



SCS™ Connect System Terms of Use

Last updated: 11 October 2018

This Agreement governs your use of the SCS™ Connect System software ("**Software**") including any of its components, and any services provided by or on behalf of Wellington Drive Technologies Limited and its affiliates (also called "**we**", "**us**" and "**our**") in connection with or via the Software ("**Services**"). These terms comprise a legally binding agreement between you and us (the "**Agreement**"). By confirming your acceptance or agreement to these terms (where this option is provided to you), or by otherwise using the Services or Software in any way, you acknowledge that you have read and understood the terms and conditions of this Agreement and agree to be bound by all of its provisions.

If you are entering into this Agreement on behalf of a company or other legal entity, you represent and warrant that you have the full legal authority to bind that company or entity to this Agreement, in which case references to "you" and "your" are references to that company or entity. If you are using the Services or Software for or on behalf of a company or other legal entity (and not entering into this Agreement on their behalf) then you are nevertheless individually bound by this Agreement, even if that company or other entity has a separate agreement with us.

If you do not agree to this Agreement, or do not have the authority mentioned above, or if you have downloaded Software otherwise than in accordance with this Agreement, you are not permitted to use the Services or use or retain the Software.

By agreeing to this Agreement, you warrant that you are not prohibited by the laws of your jurisdiction from using any of the Services or the Software or Third Party Products (as defined below).

1. This Agreement applies to the Account Owner and Users of the Account Owner's Services

An "**Account**" is a unique database or environment within the Software which may contain information about assets associated with you, and to which you are able control users' access privilege level, together with any Apps and Services associated with that environment.

If you have:

- Purchased Software or Services from us or our agents, directly or bundled with hardware; or
- Had, with your consent, an Account for your use created within the Software by us; or
- Agreed a Services Contract with us (as defined in clause 2 below),

then you are an "**Account Owner**".

If you have downloaded any Software with the Account Owner's actual or implied consent in order that you can access any Services and/or Software provided by us to the Account Owner then you are an "**Account User**" and that Account Owner is "**your Account Owner**". Similarly, if you are an Account Owner, the Account Users accessing any Services and/or Software provided by us are "**your Account Users**".

All of the provisions in this Agreement apply to you whether you are an Account Owner or Account User unless the specific provision provides otherwise.

If you are an Account User, you agree that with regard to the access to the Services and/or Software your relationship is solely with your Account Owner and not with us and that we have no obligations to you with regard to the Services and Software. For the avoidance of doubt, any Services Contract (and any related Services)

is for the benefit of the relevant Account Owner only and is not for the benefit of nor enforceable against us by any Account User.

2. Provision of Software and Services to Account Owners

The description of the Services and Software we provide to you as Account Owner will be:

- set out in the relevant documentation we provide to you where the Services and/or Software are bundled with hardware that is supplied to you; or
- as otherwise agreed in writing with you in a separate document

The description of the Services and Software provided by us to an Account Owner together with any other agreed written terms relating to the Services and Software shall be a Services Contract for the purposes of this Agreement (the "**Services Contract**").

If no formal description of the Services and Software has been provided to you as Account Owner, or other written terms agreed, the scope of Services and Software provided shall be at our sole discretion, and this Agreement shall be your Services Contract.

If you are an Account Owner, you are responsible for:

- ensuring that your Account Users comply with the Services Contract and this Agreement;
- all activity that occurs under or in connection with your Account or Services Contract;
- the acts and omissions of your Account Users (or any of your or their employees, contractors or personnel) in relation to the Services and Software as fully as if they were your own acts or omissions;
- solely managing the relationships with and requirements of your Account Users; and
- meeting any payment obligations you have to us in respect of the provision of Services and Software to you.

Except to the limited extent agreed in the Services Contract with the applicable Account Owner you acknowledge that we do not provide any support, helpdesk or other remedial services to Account Users. It is the Account Owner's responsibility to address any queries, problems or other issues that Account Users may have in connection with the Services or Software.

If you are the Account Owner, the Services Contract forms part of this Agreement and is subject to its terms. We are not required to provide any Services or Software to an Account Owner and an Account Owner is not permitted to use, or authorise its Account Users to use, any Services or Software other than those that are specified in that Account Owner's Services Contract.

