

# Terms & Conditions

These Client Terms, together with any Proposal (defined in clause 1), set out the agreement (this '**Agreement**') under the terms of which EA Technology Pty Ltd (NZCN 5423803, ACN 134 783 887) (**EA Technology**) provides Goods and/or Services (defined in clause 2) to the person or entities named in any Proposal (the **Client**).

## 1 APPLICATION OF THIS AGREEMENT

- (a) These Client Terms will apply to all the Client's dealings with EA Technology, including being incorporated in all agreements, quotations or orders under which EA Technology is to provide goods and/or services to the Client (each a Proposal) together with any additional terms included in such Proposal (provided such additional terms are recorded in writing).
- (b) The Client will be taken to have accepted these Client Terms if the Client signs these Client Terms or a Proposal which annexes these Client Terms or otherwise indicates its assent (whether in writing or verbally) to these Client Terms, or if the Client orders, accepts or pays for any goods and/or services provided by EA Technology after receiving or becoming aware of this Agreement or these Client Terms.
- (c) The Agreement commences once these Client Terms have been accepted in accordance with clause 1(b) and expires in accordance with the Proposal and this Agreement (**Term**).
- (d) In the event of any inconsistency between these Client Terms and any Proposal, the clauses of these Client Terms will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms described as such in a Proposal) will prevail over these Client Terms to the extent of any inconsistency.
- (e) The Client is responsible for confirming that the Proposal accurately specifies (if applicable):
  - (i) the quantity and specifications of the Goods and/or Services required; and
  - (ii) the agreed Fees, other rates and the Installation Date, if applicable.

## 2 SUPPLY OF GOODS AND/OR SERVICES

- (a) EA Technology may from time to time issue a Proposal to the Client. The Proposal is valid for 30 days from the date of issue. The Proposal becomes binding on EA Technology and the Client upon written acceptance by the Client or at the time EA Technology commences supply of the Goods and/or Services under the proposal on the request of the Client, whichever comes first. Once the Proposal is accepted, the Client cannot cancel or revoke the Proposal except to the extent as expressly permitted by this Agreement. EA Technology may withdraw or vary the Proposal, at any time prior to acceptance by the Client of the Proposal, in its discretion.
- (b) In consideration for the payment of the fees set out in the Proposal (**Fees**), EA Technology will provide the Client with services set out in a Proposal (**Services**) and/or goods set out in a Proposal (**Goods**) in accordance with these Client Terms.
- (c) Where the context permits the terms 'Goods' and 'Services' shall be interchangeable when used in this Agreement.
- (d) Once the Proposal is accepted by EA Technology, the Client cannot cancel or revoke the Proposal except to the extent as expressly permitted by this Agreement.

- (e) EA Technology will commence work from either the date:
  - (i) when the Client pays the Fees to EA Technology;
  - (ii) set out in the Proposal; or
  - (iii) agreed with the Client.
- (f) The timing of the Goods and/or Services and any due dates for deliverables will be as set out in the Proposal and otherwise as agreed with the Client. EA Technology will use its reasonable commercial endeavours to meet agreed due dates however there may be delays in providing the Goods and/or Services, if the Client does not provide adequate or correct information for EA Technology to provide the Goods and/or perform the Services and EA Technology will not be held liable for any loss incurred by the Client as a result of such delays.
- (g) Unless otherwise agreed, EA Technology may, in its discretion:
  - (i) not commence work on any Goods or Services until the Client has paid any Fees or deposit payable in respect of such Goods or Services; and
  - (ii) withhold delivery of Services until the Client has paid an invoice in respect of such Services.
- (h) (**Incorrect Price of Goods**) The Client acknowledges that despite EA Technology's reasonable precautions, Goods may be listed at an incorrect price, or with incorrect availability and/or other information, due to typographical errors and/or oversight. In such circumstances, EA Technology reserves the right to substitute the Goods with a comparative good, if agreed by the Client or cancel the Proposal, even if the Proposal has been paid for and previously accepted by EA Technology. If EA Technology cancels a Proposal in accordance with this clause, EA Technology will, as soon as practicable, contact the Client and issue a refund for any payment the Client has made for the cancelled order. Such refund will be the Client's only remedy in these circumstances and EA Technology will not be liable to pay any other amount to the Client.
- (i) (**Price Variation for Goods and Services**) The price of Goods and/or Services set out in the Proposal is based on the conditions in place at the time the Proposal is given. EA Technology reserves the right to vary the price of the Goods and/or Services it provides to the Client from time to time via the process set out in clause 2(j) below, even after it has accepted the Proposal, where:
  - (i) there is an increase in any of EA Technology's standard rates;
  - (ii) there is any change to the nature of the work to be undertaken in the Proposal;
  - (iii) there are delays caused by circumstances or events outside of EA Technology's control, including but not limited to delays directly or indirectly caused by the Client and delays caused by the Premises not being in a condition consistent with the clause 4.2(a)(ii); or
  - (iv) EA Technology's suppliers vary the costs of the materials that supply to EA Technology.
- (j) Where the price of Goods and/or Services is to be varied under clause 2(i);
  - (i) EA Technology will give the Client notice in writing of the proposed variation;
  - (ii) the Client will have ten Business Days from receipt of the notice in subparagraph (i) above to terminate this Agreement by written notice to EA Technology, and if

so the termination will be in accordance with clause 13.2; and

- (iii) where the Client does not terminate the Agreement within the ten Business Day period set out in subparagraph (ii) above, the amended price will apply from the end of the ten Business Day period and EA Technology will provide the Client an invoice of the difference in any additional costs which the Client must pay in accordance with the payment terms as stated on the invoice.

