



**REMOTE ACCESS AGREEMENT**

Between

**THE FAKE CHICKEN COMPANY**

And

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## **LIMITATION**

This document contains confidential information and is exclusive to The Fake Chicken Company. It may not be reproduced, stored or transmitted in any form without the prior written consent of The Fake Chicken Company. This document will be held in strict confidence by the Company and will not be used in whole or in part, for any purpose other than the purpose for which it is provided. Under no circumstances shall The Fake Chicken Company be liable to anyone for direct, special, incidental, collateral or consequential damages arising out of the use of this material.

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## **SCOPE**

### ***PARTIES***

This agreement is between The Fake Chicken Company and \_\_\_\_\_ (“the Company”). The document is comprised of the Agreement and its Terms and Conditions and the list of documents defined in the clause titled “Other Documents” on page 8 of this Agreement.

### ***PURPOSE***

This Agreement defines the services to be provided by The Fake Chicken Company to the Company and the Company’s obligations and responsibilities to The Fake Chicken Company in respect of those services.

### ***OBJECTIVE***

To provide the Company with remote access to the systems and applications of The Fake Chicken Company as specified in the Application for Remote Access in order that the Company can fulfil its obligations to The Fake Chicken Company.

### ***COMMENCEMENT***

This agreement shall commence from \_\_\_\_\_ and shall remain in force on an ongoing basis unless terminated as per the terms and conditions.

### ***EXTENT***

The extent of the Agreement limits it to provision of the following:-

- The provision of remote access network connection(s) to enable the Company to fulfil its obligations to The Fake Chicken Company.
- The provision of hardware and software if specified in the Application Form for Remote Access to enable the Company to carry out particular functions.
- Setup and configure systems to facilitate remote access for the Company.
- Provide assistance and support as and when required to ensure the remote access connection continues to operate as expected.

## **DETAILS OF SERVICES**

### ***TECHNOLOGY EMPLOYED***

In respect of this Agreement remote access will be facilitated by a VPN client provided and configured by The Fake Chicken Company through the use of a The Fake Chicken Company computer designated by The Fake Chicken Company ISG staff.

### ***AVAILABILITY***

The remote access connection will by default be disabled. Access will be made available upon request to GCSD.

### ***SUPPORT***

The Fake Chicken Company will provide support for the remote access connection on a 24x7x365 basis.

Details of equipment supported:-

<b>Equipment</b>	<b>Details</b>	<b>Location</b>

All upgrades and maintenance requires approval and must be actioned via the Request for Change process.

### ***OUTAGES***

Where remote access is dependent upon an external communications provider (Telecom, Whoosh, etc) The Fake Chicken Company cannot guarantee uptime, but best endeavours will be made to ensure the link is returned to normal operations as quickly as possible.

### ***AUTHENTICATION***

Users are authenticated onto The Fake Chicken Company systems using a one time, two factor method of authentication which generates a unique password for each session. Authentication onto the Domain is by user name and password. All passwords must conform to The Fake Chicken Company Password Policy which forms part of this Agreement.

Other forms of authentication may be employed if appropriate, at the discretion of The Fake Chicken Company including, but not limited to, authentication by individual IP address and token authentication.

**ENCRYPTION**

At the discretion of The Fake Chicken Company remote access connections will be encrypted using the technologies and standards prescribed in The Fake Chicken Company Encryption Policy.

**HARDWARE**

Hardware provided by The Fake Chicken Company remains the property of The Fake Chicken Company and is supplied on a loan basis. The Applicant agrees to abide by the terms and conditions of the Equipment Loan Agreement and any policies relating to equipment use.

The following hardware is made available to the Company:-

Hardware	Model	The Fake Chicken Company Asset Number	Serial Number

**SOFTWARE**

The following software is made available to the Company:-

Software/Application	Version	Serial Number

The software provided by The Fake Chicken Company remains the property of The Fake Chicken Company. All software must be returned on the termination of this Agreement. The Fake Chicken Company will ensure all licences remain valid and The Fake Chicken Company reserves the right to update, replace or upgrade the software from time to time. The Company agrees to operate the software in an appropriate manner, only for the purposes specified in the Contract for Service, and in accordance with The Fake Chicken Company Remote Access and Accepted Use policies.

