



NETSEC LIMITED Consulting Services Agreement

This Consulting Services Agreement ("Agreement") is made between NETSEC LIMITED and _____, as of _____, ("Effective Date").

This Agreement establishes the mutually agreeable terms and conditions under which NETSEC LIMITED shall perform Services to Customer detailed in an attached Statement of Work.

1. Definitions

- 1.1 "**Services**" (sometimes referred to as "Work") refers to such activities as analysis, design, planning, development, consulting, implementation, education, training and project management as described in a Statement of Work. Services may also include other types of services described more specifically in a Statement of Work.
- 1.2 "**Statement of Work**" means the Quotations provided (when required) which describes a specific project, engagement or assignment ("**Project**") for which NETSEC LIMITED will provide Services to Customer. The Statement of Work should address at least the following areas: scope of Services; price, payment and delivery schedules; and Project representatives.

2. NETSEC LIMITED obligations

- 2.1 NETSEC LIMITED will use reasonable commercial efforts to perform the Services described in the Statement of Work in accordance with the Terms of this Agreement.
- 2.2 Unless otherwise agreed, Services shall be performed during NETSEC LIMITED's normal business hours.
- 2.3 NETSEC LIMITED shall use reasonable commercial efforts to perform the Services in accordance with the delivery schedule specified in each Statement of Work.
- 2.4 NETSEC LIMITED may select qualified and reputable subcontractors to perform Services.

3. Customer obligations

- 3.1 Customer shall comply with the general obligations specified below together with any specific Customer obligations described in the Statement of Work, in a timely manner.
- 3.2 Customer acknowledges that NETSEC LIMITED's ability to deliver Services is dependent upon Customer's full and timely cooperation with NETSEC LIMITED, as well as the accuracy and completeness of any information and data Customer provides to NETSEC LIMITED. Therefore, Customer shall:
 - 3.2.1 Provide NETSEC LIMITED with access to, and use of, all reasonably required information, data, documentation, computer time, facilities, working space and office services.
 - 3.2.2 Appoint a representative who shall provide professional and prompt liaison with NETSEC LIMITED, have the necessary expertise and authority to commit Customer, be



available at all times when NETSEC LIMITED's personnel are at the Customer's site (or designate an alternate with the same level of authority in the event of unavailability caused by illness or other valid reasons), and meet with NETSEC LIMITED's representative when required, to review progress and resolve any issues relating to the Services.

- 3.3 Customer shall be responsible for maintaining an external procedure for reconstruction of lost or altered files, data or programs to the extent deemed necessary by Customer, and for actually reconstructing any such materials.
- 3.4 Customer shall be liable for any delays to the delivery schedule specified in the Statement of Work caused by Customer or resulting from Customer's failure to fulfill any of its obligations. NETSEC LIMITED may, with prior notice, charge Customer for any additional charges or losses incurred by NETSEC LIMITED as a result of such delays, and may adjust the affected delivery schedule accordingly.

4. Price and payment

- 4.1 Prices for Services will be charged at \$150 + GST per hour & \$50 + GST per Travel per job in lieu of and/or in conjunction the Statement of Work: Prices quoted in the Statement of Work are valid for 7 days. Prices include all materials and labour, but do not include ongoing service, training, or value added service. Such items, when applicable, shall be added to NETSEC LIMITED's invoices. Travel, accommodation, and meal expenses, as applicable, are extra and are based on actual expense.
- 4.2 Payment terms are subject to NETSEC LIMITED's credit approval. NETSEC LIMITED shall issue invoices in accordance with the payment schedule specified in the Statement of Work. Customer shall pay all invoices by the next 20th of the Month from the date of invoice. NETSEC LIMITED may change credit terms upon reasonable notice at any time when Customer's financial condition, previous payment record, or the nature of Customer's relationship with NETSEC LIMITED warrants.
- 4.3 Should any sum due to NETSEC LIMITED remain unpaid after 60 days from the date of invoice, NETSEC LIMITED may terminate this Agreement pursuant to Section 10.2.2 and discontinue performance under any other agreement with Customer. The Customer will also be liable for interest on the outstanding amount, and any debt recovery costs incurred

5. Acceptance

- 5.1 Acceptance of Services will occur upon NETSEC LIMITED's performance of such Services. Correction of any non-conformance will be performed pursuant to Section 6 below.

6. Warranties

- 6.1 NETSEC LIMITED shall perform Services in accordance with generally recognized commercial practices and standards. NETSEC LIMITED shall re-perform any Services not performed in accordance with the foregoing warranty, provided that NETSEC LIMITED receives written notice from Customer within 14 days after such Services were performed.
- 6.2 The above warranties are exclusive and no other warranty, whether written or oral, is expressed or implied. NETSEC LIMITED specifically disclaims the implied warranties of merchantability and fitness for a particular purpose.



7. Intellectual property rights

- 7.1 All copyrights and other intellectual property rights existing prior to the Effective Date shall belong to the party that owned such rights immediately prior to the Effective Date.
- 7.2 Neither party shall gain by virtue of this Agreement any rights of ownership of copyrights, patents, trade secrets, trademarks or any other intellectual property rights owned by the other.
- 7.3 NETSEC LIMITED shall own all copyrights, patents, trade secrets, trademarks and other intellectual property rights, title and interest in or pertaining to all works (including computer programs) developed by NETSEC LIMITED for purposes of this Agreement.

8. Confidential information

- 8.1 NETSEC LIMITED and the Customer agree to hold as confidential all matters discovered during the course of this agreement which represent trade secrets, proprietary information, and/or business confidential information disclosed by NETSEC LIMITED or the Customer in the normal course of business or as a result of this agreement. The trust shall remain in force in perpetuity and no disclosures may be made of these matters to the detriment of NETSEC LIMITED or the Customer, except by first receiving written release to disclose or unless directed to disclose during the normal course of performing assigned tasks under this agreement.