### 3 PAYMENT

#### 3.1 FEES

- (a) The Client must pay to EA Technology Fees in the amounts and at the times set out in the Proposal or as otherwise agreed in writing or provided for in the Client Terms.
- (b) EA Technology may charge a deposit which will be set out in the Proposal or otherwise provided to the Client in writing. The deposit is due on the date stated in the Proposal and before EA Technology provides the Client with any Goods and/or Services.

#### 3.2 INVOICES

Unless otherwise agreed in the Proposal:

- (a) if EA Technology issues an invoice to the Client, payment must be made by the time(s) specified in such invoice; and
- (b) in all other circumstances, the Client must pay for all Goods and Services within 30 days of receiving an invoice for amounts payable.

#### 3.3 PAYMENT METHOD

The Client must pay Fees using the fee payment method specified in the Proposal.

#### 3.4 GST

Unless otherwise indicated, amounts stated in a Proposal do not include GST. In relation to any GST payable for a taxable supply by EA Technology, the Client must pay the GST subject to EA Technology providing a tax invoice.

#### 3.5 CARD SURCHARGES

EA Technology reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

#### 3.6 LATE PAYMENT AND DEBT RECOVERY

If the Client does not pay an amount due under this Agreement on or before the date that it is due:

- (a) the Client must pay EA Technology interest at the rate of 8% above the Reserve Bank of New Zealand Official Cash Rate applicable from time to time per month on the amount due, calculated daily;
- (b) EA Technology may seek to recover the amount due by referring the matter to debt collectors;
- (c) the Client must reimburse EA Technology for all reasonable costs it incurs, including any legal costs, in recovering the amount due or enforcing any of its rights under these terms; and
- (d) the Client authorises EA Technology, its employees and agents to enter any Premises occupied by the Client or any

other place where Goods are located and use reasonable force to retake possession of the Goods without liability for trespass or any reasonable damage.

### 4 PROVISION OF SERVICES AND GOODS

#### 4.1 INFORMATION ABOUT GOODS

EA Technology endeavours to ensure that the descriptions and specifications in relation to the Goods on its website or in catalogues are accurate. However, photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a quotation, descriptive literature or a catalogue are based on information provided by manufacturers and suppliers and, as such EA Technology does not guarantee that those descriptions and specification are accurate or free from errors or omissions, except to the extent required by applicable law. EA Technology reserves the right to make any necessary corrections to the descriptions or specifications without notice.

#### 4.2 SERVICE REQUIREMENTS

- (a) On the Installation Date or Service Date, unless otherwise agreed, the Client must:
  - (i) provide access to all Personnel, equipment, amenities and vehicles reasonably required to carry out the Services;
  - (ii) ensure that the Premises are clean and ready for EA Technology to carry out the Services, which may include the Client's completion of preparatory works specified in the Proposal to enable the Services to be supplied promptly and effectively; and
  - (iii) if necessary, notify EA Technology of the presence of hazardous machinery or substances in the area the Services are to be carried out by EA Technology.
- (b) If:
  - (i) the Proposal indicates that the Client is required to be in attendance at the Premises on the Installation Date or Service Date, and the Client is not in attendance; or
  - (ii) the Client fails to satisfy any of the requirements in clause 4.2(a);
  - (iii) the Client requests a change to the Installation Date or Service Date; or
  - (iv) any of the material assumptions specified in the Proposal are found to be incorrect;
  - (v) the Client has breached any of its obligations in this Agreement which impact the carrying out of the installation or Services,
  - (vi) EA Technology will be entitled to charge the Client a reasonable additional fee in respect of any of the above matters.
- (c) If the Client fails to satisfy the requirement in clause 4.2(a)(iii), EA Technology may be unable to perform the Services and may be entitled to terminate the Agreement in accordance with clause 13.

#### 4.3 MONITORING AND INVESTIGATION DISCLAIMER

- (a) EA Technology will only complete the Services as agreed upon by the parties in the Proposal. Where the Proposal indicates that the Services include monitoring or investigation (e.g. spot checking on a substation or forensic investigation), those Services will only be carried out by EA

Technology in accordance with the deliverables described in the Proposal.

- (b) EA Technology will not be held liable for any loss incurred by the Client for EA Technology's failure to identify and/or notify the Client about issues that would not reasonably be identified as a result of EA Technology carrying out the Services in accordance with the deliverables described in the Proposal.

