# Terms of Trade

1. **Definitions and Interpretation**

1.1 **Definitions:** In these terms (including in any Contract or any other arrangement between the Buyer and Chiptech to which these terms apply), unless the context otherwise requires:

**Billable Services** means the SIM Services and the Chargeable APP Service;

**Business Day** means a day, other than a Saturday or Sunday, on which the major trading banks are open for general business in Christchurch, New Zealand;

**Business Hours** means between 9am and 5pm New Zealand Time on a Business Day;

**Chargeable APP Service** means any service within a SmartCare application for which a Price is charged to the Buyer;

**Chiptech** means Chiptech International Limited, company number 2119553, at Christchurch, New Zealand.

**Confidential Information** means any information, data and know-how (whether technical or not) stored or imparted in whatever form (written, electronic or otherwise) acquired or received by a Receiving Party from or on behalf of a Disclosing Party under a Contract or in connection with these Terms, but excludes information that:

1.1.1 is or becomes general public knowledge through no fault of the Receiving Party;

1.1.2 the Receiving Party is able to conclusively prove was known to it prior to the date of receipt of such information from the Disclosing Party (other than by reason of it having been acquired directly or indirectly from a third party under an obligation of confidence to any person in respect of that information);

1.1.3 was independently developed by the Receiving Party without reference to any information acquired or received by the Receiving Party from the Disclosing Party or directly or indirectly from any third party under an obligation of confidence to any person in respect of that information; or

1.1.4 the parties agree in writing is not to be treated as Confidential Information for the purpose of a Contract or these Terms;

**Contract** means a contract for the supply of Product and/or provision of a Billable Service by Chiptech to the Buyer, comprised of these Terms and, where applicable, a Purchase Order accepted by Chiptech;

**Data Privacy Laws** means applicable national, state, regional or local laws relating to data privacy, the protection of personal information or data, and the transfer of personal information or data across borders;

**Delivery Date** means the date the Product is delivered to the Buyer's premises;

**Delivery Location** means the location agreed between the parties and specified in a Purchase Order;

**Disclosing Party** means the party that discloses or makes available its Confidential Information to the other party;

**Documentation** means any of Chiptech's manuals, user guides or technical support documentation relating to the Product, including operating instructions and any material updates to such documentation made available to the Buyer via the Web Portal;

**Force Majeure Event** means any or all (and the effects thereof) acts of God (including floods, earthquake, storm, cyclone, tornado, hurricane, lightning, and fire), explosion, epidemic, pandemic, raw material or component shortages, shipping delays, war, embargoes, riots or

civil disturbances, strikes, failure of telecommunications networks, the order of a court or government authority or governmental restrictions or control of foreign exchange or other labour disputes and any other matter or event which is beyond the control of the Buyer or Chiptech (as the case may be) and which the relevant party could not take reasonable measures to prevent;

**GST** means:

1.1.1 if the Buyer is located in New Zealand, New Zealand goods and services tax, payable in accordance with the New Zealand Goods and Services Tax Act 1985; or

1.1.2 if the Buyer is located in Australia, has the meaning given to that term in the Australian A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**Intellectual Property Rights** means all rights to, and interests in, all intellectual property of all types (whether registered or unregistered), including all patents, trademarks, copyrights, circuit layouts, design rights, all rights in business, product and domain names, all rights in relation to logos and symbols, databases, know-how, business processes, methods, algorithms, inventions, discoveries, trade secrets and any undisclosed or confidential information, applications for, or rights to apply for, registration of any intellectual property rights and interests under statute or any other process to recognise or protect such rights, and all rights or forms of protection having equivalent or similar effect which may subsist anywhere in the world;

**Minimum Order Quantity** means such minimum quantity of a Product type to reduce freight costs as set out in the Price List;

**Monitoring Centre** means the facility used to receive status reports of, and alerts from, certain types of Product;

**Personal Information** means any information provided by a party to another, or its agents, representatives or sub-contractors, in connection with a Contract, that has the meaning of 'personal information' or 'personal data' (as relevant) set out in the Data Privacy Laws;

**Price** means the prices set out in the Price List;

**Price List** means Chiptech's price list for the Products and Billable Services, available on the Web Portal, and as amended from time to time;

**Product** means the telecare systems, mobile personal emergency response systems, and related products supplied or to be supplied by Chiptech under a Contract;

**Purchase Order** means an order for the Product by the Buyer stating the quantity of Products required, a requested date for delivery, an agreed upon Delivery Location, any SIM Card required, and any other requirements of the Buyer, and incorporating a valid purchase order number prepared by the Buyer and provided to Chiptech in accordance with clause 2;

**Receiving Party** means a party that holds Confidential Information of the other party;

**Rejected Product** means any Product that does not comply with the warranty in clause 9.1;

**SIM Card** means a subscriber identity module card of a type specified in the Purchase Order;

**SIM Service** means provision under a Contract of services from a third party telecommunications service provider that enable data and voice connectivity between that Product, the applicable Monitoring Centre and the relevant SmartCare® applications, over a cellular network connection

**SmartCare** means the range of software from Chiptech that is designed to work with the Product, including but not limited to SmartCare® Locate which is used for mapping GPS coordinates, SmartCare® Response App which is used for monitoring the Product, and SmartCare® Cloud, which is used for fleet management of data connected Products;

**Specifications** means the specifications for the Product as set out in the Web Portal, which may be varied or modified from time to time;

**Terms** means these terms and conditions, to be read and construed with each Purchase Order accepted by Chiptech;

**Trade Marks** means Chiptech®, SmartCare®, Opal®, GOcard®, mytelecare™ and the GO symbol, and any other trade marks that Chiptech may permit the Buyer to use (in writing) in respect of the Product;

**Web Portal** means Chiptech's customer web portal which can be found from their website.

1.2 **Interpretation**: In these Terms, unless the context otherwise requires:

1.2.1 headings are for ease of reference only and will not be deemed to form any part of the context or affect the interpretation of these Terms;

1.2.2 another grammatical form of a defined word or expression has a corresponding meaning;

1.2.3 the singular includes the plural and vice versa;

1.2.4 a reference to:

(a) 'including' (and its similar expressions) shall be interpreted as if followed by 'without limitation'; and

(b) any legislation shall (except where expressly stated otherwise) be construed as a reference to that legislation as amended, replaced, consolidated or re-enacted; and

(c) dollars or $ is a reference to the currency of New Zealand (if the Buyer is in New Zealand) or Australia (if the Buyer is in Australia);

1.2.5 if agreement or consent is required, it must be provided in writing.

1.3 **Chiptech Group:**

1.3.1 Chiptech may use any related entity of Chiptech to exercise its rights or perform its obligations under these Terms and any Contract. However, Buyer agrees that its rights under these Terms and any Contract are solely against Chiptech, and not against any related entity of Chiptech. The acts and omissions of any related entity of Chiptech will be deemed to be Chiptech's acts and omissions.

1.3.2 A reference to a related entity of a party in these Terms has the same meaning as the term "related company" in section 2(3) of the New Zealand Companies Act 1993, as if references to "company" in that section were references to any "body corporate". In addition, Chiptech Limited (incorporated in New Zealand under company number 1040216) and the United Kingdom entity also named Chiptech International Limited (incorporated in the United Kingdom under company number 11928721) and Chiptech Iberia SL (incorporated in Spain under registration number 867413) are deemed to be related entities of Chiptech.

