

Service Agreement
prepared for
XXXXXXX Limited
Confidential

DATE MASTER SERVICES AGREEMENT made this 22nd February 2021

BETWEEN CLIENT NAME, CLIENT ADDRESS ("Customer")

AND Fastcom Limited being a company incorporated under company number 2292668 and having its registered office at 14 Piermark Drive, Rosedale, Auckland ("Fastcom")

BACKGROUND

This Master Services Agreement sets out the terms on which Fastcom has agreed to provide certain Services to the Customer, as agreed by Fastcom and the Customer from time to time and each Service Agreement subsequently entered into.

AGREEMENT

1. Definitions and Interpretation

1.1 In this Agreement, unless the context indicates otherwise:

"we", "our", "us" or "Fastcom" refers to Fastcom Limited, and "Customer", "Client", "you" or "your" refers to the Customer;

"**Commencement Date**" unless otherwise specified, means the date on which we notify the you that Services is available and has commenced;

"**Due Date**" means the date that payment is due, as specified in the tax invoice;

"**Force Majeure**" means, in relation to either party ("Affected Party"), an event or circumstances which are beyond the reasonable control of the Affected Party, including any:

- i) act of God;
- ii) strike, lock-out or other industrial disturbance by or amongst employees of a person other than the Affected Party;
- iii) act of public enemy, or declared or undeclared war or threat of war;
- iv) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party); or
- v) governmental, regional or local authority restraint, legislation or bylaw, but does not include any event or circumstance which could have been avoided by the Affected Party exercising Good Industry Practice;

"**Good Industry Practice**" means, in relation to any activity, the exercise of a degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in New Zealand in the same type of activity, under the same or similar circumstances;

"**GST**" means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time;

"**Intellectual Property**" means patents, registered designs, petty patents, utility models, trade marks (including logos and get-up), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, confidential information, trade secrets and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;

"**Master Agreement**" means this Agreement which other Service Agreement relate and refer to and contains the general terms and conditions between Fastcom and the Customer;

"**Services**" means the services which are specified in this Agreement and subsequent Service Agreements as to be provided by Fastcom to the Customer that relate to the Services specified in this Agreement and subsequent Service Agreements;

"**Service Levels**" means, in respect of the provision of any Product or Service, the service levels (if any) associated with that Product or Service, as described in this agreement and published on Fastcom's website from time to time;

"**Service Agreements**" means the Agreements that relate to specific products and services provided by Fastcom that form part of the overall Master Agreement with Fastcom

"**Site**" means the Customer's premises or other site owned or used by the Customer at which the Services are to be provided, as specified in this agreement.

"**Variable Charge**" means any charge which is based on actual usage and that can change from month to month like calling charges, tolls, license counts, consumption usage for the likes of Backup & storage, CPU, memory usage.

1.2 In this Agreement, unless the context indicates otherwise:

- i) expressions defined in the main body of this Agreement have the defined meaning throughout this Agreement, including the background;
- ii) references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it; and

- iii) all monetary amounts are stated exclusive of GST and in New Zealand currency, and all amounts payable by a party under this Agreement are to be paid in that currency. GST is payable at the same time and in the same manner as is any other amount payable under this Agreement, where that amount is subject to GST under the Goods and Services Tax Act 1985.

2. Services Provided

- 2.1 This agreement covers services provided by Fastcom to the Customer as set out in Appendix A and any subsequent Service Agreements or services added at any time.

3. Parties' Obligations – General

3.1 Fastcom will, in providing the Services:

- i) comply with all of its obligations specified in this agreement;
- ii) use all reasonable endeavours to ensure that the Services are provided in accordance with the relevant Service Levels;
- iii) act in accordance with Good Industry Practice;
- iv) comply with all relevant laws including the Privacy Act 2020.

