INTRODUCTION

1 Application

1.1 All Services and Deliverables supplied by the Supplier are supplied subject to these Terms and Conditions as follows:

1.1.1 unless the context otherwise requires, the provisions of Part 1 apply to the provision of all and any Services and Deliverables;

1.1.2 the provisions of Part 2 apply to the provision of hosting services (if any); and

1.1.3 the provisions of Part 3 apply to the provision of software development services (if any).

1.2 Any reference to "Services" or "Deliverables" in Parts 2 and 3 is a reference to the specific Services or Deliverables provided pursuant to that part as specified in the Agreement.

PART 1 – GENERAL

2 Definitions

2.1 In these Terms and Conditions, unless the context otherwise requires:

2.1.1 **Address** means the address, premises, site, or location where the Deliverables are to be delivered and/or the Services provided by the Supplier, being the Client's address specified in the Agreement or otherwise agreed in writing between the Supplier and the Client.

2.1.2 **Agreement** means the terms set out in any written agreement between the Supplier and the Client for the supply of Services and/or Deliverables by the Supplier to the Client, and includes any Scoping Document and these Terms and Conditions.

2.1.3 **Business Day** means a day which is not a Saturday, Sunday or public holiday in Christchurch, New Zealand.

2.1.4 **Claim Period** has the meaning given to it in clause 12.1.

2.1.5 **Client** means the person to whom the Services and Deliverables are to be supplied.

2.1.6 **Client's Materials** means all information, data, graphics, pictures, trademarks, software, Website banners, Website design and development, advertising, brochures and other materials incorporated or to be incorporated into the Developed Software, including user data generated by the operation of the Developed Software, but excluding anything created or developed by the Supplier in providing the Services.

2.1.7 **Client's Website** means the Website of the Client as specified in the Agreement (if any).

2.1.8 **Collateral** has the meaning given to it in clause 14.1.

2.1.9 **Commencement Date** means the commencement date of the relevant Services (if any) as specified in the Agreement.

2.1.10 **Deliverable** means an item (if any) to be delivered by the Supplier in the course of providing the Services which is specified in the Agreement and, for the avoidance of doubt, may include software and Developed Software.

2.1.11 **Delivery** means delivery of the Services and Deliverables in accordance with the Agreement.

2.1.12 **Delivery Testing Phase** means the period of two weeks from Delivery during which the Client must conduct a thorough check of the Deliverables to ensure that they perform in accordance with the Specifications.

2.1.13 **Developed Software** means any software to be specifically written and developed by the Supplier for the Client pursuant to the Agreement.

2.1.14 **Dispute** has the meaning given to it in clause 21.1.

2.1.15 **Dispute Notice** has the meaning given to it in clause 21.1.

2.1.16 **Existing IP** means all Intellectual Property which is owned by or proprietary to, a party to the Agreement as at the date of the Agreement or developed by, or on behalf of, a party other than pursuant to the Agreement.

2.1.17 **Hosting Environment** includes webservers, database servers, other servers and any webservers, database servers and other servers hosted in a remote environment.

2.1.18 **Intellectual Property** means any and all intellectual and industrial property rights throughout the world including rights in respect of, or in connection with, copyright (including future copyright) and rights in the nature of, or analogous to, copyright, trademarks, inventions (including patents), any confidential information, service marks, designs, circuit layouts, rights in databases, and rights in internet domain names and Website addresses, whether or not existing now and whether or not registered or registrable and includes any right to apply for registration of such rights and all renewals and extensions.

2.1.19 **Price** means:

(a) where a price is specified in the Agreement, the price for the Work recorded in the Agreement (other than where that price is clearly stated to be an estimate only);

(b) otherwise, the Supplier's usual charges for completing the Work;

plus any additional charges pursuant to these Terms and Conditions.

2.1.20 **Production Testing** means conducting a thorough check of the Deliverables to ensure that they perform or will perform in accordance with the Specifications.

2.1.21 **Prohibited Content** means any content that is or could reasonably be considered to be

(a) in breach of the Consumer Guarantees Act 1993, Fair Trading Act 1986, or any other applicable law or applicable industry code;

(b) misleading or deceptive, likely to mislead or deceive, or otherwise unlawful;

(c) in breach of any person's Intellectual Property; or

(d) unlawful in any manner whatsoever.

