, amount to a material breach, provided:
 - (1) ICONZ gives The Customer such notice of termination no later than 30 Business Days after becoming aware of the last of such breaches; and

(2) ICONZ, no later than 30 Business Days after becoming aware of the second to last of such breaches, gave notice to The Customer that a further related or similar breach would result in ICONZ being entitled to terminate this Agreement under this clause (d); and

(3) The Customer has failed to remedy the breaches, or failed to provide a plan to remedy the breaches acceptable to ICONZ (acting reasonably), within a period of 10 Business Days of that termination notice, or such longer time as may be specified in that notice for remedying that breach;

or

v) is the subject of an Insolvency Event.

c) Force Majeure termination

If a Force Majeure event persists for more than 70 consecutive days, a Party may give written notice to the other Party of its intention to terminate this Agreement, and this Agreement will be terminated with effect from the termination date specified in that notice provided such date is after the delivery date of that notice.

15) CONSEQUENCES OF TERMINATION

a) Consequences of termination

i) The expiry or termination of this Agreement shall be without prejudice to the rights of each Party accrued up to the date of such expiry or termination. During the Disengagement Period, the terms of this Agreement shall continue in full force and effect, except where the context requires otherwise.

ii) The Customer must pay for any Services provided in accordance with this Agreement up to the date of termination (provided that ICONZ has provided an invoice which complies with clause 7b and continues to provide services at the agreed service levels up to the point of termination)

iii) Subject to clause 14a and 14c, if the Service Agreement is terminated by the Customer before the expiry of the Minimum Term, all charges corresponding to the remainder of the Minimum Term will immediately become due and payable to ICONZ

16) DISENGAGEMENT

a) Disengagement Plan

The parties agree that the following provisions shall apply in respect of the Disengagement Plan:

i) On the termination or expiry of this Agreement, unless and until a Disengagement Plan has been agreed, it shall be deemed to be as follows:

(1) The Disengagement Period shall be a period nominated by The Customer but not less than one month.

(2) During the Disengagement Period The Customer may require ICONZ to perform a reduced level of Services in which case the relevant terms of this Agreement shall continue to apply those reduced Services during that period.

(3) ICONZ shall continue to deliver the Services as required by The Customer, and The Customer shall continue to pay for those Services, on the same basis as prior to the Disengagement Period, to the extent that ICONZ is continuing to perform the Services.

(4) ICONZ shall do all things reasonably required by The Customer to achieve an Orderly Migration, including the use of reasonable endeavours to deliver any additional services reasonably required by The Customer.

b) Disengagement services

Except as contemplated in any Disengagement Plan, the Services that are required by The Customer to be performed during the Disengagement Period in accordance with any Disengagement Plan shall continue to be delivered by ICONZ under the terms of the Agreement that applied immediately prior to the notice of termination and The Customer shall continue to pay for those Services on the same basis as prior to the Disengagement Period.

c) Additional services

Except to the extent that the Disengagement Plan specifies otherwise, The Customer shall pay ICONZ on a basis agreed between the parties.

17) CUSTOMER RESPONSIBILITIES

The Customer must:

- a) ensure any information which it gives ICONZ relating to The Customer's use of the Services is complete and accurate;
- b) advise ICONZ promptly if there is a change in its business address or business name;
- c) follow ICONZ's reasonable directions about the use of the Services and any modifications which The Customer needs to make to the Customer's equipment to use the Services;
- d) not use any part of the Service for any obscene, offensive, improper, immoral, defamatory, indecent, abusive, menacing or unlawful purpose or for any unsolicited advertising messages or promotions nor knowingly allow others to do so;
- e) use the Services for lawful purposes only and comply with all applicable laws relating to The Customer's use of the Service;
- f) not knowingly use the Services or any equipment in a way which interferes with or disrupts ICONZ's network or any third party's network;
- g) use reasonable endeavours to ensure that anyone else who uses the Services does so in a manner which is consistent with The Customer's obligations under the Service Agreement;
- h) comply with all of ICONZ's acceptable use policy, as can be found on www.iconz.co.nz, relating to the Service, as may be changed by ICONZ from time to time;
- i) not knowingly reproduce, distribute, copy, download, transmit or otherwise exploit any Content which infringes any third party Intellectual Property Rights or similar right unless The Customer owns or controls the relevant rights or have obtained all the requisite licences and approvals;
- j) not interfere with, disrupt, hack, break into or access any part of the Service, ICONZ's Content, or any data areas on our any Third-Party Service Provider's computer server(s) for which The Customer has not been authorised by us in writing;
- k) within reason bring the terms of the Service Agreement to the notice of each designated user. You will be responsible for all use of the Service by each designated user and will indemnify ICONZ in respect of all such use which breaches this agreement and causes ICONZ loss

