



MASTER SERVICES AGREEMENT

WIRES UNCROSSED LIMITED

(the "Supplier")

AND

[INSERT PARTY 2]

(the "Client")

DATED:

THIS AGREEMENT is made the ## day of ### 20##

BETWEEN WIRES UNCROSSED LIMITED
(the "Supplier")

AND [INSERT PARTY 2]
(the "Client")

BACKGROUND

The Supplier agrees to provide, and the Client agrees to buy, Services on the terms of this Master Services Agreement.

TERMS AND CONDITIONS

1. DEFINITIONS AND CONSTRUCTION

1.1. Defined Terms

In this agreement, unless the context requires otherwise:

- (a) **Agreement** means this MSA together with a SOW;
- (b) **Business Day** means any day other than a Saturday, Sunday or day that a statutory holiday is observed in Auckland or Wellington or any day during the period 24 December to 5 January (inclusive);
- (c) **Confidential Information** means the terms of the Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement;
- (d) **Deliverables** means all [] supplied by the Supplier in the course of providing the Services (including any Deliverables listed in the SOW) and any reports or advice in relation to the Deliverables;
- (e) **Developed Software** means software developed, created or commissioned by the Supplier under or in connection with this Agreement as specified in a SOW;
- (f) **Expenses** means any disbursements or expenses reasonably incurred by the Supplier incidental to providing the Services;
- (g) **Existing Material** means all software, applications, documentation and other material (including any data or dataset accompanying or included in any such material) that existed prior to the Commencement Date or was developed or acquired outside of this Agreement;
- (h) **Fees** means the Supplier's fees for the Services (as specified in a SOW, or if no fee is specified then at the Supplier's prevailing hourly rates);

- (i) **Intellectual Property Rights** means all Intellectual Property Rights (whether registered or unregistered) to and all copyright in all designs, works, concepts, models, drawings, specifications, plans, studies, reports, software, systems, patentable inventions, technology and documents;
- (j) **MSA** means this Master Services Agreement;
- (k) **SOW** means an order for Services (which may include a quote; estimate, proposal, statement of work, engagement letter or otherwise) that is signed or otherwise accepted by the Supplier and the Client;
- (l) **Services** means the services to be carried out by the Supplier for the Client as recorded in a SOW.

1.2. Construction

In the construction of this agreement, unless the context requires otherwise:

- (a) **Person includes Successors:** a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (b) **Currency:** a reference to \$ or dollars is a reference to the lawful currency of New Zealand and, unless otherwise specified, all amounts payable by a party under this agreement are to be paid in that currency;
- (c) **Includes:** the word "includes" in any form is not a word of limitation;
- (d) **Varied document:** a reference to this agreement or another instrument includes any variation, novation, or replacement of either of them;
- (e) **Background, Clauses and Schedules:** references to background, clauses and schedules are to background, clauses and schedules of this agreement and, unless stated otherwise, a reference in a schedule to a clause or paragraph is a reference to a clause or paragraph in that schedule;
- (f) **Business Days:** anything required by this agreement to be done on a day which is not a Business Day will be done and be valid if done on the next succeeding Business Day;
- (g) **Headings:** the headings and sub-headings appear as a matter of convenience and will not affect the construction of this agreement;
- (h) **Person:** a reference to a person includes a reference to a body corporate, to a Governmental Agency and to an unincorporated body of persons;
- (i) **Singular, Plural and Gender:** the singular includes the plural and vice versa, and words importing any gender include the other genders; and
- (j) **Statutes and Regulations:** a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.

2. STRUCTURE OF AGREEMENT

2.1. Services

The Supplier agrees to provide the Services to the Client on the terms and conditions set out in this MSA and any SOW signed or otherwise accepted by the parties.

2.2. Precedence

Unless expressly stated otherwise, if there is any conflict between the agreement documents the following precedence will apply:

- (a) The SOW;
- (b) This MSA.

2.3. Separate agreements

Each SOW agreed by the parties, in conjunction with this MSA, will constitute a separate Agreement to provide the Services specified in that SOW.

2.4. Independent Contractors

The parties agree that it is their mutual intention that this MSA will operate as a contract for services. No term of this MSA, or any implied term, creates or establishes a relationship of employment, principal and agent, joint venture, legal partnership or other legal relationship except that of independent contractor.

