

REALTECH

Standard Terms & Conditions

- 1.1 Background
- 1.2 Realtech Limited (**REALTECH**) and the Customer have agreed that REALTECH shall provide Services to the Customer.
- 1.3 These Standard Terms and Conditions and the Work Order(s) (together referred to as the **Agreement**) set out the terms on which REALTECH shall provide any Services to the Customer.

2 Definitions

- 2.1 In this Agreement the following definitions apply:

Additional Charge means charges specified as additional to any Fees in the relevant Work Order.

Agreement means, in respect of each Work Order, the separate agreement formed by the relevant Work Order together with these Standard Terms and Conditions.

Confidential Information means in relation to either Party all information relating to its business, products, customers, suppliers, contractors and employees, financial reports, sales information, marketing proposals whether furnished in writing, orally or in physical configuration and, in relation to REALTECH includes software, all technical data, all information relating to the source and object code of any software, the documentation provided by or on behalf of REALTECH, know-how, concepts, specifications and diagrams technical drawings and designs; and includes this Agreement, Work Orders, quotes, proposals and associated documents.

Customer means the customer that has requested the Services as recorded in the Work Order.

Customer Locations means the location(s) designated in the relevant Work Order as the location where the Services are to be provided by REALTECH.

EULA means any licence, terms of service, terms of use or similar agreement relating to the Customer's use of or access to a service, and which the relevant Service Provider requires the Customer to agree to in order to use or access the service.

Fees means the charges set out in the relevant Work Order.

Force Majeure Event has the meaning given to that term in clause 24.1.

GST means the goods and services tax calculated and required to be paid in accordance with the provisions of the Goods and Services Tax Act 1985.

HSWA means the Health and Safety at Work Act 2015.

Insolvency Event means an arrangement, compromise, winding up, dissolution, receivership, official management, appointment of an administrator, liquidator or controller, assignment for the benefit of a creditor, scheme or arrangement with creditors, insolvency, bankruptcy or a similar procedure or, if it applies, a merger, amalgamation, reconstruction or change in the constitution of an entity for the purpose of or having the effect of altering a Party's rights with its creditors.

Intellectual Property Rights means all intellectual property rights whether conferred by statute, at common law or in equity, including (but without limitations) all patents, designs, trade marks and service marks (whether registered or unregistered), any applications for or rights to apply for registration of any patent, design, trade mark or service mark, any copyright (including in software, websites, website source code, website programming, databases and advertising and other marketing materials), trade or business names, business processes, methodologies or tools, eligible

circuit layout rights, knowhow, trade secrets, domain names, internet addresses, all rights to have information kept confidential, trade or other proprietary rights and all other protections and rights with a similar effect anywhere in the world.

Parties means REALTECH and the Customer and **Party** means either one of them.

Partners means REALTECH's partners involved in the supply of the Service(s), and includes the Service Provider and any resellers of the Service(s).

PCBU has the meaning as set out in section 17 of the HSWA.

Personal Information has the meaning described in the Privacy Act 2020.

Personnel means Staff and REALTECH's agents, directors, officers and advisors.

Services means the services to be provided by REALTECH to the Customer as set out in the relevant Work Order made under this Agreement.

Service Centres means the site designated by REALTECH from where REALTECH can most conveniently and practicably provide off-site Services.

Service Levels means the service levels (if any) applicable to the Services, as set out in the relevant Work Order.

Service Provider means a third-party licensor or provider of any software, platform, infrastructure or other product or service that is utilised by REALTECH in the provision of the Services (for example, Microsoft Inc as provider of the Azure cloud computing service).

Special Conditions means any additional terms and conditions recorded in the Work Order.

Staff means the employees of REALTECH and any subcontractors retained by REALTECH to undertake the Services.

System means a system described or referred to in any Work Order.

Work Order means a written order (or other document describing the services to be provided) prepared or otherwise adopted by REALTECH for a defined piece of work or other services agreed between the Parties.