2.1.22 **Scoping Document** means any proposal for the provision of Services and/or Deliverables, or any other services, prepared for the Client by the Supplier and accepted by the Client.

2.1.23 **Secured Products** has the meaning given to it in clause 13.4.

2.1.24 **Service Levels** means the service levels for the provision of the relevant Services as specified in the Agreement (if any).

2.1.25 **Services** means the services to be provided by the Supplier to the Client, as specified in the Agreement.

2.1.26 **Specifications** means any specifications applying to the provision of the Services and Deliverables, as specified in the Agreement.

2.1.27 **Supplier** means Global Office Limited and its successors and assigns.

2.1.28 **Supplier Process IP** means all Intellectual Property in the Supplier's processes, systems, methodology and practices and in the components of any Deliverable that the Supplier is able to utilise and anticipates utilising (either in its current form or in an adapted or modified form) in its business (including for the purpose of providing services and/or deliverables to any third party). For the avoidance of doubt, this definition shall not extend to any actual Deliverable in respect of which ownership shall expressly vest in the Client pursuant to the Agreement unless specified otherwise.

2.1.29 **Supplier's Authorised Representative** means the person (or class of persons) named as the supplier's authorised representative in the Agreement (if any) or otherwise notified to the Client in writing, or any replacement person advised by the Supplier from time to time by written notice to the Client.

2.1.30 **Terms and Conditions** means these terms and conditions as may be amended by the Supplier from time to time by written notice to the Client.

2.1.31 **Third Party Hosting Environment** has the meaning given to it in clause 26.1.

2.1.32 **Third Party Software** means any software sold or licensed to the Client either by a third party supplier directly or indirectly through the supply of a Deliverable by the Supplier under this Agreement. Such Third Party

Software may be used in connection with, or integrated with, the Services and Deliverables supplied by the Supplier pursuant to the Agreement.

2.1.33 **Website** means a location which is accessible on the World Wide Web and which provides multimedia content via a graphical user interface.

2.1.34 **Work** means all Services and Deliverables supplied or required to be supplied by the Supplier in the course of performance of the Agreement.

2.2 In these Terms and Conditions, unless the context otherwise requires:

2.2.1 references to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental and other regulatory bodies or authorities and other entities, in each case whether having separate legal personality;

2.2.2 reference to a party will include that party's executors, administrators, successors and permitted assigns;

2.2.3 references to a statute include references to regulations, orders or notices made under or pursuant to such statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to, or incorporating any of its provisions;

2.2.4 reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;

2.2.5 references to times of day or dates are to New Zealand times and dates respectively unless specifically stated otherwise;

2.2.6 any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done;

2.2.7 where more than one Client has entered into the Agreement, the Clients shall be jointly and severally liable for all payments of the Price and performance of all obligations of the Client under the Agreement;

2.2.8 where any term defined in these Terms and Conditions takes a different form for reasons of grammar, the different form has a corresponding meaning;

2.2.9 the terms **written** and **in writing** include any means of reproducing words, figures or symbols in a tangible and visible form; and

2.2.10 the term **including** means **including without limitation**.

3 Acceptance of Terms and Conditions

3.1 Unless the parties specifically agree otherwise in writing, these Terms and Conditions shall apply to the supply and/or performance of all Services and/or Deliverables from the Supplier to the Client, to the exclusion of the Client's standard terms and conditions (if any). Contracting with the Supplier to carry out the Work (including entry into any Agreement) or acceptance of an estimate or Scoping Document provided by the Supplier constitutes acceptance by the Client of these Terms and Conditions.

3.2 The Supplier is not bound by any statements or representations that are not recorded in the Agreement or otherwise notified to the Client in writing by the Supplier or the Supplier's Authorised Representative.

3.3 The Client undertakes to give the Supplier at least 14 days' prior written notice of any proposed change to the Client's name and/or any other change in the Client's details (including changes in the Client's Address, contact details or business practice).

4 Services and Deliverables

4.1 The Supplier will supply the Services to the Client and produce the Deliverables in accordance with the Specifications and otherwise in accordance with the terms of the Agreement.

4.2 The Supplier will use reasonable endeavours to provide the Services in accordance with any dates and times specified in the Agreement. The Supplier will use its reasonable endeavours to ensure that any key milestones are achieved by the key milestone dates (if any) specified in the Agreement.