3.2 The Customer will:

- i) comply with all reasonable directions from Fastcom in relation to the provision of the Services (except to the extent that such directions are inconsistent with any express term of this Agreement);
- ii) carry out any obligations on the Customer specified in this agreement, at the time and in the manner contemplated by this agreement;
- iii) ensure that Fastcom's personnel and contractors have appropriate access to any Site at the times required in order to enable Fastcom to comply with its obligations under this Agreement; and
- iv) If you are a Vulnerable Consumer register this with Fastcom by going to Fastcom's website and completing the form contained under Terms and Conditions Vulnerable Consumers or clicking the following link [Vulnerable Consumers - Fastcom](#).

3.3 Fastcom may subcontract any third party to provide all or any part of the Services where Fastcom has selected the subcontractor and not the client:

- i) Fastcom will be responsible and liable for all acts and omissions of any such subcontractor; and
- ii) any such subcontracting by Fastcom will not release Fastcom from liability for the performance of any of its obligations under this Agreement.
- iii) any such subcontracting is approved by the customer where a supplier or subcontractor will have access to the customer's system or data, which approval will not be unreasonably withheld.

4. Warranties, Liability and Insurance

- 4.1 Fastcom does not warrant that any Service will be continuously available, and does not give any warranty, express or implied, as to the fitness for purpose or otherwise of any Service.

4.2 Nothing expressed or implied in this Agreement will confer any liability on either party (referred to in this clause as the "First Party") in respect of any:

- i) indirect, consequential or special loss, damage, cost or expense suffered or incurred by the other party as a direct or indirect result of a breach by the First Party of any of its obligations under this Agreement.
- ii) provided that this clause does not apply in respect of either party's liability for fraud, willful misconduct, gross negligence or for a breach of clause 6.1.

4.3 Fastcom will not be liable to the Customer for any loss or corruption of data, or inadvertent disclosure of information, arising from the use by the Customer of the Services.

4.4 Fastcom undertakes to the Customer that for so long as it is contractually obliged to supply the Services specified in Appendix A and subsequent Service Agreements, it will:

- i) maintain insurance cover which includes the following risks:
 - professional liability, including liability for processing errors and omissions;
 - and public liability,in each case, for amounts not less than NZD 2 million,
- ii) duly and promptly pay or procure the payment of all monies necessary to maintain such insurance or procure that the same are paid; and

4.5 Fastcom shall upon request by the Customer, furnish to the Customer evidence to the satisfaction of the Customer that Fastcom continues to comply with clause 4.4.

5. Accounts and Finance

- 5.1 Fastcom will invoice the Customer for all amounts payable under this agreement and subsequent Service Agreements, all invoices will be payable by the Customer on or before the due date specified on the invoice.
- i) Hardware and software supply require payment within 14 days of invoice plus a 50% deposit on order. No hardware or software will be supplied until payment in full has been received.
 - ii) Monthly reoccurring fixed fee services will be invoiced on the 1st of the month for that month of service.
 - iii) Variable and adhoc charges shall be invoiced at the end of each month in arrears based on the actual consumption for the month.
 - iv) Where a service is commenced during the month a prorated invoice will be raised for the period from the commencement of the service to the end of the first month of service.
- 5.2 If the Customer disputes any portion of any amount appearing as payable on any invoice issued by Fastcom to the Customer under this Agreement:
- i) the Customer will notify Fastcom of such dispute at the earliest reasonable opportunity;
 - ii) the undisputed portion of that invoice will remain payable on the due date for payment under this Agreement; and
 - iii) the Customer will not be obliged to pay the disputed portion of that invoice until the parties' dispute has been resolved by agreement between the parties or, in the absence of such agreement, in accordance with clause 7.
- 5.3 Subject to clause 5.2, if any amount falls overdue for payment under this Agreement, such late or non-payment will constitute a default under this Agreement and, without limiting any other right or remedy of Fastcom, Fastcom may:
- i) suspend performance of some or all of its obligations to the Customer under this Agreement until the overdue amount is paid in full; and/or
 - ii) charge default interest on the overdue amount from the date on which payment of that amount falls due until the date on which the overdue amount is paid in full. Such default interest will be calculated daily at Fastcom's bankers then current overdraft interest rate.
 - iii) place the outstanding debt with a collection agency or solicitor for collection purposes. This includes passing any relevant information, detail, records, and communications in relation to the Customer. The Customer will be liable for any additional costs incurred by Fastcom and/or its collector in addition to the original amount outstanding.
- 5.4 If a service is provided on a month by month basis Fastcom retains the right to alter the pricing for this service by giving the Customer 30 day's written notice of any pricing change.
- 5.5 Where a service is provided on a fixed term basis Fastcom retain the right to change the price giving 30 days' notice where;
- i) The government of appropriate regulatory body introduces, amends or removes a charge, levy, fee of tax rate
 - ii) A supplier Fastcom utilises for the delivery of its services to the Customer amends its pricing
 - iii) The expected usage by the Customer does not meet or exceeds Fastcom's expectations and due to this the financial model that Fastcom based it's pricing in relation to the Customer results in Fastcom not achieving its expected margins, then Fastcom will enter into discussions with the Customer and show how the shortfall/excess has affected Fastcom's position and seek to rectify this with the client.
 - iv) Fastcom may apply a CPI adjustment annually to the costs outlined in this Agreement including but not limited to labour charges, fixed fee services, variable and Adhoc charges.
 - v) Where a contract has rolled over Fastcom may amend pricing from the initial term pricing to its current pricing at any time during the rollover period subject to giving 30 days notice.

