

Application For Reseller Account

Applicant's Full Legal Name (Reseller):

Trading Name (If Different From Above):

Business Telephone: (0)

Mobile Telephone: (0)

Email:

Street Address:

Postal Address:

Type of Business:

Trading Bank:

Branch:

Accounts Contact Name:

Telephone: (0)

Email:

Owners / Partners / Directors

Full Names:

Private Address (Not PO Box):

Type of Business Entity (please tick one category):

Sole Trader Limited Liability Company Partnership Other (please specify):

I/We nominate the following businesses/persons as Credit References on my/our behalf and understand that they may be called upon to provide such references:

1.	Telephone:
2.	Telephone:
3.	Telephone:

I/We irrevocably authorise any person or company to provide Entelar Ltd with such information as it may require in response to its credit enquiries. I/we further irrevocably authorise Entelar Ltd to furnish to such parties details of this application and any subsequent details that I/we may have with Entelar Ltd as a result of this application being actioned by Entelar Ltd. Where I/we am/are in default of the "General Terms", I/we authorise Entelar Ltd to supply to any person or firm engaged by Entelar Ltd to assist it in rectifying such default, full details about me/us and this reseller account.

I/We hereby apply to Entelar Ltd for the opening of a reseller account and agree to the "General Terms" as set out at the end of this form. I/We acknowledge that this application forms part of the Agreement between me/us and Entelar Ltd in relation to the purchase of Products and Services from Entelar Ltd for the purpose of resale to my/our customers.

Signature:	Position:	Date:
Signature:	Position:	Date:

Entelar Ltd. Email: ict@entelar.co.nz

General Terms

1. Introduction and Scope

1.1 Resale only: This Agreement sets out the terms and conditions that apply to all Products and Services distributed by us to you. The Products and Services are provided to you under this Agreement for the purposes of Resale only. You may Resell the Products and Services only to End Users for use in the Territory. The right to Resell is not exclusive to you and is non-transferable. You shall not copy or duplicate any Products, including any Software.

1.2 Precedence: If there is any conflict between any elements of the Agreement, the elements listed first in the following order prevail to the extent of that inconsistency: (i) any terms and conditions on the Website that define the nature of Products and Services or the additional terms that are imposed by a Manufacturer (ii) these General Terms and (iii) the Purchase Orders issued by you and accepted by us in accordance with these General Terms.

2. Commencement and Term

2.1 These terms (as amended from time to time in accordance with clause 12) will apply (i) during the term of your appointment as a reseller and (ii) to each Purchase Order submitted by you pursuant to this Agreement, and will continue to apply until the Agreement or the relevant Purchase Order (as the case may be) is terminated in accordance with clause 13.

3. Ordering and Supply

3.1 Product and Service information: A list of the Products and Services available for you to order is posted on our Website. Maintenance and support for any Product or Service (such as Updates or Upgrades, remote or onsite support) may be packaged with the Product or Service or may be available to order separately. The Manufacturers may impose additional terms and conditions that apply to the particular Products and Services, or more generally, and may change them from time to time. These additional terms will be posted on our Website, or they may be advised to you directly by the Manufacturer. You accept the additional terms and conditions that apply at the time we accept your Purchase Order, and such terms are binding on you in the same way as any other term of this Agreement. In some cases, the End User may be required to enter into an agreement (such as a support agreement or end user agreement) with the Manufacturer or its nominee.

3.2 Issuing Purchase Orders: Any request to us to provide Products or Services, must be submitted by you through issuing a Purchase Order. Only a Purchase Order submitted by you shall constitute an offer to contract. Any quotation we provide does not constitute an offer. The form of the Purchase Order, and/or the information required to be provided, is posted on our Website.

3.3 Accepting or rejecting Purchase Orders: We will either accept the Purchase Order with a written acknowledgement, in which case both parties are bound by it and the terms of this Agreement, or reject the Purchase Order. We will use reasonable endeavours to respond with an acceptance or a rejection, or if that is not possible to respond with an update, within 7 Business Days of you issuing a Purchase Order to us. The terms and conditions of this Agreement will prevail regardless of any conflicting or additional terms you may include on any Purchase Order or other correspondence submitted by you to us. Any such conflicting or additional terms shall have no effect, unless they are expressly accepted in writing by our authorised representative with respect to that Purchase Order.

3.4 Change and cancellation of Purchase Orders: If you request a change to a Purchase Order (such as a change in the delivery location or the rescheduling of the expected delivery date) or to cancel a Purchase Order, we may accept or reject that request at our discretion. If we accept the request, we reserve the right to charge you for all costs incurred by us as a result of that request. We will provide you with a quotation or estimate of such costs on request. All sales are final. Except as provided in the Manufacturer's

warranty statements, we do not accept returns unless (i) Product has been delivered in error, (ii) such Product is unopened, and (iii) the Product is returned in accordance with the relevant RMA Policy. Notwithstanding anything to the contrary in this Agreement, we and the Manufacturers reserve the right to make any changes in the specifications of the Products, without notice, which are required to conform to any statutory or other legal requirements or which do not materially affect the performance of the relevant Products.

4. Delivery Terms

4.1 Place of delivery: We will deliver the Products or Services to the delivery address specified in the Purchase Order, except where the nature of the Products or Services are such that delivery may be carried out remotely or via the internet, in which case we will deliver via the relevant medium. You shall supply such further details as are necessary to enable delivery to occur. If no delivery address is provided on the Purchase Order, we will deliver the Products or Services to the address specified on your reseller account application form (or as those details are updated from time to time through our Website).

4.2 Time of delivery: We may advise of our usual lead times for particular Products and Services on request, but these time are estimates only and do not bind us in any way. We are not liable for any delay in delivery of the Products or Services, however caused, or for failure to give notice of any delay. However, we will endeavour to keep you updated of any change to the expected delivery dates. Any carrier shall not be deemed to be our agent.