Information which exists in the public domain, or which is independently discoverable by the public, is exempt from this confidentiality clause.

9. Remedies and liabilities

- 9.1 The remedies in this Agreement are Customer's sole and exclusive remedies.
- 9.2 To the extent NETSEC LIMITED is held legally liable to Customer, NETSEC LIMITED's liability is limited to: (a) Payments described in Sections 4 above, this Section 9, and Section 10.4 below; (b) Damages for bodily injury; and (c) Direct damages to tangible property up to a limit of \$500,000; d) Other direct damages for any claim based on a material breach of any other term of this Agreement, up to a maximum of \$500,000 or the amounts paid to NETSEC LIMITED under this Agreement, whichever is less.
- 9.3 Notwithstanding Section 9.2 above, in no event will NETSEC LIMITED or its affiliates, subcontractors and suppliers be liable for any of the following: (a) Actual loss or direct damage that is not listed in Section 9.2 above; (b) Damages for loss of data, or Software restoration; (c) Damages relating to Customer's procurement of substitute products or services (i.e., "cost of cover"); or (d) Incidental, special or consequential damages, including downtime costs or lost profits but excluding damages for bodily injury.

10. Term and termination

- 10.1 This Agreement shall commence on the Effective Date and shall continue in force until termination according to the terms of this Agreement.
- 10.2 This Agreement may be terminated immediately upon notice in writing:
 - 10.2.1 By either party if the other party is in material breach of any of its obligations hereunder and fails to remedy such breach within 30 days of receipt of a written notice by the other party which specifies the material breach.
 - 10.2.2 By either party if the other party has a receiver appointed, or an assignee for the benefit



of creditors or in the event of any insolvency or inability to pay debts as they become due by the other party, except as may be prohibited by applicable bankruptcy laws.

- 10.3 Either party may terminate this Agreement for convenience. Any termination of this Agreement shall not relieve either party of its obligations under the Statement of Work in effect on the date of termination of this Agreement, unless otherwise mutually agreed to in writing.
- 10.4 Upon termination of the Statement of Work, Customer shall pay NETSEC LIMITED for all Work performed and charges and expenses incurred by NETSEC LIMITED up to the date of termination, and Customer shall receive all work in progress for which Customer has paid. Should the sum of such amounts be less than any advance payment received by NETSEC LIMITED, NETSEC LIMITED shall refund the difference within 30 days of receipt of an invoice from Customer.
- 10.5 Sections 4, 6, 7, 8 and 9 above, and Section 11 below, shall survive termination of this Agreement.

11. General

- 11.1 Standard Products: This Agreement covers standard NETSEC LIMITED hardware and software products sold or licensed to Customer. Unless stated in individual Customer's purchase agreements or, in the absence of a signed purchase agreement, NETSEC LIMITED's Terms and Conditions of Sale and Service.
- 11.2 Health and Safety: NETSEC LIMITED and any of its subcontractors shall, when at the Customer's site, conduct their activities so that their equipment, working conditions and methods are safe and without risk to health for their own and Customer's employees as well as for any other users of the Customer's site.
- 11.3 Non-Restrictive Relationship: NETSEC LIMITED may provide the same or similar Consulting Services to other customers. Customer shall ensure that NETSEC LIMITED is made aware of and NETSEC LIMITED shall comply with any special regulations applicable prior to commencement of any work at the Customer's site.
- 11.4 No Joint Venture: Nothing contained in this Agreement shall be construed as creating a joint venture, partnership or employment relationship between the parties hereto, nor shall either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.
- 11.5 No Assignment: Except with respect to NETSEC LIMITED's rights regarding the use of subcontractors, neither party may assign any rights or obligations under this Agreement or Statement of Work without the prior written consent of the other party.
- 11.6 Extraneous circumstances: Neither party shall be liable for performance delays or for non-performance due to causes beyond its reasonable control.
- 11.7 Notices: All notices required under or regarding this Agreement or the Statement of Work shall be in writing and shall be considered given upon personal delivery of a written notice to the NETSEC LIMITED representative or Customer representative designated in the Statement of Work, or within five days of mailing, postage prepaid and appropriately addressed.
- 11.8 Waiver: Neither party's failure to exercise any of its rights under this Agreement shall constitute or be deemed a waiver or forfeiture of those rights.



NETSEC Ltd

Networking & Security Solutions

- 11.9 Severability: If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected.
- 11.10 Precedence: In the event of conflict between the provisions of this Agreement and any attached exhibit or Statement of Work, the provisions of this Agreement shall to the extent of such conflict take precedence.
- 11.11 Non-Hiring: CUSTOMER SHALL NOT, DURING THE TERM OF THIS AGREEMENT OR FOR THREE YEARS FOLLOWING ITS TERMINATION OR COMPLETION, SOLICIT OR HIRE AN EMPLOYEE OF NETSEC LIMITED OR A SUBCONTRACTOR OF NETSEC LIMITED WHO HAS PROVIDED SERVICES TO CUSTOMER PURSUANT TO THIS AGREEMENT.
- 11.12 Entire Agreement: This Agreement and its exhibits and Statement of Work constitute the entire agreement between NETSEC LIMITED and Customer and supersede any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this Agreement. Customer's additional or different terms and conditions shall not apply. The terms and conditions of this Agreement may not be changed except by an amendment signed by an authorized representative of each party.
- 11.13 Applicable Law: This Agreement is made under and shall be construed in accordance with the laws of New Zealand.

Signed for and on behalf of

By: _____
Name: _____
Title: _____
Date: _____

**Signed for and on behalf of
NETSEC LIMITED**

By: _____
Name: _____
Title: _____
Date: _____