3. SUPPLIER'S OBLIGATIONS

3.1. Services to be provided with due skill

The Supplier will perform the Services:

- (a) In accordance with this Agreement and all applicable laws;
- (b) with all due care and skill and accepted professional business practices;
- (c) using suitably skilled, experienced and qualified staff to the reasonable satisfaction of the Client,

subject to any financial, physical, time or other constraints imposed by the Client or reasonably resulting from the nature of the engagement.

3.2. Timing

The Supplier will use reasonable endeavours to provide the Services in accordance with timing requirements set out in any SOW, provided that dates in any timetable set out in the SOW are intended for planning and estimating purposes only and are not contractually binding. Estimates of time for completion of Services are given on the assumption that the Supplier receives the cooperation required under in this MSA and commitment from personnel in the Client's organisation. If the Client does not provide that cooperation or delays in providing it the Client will pay any additional Fees and Expenses which result.

3.3. Compliance with policies

While on the Client's premises (or those of the Client's customers or suppliers if applicable) the Supplier will comply with all health and safety, security and other

policies and procedures of the Client (or its customers and suppliers) and will ensure that all personnel also comply with such procedures.

3.4. Reporting

The Supplier will report directly to the person or persons specified in the Schedule or such other person as is specified from time to time by the Client. The Supplier will comply with the reporting requirements specified in the Schedule (if any) and any other or additional reporting requirements as are reasonably specified by the Client from time to time.

3.5. Progress

Without limiting clause 3.4, the Supplier will keep the Client fully informed of progress of the provision of the Services, including promptly notifying the Client if it becomes aware of any potential disruption to performance or any delay or other difficulties that may delay the performance of the Services.

4. CLIENT'S OBLIGATIONS

4.1. Communication

The Client will promptly make decisions (including approvals) and provide the Supplier with all information reasonably required to provide the Services. All such instructions or information will be provided in the format reasonable specified by the Supplier (if any). The Client will also notify the Supplier in writing as soon as it becomes aware of any matter which may:

- (a) Materially change the specifications of the Deliverables, scope or timing of the Services from what is set out in the SOW;
- (b) Affect or delay the performance of any of the Client's responsibilities under the Agreement.

4.2. Third party property

Notify the Supplier of any ownership or proprietary interest that any third party may have in the information referred to in clause 4.1 or in any design or product similar to that which the Supplier is to produce or work on for the Client.

4.3. Accuracy

The Client will be solely responsible for the accuracy of all information, instructions and briefs provided by the Client. The Client acknowledges that the Supplier will rely on these instructions and other information and that the Supplier will not be liable for any losses sustained by the Client or any other person, directly or indirectly, arising from the Supplier's reliance on the instructions or information supplied by the Client.

4.4. Nominated representative and access

Appoint a representative to act as the Supplier's point of contact in the Client's organisation and as needed provide the Supplier with reasonable and safe access to the Client's premises and personnel.

5. VARIATIONS

5.1. Variations in writing

The Services as stated in a SOW will not be varied except in writing between authorised representatives of the parties.

5.2. The Supplier's right to vary

Notwithstanding clause 5.1 the Supplier may:

- (a) Vary the manner in which it carries out the Services at any time without notice to the Client provided that this does not have a material adverse effect on Services; and
- (b) Reduce the scope of the Services at any time if it considers that some or all of the remaining Services require expertise that the Supplier is unable to provide or source. The Supplier must advise the Client immediately if it becomes apparent to the Supplier that this is the case. Any reduction in the Services provided will reduce the Fees accordingly.

5.3. Scope changes or delays

The Services are limited to the work specified in the SOW. Changes to the scope of work due to scope changes or delays beyond the Supplier's control will be subject to additional Fees either as agreed or in accordance with the Supplier's then applicable charge out rates. Any such changes may also affect other aspects of the Services including but not limited to the Client's designated responsibilities and delivery schedules.

6. TERM

6.1. MSA

This MSA will take effect from the Commencement Date specified in the Schedule and will continue until terminated in accordance with clause 13.1.

6.2. SOW

Each SOW will take effect from the commencement date specified in the SOW and will continue until the completion of the Services in that SOW.

7. FEES

7.1. Fees

The Client will pay the Supplier the Fees plus any applicable goods and services tax.