2. **Ordering Product and Billable Services**

2.1 Chiptech agrees to sell and deliver to the Buyer and the Buyer agrees to purchase from Chiptech, the Product and any associated SIM Card in an accepted Purchase Order in accordance with these Terms. Product may only be ordered via a Purchase Order.

2.2 The Buyer can order Product by placing a Purchase Order with Chiptech. Details on how to place a Purchase Order are set out on the Web Portal can be obtained by contacting Chiptech.

2.3 The Purchase Order must state if the Product ordered is to include a SIM Card, and if so the third party telecommunications service provider network selected for the SIM Service (if more than one network is available as stated on the Web Portal).

2.4 Each Purchase Order shall be deemed to be a separate offer by the Buyer to purchase the Product and any SIM Card, which Chiptech will be free to accept or decline at its absolute discretion. A Purchase Order will only be binding on Chiptech once it gives an order confirmation to the Buyer stating that it accepts the Purchase Order. Provision of an order confirmation in relation to a Purchase Order for Product signifies that the relevant Product has been scheduled for manufacture. A Purchase Order for a SIM Service is not required, and the SIM Service is deemed to be requested when a Purchase Order includes a SIM Card.

2.5 The Buyer acknowledges that while a requested delivery date for Product may be set out in the Purchase Order, as the Product must be manufactured to meet the Purchase Order, Chiptech is unable to agree any delivery timeframes. However, the order confirmation provided by Chiptech will set out an estimated date for despatching the Product to the Buyer.

2.6 These Terms will apply to every accepted Purchase Order, unless the parties have agreed an alternative arrangement in writing. By placing a Purchase Order, the Buyer confirms its acceptance of these Terms.

2.7 A Purchase Order is not required for a Chargeable App Service. Instead, the Buyer subscribes for a Chargeable App Service in accordance with the operation of the relevant SmartCare application or such other subscription process as may be set by Chiptech and specified on the Web Portal.

2.8 These Terms will take precedence over all other terms and conditions submitted by, or included with any Purchase Orders placed by, the Buyer, including any other or additional terms and conditions being stated on such Purchase Orders or any other document provided by the Buyer with any Purchase Orders, including if those other or additional terms and conditions state that they apply subject to these Terms. Accordingly, such other or additional terms and conditions shall be of no effect.

3. **Price and Payment**

3.1 The Buyer must pay to Chiptech, the Price for each Product and any Billable Services provided, and all other amounts which Chiptech is entitled to charge to the Buyer under these Terms.

3.2 The Buyer will also pay all delivery costs (including without limitation the cost of freight) on the delivery of Product where the Purchase Order is for less than a Minimum Order Quantity.

3.3 The Price for the Product and any Billable Services is exclusive of any applicable GST or other taxes.

3.4 The Buyer must pay to Chiptech any applicable GST, and any other taxes (other than taxes on Chiptech's net income), duties, levies or imposts that arise or are imposed on or incurred by Chiptech in relation to the supply of the Product, provision of any Billable Service and the provision of any other software and/or services by Chiptech under these Terms.

3.5 Chiptech will invoice the Buyer in respect of the Price for the Product, any Billable Services and other amounts payable under these Terms (**Invoice**). The Price for any SIM Cards provided in any Product is charged at the same time as the Price of the Product. If any Billable Services are being provided, a monthly Invoice for the monthly amount of the Price for those Billable Services (including use charges incurred in the prior month) will be provided by Chiptech. To avoid doubt, only the Product and any SIM Cards provided in the Product are invoiced under the Purchase Order to which they relate.

3.6 Unless otherwise expressly agreed in writing between the parties, payment of each Invoice will be made by the Buyer on or before the 20th of the month following the date of the Invoice provided by Chiptech to the Buyer.

3.7 Should the Buyer fail to tender due and punctual payment of the full Price or any other amount to be paid by the Buyer in any Invoice, Chiptech shall be entitled to:

3.7.1 suspend or cancel the fulfilment of any remaining or additional Purchase Order and any of Chiptech's obligations under any Contract until such payment is made, including suspending any manufacturing processes in respect of Product required for any such Purchase Order; and/or

3.7.2 charge interest on any amounts overdue from the due date up to the actual date of payment at the rate of two and a half percent (2.5%) per month, and Chiptech shall be entitled to recover payment in full with all interest, costs and expenses accruing.

3.8 Notwithstanding that risk may have passed to the Buyer or that delivery has been completed, Chiptech shall, without prejudice to any other right it may have under these Terms or at law or in equity, have the right, on default of payment of any amounts due to it, to enter the premises of the Buyer and take possession of and remove any Product that is not in use (including any Chiptech provided SIM Card), without being responsible for any damage caused in doing so.

3.9 If Chiptech exercises its right to reclaim any Product it shall be entitled to dispose of the Product for its own benefit and the Buyer shall indemnify Chiptech for:

3.9.1 any shortfall incurred by it on realisation against the price at which such Product was contracted to be bought by the Buyer; and

3.9.2 any reasonable costs incurred by Chiptech, as agreed between the parties (and the Buyer must not unreasonably withhold or delay its agreement), in the exercise of its right to reclaim the Product, whether relating to the repossession, storage or resale of the Product (including, but not limited to legal costs).

3.10 Nothing in this clause 3 shall be construed as permitting the Buyer to return the Product or any part of it (including any Chiptech provided SIM Card) for any reason.

4. **Risk and Title**

4.1 Risk in the Product shall pass to the Buyer upon delivery to the Delivery Location set out in the relevant Purchase Order.

4.2 Title to the Product sold under a Contract shall pass to the Buyer upon receipt by Chiptech of full payment of the Price in accordance with these Terms and the relevant Purchase Order. SIM Cards remain the property of the third party telecommunications services provider that issued them, and must be returned to Chiptech if required by the third party telecommunications services provider.

5. **Delivery and Transportation**

5.1 Delivery of the Product and any SIM Card shall be deemed to have occurred upon delivery of the Product or the SIM Card, as the case may be, to the Delivery Location specified in the relevant Purchase Order.

5.2 Where the Delivery Location is in a country outside of New Zealand the Buyer is responsible for complying with any import laws or requirements of that country, obtaining any licences, permits or consents required to enable the Product and any included SIM Card to be imported by the Buyer, and paying any applicable taxes, duties, levies or imposts imposed on or in relation to the Products and any included SIM Cards by any regulatory or governmental agency of that country.

5.3 Chiptech reserves the right to deliver Purchase Orders in instalments.

5.4 Chiptech shall use its best endeavours to despatch all Product by the estimated date of despatch advised to the Buyer, provided that Chiptech shall not, under any circumstances, be liable for any costs, expenses, damages or loss of profits incurred or suffered by the Buyer as a result of any delay in delivery of the Product.

5.5 Chiptech shall ensure that all Product consigned to the Buyer is suitably packaged during transit and for loading and unloading.

5.6 Chiptech agrees that all consignments of Product despatched to the Buyer must have:

5.6.1 a packing slip; and

5.6.2 a valid Purchase Order number shown on packing slips and Invoices.

