

TERMS AND CONDITIONS

1 INTERPRETATION

1.1 **Definitions:** In these Terms, the following terms have the stated meaning:

Additional Services: any additional services to be provided by MirrorWave which the parties agree after the date of the Statement of Work.

Aggregated Data: Client Data in an aggregated form which does not directly include the Client's name, the names of any of the Client's Permitted Users, or the name or organisation of any Program Participant.

Client: the person or organisation specified in the Statement of Work.

Client Data: the raw program response data collected from Program Participants and processed by the Software in the course of MirrorWave providing the Services.

Confidential Information: any and all information (whether that information is oral, written or embodied in any other physical or electronic form) which is obtained directly or indirectly from another party under or in connection with these Terms, and which is marked or stated to be confidential or which by its nature is reasonably intended to be confidential, including information relating to the financial, strategic, customers, suppliers, research and development, operational, legal or marketing affairs of a party. For the avoidance of doubt, "Confidential Information" excludes all Aggregated Data.

Core Feedback Management Services: the carrying out of questionnaire pulses of the agreed scope from the Program Participants and the uploading of the results of those questionnaire pulses to the Software, as specified in more detail in the Statement of Work.

End Date: the end date specified in the Statement of Work.

Fees: the charges payable by the Client for the Services as set out in the Statement of Work or otherwise agreed by the parties.

GST: good and services tax imposed under the New Zealand Goods and Services Act 1985.

Intellectual Property: any and all intellectual and industrial property rights throughout the world including but not limited to rights in respect of, or in connection with: copyright (including future copyright and rights in the nature of, or analogous to, copyright); trade marks; inventions (including patents); any confidential information; service marks; designs; and whether or not existing now and whether or not registered or registrable and includes any right to apply for the registration of those rights and includes all renewals and extensions.

Knowledge Base: the electronic repository containing documentation and other information explaining how to use the Software and obtain the benefit of the Services.

Methodology: the stakeholder engagement and feedback management system, business method and documentation, created and developed by MirrorWave (as amended and updated from time to time) and used by MirrorWave to provide the Services.

MirrorWave: MirrorWave Limited, company number 2202514.

Permitted User: an individual who has been authorised to access the Software on the Client's behalf in accordance with these Terms.

Personal Data: any information relating to an identified or identifiable individual, regardless of the media in which it is contained.

Privacy and Information Security Requirements: the New Zealand Privacy Act 1993 and any other privacy laws and/or regulations relating to the collection, storage or use of the Personal Data.

Program Participant: an individual stakeholder of the Client who will be included in each Wave, as nominated by the Client and agreed by MirrorWave.

Sales Tax: goods and services tax, value added tax or equivalent tax payable under any applicable law.

Services: the provision of access to and use of the Software via the Site, the other services set out in the Statement of Work, including the Core Feedback Management Services, the Support Services and any Additional Services.

Site: the website operated by MirrorWave including the public areas of the website available to any user without logging in to the Software.

Software: the MirrorWave Control Panel and its various integrated software applications as updated from time to time and made available via the Site.

Statement of Work: an agreement between MirrorWave and the Client for the supply of Services that is governed by these Terms in accordance with clause 2.

Start Date: the start date set out in the Statement of Work.

Support Services: any support services set out in the Statement of Work.

Terms: any Statement of Work and these terms and conditions.

Wave: a regular questionnaire pulse of the Program Participants using the Software and the Services. A wave commences two months prior to the wave send communications being sent.

1.2 **Interpretation:** In these Terms:

- a references to:
 - i a clause is to a clause in these Terms;
 - ii a person includes bodies corporate, unincorporated associations or partnerships;
 - iii "including" and similar words do not imply any limitation;
 - iv a statute includes references to that statute as amended or replaced from time to time; and
 - v "\$" or "dollars" are to the currency used in the Statement of Work or, if no currency is specified, to New Zealand currency;
- b If there is any conflict between a Statement of Work and these terms and conditions, these terms and conditions will prevail, unless expressly stated otherwise.
- c the headings in these Terms are for convenience only and have no legal effect; and
- d the singular includes the plural and vice versa.

2 APPLICATION OF TERMS

These Terms apply to each Statement of Work which:

- a states that it is subject to these Terms; and
- b is signed by MirrorWave and the Client.

