

Master Service Agreement Terms and Conditions

1. Definitions

- 1.1 **"Agreement"** means the terms and conditions contained herein, together with any quotation, estimates, proposals or plans, order, invoice or other document or amendments expressed to be supplemental to this Agreement.
- 1.2 **"Business Day"** means a day (other than a Saturday, Sunday, or public holiday) when banks in New Zealand are open for business.
- 1.3 **"Charges"** means the Charges payable (including any Goods and Services Tax ("GST") where applicable) for the Services as agreed between Webtech and the Client in accordance with clause 5 below and shall be in New Zealand dollars (\$NZ), unless otherwise specified.
- 1.4 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Webtech to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.5 **"Client Data"** means all data provided by the Client for use in connection with the Services.
- 1.6 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and web site and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using Webtech's web site, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the web site, prior to making enquiries via the web site.
- 1.7 **"OSS"** means the Client's online support service to provide direct support to the Client for technical issues.
- 1.8 **"Prohibited Content"** means any content on any advertising media that:
 - (a) is, or could reasonably be considered to be, in breach of the Broadcasting Act 1989; the Fair Trading Act 1986; or any other applicable law or applicable industry code; or
 - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - (c) is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights (including, but not limited to, the distribution of music files or any other material in which the Client does not own the copyright).
- 1.9 **"Schedules"** means the service schedules applicable to the Services, in each case attached to these conditions and

forming part of the Master Service Agreement, which shall be applicable where the Client receives such Services.

- 1.10 **"Services"** means all Goods (which includes any fonts, software, licensing, content, files, information, printed or virtual material, data, hardware, software or applications (whether supplied from a third party software development company or where custom developed or programmed for the Client), brands, designs, images, graphics, pictures, trademarks, manuals, and other associated documentation and/or goods, accessories or parts) or Services (which includes any advice or recommendations, consultancy, hosting (which includes virtual server hosting, web site hosting, e-mail hosting, etc.), monitoring, data back-up or storage, design and/or web site maintenance, brands, designs, project management work, brand integration, strategising and analytical services, technical service, support and training, repairs, or installation of Goods, etc.) supplied by Webtech to the Client, at the Client's request, from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.11 **"Software"** means any branded software produced and/or supplied by Webtech and includes any software required for operating each individual terminal or application.
- 1.12 **"Webtech"** means Webtech Evolution Ltd T/A Webtech, its successors and assigns.

2. Interpretation

- 2.1 In this Agreement, unless the context otherwise requires:
 - (a) the singular includes the plural, and vice versa; and
 - (b) a reference to a clause is a reference to a clause in this Agreement; and
 - (c) a reference to a party in this Agreement, or any other document or agreement, includes that party's executors, administrators, successors and permitted assigns, and any person acting on behalf of, and with the authority of, that party; and
 - (d) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
 - (e) a reference to a period of time (including, but not limited to, a year, quarter, month and day) is to a calendar period; and
 - (f) headings are for convenient reference only, and do not affect interpretation.
- 2.2 If the day upon which any act, matter or thing is to be done under this Agreement is not a Business Day, that act, matter or thing:
 - (a) if it involves payment other than payment which is due on demand, must be done on the preceding Business Day; and
 - (b) in all other cases, may be done on the next Business Day.

3. Acceptance

- 3.1 The parties acknowledge and agree that:
 - (a) they have read and understood the terms and conditions contained in this Agreement; and