5.7 The Buyer will inspect the Product on its receipt of delivery and must notify Chiptech in writing, within seven (7) days of receiving the Product, of any deficiencies. The Product shall

be deemed to have been accepted if a notice is not received from the Buyer within such period. Any deficiencies evident from a visual inspection shall not be subject to the warranties in clause 9 if a notice of deficiencies is not provided to Chiptech as required by this clause 5.7.

5.8 Chiptech is entitled to hold or delay further deliveries for Purchase Orders that have been received and accepted by Chiptech if the delivery of further Product would increase the outstanding amount due to Chiptech under all Contracts to more than $100,000.00.

5.9 The Buyer must not export any Product or SIM Card, except any exporting that occurs when sending the Product and any SIM Card to Chiptech under these Terms.

6. **Buyer Obligations**

6.1 The Buyer is responsible for:

6.1.1 obtaining any licences, permits and consents that may be required to use the Product including any Billable Services provided by Chiptech);

6.1.2 where the Product requires a cellular network connection and Chiptech is not providing the SIM Service for the Product, obtaining and maintaining a cellular network connection with the telecommunications provider for which the Product has been set up;

6.1.3 where the Product requires a cellular network connection and Chiptech is providing the SIM Service for the Product:

(a) ensuring that the Product operates within the coverage area of the SIM Service;

(b) ensuring that the SIM Service is used only with and by the Product with which the associated SIM Card was provided;

(c) complying with any third party security, access or use requirements applicable to the SIM Service as advised by Chiptech to the Buyer;

(d) using commercially reasonable efforts to prevent unauthorised access to, or use of, the SIM Service and will notify Chiptech of any such unauthorised use of which the Buyer becomes aware;

(e) not interfering with or modifying the SIM Card within the Product unless directed to by Chiptech;

(f) ordering a new SIM Card from Chiptech and replacing the existing SIM Card within the Product if it becomes damaged or the cellular network on which it operates is being shut down by the third party provider of that cellular network; and

(g) undertaking any onsite activities requested by Chiptech in connection with the SIM Service;

6.1.4 where the end user of the Product requires a monitoring service, providing that monitoring service;

6.1.5 checking the accuracy of any alerts the Buyer receives from a SmartCare application or the Product and the actions the Buyer takes in reliance on any alerts;

6.1.6 ensuring that its collection, storage, use and disclosure of personal information obtained from any data transmitted by the Product, occurs in accordance with (where relevant) the Privacy Act 2020 (NZ) or the Privacy Act 1988 (Cth) and any other applicable privacy laws, and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of such information;

6.1.7 obtaining all necessary consents to hold any personal information obtained from any data transmitted by the Product and to share that personal information with Chiptech for the purposes of these Terms;

6.1.8 implementing and maintaining reasonable administrative, technical and physical safeguards in accordance with good industry practice in order to:

(a) protect against anticipated threats or hazards to the integrity and security of the Buyer's technology environment; and

(b) protect any data transmitted by the Product and held by the Buyer, against unauthorised access, use, disclosure, loss, interference, modification, corruption or any other misuse; and

6.1.9 complying with all relevant laws in the use and re-supply of the Product and the handing of Product data.

6.2 The Buyer shall comply with all reasonable instructions of Chiptech in relation to the handling, fitting, installation and use of the Product and any software provided by Chiptech.

6.3 The Buyer is responsible for ensuring that the Product is set-up correctly, that such Product retains those settings and that any required updates are made when required. Where the Buyer has a private APN, the Buyer must ensure the Product has Allow-listed the DNS addresses advised by Chiptech. The Buyer must ensure that it updates Allow-listed addresses advised to it by Chiptech in a timely manner and within any time frame as is advised by Chiptech in the relevant notification.

6.4 The Buyer is responsible for the maintenance and servicing of the Product, and for carrying out any testing to ensure the Product operates and communicates with the Monitoring Centre as intended. However, the Buyer must not use any third party parts or processes not approved by Chiptech or an unauthorised service agent when maintaining or servicing the Product.

6.5 If the Buyer resupplies the Product in trade to any other person who acquires or holds themselves out as acquiring such Product for the purposes of a business ("business purchaser"), then the Buyer must:

6.5.1 include a term in the contract with that other person that the Product:

(a) if the Buyer is in New Zealand, is being acquired by the Buyer for the purpose of its business, and, accordingly, to the extent permitted by law, the provisions of the New Zealand Consumer Guarantees Act 1993 shall not apply in relation to the supply of such goods and services; and

(b) if the Buyer is in Australia, is being acquired by the Buyer for the purpose of re-supply, and, accordingly, to the extent permitted by law, any implied guarantees, rights or remedies provided by the Australian Consumer Law set out in Schedule 2 of the Australian Competition and Consumer Act 2010 (Cth) shall not apply in relation to the supply of such goods and services;

6.5.2 ensure that if the business purchaser resupplies the Product to an end-user or any other customers, that the business purchaser complies with the obligations in these Terms on the Buyer that apply in relation to resupply to an end-user or any customer of the Buyer.

6.6 Where the Buyer resupplies (whether by on-selling, leasing or renting) the Product to an end-user, the Buyer must provide a copy of the Documentation to the end-user and clearly inform end-users in writing that the Product is not to be used in contravention of any limitations set out in clause 15.2, on the Web Portal, in the Documentation, or otherwise identified to the Buyer by Chiptech.

## 7. Training, Manuals and Product Support

7.1 Subject to clause 25, Chiptech will provide the Buyer the services set out in this clause 7 for a minimum of 12 months after the Delivery Date, and thereafter until such services are discontinued by Chiptech, on no less than three months' notice to the Buyer. Notice may be

given prior to the minimum 12 month period ending, but must not expire before the end of that period.

7.2 Chiptech will provide:

7.2.1 training materials accessible via the Web Portal; and

7.2.2 responses to any reasonable questions in relation to the training via email at support@chiptech.co.nz.

7.3 Onsite training can be arranged at a daily rate plus expenses.

7.4 Chiptech will provide manuals and technical support documentation for the Product, including operating instructions, on the Web Portal.

7.5 Chiptech will also provide reasonable telephone and email support to the Buyer in connection with the use of the Product and any Billable Service during Business Hours. Such support will be available in such manner as is determined by Chiptech.

7.6 Chiptech may from time to time make software or firmware enhancements, including security updates, to the Product (which may be to a base unit and/or an individual device). Enhancements will be provided at no additional charge, unless the enhancements add functionality and/or are made at the Buyer's request in accordance with clause 7.11. Enhancements that add functionality may be purchased from Chiptech for such additional fee and on such terms as may be agreed between the parties. Enhancements may be applied by Chiptech (via a remote connection), or made available to the Buyer or the user of the Product to apply. To the extent required by law, Chiptech may apply any security update (via a remote connection) directly to the Product. Chiptech will notify the Buyer of any security update or other enhancements that it applies directly to the Product.

7.7 Chiptech may provide the Buyer the opportunity to test Product enhancements before making such enhancements available for deployment to all Product. In such event, the Buyer is responsible for testing the Product enhancements made available to the Buyer. While Chiptech uses its best efforts to ensure enhancements are error free, Chiptech is not able to test all situations, and so Chiptech's testing is limited to its local environment. As such, Chiptech will not be liable for any problems with the Product or software or firmware errors that are caused by the installation of the enhancements and which are unique to the Buyer's environment in which it has deployed the Product (including the communications network accessed by the Product) or for situations for which it was not reasonable to test.