3 Interpretation

3.1 In this Agreement, unless the context otherwise requires:

3.1.1 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

3.1.2 words importing the singular include the plural and vice versa, and where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

3.1.3 references to any Party include that Party's successors, assigns and permitted transferees;

3.1.4 all amounts are expressed in New Zealand dollars and are exclusive of GST unless otherwise stated;

- 3.1.5 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- 3.1.6 a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement unless otherwise stated;
- 3.1.7 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- 3.1.8 a reference to a business day means a day on which all banks are open for business generally in Auckland, New Zealand, but excluding Saturdays, Sundays, and the period starting on 23 December in one year and ending on 3 January in the next year;
- 3.1.9 if the day on which any act, matter or thing is to be done under this document is not a business day, that act, matter or thing may be done on the next business day;
- 3.1.10 a covenant or agreement on the part of two or more persons binds them jointly and severally; and
- 3.1.11 the schedules, annexures and attachments form part of this Agreement.

4 Order of precedence

- 4.1 If there is any conflict or inconsistency between the documents forming this Agreement, the following order of precedence shall apply (with the document listed first prevailing to the extent of the conflict or inconsistency):
 - 4.1.1 the Special Conditions (if any) stated in the Work Order;
 - 4.1.2 these Standard Terms and Conditions; and
 - 4.1.3 the other provisions of the Work Order.

5 Services

- 5.1 REALTECH will perform the Services with reasonable skill and care on the terms of this Agreement and any Work Order made under this Agreement, however, the Customer acknowledges that the Services provided to the Customer are not fault free and rely on factors outside of the direct control of REALTECH, including the characteristics of the System.
- 5.2 Subject to any explicit Customer requirements included or referenced in a Work Order, the Customer acknowledges that REALTECH will provide the Services based on its assessment and understanding of the Customer's requirements and the relevant Services requested.
- 5.3 The Customer acknowledges that REALTECH may, in the course of providing the Services, make assessments based on information supplied by the Customer or compiled by others. REALTECH will rely on and shall not be required to verify the accuracy or completeness of such information. The Customer agrees that REALTECH shall not be liable for any loss or damage the Customer or any other person sustains, directly or indirectly, in connection with REALTECH's reliance on that information.
- 5.4 REALTECH will endeavour to achieve the Service Levels (if any) provided in the relevant Work Order.

- 5.5 The Customer agrees to perform its obligations under this Agreement including those set out in a Work Order.
- 5.6 The Customer acknowledges and agrees that it may be required to enter into separate agreements for software or other third-party components supplied or used in the Services (e.g. third-party software licences).

6 Work Order

- 6.1 A Work Order shall come into force and be binding upon acceptance by the Parties (which may include by written confirmation, or by the Customer issuing a “purchase order” or similar document in acceptable form to REALTECH, or by REALTECH commencing provision of the Services).
- 6.2 The Services are restricted to those Services specified in the Work Order. Any services provided by REALTECH that fall outside the scope of a Work Order including:
- 6.2.1 any effort in assisting with fault resolution by any Service Provider;
 - 6.2.2 any alterations that are required due to a Force Majeure Event or other delay beyond REALTECH’s control; or
 - 6.2.3 any alterations that are required due to the misuse of the Services by the Customer,
- are excluded from the Services and shall be charged to the Customer on a time and materials basis at REALTECH's then-current rates, unless otherwise agreed in writing between the Parties.
- 6.3 Unless expressly agreed in writing, any additional or alternative terms purported to be imposed by the Customer shall be of no effect.
- 6.4 Unless otherwise stated, a Work Order (and any related estimates, quotes or Fees) does not include software licence fees, hardware, support, maintenance, upgrades, third-party services, or training.

7 Term

- 7.1 These Standard Terms and Conditions shall govern all Work Orders entered into between the Parties. Upon acceptance of a Work Order by both Parties, a separate and independent agreement shall be formed comprising the relevant Work Order and these Standard Terms and Conditions (each, an **Agreement**).
- 7.2 Each Agreement shall continue in force until terminated in accordance with clause 19 or until the expiry or completion of the relevant Work Order, whichever is earlier.

