

## 1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “Supplier” means ND Kiwi Tours Ltd T/A either ND Kiwi Tours or Kate’s Kabs, its successors and assigns or any person acting on behalf of and with the authority of ND Kiwi Tours Ltd T/A either ND Kiwi Tours or Kate’s Kabs.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:  
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and  
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and  
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and  
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Incidental Items” means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Supplier in the course of it conducting, or supplying to the Customer, any Services.
- 1.5 “Services” means all Services supplied by the Supplier to the Customer at the Customer’s request from time to time.
- 1.6 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.8 “Price” means the price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between the Supplier and the Customer in accordance with clause 5 of this Contract.

## 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by the Supplier.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.5 The Customer acknowledges that:  
(a) provision of the Services may be subject to the Supplier’s minimum passenger numbers;  
(b) if the Customer is using courtesy transfers service, the Customer is required to be ready ten (10) minutes prior to published departure time, as such times may vary due to unforeseen circumstances;  
(c) the Supplier reserves the right to cancel or to vary the content of the Services should the need arise;  
(d) group discounts may apply, at the Supplier’s sole discretion;  
(e) other operators’ products and services may be advertised in good faith in any promotional or advertising material of the Supplier. However, the Supplier shall not be responsible for the conduct of these operators or for loss or damage to property, personal injury, death or delay incurred by the Customer or any third party by the use of such products and services.
- 2.6 The Customer agrees that upon making a booking they shall notify the Supplier of any current or previous medical conditions, and/or special requirements which may possibly impact on whether or not the Supplier is prepared to provide the Services (this shall be taken to include, but shall not be limited to, asthma, diabetes, heart conditions, allergies or behavioural challenges, etc.). The Supplier shall have no liability to the Customer whatsoever should the Customer fail to comply with this clause.
- 2.7 Both parties shall not use, divulge or communicate to any person any Confidential Information, and shall exercise good and proper judgement and discretion to limit disclosure of any Confidential Information (or any part of it) to its contractors, employees, agents and Customers, concerning this Contract between the Customer and the Supplier, unless such use or disclosure is necessary for performance of their obligations under this Contract. The obligations of this clause 2.7 shall survive termination or cancellation of this Contract.

## 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):  
(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or  
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

## 4. Change in Control

- 4.1 The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer’s failure to comply with this clause.

**5. Bookings and Tickets**

- 5.1 No bookings are confirmed until received by the Supplier and paid for in full in accordance with clause 6.10; a paid ticket will always board in preference before a reservation booking or unpaid ticket.
- 5.2 Online bookings must be entered in and accepted on the Supplier's booking system twenty-four (24) hours before departure for confirmation to travel.
- 5.3 Tickets are:  
(a) issued to and accepted by the person named in the ticket ("**Passenger**"), subject to the relevant By-Laws, Regulations and these terms and conditions.  
(b) non-transferable.
- 5.4 Tickets issued at pension / concessional fare rates are valid for pensioners only, and the Passenger must produce identification, pension card and supply pension number upon request. They are also obliged to carry the same whilst travelling on the coach.
- 5.5 The Supplier shall not be liable to the Customer in the event of the loss of or theft of their ticket or if it is honoured when presented by a person other than the Customer or if the ticket is mislaid.

**6. Price and Payment**

- 6.1 At the Supplier's sole discretion the Price shall be either:  
(a) as indicated on any invoice provided by the Supplier to the Customer; or  
(b) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services (including, but not limited to, as a result of increases to the Supplier in the cost of fuel or labour, or due to unforeseen circumstances (such as additional Passengers), etc.) which are beyond the Supplier's control and will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 At the Supplier's sole discretion a deposit may be required.
- 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:  
(a) before delivery of the Services;  
(b) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is delivered to the Customer's address or address for notices;  
(c) the date specified on any invoice or other form as being the date for payment; or  
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.
- 6.5 Payment may be made by cash, cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the Supplier.
- 6.6 The Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for providing the Supplier's Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.9 The Customer acknowledges and agrees that the Customer's obligations to the Supplier for the supply of Services shall not cease until:  
(a) the Customer has paid the Supplier all amounts owing for the particular Services; and  
(b) the Customer has met all other obligations due by the Customer to the Supplier in respect of all contracts between the Supplier and the Customer.
- 6.10 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's ownership or rights in respect of the Services shall continue.