6. Intellectual Property and Confidentiality

- 6.1 Each party undertakes to the other that it will take all proper and effective precautions to preserve the confidentiality and secrecy of, and will not directly disclose directly, or indirectly reveal, report, publish, transfer or disclose, or acknowledge or disclose the existence of, any Confidential Information of the other party except to its employees, directors, and professional advisors in accordance with clause 6.2 or where a party is required to make such disclosure by:
- i) any statutory or regulatory obligation, body or authority.
 - ii) any judicial or other arbitration process; or
 - iii) the regulations of any stock exchange upon which the share capital of the party is from time to time listed or dealt in.
- 6.2 Permitted disclosure. Each party will adopt procedure within its organisation and take all proper and effective precautions to ensure the confidentiality and secrecy of all Confidential Information which it is obliged to preserve as confidential and secret under the terms of this agreement. These procedures will include;
- i) the Confidential Information will be disseminated within the organisation of each party only on a need to know basis, and
 - ii) employees, directors, agents, consultants and professional advisors of each party in receipt of Confidential Information will be made fully aware of each party's obligations of confidence in relation to the Confidential Information.

- 6.3 Unless required by law, neither party will make any announcements or disclosures as to the subject matter of this Agreement, except in a form and manner, and at a time, previously approved in writing by the other party (such approval not to be unreasonably or arbitrarily withheld).
- 6.4 Nothing in this Agreement operates to grant to either party any rights to use the other party's Intellectual Property. Any Intellectual Property which is provided by Fastcom to the Customer remains the property of Fastcom at all times and must be returned by the Customer to Fastcom on demand.

7. Disputes

- 7.1 The parties will meet at least once to discuss any dispute between them arising out of this Agreement.
- 7.2 If the discussions referred to in clause 7.1 fail to resolve the relevant dispute, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the New Zealand Law Society. In the event of any such submission to mediation:
- i) the mediator will be deemed to be not acting as an expert or as an arbitrator;
 - ii) the mediator will determine the procedure and timetable for mediation; and
 - iii) the cost of the mediation will be shared equally between the parties.
- 7.3 Neither party may issue legal proceedings (other than for urgent interlocutory relief) in respect of any such dispute, unless that party has first taken all reasonable steps to comply with clauses 7.1 and 7.2.