8 Fees, other amounts and invoices

Fees

- 8.1 The Customer will pay the Fees at the rate and in the manner specified in the relevant Work Order.

Additional Charges

- 8.2 The Customer will pay Additional Charges at the rate and in the manner specified in the relevant Work Order.

- 8.3 In addition to clause 8.2, REALTECH may render, and the Customer agrees to pay, any Additional Charges if:
- 8.3.1 REALTECH is required to provide Services at sites other than the Customer Locations or the Service Centres;
 - 8.3.2 REALTECH is required to perform Services in circumstances other than those expressly or reasonably anticipated in agreements of this nature; and/or
 - 8.3.3 There is a material change in timing, cost or complexity of the Services.
- 8.4 REALTECH will charge at cost, and the Customer shall pay, for other expenses including air travel, mileage, accommodation and courier fees plus GST. Where possible, REALTECH will endeavour to obtain approval of the Customer before incurring such expenses.

Invoices

- 8.5 Invoices for the Fees, Additional Charges and any other amounts payable by the Customer will be issued by REALTECH at the times specified in the relevant Work Order, or otherwise monthly.
- 8.6 If the Customer disputes the whole or any part of the amount claimed in an invoice submitted by REALTECH pursuant to clause 8.5:
- 8.6.1 the Customer shall pay the portion of the amount stated in the invoice that is not in dispute and shall notify REALTECH in writing (within 10 business days of receipt of the invoice) of the reasons for disputing the remainder of the invoice; and
 - 8.6.2 if no dispute is notified pursuant to 8.6.1, the Customer shall be deemed to have accepted the invoice.
- 8.7 Unless otherwise agreed in a Work Order, invoices must be paid by the Customer to REALTECH by 20th of month following receipt of an invoice from REALTECH. The Customer shall not make any deduction or withholding whatsoever nor shall the Customer make any claim or set-off. REALTECH may suspend provision of the Services during any period that money due to REALTECH is outstanding.
- 8.8 If full payment of an invoice has not been made by its due date, REALTECH may charge interest on all sums outstanding at the rate of 2% per month on a daily basis from the due date to the date full payment is received, and the Customer agrees to pay any collection and handling fees incurred by REALTECH.
- 8.9 If for any reason the Customer fails to pay REALTECH for any licence fee paid for or procured by REALTECH on the Customer's behalf, REALTECH may by notice suspend, terminate, or require the Customer to terminate, the relevant licence(s).

9 Access

- 9.1 The Customer must give REALTECH remote access to the relevant System and (if required) physical access to the Customer Locations to enable REALTECH to perform the Services. The Customer must provide REALTECH with any information, facilities and assistance reasonably required for REALTECH to comply with its obligations under this Agreement and any applicable Work Order.
- 9.2 REALTECH may bring materials on to the Customer's premises. REALTECH shall continue to own these materials, which may include information that is proprietary to REALTECH. Only REALTECH may use the materials and the Customer shall permit REALTECH to remove such material at any

time. The materials may include hardware, software manuals, schematics, diagnostic software, monitoring software and other items REALTECH may use in its delivery of the Services.

9.3 The Customer shall ensure that REALTECH's Staff are provided with:

- 9.3.1 Safe access to any Customer Location as required to complete the Services;
- 9.3.2 All equipment, materials and information required by REALTECH to carry out the Services; and
- 9.3.3 All necessary health and safety information prior to Staff entering Customer Locations (or other places under the Customer's control).

10 Health and Safety

10.1 If REALTECH is working at a Customer Location:

- 10.1.1 the Customer shall promptly notify REALTECH of any health and safety policies in place on that Customer Location; and
- 10.1.2 REALTECH and its Personnel shall at all times comply with all reasonable health and safety requirements and safety-related instructions provided by the Customer.

10.2 REALTECH and its Personnel do not assume any obligation, as the Customer's agent or otherwise, which may be imposed on the Customer pursuant to the HSWA, and the Parties agree that REALTECH and its Personnel will not be deemed to be a PCBU.