5 Estimates

5.1 All estimates are provided strictly on the following basis:

5.1.1 estimates are only binding on the Supplier if they are accepted by the Client in writing within 30 days of the

estimate being provided to the Client, unless otherwise agreed by the Supplier in writing;

5.1.2 that the work to be completed to which the estimate relates will proceed in the usual course and there are no unforeseen difficulties or delays with the Work; and

5.1.3 if additional work is required that could not be foreseen by the Supplier at the time of providing the estimate, then the Supplier may at its sole discretion either cancel the Agreement or charge for such additional work at the Supplier's usual rate.

6 Price

6.1 All Services and Deliverables are supplied at the Price applicable as at date the Services and/or Deliverables are supplied. The Supplier reserves the rights to pass on to the Client any change in Price after the date of any estimate.

6.2 All Prices as estimated are exclusive of goods and services tax unless otherwise stated. Goods and services tax is (where applicable) payable by the Client.

6.3 Unless otherwise stated, the Prices are exclusive of delivery costs. Delivery costs are payable by the Client.

7 Variations and Additional Services

7.1 No variations to the Work originally contracted for (including changes to the scheduled work, Specifications or content) shall be carried out without the agreement of both the Client and the Supplier. Where the Client and the Supplier have agreed to a variation, the Supplier will be entitled to charge for the work involved in such variation at the Supplier's usual rate.

7.2 Where the Client requests the Supplier to provide services or deliverables in addition to the Services or Deliverables, the Supplier will be entitled to charge for the work involved in the provision of those additional services and deliverables at the Supplier's usual rate.

8 Invoicing and Payment

8.1 Unless otherwise recorded in the Agreement, the Supplier may, at its sole discretion, require a deposit (in such sum as is determined by the Supplier at its sole discretion) to be paid by the Client. Where a deposit is required, the Supplier is not obliged to commence Work until receipt of the deposit.

8.2 Unless otherwise recorded in the Agreement, prior to completion of the Work, the Supplier may issue interim invoices to the Client for the Services performed up to the date specified in the invoice (including any variations), at such intervals as are determined by the Supplier at its sole discretion.

8.3 Unless otherwise recorded in the Agreement, all invoices issued by the Supplier to the Client are payable by the date specified on the invoice. Where no date for payment is specified, payment must be made within seven days of the date of the invoice.

8.4 Time is of the essence in relation to all payments to be made by the Client pursuant to the Agreement and such payments shall be made to the Supplier in full, in immediately available funds.

8.5 Any variation from the payment terms above must have the prior written approval of the Supplier.

8.6 The Client is not entitled to set-off against or deduct from the Price (or any invoice) any sums owed or claimed to be owed to the Client by the Supplier, nor to withhold payment of any invoice because part of that invoice is in dispute.

8.7 If full payment is not made by the Client to the Supplier in accordance with clauses 8.3 and 8.4, the Client will be in default under the Agreement and the Supplier may exercise all of the rights and remedies set out in the Agreement and otherwise available at law, and

8.7.1 the Client will pay interest on the default monies at the rate of 10% per annum payable on a daily basis from the due date until payment in full;

8.7.2 the Client will be liable for all expenses (including legal expenses as between solicitor and client) incurred by the Supplier as a result of the default;

8.7.3 the Supplier may withhold Delivery of the Services and/or Deliverables;

8.7.4 the Supplier may suspend the Works; and

8.7.5 the Supplier may withhold the further supply of Services and/or Deliverables.

9 Validity of Payment

9.1 The Client acknowledges that:

9.1.1 all payments made to the Client's account with the Supplier are in the ordinary course of the Client's business;

9.1.2 all payments to the Client's account are received by the Supplier on the reasonably held belief that those

payments are valid unless the Client advises otherwise in writing; and

9.1.3 by accepting any payments the Supplier has altered its position in reliance on the validity of those payments.

9.2 If any payment made by the Client to the Supplier is dishonoured for any reason, the Client will be liable for any dishonour fees or other costs incurred by the Supplier in relation to such payment.

10 Subcontracting

10.1 The Supplier may license or subcontract all or any part of the Work or any of its other rights or obligations under the Agreement without the Client's consent.