7.8 The Buyer must ensure that it installs any enhancement in accordance with instructions provided by Chiptech. Chiptech will not be liable for any problems with the Product or software or firmware errors that arise due to the Buyer's failure to follow those instructions.

7.9 If the Buyer chooses not to install enhancements that are made available at no additional charge, the Buyer does so at its own risk. Chiptech will not be liable for any problems with the Product or errors that would have been corrected had the enhancement been installed.

7.10 The Buyer acknowledges that remote updates require the Product to be on and connected to a data or cellular network, and that Chiptech relies on third party networks in order for it to deliver the update. Chiptech will not be liable for any failure to perform, or delay in performing, a remote update due to transmission errors or third party network unavailability, or where the Product is not switched on.

7.11 The Buyer may request specific software or firmware enhancements to the Product. If Chiptech agrees to make any such enhancements, the terms on which those enhancements will be undertaken, including any applicable fee for doing so, must be agreed by both parties in writing.

8. **SIM Service**

8.1 The Buyer may obtain a SIM Service in connection with a Product that is data capable. However, the Buyer obtains access to the SIM Service with its order for a SIM Card with the Product. A SIM Service cannot be ordered separately or for an existing Product under a Purchase Order. However, Chiptech may agree to provide a SIM Service for an existing

Product, and, if it does so, the terms on which the Product is upgraded to enable the SIM Service, including any applicable fee for doing so, must be agreed by both parties in writing.

8.2 Where a Contract includes a SIM Service, the SIM Service will commence when the Product is first connected to the relevant third party telecommunications service provider's cellular network.

8.3 The Buyer acknowledges that Chiptech is not a telecommunications service provider. Accordingly, Chiptech's obligation to provide data and voice connectivity between a Product with a Chiptech supplied SIM Card and the relevant SmartCare® applications and the applicable Monitoring Centre over a cellular network connection is limited to procuring the relevant service from a third party telecommunications service provider. Therefore, availability of the SIM Service is subject to the availability of the third party telecommunications service provider's cellular network. If the SIM Service is unavailable the Buyer may contact Chiptech's support team to determine if such unavailability is due to a known outage.

8.4 If there is no known outage or there is any other incident or problem with the SIM Service and there is no resolution available to Chiptech, Chiptech's sole obligation is to, within a reasonable timeframe, escalate the incident or problem to the third party telecommunications service provider and request a solution. Chiptech will keep the Buyer updated on the third party telecommunications service provider's process to find a solution.

8.5 Chiptech gives no warranty in connection with a SIM Card or the SIM Service. However, if a SIM Card is or becomes damaged or faulty the Buyer may return it to Chiptech. Chiptech may then return the SIM Card to the third party telecommunications service provider that issued it for analysis and resolution. If the third party telecommunications service provider is unable to fix the SIM Card, Chiptech will provide a replacement SIM Card.

8.6 The Buyer will pay all amounts charged to Chiptech by the third party telecommunications service provider in connection with:

8.6.1 incidents and problems with the SIM Service that are escalated to the third party telecommunications service provider;

8.6.2 damaged or faulty SIM Cards, together with the cost of any replacement SIM Card provided to the Buyer; and

8.6.3 all use of a SIM Card, even if it is lost or stolen.

8.7 The Buyer may contact Chiptech if a SIM Card is lost or stolen so that Chiptech can disconnect the SIM Card from the third party telecommunications service provider's network.

8.8 The Buyer agrees that Chiptech may provide any information about the Buyer, including the Buyer's staff contact information, to the third party telecommunications service provider that is providing the SIM Service where that is necessary for the SIM Service. Any personal information of the Buyer's staff will be subject to the third party telecommunications service provider's privacy policy. The Buyer must ensure that its staff consent to such disclosure and are aware of the third party telecommunications service provider's privacy policy.

8.9 The Buyer acknowledges that the third party telecommunications service provider has legal obligations to monitor what is transmitted over its networks. It may also share information when the third party telecommunications service provider considers it necessary to satisfy a law, regulation, code, legal process or government agency request. The third party telecommunications service provider may also edit, remove or block some information when it has a legal obligation to do so. The Buyer will ensure that any user of a Product using a SIM Service is aware of these matters.

8.10 The Buyer may terminate a SIM Service at any time by giving Chiptech at least thirty (30) days' written notice.

8.11 A SIM Service will automatically end if the network on which the SIM Card operates is shut down by the third party telecommunications service provider. Chiptech may suspend, disconnect or terminate a SIM Service if required to do so by the third party telecommunications service provider used by Chiptech to deliver the SIM Service. Chiptech may also terminate a

SIM Service by giving at least 6 months' notice if Chiptech ceases to provide the SIM Service to its customers generally.

8.12 If the SIM Service is terminated in relation to any Product:

8.12.1 Chiptech will request the third party telecommunications service provider to disconnect the SIM Services; and

8.12.2 the Buyer must:

(a) pay all charges incurred to the date the SIM Service is disconnected by the third party telecommunications service provider; and

(b) return the SIM Card to Chiptech if requested by Chiptech.

9. **Warranty and Rework**

9.1 Subject to clause 9.10, Chiptech warrants the Product supplied by it to the Buyer:

9.1.1 shall, on delivery, conform to the Specifications in all material respects, subject to any limitations on use set out in clause 15.2, on the Web Portal, in the Documentation, or otherwise identified to the Buyer by Chiptech;

9.1.2 shall be free of any material defect in Chiptech's workmanship for a period of 12 months from the date of delivery to the Buyer;

9.1.3 shall be free of any material defect in materials, for a period of 12 months from the date of delivery to the Buyer, provided that this warranty is limited to defects that Chiptech is able to determine through current testing methods undertaken by Chiptech when using those materials in the manufacture of the Product;

9.1.4 shall comply with any applicable laws, statutory and legal requirements relating to:

(a) the safety, manufacture, production, transportation, delivery, importation (subject to clause 6.1) and sale of the Product; and

(b) the nature, substance, quality, weight and measurement of the Product.

9.2 Chiptech may request that an alleged faulty Product is returned to Chiptech for testing to determine whether such Product does not comply with the warranty in clause 9.1. If a Product does not comply with the warranty in clause 9.1, the Buyer shall return the faulty Product **(Rejected Product**) and Chiptech may, at its option, repair or provide a replacement to the Buyer to remedy the defect.

9.3 Any Rejected Product must be returned together with a fault report sheet attached by the Buyer outlining the nature of the defect.

9.4 Upon receipt of the Rejected Product pursuant to this clause 9 Chiptech will endeavour to despatch the repaired or replacement Product within forty (40) Business Days. Title to the Rejected Product shall revert to Chiptech if a replacement Product is provided. Title to the replacement Product will pass to the Buyer on delivery to the Buyer's premises (subject to clause 4.2).

9.5 The Buyer must pay the transportation charges, and insure the Rejected Product or accept the risk of loss or damage to the Rejected Product during its transport to Chiptech. Chiptech will pay transportation charges to deliver the repaired or replacement Product to the Buyer. If the Buyer is not in New Zealand, Chiptech will pay any import duties that arise in relation to the return of a Rejected Product to Chiptech. The Buyer is responsible for paying any taxes, duties, levies or imposts imposed on or in relation to the delivery of the repaired or replacement Product to the Buyer by any regulatory or governmental agency of the Buyer's country.