10.3 The Customer shall:

- 10.3.1 Ensure that REALTECH's Personnel have full and safe access to the Customer Location at all reasonable times for purposes associated with the supply of the Services; and
- 10.3.2 Provide reasonable working facilities for the Personnel, if they are working at a Customer Location.

11 Meetings

11.1 The Parties shall hold meetings of the type and frequency specified in a Work Order.

11.2 The meetings may be minuted by REALTECH. REALTECH may require the minutes to be signed by representatives of both Parties before the next meeting.

11.3 The meetings shall be held by way of teleconference or as otherwise agreed.

11.4 Both Parties shall be permitted to have representatives present at the meetings as they reasonably consider necessary.

11.5 Nothing in this clause 11 limits the ability of either Party to call a meeting from time to time, or imposes or limits project management obligations specified in a Work Order.

12 Confidentiality

12.1 Neither Party will, without the prior written approval of the other, disclose the other Party's Confidential Information.

- 12.2 Notwithstanding clause 12.1, either Party may disclose Confidential Information of the other Party in any of the following circumstances:
- 12.2.1 The disclosure is required by law.
 - 12.2.2 The disclosure is necessary in connection with performing obligations under a Work Order, this Agreement or another agreement between the Parties.
 - 12.2.3 The disclosure is to an officer, employee, agent or consultant of the recipient Party, but only to the extent that he or she needs to know the Confidential Information.
 - 12.2.4 The disclosure is reasonably made to a professional legal adviser or professional auditor.
 - 12.2.5 The other Party consents in writing to the disclosure. The consent may be subject to the condition that the person to whom the disclosure is to be made enter into a separate confidentiality agreement with the owner of the Confidential Information.
 - 12.2.6 The Confidential Information is already in the public domain.
 - 12.2.7 The Confidential Information has been rightfully obtained from third parties.
 - 12.2.8 In the case of REALTECH, the Confidential Information has been independently developed by REALTECH.
- 12.3 Each Party will take all reasonable steps to ensure that its employees, agents, and subcontractors engaged for the purposes of this Agreement, do not disclose the other Party's Confidential Information.

13 Staff

- 13.1 REALTECH warrants that its Staff provided to undertake the Services will have the requisite skills and expertise to perform the Services.
- 13.2 REALTECH shall use its reasonable endeavours to ensure continuity of Staff in its delivery of the Services. In the event that REALTECH is unable to provide that continuity or if Customer reasonably requests that a staff member be removed from providing the Services, REALTECH shall provide alternative Staff who shall within the reasonable endeavours of REALTECH possess similar qualifications and experience to the original Staff.
- 13.3 REALTECH and its Staff or any other person under REALTECH's control may perform similar services to the Services for third parties from time to time.
- 13.4 For the duration of this Agreement, and for a period of 12 months following expiry or termination of this Agreement, neither REALTECH nor the Customer shall directly or indirectly solicit for employment or entice away any employee, partner or contractor of the other Party who has been materially involved in the provision or receipt of the Services. This restriction shall not prevent either Party from employing any such person who responds to a general advertisement or recruitment campaign not specifically targeted at employees, partners or contractors of the other Party, or who approaches the hiring Party of their own accord.

14 Intellectual Property Rights

14.1 As part of providing the Services, REALTECH may utilise its existing Intellectual Property Rights (**REALTECH IP**). In relation to all REALTECH IP supplied or made available by REALTECH to the Customer:

14.1.1 REALTECH retains ownership of all REALTECH IP supplied or made available to the Customer; and

14.1.2 provided that the Customer complies in full with its payment obligations, REALTECH grants to the Customer a royalty-free, non-exclusive, non-assignable, non-transferrable and non-sublicensable licence to use the REALTECH IP solely to the extent necessary to enable the Services to be provided by REALTECH and received by the Customer.

14.2 All Intellectual Property Rights in the ideas, concepts, know-how, systems, techniques, software, documentation or any other works, materials and deliverables developed and/or supplied by REALTECH or its business partners in the course of this Agreement shall remain the property of REALTECH or the applicable licensor(s).