11 Information

11.1 The Client is responsible for ensuring that any designs, specifications, information or instructions supplied by the Client (or the Client's agent) are clear and correct in every particular and meet the Client's requirements and purposes whether or not the same have been communicated to the Supplier. The Client shall indemnify and hold harmless the Supplier in respect of any and all liability, loss, injury, damage, demand, cost, charge or expense (including legal expenses as between solicitor and client) which may be incurred or sustained by the Supplier by reason of or arising directly or indirectly out of any claim in respect of any omission, inaccuracy, ambiguity or illegibility in respect of any such designs, specifications, information, instructions or otherwise in relation thereto.

12 Liability

12.1 Any claim made by the Client against the Supplier in respect of the Services and/or Deliverables supplied must be made within 90 days of Delivery of the Services and/or Deliverables (as relevant) (**Claim Period**). The Supplier shall not be required to consider any claims made outside of the Claim Period.

12.2 Where the Supplier has accepted a claim made by the Client in respect of the Services and/or Deliverables, the Supplier reserves the right, at its sole discretion, to either replace or correct the relevant Services and/or Deliverables. If the Supplier reasonably believes that the Services and/or Deliverables cannot be replaced or corrected, the Supplier may, at its sole discretion, credit the portion of the Price applicable to those Services and/or Deliverables.

12.3 The total liability of the Supplier for any loss arising from any defect or non-compliance of the Services and Deliverables or any other breach by the Supplier of its obligations under the Agreement will not in any circumstances exceed the Price received by the Supplier.

12.4 The Supplier will not be liable for:

12.4.1 any claims made by the Client outside of the Claim Period;

12.4.2 any consequential, indirect or special damage or loss of any kind;

12.4.3 any loss caused by the Client's employees, contractors, agents or any other persons whatsoever;

12.4.4 the Client's or any other person's use of the Deliverables other than in accordance with any specified assumptions, constraints or documentation supplied by the Supplier; or

12.4.5 any alteration made to the Deliverables by anyone other than the Supplier (or its authorised agents or subcontractors).

12.5 The Client will indemnify the Supplier against any claim by the Client's employees, contractors, agents or any other persons whatsoever in respect of any loss arising from any defect in or non-compliance of the Services and/or Deliverables or in respect to any other matter whatsoever.

12.6 No warranty, condition or guarantee, either express or implied, is given by the Supplier as to the quality, state or condition of any Services or Deliverables or as to their appearance, content or fitness for any particular purpose.

12.7 The Client acknowledges that, subject only to any representations or warranties expressly recorded in the Agreement, the Client has entered into the Agreement in reliance solely on its own enquiries, skill and judgement and not upon any representations or warranties of the Supplier.

12.8 Any samples or documents containing illustrations, descriptive material and/or specifications made available by the Supplier including designs and estimates of performance are indicative only unless specifically stated otherwise. All such samples and documents shall remain the exclusive property of the Supplier and must not be copied, loaned or transferred by the Client without the Supplier's prior written approval.

13 Ownership of Deliverables

13.1 Property in and ownership of the Deliverables remains in the Supplier until all money the Client owes to the Supplier (whether pursuant to the Agreement or otherwise) has been paid in full. Thereafter, property in and ownership of the Deliverables is subject to the terms of the Agreement.

13.2 If the Supplier's Deliverables become mixed with or incorporated in any other products, property or materials in such a way that they cease to exist as separate Deliverables, the original ownership of the new products created by that mixing will vest immediately on creation in the Supplier as co-owner of the new products with the owner of any other materials which become part of the new products. The co-ownership will be calculated proportionally to the value of the various component materials. The Supplier's ownership of the new products is otherwise on the same terms as the ownership of the Deliverables originally supplied.

13.3 If the Client is in default under the Agreement or if one of the events described in clause 19.1.2 occurs, the Client will at the Supplier's request re-deliver the Deliverables to the Supplier or do all things reasonably necessary to allow the Supplier to retake possession of them.

13.4 The Client hereby grants a security interest to the Supplier in respect of:

13.4.1 the Deliverables;

13.4.2 any new products in terms of clause 13.2; and

13.4.3 any other products or personal property owned by the Client that have been installed or worked on by the Supplier or which are required for the completion of the Work,

(**Secured Products**).

13.5 If the Client is in default under the Agreement or if one of the events described in clause 19.1.2 occurs, the Supplier will be entitled without notice to repossess the Secured Products. The Client authorises the Supplier or its representatives, employees, contractors or agents to enter the property where the Secured Products are situated for the purpose of repossession. The Supplier will not be liable for any costs, expenses, damage, loss of any kind whatsoever suffered by the Client as a result of such repossession.