Subject to the other provisions of this Agreement, when we provide the Services and Software to the Account Owner we will endeavour to:

- provide to the Account Owner such minor updates, bug fixes, patches and other error corrections (collectively, "**Updates**") for the Software as we make generally available to all Account Owners. We may develop and provide Updates in our sole discretion. Where components of the Software have been developed specifically for you we shall be under no obligation to provide Updates or any other modifications or additions to the Software unless explicitly agreed by us as part of the written development agreement entered into by us with you. All Updates and other modifications and additions to the Software that we may provide to you will be deemed to be Software. Updates may be provided via download from a website designated by us or may automatically be applied to the Software. We do not have to make available to you any new version or new release of the Software that we may issue as a separate or new product, and we will decide whether any issuance qualifies as a new version, new release or Update in our sole discretion. New versions or releases may be provided at an additional charge;

- respond in a timely manner to any email requests from the Account Owner for assistance in relation to the Services or Software;
- provide at least one month's notice to the Account Owner before we make any material change to the Services that we consider is likely to have significant impact on the use of the Services by all of our Account Owners.

We will always use our reasonable endeavours to provide the Services by the dates specified in a Services Contract or, if no dates have been specified, by the dates agreed in writing with the Account Owner. We will always try and notify you if we are unable to complete any customisation or implementation Services by the target date, and we will consult with you before setting a new date. Any dates or timeframes (including start dates) for the Services are estimates only and are not binding.

3. Your Environment

You acknowledge and agree that we do not have complete information about your facilities, equipment, infrastructure and information technology and telecommunications environment (including software, hardware, systems and networks) or as to the end user equipment and hardware from which Your Data (as defined in clause 5 below) may be obtained (collectively, "**Your Environment**"). The provision of Services and operation of the Software is dependent on Your Environment supporting the Software and the Services including any Updates. We are not responsible for Your Environment (including its maintenance) or for ensuring that it remains compatible with the Services and Software. This applies to both the Account Owner's and the Account Owner's Account Users' Environments.

We are not responsible for compatibility issues or faults in Your Environment or for fixing faults that have been caused by you, Your Environment or any third party. We are also not responsible for any problems experienced by any equipment caused by the Software including end-user equipment and hardware used by third parties, such as but not limited to configuration or misconfiguration of the equipment, and for any problems caused by Updates. We do not provide any warranty or guarantee that the equipment or hardware will perform to any particular level or standard as a result of the use of the Software or Services or that it will be error free.

If you ask us to investigate or work on any such issues and we agree (at our discretion) to do so, we may charge you at our then standard hourly rates for such work.

We or our suppliers are free to choose and change the manner in which, and the technologies by which, a Service is provided.

The provision of the Services and the performance of the Software are subject to any assumptions and dependencies that are detailed in this Agreement (including, if you are an Account Owner, your applicable Services Contract). If any assumption or dependency proves to be invalid or inaccurate or you otherwise fail to perform your responsibilities, (each a "**Dependency Failure**") then, without limiting any of our other rights or remedies:

- we will not be liable for any delay or failure to perform our obligations that is caused or contributed to by the Dependency Failure; and
- we will be entitled to a variation to the relevant Services Contract to the extent reasonably required to reflect the impact of the Dependency Failure (including to increase any charges and extend timeframes).

4. Your right to use the Services and Software

If you are an Account Owner or Account User, so long as you comply with this Agreement, we grant you a non-exclusive and non-transferable licence to:

- access and use the Services; and



- install and use the Software for the term of this Agreement on a device that is compatible with the Software.

If you are an Account Owner, the licence above is subject to this Agreement and is limited by your Services Contract. For example, your Services Contract may only permit a certain number of Account Users to access and use the Services and may limit the Software and/or features that you and your Account Users are permitted to use.

If you are an Account User then the licence above is subject to this Agreement and is limited by the Services Contract that your Account Owner has with us. For example, you are not permitted to use any Software other than the Software that your Account Owner is permitted to use under its Services Contract. Your Account Owner may also use settings within the Services to limit your use of the Software and Services (including to stop you from accessing the Services).