- (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, pays a deposit or accepts Services provided by Webtech either via phone, email, text, or other digital messages.
- 3.2 In the event of any inconsistency between the terms and conditions of this Agreement and any other prior document or Schedules that the parties have entered into, the terms of this Agreement shall prevail.
- 3.3 These terms and conditions are meant to be read in conjunction with the terms and conditions posted on Webtech's web site, Webtech's Hire Form and/or Schedules, and where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein.
- 3.4 Any amendment to the terms and conditions contained in this Agreement may only be amended in writing by the consent of both parties.
- 3.5 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Webtech and it has been approved with a credit limit established for the account.
- 3.6 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, Webtech reserves the right to refuse delivery.
- 3.7 None of Webtech's agents or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by the manager of Webtech in writing nor is Webtech bound by any such unauthorised statements.
- 3.8 Once accepted by the Client, Webtech's quotation shall be deemed to correctly interpret the Client's instructions, whether written or verbal. Where verbal instructions only are received from the Client, Webtech shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 3.9 Any advice, recommendation, information, assistance, or service provided by Webtech in relation to Services supplied is given in good faith to the Client, or the Client's agent and is based on Webtech's own knowledge and experience and shall be accepted without liability on the part of Webtech. Where such advice or recommendations are not acted upon then Webtech shall require the Client or their agent to authorise commencement of the Services in writing. Webtech shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 3.10 The Client acknowledges and accepts that:
- access to Webtech's accounts will not be granted to the Client or the Client's IT supplier (including, but not limited to, access to servers, hosting environments, marketing tools, Google, Facebook, or any other business accounts). Any updates or maintenance required to the web site will be conducted by Webtech, upon confirmation by both parties, and shall be invoiced as an extra;
 - digital third-party platforms including content management system platforms, browsers, plugins or licensed products can become outdated and unsupported which are out of Webtech's control;
 - Webtech shall not actively conduct Services on unsupported digital third-party platforms and shall advise the Client of suitable upgrades or alternatives or in some circumstances complete short-term fixes available upon the Client's request. In the event that the Client advises Webtech to continue with the Services then Webtech shall require the Client or their agent to authorise commencement of the Services in writing. Webtech shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services;
 - copyright is retained by Webtech on all design work and other Services provided by Webtech including text, images, ideas, visuals, and illustrations unless specifically released in writing and after all costs have been settled.
- 3.11 To ensure that the web site functions effectively over time it is Webtech's recommendation that updates, and maintenance are completed annually.
- 3.12 Any ongoing remote and/or support work provided by Webtech to the Client not set out in the quotation will be additional Charges at the current charged set by Webtech which may be subject to change from time to time.
- 3.13 This Agreement constitutes the entire Agreement between Webtech and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by Webtech, but not embodied in this Agreement.
- 3.14 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Agreement and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 4. Product Specifications**
- 4.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings, and weights stated in Webtech's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Agreement, unless expressly stated as such in writing by Webtech.
- 5. Change in Control**
- 5.1 The Client shall give Webtech not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Webtech as a result of the Client's failure to comply with this clause.
- 6. Fixed Term Agreement**
- 6.1 Where this Agreement relates to a fixed term contract, all payments shall fall due as per the payment schedule. To terminate the fixed term contract on, or after, the current annual term, the Client must give Webtech not less than ninety (90) days written notice prior to the current anniversary date of this Agreement. The Services will then terminate at the end of the then current annual term. If the Client does not terminate the Services on expiry of the current annual term, the Services shall revert to a month-by-month basis charge until otherwise agreed by both parties. Any additional Services shall become due and payable until notice (as herein) is received.
- 6.2 In the event of the premature termination of this fixed term contract (including by notification from the Client, (at least ninety (90) days written notice prior to the expiration date of the contract term), or as a result of default, but excluding any breach or termination of this Agreement by Webtech):
- the Client shall be responsible for the immediate payment of the following sums:
 - all monies due and payable up to the date of termination, noting applicable rates may change if the Plan is shorter than that noted in the quotation; and
 - all other sums owing by the Client under this Agreement (or any other agreement with the Client) as a result of the default and termination of this Agreement, including consequential damages and any and all loss of profits, costs, charges and expenses incurred by Webtech in connection with (and resulting from) the premature termination of this Agreement, which shall be calculated at a minimum of thirty percent (30%) of the remainder of the Charges under this Agreement where a fixed term applies.
- 6.3 Any Charges quoted by Webtech shall remain in full force and effect for the fixed term; upon expiry thereof, Webtech reserves the right to renegotiate the Charges for any subsequent

period/s on the basis of the movement in the Consumer Price Index (CPI).

7. Subscription Software Licence Agreement "SSLA"

7.1 The Client is required to pay a recurring fee for the on-going use of the Software. The monthly licence fee payable for the SSLA is stipulated and is due and payable as per the Client's quotation. Webtech may adjust the subscription charges from time to time (as per clause 8.9(g) upon thirty (30) days written notice to the Client. The SSLA shall include the Client's OSS and includes access to the Software and updates as per the SSLA.