9.6 Chiptech will bear the risk of loss or damage to any Rejected Product from the time the Rejected Product is delivered to Chiptech's premises. Risk of loss or damage to any repaired or replacement Product shall remain with Chiptech until the Product is delivered to the Buyer's premises, at which time it passes to the Buyer.

9.7 Instead of repairing or replacing a Rejected Product Chiptech may, at its option, provide a credit to the Buyer for the Price of the Product. Any credit will be applied to the next Purchase Order accepted by Chiptech under a Contract.

9.8 To the extent permitted by law, the repair, replacement or credit in relation to a Rejected Product is the Buyer's sole remedy for the failure of a Product to comply with the warranty in clause 9.1.

9.9 In addition to the warranties set out in clause 9.1, Chiptech represents and warrants to the Buyer that:

9.9.1 Chiptech has the right to sell the Products to the Buyer free from all encumbrances; and

9.9.2 (subject to clause 6.1) Chiptech holds and shall comply with all necessary licences, permits and other approvals required for the manufacture, packaging, supply and storage of the Product.

9.10 The warranty in clause 9.1 does not cover (and Chiptech has no liability for) damage, fault, failure or malfunction of the Product due to:

9.10.1 external causes, including, accident, abuse, misuse and problems with electrical power;

9.10.2 any repairs, servicing or work on the Product which is not carried out by Chiptech or an authorised service agent;

9.10.3 usage, storage or installation not carried out in accordance with Chiptech's instructions;

9.10.4 failure to perform required preventative maintenance;

9.10.5 normal wear and tear, act of God or any other Force Majeure Event; or

9.10.6 problems caused by the use of parts and components or equipment or items not provided or approved by Chiptech.

9.11 If any Product is returned to Chiptech it must be returned with any Chiptech provided SIM Card.

## 10. Product Recall

10.1 Unless applicable laws take precedence, Chiptech has the sole responsibility to determine the necessity for a recall or field correction of any Product. In the event of a recall by Chiptech or a regulatory or governmental authority Chiptech will consult with the Buyer to develop a plan for the recall which will address the timing and the method and location of return or disposal of such Product (**Recall Plan**) and the Buyer will:

10.1.1 co-operate fully with Chiptech and follow all reasonable instructions provided in the Recall Plan; and

10.1.2 provide written confirmation when the actions agreed in the Recall Plan have been completed in full.

10.2 The costs of the recall or field correction will be agreed in writing by the parties, prior to the commencement of the Product Recall or field correction.

## 11. No Third Party Warranty

11.1 It is the sole responsibility of the Buyer to satisfy itself as to the condition, quality and Specifications of the Product. Except as is required by law, Chiptech will not be responsible to any third party in respect of any warranty provided under these Terms. If the Buyer offers to its customers any warranties or guarantees regarding the Product, any SIM Service and any service provided by a SmartCare application (including a Chargeable App Service), then:

11.1.1 those warranties or guarantees must not be inconsistent with the Specifications or the terms of any SIM Service or any service provided by a SmartCare application, and the Buyer must not make any unverified claims in relation to the Product, any SIM Service or any service provided by a SmartCare application;

11.1.2 the Buyer will be solely responsible for any claims, actions, proceedings, judgements or demands made under such warranties or guarantees, however arising; and

11.1.3 the Buyer must not in any way represent that such warranties or guarantees regarding the Product, any SIM Service or any service provided by a SmartCare application are offered or supported by Chiptech or anyone else.

12. **Exclusion of other Warranties**

12.1 Except as expressly provided in these Terms all representations or warranties (statutory, express or implied), except any which may not lawfully be excluded, are excluded. To avoid doubt, due to the reliance on the availability of third party applications and services, Chiptech does not warrant that Product that is so reliant will always function without failure or interruption (including in relation to the sending of alerts to the Monitoring Centre).

12.2 The parties acknowledge that all goods and services being provided by Chiptech under a Contract or which are otherwise subject to these Terms are being acquired as follows:

12.2.1 If the Buyer is located in New Zealand, the Buyer is acquiring the goods and services for the purpose of its business, and, accordingly, to the extent permitted by law, the provisions of the New Zealand Consumer Guarantees Act 1993 shall not apply in relation to the supply of such goods and services.

12.2.2 If the Buyer is located in Australia, the Buyer is acquiring the goods and services for the purpose of re-supply, and, accordingly, to the extent permitted by law, any implied guarantees, rights or remedies provided by the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) shall not apply in relation to the supply of such goods and services.

13. **Non-Warranty Repairs and Servicing**

13.1 Repairs and servicing not covered by a warranty under clause 9.1 may be obtained by the Buyer, on such terms and for such fee as may be agreed between the parties.

14. **Licence**

14.1 All software and firmware supplied by Chiptech for the intended operation of the Product supplied in connection with these Terms shall be subject to the software licence terms embedded in the software and firmware or otherwise provided by Chiptech with the software and firmware (or the Product), unless provided under a separate licence agreement. If no software licence terms are embedded or otherwise provided Chiptech grants the Buyer and all purchasers and users of the Product a limited licence to use such software and firmware for the intended operation of the Product only. No other rights are granted and, except to the extent that applicable laws (including any applicable copyright legislation) prevent Chiptech from restraining the Buyer from doing so, the Buyer (and the Buyer must ensure that all purchasers and users of the Product) must not sublease, copy, or reproduce the software and firmware nor use the software and firmware for any other purposes.

14.2 Chiptech will ensure that all back up software and source codes for software and firmware supplied by Chiptech (if any) are stored off-site.

14.3 Chiptech will take such steps as are reasonable in the circumstances to protect any Buyer data that is held by Chiptech in the connection with these Terms, or processed by Chiptech on behalf of the Buyer in relation to any services provided by Chiptech or the Buyer's use of any SmartCare application, from unauthorised access, modification or disclosure. To avoid doubt, this clause 14.3 applies subject to the terms of any applicable licence.

14.4 Where the Buyer uses Chiptech's SmartCare Cloud application or any of Chiptech's other SmartCare applications, including use of a Chargeable App Service, such use is also governed by the terms and conditions for those applications. If any other SmartCare software is provided by Chiptech to the Buyer, such SmartCare software will be subject to a separate licence agreement or the licence terms provided with the software.

14.5 Where the Buyer proposes using any of Chiptech's SmartCare applications, the Buyer represents and warrants that it is acquiring the right to access and use Chiptech's SmartCare applications for legitimate business purposes and that any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the provision and use of Chiptech's SmartCare applications.

15. **Liability, Indemnity & Insurance**

15.1 To the full extent permitted by law, Chiptech shall not be liable for any direct loss in respect of the Product (including any software), any repairs and servicing of a Product, the SIM Service, any other services provided by Chiptech, including the Chargeable App Services and any other use of any SmartCare application, or for any delay or failure to supply the Product or any services, except where it is due to a breach of these Terms by Chiptech or Chiptech's negligence. Such negligence is defined as arising from failing to perform a duty that a reasonable person would be expected to perform in the circumstances at the time.