7.2. Invoicing

The Supplier will provide the Client with valid tax invoices and supporting documentation by the date or dates set out in the SOW, or if there are none, then monthly for the Services undertaken in the previous month.

7.3. Payable in arrears

Unless otherwise stated in the SOW the Client will pay the Supplier monthly by the 20th of the month following the date of invoice, electronically in cleared funds to the Supplier's nominated bank account. Payment will be made without any set off or deduction.

7.4. Reimbursement of expenses

If the SOW provides for reimbursement of expenses rather than expenses being part of the fees, all expenses necessarily and reasonably incurred by the Supplier in connection with the performance of the Services will be reimbursed within 10 Business Days of receipt of an invoice issued by the Supplier to the Client, provided those expenses are verified by the Supplier providing the Client with receipts and detailed, accurate and up to date records that identify the relevant dates and tasks performed.

7.5. Overdue amounts

The Supplier may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the Supplier's bank's corporate overdraft rate as at the due date plus 2% per annum.

7.6. Legal costs

The Client will be liable for all loss, costs and expenses, including legal costs on a solicitor/client basis, which the Supplier may suffer or incur as a result of any failure by the Client to make due and punctual payment.

7.7. Disputed Invoices

If the Client reasonably disputes an invoice or part of an invoice the Client must, within 5 Business Days of receiving the invoice, give reasons for withholding payment of the disputed amount and pay the undisputed amount. If the Client does not give notice within is not the time frame stipulated, then they will be deemed to have accepted the Supplier's invoice.

8. WARRANTIES

8.1. Client warranties

The Client warrants that Intellectual Property Rights and other information supplied to the Supplier do not breach any third party Intellectual Property Rights and the Client is duly authorised to supply this material to the Supplier for the purpose of the Services. The Client acknowledges that the Supplier will not independently verify or research this material and instead relies on the Client's warranty.

8.2. Supplier warranties

The Supplier warrants that, to the best of its knowledge (relying on the Client's warranties in this MSA), the Services performed will not infringe upon or violate any Intellectual Property Rights of any third party.

8.3. Breach of warranty

If the Services do not meet a warranty, at the Client's request and at the Supplier's cost, the Supplier will reperform the Services so that they meet or satisfy that warranty. The Supplier's obligation under this clause 8.3 is the Client's sole remedy against the Supplier for breach of warranty.

8.4. Exclusions

- (a) To the maximum extent permitted by law, the Supplier's warranties are limited to those stated in clause 8.1. Any implied condition or warranty (including any warranty under Part 3 of the New Zealand Contract and Commercial Law Act 2017) is excluded.

- (b) The Client agrees and represents that it is acquiring the Services for the purposes of trade. The parties agree that:
- (i) to the maximum extent permissible by law, the New Zealand Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to the supply of the Services or the MSA; and
 - (ii) it is fair and reasonable that the parties are bound by this Agreement, including this clause 8.4.

9. LIABILITY AND INDEMNITY

9.1. Maximum liability

The maximum aggregate liability of the Supplier under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed the Fees paid and/or payable by the Client for the Services in the ninety (90) day period preceding the event giving rise to the losses.

9.2. Unrecoverable loss

Except for the Client's liability to pay the Fees, neither party is liable to the other under or in connection with the Agreement for any loss of profit, data, savings, business, revenue, and/or goodwill, or any indirect, consequential, incidental or special loss or damage of any kind.

9.3. No liability for the other's failure

Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent the failure is directly caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

9.4. Mitigation

Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.

9.5. Insurance

The Supplier must have and maintain throughout the term of this Agreement insurance (including public liability insurance) of an appropriate level given the nature and activities of the Supplier.

9.6. Indemnity

The Client indemnifies and will keep indemnified the Supplier, its Directors, contractors, employees and agents from and against all losses of any kind relating to arising from the provision of the Services or any breach of the Agreement by the Client.

10. ASSIGNMENT AND SUBCONTRACTING

10.1. Client may not assign

The Client may not assign or subcontract or transfer any rights or benefits under this Agreement without first obtaining the written consent of the Supplier. Under any assignment the Client remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer.

10.2. Supplier may assign

The Supplier may at any time assign or transfer any rights or benefits under this Agreement to an affiliated company or a reputable third party.