7.2 The SSLA shall continue for the term stipulated on the SSLA and, upon expiration of this term, will continue a month-by-month basis, unless the SSLA is terminated by way of the Client providing Webtech with written notification. Following receipt of notice from the Client, the SSLA and the licence shall both terminate at the end of the then current monthly billing period.

7.3 If the Client wishes to terminate the SSLA during the term stipulated, the Client must pay to Webtech the remaining SSLA subscription charges which would otherwise have been payable to Webtech during the SSLA term.

7.4 Where the Client defaults in payment of the SSLA subscription charges (of any part thereof), Webtech shall suspend the licence and deactivate the Software.

7.5 In order to, inter alia, protect the integrity of the Software, it is a condition of the licence that all Clients maintain an OSS in accordance with the terms of the Licence to Use.

7.6 In the event the Client's OSS has lapsed (due to non-payment) and support is required (either on-site or via telephone/internet), the Client shall be charged, and agrees to pay, Webtech's current hourly rate for such support.

7.7 It is the responsibility of the Client to ensure an appropriate internet connection is available for updates to the Software and to provide OSS. Webtech will be under no obligation to provide technical support for problems which relate to the Client's internet connection, or any failure thereof.

7.8 The Client may terminate the subscription by giving Webtech at least sixty (60) days' written notice. Where the Client provides such notice before the end of the initial term, Webtech shall be entitled to charge the Client a "break fee" (calculated by: remaining term x annual fees / 365). It is agreed by both parties that this calculation represents a realistic pre-estimate of the loss and damage Webtech is likely to suffer because of the agreement ending before the end of the initial term.

7.9 Subject to clause 7.8, the initial term (being either twelve (12), twenty-four (24) or thirty-six (36) months) as agreed between both parties shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least sixty (60) days required notice as defined in the agreement prior to the expiration date of the initial term or any "additional" term, except:

- (a) termination by the Client of the "additional term" shall not incur a "break fee"; and
- (b) if Webtech notifies the Client of a change to the subscription charges at sixty (60) days prior to the end of the "initial term", those new Charges will take effect from the start of the "additional term".

8. Charges and Payment

8.1 At Webtech's sole discretion, the Charges shall be either:

- (a) as indicated on any invoice provided by Webtech to the Client; or
- (b) Webtech's current price at the date of provision of the Services as indicated on Webtech's pricelist; or
- (c) Webtech's estimated Charges (subject to clause 8.9) as the final price can only be ascertained upon completion of the Services. Variances in the estimated Charges will be subject to Client approval before proceeding with the Services; or

(d) Webtech's quoted price, estimates or proposals (subject to clause 8.9) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days;

(e) as per Webtech's set non-refundable monthly Charges for the Services ("Plan"), which will be as stipulated (including when due and payable) by Webtech in the Plan.

8.2 Charges in all investment estimates, quotes and proposals are estimated in New Zealand Dollars and are exclusive of GST. The Charges for the delivery of projects are estimated based on the interpretation of the scope and detail provided by the Client and are subject to change (including, but not limited to, further details being learnt and/or revealed by either party, a change in Client requirements and/or brief, rounds of amends or changes outside the original estimation, content or requests not being supplied together as a concise set, the timeframe for the project changing and/or being delayed, human errors contained in prices or specifications, supplier price changes, and exchange rate fluctuations).

8.3 A copy of the written estimate or quotation is to be signed and dated by the Client to indicate acceptance and should be returned to Webtech. As an alternative, the Client may send an official order for the Services via email in reply to the estimate or quotation which will imply the Client's acceptance of Webtech's terms and conditions. The Client accepts that no work will be commenced until acceptance has been supplied to Webtech as per this clause.

8.4 Webtech shall supply each of the Services to the Client under each order from the respective commencement date in accordance with the terms of this Agreement.

8.5 Where Webtech is requested by the Client to provide a duplicate code and/or design of the initial web site for the purposes of duplication on another domain then this shall be invoiced as an extra and will be calculated at twenty-five percent (25%) of the original project Charge.