#### 4.4 EXPERT ADVICE DISCLAIMER

- (a) Where the Proposal indicates that the Services include EA Technology providing an expert advice report or acting as an Expert Witness, all information provided by EA Technology as part of the Services is an opinion only, based on EA Technology's experience.
- (b) Information provided by EA Technology is based on information the Client provides to EA Technology.
- (c) No information provided by EA Technology as part of the Services is intended to be legal or financial advice of any kind and it should not be relied on as such.
- (d) While care will be taken by EA Technology in delivering the Services, EA Technology does not guarantee any particular outcome, or any particular decision from any authority on any issue.
- (e) Where the Proposal indicates that EA Technology is providing an expert advice report, any advice, analysis, calculations, information, forecasts and recommendations contained in such report are supplied for the assistance of the Client and are not to be relied on as authoritative or as in substitution for the exercise of judgement by that Client or any other reader.
- (f) EA Technology is not responsible, and to the maximum extent permitted by applicable law disclaims any liability for, any interpretations made on any reports or other documents produced by EA Technology in performing the Services.

### 5 SOFTWARE

#### 5.1 SOFTWARE

- (a) Where the Proposal includes the supply of software by EA Technology to the Client (**Software**), the Client must maintain the hardware, software licences and internet connection as necessary for EA Technology to perform the Services.
- (b) Where EA Technology is to provide the Client with any Software, EA Technology is not obliged to do so until Client has (if required by EA Technology) entered into a software licence agreement with EA Technology in respect of the Client's use of the Software. Where there is any inconsistency between this Agreement and a software licence agreement, the software licence agreement shall apply.

#### 5.2 SOFTWARE SUPPORT

Subject to the terms of the Proposal and otherwise for 12 months (or such other time as is agreed between the parties) following the provision of the Software EA Technology will provide a reasonable level of support where necessary to the Client to resolve any technical issues with the Software (**Support Services**), subject to the following terms (unless otherwise specifically agreed in writing):

- (a) EA Technology will take reasonable steps to provide Support Services where necessary. The Client must first endeavour to resolve any issues with the Software internally and EA

Technology will not assist with issues that are beyond its reasonable control.

- (b) The Client is responsible for all internal administration and managing access, including storing back-up passwords and assisting its Personnel to access and use the Software.
- (c) The Client will not have any claim, and EA Technology will not be responsible, for delay to its access to the Software due to any failure or delay in Support Services.

#### 5.3 DATA BREACH

The Client acknowledges and agrees that:

- (a) issues can arise with transferring data to software and between software, and when integrating software with other software. EA Technology cannot guarantee the integration processes to other software will be free from errors, defects or delay. The Client agrees that EA Technology will not be liable for the functionality or transmissions errors of any services provided by a third party, including any software; and
- (b) third party software, may be subject to enhancements, upgrades or other changes, which may affect the operation of the Software provided to the Client under this Agreement (**Third Party Updates**). EA Technology will use reasonable endeavours to rectify any issues with the Services following a Third Party Update but will not be liable for any loss suffered by the Client in connection with such Third Party Updates.

#### 5.4 SECURITY BREACH

- (a) The Client is responsible for at all times ensuring the security of its data and the Software, including protection of its password and other details. The Client acknowledges and agrees that EA Technology will not be liable for any misuse of data or the Software, including where unauthorised access is gained.
- (b) The Client must promptly notify EA Technology if it learns of any potential, actual or suspected loss, misappropriation or unauthorised access to, or disclosure or use of data or other compromise of the security, confidentiality, or integrity of data or the Software (collectively, **Security Breaches**).
- (c) EA Technology will, to the extent necessary and reasonable, assist the Client and its Personnel in connection with any investigation of a Security Breach to the extent the Security Breach relates to the Software.

### 6 DELIVERY

#### 6.1 COST AND OBLIGATIONS

- (a) Unless otherwise indicated, amounts stated in Proposals, or on EA Technology's website, do not include delivery.
- (b) For Goods to be delivered, EA Technology will charge the Client for delivery (notwithstanding that it may not have previously done so), and the delivery cost will vary depending on the type of Goods being delivered, their size and weight, the delivery location etc.
- (c) Delivery is to the delivery point specifically accepted by EA Technology.
- (d) If EA Technology is unable to complete the delivery within the agreed time schedule due to the Client's absence or other fault of the Client, the Client will be liable for all charges and costs incurred, including but not limited to warehousing, transportation and redelivery.

- (e) EA Technology may, at its discretion, deliver the Goods to the Client in any number of instalments.

## 6.2 DAMAGE IN TRANSIT

Unless EA Technology is delivering the Goods, EA Technology shall not be liable for non-delivery, lateness of delivery or any loss of or damage to Goods in transit and the Client must make all claims for such loss or damage against the carrier. EA Technology encourages the Client to take out insurance to protect itself for loss of or damage to Goods in transit.

## 7 VARIATIONS

- (a) **(Work times)** The Client acknowledges and agrees that EA Technology will provide the Services during ordinary business working hours **(Work Hours)** unless otherwise agreed between the parties.
- (b) **(After Hours)** If the Client requires Services to be performed at any time other than during Working hours **(After Hours)**, including where the Client fails to make the Premises available during Work Hours, the Client may be required to pay the After Hours Rate specified in the Proposal.
- (c) **(Additional Work)** If the Client requires any services additional to those agreed in the Proposal **(Changes)**, that work will be performed at the additional work rate set out in the Proposal **(Additional Work Rate)**.
- (d) Unless otherwise agreed in writing, EA Technology may at its discretion extend or modify any delivery schedule or deadlines for the Services as may be reasonably required by such Changes.