15 Warranty

15.1 REALTECH represents and warrants that:

15.1.1 To the best of its knowledge and belief no Services supplied by REALTECH to the Customer in terms of this Agreement shall violate or infringe any third-party Intellectual Property Rights.

15.1.2 REALTECH shall use all reasonable efforts to provide the Services in a timely manner, and to meet any times for delivery of Services specified in the Work Order (if any), although delivery of the Services usually depends on external factors including the availability of Customer instructions and access to the System, and other factors beyond REALTECH's control.

15.2 The Customer acknowledges and agrees that in respect of some or any part of the System provided by a Services Provider, any third-party software, platform, infrastructure or other product or service utilised in or supplied as part of the Services:

15.2.1 REALTECH does not provide any warranties for third-party products or services, including that it is or will be fully operational and error-free at all times during the term of this Agreement or at any time thereafter or that it will be free of external intruders, viruses or worm dissemination or any other unauthorised third party access;

15.2.2 the Service Provider's EULA may apply and the Customer shall be solely responsible for compliance with the EULA;

15.2.3 the Customer relies solely on the applicable Service Provider's warranty (if any) and shall be solely responsible for compliance with the Service Provider's warranty registration and claims processes; and

15.2.4 REALTECH shall have no liability for any failure, defect, interruption, modification, discontinuation, change in pricing or change in terms by a Service Provider in respect of any third-party product or service.

15.3 The Customer represents and warrants that:

- 15.3.1 No material or information supplied to REALTECH in relation to this Agreement shall violate or infringe any third party Intellectual Property Rights.
- 15.3.2 It is either the sole legal owner of the Intellectual Property, materials, data or other information provided to REALTECH for performance of the Services, or holds all the necessary licences, consents and permissions, and that such use by REALTECH will not infringe any third-party Intellectual Property Rights.
- 15.3.3 It can give REALTECH access to the System, materials and sites necessary for REALTECH to provide the Services.
- 15.3.4 It shall be solely responsible for the security of its own Systems and data and has appropriate security and backup measures in place.
- 15.3.5 It shall be solely responsible for fully evaluating and testing the suitability, fitness for purpose and accuracy of any proposal, specification, System design, solution or other deliverable, and notifying REALTECH in writing of any concerns or required changes prior to any sign-off or go-live.
- 15.3.6 It has disclosed all relevant requirements to REALTECH in the Work Orders and that all information provided to REALTECH is accurate and complete.
- 15.3.7 It is not insolvent, in liquidation, in receivership or subject to any form of external administration, and is able to pay its debts as they fall due and perform its obligations under this Agreement.
- 15.4 Any condition or warranty that is not expressly recorded in this Agreement or a Work Order is excluded, including, without limitation, implied warranties of merchantability and fitness for any particular purpose, and compliance with any particular standards or practice. No oral or written statement or representation (whether made before or after this Agreement) shall create a warranty or condition or in any way increase the scope of an existing warranty or condition, unless it is expressly agreed in writing to have such effect.
- 15.5 If the Customer is in trade, the Parties agree that the Services are supplied and acquired in trade and that it is reasonable for the provisions of the Consumer Guarantees Act 1993, and sections 9, 12A and 13 of the Fair Trading Act 1986, to not apply to the Services.

16 Limitation of Liability

- 16.1 Neither REALTECH nor its Personnel shall be liable to the Customer or any third party for any loss, damage, cost or injury arising directly or indirectly in connection with the provision of any Services or the operation (or non-operation) of any System, including (but without limitation) any loss of profit, revenue, goodwill or anticipated savings, loss of data, business interruption, or fines or penalties. This exclusion of liability applies to liability in contract, tort (including negligence), statute, and any other principle of legal liability.
- 16.2 In the event that REALTECH or any Personnel becomes liable for any loss or damage that is not (or cannot lawfully be) excluded from this Agreement, such liability shall be limited to the amount paid by the Customer to REALTECH for the Services in the preceding six-month period.
- 16.3 Notwithstanding the terms of clauses 16.1 and 16.2, where the Customer suffers loss which the Customer claims is attributable to the actions of REALTECH in its delivery of the Services, REALTECH

may, at its election and without admission or prejudice to any of its rights, carry out work at its own cost reasonably required to provide a remedy.

