

# Professional Services Terms and Conditions

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## Definitions

### Day

“Day” means a calendar day unless otherwise specified. Where working day or business day is stated this shall mean a day in a working week where the Services are being performed, namely Monday to Friday excluding statutory holidays in Auckland, New Zealand.

### Deliverables

“Deliverables” mean the result(s) that we will create or achieve for you. Each Statement of Work or Work Order shall specify the Deliverables.

### Estimate

“Estimate” means our best approximation of the charges and expenses that we will charge you to perform the Services specified in a Statement of Work or Work Order.

### Facilities

“Facilities” means those items of equipment and amenities that each of us will provide. Each Statement of Work or Work Order will specify the Facilities and who will provide them. If the Statement of Work or Work Order does not specify the Facilities, each of us shall provide such reasonable Facilities as the Project requires.

### LEADR

“LEADR” is an acronym for “Leading Edge Alternative Dispute Resolvers”, PO Box 4329, Shortland Street, Auckland, New Zealand. Telephone 64 9 373 5020; Fax 64 9 309 5113. LEADR provides an independent professional mediation service.

### Project

“Project” means the project specified in a Statement of Work or Work Order.

### Services

“Services” means the full range of professional services that we may offer to you. The Services that we offer will vary from Project to Project and task to task. Each Statement of Work or Work Order shall specify the type of Services that we have agreed upon.

“Services” does not include repair and maintenance services, engineering services, sales of hardware, software or consumables. The provision of such items is outside the scope of this agreement.

### Statement of Work

“Statement of Work” means the form that we agree when you require Services for a specific Project. The Statement of Work sets out all relevant details concerning the Project such as scope, the Services, the charges and the acceptance criteria.



## Work Order

“Work Order” means the form that we agree when you require Services for a specific deliverable that involves an individual resource and little or no project management. The Work Order sets out all relevant details concerning the task to be completed, the charges and the sign off by authorized customer representative. For the benefit of good project management, Work Order(s) may be aggregated under a single Statement of Work.

## Scope of Work

### General

Whenever you require professional services from us we shall provide such Services as specified in a Statement of Work or Work Order.

### Scope of Work

The scope of work will vary from Project to Project and task to task. Therefore, each Statement of Work or Work Order as the case may be, shall set out the scope of work.

We shall mutually agree with you on the scope of work before starting any Statement of Work or Work Order.

### Roles

The roles and responsibilities for you and us will be set out in the Statement of Work or Work Order.

### Your Obligations

To ensure that the Project or task is completed on a timely basis you must provide the necessary resources and personnel, such that we can meet our obligations in the project plan.

### Changes to Scope

The Scope of Work may be changed on following the process set out under change control in this agreement.

## Change Control

### Change Request

Either you or we may request a modification or variation to a Statement of Work or Work Order. The request must be in writing detailing the change required. We both agree to give such request reasonable consideration and respond to the other on its merits within five (5) working days.



## Charges

A change request may result in a variation to our charges and/or impact on the timing of the project. We shall agree with you the new charges and/or expected impact on timing before implementing a change request.

## Charges and Expenses

### General

The charges in a Statement of Work or a Work Order may be fixed or variable. Fixed means that the charge will be as quoted. Variable means that the Project or task will be charged on a time and materials basis.

### Time and Materials

If we perform the Services on a time and materials basis, we shall maintain detailed records of our charges and expenses. You may inspect such records on request.

### Fixed Price

If we perform the Services on a fixed price basis, subject to change control and any delay caused by you, we shall not exceed that price. Dependent on the quote for a fixed price, the charges for incidentals, travel and accommodation may be an additional charge. If there is a delay caused by you in delivering the Services, and the delay is within your reasonable control, we may charge you for such delays and changes at our standard time and materials rates.

### Estimates

An Estimate is prepared based on our knowledge of your requirements and the information then available. You acknowledge that the Estimate does not foresee every circumstance that could affect the Estimate. We shall advise you in writing where it is likely that the Estimate will be exceeded. In this event we will agree with you the options on completion of the Statement of Work or Work Order. Such agreement may address a change in scope or charges.

### Charge Out Rates

If the Statement of Work or Work Order is not covered by a fixed price and does not provide a charge-out rate, then all charge-out work would be based on the published consultant charge out rate at the time of signing the Statement of Work or Work Order.



## Subscription and Hosting Fees

We host our integrations, the FeatureIT developed applications and associated data. Subscription and hosting fees will be an on-going charge and invoices will be issued either monthly, quarterly or annually as agreed. Nonpayment of subscription and hosting fees will result in the Suspension of Services. If the infrastructure associated with the subscription and hosting fees needs amendment of any kind, you must give no less than thirty (30) days notice in writing to outline the changes.

## GST

All charges are exclusive of GST (goods and services tax), VAT (value-added tax) or sales tax.

## Payment Terms

### Payment Due

Payment for any professional services is due by the 20<sup>th</sup> of the following month, or as dated on the invoice.