4.3 Advance or partial delivery: Any Products may be delivered in advance of the quoted delivery date upon giving reasonable notice to you. You agree to accept partial delivery of Products ordered unless otherwise mutually agreed by the parties in writing. Where the parties agree in writing that an order must be sent complete, you agree to accept allocations of Product in the event of shortage. Where the Products are delivered in instalments, each delivery shall constitute a separate contract. Failure by us to deliver any one or more of the instalments or any claim in respect of any one or more instalments shall not entitle you to treat a contract as repudiated or to cancel any other instalment.

4.4 Failure to accept delivery: If you or the End User fail to take delivery of the Products or fail to give us adequate delivery instructions in the Purchase Order, then, without prejudice to any other right or remedy available, we may: (i) store the Products until actual delivery and charge you for the reasonable associated costs, including insurance costs; or (ii) terminate the Purchase Order and sell the Products. You will bear any and all costs (including original and return carriage costs) associated with any unjustified refusal of delivery of Products.

4.5 Delivery errors and damage: You shall ensure that any error in delivery, loss, damage or destruction to any Products during transportation of the Products to you or the End User is advised to us by telephone immediately on receipt of the Products and confirmed in writing within three working days. You or the End User shall concurrently notify the carrier in writing of any such error, loss or damage and shall, in all cases, where possible, enter a note of the same upon the carrier's bill of lading or other delivery receipt. If by reason of any failure to give any such notice we or the Manufacturer is unable to make recovery from the carriers in respect of the error, loss or damage complained of, then you shall be liable to pay for Products as though no such error, loss or damage occurred. No liability for Product shortages will be accepted unless such shortage is noted on the bill of lading or other delivery receipt. Subject to the foregoing, any Products that are delivered in error or lost, damaged or destroyed during transportation will be replaced or rectified as soon as practicable or, if rectification or replacement is not practicable, we will issue a credit to you equal to any payments received by us for such Products. Any error, loss, damage or destruction of Product in delivery shall not entitle you to rescind the remainder of a Purchase Order.

5. Price and invoicing

- 5.1 Price:** The prices for Products and Services are those specified on our then-current price list, available on the Website, as updated from time to time by us, or as otherwise provided by us in writing. We endeavour to give advance notice of any Fee changes through the Website, however Manufacturers' prices may change without sufficient notice and therefore Fees are also subject to change at short notice or without advance notice. The Fees applicable to particular Purchase Orders for Products or Services are those stated at the time of ordering, unless we reject that order, except that we have the right to pass through price increases imposed by the Manufacturer ("Fees").
- 5.2 Delivery charges, taxes and duties:** Unless otherwise specified on a Purchase Order, all Fees are stated exclusive of the cost of packaging, delivery, and insurance, GST and other taxes (other than taxes based upon net income), and duties or customs fees. You are liable to pay these additional amounts to us (except, in the case of GST, if you have provide us a valid tax exemption certificate prior to issuing a Purchase Order).
- 5.3 Estimates and quotes:** Where any pricing, timing or other factor is provided on an estimated basis, we will provide such estimate in good faith, but such estimate shall not be binding on us. Where we provide you a quote in relation to Products and/or Services, the quote will expire 7 days from the date it is given, unless we advise you earlier of any change to or withdrawal of such quote.
- 5.4 Additional charges:** Any additional costs incurred by us or a Manufacturer, which the affected person is unable to mitigate, that are associated with either your failure to meet responsibilities associated with the applicable Purchase Order, or project schedule delays outside of our or the Manufacturer's control may result in us charging you additional fees for the resulting costs and expenses incurred.
- 5.5 Invoicing and payment:** We may invoice you for the Charges at any time following our acceptance of a Purchase Order. You must pay the Charges as detailed in the applicable invoice, unless disputed in accordance with clause 5.6. If we have granted you a credit facility, you must pay all undisputed Charges no later than 30 days from the date of the invoice. If no credit facility has been granted to you, (i) all Charges must be paid in full immediately (or such longer period permitted on the invoice) and prior to dispatch and (ii) we are not obliged to take any action to secure or dispatch any Products and Services until such payment is received. All payments shall be made in New Zealand dollars, unless otherwise agreed in writing between the parties.
- 5.6 Disputed Charges:** If you dispute any Charges in good faith, you may withhold payment of those Charges if you (i) pay all undisputed Charges by the due date; (ii) provide us with a written explanation of the reasons for your dispute of the Charges within 3 Business Days of the date of the relevant invoice; and (iii) co-operate with us to promptly resolve the disputed Charges. Disputed payments will be paid, if owed, within 14 days of resolution of the dispute or of confirmation by us that the amount is owed. We may suspend the dispatch of any Products or Services that are the subject of a disputed invoice, without liability, until the dispute is resolved.
- 5.7 Late payment:** All Charges which are not subject to a genuine dispute but remain unpaid 10 Business Days after the due date for payment are subject to interest charged monthly from the due date for payment until the date on which you make payment in full to us at the Bill Rate plus 5% per annum or the maximum rate permitted by law, whichever is less. If you are late in paying, we may suspend any current delivery until payment is made and require pre-payment for future orders.
- 5.8 No set off:** You may not, at any time, set off any amounts you owe us under this Agreement against any amounts owed to you by us under this Agreement or any other agreement we have with you.

6. Property Rights and PPSA

- 6.1 Passing of risk and title:** Risk of any loss of, or damage to, Products or Deliverables will pass to you upon delivery of the

Product or Deliverable in accordance with clause 3. Title in Products or Deliverables will pass to you once we have received payment in full for the relevant Purchase Order.