3 FEES

- 3.1 **Fees:** The Client must pay the Fees to MirrorWave in accordance with the Statement of Work.
- 3.2 **Invoices:** MirrorWave must invoice the Client in accordance with the Statement of Work.
- 3.3 **Payment of Fees:** All Fees payable under the Statement of Work:
 - a are exclusive of any GST, sales tax or value added tax which, where applicable, must be paid by the Client to MirrorWave in addition to the Fees; and
 - b must be paid by the due date, failing which:
 - i MirrorWave may charge interest on any outstanding amount on a daily basis at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by MirrorWave's primary trading bank as at the due date (or if MirrorWave's primary trading bank ceases to quote such a rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per

annum, from the due date until the date of actual payment;

- ii if MirrorWave incurs any costs or expenses by reason of the Client's failure to pay any amount required to be paid by it to MirrorWave by the due date, the Client must reimburse MirrorWave for all costs and expenses that MirrorWave incurs in connection with any actions or proceedings for recovery of such amounts, including all reasonable accounting costs, attorney costs (on a solicitor and own client basis), court costs and debt collection costs; and
- iii if such Fees are overdue by more than 14 days (and without limiting clause 3.2), MirrorWave may suspend the provision of any Services and/or the Client's use of the Software until the Client has made full payment of all overdue Fees (together with any interest and recovery costs under paragraphs (i) and (ii) above).

3.4 **Time and materials:** To the extent that the Statement of Work states that any Fees will be calculated on a time and materials basis, or if the parties agree that in respect of any Additional Services the Fees will be calculated on a time and materials basis:

- a the Client must pay MirrorWave at the rates specified in the Statement of Work or otherwise agreed by the parties or if no rates are agreed at MirrorWave's standard hourly rates for all time actually spent by its personnel performing the relevant Services; and
- b MirrorWave must maintain timesheets recording the time spent by its personnel performing any of the Services that are chargeable on a time and materials basis each day and must make these time sheets available to the Client on request.

3.5 **Expenses:** The Client must reimburse MirrorWave for expenses incurred by MirrorWave in the provision of the Services to the extent set out in the Statement of Work.

4 TERM

- 4.1 **Term:** The Statement of Work commences on the Start Date and continues for the period specified in that Statement of Work.
- 4.2 **Extension of term:** The Statement of Work is to be extended by written agreement. Failing such agreement being received by MirrorWave, the agreement will continue on a wave by wave basis until notice is received.

5 SOFTWARE

5.1 **Modified and updated Software:** The Client accepts and agrees that MirrorWave may amend, update, and/or modify the Software at any time in MirrorWave's discretion. The Client's rights under

these Terms will continue to apply to the Software as modified and updated.

- 5.2 **Compliance by Client:** The Client must comply with all operating procedures, instructions or acceptable use policies in respect of the Software notified to the Client by MirrorWave from time to time.
- 5.3 **Permitted User:** No person may use or attempt to use the Software except a user authorised by the Client to access the Software on behalf of the Client (**Permitted User**).
- 5.4 **Compliance by Permitted User and Sublicensee:** The Client must ensure that each Permitted User, and any entity that accesses the Software in connection with clause 5 of these Terms (**Sublicensee**), complies with these Terms and any other reasonable condition MirrorWave notifies to the Client. A breach of these Terms by a Permitted User or Sublicensee will be deemed to be a breach by the Client. In addition (and without prejudice) to MirrorWave's rights against the Client, MirrorWave may suspend or terminate any Permitted User's or Sublicensee's access to the Software if MirrorWave has reasonable grounds to suspect any breach of these Terms by that Permitted User or Sublicensee.
- 5.5 **Security:** The Client must ensure that all usernames and passwords required to access the Software are kept secure and confidential.
- 5.6 **Use:** The Client must only use the Software for the Client's internal business purposes.
- 5.7 **Unlawful use of Software:** The Client must not use the Software for any illegal purpose or activities, or for the transmission or storage of material which is unlawful, defamatory, objectionable or harassing, or contains viruses or that which may infringe the Intellectual Property of any third party.
- 5.8 **Restrictions:** When accessing and using the Software, the Client must:
- not attempt to undermine the security or integrity of MirrorWave's computing systems or networks or, where the Software is hosted by a third party, that third party's computing systems and networks;
 - not use, or misuse, the Software in any way which may impair the functionality of the Software or Site, or other systems used to deliver the Software or impair the ability of any other user to use the Software or Site;
 - not attempt to view, access or copy any materials or data other than that relate to the Client (i.e. not any other client of MirrorWave) and to which the Client is authorised to access;
 - not transmit, or input into the Software or the Site, any files that may damage any other person's computing devices or software;
 - not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the