### ***ACCESS RIGHTS TO USERS***

Access rights will be granted to remote users listed in the Application for Remote Access on the same basis as The Fake Chicken Company staff and as per the guidelines specified in the Accepted Use Policy. Remote users must only access the applications required to perform the duties prescribed in the Contract for Service. The use of The Fake Chicken Company systems and networks for other reasons than those prescribed will be treated as a breach of this Agreement.

### ***ACCEPTABLE USE OF SYSTEM***

The Company is responsible for staff using the system as prescribed in The Fake Chicken Company Accepted Use Policy for Computer Systems and Networks. Any breach of these policies will be treated as a breach of this Agreement.

### ***MONITORING OF SYSTEM USE***

The Fake Chicken Company reserves the right to monitor the use of the remote access connections and to employ any tools and applications it may deem appropriate to determine that the remote access link is operating as expected and within acceptable performance parameters.

### ***ACCESS TO COMPANY'S SYSTEMS***

The Fake Chicken Company staff may, from time to time, require access to the Company's system in order to carry out maintenance or upgrades. This is to be allowed by prior mutual arrangement and preferably with a member of the Company's staff present.

### ***PAYMENT OF COSTS***

Each party will be responsible for all costs incurred by that party under this Agreement including, without limitation, costs for phone charges, telecommunications equipment and personnel for maintaining the Network connection.

### ***OTHER DOCUMENTS***

The following documents are to be included as part of this Agreement:-

Acceptable Use Policy and all Information Systems Management Policies listed therein.

## **OBLIGATIONS AND EXPECTATIONS**

### ***THE FAKE CHICKEN COMPANY SHALL:-***

- Provide the remote access network connection(s) to enable the Company to fulfil its obligations to The Fake Chicken Company.
- Provide hardware and software, if specified in the Application for Remote Access, to enable the Company to carry out particular functions.
- Setup and configure systems to facilitate remote access for the Company.
- Provide assistance and support as and when required to ensure the remote access connection continues to operate as expected.
- Act in good faith and abide by the Terms and Conditions included in this Agreement
- Ensure that any variations to this Agreement are in writing.
- Notify the Company within 7 days of any planned outages.

### ***THE COMPANY SHALL:-***

- Operate all hardware and software in accordance with manufacturers' specifications and with regard to The Fake Chicken Company's policies and the Equipment Loan Agreement (if applicable).
- Operate systems covered by this Agreement with suitably trained and skilled staff in accordance with reasonable recommendations notified by The Fake Chicken Company staff or usual industry practices.
- Take any action reasonably required to maintain the benefits of warranties during their currency and any action reasonably required for The Fake Chicken Company to have recourse to the manufacturer licences and warranties while performing functions prescribed in the Contract for Service document.
- Not alter the settings, passwords and configuration of any hardware, software or network component that facilitates remote access without the authority of The Fake Chicken Company.
- Adhere to The Fake Chicken Company's Anti-Virus and Security policies and take all reasonable and practicable steps to ensure that applications, software, hardware and data is protected against unauthorised intrusion, hacking, damage, alteration, interference loss, theft, nor engage in denial of service, virus, worms, trojan horses, time bombs and bots from external or internal sources.
- Use the remote access connection only for the functions prescribed in the Contract for Service document.
- Allow The Fake Chicken Company staff onsite to perform upgrades and maintenance to any part of the remote access system or to assist users with any operational issues.
- Act in good faith and abide by the Terms and Conditions included in this Agreement

## COMPLETION

This Agreement remains in effect until terminated by either party as stated in clause 11 of the Terms and Conditions.