5. Your Information

Any information, data (including equipment operation, configuration and location data), files, and other content collected or stored by us directly (or indirectly through the services of third parties) via the Services or Software, or collected by you, or made available to you via the Services or Software (“**Your Data**”) may be inaccurate, incomplete, corrupted or outdated. Your use and interpretation of Your Data is your responsibility (not ours) and is at your own risk. It is also your responsibility to make sure that you have obtained all the necessary rights and permissions to use Your Data (for example, if an Account Owner wants to use Your Data uploaded by an Account User).

We do not endorse, approve or pre-screen Your Data and, to the fullest extent permitted by law, we provide no promises, warranties or guarantees in relation to Your Data, including as to its adequacy, accuracy or completeness or its freedom from anything harmful or inappropriate. You agree that we are not responsible or liable in any way for Your Data or the consequences of you providing, using or relying on Your Data.

6. Use by Us of Your Data

You grant to us a worldwide, non-exclusive and sub-licensable right (including to arrange for third party service providers to provide services on our behalf) to store, use, modify, adapt, prepare derivative works from, reproduce, publish, display, distribute and communicate Your Data for the purpose of providing, operating, supporting and improving the Software and Services, verifying your compliance with the terms of this Agreement and enforcing our or our licensor’s rights, including all intellectual property rights in and to the Services and Software and subject to Section 8, Privacy, marketing the Services and Software. You also acknowledge and agree that Your Data may be available to and used by, as applicable: (a) if you are an Account User, your Account Owner, any third party to whom your Account Owner may pass Your Data (or authorise us to pass Your Data), or any Account Users that have the same Account Owner as you; or (b) if you are an Account Owner, any of your Account Users. You represent and warrant to us that you have the right and authority to grant the rights in this clause and Your Data will not violate this Agreement.

If you are an Account User, you agree that we may treat Your Data for all purposes as if it were owned by your Account Owner.

You must make sure that Your Data is free of anything illegal or that may be offensive, any viruses and anything else that infringes a third party’s rights or Third Party Terms or that could have a detrimental effect on the Services, Software or us (including our reputation). We reserve the right (but have no obligation to) remove or edit any of Your Data that we consider, in our sole discretion, is contrary to this Agreement. You also acknowledge and agree that we may disclose Your Data if we in good faith consider that such disclosure is



required to comply with a legal process or requirement, enforce this Agreement or respond to any claims by a third party.

If this Agreement ends for any reason then we will, for at least one (1) month from the end date, endeavour to provide a facility for the Account Owner to download Your Data from the Services (in a format that we determine). An Account Owner can also ask us to delete Your Data and we will do so within a reasonable period. If you are an Account User you agree that we only have to deal with your Account Owner in relation to Your Data.

7. Third Party Products

The Services or Software uses, incorporates and/or links to software, data, websites or other products or services that are licensed, sold, provided or otherwise made available by third parties, including third party data warehousing services ("**Third Party Products**"). You acknowledge and agree that we are not liable for any loss or damage which may be incurred by Account Owners, Account Users or anyone else as a result of the availability, performance or content of Third Party Products, including as a result of any loss, damage or corruption to Your Data.

You agree that your use of any Third Party Products is at your own risk and is governed by any separate terms (including privacy policies) that we have notified you of, including at [http:// www.wdtl.com/legal](http://www.wdtl.com/legal) as those terms may be updated from time to time ("**Third Party Terms**"). We assume no liability or responsibility whatsoever for any Third Party Products. Some Third Party Terms may apply to open source software, and where those Third Party Terms are expressly stated to supersede this Agreement they will do so to the limited extent necessary, and then only in relation to the applicable open source software.

8. Your Privacy

You acknowledge that Your Data may include identifiable personal data of an Account User, including location information. By downloading the Software and accessing the Account Owner's Services, the Account User consents to the Account Owner accessing, via the Services, Your Data that constitutes identifiable personal data and to the collection, storage, processing and use of such data by us. The Account Owner is responsible for all decisions relating to the purposes and means of the processing of an Account User's identifiable personal data, including the collection, storage, processing and use of such data by us and the maintaining of its privacy. Any request by an Account User in relation to the continued collection, storage, processing and use of Your Data must be addressed to the Account Owner, and not to us.