### Invoices

Invoices shall be issued upon the supply of professional services, unless otherwise agreed in a Statement of Work or Work Order.

### Refunds

Payments for custom services are made to us in increments as a courtesy to the client. Once a payment or deposit is made, it is non-refundable. If a project is cancelled or postponed, all monies paid are retained by FeatureIT and if applicable, a fee for all work completed beyond what was already paid for shall be paid by the client.

### Suspension of Services

If you do not pay our invoices by the due date, we may, upon reasonable notice in writing to you, suspend the Services. Such suspension of Services will not affect our right to other remedies available to us.

### Dispute of Invoice

If you dispute any invoice, please notify us in writing within three (3) working days of receipt of the invoice. We shall endeavor to resolve the dispute promptly with you. Until resolution of the dispute, you may withhold payment of the disputed amount, but you shall pay us the balance of the invoice not in dispute.

If we are unable to resolve the disputed invoice, we both agree to follow the procedure under Dispute Resolution of this agreement.





## Offsets

Dispute procedure must be used, offsets are not accepted, you must pay all invoices in full without set-off or deduction of any kind.

## Personnel

### Changes to Personnel

We shall not change or re-assign personnel without your approval, such approval shall not be unreasonably withheld.

You agree not to change your assigned personnel without our approval, such approval not to be unreasonably withheld.

### Incompatibility

A situation may arise where one of our staff members does not work well with one of yours. If this arises, we shall promptly discuss ways to resolve the issue and restore a favorable working relationship.

### Restraints

Neither party shall employ, or otherwise engage, the services of the other party's personnel. This mutual undertaking shall continue for six (6) months after the completion of a Statement of Work.

## Intellectual Property

You will not own the intellectual property for the implementation process deliverables. You do not own the intellectual property rights to any proprietary software that is subject to any license or subscription which supports the deliverables including hosted integration service configurations.

We own the intellectual property in the means, methods, processes and know-how that we employ to create the Deliverables or to otherwise perform our obligations under this agreement, and in any of our pre-existing library code used to create or incorporate into the Deliverables. We grant you a non-exclusive license to use the intellectual property referred to in this clause to the extent required for you to make use of the FeatureIT Services and Deliverables as specified within the separate hosted integration agreement.



## Date Processing

### Date Processing

To the extent that we have received date processing compliance warranties and undertakings from our suppliers which form part or all of any Deliverable, we will take such steps as we are legally able to in order to assign to you the benefit of all warranties and undertakings which we enjoy in respect of those Deliverables in relation to date processing compliance. No warranty or undertaking to you shall have effect until the date upon which the Deliverables have been delivered to you.

We will warrant that all procedures and scripts that we write or develop and that are added to or use software in the Deliverables will be date processing compliant.

We do not offer any further or additional warranties or undertakings than those provided for in this clause.

## Confidentiality

### Undertaking

We both agree to keep confidential all non-public information on each other's data and records. We both also agree to keep confidential anything else that is learnt about each other's business while the Services are being performed. Such information includes details on business, properties, Customers, finances and accounts.

We each agree that we will maintain appropriate internal procedures to protect the confidential information from unauthorized disclosure.

The parties are also bound by the signed mutual confidentiality agreement.

## Property and Risk

### Romalpa

We shall retain our full Romalpa rights to the Deliverables. This means that title in the Deliverables does not pass to you until you have paid our charges in full (subject to ownership of intellectual property rights in any software that is the subject of any third-party license remaining with the third-party licensor). You acknowledge that we hold a security interest in the Deliverables. We may register our security interest on the Personal Property Securities Register.

### Risk

Risk of loss or damage, and the obligation to insure against such risks, shall pass from us to you when we deliver the Deliverables to you.



## Acceptance

### Criteria for Acceptance

The design deliverables produced under each Statement of Work or Work Order shall specify the relevant acceptance criteria. If the Statement of Work or Work Order does not record any acceptance criteria, then acceptance shall be five (5) working days after notice to you that the implementation deliverables are ready for acceptance testing.

### Rejection of Acceptance

You shall within five (5) working days following receipt of our notice to you that the implementation deliverables are ready for acceptance, notify us in writing if you do not accept the Deliverables. Your notice is to specify those implementation deliverables that you do not accept and the reason for not accepting them. We shall then consult with you to agree a process and time frame for gaining acceptance for the implementation deliverables.

If the implementation deliverables fail to meet the acceptance criteria:

- a) within one month following the commencement of acceptance testing, we will use our best endeavors to provide a work-around solution that meets your requirements; and
- b) within two months following the commencement of acceptance testing, such failure will be deemed to be a failure to perform a material breach of this agreement entitling you to terminate this agreement in accordance with the termination provisions of this agreement.

## Warranty

### Standard

We shall perform the Services to the generally accepted standards of professionalism within our industry. We shall use persons that have the requisite skills, expertise and competency for the Project or task.