**7. Provision of the Services**

- 7.1 The Supplier may use, or change, the nominated mode of transport for the journey.
- 7.2 The Supplier may, in its sole discretion, without liability therefore, cancel in whole or in part any of the Services shown in the published timetables or vary the stops at which the coaches will pick up or set down Passengers.
- 7.3 The Supplier shall be under no obligation or liability whatsoever to any person as a result of: any inaccuracy, error or mis-description contained in any travel or tour brochure; any change in any pricing; or withdrawal of or failure to provide any service set out in such travel or tour brochure.
- 7.4 Whilst every effort is made to provide the Services, the Supplier accepts no responsibility for mechanical, electrical or breakdowns caused by natural disasters. The Supplier will endeavour to have the coach repaired in time for the booking, but in the unlikely event that repairs cannot be made in time the Supplier will attempt to provide a similar alternative vehicle at the Supplier's discretion. In failing this, a full refund will be made.

- 7.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action/riot/civil commotion, robbery, fire, flood, storm, stoppages or restraint of labour from whatsoever cause whether partial or general, or traffic conditions, adverse weather, road works and other conditions beyond the reasonable control of either party, and the Supplier:
- (a) shall not be liable for any claims for non-fulfilment or late provision of the Services delayed in consequence of unforeseen events under this clause 7.5 or adverse non-foreseeable weather conditions; and
  - (b) shall be entitled (at its option) to terminate this Contract (as per clause 11) or extend the time for performance.
- 7.6 The Supplier will endeavour to meet all given times, however times may vary due to driving conditions, and the Supplier shall not be liable for any consequence, loss or damage whatsoever arising out of or from any cancellation, or any variation in the time of arrival at or departure from any stops of any coach.

## **8. Travel Conditions**

- 8.1 Whilst participating in any tour or travelling on the coach/vehicle, the Customer acknowledges and agrees that:
- (a) they will be responsible for the conduct of the Passengers in the coach at all times; and
  - (b) the Passengers are expected to be clean, tidy and well behaved; and
  - (c) smoking, consumption of alcohol and/or illicit drugs or non-prescribed drugs is prohibited; and
  - (d) hot greasy foods and milk products are prohibited on board the coach/vehicle. If any other food or drink is consumed, all rubbish must be disposed of in the bins provided or removed from the coach/vehicle by the Customer and/or Passenger; and
  - (e) no animals or dangerous goods (including but not limited to, flammable liquids, firearms or explosives) shall be carried or accepted as personal luggage, personal possession or as freight on any coach/vehicle; and
  - (f) failure by the Customer/Passenger to comply with the above sub-clauses 8.1(b) to 8.1(e) and the coach requires cleaning following the provision of the Services, the Customer shall be liable and reimburse the Supplier all cost associated; and
  - (g) as per current legislation, all Passengers must occupy a seat and be seat-belted where seat belts are fitted; and
  - (h) where an accident results from actions of the Passenger, the Customer shall be responsible for the payment of any insurance excess and/or associated costs that may be charged to the Supplier; and
  - (i) the Supplier reserves the right to either refuse Services to any non-compliant person/s, or terminate the Services, without refund, in the event of any non-compliance of the Customer (or Passengers) of these terms and conditions; and
- 8.2 The Supplier reserves the right for reasons of health and safety, to require children under the age of ten (10) years to travel accompanied by a parent or guardian, and to wear reasonable attire. The Supplier will accept children between the ages of ten (10) and fifteen (15) years travelling without a parent or guardian in accordance with the Supplier's policy from time to time. This includes the tender of duly signed authorisation form.
- 8.3 Children under four (4) years old may travel free of charge. Car seats can be taken on board and belted to the seat of the coach/vehicle.
- 8.4 The Customer acknowledges and accepts that:
- (a) the free luggage allowance is limited to two (2) items of luggage per Passenger with a maximum of fifty kilograms (50kg) per Passenger, and any other will be regarded as freight with additional costs being applicable;
  - (b) luggage will only be accepted in bona-fide packaging. Bicycles and surfboards will be accepted if space permits;
  - (c) Passengers are responsible for labelling and handling of their own luggage. Handbags and briefcases are the only luggage permitted within the passenger compartment, valuables must be kept with the Passenger;
  - (d) the maximum liability for damaged or lost uninsured luggage is one hundred and fifty (\$150.00) for any or all of the luggage accompanying a Passenger.
- 8.5 All Passengers must be at their designated departure point at least fifteen (15) minutes prior to the allotted departure time.