In performing the Services, we will comply with our **Services Privacy Policy**, which is available at [http:// www.wdtl.com/legal](http://www.wdtl.com/legal) and incorporated herein by reference. Our Services Privacy Policy is subject to change at our discretion; provided however, our policy changes will not result in a material reduction in the level of protection provided for Your Data during the term of the Account Owner's Services Contract with us.

Subject to the foregoing, we will use all reasonable endeavors to not disclose to any third party any of your confidential data provided by you or collected by us and will maintain safeguards intended to protect the confidential data from unauthorised use, access or disclosure using at least the degree of care we use to protect our sensitive information and in no event using less than a reasonable degree of care.

9. Your responsibilities

You must:

- Use the Services and Software solely for lawful purposes;

- Comply with all Third Party Terms in respect of any Third Party Products that are used within our Services and Software;
- Not access or use Software or Services that you are not permitted to access or use under an applicable Services Contract;
- Not access (or attempt to access) the administrative interface of the Services by any means other than through the interface that is provided by us in connection with the Services;
- Never misuse the Services or Software. This shall include trying to access the Services or Software in a way that we have not expressly permitted or doing anything that adversely affects the Services or Software or their use by anyone else;
- Access and use the Services and Software in a reasonable and proper manner and never in a way that infringes our or anyone else's rights or accesses any data or information which you are not authorised to access, and notify us immediately upon becoming aware of any noncompliance;
- Never resell, transfer, distribute, sub-licence or otherwise make available to any third party all or any part of the Services or Software, except, if you are an Account Owner, as agreed with us in your Services Contract;
- Never copy or modify, or create derivative works from, all or any part of the Services or Software;
- Comply with all laws and regulations (including any privacy laws in your jurisdiction) applicable to your use of the Services and Software;
- Never reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of all or any portion of the Software, or the software underlying the Services, except as may be permitted in your jurisdiction by mandatory law;
- Provide accurate, current and complete information as part of the subscription process, in connection with the Services or whenever otherwise required as part of your use of the Services or Software;
- Comply with all our directions and restrictions regarding the use of the Services and Software;
- Never undermine, or attempt to undermine, the security or integrity of the Services or Software, circumvent any restrictions we place on your use of the Services or Software, or obtain access to any part of the Services or Software that we have not expressly given you permission to access;
- Notify us or, if you are an Account User, your Account Owner, immediately upon becoming aware of any actual or potential breach of security or unauthorised access to or use of any part of the Services or Software, including unauthorised access to yours or anyone else's information;
- Use confidential information which we provided to you about our business, the Services and the Software, only for the purpose we provided it to you for and for no other purpose, and maintain its confidentiality;
- Make sure all your user ID, codes and passwords for the Services are kept confidential and secure and are properly used by you. If you are an Account User you must immediately tell your Account Owner whenever you have reason to believe that this hasn't happened;
- Never access or use the Services or Software for the purpose of building a product or service which competes with or is derivative of the Services or Software or which has similar features or functionality;
- Never copy or create derivative versions of any documentation provided in relation to the Services or Software other than in respect of the use of the Services or Software by you; and
- Obtain all necessary permissions to use any device you download the Software to.

You also acknowledge and agree that the Software is downloaded to your device at your own discretion and risk and that you will be solely responsible for any damages to that device, or loss of data, that results from the download or use of the Software. You, or the owner of the device, may also be charged internet access and other fees by the applicable service provider(s). Those fees are your responsibility, and not ours.

10. Changes to this Agreement

From time to time, we may make changes to this Agreement. Any such changes take effect on the date that the changes are posted on our website. Without limiting the foregoing, we will endeavour to notify Account Owners

of any changes to this Agreement by either emailing Account Owners with notice of the changed terms or by displaying a notice as part of the Services or Software. You may be required to read and accept any updated version of the Agreement to continue your use of the Services and Software.