Software or to operate the Site (except as is strictly necessary to use either of them for normal operation) nor communicate the same to any person nor directly or indirectly allow or cause a third party to do so; and

- notify MirrorWave if the Client has knowledge of the existence of any circumstance that may suggest that a person may have unauthorised knowledge, possession or use of any part of the Site or the Software.
- 5.9 **Breach of use of Software:** If there are reasonable grounds to believe that the Client has engaged in any unlawful or unauthorised activity, has used the Software beyond the scope of the Client's authorisation or that the Client may be in material breach of any of the restrictions in this clause 5 or any other clause of these Terms, MirrorWave may take one or more of the following actions in its absolute discretion:
- suspend the provision of the Services or any part of the Services to the Client;
 - limit or suspend the Client's access to the Software or any part of the Software;
 - terminate the Statement of Work immediately by notice to the Client in writing; and/or
 - delete, edit or remove any of the relevant material or information.

6 MIRRORWAVE'S OBLIGATIONS

- 6.1 **Duty of care:** In providing access to and use of the Software via the Site, MirrorWave must exercise that level of care, skill, prudence and foresight that would be expected of a reasonably experienced provider of a software as a service product at the date the Services are provided.
- 6.2 **Knowledge Base:** If the Services to be provided to the Client include access to the Knowledge Base, MirrorWave must maintain the Knowledge Base and make this accessible to the Client via the Software and/or the Site to assist the Client in maximising the value of the Services received.
- 6.3 **Compliance:** MirrorWave must provide the Services so as to comply with:
- the data security policy set out as Annex A to these Terms, as updated and/or amended by MirrorWave from time to time on 10 days' notice in writing to the Client; and
 - any agreed program configuration set out in the Statement of Work.
- 6.4 **Further compliance:** MirrorWave must use reasonable efforts to provide the Services so as to achieve any service levels specified in the Statement of Work.

7 ADDITIONAL SERVICES

- 7.1 **Additional Services:** The parties may agree from time to time that MirrorWave will provide Additional Services. The parties must agree the scope of any Additional Services in accordance with this clause 7.
- 7.2 **Determination of Additional Services:** The Client will provide MirrorWave with a comprehensive list of what it wishes to achieve in respect of the Additional Services. MirrorWave and the Client will then work together to prioritise and agree:
- a the scope of the Services to be provided by MirrorWave, including the technical specification of any deliverables to be produced;
 - b the key obligations on the Client to provide input, make decisions and/or take action; and
 - c an estimated timetable for the provision of the Client's input/action/decisions and the provision of the services and/or deliverables by MirrorWave.
- 7.3 **Performance of Additional Services:** MirrorWave must:
- a perform the Additional Services and deliver the deliverables, in accordance with the parties' agreement as to the matters in clause 7.2; and
 - b use reasonable endeavours to perform the Additional Services and deliver the deliverables in accordance with the agreed timetable.
- 7.4 **Charges for Additional Services:** Any Additional Services will be charged at the rate set out in the Statement of Work or, if no rate is specified, at the standard rate of the consultant involved.

8 CLIENT OBLIGATIONS

The Client must

- a comply with its obligations under the agreed program configuration set out in the Statement of Work;
- b promptly and so as not to delay the provision of the Services provide MirrorWave all information in its power to obtain which MirrorWave needs to provide the Services;
- c provide resources and suitably qualified personnel appropriate for the performance by the Client of its obligations under these Terms and the Statement of Work; and
- d assist MirrorWave in the provision of the Services by making timely decisions and providing approvals where reasonably required.

9 CONFIDENTIALITY AND DATA PROTECTION

- 9.1 **Interpretation:** For the purpose of this clause 9, "receiving party" shall mean that party receiving the

other's Confidential Information and "disclosing party" shall mean that party disclosing its Confidential Information to the other.