- 6.2 Security Interest:** You grant a security interest (as that term is defined in the Personal Property Securities Act 1999 ("PPSA")) ("**Security Interest**") in all goods supplied by us to you (and all proceeds of those goods) as security for payment of all amounts owing (if any) by you to us in respect of any goods and any obligations owing by you to us from time to time. The security interest granted in relation to goods above will be deemed to be released in relation to a particular good upon our receipt of all of the payments due in relation to that good. Following a request by us, you will promptly execute any documents and do anything else required by us to ensure that the Security Interest created under this Agreement constitutes and remains a first ranking perfected Security Interest over the goods supplied to you by us (and the proceeds of these goods) including providing any information we may reasonably require to register a financing statement or a financing change statement. You agree to irrevocably nominate and appoint us or a nominee or agent appointed by us as your true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause. You shall immediately notify us in writing of any change in your name (and within 14 days of any such change), and you waive any right to receive a copy of a verification statement under the PPSA. You agree that your rights as debtor in sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129 and 131, 133 and 134 of the PPSA shall not apply.

7. End User Licence Agreement

- 7.1 Acknowledgment:** You understand that we are not the manufacturer of the Products and Services. Any Software is supplied subject to the Manufacturer's licensing terms.
- 7.2 End User Licence Agreement:** Subject to the terms and conditions of this Agreement and the Manufacturer's End User License Agreement ("**EULA**"), we grant you a non-exclusive, non-transferable license to distribute Software, in object code form only, and Documentation in the Territory solely to End Users during the term of this Agreement. You shall not copy or duplicate any Software without the prior written consent of us or the Manufacturer.
- 7.3 Obligation to pass through EULA:** You must pass through to End Users the Manufacturer's EULA supplied to you or, if they are not already packaged or provided together, ensure that the relevant Manufacturer's EULA is provided with each Product or Service when it is supplied to End Users. The method for obtaining the EULA will be described and, where relevant, access to the relevant EULA will be provided to you on our Website, or via another method notified to you from time to time. Some Manufacturers require that you or the End User enter into a "click-accept" license agreement or other form of license agreement as part of the installation or download process. You must provide the End User with a link to the EULA (or a copy of the EULA by some other means if no link is provided) where relevant. The terms of the EULA supersede any other terms of this Agreement.
- 7.4 No further commitment:** You shall not offer or make any other licence commitment or representation (whether written or oral) to End Users regarding Products or Services on our or a Manufacturer's behalf. You shall indemnify us and the Manufacturer against any licence commitment or representation made in addition to the Manufacturer's Warranty and for any misrepresentation of the Manufacturer's Products and Services or its reputation.
- 7.5 Parties to EULA:** The End User's use of the Software will be governed by the EULA between the End User and the Manufacturer. We will have no liability to you or the End User for matters covered by the EULA, for failure of the Manufacturer to comply with any licence terms, for failure of the Manufacturer to provide Software that does not infringe any intellectual property right of any third party, or otherwise. The End User is solely responsible for enforcing the terms of the EULA against the Manufacturer.
- 7.6 Breach of licence:** You must notify us promptly of any breach of a software license agreement (including the EULA) and diligently pursue or, at our or the Manufacturer's request,

assist us or the Manufacturer to diligently pursue, an action against any third parties in breach of the license.

- 7.7 Manufacturer's title:** The Manufacturers' retain all title to and, except as expressly licensed herein, all rights to the Software, all copies, and all related Documentation and materials. Any invoices purporting to sell or transfer such items do not convey title to, or patent rights, copyrights, or any other proprietary interest in, such items to you or the End User.
- 8. Support, Maintenance, and Updates**
- 8.1 Maintenance and support obligations:** We are not responsible for providing any maintenance or support for the Products and Services to you and/or End Users, unless this is expressly agreed to by us and/or forms part of the Product and/or Services. If you take any Product or Service that includes support and maintenance, those services may be provided to you and/or your End Users directly by the Manufacturer (or other third party on behalf of the Manufacturer) in accordance with the terms of the applicable support agreement that accompanies the Product or Service.
- 8.2 Software Updates or Upgrades:** You acknowledge that any Updates or Upgrades to Software are provided by the Manufacturer (or on the Manufacturer's behalf) and will be subject to the specific Product and/or Services specifications, Documentation and the terms of any EULA. If expressly provided for as part of any Product or Service provided by us, we will (or will procure that the Manufacturer or another third party) provide you with any Update or Upgrade of Software as soon as reasonably practicable upon it becoming available in accordance with the terms of the EULA and/or Manufacturer's Warranty.
- 8.3 Ensuring continuity of Service:** Following the Resale of a Product or Service, or the expiry or termination of any Service term, we, the Manufacturer or its nominee may contact you or End Users regarding the availability of maintenance and support and related services relating to that Product or Service. Where requested, you will reconfirm the End User's identity (and any other relevant details) and either initiate the coverage or renewal process or notify us that the End User does not wish to obtain coverage or renewal.
- 9. Products Warranty**
- 9.1 Reseller responsibilities:** You are responsible for ensuring that any Product and/or Service that you obtain from us is (i) technically compatible with your own or the End User's equipment or item and (ii) installed and used in accordance with the Documentation, and any relevant instruction, or law.
- 9.2 Limited warranty:** You understand that we are not the manufacturer of the Products and Services. Products and Services are sold subject to the express warranty and other terms, if any, specified by the Manufacturer ("**Manufacturer's Warranty**"). Except as required by law, no other warranties apply or are offered by the Manufacturer or by us.
- 9.3 Obligation to pass through warranty:** You must pass through to End Users the Manufacturer's Warranty with Products or Services supplied to you or, if they are not already packaged or provided together, ensure that the relevant Manufacturer's Warranty is provided with each Product or Service when it is supplied to End Users. The method for obtaining the Manufacturer's Warranty will be described and, where relevant, access to the relevant Manufacturer's Warranty will be provided to you on our Website, or via another method notified to you from time to time. You must provide the End User with a link to the Manufacturer's Warranty (or a copy of the Manufacturer's Warranty by some other means if no link is provided) where relevant.
- 9.4 No further warranties:** You shall not offer or make any other warranty commitment or representation (whether written or oral) to End Users regarding Products or Services on our or a Manufacturer's behalf. You shall indemnify us and the Manufacturer against any warranties made in addition to the Manufacturer's Warranty and for any misrepresentation of the Manufacturer's Products and Services or its reputation.
- 9.5 Manufacturer liable for all claims:** The Manufacturer's Warranty applies between the Manufacturer and you or the