13.6 If the Supplier takes possession of the Secured Products or the proceeds and after deduction of all money the Client owes to the Supplier (including any interest due and including any expense incurred by the Supplier in enforcing its rights including legal expenses as between solicitor and client) there is a surplus, the Supplier will pay that surplus to the Client.

14 Personal Property Securities Act 1999 (PPSA)

(Unless otherwise defined in these Terms and Conditions, capitalised expressions in this clause 14 have the meaning given to them in the PPSA.)

14.1 The Client acknowledges the Supplier's Security Interest in the Secured Products (**Collateral**) supplied to the Client by the Supplier but not paid for under these terms and conditions.

14.2 The Client reserves the right, at its sole discretion, to register a Financing Statement in respect of each category of Deliverables supplied to the Client which comprises Collateral. The Supplier's costs of registering a Financing Statement or a Financing Change Statement shall be paid by the Client and where applicable, debited by the Supplier against the Client's account with the Supplier. Upon request by the Supplier the Client shall promptly execute any documents and do anything else required by the Supplier to ensure that the Supplier's Security Interest in the Collateral created by these Terms and Conditions constitutes a Perfected Security Interest over the Deliverables comprising Collateral.

14.3 The Client shall not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of the Supplier and shall notify the Supplier immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.

14.4 The Client:

14.4.1 agree(s) that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to the Agreement; and

14.4.2 waive(s) the Client's right to do any of the following:

(a) object to the Supplier's proposal to retain any Personal Property under s121 of the PPSA;

(b) not have products damaged when the Supplier removes an Accession under s125 of the PPSA;

(c) receive notice of the removal of an Accession under s129 of the PPSA;

(d) apply to the Court for an order concerning the removal of an Accession under s131 of the PPSA; and

(e) to receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by these Terms and Conditions.

15 Consumer Guarantees Act and Fair Trading Act

15.1 Subject to clause 15.2, where the Consumer Guarantees Act 1993 and/or the Fair Trading Act 1986 apply, nothing in these Terms and Conditions shall contract out of or limit the application of those Acts.

15.2 Subject to clauses 15.3 and 15.4, where the Client is "in trade" within the meaning of the Consumer Guarantees Act 1993 or the Fair Trading Act 1986 (as the case may be), the Supplier and the Client agree to contract out of the Consumer Guarantees Act 1993 and out of sections 9, 12A, 13 and 14 of the Fair Trading Act 1986.

15.3 Where a Client is in trade and has agreed to contract out of the Consumer Guarantees Act 1993 and relevant provisions of the Fair Trading Act 1986, the Client and the Supplier acknowledge that the effectiveness of contracting out of those Acts is subject to compliance with the statutory tests including that it is fair and reasonable that the Client be bound by those terms.

15.4 Where the Supplier is supplying goods and services to the Client other than for business purposes, the provisions of clauses 15.2 and 15.3 above will have no effect and the provisions of the Consumer Guarantees Act 1993 and the full provisions of the Fair Trading Act 1986 will apply.

16 Information and Privacy

16.1 For the purpose of facilitating the efficient running of the Supplier's business, the Client authorises the Supplier to:

16.1.1 collect all information it may require from any third parties and authorises those third parties to release that information to the Supplier;

16.1.2 hold all information given by the Client or any third parties to the Supplier; and

16.1.3 use that information, including giving information to any other person, to facilitate the collection of debts (if any) from the Client.

16.2 The information will be collected, held and used on the condition that:

16.2.1 it will be held securely at the Supplier's office or in a Hosting Environment;

16.2.2 it will be accessible to any of the Supplier's employees, contractors and agents who need access to it for the efficient running of the Supplier's business; and

16.2.3 the Client may request access to and correction of it at any time,

provided that such conditions will be subject to the terms of any contract between the Supplier and any third parties (as relevant) which the Supplier has contracted to provide hosting services in relation to such collection, storage and/or use.

17 Delivery and Risk

17.1 Notwithstanding that the Supplier may retain Intellectual Property and property in the Deliverables, all risk in the Deliverables passes to the Client on Delivery.