## 8 CLIENT OBLIGATIONS

- (a) **(General)** The Client must provide EA Technology with all documentation, information, data and assistance reasonably required for EA Technology to perform the Services.
- (b) **(Liaison)** The Client agrees to liaise with EA Technology as it reasonably requests for the purpose of enabling EA Technology to provide the Services.
- (c) **(Ownership)** The Client warrants that it is the owner of the Premises or has obtained authority from the owner/s of the Premises for the Services to be performed on the Premises.
- (d) **(Access to Premises)** The Client agrees to provide EA Technology with access to the Premises and the Client's Personnel, to the extent reasonably required by EA Technology to perform the Services.
- (e) **(WH&S)** The Client must ensure that the Premises complies with Work Health and Safety standards and is otherwise in a suitable condition for EA Technology Personnel to perform the Services.
- (f) **(Client Supplied Goods and Existing Construction)** If in performing the Services, EA Technology is required to use any materials and/or goods supplied by the Client:
  - (i) the Client accepts the risk of defects or deficiencies in such goods and/or materials;
  - (ii) EA Technology will not be required to investigate the suitability, quality or fitness for purpose of existing or proposed materials and/or goods;
  - (iii) the Client will be required to pay the Additional Work Rate if it requests that EA Technology correct any defects or issues with such materials and/or goods.

## 9 SUBCONTRACTING

EA Technology may subcontract any aspect of providing the Services and the Client hereby consents to such subcontracting.

## 10 ACCREDITATIONS

Unless otherwise agreed in writing:

- (a) all displays or publications of any deliverables provided to the Client as part of the Services must, if requested by EA Technology, bear an accreditation and/or a copyright notice including EA Technology's name in the form, size and location as directed by EA Technology; and
- (b) EA Technology retains the right to describe the Services and reproduce, publish and display the deliverables in EA Technology's portfolios and websites for the purposes of recognition or professional advancement, and to be credited with authorship of the Services and deliverables in connection with such uses.

## 11 THIRD PARTY GOODS AND SERVICES

- (a) Subject to all applicable laws, any Service that requires EA Technology to acquire Goods and Services supplied by a third party on behalf of the Client may be subject to the terms & conditions of that third party **(Third Party Terms)**, including 'no refund' policies.
- (b) The Client agrees to familiarise themselves with any Third Party Terms applicable to any such Goods and Services supplied and, by instructing EA Technology to acquire the Goods or Services on the Client's behalf, the Client will be taken to have agreed to such Third Party Terms.

## 12 ACCEPTANCE AND DEFECTIVE GOODS AND/OR SERVICES

### 12.1 GENERAL

- (a) **(NZCL)** For the purposes of section 5D of the FTA and section 43 of the CGA the parties agree that:
  - (i) the parties are in trade (within the definition under NZCL);
  - (ii) the Goods and/or Services supplied under or in connection with this Agreement are supplied and acquired in trade (within the definition under NZCL);
  - (iii) the provisions of the CGA and sections 9, 12A and 13 of the FTA do not apply; and
  - (iv) it is fair and reasonable for the parties to be bound by this clause.
- (b) **(Our Warranty)** EA Technology warrants that the following will be free from material defects for the following warranty periods:
  - (i) a period of twelve months from the date of delivery for our Goods (excluding Software);
  - (ii) a period of twelve months from the date of completion of our Services; and
  - (iii) a period of 3 months from the date of delivery for Software.
- (c) **(Manufacturer's Warranty)** Manufacturers of Goods, not manufactured by EA Technology, may also provide a warranty which will be provided to the Client with the Goods. Please read and review any such warranty document for details of such warranties.
- (d) **(Services not included)** Our Services and labour will not be included as part of any Manufacturer's Warranty. The Client



may be charged for additional labour fees for installation relating to warranty claims from a different manufacturer. If so, we will inform the Client of these charges and they will be charged at our usual service labour rate.

- (e) **(No warranty for lack of maintenance)** Warranty claims will only be accepted if the Goods and/or Services are faulty and the Client complies with the provisions of this clause 12 and will not be provided where the Goods and/or Services are faulty due to the Client's fault such as lack of maintenance.
- (f) To the maximum extent permitted by applicable law, all express or implied guarantees, representations and warranties not expressly stated in this Agreement are excluded.

## 12.2 DEFECTIVE GOODS

To the extent permitted by law:

- (a) On notification of defective Goods, the Client must allow EA Technology unimpeded access to inspect such Goods. EA Technology may also require the Client to send photographic proof of any defect in the Goods.
- (b) Returns will only be accepted by EA Technology provided that:
  - (i) the Client has complied with its obligations under this Agreement and has not attempted to repair the Goods itself;
  - (ii) EA Technology has agreed (in its reasonable opinion) that the Goods are defective;
  - (iii) the Goods are returned to EA Technology as soon as possible and within a timeframe that in the EA Technology's opinion is reasonable for the specific type of Goods after installation or delivery, at the Client's cost, or as otherwise agreed between the parties; and
  - (iv) the Goods are accompanied by all original documentation provided by EA Technology.
- (c) For each Good that is deemed defective and returned in accordance with this clause, EA Technology will only be liable to provide a replacement Good, a refund or a repair and a refund of any shipping costs incurred by the Client.
- (d) **(Change of mind return)** EA Technology does not accept returns for change of mind.
- (e) **(Error in the specifications)** EA Technology does not accept returns for any error or miscommunication in any specifications set out in the Proposal. It is the Client's responsibility to ensure such details are correct.
- (f) For the avoidance of doubt, this clause only applies to Goods supplied by EA Technology.