## CONTACTS

The main contact person for the Company is nominated as:-

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Fax: \_\_\_\_\_

The contact person for The Fake Chicken Company is:-

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Pager: \_\_\_\_\_  
Email: \_\_\_\_\_

## REVIEW

This Agreement may be reviewed by The Fake Chicken Company from time to time and any additions, deletions or alterations will be notified to the Company in writing.

## LOCATIONS

This Agreement relates to network connections terminated in the following locations:-

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## COST RECOVERY

External users attract a one off set up fee. This fee will be billed to the unit of the relevant The Fake Chicken Company manager, and covers the internal labour costs of provisioning and training.

All VPN users will also be on-charged on a cost recovery basis for

- Cost of authentication tokens, smart cards or usb dongles.
- Annual licensing costs associated with maintaining the VPN client software.

These costs would normally be charged to the relevant business unit signing off the request, unless alternative means are agreed at the time the application is lodged.

VPN Users will also be responsible for maintaining their own personal ISP account, which is required for access to the VPN. Some users may be eligible to claim part or all of these costs back, by arrangement with their manager.

**ACCEPTANCE**

The Agreement constitutes the entire agreement between the parties with respect of the subject matter hereof and supersedes and extinguishes all prior agreements and understandings between the parties with respect to the matters covered by this agreement.

**FOR AND ON BEHALF OF THE COMPANY**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**FOR AND ON BEHALF OF THE FAKE CHICKEN COMPANY**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

# TERMS AND CONDITIONS

Pursuant to the Company's request for remote access as detailed in this Agreement, this document sets out the terms and provisions that apply to the contract between the parties. Any Schedule attached to this agreement whether at its commencement or at any other time is considered an integral part of this Agreement and needs to be referred to separately.

## 1. Definitions and Interpretations

This Agreement has the following terms appearing within it and the following definitions shall have effect in interpreting this Agreement:-

- a) "Agreement" means this document including the Schedules attached
- b) "Designated Premises" shall be the Company's premises as defined in the Agreement
- c) "Force Majeure" event means an event beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Agreement including but not limited to:-
  - i) Fire, floods, storms, tempests, earthquakes or other act of God;
  - ii) Any act of a public enemy, war, civil disorders, rebellions, revolution, riot act or civil or military authority or
  - iii) Any act of a third party engaged in subversive activity or sabotage that is not an employee, agent or subcontractor of a party to this Agreement and
  - iv) Any change in applicable law or regulation or in its interpretation by any judicial body, tribunal or regulatory authority to the extent that such event makes it impossible or illegal to perform, or prevents compliance with, or the performance of that party's obligations under this Agreement.
- d) "Schedule(s)" means any schedule attached to this Agreement with the agreement of both parties.
- e) "Service" means any function performed by The Fake Chicken Company as agreed with the Company.

## 2. Entire Agreement

This Agreement constitutes the entire Agreement between the parties as they relate to the subject matter of this agreement and there are no representations, understanding or agreements relating to this Agreement which are not fully expressed in this Agreement. This agreement shall supersede and cancel all prior agreements or understandings between the parties for the matters detailed in this Agreement.

## 3. Amendment

This Agreement shall not be amended or varied in any respect except in writing signed by duly authorized representatives of both parties. Any such amendments or variations to this Agreement shall apply on the effective date stated in such amendment or variation.

## 4. Governing Law

This Agreement is governed by and construed in accordance with the laws of New Zealand.

## 5. Severance

If any provision contained in this Agreement is held to be illegal, invalid or unenforceable, it shall be severable, shall be deemed to be deleted from this Agreement and shall not affect the validity of enforceability of other provisions in this Agreement.

## 6. Assignment/Sub Contracting

Neither The Fake Chicken Company nor the Company shall assign or sub contract all or part of this Agreement or any interest in it, without the other party's prior written consent.

## 7. Successor in Interest

Notwithstanding clause 6, a successor in interest by merger, by operation of law, assignment, purchase or otherwise of the entire business of either party, shall acquire all interest of such party.