8. Term and Termination

- 8.1 Fastcom will provide the Service to the Customer from the date on which the Customer commences using the Products and/or Services as described in Appendix A (or such other date as is agreed by the parties in writing) for an initial period of **36 months** ("Initial Term").
- 8.2 Unless otherwise specified in the any subsequent Service Agreement/s the term of those Service Agreements and any subsequent services provided shall be the same as the term remaining under this Master Agreement and any subsequent Services added since the initial term commenced.
- 8.3 Subject to clause 8.5, in the event the Customer terminates this Agreement where there is no breach by Fastcom, the Customer shall pay Fastcom the fees as calculated in clause 8.6 and any subsequent increases in price advised by Fastcom during the term.
- 8.4 Upon Expiry of the Initial Term this Agreement will roll for a further term period of 12 months. ("Roll Over"). This Agreement will continue to Roll Over for a further 12 months at the end of each subsequent Roll Over period unless terminated in accordance with clause 8.6.
- 8.5 The Customer must provide a minimum of 30 days' notice prior to the expiry of the Initial Term or any subsequent Roll Over period.
- 8.6 Termination of this Agreement at any time prior to the expiry of the Initial Term or any subsequent Roll Over, Fastcom will invoice the Customer (and the Customer will pay within 7 days after receipt of that invoice) the amount calculated as follows:
- $A = (B \times C)$
- Where: A = the amount payable by the Customer;
B = the monthly fees specified in this agreement and any associated charges attached to the Services provided;
C = the number of months remaining in the Initial Term or Roll Over at the time of termination (including any part-months);
- 8.7 Fastcom may suspend the provision of any Services with immediate effect:
- i) subject to clause 5.2, if the Customer has failed to pay any amount owing to Fastcom by the due date, where Fastcom has provided not less than 14 days' prior written notice that if such amount is not paid Fastcom may suspend any of the Services provided to the Customer;
 - ii) in order to protect the safety or security of any person or property or to prevent or mitigate any interference with the operation of Fastcom's systems; or
 - iii) if required by law or any authority.
- 8.8 Fastcom may terminate this Agreement with immediate effect by written notice to the Customer if:
- i) the Customer assigns this Agreement other than in accordance with clause 18.13;
 - ii) there is a change in the legal or beneficial ownership of its shares in the Customer or the shares of its shareholder where there is a change in the effective management and control of the Customer without prior written consent of the other party.
- 8.9 Fastcom may terminate this Agreement with 60 days written notice.
- 8.10 Either party (referred to in this clause as the **"First Party"**) may terminate this Agreement at any time and with immediate effect by written notice to the other party (referred to in this clause as the **"Second Party"**) if the Second Party:

- i) has committed a material breach of this Agreement where that breach is reasonably capable of being remedied within 14 days and where the Second Party has failed to comply with an earlier written notice given by the First Party:
 - a) specifying that breach; and
 - b) requiring that the Second Party remedy that breach within the period specified in the earlier notice (which, in order for that notice to be effective, must be at least 14 days after receipt of the earlier notice) provided that the First Party must not at any time give a notice terminating this Agreement under this clause 8.10(i) if, at that time, the First Party is, to any material extent, in default under this Agreement;
- ii) has committed any material breach of this Agreement, which breach is not reasonably capable of being remedied by the Second Party within 14 days (provided that the First Party must not at any time give a notice terminating this Agreement under this clause 8.10(ii) if, at that time, the First Party is, to any material extent, in default under this Agreement);
- iii) goes into receivership, liquidation or voluntary administration;
- iv) is removed from the New Zealand Companies Register other than as part of an amalgamation, in which the Second Party is one of the companies being amalgamated;
- v) has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets;
- vi) is the subject of any event analogous in nature to those listed in clauses 8.10(iii) to 8.10(v) (inclusive) under the laws of any relevant jurisdiction;
- vii) suspends, for 14 days or longer, or ceases, or sells, its principal business undertaking or assets without the First Party's prior written consent (which the First Party may withhold at its absolute discretion);
- viii) makes any assignment to, or enters into any arrangement for the benefit of, its creditors generally (other than for the purposes of a solvent restructuring which has previously been approved in writing by the First Party, such approval not to be unreasonably withheld or delayed); or
- ix) becomes unable to pay its debts as they fall due or is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts.

8.11 Termination of this Agreement for any reason pursuant to clause 8.7 or clause 8.8 will have the effect of immediately terminating this agreement.

8.12 On the termination of this for any reason Fastcom shall;

- i) provide all administrative passwords and access credentials to the customer;
- ii) return to the customer all confidential information obtained or produced in the course of providing the Services and any Customer resources used for the provision of the services (to the extent that they have not already been supplied to the Customer and the information is not the intellectual property of Fastcom);
- iii) assist and co-operate with the Customer to ensure an orderly transition of the Services to any replacement supplier as approved by the Customer and complete any work in progress.