## 12.3 DEFECTIVE SERVICES

To the extent permitted by law:

- (a) The Client must provide written notice of any defective Services as soon as possible upon becoming aware of them and within a timeframe that in the EA Technology's opinion is reasonable for the specific type of Service. EA Technology may also require the Client to provide evidence of any defect in any Services supplied.
- (b) Services will only be considered defective where EA Technology has agreed (in its reasonable opinion) that the Services are defective.

- (c) Except as required by law, for each Service that is deemed defective in accordance with this clause, EA Technology's liability will be limited to the supplying of the Services again or the payment of the cost of having the Services supplied again (to remedy such defect) and such replacement Services will not be carried out until the Client's account is paid in full. If any works are required outside of the timeframe that in the EA Technology's opinion is reasonable for the specific type of Service, it will be deemed a new scope and a new Proposal will be provided to the Client.
- (d) Where a service or item not supplied by EA Technology is faulty and the Client requires EA Technology to attend to check or repair it, EA Technology may charge the Client a call out fee as specified by EA Technology for having one of its Personnel attend the relevant Premises. Such call out fee will be payable at the date as specified on the invoice.

## 12.4 LIABILITY

- (a) **(Liability for Defects)** Notwithstanding any other clause in this Agreement, to the maximum extent permitted by law EA Technology will only be responsible for defects in the Services, Goods and components that EA Technology supplies. To the maximum extent permitted by law, EA Technology will not be liable for or required to provide any remedy for:
  - (i) any components or materials supplied by the Client;
  - (ii) any services carried out by third parties;
  - (iii) any defect or damage where such defect or damage is caused by or arises as a result of, or directly or indirectly in connection with, the Client (or the Client fails to take reasonable steps to prevent them from becoming defective), any other person (such as the Client's other contractors, staff and agents) fair wear and tear, or any accident or circumstance outside the reasonable control of EA Technology.
- (b) **(Damages)** In the event the provision of the Goods and/or Services (being the works provided) are damaged or destroyed through no fault of EA Technology, then any additional cost and expenses incurred as a result of such damage or destruction shall be chargeable to the Client and the Client is solely liable to pay such amounts.
- (c) **(Limitation of liability)** To the maximum extent permitted by applicable law, the maximum aggregate liability of EA Technology to the Client in respect of loss or damage sustained by the Client under or in connection with this Agreement is limited to the greater of:
  - (i) the total Fees paid to EA Technology by the Client in the six (6) months prior to the first event giving rise to the relevant liability; or
  - (ii) the total Fees paid to EA Technology by the Client under the Proposal under which the Goods and/or Services giving rise to the liability were provided.
- (d) **(Indemnity)** Subject to cl 12.4(e), to the maximum extent permitted by law each party agrees at all times to indemnify and hold harmless the other party and its Personnel ("those indemnified") from and against any loss (including reasonable legal costs) or liability incurred or suffered by any of those indemnified to the extent such loss or liability was caused or contributed to the first party's or the first party's officers', employees' or agents':
  - (i) breach of any term of this Agreement; or
  - (ii) negligent, fraudulent or criminal act or omission.

- (e) **(Consequential loss)** Neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this Agreement or any Goods or Services provided by EA Technology, except to the extent this liability cannot be excluded under the NZCL or any other applicable law.

## 12.5 WARRANTIES

- (a) The warranties contained in this clause must be valid at all times during the term of the Agreement and will be continuing warranties which will survive the termination or expiration of this Agreement.
- (b) The Client warrants to EA Technology that as at the date of this Agreement and for the duration of this Agreement:
  - (i) the information contained in this Agreement is true and correct;
  - (ii) the Client is not entering this Agreement as trustee for any trust (unless disclosed);
  - (iii) it has the legal right and power to enter into this Agreement;
  - (iv) the execution, delivery and performance of this Agreement by the Client has been duly and validly authorised by all necessary corporate action on its part;
  - (v) this Agreement is a valid and binding Agreement on the Client, enforceable in accordance with its terms;
  - (vi) the Client is not bankrupt or insolvent and no receiver, liquidator, administrator or receiver and manager has been appointed over any part of its assets and no such appointment has been threatened;
  - (vii) the Client (including its partners, directors or shareholders) is not subject to any form of insolvency or bankruptcy administration; and
  - (viii) it has the capacity to make the payment in accordance with this Agreement.