## **9. Defective Services**

- 9.1 The Customer shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Supplier of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 9.2 For defective Services, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Services or rectifying the Services provided that the Customer has complied with the provisions of clause 9.1.

## **10. Default and Consequences of Default**

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 10.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 10.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 10, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 10.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by the Supplier;

- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 11. Rescheduling, Itinerary Changes and Cancellation

- 11.1 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Services to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.
- 11.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Services. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.3 If the Customer cancels the booking for which the Supplier is providing its Services then the Customer shall be liable to the Supplier for any losses or costs incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of, or as a result of the cancellation, notwithstanding that at the Supplier's sole discretion a cancellation fee shall apply to all ticket bookings as follows (or may vary depending on the Services):
  - (a) twenty-five percent (25%) of the Price if cancelled less than seven (7) days, but more than three (3) days of the arranged departure date; or
  - (b) fifty percent (50%) of the Price if cancelled less than three (3) days of the arranged departure date; or
  - (c) seventy-five percent (75%) of the Price if cancelled less than twenty-four (24) hours of the arranged departure date; and
  - (d) any cancellation requests must be submitted in writing before any form of refund will be considered. Allowance will be made, whenever possible to reschedule a cancelled or postponed tour subject to availability.
- 11.4 The Supplier shall not grant any refund of the Price where the Customer fails to board the coach/vehicle.
- 11.5 Applicable cancellation fees are detailed on the Supplier's marketing material; otherwise the cancellation fees will be as per clause 11.3.

## 12. Privacy Policy

- 12.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information as defined and referred to in clause 12.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 12.2 Notwithstanding clause 12.1, privacy limitations will extend to the Supplier in respect of Cookies where transactions for purchases/orders transpire directly from the Supplier's website. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
  - (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information ("collectively Personal Information")In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Supplier's website.
- 12.3 The Customer authorises the Supplier or the Supplier's agent to:
  - (a) access, collect, retain and use any information about the Customer;
    - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by the Supplier from the Customer directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 12.4 Where the Customer is an individual the authorities under clause 12.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 12.5 The Customer shall have the right to request the Supplier for a copy of the Personal Information about the Customer retained by the Supplier and the right to request the Supplier to correct any incorrect Personal Information about the Customer held by the Supplier.

## 13. Service of Notices

- 13.1 Any written notice given under this Contract shall be deemed to have been given and received:
  - (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;

- (e) if sent by email to the other party's last known email address.
- 13.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 14. Trusts**
- 14.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Customer will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 15. General**
- 15.1 If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by the Supplier to the Customer.
- 15.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga Courts of New Zealand.
- 15.4 the Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 15.5 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 15.6 The Customer cannot licence or assign without the written approval of the Supplier.
- 15.7 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 15.8 The Customer agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Services to the Customer.
- 15.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 16. Personal Property Securities Act 1999 ("PPSA")**
- 16.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Incidental Items and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- 16.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of the Supplier.
- 16.3 The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 16.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 16.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 16.1 to 16.5.
- 16.7 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.