This Agreement is likely to change over time and it is your responsibility to ensure that you are familiar with the most recent version of this Agreement. Please refer to the Last Updated section at the start of these terms for when these terms were last updated. If you do not agree with any changes to the Agreement you should immediately stop using the Services and Software and end the Agreement under clause 15 (Ending the Services and this Agreement).

11. Changes to the Services and Software

We may, at our sole discretion, change the whole or any part of the Services or Software at any time without notice to you, unless, if you are an Account Owner, we agree otherwise (with reference to this clause 11) as part of the terms of your Services Contract. Subject to clause 10 (Changes to this Agreement), this Agreement continues to apply to any modified or updated Services or Software. Some Updates to the Software may be automatically downloaded and installed onto a device. You may also, from time to time, not be able to use the Services until you have downloaded and installed the latest version of the Software.

12. Pricing, payment, and changes to the fees

If you are an Account Owner, you must pay all of the relevant subscription and other fees related to your Services Contract at the times and in the way specified by us in your Services Contract. You must pay the fees for the Services, and any fees for the Software, no matter who uses them. The fees are exclusive of all taxes and duties (including value added taxes, if any), which are payable by you.

If you are an Account Owner, except as we may agree otherwise as part of the terms of your Services Contract, we reserve the right to increase the fees we charge for the Services and will endeavour to provide advance notice of such increases. If you don't agree to the new fees you can choose to end this Agreement by taking the steps set out in clause 15 (Ending the Services and this Agreement).

We may introduce or withdraw at any time a licence fee for Software which will be payable by the Account Owner (unless restricted by the Services Contract an Account Owner has with us) or, with the agreement of the Account Owner, the Account Owner's Account Users. We may reduce or increase any such licence fee from time to time and will endeavour to provide advance notice of any change. If you don't agree to the licence fee you can choose to end the licence by immediately ceasing to use the licence and deleting it from your device.

If any invoiced amount is not received by us by the due date, then without limiting our rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

If any amount owing by you under this Agreement is 30 or more days overdue, we may, without limiting our other rights and remedies, suspend our Services to you until such amounts are paid in full. We will give you at least 10 days' prior notice that your account is overdue before suspending Services to you. We will not exercise our rights to suspend for non-payment if you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

Our charges do not include, and are exclusive of, any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with your purchases hereunder. If we have the legal obligation to pay or collect Taxes for which you are responsible as aforesaid, we will invoice you and you will pay that amount unless you provide us with a valid tax exemption certificate

authorized by the appropriate taxing authority. For clarity, we are solely responsible for taxes assessable against us based on our income, property and employees.

Changes to our fees or payment policies will be posted on our website (or such other URL we may provide from time to time) or notified to you in writing.

13. You are a Business User

If you are an Account Owner, you represent to us that your access and use of the Services and Software is for the purposes of a business.

To the maximum extent permitted by law, the provisions of any legislation or other law intended to protect non-business consumers in any jurisdiction (including, without limitation, from “unfair” contractual provisions, such as limits of liability), do not apply to the Services or Software.

14. Ownership and Suggestions

We or our licensors and suppliers own all rights, title and interest, including all intellectual property rights (whether or not registered and anywhere in the world), in and to the Services and Software and Third Party Products (including in any underlying software, ideas or know how), any documentation provided with the Services and Software and Third Party Products (whether on-line or in hardcopy form) and any changes or improvements to the Services, Software, Third Party Products or such documentation. Except to the extent that we specifically grant you a licence in clause 4 (Your right to use the Services and Software), we do not grant you any rights, title or interest in relation to any of the foregoing. You are also not granted any rights or interests in any of our trademarks, logos and business, product and domain names or those of our licensors and suppliers.

Except in relation to certain Third Party Products (and then only to the limited extent permitted by the applicable Third Party Terms), you acknowledge that you have no right to have access to the Software in source-code form.

You may choose to submit ideas, comments, feedback or suggestions to us in relation to the Services or Software (“**Suggestions**”). You acknowledge and agree that any Suggestions do not contain any confidential or proprietary information. You grant, and warrant that you have the right to grant, us a perpetual, irrevocable, worldwide, transferable, sub-licensable and non-exclusive right to use, share, commercialise and otherwise exploit Suggestions in any way for any purpose, at no charge and free of any obligation to you or anyone else.