18 Intellectual Property

18.1 All Existing IP owned by either party will remain the sole and exclusive property of that party, and nothing in the Agreement confers on either party any right or interest in, or licence to use, or permit to be used, any of the other party's Existing IP, except that:

18.1.1 to the extent that any Existing IP of the Supplier is contained in the Deliverables, the Supplier grants the Client an irrevocable (subject to clause 18.11), royalty free, non-exclusive licence to access and use any such Existing IP to the extent reasonably required by the Client to enable it to obtain the full use and benefit of the Deliverables; and

18.1.2 the Client grants the Supplier an irrevocable, royalty free, non-exclusive licence to access, use, reproduce, store and/or adapt the Client's Existing IP to the extent required to perform the Services and otherwise give effect to the Agreement.

18.2 The Client warrants that all designs, instructions and/or Client Materials given to the Supplier, including any software supplied by the Client, will not cause the Supplier to infringe any patent, registered design, trademark or copyright in the performance of the Agreement and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

18.3 The Client warrants that it has, and will continue to have, the right and authority of all third party owners, head licensors, and any sub-licensors to use any information, material, systems, software and/or processes that the Client does not own but uses and which the Supplier needs access to in order to provide the Services.

18.4 All Intellectual Property in any Third Party Software that is supplied to the Client (or incorporated in any of the Deliverables supplied to the Client) under the Agreement remains the sole and exclusive property of the supplier of the Third Party Software, irrespective of whether the relevant Third Party Software is supplied to the Client by the Supplier or by the relevant Third Party Software supplier directly.

18.5 The Client agrees that it is aware of and will strictly comply with the terms of any Third Party Software license agreements and/or arrangements for Third Party Software which have been supplied by the Supplier as a Deliverable (or incorporated into any Deliverable) pursuant to the Agreement.

18.6 Notwithstanding any other provision of the Agreement, unless it is expressly stated otherwise in the Agreement, or other written agreement between the parties, and notwithstanding any Intellectual Property rights of the Client in a Deliverable that might be specified in the Agreement, all Supplier Process IP will be and will remain the sole and exclusive property of the Supplier and, except as provided in clause 18.7, the Client will obtain no rights or interests in the Supplier Process IP.

18.7 The Supplier grants to the Client an irrevocable (subject to clause 18.11), royalty free, non-exclusive licence to access, possess, store and use such Supplier Process IP as may be reasonably required by the Client to enable it to obtain the full use, benefit and enjoyment of each Deliverable provided pursuant to the Agreement, subject to any limitations or restrictions on such rights imposed by any supplier of Third Party Software to the extent that Supplier Process IP incorporates Third Party Software.

18.8 Nothing in the Agreement affects the Supplier's right to continue to develop solutions that are similar to and which use or are based upon any Deliverable, its development methods, techniques, technical components or software routines built and used before entry into the Agreement or during its term.

18.9 Unless otherwise agreed in writing by the parties, any improvements, developments or modifications to the Supplier's Existing IP created by, or on behalf of, either party during the term of the Agreement and all Intellectual Property therein, will vest absolutely and automatically upon creation in the Supplier.

18.10 The Client agrees that the Supplier may publicly identify the Client as a client of the Supplier, and the Client grants the Supplier a perpetual, royalty-free licence to use the Client's name and Intellectual Property for the purposes of publicly identifying the Client as a client of the Supplier (and providing details of the Services and Deliverables) in any of the Supplier's marketing materials, including on the Supplier's Website. The Supplier may also, for promotional purposes, include a link to the Supplier's Website at the bottom of any page of the Client's Website or on any Deliverable.

18.11 Any licence granted by the Supplier to the Client pursuant to the Agreement may be terminated by the Supplier on the occurrence of any of the events specified in clause 19.

19 Termination

19.1 Without prejudice to the Supplier's other remedies, this Agreement (including any unperformed obligations of the Supplier) may be terminated immediately by the Supplier's written notice to the Client that no further Services and Deliverables will be supplied if:

19.1.1 the Client is in default under the Agreement (including the terms of any licence granted pursuant to the Agreement); and/or

19.1.2 the Client becomes insolvent; is subject to the appointment of a receiver, manager, liquidator, or statutory manager; commits an act of bankruptcy; makes a scheme of arrangement with its creditors; or is unlikely to be able to meet its obligations to the Supplier (in the reasonable opinion of the Supplier).