## **8. Dispute Resolution**

If a dispute arises between The Fake Chicken Company and the Company in relation to any matter arising out of this Agreement, the parties agree to enter into negotiations in good faith to try to resolve the dispute. Either party may initiate the negotiations by advising the other party in writing.

The party who initiates the resolution procedures must name its representative in the negotiations when giving written advice to the other party. The other party must then reply in writing within 5 working days to the initiating party naming its representative in the negotiations. Each representative must have authority from the party he or she is representing to settle the dispute. Within 5 working days of both parties having been advised of the other party's representative, the representatives must enter into open and frank discussions to try to resolve the dispute. The commencement of this discussion is deemed to be the negotiations being initiated.

If the dispute has not been settled within 20 working days from the date that negotiations were initiated, the parties will try to settle the dispute by mediation before resorting to arbitration. Either party may initiate mediation by giving 5 working days written notice to the other party. The mediator shall be agreed on by the parties, but if the parties cannot agree on one within 10 working days after the mediation has been initiated then the mediator shall be appointed by the President of the Auckland District Law Society.

If the dispute has not been settled within 20 working days after the appointment of a mediator by agreement or by the President of the Auckland District Law Society, or within a longer period agreed on in writing by the parties, then the parties agree to refer the dispute to arbitration in accordance with the Arbitration Act 1996 (or any statutory modification or amendment to that Act). Either party may commence the arbitration by giving written notice to the other stating the subject matter and details of the dispute and that party's desire to have the dispute referred to arbitration. The arbitration shall be conducted by one arbitrator agreed by the parties. Failing agreement on an arbitrator, the arbitrator shall be appointed by the President of the Auckland District Law Society. The decision of the arbitrator shall be final and binding on the parties and the costs of the arbitrator shall (subject to any award by the arbitrator) be borne equally by the parties.

During the resolution of any dispute, the parties shall continue to perform their obligations under the agreement as far as possible as if no dispute had arisen, pending final settlement of the dispute.

Nothing in this clause shall preclude either party from taking immediate steps to seek equitable relief before a New Zealand court.

## **9. Confidentiality**

The Fake Chicken Company and the Company agree that each party shall:-

Not use, disclose, reproduce or otherwise make available, proprietary information (including firewall, network or host configurations) provided by the other party to any person, firm or enterprise (other than each party's employees or agents who have a need to know such information for the purposes of the Agreement), unless specifically authorized in writing to do so by the other party.

Exercise all due care and diligence and take all reasonable precautions to prevent any unauthorized use or any proprietary information. Such precautions shall at least be as careful as the recipient for its own confidential information.

Indemnify and keep indemnified the other party against damage or loss suffered and arising from unauthorized disclosure of proprietary information by any of its employees or agents.

Both parties shall keep confidential the terms of this Agreement and all data and other information which comes into their possession pursuant to, or as a result of, or in the performance of this Agreement and shall not divulge such information to any third party without the prior written consent of the other.

The Fake Chicken Company will indemnify and keep the Company indemnified against all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses (including all legal costs and expenses on a solicitor and own Company basis) (collectively called “Action”) suffered or incurred by the Company to the extent such arises out of, or in connection with, any claim that the Company’s authorized use of the Services or any produce of the Services, constitutes a breach of an existing patent, copyright, trade secret or other proprietary right provided that:-

- a) Company, at the request of The Fake Chicken Company, affords all reasonable assistance to The Fake Chicken Company in defending or settling the Action and makes its employees available to give statements, advice and evidence as The Fake Chicken Company may reasonably request, subject to Company being reimbursed for all reasonable costs and expenses occasioned by Company’s co-operation in such defences.
- b) The Fake Chicken Company is notified promptly in writing of any Action and is given complete authority and information required for the conduct of the same;
- c) The Fake Chicken Company having the sole control of the conduct of any Action and all negotiations for its settlement or compromise;
- d) Company ceases using the infringing item until The Fake Chicken Company obtains a license for the Company to use the item, or modifies it to become non-infringing (without substantial loss of functionality or performance).