8.6 Copies of web site codes for any other reason than as specified in clause 8.5 above will only be provided when the Client has met all their obligations under the Agreement particularly those relating to payment.

8.7 The Client acknowledges and accepts that additional Charges will apply, as determined by Webtech, which shall be due and payable prior to the delivery of the Services, for:

- (a) packaging and supply of web site files or domain records for transfer; or
- (b) web site hosting transfers to the new provider; or
- (c) taking down the web site.

8.8 Unless otherwise agreed Webtech shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Services, except where such expenses are specifically stated in the Plan or in writing by Webtech, as being non-reimbursable. All reimbursable expenses (e.g., communications, travel expenses, etc.) will be charged at the cost involved (excluding GST) as incurred by Webtech.

8.9 *Additional and/or Varied Services:*

- (a) Webtech agrees that there will be no charge in the preparation of the initial quotation, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned Services may be charged to the Client additionally (at Webtech's sole discretion). In the event the Client requires proofs, mock-ups, layouts, samples or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at Webtech's hourly rate unless specified otherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per sub-clause (g);
- (b) all work carried out whether experimentally or otherwise at the Client's request will be charged to the Client;
- (c) any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice;

- (d) unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at the Client's request for the job;
 - (e) where the performance of any agreement with the Client requires Webtech to obtain products and/or services from a third party, the Agreement between Webtech and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Webtech, and the Client shall be liable for the cost in full including Webtech's margin of such products and/or services;
 - (f) whilst every effort will be taken by Webtech to match virtual colours with physical colours, Webtech will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product. Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra and charged contra against final invoice;
 - (g) Webtech reserves the right to amend the Charges where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of Webtech's standard hourly rates (and double such rate for any Services provided outside Webtech's normal business hours) and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by Webtech within five (5) working days. Failure to do so will entitle Webtech to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
 - (h) as a result of the timeframe for the project changing and/or being delayed;
 - (i) as a result of increases beyond Webtech's reasonable control in the cost of materials or labour (e.g., third-party network operator or Webtech's costs (e.g., google) or fluctuations in currency exchange rates, etc.). Where the Client is on a Plan, Webtech will provide one (1) month's written notice to the Client of any variation to the Charges thereof;
 - (j) the Client acknowledges that all Services and support for email are chargeable in addition to the Charges;
 - (k) Webtech shall not be held responsible for any amendments made by any third party before or after a design is published.
- 8.10 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by Webtech, which may be:
- (a) on completion of the Services;
 - (b) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Webtech.
- 8.11 Payment may be made by:
- (a) cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Webtech; or
 - (b) a Direct Debit Request ("DDR") arrangement, unless otherwise as agreed to between the Client and Webtech and shall be subject to:
 - (i) if a deduction falls due on a non-business day, it will be debited to the Client's account on the next business day following the scheduled withdrawal date;
 - (ii) Webtech will give the Client not less than thirty (30) days written notice when changes to the initial terms of the arrangement are made. This notice will state any other changes to the initial arrangement; and
 - (iii) if the Client wishes to discuss any changes to the initial arrangement, then the Client shall contact Webtech's representative directly. The changes may include deferring the monthly deduction; stopping an individual debit; suspending the DDR; or cancelling the DDR.
- 8.12 Webtech may in its discretion allocate any payment received from the Client towards any invoice that Webtech determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Webtech may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Webtech, payment will be deemed to be allocated in such manner as preserves the maximum value of Webtech's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Services.
- 8.13 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Webtech nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify Webtech in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as Webtech investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Webtech placing the Client's account into default and subject to default interest in accordance with clause 20.1.
- 8.14 GST and other taxes and duties that may be applicable shall be added to the Charges except when they are expressly included in the Charges.
- 9. Design and Development Invoices and Payments**
- 9.1 In accordance with clause 8, fees for new designs and builds shall be made over three (3) payments unless otherwise agreed by both parties in writing and the following conditions may apply:
- (a) fifty percent (50%) of the contract price is payable up front and considered a non-refundable deposit;
 - (b) a payment of twenty-five percent (25%) of the contract price is payable on design approval; and
 - (c) the balance payable prior to go live of the web site.
- 10. Provision of the Services**
- 10.1 Each project is unique to a Client and the costings of a project are estimated and based on the requirements as defined by the Client at the initial meeting and shall include the hours and timeframe that Webtech envisages it will take to complete, (subject to variations as per clause 8.9).
- 10.2 Any time specified by Webtech for provision of the Services is an estimate only and Webtech will not be liable for any loss or damage incurred by the Client as a result of provision being late. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that Webtech is unable to provide the Services as agreed solely due to any action or inaction of the Client, then Webtech shall be entitled to:
- (a) charge the Client additionally for re-providing the Services at a later time and date; or
 - (b) subject to clause 21.1, terminate the Agreement.
- Managing scope and assumptions**
- 10.3 All technical, mandatory requirements and assumptions are required to be clearly itemised and disclosed by the Client prior to the initiation of the project to ensure all expected features and functionality have been correctly estimated and scoped for in both investment and time required to complete the project.
- 10.4 In the event that additional work is requested or required outside of the original estimate/scope, Webtech has the right to re estimate the Services and timeframe required to complete the project at any stage.
- 10.5 The Client acknowledges and accepts that not all development work can or will be previewed with designs prior to development. Should any specifications be required or