- 9.2 **Internal disclosure:** The receiving party may disclose the Confidential Information only to its officers, employees and professional advisors and then only such officers, employees and professional advisors to whom such disclosure is reasonably necessary, provided that such officers, employees and professional advisors are either bound by general confidentiality undertakings no less stringent than those contained in this clause 9 or agree, in writing, to be bound by the terms and conditions of this clause 9 prior to such disclosure.

9.3 Confidentiality:

- a The receiving party agrees:
 - i not to disclose the Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of these Terms;
 - ii not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of these Terms for any purpose whatsoever other than strictly in relation to these Terms; and
 - iii that the unauthorised or unlawful use or disclosure of the Confidential Information may cause irreparable loss, harm and damage to the disclosing party.
- b Accordingly, the receiving party indemnifies and holds the disclosing party harmless against any loss, action, expense, claim, harm or damage, of whatsoever nature, suffered or sustained by the disclosing party pursuant to a breach by the receiving party or any of its officers, employees or professional advisors to whom disclosure is made under these Terms.

- 9.4 **Duty of care:** The receiving party agrees to protect the Confidential Information of the disclosing party by using the same standard of care used to safeguard its own information of a confidential nature and by taking all reasonable steps to prevent any unauthorised disclosure of such Confidential Information.

- 9.5 **Return of Confidential Information:** The disclosing party may, at any time by way of written notice to the receiving party, require the receiving party to return or destroy any material containing, pertaining to or relating to Confidential Information and to expunge such confidential information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the receiving party to furnish a written statement (certified as correct by a director of the receiving party) to the effect that, upon such return, the receiving party has not retained in its possession, or under its control, either directly or

indirectly, any such material. The receiving party shall comply with all requirements in terms of this clause 9.5 within 7 (seven) days of receipt of written notice thereof.

9.6 **Permitted disclosure:** Clauses 9.1 to 9.5 will not apply to any information which:

- a is or becomes public knowledge other than through a breach of these Terms;
- b is received from a third party who lawfully acquired it and who is under no obligation regarding its disclosure;
- c is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- d is disclosed by the receiving party to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulations in force from time to time, provided that in these circumstances, the receiving party shall advise the disclosing party in writing prior to such disclosure to enable the disclosing party to take whatever steps it deems necessary to protect its interest in this regard, provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances.

10 USE OF CLIENT DATA

10.1 **Confidentiality:** Except as set out in clause 10.2 below, MirrorWave must keep all Client Data held on the Software confidential and not disclose Client Data to third parties.

10.2 **Permitted disclosure:** Notwithstanding any other provision of these Terms, MirrorWave may use, modify and disclose Client Data to third parties for the following purposes:

- a providing the Services to the Client, provided that such third parties are bound by confidentiality provisions no less restrictive than those set out in these Terms;
- b adapting, modifying and improving the Software and/or the Methodology, provided that such third parties are bound by confidentiality provisions no less restrictive than those set out in these Terms;
- c disclosing Aggregated Data to third parties;
- d engaging service providers working with MirrorWave on the operation and ongoing development of the Software and the Methodology, provided that such third parties are bound by confidentiality provisions no less restrictive than those set out in these Terms;

e in relation to the proposed purchase or acquisition of MirrorWave's business or assets, provided that such third parties are bound by confidentiality provisions no less restrictive than those set out in these Terms; or

f where required by law or any court, or in response to a request by a legitimate law enforcement agency.

10.3 **Client Data back-up:** MirrorWave agrees to take standard industry measures to back up Client Data stored on the Software. The Client acknowledges that MirrorWave will not retain back-up copies of any Client Data previously entered or stored on the Software other than the version subject to the most recent disaster recovery back-up.

10.4 **Storage of Client Data:** Notwithstanding any other provision of these Terms, the Client agrees that MirrorWave may store Client Data (including any personal information) in servers of MirrorWave's service providers, which may be located in a different country to the Client, and may access Client Data (including any personal information) in either that country, New Zealand or the Client's location from time to time.