## 13 TERMINATION

### 13.1 TERMINATION FOR CAUSE

Either party (**Non-Defaulting Party**) may terminate this Agreement immediately by written notice to the other party (**Defaulting Party**) if the Defaulting Party is in breach of this Agreement and either:

- (a) fails to remedy such breach within 14 days of receiving notice from the Non-Defaulting Party requiring it to remedy such breach; or
- (b) that breach is not capable of remedy.

### 13.2 EFFECT OF TERMINATION

Upon termination of this Agreement:

- (a) EA Technology will refund any amounts paid by the Client for Goods or Services not provided as at the date of termination;
- (b) the Client must pay all amounts owed for Goods or Services already provided as at the date of termination;
- (c) each party must return all property of other parties to those respective parties;
- (d) each party must immediately return to each other party, or (if requested by that party) destroy, any documents in its

possession or control containing Confidential Information of the other party; and

- (e) no rights, liabilities or remedies of any party will be invalidated by the termination.

### 13.3 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this Agreement will survive and be enforceable after such termination or expiry.

## 14 OWNERSHIP, RISK AND ASSIGNMENT

- (a) Notwithstanding anything to the contrary express or implied in this Agreement, the parties agree that EA Technology retains full title to the Goods and title will not at any time pass to the Client until the purchase price for the Goods and all other amounts owing in respect of the Goods are paid to EA Technology notwithstanding:
  - (i) the delivery or collection of the Goods to/by the Client (as the case may be);
  - (ii) installation in or attachment of the Goods to the Client's property; and/or
  - (iii) the possession and use of the Goods by the Client.
- (b) Even if EA Technology retains ownership of the Goods, all risk for the Goods passes to the Client on delivery of the Goods to the Client or the nominee of the Client.
- (c) If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, EA Technology is entitled to (without double counting):
  - (i) receive payment for the Goods from the Client; and
  - (ii) receive all insurance proceeds payable for the Goods. The production of this Agreement by EA Technology is sufficient evidence of EA Technology's rights to receive the insurance proceeds without the need for any person dealing with EA Technology to make further enquiries.
- (d) The Client acknowledges and agrees that prior to ownership passing to the Client:
  - (i) it will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, hire or otherwise part or attempt to part with personal possession of or otherwise deal with the Goods without the express written consent of EA Technology;
  - (ii) it will, if requested by EA Technology, return the Goods to EA Technology following non-fulfilment of any obligation of the Client (including payment of monies) without limiting any other right EA Technology may have;
  - (iii) it will deliver up the Goods to EA Technology upon demand by EA Technology and give EA Technology or its agents or authorised representatives the right to enter any Premises occupied by the Client and any Premises where it believes any Goods may be stored (without liability for trespass or any resulting damage) and to use the name of the Client and to act on its behalf, if necessary, to recover possession of the Goods and to the maximum extent permitted by law agrees to indemnify EA Technology and its agents and/or authorised representatives from any damage, injury and/or loss arising from such recovery or attempted recovery of the Goods from the Client's possession or control;

- (iv) it holds the proceeds, book debts and accounts receivable arising from selling or hiring of the Goods on trust for and as agent for EA Technology immediately when they are receivable or are received; and
- (v) EA Technology may recover as a debt due and immediately payable by the Client all amounts owing by the Client to EA Technology in any respect even though title to the Goods has not passed to the Client.

## 15 PERSONAL PROPERTY SECURITIES

### 15.1 APPLICATION

Until such time as the Goods are paid for in full in cleared funds, this clause shall apply to the supply of Goods.

### 15.2 PERSONAL PROPERTY SECURITIES

The Client acknowledges and agrees that notwithstanding any other provision of this Agreement:

- (a) the PPSA applies to any supply of Goods by EA Technology to the Client;
- (b) by agreeing to and/or accepting or adopting this Agreement the Client grants to EA Technology:
  - (i) a purchase money security interest in the Goods (on the basis that the security interest is taken in the Goods to secure the obligation for the Client to pay all or part of the purchase price for those Goods); and
  - (ii) a security interest over all present and after-acquired property of the Client (for purposes of this clause 15 "Client's Property"), to secure EA Technology's interest in the Goods and all moneys owing or payable by the Client under this Agreement and any other moneys payable by the Client to EA Technology from time to time on any account whatsoever;
- (c) if a purchase money security interest is not able to be claimed by EA Technology in respect of the Goods for any reason, EA Technology will have a security interest in the Goods;
- (d) the Client agrees that EA Technology's security interest in Goods and the Client's Property covered by this Agreement may be registered on the PPSR and the Client agrees to do all things necessary and required by EA Technology to effect registration of EA Technology's security interest on the PPSR in order to give EA Technology's security interest the best priority possible and anything else EA Technology requests the Client to do in connection with the PPSA without delay;
- (e) the Client warrants that all information provided by the Client to EA Technology, including but not limited to the Client's details, including the entity, name, NZCN or NZBN and address set out in the Proposal is correct in all respects and must not change its name, address or other details set out in the Proposal without providing EA Technology with at least 20 Business Days prior written notice;
- (f) the Client unconditionally and irrevocably appoints EA Technology as its attorney to do any of acts and matters set out in this clause 15 in the event that the Client fails, delays or declines to execute such documents or do such acts;
- (g) the Client agrees that it will not grant a security interest or other encumbrance in the Goods whether under the PPSA or any other law to a third party unless it has obtained the prior written consent of EA Technology, which EA Technology

may refuse to provide or grant in its absolute and unfettered discretion. EA Technology may request and the Client must provide any information that EA Technology requires, acting reasonably, in order to fully consider whether to grant its consent;