- 16.4 No claim connected with this Agreement may be brought against REALTECH or its Personnel more than 6 months after the event that gave rise to that right of claim.

17 Indemnity

- 17.1 The Customer agrees to indemnify and hold harmless REALTECH (and separately its Personnel) against any liability, costs, losses, expenses, claims, or damages (including legal fees and disbursements on a solicitor and own client basis) arising in any way from or in connection with:

- 17.1.1 the Customer's breach of any obligation under this Agreement;
- 17.1.2 any act of omission for which the Customer is responsible at law or any act undertaken at the Customer's request;
- 17.1.3 Services provided in accordance with any specifications or directions provided by or on behalf of the Customer;
- 17.1.4 REALTECH's reliance on information or materials supplied by the Customer;
- 17.1.5 non-payment of Fees when they become due;
- 17.1.6 any claim or demand by a third party in connection with the System, Services, related software or any other matter connected with this Agreement.
- 17.1.7 death or injury to a person, or loss of or damage to any property, as a direct or indirect result of any act or omission by the Customer;
- 17.1.8 infringement of any Intellectual Property Rights of a third party by the Customer in providing the Services; or
- 17.1.9 a failure by the Customer to give REALTECH all reasonable assistance in connection with dealing with a possible or alleged infringement of the rights of a third party and defending any claim in respect of it.

18 Suspension of Services

- 18.1 REALTECH may suspend, disconnect or discontinue the Services in whole or in part at any time without notice if, in REALTECH's reasonable opinion:

- 18.1.1 it is necessary to safeguard the provision or integrity of the Services, any System, or REALTECH's network;
- 18.1.2 a security situation threatens the stability of REALTECH's network or the Services;
- 18.1.3 there is or has been unauthorised, unlawful or fraudulent use of the Services or the Customer's use of the Services is causing or may potentially cause damage or interference to REALTECH's network;
- 18.1.4 it is necessary to comply with a direction, order or request of any Governmental authority or other competent authority; or
- 18.1.5 the Customer fails to comply with any term of this Agreement or a Work Order.

19 **Termination**

19.1 Either Party may terminate this Agreement immediately by notice in writing to the other Party if the other Party does any of the following.

19.1.1 Commits a material breach of any of the provisions of this Agreement and fails to rectify the breach, if capable of remedy, within 30 days after being required to do so in writing.

19.1.2 Commits a material breach of this Agreement which is not capable of being remedied.

19.1.3 Undergoes an Insolvency Event.

19.2 Either Party may terminate this Agreement for convenience by providing two (2) months' notice in writing to the other Party, provided that where the Customer gives notice of termination under this clause, the Customer shall pay REALTECH's reasonable costs incurred in bringing the Agreement and any Work Orders to an end, and any reasonable costs incurred by REALTECH arising from the early termination of third-party supply contracts entered into by REALTECH in order to provide the Services.

19.3 If this Agreement is terminated, the following rules apply:

19.3.1 Termination of this Agreement shall be without prejudice to other rights and remedies of the Parties arising out of any default, which occurs before the termination and shall be without prejudice to any claim for moneys payable as at the date of termination or in respect of liabilities incurred before the termination.

19.3.2 The Customer must hand back to REALTECH any of REALTECH's property that is in Customer's possession, custody or control.

19.3.3 The Customer must pay any outstanding invoices. REALTECH may retain any money that the Customer has paid to REALTECH.

19.3.4 REALTECH will invoice the Customer for any uninvoiced completed work or milestones. In addition, REALTECH may charge the Customer a reasonable amount in respect of work it has done but not charged (regardless of whether a milestone or deliverable has been completed).