15.2 The Buyer acknowledges that:

15.2.1 it is not always possible with current technology and monitoring systems to immediately identify and report to a Monitoring Centre or to the end user the failure of hardware, software or infrastructure that the supplied Product uses;

15.2.2 the Product relies on certain technologies to operate correctly, including but not limited to cellular network/internet connectivity, and the availability of the satellite network; and

15.2.3 the Product may not function correctly, or at all, if the individual device is used beyond the range of the base unit, if there is a transmission failure, if it is not used on the cellular network instructed by Chiptech, or if the Product connection to satellite technology (where relevant) is affected by atmospheric conditions, buildings or any other form of interference.

15.3 The Buyer must make its customers aware of the limitations set out in clause 15.2, and any other limitations set out in the Web Portal, the Documentation or as advised to it by Chiptech. Chiptech is not liable to the Buyer for any loss of any nature (whether direct or indirect) to the extent the Buyer fails to make its customers aware of these limitations and the Buyer indemnifies Chiptech for any loss, cost or expense incurred or suffered by Chiptech as a result of such failure.

15.4 To the full extent permitted by law, under no circumstances will Chiptech be liable for any incidental, indirect, exemplary, punitive, special or consequential loss or damage, including loss or damage that arises as a secondary effect to any direct loss or damage, or for any loss of business, profit, revenue, or other economic loss, or loss of goodwill, opportunity or anticipated saving, or for any loss of data or business interruption that you or any other person may suffer or incur as a result of your access or use of any Supplier SmartCare application.

15.5 Chiptech will not be liable or responsible to the Buyer or any other person for any loss, damage, death or injury, suffered or incurred in connection with:

15.5.1 any failure of the Product (including any software) or failure in any services provided by Chiptech, including any SIM Service and the Chargeable App Services and any other use of any SmartCare application, where the failure is due to technologies or circumstances outside of Chiptech's reasonable control (including if the Product is out of range, if there is a transmission failure, if the Product is not used on the cellular network instructed by Chiptech, or if the Product connection to satellite technology (where relevant) is affected by atmospheric conditions, buildings or any other form of interference, or a failure of relevant third party software or services), or if the Product is used in a manner in which it cannot reasonably be expected to operate;

15.5.2 any failure in the security of the computer used, or from any viruses, malware or other malicious code that affects the computer used to access a SmartCare application;

15.5.3 a SmartCare application or any of its functionality being unavailable (in whole or in part) or performing slowly;

15.5.4 any error in, or omission from, the alerts given by the Product or any SmartCare application, or a failure to send alerts due to unavailability or a transmission failure;

15.5.5 any problems with the Product or its software or firmware that arise due to the Buyer's failure to set up the Product correctly, follow Chiptech's instructions, or install an enhancement to the Product that is made available; or

15.5.6 any incorrect usage of a SmartCare application by the Buyer.

15.6 If Chiptech is held to be liable to the Buyer under any Contract, these Terms or for any other reason Chiptech's total liability is limited to an amount equal to the amount the Buyer has paid to Chiptech under the relevant Contract. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

15.7 The Buyer shall indemnify and keep Chiptech indemnified against all costs, claims, demands, expenses and liabilities, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss, which may be made against Chiptech or which Chiptech may sustain or incur in connection with:

15.7.1 the sale or use of the Product, any SIM Service and any software by the Buyer, and/or the sale or use by any third party of the Product, any SIM Service and any software provided to the Buyer under a Contract, except to the extent caused by:

(a) the Product's failure to comply with clause 9.1; or

(b) Chiptech's instruction, unlawful actions or negligence;

15.7.2 the manufacture of the Product to the Buyer's requirements; and/or

15.7.3 any third party claim that the Buyer's logo or any other materials provided by the Buyer to Chiptech to apply to the Products infringes the Intellectual Property Rights of that third party.

15.8 Chiptech will maintain Public Liability Insurance to the value of $20,000,000 to cover property damage and personal injury arising from the use of its products. Chiptech will maintain Professional Indemnity Insurance to the value of $1,000,000 on any one claim and in total to cover property damage or personal injury arising from the use of its products.

15.9 If the Buyer is in breach of these Terms, the Buyer shall pay on demand all costs and expenses (including legal expenses) incurred by Chiptech in taking action in connection with that breach.

15.10 The exclusions and limitations in this clause 15 apply regardless of whether such liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.

16. **Force Majeure**

16.1 It is agreed by both parties, that where either Chiptech or the Buyer is unable, wholly or partly, by reason of a Force Majeure Event to carry out any obligation, that obligation is suspended so far as it is affected by the Force Majeure Event. Where a Force Majeure Event is relied upon by a party:

16.1.1 the other party must be given prompt written notice of the Force Majeure Event;

16.1.2 the party affected by it will use all commercially reasonable diligence to remove the affects of the Force Majeure Event as quickly as possible;

16.1.3 as soon as the Force Majeure Event ceases, the party affected by it must give written notice to the other.

16.2 If the Force Majeure Event continues for more than sixty (60) Business Days and substantially affects the commercial basis of the Contract:

16.2.1 the parties agree to consult and negotiate in good faith about what action to take; and

16.2.2 if the negotiations are unsuccessful, the matter will be dealt with pursuant to dispute resolution under clause 26.

17. **Trade Marks, Documentation and Buyer provided SIMs**

17.1 Where the Buyer provides Chiptech with any logos or other materials to include on the Product or Documentation for the Buyer (including those of its customers), the Buyer grants to Chiptech a licence to copy and reproduce such logos and other materials in order to include them on the Product in accordance with the Buyer's requirements. The Buyer warrants that it has the right to permit Chiptech to do so.

17.2 If the Buyer provides Chiptech with any subscriber identity module cards to include in the Product, the Buyer warrants that it has the right to permit Chiptech to do so, and the inclusion of such cards in the Product will not breach any laws. The Buyer acknowledges that it remains responsible for separately obtaining all services required from a telecommunications service provider to use those cards. To avoid doubt, Chiptech does not provide any SIM Service for a Product where subscriber identity module cards for that Product are provided by the Buyer.

17.3 Where the Trade Marks are on the Product, or otherwise provided to the Buyer by Chiptech to use in connection with the Product, Chiptech grants the Buyer a non-exclusive, non-transferable, revocable, right to use the Trade Marks in the marketing, sale and distribution of the Product.

17.4 Chiptech also grants the Buyer a non-exclusive, non-transferable, revocable, right to copy the Documentation for the purpose of providing such Documentation to its customers for use with the Product,

17.5 The Buyer shall:

17.5.1 comply with all rules for the use of the Trade Marks and Documentation issued by Chiptech and shall not, without the prior written consent of Chiptech, alter or make any addition to the labelling or packaging of the Product displaying the Trade Marks, or to the Documentation;

17.5.2 not sub-licence or transfer the rights of use of the Trade Marks granted under these Terms;

17.5.3 not apply for, or obtain, registration of the Trade Marks for any goods or services in any country, or any mark that consists of or is confusingly similar to the Trade Marks; and

17.5.4 not do, or omit to do, anything in its use of the Trade Marks or Documentation that could adversely affect the business, interests, reputation or relationships of Chiptech.

17.6 Any goodwill derived from the use by the Buyer of the Trade Marks shall accrue to Chiptech. Chiptech may, at any time, call for a document confirming the assignment of that goodwill and the Buyer shall immediately execute it.