18) GENERAL PROVISIONS

a) **Contracts (Privity) Act**

This Agreement shall not and is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a Party to this Agreement.

b) **Assignment**

ICONZ may, in its absolute discretion without the need for The Customer's consent, assign any of its rights under this Agreement to any related company (as that term is defined in section 2(3) of the Companies Act 1993) of ICONZ as part of a solvent amalgamation or reconstruction. In all other circumstances, neither Party may assign its rights and responsibilities under this Agreement to someone else without first obtaining the other Party's written consent to the assignment (which may be given, declined, or given subject to conditions, in the other Party's sole discretion).

c) **Subcontracting**

ICONZ may appoint a Subcontractor to perform any of ICONZ's responsibilities under the Agreement provided it obtains The Customer's prior written consent to such appointment (such consent not to be unreasonably withheld or delayed). Where such consent is given, ICONZ shall remain liable to The Customer for performing all responsibilities under this Agreement and for all acts and omissions of each such Subcontractor.

d) **Independent Contractor**

No legal partnership, employer/employee, principal/agent or joint venture relationship is created or evidenced by this Agreement.

e) No Waiver

A waiver of any provision of this Agreement shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.

No failure, delay or indulgence by either Party in exercising any power or right conferred on that Party by this Agreement shall operate as a waiver of that power or right. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights under this Agreement.

f) Express Rights

Unless specified otherwise in this Agreement, the exercise by a Party of any express right set out in this Agreement is without prejudice to any other rights, powers or remedies available to a Party in contract, at law or in equity, including any rights, powers or remedies which would be available if the express rights were not set out in this Agreement.

g) Further Assurance

Each Party agrees to execute and deliver any document and to do all things as may reasonably be required by the other Party to obtain the full benefit of this Agreement according to its true intent.

h) Invalidity

Any provision of the Agreement that is invalid or unenforceable, shall be deemed deleted from the Agreement and this invalidity shall not affect the other provisions of the Agreement, all of which remain in force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

i) Notices

Any notice or other communication to be given under this Agreement must be in writing addressed to the recipient at the postal address or provided by email to the email address from time to time notified by that Party in writing to the other Party. Until a change is so notified, the postal address and email address of each Party are as set out in the Contract Investment Summary .

Delivery may be effected by hand, by post with postage prepaid, or by scanned form by email. A notice or other communication will be deemed to have been received:

- (a) in the case of hand delivery and pre-paid post sent from outside New Zealand, at the time of actual delivery to the recipient's address;
- (b) in the case of delivery by pre-paid post sent from within New Zealand, on the 2nd Business Day after posting;
- (c) in the case of delivery by email, at the time of actual receipt of that email at the relevant email address.

Notwithstanding the preceding paragraph, if a notice or other communication is received or deemed to have been received after 5pm on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, it will be deemed not to have been received until the next Business Day in that place.

j) Costs

Each Party shall bear its own costs associated with the preparation and implementation of this Agreement, unless expressly stated otherwise.

k) Entire Agreement

This Agreement constitutes the sole and entire understanding with respect to the subject matter hereof and supersedes all prior understandings, written or oral.

l) Variation

No amendment to this Agreement shall be effective unless it is in writing and signed by a representative of each Party who has the authority to agree to such amendment.

m) Counterparts

This Agreement may be executed in any number of counterparts (including facsimile copies) and provided that each Party has executed a counterpart and delivered it to the other Party, the counterparts together shall constitute a binding and enforceable Agreement between the Parties.

n) **Governing Law**

This Agreement is to be governed by, and construed in accordance with, the laws of New Zealand, and the Parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

19) **DEFINITIONS AND INTERPRETATIONS**

a) **Definitions**

These terms govern the relationship between The Customer and ICONZ and form part of the Agreement. In this Agreement, unless the context otherwise requires:

Agreement means this agreement and any attached schedules, as amended from time to time.

Business Day means any day other than a Saturday, Sunday or statutory holiday in New Zealand.

Contract Investment Summary means the schedule to this Agreement entitled "*Contract Investment Summary*" (and includes any other document which the parties agree in writing (as an amendment to this Agreement) shall constitute part of that schedule).

Confidential Material has the meaning set out in clause 11a

Contract Year means the period of a year commencing on the Service Start Date and ending 365 days later or, where that year includes the 29th February, 366 days later.

Disengagement Period means the period commencing on the expiry or termination of this Agreement and ending on the date specified in or determined in accordance with the Disengagement Plan.