### Deliverables

We warrant that the implementation deliverables will meet the scope specified in the Statement of Work or Work Order for a period of thirty (30) days from acceptance in respect of daily processing transactions and sixty (60) days in respect of monthly processing. This provides separate acceptance periods for each phase and for each authorised change. During the period of this warranty we will ensure that we use appropriate systems and procedures to prevent corruption of data through the migration process and minimise unavailability for your website database or related services while transitioning from old system to new.



## Documents

If a Deliverable includes the production of a document, we will produce that document from the information available. However, we cannot warrant the contents, accuracy or use of such information as we rely on information provided by you and third parties.

## Liability

### Errors

If in the course of providing the Services, or during the warranty period, we discover or make a mistake we will openly discuss this with you and use our best endeavors to resolve the issue to our mutual satisfaction.

### Consequential Damages

We do not accept responsibility or liability for special, indirect or consequential damages, which also includes among other things loss of profits, loss of operations and damages or costs to restore lost or corrupt data where these damages are deemed outside the scope of our warranty.

We shall not be responsible or liable for Services we perform to plans or instructions that we did not prepare. However we shall remain liable for the actions of any of our sub-contractors.

### Force Majeure

Our maximum liability to you shall not exceed the value of the Statement of Work or Work Order giving rise to such liability.

## Term

### Commencement

The agreement shall commence on the date the agreement has been signed by both parties.

### Duration

This agreement shall continue until this agreement has been terminated as provided for under termination.



## Termination Without Cause

Either party may terminate this agreement at any time without cause on giving thirty (30) days notice in writing to the other party provided that if any work is outstanding under a Statement of Work or Work Order, such termination will only take effect on completion and payment in full by you of all such work. You may waive the requirement that we complete all work but must pay all amounts under the Statement of Work or Work Order as if that waiver had not been given.

## Termination With Cause

Either party may terminate this agreement on written notice to the other party if:

- a) the other party becomes insolvent or makes any arrangement with its creditors or becomes subject to an administration order;
- b) the other party goes into liquidation (except for the purposes of amalgamation or reconstruction);
- c) the other party fails to perform any material provision of this agreement, and such failure is not remedied within a period of thirty (30) days after receipt of notice from the non-breaching party of such failure (provided that an acceptance testing failure will only constitute a failure to perform a material provision of this agreement for the purposes of this clause if the Deliverables fail to meet the acceptance criteria two months after the commencement of acceptance testing). At this time any progress payment paid will be fully refunded.

The termination of this agreement without cause shall not relieve you of the obligation to pay invoices outstanding on the date of termination.

## Dispute Resolution

In the event of a dispute arising between the parties about interpreting or implementing this Agreement:

- a) The parties will use their Best Endeavors to resolve the dispute by negotiation in good faith. The parties will attend at least one meeting to discuss an attempt to resolve the dispute as a condition precedent to taking any other steps concerning the dispute (including but not limited to commencing any legal proceedings other than an application for injunctive relief);
- b) In New Zealand
  - i.) If the dispute cannot be resolved within ten (10) business days under clause a., or if a party refuses to comply with its obligations under that clause, then the parties will be required to refer the dispute to mediation by a mediator jointly appointed by them and failing agreement, a mediator appointed by the chairperson for the time being of LEADR; and



- ii.) If the dispute is not resolved within twenty (20) business days of its reference to mediation in accordance with clause b.i., or if a party refuses to comply with its obligations under that clause, then the parties will be required to refer the dispute to arbitration by a single arbitrator agreed on by both parties or, failing agreement, to a panel comprised of three arbitrators, one appointed by FeatureIT, one appointed by the Customer and one appointed by the two other arbitrators, or, should they be unable to agree on the third arbitrator, the appointment of the third arbitrator will be made by the President (or equivalent officer) for the time being of the New Zealand Law Society. The dispute referred to arbitration will be resolved according to the rules and principles of arbitration established by LEADR as amended from time to time. Where a panel of arbitrators is appointed, a majority decision of that panel will determine the matter under dispute. The determination of the arbitrator will be final and binding on the parties. Arbitration costs will be apportioned between the parties in the manner determined by the arbitrator

Nothing in this clause will preclude or prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate court or other forum in New Zealand.

## General

### Governing Law

The law of New Zealand shall govern this agreement. The parties agree to submit to the jurisdiction of New Zealand courts.

### Sub-Contractors

We may engage sub-contractors to handle various aspects of your Project or task. Any subcontractors that we engage shall report to us and we shall be responsible for their performance.

### Assignment

Neither party shall assign this agreement without the prior written consent of the other party. Such consent shall not be unreasonably withheld.

### Severability

Each provision in this agreement is severable in whole or in part. If any provision in this agreement is illegal or unenforceable for any reason, the parties shall strike such provision from this agreement. The balance of this agreement shall continue in full force and effect.

### Post-termination obligations

The following Clauses survive termination of the agreement "Intellectual Property", "Confidentiality", "Dispute Resolution" and "General".



## Preference

If there is any inconsistency between the main body of this agreement and any Statement of Work or Work Order, the following order of precedence will apply (in descending order of priority):

- a) Work Order;
- b) Statement of Work;
- c) The main body of this agreement.