20 Confidentiality and non-solicitation

20.1 Each party agrees to treat all information and ideas communicated to it by the other party confidential and agrees not to divulge such information and ideas to any third party without the other party's prior written consent. The parties will

not copy such information or ideas supplied (except to the extent necessary to carry out its obligations under the Agreement) and will either return or destroy the information together with all copies at the request of the other party.

20.2 The Client will not, during the provision of the Work or for a period of 12 months after the latest of:

20.2.1 Delivery;

20.2.2 completion of all Work and all matters relating to such Work and the Agreement; and

20.2.3 the last payment made by the Client to the Supplier in relation to the provision of:

(a) any Services or Work;

(b) any services provided pursuant to an estimate or Scoping Document; or

(c) any other services provided by the Supplier to the Client from time to time,

without the Supplier's prior written consent, directly or indirectly solicit or offer employment to employees of or individuals contracted to the Supplier.

21 Disputes

21.1 If any dispute or difference arises between the parties, or if any matter or issue arises which the parties wish to have resolved or remedied (**Dispute**) a party may serve a notice of Dispute on the other (**Dispute Notice**). For the purposes of this and the following clauses the term **Dispute Notice** means a written notice issued by either party on the other:

21.1.1 specifying reasonable details of the nature of the Dispute;

21.1.2 designating the person with authority to negotiate and settle the matter or issue specified in the notice of behalf of the issuer of the notice; and

21.1.3 requiring the recipient of the notice to enter into negotiations with the issuer of the notice to resolve the matter or issue specified in that notice.

21.2 Upon service of a Dispute Notice, the following procedures will apply:

21.2.1 no party may commence any arbitration or court proceedings relating to any Dispute unless that party has complied with the procedure specified in this clause 21.2;

21.2.2 upon the issue of a Dispute Notice the parties' representatives will enter into negotiations in good faith to resolve a course of action for resolution of the Dispute within 10 Business Days (or such longer period as the parties may agree) of the issue of a Dispute Notice;

21.2.3 where any course of action for resolution of the Dispute is not resolved via the process in clause 21.2.2:

(a) the parties must immediately submit the Dispute to mediation and any mediation must be conducted in terms of the LEADR New Zealand Inc. standard mediation agreement (or any suitable replacement agreement). The mediation must be conducted by a mediator and at a fee agreed by the parties, and failing agreement within seven days of reference to mediation, the mediator will be selected and his/her fee determined by the President for the time being of LEADR New Zealand Inc. or any suitable replacement organisation); and

(b) if the Dispute remains unresolved after mediation then the Dispute must be submitted to the arbitration of the single arbitrator agreed on between the parties, or in fault of agreement, to be nominated by the President of the Canterbury Westland branch of the New Zealand Law Society. The arbitration will be conducted in accordance with the Arbitration Act 1996. The parties reserve the right to appeal to the High Court on any question of the law arising out of an award.

21.3 Nothing in this clause 21 will prevent either party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

22 Notices

22.1 Any notice given pursuant to the Agreement will be deemed to be validly given if either:

22.1.1 personally delivered;

22.1.2 posted;

22.1.3 forwarded by facsimile transmission; or

22.1.4 sent by email,

to the address, facsimile number or email address of the party to be notified from time to time by written notice given to the other party.

22.2 Any notice given pursuant to the Agreement will be deemed to be validly given in the case of:

22.2.1 delivery, when received;

22.2.2 posting, on the fifth day following the date of posting;

22.2.3 facsimile transmission, at the time specified in the facsimile transmission report evidencing the transmission free of error; and

22.2.4 in the case of electronic transmission by email, at the time specified in the email transmission which was not returned as undeliverable or as containing any error.

22.3 If the delivery or transmission of any notice given under the Agreement is on a day which is not a Business Day, or occurs after 5.00 p.m. (local time) on any Business Day, the notice will be deemed to be received on the next following day which is a Business Day.

23 General

23.1 If there is any conflict or inconsistency between these Terms and Conditions and any other provisions of the Agreement, the other provisions of the Agreement will prevail to the extent of such inconsistency.

23.2 The Supplier reserves the right to review and amend these Terms and Conditions at any time. Any change will take effect from the date on which the Supplier notifies the Client of the change.

23.3 If any provision of the Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the Agreement will remain in full force apart from such provision which will be deemed deleted.

23.4 All of the Supplier's rights will remain in full force notwithstanding any delay in enforcement. The Supplier will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of the Supplier. Any waiver will apply only to the particular matter in respect of which it is given.