Disengagement Plan means the disengagement plan to be agreed by the Parties

Dispute has the meaning given in clause 8.

Dispute Notice has the meaning given in clause 8.

Expiry Date means the last day of the agreed contract term.

Fee means the amounts payable by The Customer to ICONZ recorded in the Service Schedule and *Fees* means in respect of any period the total of such amounts payable from The Customer to ICONZ in respect of that period.

Force Majeure has the meaning set out in clause 13

GST has the meaning given to that term in the Goods and Services Tax Act 1985 and includes any change in the rate of GST under that legislation;

Insolvency Event means in relation to a Party:

- i) the party is, becomes, or is deemed by applicable legislation or a competent court having proper jurisdiction to be insolvent, liquidated or bankrupt;
- ii) the party makes an assignment for the benefit of, or makes any arrangement or composition with, its creditors;
- iii) the party goes into receivership or has an administrator, receiver, trustee and/or manager (including a statutory manager) appointed in respect of it or all or any of its property; or
- iv) any resolution is passed or proceedings are commenced for the Party's amalgamation with any person, bankruptcy or liquidation (except for a solvent amalgamation or reconstruction provided that, in the case of ICONZ, it has obtained the prior written approval of The Customer for such amalgamation or reconstruction, such approval not to be unreasonably withheld or delayed).

Intellectual Property includes (without limitation) any right to, and any interest in, any patent, design, trade mark, trade name and all goods rights associated with such works, copyright, trade secrets and any other proprietary right or form of intellectual property (protectable by registration or not).

Laws means, to the extent they are relevant to the subject matter of this Agreement, any rules of common law, principles of equity, national, and local laws, statutes, rules, regulations, proclamations, ordinances and by-laws codes, common law and any principles issued under any of the foregoing.

Loss includes any loss, cost, expense, damage, claim, economic loss, including loss of profits, revenue, goodwill or loss of anticipated savings.

Party means The Customer or ICONZ, as appropriate, and *Parties* means both of them.

Personnel means, in respect of each entity, any contractor to or agent of that entity (including in the case of ICONZ, any Subcontractor) and any director, officer, employee, contracted staff member or other worker of that entity or that entity's contractors or agents.

Pre-existing Intellectual Property means any Intellectual Property owned by ICONZ, The Customer or any third party, as the case may be, either prior to ICONZ and The Customer entering into the Agreement or owned by The Customer, ICONZ or a third party independently of this Agreement.

Schedule means a schedule to this Agreement.

Services means the services to be supplied by ICONZ to The Customer as set out in the Contract Investment Summary and (where relevant) any services provided under a Disengagement Plan, together with all other services to be performed by ICONZ in order to meet its obligations under this Agreement.

Service Credit means a "service level rebate" provided by ICONZ to The Customer in accordance with clause 9 of the Service Level Agreement as a result of a failure by ICONZ to deliver Services to required Service Levels.

Service Level means a service level for a Service set out in the Service Schedule.

Service Start Date means the day on which ICONZ provides services to the Customer as outlined in the Contract Investment Summary or Contract Variation Agreement.

Subcontractor means a subcontractor engaged by ICONZ in relation to this Agreement.

Term means the period from the Service Start Date to the expiry or termination of this Agreement.

Year means a 12 month period from the Service Start Date or from any anniversary of that date,

b) **Interpretation**

In this Agreement, unless the context otherwise requires:

- (a) a reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
 - (b) a reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time;
 - (c) all periods of time include the day on which the period commences and also the day on which the period ends. Any date which is not a Business Day, upon or by which anything is due to be done by any Party, shall be deemed to be a reference to the next Business Day;
 - (d) any reference to time is a reference to the time in New Zealand, as adjusted for daylight saving;
 - (e) headings are inserted for convenience only and are to be ignored in construing this Agreement;
 - (f) a reference to "includes" is to "includes without limitation", and references to "included" and "including" shall be construed accordingly;
 - (g) all amounts are in New Zealand dollars unless expressly stated otherwise;
 - (h) any obligation not to do something shall be deemed to include an obligation not to suffer, permit or cause that thing to be done;
 - (i) the singular includes the plural and vice versa; and
 - (j) the word "person" includes a natural person and any body or entity whether incorporated or not.
- c) Any inconsistency between the provisions of this Services Agreement, the Contract Investment Summary and the Service Level Agreement shall be resolved in accordance with the following order of priority, so that the provisions of the higher priority document prevail over those of the lower document:
- i) Firstly the Contract Investment Summary;
 - ii) Secondly this Services Agreement; and
 - iii) Finally the Service Level Agreement (where applicable)