18. **Intellectual Property**

18.1 The Buyer acknowledges and agrees that Chiptech owns:

18.1.1 all the Intellectual Property Rights in or associated with the Product, the Trade Marks, the Documentation, the SmartCare software and associated services, and all other software or firmware supplied by Chiptech for the intended operation of the Product (Supplier's Intellectual Property Rights); and

18.1.2 any development, improvement, modification, variation or addition to Chiptech's Intellectual Property Rights.

18.2 To the extent that the Buyer creates any development, improvement, modification, variation or addition to Chiptech's Intellectual Property Rights, then the Buyer hereby irrevocably assigns all such Intellectual Property Rights in any such development, improvement, modification, variation or addition to Chiptech. To avoid doubt, this includes any feedback or suggestions for the Product that are made by the Buyer to Chiptech.

18.3 The Buyer acknowledges that all Intellectual Property Rights in the SIM Cards and SIM Service are owned by Chiptech or the third party telecommunications service provider that is used to provide the SIM Service.

18.4 Nothing in these Terms will transfer to the Buyer any Intellectual Property Rights in or associated with the Product, the SIM Card, the SIM Service, the Trade Marks, the Documentation, or the SmartCare software and associated services, or any other software or firmware supplied by Chiptech for the intended operation of the Product, other than the rights of use and copying expressly granted to the Buyer under these Terms.

18.5 Except to the extent that applicable laws (including any applicable copyright laws) prevent Chiptech from restraining the Buyer or a third party from doing so, none of the Buyer, its customers or any affiliates shall copy, modify, decompile, disassemble, reverse engineer, or reproduce any of the Product, the SIM Card, the SIM Service, Documentation or software or firmware provided by Chiptech, nor use the Product, the SIM Card, the SIM Service, Documentation, or any software or firmware provided by Chiptech for any purpose, other than in accordance with these Terms, and the Buyer will ensure that its customers comply with this obligation.

18.6 The Buyer:

18.6.1 will not in any way challenge, question, dispute or infringe the rights of Chiptech in relation to any of Chiptech's Intellectual Property Rights;

18.6.2 will not cause or permit anything which may damage or endanger Chiptech's Intellectual Property Rights or to assist or allow others to do so;

18.6.3 will notify Chiptech of any suspected infringement of Chiptech's Intellectual Property Rights in writing immediately after becoming aware of such suspected infringement and will take such reasonable action as Chiptech shall direct at the expense of the Buyer in relation to such infringement;

18.6.4 will (but without prejudice to Chiptech's other rights and remedies) compensate Chiptech for any use of Chiptech's Intellectual Property Rights by or on behalf of the Buyer in breach of these Terms; and

18.6.5 will not use Chiptech's Intellectual Property Rights otherwise than as permitted by these Terms.

19. **Confidentiality**

19.1 The Receiving Party must hold and maintain any Confidential Information of the Disclosing Party that it holds in strict confidence. To avoid doubt, any information, data and know-how of a related entity of the Disclosing Party that is provided to the Receiving Party which if it was the Disclosing Party's information, data or know-how is deemed to be the Confidential Information of the Disclosing Party.

19.2 Nothing in these Terms transfers any title or other right in the Disclosing Party's Confidential Information to the Receiving Party, other than the right to use the Confidential Information in accordance with these Terms.

19.3 The Receiving Party will:

19.3.1 establish and maintain effective security measures (including at a minimum the same measures as the Receiving Party uses to protect its own Confidential Information, which in any event must be not less than reasonable measures) to safeguard the Disclosing Party's Confidential Information from unauthorised access, use, copying or disclosure;

19.3.2 keep the Disclosing Party's Confidential Information under its power and control;

19.3.3 immediately notify the Disclosing Party of any suspected or actual unauthorised access, use, copying or disclosure of the Disclosing Party's Confidential Information; and

19.3.4 provide all assistance reasonably requested by the Disclosing Party in relation to any proceedings the Disclosing Party may take against any person for unauthorised access,

use, copying or disclosure of the Disclosing Party's Confidential Information where the unauthorised access, use, copying or disclosure is a consequence of the Receiving Party's act or omission.

19.4 The Receiving Party will:

19.4.1 only use the Confidential Information of the Disclosing Party in accordance with these Terms and not for any other purpose;

19.4.2 not (except with the Disclosing Party's prior written approval or where required to do so by law) disclose (or assist in the disclosure of) the Disclosing Party's Confidential Information to anyone other than its:

(a) personnel or related entities (including personnel of related entities) who have a need-to-know for the purposes of fulfilling the Receiving Party's obligations under these Terms or to enable the Receiving Party to exercise its rights under these Terms;

(b) professional advisors, upon obtaining a similar undertaking of confidentiality from such advisors;

19.4.3 ensure that its relevant personnel and related entities are made aware of and comply with the confidentiality obligations of the Receiving Party under these Terms, including being bound by a corresponding confidentiality obligation; and

19.4.4 on discovery of any breach of this clause 19.4 by the Receiving Party or any person in possession of the Disclosing Party's Confidential Information through the Receiving Party;

(a) immediately notify the Disclosing Party of such breach;

(b) co-operate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of the Disclosing Party's Confidential Information and prevent its further unauthorised use or disclosure, including following the Disclosing Party's reasonable directions; and

(c) take appropriate steps to ensure that the same or any similar breaches do not occur in the future.

19.5 If disclosure is required by law the Receiving Party must notify the Disclosing Party and provide the Disclosing Party with as much notice as is practicable in the circumstances of the requirement for, and proposed form of, such disclosure. The Receiving Party must provide all reasonable assistance required by the Disclosing Party if it chooses to seek to prevent such disclosure being made.

19.6 For the purposes of these Terms, if the Disclosing Party's Confidential Information is provided to a related entity of a Receiving Party in connection with these Terms, that Confidential Information is deemed to have been provided to the Receiving Party and this clause 19 is to apply as if the Receiving Party had disclosed that Confidential Information to its related entity.

19.7 A party who discloses the other party's Confidential Information to any other person will be responsible for the acts and omissions of that other person as if they were its own acts and omissions.

19.8 Neither party shall make or permit any public announcement or disclosure of any sort regarding these Terms without the prior written consent of the other party.

19.9 On request by the Disclosing Party, the Receiving Party must promptly:

19.9.1 return or deliver to the Disclosing Party all of its Confidential Information (including all copies and all notes made by reference to any such Confidential Information);

19.9.2 delete entirely and permanently all of the Disclosing Party's Confidential Information from every computer disk or electronic storage facility of any type owned or used by the Receiving Party;

19.9.3 cease to make use of the Disclosing Party's Confidential Information or any part of it; and

19.9.4 confirm in writing to the Disclosing Party that it has complied with all the obligations in this clause 19.9 and (subject to the proviso to this clause) certify in writing that the Receiving Party has no copies of the Disclosing Party's Confidential Information in its possession, power or control, either in hard copy, electronic format or in any other media, provided that the Receiving Party is not required to comply with clauses 19.9.1 and 19.9.2 in relation to its board reports, board papers or any similar documents provided to its board of directors for the purposes of a board meeting and which refer to or contain the Disclosing Party's Confidential Information. The obligations of confidentiality in these Terms shall continue to apply to all of the Disclosing Party's Confidential Information that is retained by the Receiving Party.

19.10 The Receiving Party acknowledges that its undertakings in these Terms are in addition to, and do not detract from, the duties of confidentiality which are imposed on it by law and in equity.