19.3.5 Any Work Orders shall be deemed terminated.

19.3.6 The following provisions shall remain in full force and effect: 12, 16, 17, 21, 26.7.

20 **Delays**

20.1 REALTECH may require some Services for the Customer to be scheduled in advance. The Customer acknowledges that delays caused by the Customer may mean that REALTECH will incur costs. If REALTECH receives less than three business days' notice from Customer delaying any of the scheduled Services, the Customer must indemnify REALTECH for all losses, costs and expenses of REALTECH arising from the delay.

20.2 Delivery times by REALTECH cannot be guaranteed and shall not be a representation or condition of the Agreement. REALTECH shall not be liable for any loss, expenses, damages, claims, costs and other amounts arising from or in relation to any delay in the supply of the Services. The Customer shall not be relieved of any obligation to accept or pay for any Services by reason of any delay in delivery.

21 Dispute Resolution

- 21.1 The Parties agree to use their best efforts to resolve all disputes in good faith using the following process.
- 21.2 Either Party may raise a dispute by written notice to the other. The notice must provide all relevant details of the dispute, and the desired outcome. Parties will provide further information reasonably requested by the other Party for the purposes of attempting to resolve the dispute.
- 21.3 On receipt of a dispute notice, the Parties' authorised representatives shall meet (or otherwise communicate, if a meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis.
- 21.4 If a resolution to the dispute cannot be achieved within 10 business days following the commencement of negotiations between the Parties' respective representatives, then the dispute shall be escalated to the Parties' respective chief executives (or equivalent), who shall meet (or otherwise communicate, if a meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis.
- 21.5 If the Parties cannot resolve the dispute within 10 business days of the Parties' chief executives (or equivalent) meeting or otherwise communicating in an effort to resolve the dispute, the Parties may by agreement refer the matter to mediation on terms agreed between the Parties.
- 21.6 Neither Party will commence legal proceedings (except proceedings seeking urgent or interlocutory relief) in respect of a dispute unless the procedure set out in this clause 21 has been complied with by the Parties.
- 21.7 The Parties shall continue to perform their respective obligations under this Agreement as far as possible as if no dispute had arisen, pending final resolution of any matter referred to dispute resolution under this clause.

22 Privacy

- 22.1 In the course of arranging and providing the Services, REALTECH and its Partners may collect Personal Information relating to the Customer for the purposes of performing their obligations under a Work Order, this Agreement and/or a EULA (which may involve the use, hosting, storage or other processing (together, "**Processing**") by Service Providers of Personal Information held by or relating to the Customer, and that Processing may take place in jurisdictions other than New Zealand), and to enable monitoring and verifying compliance with any use restrictions applicable to the Services. If the Customer submits or uploads Personal Information to REALTECH or any of its Partners, the Customer:
- 22.1.1 Consents to the collection, use, Processing, transmission and disclosure of that Personal Information by REALTECH and its Partners;
- 22.1.2 Agrees to Processing by the Service Provider in accordance with any data processing agreement or similar terms notified to REALTECH by the Service Provider from time to time; and
- 22.1.3 Warrants that it has obtained all necessary consents from each individual whose Personal Information is disclosed to REALTECH and its Partners, (in compliance with Information Privacy Principle 3A of the Privacy Act 2020), for REALTECH and its Partners to collect, retain and use that Personal Information for the supply of Services requested

by the Customer and any other purposes set out in REALTECH's current privacy statement (accessible at <https://www.realtech.co.nz/privacy-statement/>). REALTECH's privacy statement may be updated from time to time. The Customer agrees that REALTECH's privacy statement, as may be modified from time to time, is incorporated into this Agreement.

- 22.2 Both Parties agree to treat all Personal Information in accordance with, and otherwise comply with, the Privacy Act 2020.

23 GST

- 23.1 All Fees and other amounts exclude GST unless otherwise stated. A Party must pay GST on a taxable supply made to it under this Agreement (or Work Order), in addition to any consideration (excluding GST) that is payable for that taxable supply. The Party making the taxable supply must provide a valid tax invoice to the other Party at or before the time that the other Party is required to pay the GST.