11 INTELLECTUAL PROPERTY

11.1 **Ownership of Intellectual Property:** All existing and future Intellectual Property in the Software, the Site and the Methodology, including any modification, enhancement or derivative work made in relation to the Software, the Site or the Methodology (whether created by MirrorWave, the Client or the parties jointly), or any data or material generated by MirrorWave, or the Software, from Aggregated Data will be owned solely by MirrorWave and/or MirrorWave's licensors (if any).

11.2 **Ownership of new Intellectual Property:** All new Intellectual Property created in connection with MirrorWave providing the Services to the Client is owned solely by MirrorWave except to the extent expressly set out otherwise in the Statement of Work.

11.3 **Ownership of Client Data:** The Client owns all of the Intellectual Property in the Client Data. The Client grants to MirrorWave a worldwide, non-exclusive, fully paid up, irrevocable licence to use, copy, modify, make available and communicate Client Data for the purpose of providing the Services and complying with its obligations and exercising its rights under these Terms (including MirrorWave's use of Client Data and Aggregated Data in accordance with clause 10).

11.4 **MirrorWave indemnity:** The Client indemnifies MirrorWave against any liability, claims, costs (including the actual legal fees charged by MirrorWave's solicitors), and losses of any kind arising from any actual or alleged claim by a third party that MirrorWave's use of Client Data, including any use of the Client Data in the provision of the Services:

- a infringes a third party's Intellectual Property rights or privacy rights;

- b is defamatory, objectionable, obscene or harassing;
- c is unlawful in any way; or
- d is otherwise in breach of these Terms.

11.5 **Client indemnity:** MirrorWave indemnifies the Client against any liability, claims, costs (including the actual legal fees charged by the Client's solicitors), and losses of any kind arising from any actual or alleged claim by a third party that the use of the Software (excluding any claim that relates to any use of the Client Data by the Software) constitutes an infringement of any third party's Intellectual Property rights or privacy rights.

11.6 **Indemnity claims:** If any action is brought against a party (**Indemnified Party**) for which an indemnity may be sought from the other Party (**Indemnifying Party**) in terms of these Terms, the Indemnified Party shall: (i) allow the Indemnifying Party to assume sole control of the defence or settlement of any claim and give the Indemnifying Party all reasonable assistance in relation to the claim; and (ii) make no admission relating to the claim; and (iii) notify the Indemnifying Party in writing as soon as is reasonably practicable of any claim of which the Indemnified Party has notice.

11.7 **Use of know-how:** Despite any other provision in these Terms, MirrorWave may retain all know-how acquired in the course of providing the Services under these Terms and re-use such know-how in respect of its other clients.

12 WARRANTIES AND ACKNOWLEDGMENTS

12.1 **Purpose of business:** The Client warrants and represents that the Client is acquiring the Services for the purposes of a business and that, to the maximum extent permitted by law, the Consumer Guarantees Act 1993 does not apply to the provision of the Services to the Client.

12.2 **Compliance:** The Client warrants that it will comply with all applicable laws in respect of the Client's use of the Software and information derived from the Software, including all applicable laws in respect of the use of personal information of individuals.

12.3 **No MirrorWave warranties:** MirrorWave gives no warranty in respect of the Software, which is provided "as is". Without limiting the above, MirrorWave does not warrant that the Software will meet the Client's requirements, will be uninterrupted or error free, will be free from defects or that it will be suitable for any particular purpose. All implied conditions or warranties are excluded to the extent permitted by applicable law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

13 TERMINATION

13.1 **No Fault termination:**

- a Subject to clause 13.1b, either party may terminate the Statement of Work at any time, by

giving the other party one full Wave's prior written notice, which will include the completion of a Wave.

- b If the Statement of Work includes a minimum initial term, the earliest date for termination under clause 13.1a will be the expiry of that initial term.

13.2 **Termination:** Either party may terminate the Statement of Work immediately by notice in writing if the other party:

- a is in breach of these Terms and the breach is not capable of being remedied;
- b is in breach of these Terms (including, without limitation, if the Client is the breaching party, by not paying the Fees) and, if the breach is capable of being remedied, the breaching party has not remedied the breach within 7 days of receiving notice of the breach; or
- c becomes insolvent, goes into liquidation or has a receiver or manager appointed over any of its assets or makes any arrangement with its creditors, or become subject to any similar insolvency event in any jurisdiction.

13.3 **Rights and obligations:** Termination of the Statement of Work is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination.