20. **Privacy**

20.1 The Buyer agrees that the contact details and associated information of its staff may be collected and used by Chiptech in the course of complying with its obligations, or exercising its rights, under these Terms and any Contract.

20.2 The following applies to such contact details and information:

20.2.1 Chiptech will hold such details and information. It may use the details and information for any purpose in connection with these Terms and any Contract, to maintain the relationship between the parties (including providing marketing material to the Buyer), as set out in its privacy policy on its website, or as may otherwise be agreed by the parties or Chiptech and the relevant individual. Chiptech's privacy policy applies to its management of such contact details and information.

20.2.2 The Buyer shall ensure that the relevant staff members have consented to such collection and use, and are aware that Chiptech holds their contact details and information, the purposes for which it may be used and of any rights they have under applicable laws. If the Buyer's staff do not provide the necessary contact details and information Chiptech may not be able to deal with them in relation to the relevant Contract.

20.2.3 Chiptech also agrees that the contact details and associated information of its staff may be collected and used by the Buyer in the course of complying with its obligations, or exercising its rights, under these Terms or any Contract. The Buyer must hold such details and information and only use them in accordance with these Terms and any Contract, to maintain the relationship between the parties, or as may otherwise be agreed by the parties or the Buyer and the relevant individual. Chiptech will ensure that its staff members are aware that the Buyer holds their contact details and information.

20.3 Each party will comply with applicable privacy laws in relation to holding and its use of the other party's staff members' contact details and information. In addition, each party will promptly advise the other if there is any unauthorised access, use or disclosure of such contact details and information.

20.4 Each party will only hold the other party's staff members' contact details and information for as long as it has obligations to the other party, and to the extent required by law, to enable it to respond to any claim that may be brought by the other party, and in backups held in accordance with its security processes.

21. **Entire Agreement**

21.1 These Terms, including any applicable software licence terms and separate licence agreements or any other documents referred to or incorporated by reference, and the terms in any Purchase Order, set forth the entire agreement between Supplier and Buyer and supersedes all prior agreements, undertakings, representations or warranties by or between

Chiptech and the Buyer (including their directors, officers, employees and agents) relating to the subject matter hereof. No amendment or variation to these Terms as they apply to a Contract shall be binding unless it is in writing and agreed by the parties.

21.2 Chiptech may amend or update these Terms for any subsequent Contracts at any time. The amended or updated Terms will also apply to Chiptech's ongoing obligations with respect to Product delivered under all prior Contracts from the time a Purchase Order is accepted after the amendment or update to these Terms is made.

22. **Assignment**

22.1 Neither party shall be entitled to assign, novate or otherwise transfer a Contract or any of its rights and/or obligations under a Contract and these Terms to any third party except with the prior written consent of the other party. Any such consent shall not be unreasonably withheld.

23. **Waiver**

23.1 No delay or other forbearance by one party to another in respect of any breach of the other party's obligations under these Terms shall operate as a waiver of or prevent the subsequent enforcement of that obligation, nor be deemed a delay or forbearance in respect of, or a waiver of, any subsequent or other breach.

24. **Partnership or Agency**

24.1 Nothing in these Terms creates a partnership or agency between any of the parties unless expressly provided.

24.2 Neither party has any authority to bind the other party or act on its behalf, except to the extent expressly provided for in these Terms.

25. **Cancellation**

25.1 Chiptech may, without incurring liability, cancel a Contract or any services provided in relation to the Product, including a Billable Service if:

25.1.1 the Buyer becomes insolvent, enters into a scheme of arrangement with creditors (other than with Chiptech's prior consent) or ceases or threatens to cease to carry on all or a material part of its business, or has a receiver or administrator appointed in respect of any or all of its assets or other steps are taken for its dissolution; or

25.1.2 the Buyer breaches any of these Terms and fails to remedy such breach within five Business Days of receiving written notice of such breach.

25.2 In the event a Contract or any services in relation to a Product, including a Billable Service are cancelled or discontinued:

25.2.1 the Buyer shall cease all use of the Trade Marks and Documentation; and

25.2.2 all charges and other payments outstanding or incurred prior to the date of cancellation will become immediately due and payable, including the Price for any accepted Purchase Orders where the Products have been despatched.

25.3 Cancellation of a Contract or any services in relation to a Product shall not:

25.3.1 relieve either party from any right, liability or claim that has accrued before the date of cancellation; or

25.3.2 affect the provisions of these Terms which expressly, or by their nature, survive cancellation.

26. **Governing Law and Disputes**

26.1 These Terms and the performance of any Contract shall be governed by and construed in accordance with the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the New Zealand Courts.

26.2 If any dispute or difference (a dispute) arises between the parties relating to these Terms or a Contract or the construction of them, or the rights, duties or obligations of either party under them then all disputes in connection with these Terms, a Contract or the performance of them shall be settled through good faith negotiations.

26.3 If the parties fail to resolve the dispute within ten (10) Business Days of either party notifying the other party in writing of a dispute, the parties will try to settle the dispute by mediation. Either party can initiate mediation by giving not less than five (5) Business Days written notice (**Mediation Notice**) to the other party.

26.4 The mediator must be agreed by the parties or, if the parties cannot agree on a mediator within five Business Days after the Mediation Notice has been given, then either party may request the chairperson of the Resolution Institute (or his or her nominee) to select the mediator (being a New Zealand mediator), such request to be made within a further five (5) Business Days.

26.5 The mediator will set the timetable (including the date by which the mediation will expire irrespective of whether or not the dispute has been resolved). The mediation will take place in New Zealand in accordance with the standard mediation agreement of the Resolution Institute, unless otherwise agreed. If the parties cannot agree on the mediator's fee, then the chairperson of the Resolution Institute (or his or her nominee) will determine the mediator's fee.

26.6 If the dispute has not been resolved within the time frame specified by the mediator, unless the parties otherwise agree, the mediation procedure will terminate and each of the parties will be entitled to pursue arbitration.

26.7 If the dispute cannot be resolved through mediation either party may by notice to the other refer the matter to three arbitrators in New Zealand, one arbitrator to be appointed by each of the parties hereto, and the third arbitrator by the two arbitrators so chosen. In the event that one party fails to appoint an arbitrator within thirty (30) Business Days of being requested to do so, the other party may request the President, for the time being, of the New Zealand Law Society (or the President's nominee) to appoint an arbitrator on behalf of the defaulting party. The decision of the arbitrators or that of any two of them shall be final. The arbitration shall be conducted in English and pursuant to the UNCITRAL Arbitration Rules.

26.8 Neither party is to commence proceedings relating to the dispute (except where urgent interlocutory relief is sought or to recover amounts owing under an Agreement) unless that party has first complied with this clause 26.

27. **Notices and General Contact**

27.1 Notices may be given to each party at their addresses as set out in a relevant Purchase Order, and shall be deemed to have been received:

27.1.1 in the case of postal mail or courier, four (4) Business Days after posting (or ten (10) Business Days if posting internationally); and

27.1.2 in the case of email, two (2) Business Days after date of despatch of an email from the email address specified by the receiving party.

27.2 Notwithstanding the foregoing, any communication received or deemed to be received on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

27.3 If the Buyer needs to contact Chiptech in connection with any operational matter to which these Terms apply, the Buyer should do so in accordance with the process set out on the Web Portal. Chiptech's contact details are set out on its website.