- necessary to be met, it is required that the Client clearly communicate this to Webtech prior to development.
- 10.6 The Client's amends are expected to be minimum, and styling, text or content updates are to be received in batches in-line with the stage of project and the number of amends shall be stipulated in the estimate, project, or scope of the Services. If this is not identified at the time of estimating, then at least one round of amends will be adopted at the discretion of Webtech.
- 10.7 Webtech warrants to the Client that the Services:
- (a) will be provided using reasonable care and skill and using suitably skilled and qualified personnel;
 - (b) shall be performed in accordance with all applicable laws and regulations; and
 - (c) shall conform to the specifications and standards set out in the applicable Schedules in all material respects.
- 11. Fonts and Licensing**
- 11.1 Notwithstanding and in accordance with clause 12, where Webtech has designed, drawn or developed Services (including the web site) for the Client, Webtech retains full intellectual property ownership of the Services, including the copyright in any designs, finalised logos, photographs, artwork, proofs and drawings and documents, work delivered in 'pitches', and Webtech hereby grants to the Client an irrevocable, non-exclusive and non-transferable licensing, fonts or software to use the Services solely in relation to the operation of the Client's own business, conditional upon the Client fulfilling their obligations under this Agreement (including, but not limited to, the full payment of the Charges).
- 11.2 Notwithstanding clause 16 and 11.1 ownership of an all intellectual property rights in the web site or any other software or content developed for the Client (including, but not limited to, releasing the control of the web site, use of domain name or the source code of any software etc) shall be retained by Webtech until all amounts owing to Webtech have been paid in full.
- 11.3 Notwithstanding anything herein, the intellectual property rights in Webtech's Services do not vest in the Client and there is no assignment of these intellectual property rights to the Client. Webtech hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use and reproduce the Services for the purposes of this Agreement only, and solely for the operation of the Client's business however, the Client shall not use nor make copies of such intellectual property in connection with any work or business other than the work or business specified in writing to Webtech unless express approval is given in advance by Webtech. Such license shall terminate on default of payment or any other terms of this Agreement by the Client.
- 11.4 Subject to the Copyright Act 1994 and the conditions therein, where Webtech or their subcontractor has provided the Client with a licence for use on any design, copy, writing, drawing, image, illustration, idea or code created for the Client, the licence shall be for use by the Client on a one-time only basis and may not be modified, re-used, or re-distributed in any way or form without the express permission of Webtech and any of its relevant subcontractors.
- 12. Intellectual Property and Confidentiality**
- 12.1 All design work where there is a risk that another party makes a claim, should be registered by the Client with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use. Webtech shall not be held responsible for any or all damages resulting from such claims.
- 12.2 Trademarking, protection, and management of the intellectual property developed for the Client shall be the sole responsibility of the Client, Webtech will not be liable for any costs or losses, real or otherwise that may be incurred should the Client fail to adhere to this clause.
- 12.3 The Client hereby authorises Webtech to utilise images of the Services created by Webtech in advertising, marketing, or competition material by Webtech including, but not limited to:
- (a) the Client permitting Webtech to place a small credit on printed material, exhibition displays, advertisement and/or link to Webtech's own web site on the Client's web site, which shall usually be in the form of a small logo or line of text placed towards the bottom of the page even if the web site is moved or transferred to another provider;
 - (b) allowing Webtech to place web sites and other designs, along with a link to the Client's web site on Webtech's own web site for demonstration purposes and to use any designs in Webtech's own publicity.
- 12.4 The Client shall indemnify Webtech against any claims by third parties for patent, trademark, design, or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Services or any other deficiency therein. Where the Client has supplied drawings, sketches, files or logo's to Webtech, the Client warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Client agrees to indemnify Webtech against any action taken by a third party against Webtech.
- 12.5 All Flash, PHP, Java Script, HTML and Dynamic HTML coding and other supplied code (if any) remains the intellectual property of Webtech. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 12.6 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 13. Risk and Limitation of Liability for Client Data**
- 13.1 The Client shall:
- (a) provide Webtech with data in the following formats:
 - (b) for text, files shall be in an electronic format as standard text (.txt) or Work (.doc) on a USB, CD-ROM or via email;
 - (c) for imaged, in an electronic format as prescribed by Webtech on a USB, CD-ROM or via email with the images of a suitable quality applicable for the use intended and without any subsequent image processing being required. Webtech shall not be responsible for the quality of images scanned from printed materials;
 - (d) additional expenses may be charged to the Client for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing or data entry services;
 - (e) provide the data in accordance with this Agreement and in accordance with any timescales agreed by the parties or otherwise in a timely and efficient manner;
 - (f) ensure that the terms of each service and any information it provides to Webtech, including, but not limited to, the data, are complete and accurate;
 - (g) co-operate (and procure that its employees, officers, agents and representatives co-operate) with Webtech in all matters relating to the Services;
 - (h) provide Webtech, its employees, agents, consultants and subcontractors, with access to the Client's data and documents necessary and the Client's premises and other facilities as reasonably required by Webtech for the proper provision of the Services;
 - (i) inform Webtech of all health and safety rules and regulations and any other reasonable security requirements or other procedures that apply at any of the Client's premises;
 - (j) keep and maintain all materials, equipment, documents and other property (including software) of Webtech's or its licensors (Webtech's materials) at the Client's premises in safe custody at the Client's own risk, maintain Webtech's Goods in good condition until returned to Webtech, and not dispose of or use Webtech's Goods other than in