End User (as relevant). We have no liability to you or the End User for matters covered by the Manufacturer's Warranty, including for failure of the Manufacturer to comply with any warranty terms or provide any remedy. The End User is solely responsible for enforcing the terms of the Manufacturer's Warranty against the Manufacturer. However, in some cases we may act on the Manufacturer's behalf to process warranty claims. A list of the Manufacturers for whom we provide this service is available on our Website.

- 9.6 Disclaimer:** Any warranties, conditions, representations or other terms, express or implied, statutory or otherwise, in respect of the Products or Services provided under this Agreement, including but not limited to (i) merchantability, acceptable quality, fitness for a general or particular purpose, reasonable care and skill, accuracy, system integration, or title and non-infringement of intellectual property rights or (ii) arising from any course of dealing, course of performance, or usage in the industry, are expressly excluded to the fullest extent permitted by law. To the extent permitted by law, if a warranty, condition, or term cannot be disclaimed, such warranty, condition, or term shall be limited in duration to the applicable express warranty period.
- 10. Defects Notification**
- 10.1 Safety notification:** You must immediately notify us by telephone, followed by written confirmation within 24 hours, of any Service, Deliverable or Product which fails to comply with any applicable safety laws or regulations, or rules or standards of any Government agency, or which contains a defect that could present a risk to a user, security, privacy, property, data, public health or has any other impact of a similar importance.
- 10.2 Warranty claim notification:** You must immediately notify us of any Service, Deliverable or Product which proves to be defective in quality or condition and for which you wish to make a claim under the Manufacturer's Warranty ("**Warranty Claim**") through us. After receiving such Warranty Claim, we will notify you, depending on the arrangement that exists between us and the Manufacturer, whether the Warranty Claim will be handled directly with the Manufacturer or indirectly through us.
- 10.3 Management of Warranty Claim:** If we are required to handle the Warranty Claim, our RMA Policy will apply. Where any Warranty Claim must be made against the Manufacturer directly, we are not responsible if any delay that arises through the process of determining who is responsible for processing the Warranty Claim results in any Warranty Claim falling outside of the period in the Manufacturer's Warranty by which it must be notified to the Manufacturer.
- 11. Warranty Liability**
- 11.1 Pass through of remedies:** Our sole liability to you and/or any End User regarding any Warranty Claim is limited to the administration of such claims with the Manufacturer (where we are appointed to process Warranty Claims) and is expressly contingent upon our ability to obtain a repair, replacement product, re-performance of services, refund, or other remedy from the Manufacturer. Where we process Warranty Claims on behalf of the Manufacturer, we have no obligation to accept a return of Products where you (or your End User) fail to comply with the Manufacturer's policy on Product returns. Neither we nor the Manufacturer has liability for any Product or Service that is not covered by a Manufacturer's Warranty or is reported as defective to us or the Manufacturer (as the case may be) after the applicable warranty period. We reserve the right to determine whether any Products are defective.
- 11.2 Effect of Consumer Guarantees Act:** Notwithstanding any other provision in this Agreement, subject to clause 15.7 and 15.8, nothing in these General Terms seeks to limit our obligations to any End User that is a "consumer" for the purposes of the Consumer Guarantees Act 1993 (as such term is defined in that Act).
- 11.3 Costs:** You will be responsible for all costs and expenses arising from any Warranty Claim (such as transportation and handling) that is not covered by the Manufacturers' Warranty.

12. Changes to Terms

- 12.1 We may change the General Terms or any additional terms that appear on the Website at any time. Any changes will be notified on our Website prior to the date the change comes into effect. We will endeavour to provide as much notice as practicable, however Manufacturers' terms may change without sufficient notice and therefore are subject to change at short notice or without advance warning.
- 12.2 Any amendment to the General Terms will not apply to a Purchase Order that has been accepted by us prior to the date that the changes come into effect.
- 12.3 Subject to this clause 12, any other variation to this Agreement must be recorded in writing and signed by the authorised representatives of both parties.

13. Termination

- 13.1 **Termination for convenience:** Either party may terminate this Agreement, without liability, on one month's notice to the other party. This form of termination will not affect any Purchase Orders that have already been accepted by us. The terms of this agreement will continue to apply to those Purchase Orders. Nothing in this Agreement implies that we have any obligation to accept Purchase Orders from you.
- 13.2 **Termination due to external causes:** We may, on notice, terminate this Agreement (including any Purchase Order), in whole or in part, or modify its terms as necessary: (i) as a result of requirements imposed on us or rights exercised by a Manufacturer or changes to or termination of the agreement we have with a Manufacturer; (ii) if it becomes or is discovered to be illegal or contrary to any law, regulation, guideline or request of any regulatory authority; or (iii) if any Product or Service becomes subject to a claim or potential claim that it infringes the rights of any third party. We will endeavour to provide you with reasonable prior notice of any such termination or modification, but may not be able to do so if the triggering event is outside our control.
- 13.3 **No Manufacturer's approval:** You acknowledge that our ability to supply to you or your End User may be dependent on the Manufacturer approval. Where we discover or have reasonable grounds to believe that you or your End User does not have or no longer has the necessary Manufacturer's approval, we may terminate any affected Purchase Order without liability.
- 13.4 **Breach, Insolvency and Force Majeure:** Either party may immediately terminate all or any affected part of this Agreement by written notice to the other party if the notified party: (i) commits a material breach of this Agreement which is incapable of remedy; (ii) fails to remedy any material breach of this Agreement which is capable of remedy within 20 Business Days after receiving written notice of the breach; (iii) is Insolvent; or (iv) for Force Majeure as permitted under clause 22. However, your right is limited to terminating the affected Purchase Order(s).
- 13.5 **Deliberate breach:** We may immediately terminate all or any affected part of this Agreement by written notice if you commit a material breach of this agreement relating to breach of confidentiality, intellectual property infringement or breach of law where we have good reasons to consider that such breach or infringement has been deliberate.