15. Ending the Services and this Agreement

Subject to the terms of any Services Contract an Account Owner has with us, the Account Owner may immediately end this Agreement at any time by telling us in writing. An Account User may only end this Agreement by ceasing to use the Services and Software and by deleting or removing the Software from all devices within the Account User’s possession or control and, if requested by us in writing, certifying to us that the Account User has done so.

We may end this Agreement for any reason by giving the Account Owner at least 30 days’ notice beforehand, subject to any Services Contract the Account Owner has with us. We may also end this Agreement at any time in any of the following circumstances:

- if you are an Account Owner, you have breached this Agreement;
- if you are an Account User, you have breached this Agreement, your Account Owner’s agreement with us has ended or we have otherwise ended, suspended or restricted your Account Owner’s access or use of the Services or Software; or

- we (in our sole discretion) consider it necessary or reasonable to do so (for example, if required by law, to protect the Software or Services and the use of them by anyone else or where our ability or right to provide any part of the Software or Services has been stopped or restricted, such as where required Third Party Products have been suspended or terminated).

We will endeavour to notify Account Owners if we end the Agreement in the circumstances noted above.

Where we are entitled to end this Agreement we may choose to end, suspend or restrict your access and use of the Services or Software (or both of them), and we can do so without notifying you. To avoid any doubt, the exercise of those rights to end, suspend or restrict will never prevent us from exercising our rights to end the Agreement, and we can exercise the rights to suspend or restrict more than once for the same or different reasons.

When this Agreement ends for any reason:

- all rights we have granted to you under this Agreement shall cease; and
- you must immediately cease using the Services and Software, delete or remove the Software from all devices within your possession or control and, if requested by us in writing, certify to us that you have done so.

Ending this Agreement or any of the Services does not affect clauses that are intended to survive termination (including clauses 1, 3, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17 and 18, which will continue to operate) or any rights or remedies that have accrued beforehand.

16. Liability and indemnity

NOTHING IN THIS AGREEMENT, INCLUDING THE BALANCE OF CLAUSE 16 BELOW, SHALL EXCLUDE OR LIMIT OUR WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES AND SOFTWARE AND THIRD PARTY PRODUCTS IS AT YOUR SOLE RISK AND THAT THE SERVICES AND SOFTWARE AND THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND "AS AVAILABLE."

WE, INCLUDING OUR SUBSIDIARIES AND AFFILIATES, AND OUR AND THEIR OFFICERS, AGENTS, EMPLOYEES, LICENSORS AND SUPPLIERS ("**OUR RELATED PARTIES**") MAKE NO EXPRESS WARRANTIES AND DISCLAIM ALL IMPLIED WARRANTIES REGARDING THE SERVICES AND SOFTWARE AND THIRD PARTY PRODUCTS, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE, AND OUR RELATED PARTIES DO NOT REPRESENT OR WARRANT TO YOU THAT: (A) YOUR USE OF THE SERVICES OR SOFTWARE OR THIRD PARTY PRODUCTS WILL MEET YOUR REQUIREMENTS, (B) YOUR USE OF THE SERVICES OR SOFTWARE OR THIRD PARTY PRODUCTS WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) YOUR DATA WILL BE COMPLETE AND ACCURATE AND ERROR FREE.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT WE, AND OUR RELATED PARTIES SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF SAVINGS OR PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OR CORRUPTION OF YOUR DATA OR INTERFERENCE WITH THE OPERATION OF EQUIPMENT SUFFERED, UNAUTHORISED ACCESS TO OR DISCLOSURE OF YOUR DATA AND BREACH OF SECURITY, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS.

THE LIMITATIONS ON LIABILITY TO YOU IN CLAUSE 16 ABOVE SHALL APPLY WHETHER OR NOT WE OR OUR RELATED PARTIES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

You agree to hold harmless, defend and indemnify us and Our Related Parties from and against any third party claim arising from or in any way related to (a) your breach of this Agreement or any Third Party Terms (b) your use of the Services or Software or Third Party Products, (c) your violation of applicable laws, rules or regulations in connection with the Services or Software or Third Party Products, or (d) Your Data (or any other information or data), including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. In such a case, we will provide you with written notice of such claim, suit or action.