13.4 **Refund of Fees:** The Fees are non-refundable, provided that if the Statement of Work is terminated for any reason, any portion of the Fees paid in advance in respect of a period subsequent to the effective date of the termination will be repaid to the Client.

14 RIGHTS FOLLOWING TERMINATION

The Client may access and download the Client Data from within the Software at any time. In addition, within 30 days of termination of the Statement of Work for any reason, the Client may request a copy of Client Data stored on the Software. If MirrorWave receives a request within this time MirrorWave will promptly supply the Client with a copy of Client Data in electronic form, in a format determined by MirrorWave. MirrorWave does not warrant that the format of such data will be compatible with any other software.

15 PRIVACY

15.1 **Process of personal information:** The Client agrees that MirrorWave will be responsible for determining the means and purposes of the processing of personal information in its provision of the Services.

15.2 **Program Participants:** The Client warrants that prior to any Program Participant being included in a Wave, it has:

- a made available to each Program Participant the current version of the MirrorWave privacy policy provided to it by MirrorWave;
 - b obtained all necessary consents from each Program Participant to the processing of personal information by MirrorWave for the purposes of providing the Services; and
 - c obtained the consent of each Program Participant to MirrorWave contacting that Program Participant by email and/or telephone as applicable.
- 15.3 **Compliance:** MirrorWave must process all personal information of Program Participants in accordance with any applicable Privacy and Information Security Requirements.
- 15.4 **Disclosure:** MirrorWave shall immediately notify the Client of any request for the disclosure of any Personal Data received by MirrorWave in connection with these Terms or Client Data by a law enforcement authority or regulatory body to which either the Client or MirrorWave is subject, unless otherwise prohibited by law from doing so, and the Client shall promptly and unconditionally assist MirrorWave in complying with such request.
- 15.5 **Material information security incidents:** Subject to applicable legal, regulatory or law enforcement requirements, MirrorWave shall immediately inform the Client in writing of any material information security incident involving Personal Data received from the Client or Client Data of which MirrorWave becomes aware. Such notice shall summarise in reasonable detail the effect on the Client, if known, of the information security incident and the corrective action taken or to be taken by MirrorWave. MirrorWave shall promptly take all necessary corrective actions (at its sole cost and expense), and shall cooperate fully with the Client in all reasonable and lawful efforts to mitigate the effects such information security incident.
- 16 LIMITATION OF LIABILITY**
- 16.1 **MirrorWave liability:** MirrorWave will not be responsible, liable, or held to be in breach of these Terms for:
- a any failure to perform its obligations under these Terms or otherwise;
 - b any delay or deficiency in any Services provided by MirrorWave; or
 - c any loss or liability of the Client arising out of any such failure,
- in each case to the extent caused by any act, omission, delay or direction of the Client.
- 16.2 **Unrecoverable loss:** Neither party will be liable for any of the following in respect of these Terms or the Services:
- a loss of profit, revenue or business;
 - b loss of use of the Software;
 - c loss of any data, including Client Data; or
 - d any consequential indirect or special damage or loss of any kind.
- 16.3 **Maximum liability:** Despite any other provision of these Terms a party's total aggregate liability for all claims arising under or in connection with these Terms, the Software, the Site and/or the Services in any 12 month period will not exceed the total Fees paid by the Client in the preceding 12 month period.
- 16.4 **Unlimited liability:** Clauses 16.2 and 16.3 will not apply to any party's liability:
- a for personal injury or death caused by negligence;
 - b for fraud or wilful default; or
 - c under either of the indemnities set out in clause 11.4a or 11.5.
- 16.5 **Force majeure:** Neither party will be liable to the other for any failure to comply with these Terms or delay in complying with these Terms to the extent caused by events beyond its reasonable control.
- 16.6 **Limitations are separate:** Each of the limitations and exclusions of liability set out in this clause 16 is a separate limitation or exclusion and applies regardless of whether such liability arises in contract, tort (including negligence) or otherwise. To the extent any particular limitation or exclusion is not permitted under applicable law, that particular limitation or exclusion will be deemed not to apply but will not affect any of the remaining limitations or exclusions under this clause 16.
- 17 GENERAL**
- 17.1 **Contract privity:** No person other than the Client and MirrorWave has any right to a benefit under these Terms or will have any right to enforce these Terms.
- 17.2 **Waiver:** All of the parties' rights will remain in full force despite any delay in enforcement. A party will not be deemed to have waived any right unless that waiver is in writing. Any waiver will apply only to the particular matter in respect of which it is given.
- 17.3 **Assignment:** Neither party may assign or purport to assign (whether in whole or in part) its interest under the Statement of Work without the other party's prior written consent, provided that MirrorWave may assign its rights and obligations under the Statement of Work (and may transfer its shares, issue new shares or make other arrangements) at any time: (i) to one of its related companies (as defined in the Companies Act 1993); or (ii) as part of the sale of all or a substantial part of its business, shares or assets without the Client's prior written consent.
- 17.4 **Subcontracting:** MirrorWave may subcontract any of its obligations under the Statement of Work without the Client's prior consent. MirrorWave will