10.3. Supplier may subcontract

The Supplier may subcontract any part of the Services without needing to obtain the Client's consent first. However, the Supplier will remain fully liable for fulfilling its obligations under the Agreement. All subcontractors engaged by the Supplier will be bound by the confidentiality obligations set out in clause 11.

11. CONFIDENTIALITY AND SECURITY

11.1. Security

Each party must, unless it has the prior written consent of the other party:

- (a) keep confidential at all times the Confidential Information of the other party;
- (b) effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use. For the Supplier this means that the Supplier will have reasonable technical and organisational measures in place to protect all Confidential Information in its possession, control or under its responsibility so that it is held securely and is protected in accordance with Good Practice from unauthorised access, use, loss, damage or destruction; and
- (c) disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 11.1 (a) and (b).

11.2. Security Breach

If the Supplier becomes aware of any accidental, unauthorised, or unlawful destruction, loss, alteration, or disclosure of, or access to, any Confidential Information (Security Breach) or a potential Security Breach which the Supplier considers, acting reasonably, could have had a material impact, the Supplier must:

- (a) Notify the Client as soon as reasonably practicable, but no later than 48 hours, after becoming aware of the Security Breach or potential Security Breach; and
- (b) Provide the Client with a description of the Security Breach, at its cost (but on a pro rata basis if the Client contributed to the Security Breach) use reasonable endeavours to remedy the breach, and in consultation with the Client (acting in a timely manner), must mitigate its consequences as soon as reasonably practicable;

- (c) In the case of a potential Security Breach, at its cost use best endeavours to ensure that the potential breach does not become an actual breach.

11.3. Permitted Disclosure

The obligation of confidentiality in this clause does not apply to any disclosure or use of Confidential Information:

- (a) for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
- (b) required by law (including under the rules of any stock exchange);
- (c) which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- (d) which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or
- (e) by the Supplier if required as part of a bona fide sale of its business (assets or shares, whether in whole or in part) to a third party, provided that the Supplier enters into a confidentiality agreement with the third party on terms no less restrictive than this clause.

12. INTELLECTUAL PROPERTY RIGHTS

12.1. Pre-existing Intellectual Property Rights

Each party retains ownership of all Intellectual Property Rights in Existing Material belonging to that party. To the extent that any Deliverable comprises or incorporates any Existing Material, Intellectual Property Rights in that Existing Material will remain with the owner of that Intellectual Property Rights.

12.2. Enhancement of Existing Material

Unless otherwise agreed in writing (including in a SOW), to the extent that any Deliverable comprises or incorporates enhancement or modification of any Existing Material, all Intellectual Property Rights in that enhancement or modification will:

- (a) where a party to this Agreement owns the Intellectual Property Rights in that Existing Material, vest in that party on creation;
- (b) where a third party owns the Intellectual Property Rights in that Existing Material, vest in the party to this Agreement that provided or arranged the provision of that Existing Material (subject to any agreement to the contrary between that party and the applicable third party).

12.3. Developed Software

To the extent that any Deliverable comprises or incorporates any Developed Software, subject to clauses 12.1 and 12.2 above and unless otherwise agreed in writing (including in a SOW), all Intellectual Property Rights in that Developed Software will vest in the Supplier.

12.4. Know-how

To the extent not already owned by the Supplier, the Client grants the Supplier a royalty-free, transferable, irrevocable and perpetual licence to use for the Supplier's own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property Rights used by the Supplier in the provision of the Services.

12.5. Licences

The Supplier grants the Client a non-exclusive, perpetual, irrevocable and royalty free licence to exercise for the Client's business Intellectual Property Rights in any Existing Material, enhancement or modification of Existing Material, or Developed Software as necessary to give effect to this Agreement.

12.6. Further assurances

The Supplier will execute any and all such documents required to give full effect to this clause. This clause applies both during and after the term of the Agreement.

13. TERMINATION

13.1. Termination for convenience

The Agreement or a SOW only may be terminated by written agreement of the parties or by either party on not less than one month's written notice.

13.2. Termination following event

Either party, at its discretion, may terminate the Agreement immediately, at any time, by giving written notice to the other party upon the occurrence of any of the following events:

- (a) the bankruptcy or insolvency of the other party or that party ceases business for any reason; or
- (b) the conviction of the other party for any criminal offence; or
- (c) any action by the other party that, in the reasonable opinion of the terminating party, is incompatible with the first party's continued performance of its duties under the Agreement; or
- (d) breach of any material provision of the Agreement and the breach is not:
 - (i) remedied within 10 Business Days of the receipt of the notice from the first party requiring it to remedy the breach; or
 - (ii) capable of being remedied.