14. Effect of termination

- 14.1 **Effect of termination:** Where the Agreement expires or is terminated: (i) all of your rights and licenses under this Agreement shall terminate and you shall immediately discontinue all representations that you are a reseller of ours; (ii) we reserve the right to cease accepting further Purchase Orders or to deliver of Product or Services; and (iii) the due date of all monies due to us shall automatically be accelerated such that the monies become due and payable on the effective date of termination, even if longer payment terms had been provided previously.
- 14.2 **Continuing rights and responsibilities:** Termination or expiry of this Agreement or any part of it does not affect: (i) the continued operation of any other parts of this Agreement then in effect that are not subject to the termination; (ii) any rights and responsibilities under this Agreement which have

accrued prior to termination; (iii) your obligations relating to any Resale or that are necessary to enable the support of or contact with End Users (including under clauses 7.3 and 9.3); (iv) any provision that by reference to its content or context is intended to survive expiry or termination of this Agreement; and (v) clauses 5, 6, 11, 13, 14, 15, 16, 18, 19, 20, 23, and 24.

- 14.3 **Obligations following termination:** Within 14 days of the expiration or termination of the Agreement or any part of the Agreement, you will return to a location designated by us all Entelar-Owned property and Confidential Information (including all copies) then in your possession, custody, or control, or destroy them at our option.

15. Liability

- 15.1 **Manufacturer's Warranty:** Nothing in this clause 15 affects the scope of any Manufacturer's Warranty.
- 15.2 **Limitations and exclusions generally:** The exclusions and limitations made in this clause 15 apply to any liability under the law of contract, tort (including negligence), equity, an indemnity, strict liability or otherwise arising out of or in connection with the Agreement, in each case even if a party has been informed of the possibility of that liability. References in this in this clause 15 to "party" includes a party's affiliates, officers, directors, employees, agents and suppliers.
- 15.3 **Exceptions:** Nothing in this Agreement limits or excludes the liability of either party to the other party for: (i) the wilful default or fraud of a party; (ii) a breach of clause 16 or 19; (ii) any indemnity under clause 18; or (v) any liability to the extent that it cannot be limited or excluded under applicable law.
- 15.4 **Maximum liability:** Subject to clause 15.2 or 15.3, our liability to you is limited in aggregate to the price paid by you for the Product or Service (plus the associated packaging, delivery, and insurance charges) giving rise to the liability.
- 15.5 **Exclusion of liability:** We will not be liable under or in connection with this Agreement for any (i) Loss which is not Direct Loss; (ii) loss of profits, revenue, business, anticipated savings, use of any Product or Service, opportunity, goodwill or reputation; (iii) lost or damaged data; or (iv) wasted expenditure (other than any expenditure necessarily incurred to discharge the innocent party's duty or to mitigate its Losses), regardless of whether that Loss was, or ought to have been, contemplated by the party in breach.
- 15.6 **Mitigation:** Each party will take reasonable steps to mitigate any Loss it may suffer under this Agreement.
- 15.7 **Consumer Guarantees Act:** You confirm that you are acquiring all the Products and Services in trade as defined in the Consumer Guarantees Act 1993. The provisions of that Act do not apply to Products and Services provided by us under this Agreement, except to the extent that we are expressly liable to any End User pursuant to that Act, in which case we shall provide the remedy that is required by the Act.
- 15.8 **Contracting out:** In accordance with the relevant legal requirements of the Consumer Guarantees Act 1993, you undertake to contract out of the provisions of that Act in relation to the Resale of any Products or Services to End Users who are in "trade" for the purposes of the Act, and agree to indemnify us against any Loss we may suffer or incur if you fail to effectively contract out of the Act where it was legally permissible to do so.

16. Intellectual Property

- 16.1 **No grant of Intellectual Property rights:** You acknowledge that we or the Manufacturers will own all Intellectual Property in the Products, Services and Deliverables, including any associated name, logo, trademark or other mark, (collectively the "IP"). Nothing contained in this Agreement shall be deemed to grant you any rights, title, or interest to such IP and does not permit you to use any name, logo, trademark or other mark, except to the limited extent of any use licence that is provided expressly and in writing. You agree not to make any claim to the IP or lodge any filings with respect to such IP or IP confusingly similar to the IP, whether on behalf of the owner or in its own name or interest, without the prior written consent of the owner.

16.2 Prohibitions: You will not translate, reverse engineer, decompile, or disassemble any Software, or alter, remove or destroy any form of copyright notice, proprietary markings, confidential marking, serial numbers or other identifying markers placed upon or contained within any Products or Deliverables. You will indemnify us against and hold us harmless from any Loss we suffer or liability we are subject to arising from any breach of this clause 16 by you.

17. Intellectual Property Warranties

17.1 Intellectual property warranties: We warrant that to the best of our knowledge and belief we either own or are licensed to provide the Products and Services for Resale to you and to allow you to Resell Products and Services to your End Users.