- accordance with Webtech's written instructions or authorisation;
- (k) act and use the Services fully in compliance with the terms of the Agreement and all applicable laws and regulations; and
- (l) comply with any other Client obligations set out in each service Schedule or as otherwise agreed between the parties using all reasonable care and skill and in accordance with any timescales agreed by the parties.
- 14. Defects, Errors, Omissions and Warranty**
- 14.1 The Client shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify Webtech of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Client shall afford Webtech an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Webtech has agreed in writing that the Client is entitled to reject, Webtech's liability is limited to either (at Webtech's discretion) replacing the Goods or repairing the Goods.
- 14.2 Goods will not be accepted for return other than in accordance with 14.1 above, and provided that:
- (a) Webtech has agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at the Client's cost within ten (10) days of the delivery date; and
- (c) Webtech will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.3 If Webtech accepts that the Client is entitled to reject the Goods following their return pursuant to clause 14.2(b) Webtech will reimburse the Client's actual and reasonable costs of return delivery.
- 14.4 Webtech will not accept the return of Goods for credit.
- 14.5 For defective Services, which Webtech has agreed in writing that the Client is entitled to reject, Webtech's liability is limited to either (at Webtech's discretion) replacing the Services or rectifying the Services, provided that the Client has complied with the provisions of clause 14.1.
- 14.6 For Goods not manufactured by Webtech, the warranty shall be the current warranty provided by the manufacturer of the Goods. Webtech shall not be bound by nor be responsible for any term, condition, representation, or warranty other than that which is given by the manufacturer of the Goods.
- 14.7 The Client acknowledges and accepts that Webtech shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Webtech in the formation and/or administration of this Agreement; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Webtech in respect of the Services.
- 14.8 In the event such an error and/or omission occurs in accordance with clause 14.7, and is not attributable to the negligence and/or wilful misconduct of Webtech; the Client:
- (a) shall not be entitled to treat this Agreement as repudiated nor render it invalid; but
- (b) shall not be responsible for any additional costs incurred by Webtech arising from the error or omission.
- 15. Protection of Reputation**
- 15.1 Any misuse, misrepresentation or any other action that negatively impacts Webtech's brand which is deemed to damage and/or tarnish the reputation of Webtech's brand, the Client must cease and desist from such misuse, misrepresentation, or other action immediately on receipt of a written notice from Webtech to this effect.
- 16. Title**
- 16.1 Webtech and the Client agree that the Client's obligations to Webtech for the supply of Services shall not cease (and ownership of any Goods shall not pass) until:
- (a) the Client has paid Webtech all amounts owing to Webtech for the Services; and
- (b) the Client has met all other obligations due by the Client to Webtech in respect of all Agreements between Webtech and the Client.
- 16.2 Receipt by Webtech of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised, and until then Webtech's ownership or rights in respect of the Services, and this Agreement, shall continue.
- 16.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 16.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Webtech on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Webtech and must pay to Webtech the proceeds of any insurance in the event of the Goods being lost, damaged, or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes, or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Webtech and must pay or deliver the proceeds to Webtech on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Webtech and must sell, dispose of, or return the resulting product to Webtech as it so directs.
- (e) the Client irrevocably authorises Webtech to enter any premises where Webtech believes the Goods are kept and recover possession of the Goods.
- (f) Webtech may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Webtech.
- (h) Webtech may commence proceedings to recover the Charges notwithstanding that ownership of the Goods has not passed to the Client.
- 17. Personal Property Securities Act 1999 ("PPSA")**
- 17.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods that have previously been provided, and that will be provided in the future by Webtech to the Client, and the proceeds from such Goods as listed by Webtech to the Client in invoices rendered from time to time.
- 17.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which Webtech may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Webtech for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;

- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Webtech; and
- (d) immediately advise Webtech of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

17.3 Unless otherwise agreed to in writing by Webtech, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

17.4 The Client shall unconditionally ratify any actions taken by Webtech under clauses 17.1 to 17.3.

17.5 Subject to any express provisions to the contrary (including those contained in this clause 17) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

18. Security and Charge

18.1 In consideration of Webtech agreeing to provide the Goods/Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

18.2 The Client indemnifies Webtech from and against all Webtech's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Webtech's rights under this clause.

18.3 The Client irrevocably appoints Webtech and each director of Webtech as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Client's behalf.

19. Consumer Guarantees Act 1993 and the Fair Trading Act 1986

19.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Services by Webtech to the Client.

19.2 Webtech agrees to abide by the provisions of the Fair Trading Act ("FTA").

20. Default and Consequences of Default

20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Webtech's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

20.2 In addition to clause 20.1 in the event that payment remains outstanding for more than thirty (30) days from the invoice due date, Webtech reserves the right to charge a late payment fee, exclusive of GST, which shall be payable fortnightly until the date when the payment has been received.

20.3 If the Client owes Webtech any money the Client shall indemnify Webtech from and against all costs and disbursements incurred by Webtech in recovering the debt (including, but not limited to, internal administration fees, legal costs on a solicitor and own client basis, Webtech's collection agency fees, and bank dishonour fees).

20.4 Further to any other rights or remedies Webtech may have under this Agreement, if a Client has made payment to Webtech, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Webtech under this clause 20 where it can be proven that such reversal is found to

be illegal, fraudulent or in contravention to the Client's obligations under this Agreement.

20.5 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the provision of the Services to the other party, (this includes but is not restricted to, withholding domain codes, passwords and Goods, and/or blocking or restricting public and Client access to the web site, or removing the web site from the web completely). Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

20.6 Without prejudice to Webtech's other remedies at law Webtech shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Webtech shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Webtech becomes overdue, or in Webtech's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by Webtech;
- (c) the ownership or effective control of the Client is transferred or the nature of the Client's business is materially altered;
- (d) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (e) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Cancellation

21.1 If Webtech, due to reasons beyond Webtech's reasonable control, is unable to deliver any Services to the Client, Webtech may cancel any Agreement to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice Webtech shall repay to the Client any money paid by the Client for the Services. Webtech shall not be liable for any loss or damage whatsoever arising from such cancellation.