- (h) EA Technology's security interest in the Goods, and the Client's Property extends to any proceeds in all present and after acquired property including without limitation book debts and accounts receivable arising from the selling or hiring of the Goods, and/or the Client's Property by the Client;
- (i) it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest granted to EA Technology under this Agreement;
- (j) the Goods are located in New Zealand at the date of the supply of the Goods;
- (k) the Client waives its rights:
  - (i) listed in section 107(2)(a) – (e) and (g) – (i) of the PPSA; and
  - (ii) to receive a copy of any verification statement under the PPSA;
- (l) sections 114(1)(a), 133 and 134 of the PPSA shall not apply;
- (m) EA Technology may charge for complying with a demand under section 162 of the PPSA;
- (n) the Client will not give (or allow any person to give) to EA Technology a written demand requiring EA Technology to register a financing change statement under the PPSA or enter into (or allow any other person to enter into) the PPSR a financing change statement under the PPSA except as permitted under the PPSR;
- (o) a default under any other security agreement under which it has granted a security interest to any other party in respect of the Goods is deemed to be a breach of this Agreement; and
- (p) neither party will disclose information of the kind set out in Section 177(1) of the PPSA except to the extent they are required to do so under the PPSR.

### 15.3 FURTHER SUPPLIES

The parties acknowledge and agree that any supply of Goods of any kind by EA Technology to the Client which is not specifically set out in the Proposal but for which EA Technology has or later issues a tax invoice or any other documentation to the Client is deemed to form part of the Agreement and is subject to the terms of the Agreement.

### 15.4 ENFORCEMENT

- (a) The enforcement provisions contained in this Agreement are in addition to any rights available to EA Technology under the PPSA and apply to the maximum extent permitted by law.
- (b) Where EA Technology has a security interest (as defined in the PPSA) in the Goods and/or Client's Property, to the extent the law permits:
  - (i) if EA Technology exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless EA Technology states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA; and

- (ii) if the PPSA is amended to permit the parties to agree not to comply with or to exclude other provisions of the PPSA, EA Technology may notify the Client that any of these provisions is excluded, or that EA Technology needs not comply with any of these provisions.

## 15.5 POWER OF ATTORNEY

The Client irrevocably nominates, constitutes and appoints EA Technology and/or its officers and/or its nominees severally to be the true and lawful attorneys of the Client on behalf of and in the name of the Client to do all things necessary and sign all such documents as may be necessary to deal with the Goods in accordance with the enforcement provisions of this Agreement, the PPSA or otherwise, if the Client is in default of this Agreement.

## 15.6 INTERPRETATION

A term used in this clause 15 is taken to have the meaning defined under the PPSA.

## 16 CONFIDENTIALITY

- (a) Except as contemplated by this Agreement, each party must not, and must not permit any of its officers, employees, agents, contractors or related companies to, use or disclose to any person any Confidential Information disclosed to it by the other party without its prior written consent.
- (b) This clause 16 does not apply to:
  - (i) information which is generally available to the public (other than as a result of a breach of this Agreement or another obligation of confidence);
  - (ii) information required to be disclosed by any law; or
  - (iii) information disclosed by EA Technology to its subcontractors, employees or agents for the purposes of performing the Services or its obligations under this Agreement.

## 17 INTELLECTUAL PROPERTY

### 17.1 DEFINITIONS

In this clause and any Proposal, the following terms have the following meanings in relation to Intellectual Property Rights:

- (a) "Existing Material" means Material, other than New Material;
- (b) "New Material" means Material that is created, written, developed or otherwise brought into existence during the term for the purposes of this Agreement; and
- (c) "Material" means tangible and intangible information, documents, reports, software (including source and object code), inventions, Data and other materials in any media whatsoever.
- (d) "Data" means technical data including measurements and/or information transmitted to our cloud software and captured by EA Technology's instruments and/or algorithms or provided to EA Technology by the Client (whether relating to the Client's equipment, plant, cabling, switchgear or otherwise) which is obtained or processed by EA Technology in connection with the Services.

### 17.2 EXISTING MATERIAL

- (a) Except to the extent otherwise stated in a Proposal or in this clause 17.2:

- (i) each party retains ownership of the Intellectual Property Rights in its Existing Material; and
- (ii) nothing in this Agreement transfers ownership of, or assigns any Intellectual Property Rights in, either party's Existing Material to the other party.

- (b) The Client grants to EA Technology (and its Personnel) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use its Existing Material and Data to the extent reasonably required to perform any Services and to improve the Goods and Services (including for the benefit of other customers).

- (c) The Client warrants that:

- (i) the Client has full authority and capacity to permit EA Technology to collect, retain and use the Data and Existing Material in accordance with clause 17.2;
- (ii) EA Technology's use of the Client's Existing Material will not infringe the Intellectual Property Rights of any third party and the Client will indemnify EA Technology from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement.