17.2 Limited recovery: We will not and have no duty to indemnify you from or against any Loss arising out of or in connection with the actual or alleged infringement of any Third party's Intellectual Property rights. Any indemnification, if any, will be provided by the Manufacturer (e.g in the EULA or the Manufacturer's Warranty). We may in our discretion provide some recovery to you but only to the extent that a Manufacturer has expressly agreed to offer such indemnification to you or to us, in which case we will pass through the amount that we recover from the relevant Manufacturer in proportion to other claims (actual or potential) arising out of the alleged infringement, less an amount to cover our related costs and expenses. However, we have no obligation to pursue any particular claim.

17.3 Notification of claim: You must promptly notify us in writing if any intellectual property infringement claim is brought or threatened against you or any End User ("Claim") and any subsequent litigation updates. You will co-operate in the defence of any Claim and provide full and exclusive control of the defence and settlement of the Claim and any subsequent appeal where required as a condition of obtaining any indemnification pay-out.

18. Third Party Action

18.1 You agree to indemnify us and our Related Companies against any Loss (including all legal costs and expenses on a solicitor and own client basis) arising from any Action brought or threatened against us or them by any third party to the extent that the Action or threat of Action is based on a claim that: (i) has arisen as a result or because of a breach by you of this Agreement (including any breach of a EULA, Documentation, or other Manufacturer instruction); or (ii) has arisen as a result or because of any negligent, wilful or fraudulent act or omission of you or your personnel in connection with this Agreement; or (iii) you have breached any law in connection with the resale of the Products and/or Services (including but not limited to the Fair Trading Act 1993, any Intellectual Property law, Privacy Law, or law protecting confidential information). You shall, at your option and cost, defend or settle the Action, subject to our approval not to be unreasonably withheld. We agree to reasonably co-operate in defending or settling the Action.

19. Confidentiality

19.1 Confidentiality: Each party will: (i) keep confidential any Confidential Information; (ii) employ the same degree of care to protect the confidentiality of the Confidential Information as it uses to protect its own Confidential Information of a similar nature, but in no event less than a reasonable degree of care; (iii) use any Confidential Information only for the purposes of this Agreement; and (iv) subject to clause 19.2, not disclose this Confidential Information (other than to its employees, officers, directors, consultants and agents, but only to the extent necessary to exercise that party's rights and/or obligations under this Agreement) unless the other party has given written consent to specific Confidential Information being released to a specific person and provided such persons are subject to written agreements which contain confidentiality obligations that are at least as strict as those set out in this Agreement.

19.2 Confidentiality exceptions: Clause 19.1 applies except: (i) if the Confidential Information is generally and publicly available other than because of a breach of this Agreement by the party receiving the Confidential Information ("Recipient"); (ii) to

Confidential Information legally obtained from a third party who is free to disclose it; (ii) to Confidential Information that has been independently developed by the Recipient; or (iii) to Confidential Information we are required to provide to the relevant Manufacturer relating to your Purchase Order, including identity and delivery location of Reseller, identity and delivery location of End User, Products and Services ordered or delivered; or (iv) if disclosure of the Confidential Information is required by law or a Stock Exchange requirement (in which case the Recipient must immediately notify the discloser of the Confidential Information ("Discloser") of this requirement).

19.3 Return of information: You will, upon request, promptly return or at our option destroy all Confidential Information (including copies) in your possession, custody, or control.

19.4 Publicity: You will not issue any press release, publication, advertisement or public disclosure regarding this Agreement without our prior written consent. We may list your details on our Website (or on any other media) to indicate that you are a reseller of ours and may make such public statement regarding this Agreement and your participation in it at our discretion.

19.5 Password for access to Website: You will keep any passwords or codes used to access information maintained by us (such as through the Website) confidential in accordance with clause 19.1 and will only disclose them to those of your current employees and agents who need them to access the information for you. Such security credentials must not be shared. You will ensure that any staff who cease to occupy the relevant roles or who have breached the terms of use relating to the Website cease to have access to the security credentials and/or the Website. We may change or revoke security credentials at any time for security reasons. You will not seek to access any section of the Website that you have not been given access to.

19.6 Marketing and Promotions: You agree that we may contact you about updates or news regarding our Website, and provide marketing material from us or a Manufacturer to keep you informed about our Products and Services and tell you about certain promotions or offers available from us or a Manufacturer.

20. Compliance

20.1 Compliance with laws: Each party will comply with all applicable laws. You will indemnify and hold harmless us and any Manufacturer for any violation or alleged violation of any applicable laws and in respect of any violation or alleged violation of this clause 20.

20.2 Privacy and data protection: Each party shall at all times comply with the applicable Privacy Law in relation to the collection, storage, use and disclosure of personal information in connection with this Agreement, and will only use such personal information for the purposes of fulfilling its obligations under this Agreement or otherwise in accordance with any policy or privacy statement notified to you by us from time to time.

20.3 Health and safety: When working at each other's premises, the parties will comply with health and safety legislation, and each other's reasonable requirements for health and safety. Where practicable, these requirements will be communicated in writing.

20.4 Export control: The Products and Services may be subject to export control laws and regulations of the USA, European Union, and other jurisdictions. You will comply with such laws and regulations, which usually govern use, export, re-export, and transfer of certain products and technology, and will obtain all required permissions. You will maintain records to evidence your export control compliance activities. You must not resell or deliver any Products or Services outside of the Territory. You are responsible for ensuring that the End Users will not use Products or Services to develop weapons, that the End Users are not a specially designated or sanctioned party under any export control laws and shall cease providing Products and Services to those who are.

20.5 Bribery and corruption: You will not offer, give or promise to offer or give, or request, receive, or agree to receive, directly

or indirectly, any bribe to induce or reward improper performance.