In the event, notwithstanding the above, we are liable to you, the total aggregate liability of us and Our Related Parties (together) to you for all claims under or in connection with this Agreement or its subject matter is limited to US\$10,000.

17. Choice of Law and Disputes

Except as may otherwise be agreed in your Services Contract (if you are an Account Owner), this Agreement is governed by the laws of New Zealand and each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against any other party in any way arising from or relating to this Agreement including, but not limited to, contract, equity, tort, fraud and statutory claims, in any forum other than the courts of New Zealand. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. This Agreement will not be governed by the conflict of law rules of any jurisdiction or by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

Without limiting any of our rights or remedies, you agree:

- not to involve, or attempt to involve, us or any of Our Related Parties in any dispute, or in the resolution of disputes, that arise between you and, as applicable: (a) if you are an Account User, your Account Owner or any Account User that has the same Account Owner as you; or (b) if you are an Account Owner, any of your Account Users; or (c) if you are an Account Owner or Account User, between you and any other person; and
- to release, and procure the release of, us and Our Related Parties from any and all claims or demands arising out of or in any way connected with such disputes.

18. Export Rules

You agree that the Software or any Third Party Products will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software or Third Party Product is identified as export controlled items under the Export Laws, you represent and warrant that you are not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Syria, Sudan, Cuba, and North Korea) and that you are not otherwise prohibited under the Export Laws from receiving the Software. All rights to use the Software and Third Party Products are granted on condition that such rights are forfeited if you fail to comply with the terms of this Agreement. In addition, you are responsible for complying with any local laws in your jurisdiction which may impact your right to import, export or use the Software or any Third Party Products.

19. General

In this Agreement, unless the context otherwise requires, words in the singular include the plural and vice versa; any examples in this Agreement, and references to "including", "for example" and similar words, are illustrative only and do not imply any limitations; any reference to a party includes that party's successors and permitted assigns; terms defined in this Agreement have their meaning throughout this Agreement; and clause and other headings are for ease of reading only and do not affect the interpretation of this Agreement.

You may only transfer or assign any of your rights or obligations under this Agreement with our prior written consent. We may subcontract, transfer or assign all or any part of our rights or obligations under this Agreement without your consent.

If we directly supply hardware to an Account Owner, unless otherwise agreed in writing with the Account Owner the hardware will be supplied pursuant to the Wellington Drive Technologies Limited General Terms of Sale which are available at [http:// www.wdtl.com/legal](http://www.wdtl.com/legal).

This Agreement constitutes the entire agreement and understanding between you and us in respect to its subject matter and replaces all previous agreements, understandings and representations relating to that subject matter and any additional or different terms that you may provide to us (including on any purchase orders).

Anything we need to notify or tell you under this Agreement may be sent to you: (a) by email to an Account Owner to your e-mail address on record in our account information; (b) if you are an Account User, by email to your Account Owner; (c) by means of a general notice on our portal for the Services; or (d) to an Account Owner by written communication sent by first class mail or pre-paid post to the Account Owner's address on record in our account information. Anything you need to notify or tell us under this Agreement must be in writing and sent to us. Any email will be deemed to have been received two days after it was sent unless the sender has been notified to the contrary (for example, by receiving notice of failure or delay in the delivery of an email).

We will not be responsible or liable for any failure or delay to perform our obligations due to any cause that is beyond our reasonable control or any failure by you to perform any of your obligations.

No agency, partnership or joint venture relationship is intended or created by this Agreement.

Any waiver by us of any part of this Agreement must be in writing and signed by one of our authorised representatives. Any delay or failure by us to exercise any right does not prevent us from exercising that right, or any other right, on that or any other occasion.

If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions will be enforced to the fullest extent possible, and the remaining provisions will remain in full force and effect.

Except as expressly provided in this Agreement, only you and we have any benefit under this Agreement and any right to enforce this Agreement.

Wellington Drive Technologies Limited

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