8.13 All work carried conducted in accordance with clause 8.12 will be chargeable and conducted at Fastcom's prevailing Time and Materials rates.

8.14 The Customer shall return at the Customers expense return to Fastcom all equipment owned by Fastcom.

8.15 Fastcom will retain the right to bill the client for any damage or excessive wear and tear to the equipment in excess of what would normally be expected given the term the contract has been in operation, or for non-return of the equipment at its current market value.

9. Notices

9.1 Any written notice required under this Agreement must be signed by a duly authorized senior representative of the party giving that notice and (without limiting the means by which notice may be given under this Agreement) will be deemed validly given if:

- i) delivered by hand to the intended recipient's registered address; or
- ii) sent by email to the intended recipient's email address

9.2 For the purposes of this Agreement, any notice emailed or delivered after 5.00pm, or at any time on a Saturday, Sunday or statutory public holiday, will be deemed received at 8.30am on the next day which is not a weekend or statutory public holiday.

10. Consumer Guarantees Act

10.1 Our Product(s) and Service(s) are provided to you for business purposes and you acknowledge and agree that the Consumer Guarantees Act 1993 does not apply.

11. Fastcom Equipment & Access

11.1 Ownership of goods shall not pass to the Customer until the Customer has paid all that is owing to the Fastcom. Until ownership has passed the Customer holds the goods on behalf of the Fastcom under the following conditions:

- i) Fastcom is permitted to enter onto the Customer's premises to inspect and/or repossess the goods. The Company may repossess the goods at any time after;
 - (a) the Due Date for payment of any of the goods; or
 - (b) the commencement of the winding up of the Customer; or

(c) the coming of an act of bankruptcy by the Customer; or
(d) any attempt by the Customer to enter into a debt compromise arrangement with the Customer's creditors. If the Customer sells the goods to a third party then the Customer is accountable Fastcom for all the proceeds derived from such a sale and shall hold such proceeds on trust for Fastcom in a separate bank account. In all such dealings the Customer shall be deemed to be trustee of all proceeds for Fastcom as beneficiary. If the Customer manufactures, intermingles or deals with the goods in such a manner that they become an integral part of any other object then the Customer shall be deemed to do so as agent of Fastcom and ownership of the goods will remain with the Company as principal.

11.2 It may be necessary for Fastcom to install and maintain equipment provide to you in connection with the provision of Services ("Our Equipment") and/or related to/required for the Services ("Software") at your premises to provide you the Services. You agree to give Fastcom access to your premises at all reasonable times and with reasonable notice (subject to compliance with your reasonable security requirements and where applicable, health and safety requirements) to install, inspect, remove, replace and maintain Our Equipment and/or software.

11.3 Ownership of our Equipment or any replacement for our Equipment or replacement component of our Equipment remains with Fastcom at all times.

11.4. You agree:

- i) not to damage or interfere with our Equipment or software in any way;
- ii) to provide a safe and secure operating environment for our Equipment;
- iii). to take reasonable precautions to protect our Equipment and Software from theft or other loss or damage;
- iv) to follow our reasonable directions when using our Equipment and/or Software;
- v) to take reasonable precautions to protect our Equipment and software from electromagnetic interference, electrical interference or power fluctuations;
- vi) to pay our charges for provisioning, repairing or replacing any part of our Equipment that is lost or damaged while located on your premises;
- vii) to obtain and maintain insurance to a value determined by Fastcom with a reputable insurance company against loss or damage to our Equipment and Software while it is under your control or on your premises. You will ensure that our interest is noted on the insurance policy.
- viii) You authorize Fastcom to disconnect any equipment that may be connected by other telecommunications service providers and to reconfigure existing equipment to enable the Services to be provided.
- ix) Fastcom may remove our Equipment and Software from your premises upon termination of Fastcom's Services or earlier if our Equipment is no longer required for the provision of Services or if you damage or interfere with it. You agree that Fastcom may enter into premises where our Equipment is located at any time for the purpose of repossessing our Equipment and you will indemnify us, upon demand, for all costs and expenses Fastcom incur in arising from such enforcement action. Fastcom will not be liable for any damage resulting from the repossession of our equipment.