13.3. Termination without prejudice to rights

Termination of the Agreement will be without prejudice to any rights or obligations of the parties that have accrued as at the date of termination. Any provisions that are intended by the parties to apply after the termination of the Agreement will continue in full force and effect.

13.4. Termination and SOWs

Where notice has been given to terminate the Agreement under clause 13.1 or a SOW only before work under a SOW has been completed any of the following may apply (as appropriate):

- (a) The Agreement will remain in force until completion of that SOW;
- (b) Work under the SOW will stop at the date of termination and (c)(i) and (c)(ii) will apply;
- (c) The Agreement (including the MSA and the SOW) will terminate and on the date of termination the following will apply:
 - (i) The Supplier will provide the Deliverables (or those parts that have been completed) up to the date of termination, and
 - (ii) The Client will pay for the Services up to the date of termination along with all Expenses which have been approved by the Client and incurred up to the termination date, provided that the Supplier will use reasonable endeavours to limit incurring any further Expenses upon receipt of the notice of termination.

14. NOTICES

14.1. Written notice

Any written notice required to be given pursuant to this agreement will (without limitation) be deemed validly given if delivered by hand or sent by email to the intended recipient's nominated address (or to such other address as the intended recipient will notify to the other party by written notice from time to time).

14.2. No communication is to be effective until received

A communication will, however, be deemed to be received by the addressee:

- (a) in the case of personal delivery, when delivered; or
- (b) in the case of an email, on the Business Day on which confirmation of receipt or reading is given (in any form other than automated confirmation of receipt) or, if given after 5.00pm (in the place of receipt) on a Business Day or, if given on a non-business Day, on the next Business Day after such confirmation is given.

14.3. Addresses of the parties

The initial addresses of the parties for the purposes of this clause 14 are set out in the Schedule.

15. GENERAL

15.1. No conflict of interest

The Supplier will maintain a high standard of honesty and integrity at all times in the performance of the Services and avoid situations which might give rise to such a conflict of interest or compromise the Supplier's or the Client's integrity, including that the Supplier must not accept any payment or other benefit from any supplier or third party in connection with the provision of the Services.

15.2. Restraint

For the duration of the Agreement and for 12 months after termination of the final Agreement the Client will not employ or engage, or procure a third party to employ or engage, any employee, contractor or subcontractor of the Supplier who has taken part in the performance of the Services.

15.3. Survival

The provisions of this MSA relating to Confidentiality and Security (clause 11) and Intellectual Property Rights (clause 12) will continue after the termination of this MSA.

15.4. Non-Disclosure

The parties will not (except as may be required by law or regulation) make any announcement or disclosure regarding the Agreement or its subject matter except in a form and manner and at such time as the parties will agree.

15.5. Further Assurances

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

15.6. Entire Agreement

Each Agreement constitutes the entire agreement between the parties relating to the supply of those specific Services. It supersedes and extinguishes all earlier negotiations, understandings and agreements, whether oral or written, between the parties relating to those specific Services.

15.7. Severability

If any term of the Agreement becomes unenforceable, illegal or invalid for any reason, the relevant term is to be deemed modified to the extent necessary to remedy the unenforceability, illegality or invalidity. If this is not possible, the relevant term is to be severed from the Agreement without affecting the enforceability, legality or validity of any other term of the Agreement.

15.8. Counterparts

This MSA and any SOW may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute the same instrument.

15.9. Costs

The parties will meet their own costs relating to the negotiation, preparation and implementation of the Agreement.

EXECUTION

Executed as an agreement by

EXECUTED for the Supplier by [INSERT)
NAME]:)

EXECUTED for the Client by **[INSERT NAME]**:)
)

SCHEDULE – KEY TERMS

| | |
|--|--|
| [Reporting – Clause 3.3] | [Specify name and any specific reporting requirements] |
| Commencement date and term – Clause 5 | Commencement Date: [] Initial Term: [] |
| Address and contact person – Clause 14.3 | Client: Supplier: [Insert Address and contact for Client and Supplier] |