24 Force Majeure

- 24.1 REALTECH shall not be liable for any delay or failure to fulfil any of its obligations under this Agreement (or any Work Order) if such delay or failure is caused by any act, event or cause beyond the reasonable control of REALTECH, including acts of God, fire, flood, storm, earthquake, explosion, pandemic, epidemic, war (declared or undeclared), terrorism, riot, government action or regulation, labour strikes or difficulties, transportation stoppages or slowdowns, communications or power failures, or the inability to procure equipment, services or materials (**Force Majeure Event**).
- 24.2 REALTECH shall promptly notify the Customer in writing of any Force Majeure Event and the expected duration of the delay. REALTECH shall use its reasonable endeavours to mitigate the effects of the Force Majeure Event and resume performance of its obligations as soon as reasonably practicable.
- 24.3 Where a Force Majeure Event occurs, REALTECH will not be liable for delay or failure to perform its obligations under any Work Order (including liability for delays in delivery, non-delivery, impact to project deadlines and any other liability whatsoever).

25 Notices

Giving notices

- 25.1 A notice, consent, information, application or request that must or may be given or made to a Party under this Agreement or any Work Order is only given or made if it is in writing and:
- 25.1.1 delivered or posted to that Party at its head office or registered office (or other such address as last notified to the other); or
 - 25.1.2 emailed to that Party at an email address used by that Party for communications with the other Party (or such other email address as last notified to the other)

If a Party gives the other Party 3 business days' notice of a change of its address or email address, a notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address or email address.

Time notice is given

25.2 A notice, consent, information, application or request is to be treated as given or made at the following time:

25.2.1 if it is delivered, when it is left at the relevant address;

25.2.2 if it is sent by post, 2 business days after it is posted; or

25.2.3 if it is sent by email, as soon as it enters the recipient's email system.

If a notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, after the normal business hours of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

26 Miscellaneous

Assignment

26.1 Except as expressly permitted by this Agreement, the Customer must not assign any of its rights or obligations under this Agreement without the prior written consent of REALTECH, which will not be unreasonably withheld. REALTECH may assign all or part of its rights and obligations by notice to the Customer.

Costs

26.2 Except as otherwise agreed by the Parties in writing, each Party must pay its own costs in relation to preparing, negotiating and executing this Agreement and any document related to this Agreement (including subsequent Work Orders).

Entire agreement

26.3 The Agreement constitutes the entire understanding and agreement between the Parties in relation to the subject matter it deals with, and supersedes all previous agreements and understandings between the Parties relating to the same subject matter. Subject to clause 4, any documents supplied by the Customer which contain any terms and conditions shall have no effect to the extent that they are inconsistent with the Agreement.

No reliance

26.4 The Customer acknowledges that it has had the opportunity to take its own specialist advice (including technical and legal advice) in relation to this Agreement and the Services and relies solely on its own advisers. REALTECH accepts no liability for any claim relating to or arising from any representations, warranties, conditions or agreements made by any agent or representative of REALTECH which are not expressly confirmed in this Agreement or a Work Order.

Further acts

26.5 The Parties will promptly do and perform all acts and things and execute all documents as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this Agreement or any accepted Work Order.

Governing law and jurisdiction

26.6 This Agreement is made in New Zealand and its construction, validity and performance shall be determined under New Zealand law. Any dispute which is to be litigated shall be submitted to a New Zealand court.

No agency or partnership

26.7 No Party is an agent, representative, partner of any other Party by virtue of this Agreement.

26.8 REALTECH may use the Customer's name for its marketing purposes.

No authority to act

26.9 No Party has any power or authority to act for or to assume any obligation or responsibility on behalf of another Party, to bind another Party to any agreement, negotiate or enter into any binding relationship for or on behalf of another Party or pledge the credit of another Party except as specifically provided in this Agreement or by further written agreement between the Parties.

Severability

26.10 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

Variation

26.11 No variation of this Agreement (including any Work Order) will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

26.12

Waiver

26.13 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.