12. Personal Properties Security Act 1999

12.1 Fastcom retains title in any items provided to you until payment in full is received for that item.

12.2. You agree that these Terms constitute a security agreement which provides for a security interest in our favour in all of your present and after-acquired property provided by Fastcom to you under these Terms and any proceeds of such property. In addition, references in these Terms to 'Equipment' and 'Software' means the goods and software described or referred to in the relevant records Fastcom maintain (or any other relevant document Fastcom may produce), on the basis that such record or other document is deemed to be assented to by you and to be included in and form part of these Terms.

12.3. On request by Fastcom, you will promptly do all things (including signing any other documents) and provide all information necessary to enable Fastcom to perfect and maintain the perfection of any security interest you have granted under these Terms (including by registration of a financing statement). You waive your right to receive a copy of any verification statement in respect of any financing statement Fastcom register and you agree to indemnify us, upon demand, for all costs and expenses Fastcom incur in registering and maintaining any financing statement.

12.4. Where used in this clause, the following words and phrases (and grammatical variations of them) have the meanings given to them in, or by virtue of, Personal Property Securities Act 1999: 'after acquired property', 'financing statement', 'goods', 'perfection', 'personal property', 'proceeds', 'security agreement', 'security interest', and 'verification statement'.

13 Account, Password and Security

13.1 Upon registration of your account or at any other time as may be required, you may be issued a username(s) and password(s). You must keep your username(s) and password(s) confidential and to take all reasonable steps to prevent disclosure of your username(s) and password(s) to any person, other than members of your business or household who are considered authorized users. You are responsible for ensuring that all authorized users of the account also meet the responsibilities and obligations set out in the Terms.

13.2. You agree to indemnify Fastcom for all claims, proceedings, damages, losses or expenses however incurred arising from the acts of any person accessing the Services using your username(s) and password(s). Disclosure or loss of your username or password that results in the incurring of charges or misuse of the Services is your responsibility and any such occurrence shall be immediately communicated to Fastcom

- 14 Software Licenses
- 14.1 The Customer acknowledges that they will also be bound by any terms and conditions applicable to any 3rd party provided solution/software/application and its licensing requirements and terms and conditions of that 3rd party provider
- 14.2 The Customer agrees and acknowledges that any 3rd party software and/or application licenses are for their costs and accept that where required by the vendor that Fastcom shall report license details including but not limited to numbers, usage and any other relevant data in relation to their own software and applications requested by the vendor. Where there is any discrepancy between the reported numbers and actual usage either as a result of an error or omission by either the Customer or Fastcom the Customer shall be liable for any outstanding amount owned as a result of the error or omission.
- 15 References
- 15.1 The Customer agrees that Fastcom may refer to the clients name in discussions with other clients. The client agrees that generic nonproprietary information about clients IT systems make up may be discussed with other parties including suppliers and other Customers for the means of supporting the client and sharing information between Company Customers. This includes displaying the Customers Logo and name on Fastcom's website and material.
16. Electronic Communication
- 16.1 The Customer agrees that we can email to the Customer and Staff (at work) promotional and informative emails and invites to events from time to time.
17. Restraint of Trade
- 17.1 The Customer agrees that they will not during the term of this agreement, and for a period of six (6) months thereafter, directly or indirectly approach, offer, contract or otherwise deal with Fastcom's employees, agents or subcontractors in respect of substitutions of Fastcom's services, other than with prior written consent of Fastcom.
18. General
- 18.1 This Agreement records the entire understanding and agreement of the parties relating to the matters dealt with in this Agreement. This Agreement supersedes all previous arrangements, understandings or representations (whether written, oral or both) relating to these matters.
- 18.2 In addition to these Terms and Conditions the following Terms and Policies also apply and are available on Fastcom's website, these policies can be updated and further terms and policies added from time to time.
- i) Privacy Policy
- ii) Customer Policy
- iii) Fair usage Policy
- 18.3 Nothing express or implied in this Agreement constitutes either party as the partner, agent, employee or officer of, or as a joint venture with, the other party. Neither party will make any contrary representation to any other person.
- 18.4 Unless otherwise stated in this Agreement, each party will bear its own costs and expenses incurred in connection with the negotiation, preparation and implementation of this Agreement.
- 18.5 This Agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document.
- 18.6 Any scanned copy of this Agreement (including any facsimile copy of any document evidencing either party's signature of this Agreement) may be relied on by any other party as though it were an original copy. This Agreement may be entered into on the basis of an exchange of such scanned copies.
- 18.7 No amendment to this Agreement will be effective unless it is recorded in writing, signed by a duly authorized senior representative of each party.
- 18.8 Any waiver by a party of any of its rights or remedies under this Agreement will be effective only if it is recorded in writing and signed by a duly authorized senior representative of each party. If the waiver relates to a breach of any provision of this Agreement, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party will in any way affect, limit or waive that party's right to subsequently require strict compliance with this Agreement.
- 18.9 This Agreement is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters relating to this Agreement.
- 18.10 If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this Agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this Agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