- 20.6 Co-operation:** Where we request you to, you shall comply with any reasonable request from a Manufacturer relating to your compliance this Agreement or our compliance with any agreement we have with a Manufacturer.

21. Record Keeping and Audit Rights

- 21.1 Record keeping:** You will keep complete and accurate records and accounts, in accordance with generally accepted accounting principles, of each Product or Service received and Resold, by serial number, including price, identity and contact details of End Users, provision of warranty and licencing information, and delivery details, and shall make such records available to us on request upon five days' prior written notice.
- 21.2 Audit rights:** We may request access to such records for audit by us or our nominee for the purpose of verifying your compliance with the Agreement. You will allow us or any third party (including the Manufacturer, regulatory authority, or independent auditor) to undertake the audit. You will fully cooperate with any such auditors and provide them with complete, accurate and truthful information. You will bear, and/or promptly reimburse us or the relevant third party, all costs, fees and expenses, incurred by us or the Manufacturer in the performance of any audit and/or investigation that discloses any breach of this Agreement by you.

22. Force Majeure

- 22.1 No liability:** Notwithstanding any other provision of this Agreement, neither party will be liable for any failure or delay in complying with any obligation under this Agreement (excluding any payment obligation) if the failure or delay arises from a Force Majeure Event. The affected party, on becoming aware of the Force Majeure Event, must promptly notify the other party in writing of the Force Majeure Event and its effects, and shall use its reasonable endeavours to mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement.
- 22.2 Cancellation:** In the event a Force Majeure event should continue for more than ninety (90) days, either party may, by written notice to the other, cancel a Purchase Order to the extent that the Products and Services remain undelivered.

23. Resolving Disputes

Both parties will attempt to resolve any dispute relating to this Agreement at the lowest possible level of escalation, in accordance with the provisions of this clause. If a dispute arises, either party may serve on the other party a notice setting out, in summary, the nature of the dispute ("**Dispute Notice**"). Representatives of the parties will meet within 10 Business Days of the Dispute Notice to attempt to resolve the dispute. If the dispute is not resolved within that time, the dispute may be referred by either party to the senior management or executives of both parties and both parties will then seek to resolve the dispute within a further 10 Business Days. For the avoidance of doubt, nothing in this clause will prevent either party from seeking urgent injunctive relief where damages alone would be an inadequate remedy.

24. General

- 24.1 Notices:** Any notice or other communication to be given under this Agreement will be in writing and delivered by hand, registered mail or email to the relevant party, in the case of you the reseller, at the address specified in the relevant Purchase Order or the address for notices recorded in your account information on our Website. In the case of Entelar, the address is: Entelar Limited, Level 2, Spark City, 167 Victoria Street West, Auckland, 1142, New Zealand; Email: general.counsel@spark.co.nz; Attention: General Counsel. Where email is used the party receiving the email will acknowledge receipt; however, if receipt is not acknowledged within 1 Working Day of email transmission, a hardcopy of the email will also be posted to the above address. Receipt of notices under this clause will be presumed on delivery by hand, three Working Days after posting within New Zealand, or within 1 Working Day of email transmission unless during that time the sender receives an

automated message advising that email may not have been delivered (whichever is applicable).

- 24.2 Assignment:** You may not directly or indirectly assign, novate, transfer or otherwise dispose of any of your rights or obligations under the Agreement, except with our prior written consent, not to be unreasonably withheld or delayed. For the purposes of this clause 24.2, an assignment includes any change of Control. We may assign, novate or otherwise transfer all or part of our rights and obligations under this Agreement to any of our Related Companies or any third party purchaser of all or a substantial part of our business. Otherwise, we may not novate or transfer any of our obligations under the Agreement, except with our prior written consent, not to be unreasonably withheld or delayed.
- 24.3 Independent Contractor:** This Agreement does not create any agency, partnership, joint venture, franchise or employer/employee relationship. Each party is an independent contractor. Neither party shall assume or create any obligation on behalf of the other party or bind the other party in any respect.
- 24.4 Governing Law:** The Agreement is governed by, and will be construed in accordance with, the laws of New Zealand. Both parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- 24.5 No Waiver:** No failure, delay or indulgence by either party in exercising any power or right conferred on that party by this Agreement will operate as a waiver of that power or right. The waiver by either party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
- 24.6 Invalidity:** Any provision of this Agreement that is invalid or unenforceable will be deemed deleted from this Agreement and replaced with a provision that is enforceable and which most closely reflects the intentions of the parties and this invalidity will not affect the other provisions of this Agreement, all of which remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 24.7 Entire agreement:** The Agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes and cancels any previous agreement, understanding or arrangement between the parties whether written or oral. There are no terms, expressed or implied, that are not specified herein. This Agreement may be modified only by a written document executed by the parties.
- 24.8 No reliance:** Each party acknowledges that it has made its own independent enquiry and investigations in relation to the subject matter of this Agreement including the tax treatment of any payments under this Agreement, and has entered into this Agreement solely in reliance on its own judgment.
- 24.9 Counterparts.** This Agreement or any Purchase Order may be executed in several counterparts (including facsimile or electronic copies), which taken together constitute a single agreement.

25. Definitions

In this Agreement, unless the context requires otherwise:

"**Action**" means any claim, demand, suit, action or proceeding.

"**Agreement**" means our agreement to supply Products and/or Deliverables and Services to you, comprising of the General Terms, any Purchase Order, any additional terms imposed by a Manufacturer in relation to the Products, Services or Deliverables, and any other special terms agreed to in writing between the parties.

"**Bill Rate**" means in respect of any rate of interest to be calculated pursuant to this Agreement the mid or "FRA" rate for 90-day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45 am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period.

"Business Days" means Monday to Friday inclusive, excluding national public holidays and the provincial anniversary day in Auckland.