### 17.3 NEW MATERIAL

Unless otherwise stated in a Proposal, Intellectual Property Rights in New Material will be solely and exclusively owned by EA Technology.

### 17.4 LICENCE TO USE IP

- (a) EA Technology grants to the Client a non-exclusive, royalty free, non-transferable and revocable licence to use its Existing Material and any New Material to the extent reasonably required for the Client to enjoy the benefit of the Services.
- (b) Unless otherwise agreed in writing by EA Technology or in this clause 17, the Client will not acquire Intellectual Property Rights in EA Technology's intellectual property under this Agreement or as part of receiving the Services.

## 18 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this Agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this Agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

## 19 FORCE MAJEURE

- (a) If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under this Agreement (other than an obligation to pay money) due to a Force Majeure Event, the Affected Party must give to the other party prompt written notice of:



- (i) reasonable details of the Force Majeure Event; and
  - (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.
- (b) Subject to compliance with clause 19(a) the relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (c) The Affected Party must use its best endeavours to overcome or remove the Force Majeure Event as quickly as possible.
- (d) For the purposes of this Agreement, a 'Force Majeure Event' means any:
- (i) act of God, including lightning strike, meteor strike, earthquake, storm, cyclone, flood, landslide, explosion or fire;
  - (ii) strikes, stoppages, labour restraints or other industrial action outside of the control of the Affected Party;
  - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
  - (iv) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of the Affected Party, to the extent it affects the Affected Party's ability to perform its obligations.

## 20 NOTICES

- (a) A notice or other communication to a party under this Agreement must be:
- (i) in writing and in English;
  - (ii) if delivered by post to the other party, to the address specified in this Agreement, or if no address is specified in this Agreement, then the address most regularly used by the parties to correspond regarding the subject matter of this Agreement as at the date of this Agreement (**Address**); and
  - (iii) if delivered via email to the other party, to the email address specified in this Agreement, or if no email address is specified in this Agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this Agreement as at the date of this Agreement (**Email Address**), and the parties may update their Address and/or Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice sent via email will be taken to be given:
- (i) 24 hours after the email was sent, unless that falls on a day that is not a Business Day, in which case the notice will be taken to be given on the next occurring Business Day; or
  - (ii) when replied to by the other party, whichever is earlier.
- (c) Notice sent via post will be taken to be given five Business Days after the date of posting if posted to or from a place within New Zealand, or eight Business Days after the date of posting if posted to or from a place outside New Zealand, unless a notice is received after 5.00 pm on a Business Day in the place of receipt or at any time on a non Business Day, in which case, that notice is deemed to have been received at 9.00 am on the next Business Day.

## 21 GENERAL

### 21.1 GOVERNING LAW

This Agreement is governed by the law applying in New Zealand.

### 21.2 JURISDICTION

Each party irrevocably submits to the exclusive jurisdiction of the courts of New Zealand and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

### 21.3 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of each other party (such consent not to be unreasonably withheld).

### 21.4 RELATIONSHIP

- (a) Nothing contained in this Agreement creates an agency, partnership, joint venture or employment relationship between EA Technology and the Client or any of their respective employees, agents or contractors.
- (b) Neither party nor any person acting on its behalf may hold itself out as being entitled to contract or accept payment in the name of or on account of the other party.

### 21.5 AMENDMENTS

This Agreement may only be amended by a document signed by each party.

### 21.6 WAIVER

No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

### 21.7 FURTHER ACTS AND DOCUMENTS

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this Agreement.

### 21.8 ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this Agreement.

## 22 DEFINITIONS & INTERPRETATION

### 22.1 DEFINITION

In these Terms, the following words and phrases have the following meaning:

Term	Meaning
NZCL	means the FTA and CGA.

Term	Meaning
Business Day	means a day that is not a Saturday, Sunday or public holiday in Queensland, Australia or Auckland, New Zealand.
CGA	means the Consumer Guarantees Act 1993.
Confidential Information	means information relating directly or indirectly to EA Technology, its assets and the operation and affairs of EA Technology, including without limitation, this Agreement and the Goods and Services and any Proposal.
FTA	means the Fair Trading Act 1986.
Goods	means those goods that EA Technology agrees to supply to the Client pursuant to the Proposal.
GST	means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985.
Personnel	employees, secondees, agents, other nominees and subcontractors (who are individuals), including employees and contractors (who are individuals) of subcontractors.
PPSA	means the Personal Property Securities Act 1999 and its regulations as amended and in force from time to time.
PPSR	means the <i>Personal Property Securities Register</i> established under the PPSA.
Premises	means the working area or site specified where the Goods and/or Services are to be supplied as set out in a Proposal or otherwise agreed between the parties.
Services	means those services that EA Technology agrees to supply to the Client pursuant to the Proposal.

## 23 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(currency)** a reference to \$; or "dollar" is to New Zealand currency;
- (c) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (d) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (f) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) **(this Agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) **(document)** a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word "includes" and similar words in any form is not a word of limitation; and **(adverse interpretation)** no provision of this Agreement will be interpreted adversely to a party because that party was responsible for the preparation of this Agreement or that provision.

May 2025