- 18.11 Each party will make all applications, do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Agreement.
- 18.12 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.
- 18.13 The Customer may only transfer or assign its rights under this Agreement with Fastcom's prior written consent, which consent will not be unreasonably withheld. Fastcom may at any time transfer or assign this Agreement to any person which has the capability to perform the obligations of Fastcom under this Agreement, such assignment is subject to the customer's written consent, which consent will not be unreasonably withheld.
- 18.14 Neither party will be liable to the other party if and to the extent to which that party is unable to perform any of its obligations due to a Force Majeure. If a Force Majeure prevents a party from performing its obligations under this Agreement for a period of 30 days or longer, either party may terminate this Agreement with immediate effect by written notice to the other party.
- 18.15 Where the terms of condition of this Master Agreement and subsequent Service Agreements or other agreement between the Customer and Fastcom exist Fastcom at its sole discretion may decide which terms and conditions take precedence.
- 18.16 Right to Amend, Fastcom reserves the right to amend, modify or update the terms of this Agreement at any time. Any such amendments, modifications, or updates shall be effective from the date advised in the notice we provide you but not less than 30 days.

i) Notice of Change – Any changes to this Agreement will be provided to you by;

- Posting the updated terms on our website at <https://www.fastcom.co.nz/terms-conditions-and-policies/>
- Sending an email to the most recent email address provided by you, or by any other means of electronic communication we deem appropriate.

ii) Acceptance of Amendments – By continuing to use our services after the effective date of any amendment, modification, or update, you agree to be bound by the new terms of this Agreement. If you do not agree to the new terms, you must either advise us prior to the effective date of the change, modification, or update to the Agreement, or cease using the services and clause 8.6 shall still apply.

iii) Access to Updated Terms – You are encouraged to periodically review the terms of this Agreement on our website to ensure you are aware of any amendments, modifications or updates.

iv) Binding Effect – The amended Agreement will supersede all previous versions of the Agreement and will constitute the entire agreement between the parties.

- 18.17 You will notify us within seven days of any change of address or any other significant contact details
- 18.18 No course of dealing between the Customer and Fastcom, no agreement between the parties, whether before or subsequent to the signing of this Agreement by the parties and no purported modification or variation of this Agreement, shall be effective to amend, vary, modify, override or replace this Agreement unless the parties expressly agree in writing in a Variation Schedule that this should be the case.
- 18.19 If any provision in this Agreement or subsequent Service Agreements become illegal, invalid or unenforceable, such provision shall be served and the remaining provisions shall remain unaffected.

19 Amendments and Variations

EXECUTION

Signed on behalf of Fastcom Limited by:

Signature:

Name/Title:

Date:

Signed on behalf of the Customer by:

Signature:

Name/Title:

Date:

Witnessed by:

Signature:

Name:

Address:

Confidential

APPENDIX A – SERVICES AGREEMENT - Services Provided

1. **Services and Fees**

Confidential