

# **White Hat Consulting**

## Master Service Agreement

White Hat Consulting ("WHC") provides various security, cloud, network, development, and consulting services. All Services are provided by a Consultant from White Hat Consulting under this Master Service Agreement ("MSA").

### **BACKGROUND**

1. The Client is of the opinion that the Consultant has the necessary qualifications, experience and abilities to provide consulting services to the Client.
2. The Consultant is agreeable to providing such consulting services to the Client on the terms and conditions set out in this Agreement.

**IN CONSIDERATION OF** the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Consultant (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

### **SERVICES PROVIDED**

1. The Client agrees to engage the Consultant to provide the Client with the consulting services (the "Services") described in the signed Statement of Work ("SoW")
2. The Services will also include any other consulting tasks which the Parties may agree on. The Consultant hereby agrees to provide such Services to the Client.

### **TERM OF AGREEMENT**

3. The term of this Agreement (the "Term") will begin on the date of the SoW and will remain in full force and effect until terminated as defined in the SoW.
4. The Agreement can be terminated by mutual agreement on both Parties.

### **PERFORMANCE**

5. The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

### **CURRENCY**

6. All monetary amounts referred to in the SoW are in NZD (New Zealand Dollars).

## **PAYMENT**

7. The Consultant will charge the Client as defined in the SoW for the Services (the "Payment").
8. The Client will be invoiced monthly.
9. Invoices submitted by the Consultant to the Client are due within 21 days of receipt.
10. In the event that this Agreement is terminated by the mutual agreement of the Parties prior to completion of the Services but where the Services have been partially performed, the Consultant will be entitled payment for the hours worked, provided that there has been no breach of contract on the part of the Consultant.
11. The Payment as stated in this Agreement does not include GST, or other applicable duties as may be required by law. Any GST and duties required by law will be charged to the Client in addition to the Payment.
12. Late payment penalties start from the day after the payment due date. Penalties for late payments are given in 3 stages:
  - a. 1% penalty on the day after payment due date;
  - b. 4% penalty for remaining including penalties on 7th day after payment due date;
  - c. 1% penalty every month thereafter for the remaining including penalties.

## **REIMBURSEMENT OF EXPENSES**

13. The Consultant will be reimbursed for pre-approved, reasonable and necessary expenses incurred by the Consultant in connection with providing the Services.
14. All expenses must be pre-approved by the Client.

## **CONFIDENTIALITY**

15. Confidential information (the "Confidential Information") refers to any data or information relating to the Client, whether business or personal, which would reasonably be considered to be private or proprietary to the Client and that is not generally known and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.
16. The Consultant agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Consultant has obtained, except as authorised by the Client or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.

17. All written and oral information and material disclosed or provided by the Client to the Consultant under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Consultant.

## **OWNERSHIP OF INTELLECTUAL PROPERTY**

18. All intellectual property and related material, including any trade secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trade mark, trade dress, industrial design and trade name (the "Intellectual Property") that is developed or produced under this Agreement, will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted in any manner.

19. The Consultant may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Client. The Consultant will be responsible for any and all damages resulting from the unauthorised use of the Intellectual Property.

## **RETURN OF PROPERTY**

20. Upon the expiry or termination of this Agreement, the Consultant will return to the Client any property, documentation, records, or Confidential Information which is the property of the Client.

## **CAPACITY/INDEPENDENT CONTRACTOR**

21. In providing the Services under this Agreement it is expressly agreed that the Consultant is acting as an independent contractor and not as an employee. The Consultant and the Client acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service.

## **AUTONOMY**

22. Except as otherwise provided in this Agreement, the Consultant will try to accommodate reasonable specific working time or days requested by the Client in relation to provision of the Services in accordance with the Agreement.

## **EQUIPMENT**

23. Except as otherwise provided in this Agreement, the Consultant will provide at the Consultant's own expense, any and all equipment, software, materials and

any other supplies necessary to deliver the Services in accordance with the Agreement.

## **NON-SOLICITATION / RESTRAINT**

24. The Consultant will not, within the area and duration set out in the SoW:
- a. Directly or indirectly provide services to, or engage in, conduct, carry on or be involved or interested in, any business that is a competitor of the Client;
  - b. Solicit or entice the business of any of the Client's customers;
  - c. Solicit or entice any member of the Client's personnel to terminate their position, employment or relationship with the Client;
  - d. Interfere in any way with the relationship between the Client and any person in the Client's Network.

## **NO EXCLUSIVITY**

25. The Parties acknowledge that this Agreement is non-exclusive and that either Party will be free, during and after the Term, to engage or contract with third parties for the provision of services similar to the Services.

## **NOTICE**

26. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the addresses specified in the SoW

## **INDEMNIFICATION**

27. Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

## **FORCE MAJEURE**

28. Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure provided that the affected party immediately notifies the other party, uses best efforts to overcome the Force Majeure and continues to perform its obligations to the extent practicable.

## **MODIFICATION OF AGREEMENT**

29. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorised representative of each Party.

## **ENTIRE AGREEMENT**

30. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

## **GOVERNING LAW**

31. This Agreement will be governed by and construed in accordance with the laws of New Zealand.

## **SEVERABILITY**

32. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

## **WAIVER**

33. If any provision of this Agreement is deemed unenforceable or is held to be invalid, the Agreement shall remain in full force apart from that provision.

*Version 1.0.8*

*Previous versions available in [MSA - Public](#).*