21.2 The Client may cancel delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Agreement.

21.3 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Agreement will be terminated by Webtech (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within fourteen (14) days from the date of the submitted invoice.

21.4 If the Client fails to comply with any of the provisions of this Agreement and does not rectify such non-compliance within seven (7) days of Webtech giving notice either in writing, via fax or email, then Webtech may without prejudice to any other rights or remedies, and without being liable to the Client for any loss or damage that may result, give notice to the Client terminating their right to use the web site, Software and Services. Upon termination of the Agreement, the Client shall lose all right to use the web site and products and shall forthwith deliver the Goods to Webtech and destroy all copies made. The Client shall certify in writing that the copies have been destroyed.

21.5 Cancellation of orders for Goods made to the Client's specifications will definitely not be accepted once production has commenced, or an order has been placed.

21.6 In the event the Client transfers their services to another provider and cancels the Agreement in accordance with this clause, it shall be the Client or the Client's third-party provider's

- responsibility to provide Webtech with written confirmation that the transfer has been completed. Webtech shall, upon receipt of the confirmation, terminate the Services.
- 21.7 Upon termination of this Agreement, Webtech will immediately delete all files and content relating to the Client and the Services provided thereto.
- 21.8 It is the Client responsibility to make arrangements for the transfer of their data prior to the termination date. Webtech accepts no liability for any loss or damage incurred by the Client as a result of the deletion of such data.
- 21.9 In the event the Services are terminated as per clauses 21.1 or 21.4, the Services can be re-instated under a new agreement at the prevailing rates; however no credits or discounts will be granted and reinstatement costs shall apply.

22. Privacy Policy

- 22.1 All emails, documents, images, or other recorded information held or used by Webtech is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. Webtech acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. Webtech acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Webtech that may result in serious harm to the Client, Webtech will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to Webtech in respect of Cookies where the Client utilises Webtech's web site to make enquiries. Webtech agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking web site usage and traffic; and
 - (c) reports are available to Webtech when Webtech sends an email to the Client, so Webtech may collect and review that information ("collectively Personal Information")
- If the Client consents to Webtech's use of Cookies on Webtech's web site and later wishes to withdraw that consent, the Client may manage and control Webtech's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Client authorises Webtech or Webtech's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Webtech from the Client directly or obtained by Webtech from any other source to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Client shall have the right to request (by e-mail) from Webtech, a copy of the Personal Information about the Client

retained by Webtech and the right to request that Webtech correct any incorrect Personal Information.

- 22.6 Webtech will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.
- 22.7 The Client can make a privacy complaint by contacting Webtech via e-mail. Webtech will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

23. Service of Notices

- 23.1 Any written notice given under this Agreement shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Agreement;
 - (c) by sending it by registered post to the address of the other party as stated in this Agreement;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Agreement (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

- 24.1 If the Client at any time upon or subsequent to entering into the Agreement is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not Webtech may have notice of the Trust, the Client covenants with Webtech as follows:
- (a) the Agreement extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe to enter into the Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Agreement without consent in writing of Webtech (Webtech will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

25. Dispute Resolution

- 25.1 Webtech and the Client will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of, or relate to, this Agreement, or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.

26. General

- 26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Palmerston North Courts in New Zealand.
- 26.3 Subject to the CGA, the liability of Webtech and the Client under this Agreement shall be limited to the Charges.
- 26.4 Webtech may licence and/or assign all or any part of its rights and/or obligations under this Agreement without the Client's consent provided the assignment does not cause detriment to the Client.
- 26.5 The Client cannot licence or assign without the written approval of Webtech.
- 26.6 Webtech may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Agreement by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction

to any of Webtech's sub-contractors without the authority of Webtech.

- 26.7 The Client agrees that Webtech may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Webtech to provide Goods and/or Services to the Client.
- 26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns or outage of any telecommunications links or other connections forming part of the Internet which are beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make any payment due to Webtech, following cessation of a Force Majeure.
- 26.9 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent, and that this Agreement creates binding and valid legal obligations on them.