**10. Consumer Guarantees Act**

The Company agrees that the goods or services supplied by The Fake Chicken Company are obtained for business purposes, and that the Consumer Guarantees Act 1993 does not apply.

**11. Termination**

Either party may terminate this Agreement by notice in writing if the other party materially breaches this Agreement and does not remedy the default or put all reasonable steps in place to prevent the default from recurring, within 30 days after receiving notice of default from the terminating party. If a breach is alleged, termination may not occur unless the parties have used all practicable steps and the dispute resolution procedure through to conclusion of mediation at least.

**The Company may terminate the Agreement**

If the service is no longer required the Company may terminate the Agreement by giving thirty (30) days notice.

**The Fake Chicken Company may terminate the Agreement**

The Fake Chicken Company may immediately terminate this Agreement by written notice if the other party becomes insolvent or goes into receivership or liquidation.

If the service is no longer required the Company may terminate the Agreement by giving thirty (30) days notice.

Termination will not affect the rights of the parties to seek legal redress in the event of any breach of this Agreement.

**12 Force Majeure**

If either party is unable to perform its obligations under this agreement because of any Force Majeure event, the party unable to perform shall promptly give written notice to the other party. The “disadvantaged party” may, at its option, so long as such inability to perform continues;

- a) Obtain such performance at its own expense from other sources, and/or
- b) Suspend the application of this Agreement including any payment or performance obligations relating to such Force Majeure period.

Neither party shall be liable to the other for damages to other claims resulting from a Force Majeure event or related lack of performance.

An event that would or could otherwise constitute a Force Majeure event for the purposes of this Agreement, is not a Force Majeure event which can be relied on by a party to the extent that:

- a) That event is constituted by the insolvency of either party or a sub-contractor, or lack of funds for any other reason; or
- b) The impact or the event itself could have been prevented or mitigated by steps which were reasonable taking into account the obligation to be met,
- c) That event is constituted by industrial labour or personnel dispute involving The Fake Chicken Company, its sub-contractors or their respective employees.

If the impact of the Force Majeure continues for more than 90 days without substantial performance of this Agreement being able to resume, either party may terminate this Agreement by giving 7 days written notice to the other.

### **13 Limitation of Liability**

Under no circumstances shall either party, their employees, or agents be liable to the other in contract, tort (including negligence or, to the extent, permitted by law, breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatsoever.

In this clause 13 “negligence” (without limiting this term) includes any act resulting wholly or partly from any error of fact, law or judgment.

Each provision of this clause 13 and each protection given to either party by any provision of this clause 13 is to be construed as a separate limitation applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances.

The provisions of clause 13 shall survive the termination of this Agreement.

### **14. Delay, Concession, or Waiver**

Delay, concession or waiver by either party in enforcing against the other any term or provision of this Agreement shall not prejudice or restrict the rights of that party, nor shall any delay, concession or waiver establish or operate as a waiver or precedent in respect of any subsequent breach of this Agreement.

### **15. Ownership**

Loaned Goods will remain the property of the company that loaned them and must be returned upon request within five working days of the request being issued.

### **16. Copyright**

Ownership in copyright in all programmes, documents and electronic forms supplied to the Company by The Fake Chicken Company shall remain the property of The Fake Chicken Company. The Company may use these programs, documents and electronic forms on the terms and conditions of the licences granted by The Fake Chicken Company. If the copyright is owned by The Fake Chicken Company, the Company has a licence to use, for its internal business purposes while this Agreement remains in force.

### **17. Software Licences**

The Company shall ensure that The Fake Chicken Company staff have the right to use third party and Company software for support purposes if required.

The Fake Chicken Company shall ensure that the Company has the right to use third party and The Fake Chicken Company software for the purposes stated in this Agreement.