"Charges" means the Fees and any applicable related charges, such as for packaging, delivery, insurance, duties and taxes.

"Confidential Information" regardless of the form of disclosure or the medium used to store it, means any information received by a party relating to the other party or its Related Companies, or their business (current and future), of a confidential or proprietary nature or that a party knows or ought reasonably to know the disclosing party regards as information of a confidential or proprietary nature and includes information provided before the date of this Agreement and any copies of such information or material derived from that information, any passwords or codes used to access online information (such as through the Website), and also includes the terms of and negotiations relating to this Agreement.

"Control" means, directly or indirectly, the power to vote 40% or more of the voting interests of an entity or ownership of 40% or more of the beneficial interests in income or capital of an entity.

"Direct Loss" means Loss that is both: (i) Loss that may fairly and reasonably be considered as arising naturally (that is, according to the usual course of things) from the act or omission and (ii) Loss that is immediately associated with the obligations under the Agreement (that is, Loss that is not a step removed from the transaction and its immediate effects).

"Deliverables" means deliverables incidental to the delivery of Services and includes the Documentation.

"Documentation" means all written instructions, manuals, descriptions, and any other documents related to and provided in respect of the Services, Deliverables and/or Products.

"End User" means a customer of Reseller or a Reseller's Related Company that purchases the Products and/or subscribes to the Services.

EULA is defined in clause 7.2.

"Fees" is defined in clause 5.1.

"Force Majeure Event" means anything outside the reasonable control of a party, but does not include a lack of funds for any reason or any other inability to pay.

"General Terms" means clauses 1 to 26, and as amended from time to time.

"GST" means New Zealand goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985 where the underlying supply is subject to New Zealand goods and services tax.

"Insolvent" means, in relation to a party, that: (i) it ceases or threatens to cease to carry on business as a going concern; (ii) is, becomes, or is deemed to be, insolvent or bankrupt and is incapable of performing its obligations; (iii) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors; or (iv) goes into receivership or has a receiver, trustee and manager (or either of them) (including a statutory manager) appointed in respect of all or any of its assets; or (v) it becomes or is reasonably likely to become subject to voluntary or involuntary proceedings in bankruptcy or liquidation; (vi) any resolution is passed, or any order is made in a proceeding, for the winding up or liquidation of a party; or (vii) directly or indirectly assigns or transfers, or attempts to assign or transfer, any obligation, liability or interest of that party under this Agreement in breach of this Agreement, an event similar to any of the foregoing occurs under any applicable law, and **"Insolvency"** has a corresponding meaning.

"Intellectual Property" means all intellectual property rights and interests whether registered or unregistered, and whether conferred by statute, at common law or in equity, and all rights or forms of protection having equivalent or similar effect in any jurisdiction, whether those rights currently exist or arise in the future, including copyright, patents and trademarks and any applications for the same.

"IP" is defined in clause 16.1.

"Loss" means any loss, damage, liability, fines, cost, or expense.

"Manufacturer" means the OEM, producer, manufacturer, licensor or supplier, whether directly or indirectly, of the Products or Services.

"Manufacturer's Warranty" is defined in clause 9.2.

"Privacy Law" means the Privacy Act 1993, all other legislation in any jurisdiction, principles, codes and policies relating to the collection, use, disclosure, storage or granting of access rights to any personal information.

"Products" means all Hardware, Software, Documentation, "as a service" products, which is listed which are supplied by us to you (or any of your Related Companies) under this Agreement.

"Purchase Order" means a purchase order relating to the supply of Products or Services, issued by you and accepted by us in accordance with clause 3, in the form specified by us from time to time and posted on our Website.

"Related Company" has the meaning given in the Companies Act 1993 read as if the expression includes any body corporate and any company incorporated under the law of any jurisdiction and for the purposes of defining your Related Companies.

"Resale" has the following meanings. In the case of Hardware, Resale is the transfer of title to an End User (or another reseller, where applicable). In the case of Software, Resale includes (i) licensing the Software to End Users in accordance with the terms of this Agreement; and/or (ii) to license a reseller to licence the Software to End Users in accordance with the terms of this Agreement. In the case of Services, Resale means reselling the Services. **"Resell"** and **"Resold"** have a corresponding meaning.

"RMA Policy" means our or a Manufacturer's return merchandise authorisation policy which sets out the criteria and process requirements in relation to the return of a Product in order to receive a refund, replacement or repair during the Product's warranty period.

"Services" means all services, Deliverables and service offerings, including in respect of each Product any related support and maintenance, which are supplied by us (or any of our Related Companies), a Manufacturer or any other third party to you (or any of your Related Companies).

"Software" means all system software, application software, software tools and software utilities which are supplied by us to you and includes software described in any Purchase Order and any software provided as part of a Product or Service.

"Territory" means New Zealand and/or such territories as agreed between the parties in writing from time to time.

"Updates" means any software release that comprises error correction, bug fixes, or similar in respect of any Software.

"Upgrades" means software release that incorporates any major enhancements to the Software (usually indicated by the "X" in version "X.Y.Z", e.g. the 4 in version 4.0.1).

"Warranty Claim" is defined in clause 10.2.

"Website" means Entelar.co.nz, and/or any other website operated by us and notified to you in writing.

26. Interpretation

In this Agreement, unless the context requires otherwise: (i) headings are for convenience only and do not affect interpretation; (ii) the singular includes the plural and vice versa; (iii) unless otherwise stated, all references to dollars, value and price are to the New Zealand currency and exclude goods and services tax; (iv) a reference to any statute includes any amendments, re-enactments or replacements to that statute from time to time; (v) the rule of construction known as the contra proferentem rule does not apply to this Agreement; and (vi) the use of the words "includes" or "including" is not to be taken as implying any form of limitation.