remain fully liable for its obligations under these Terms and the Statement of Work notwithstanding the use of any subcontractor. All subcontractors retained by MirrorWave must be bound to the confidentiality provisions in clause 9 of these Terms. Nothing in any subcontracting agreement will constitute or create a contractual relationship between a subcontractor and the Client. The Client will have no responsibility or obligation to pay any sums to any subcontractor(s) unless that subcontractor executes a contract with the Client.

- 17.5 **Entire agreement:** These Terms express the complete agreement between the Client and MirrorWave in respect to the Software and the Services. There has been no representation made by either party to the other except as expressly set out in this document.
- 17.6 **Notices:** Any notice to be given pursuant to these Terms must be in writing addressed to the party to whom it is given and left at or sent by e-mail, or pre-paid airmail post to the address of such party as set out in the Statement of Work or as it may from time to time notify to the other and will be deemed to be served on the day so left or transmitted by e-mail or facsimile machine or on the 5th day after it is so posted.
- 17.7 **Severability:** If any provision of these Terms is, or becomes, unenforceable, illegal or invalid for any reason, these Terms will remain in full force apart from such provision which will be deemed deleted.
- 17.8 **Governing law:** These Terms will be governed by, and construed in accordance with, the laws of New Zealand. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand with respect to any legal action, suit or proceeding or any other matter arising out of or in connection with these Terms.

ANNEX A

Data Management and Data Security Policy

MirrorWave's Data Security Policy

MirrorWave's most up-to-date Data Security Policy can be found on the website www.mirrorwave.com

Hosting

The Software and all Customer Data is hosted by MirrorWave's service provider, Microsoft Azure, on servers in Ireland. For more information about the data security standards applied, please see <http://www.windowsazure.com/en-us/support/trust-center/security/>

User access

No one has access to the Client's MirrorWave Control Panel unless invited by the Client and with a level of user permission selected by the Client. The Client can remove any invited users whenever it wants.

User passwords

Users must choose a strong password and automatic lockouts are enforced when incorrect passwords are repeatedly entered. If the Client leaves its computer unattended for an extended period, it will be automatically logged out.

Firewalls & network security

External access to MirrorWave's servers is controlled by firewalls, intrusion protection systems and routers, which are configured and monitored according to industry best practice.

Data protection

The physical security and environmental risk of the offsite storage is managed by MS Azure. Back up is as provided by MS Azure.

- ▲ This data is further backed up by copying and storing offsite using Azure Storage
- ▲ Both the SQL database, and the Azure Storage are themselves fully backed up according to the Azure SLA
- ▲ SQL server does a full back up twice a day, and transactional backups every hour

Client's Network environment

The Client will need to have the following in place, for users to access the Control Panel:

- ▲ For a guaranteed user experience, the internet browser is within the last 2 versions deployed
- ▲ Internet access at any site where users of the Control Panel reside is equivalent to Broadband speed
- ▲ Javascript and Cookies to be enabled within users' browsers
- ▲ If the Client restricts what a user can browse to on the internet, then the following must be permitted, or white-listed, as a 'safe' address: *.mirrorwavefeedback.com

The core MirrorWave product is being constantly revised and upgraded to bring the Client new features and keep it in line with current web browser standards.

In addition, MirrorWave can offer the Client bespoke development such as systems integration or legacy-browser support, on a time & materials basis.