23.5 The provisions of the Contractual Remedies Act 1979 shall apply to the Agreement as if section 15(d) were omitted from that Act.

23.6 Neither party shall be liable for any failure to perform or delay in performance of its obligations hereunder caused by circumstances of "force majeure" beyond its reasonable control, provided that this clause will not excuse a party from any obligation to make payment when due under the Agreement. The performance of each party's obligations shall be suspended to the extent affected by such delay or failure. For the purposes of this clause 23.6, "force majeure" means any of the following events or occurrences and the effects thereof: fire, storm, flood, earthquake, landslide, explosion, accident, act of the public enemy, war, rebellion, insurrection, riot, civil commotion, sabotage, epidemic, quarantine restrictions, labour disputes, transportation embargoes, acts of God, acts of government or any agency, or any other cause beyond the reasonable control of either party whether or not similar to the matters herein specified.

23.7 The Supplier is entitled at any time to assign its rights under the Agreement. The assignee will be entitled to claim full rights of set-off or counter claim against the Client, its charge holders or successors in respect of the Agreement or part of the Agreement which is assigned. The Client is not entitled to assign its rights under this Agreement without the prior written consent of the Supplier.

23.8 The Supplier and the Client agree that the Agreement expresses the complete agreement between them. There has been no representation made by either party to the other except as expressly set out in the Agreement.

23.9 The Agreement will be governed by, and construed in accordance with, the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

PART 2 – HOSTING SERVICES

24 Services

24.1 Where the Supplier has agreed to provide hosting services to the Client pursuant to the Agreement, the Supplier may provide such Services directly or through any contractor and/or other third party hoster. Where the Services are provided through any contractor and/or other third party hoster, such Services shall be provided subject to any terms and conditions of that

contractor and/or other third party hoster (as relevant) and the terms of the Agreement.

25 Price

25.1 Where the Supplier has agreed to provide hosting services to the Client pursuant to the Agreement, the Price for the Services may be reviewed by the Supplier on an annual basis and the revised Price will apply to the Services from the relevant anniversary of the Commencement Date, provided that the Supplier notifies the Client in writing of the revised Price prior to effecting the change.

26 Supplier Obligations

26.1 The Supplier will ensure that from the Commencement Date:

26.1.1 sufficient capacity is maintained within the Supplier's Hosting Environment (or its contractor's or any other third party supplier's Hosting Environment (**Third Party Hosting Environment**)) to enable users to access the Developed Software;

26.1.2 the Developed Software is accessible to users in accordance with the Service Levels (subject to reasonable downtime for:

(a) Hosting Environment maintenance which has been notified to the Client prior to the commencement of the downtime;

(b) Developed Software maintenance in accordance with the Agreement; or

(c) in accordance with clause 29.1.

26.2 The Supplier will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Developed Software which is attributable to:

26.2.1 incorrect information provided by the Client;

26.2.2 failure by the Client to provide relevant information; and/or

26.2.3 any third party materials used by the Supplier in the development of the Developed Software (if relevant).

26.3 The Supplier (and its contractors and any other third party hoster) (as relevant) retain control and ownership of all IP numbers and addresses that may be assigned to the Client and may at any time change or remove any IP numbers or addresses.

27 Client Obligations

27.1 The Client will, at its sole cost and expense:

27.1.1 except to the extent that it has contracted the Supplier to provide those services, develop and maintain the Developed Software;

27.1.2 provide the Client's Materials to the Supplier, in such form as reasonably prescribed by the Supplier from time to time, and hereby grants the Supplier (and the Supplier's contractors and other third party hosters) (as relevant) a non-exclusive, world-wide irrevocable licence to use the Client's Materials for the purposes of hosting the Developed Software;

27.1.3 do all things reasonably necessary to enable the Supplier (and any contractor and other third party hoster) (as relevant) to host the Developed Software within the Supplier's Hosting Environment or a Third Party's Hosting Environment;

27.1.4 not attempt to gain unauthorised access to any system or information other than the Developed Software; and

27.1.5 ensure that the Client's Materials supplied to the Supplier do not contain:

(a) Prohibited Content;

(b) a link to any Website that contains Prohibited Content; or

(c) any viruses, Trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the Supplier's Hosting Environment or Third Party's Hosting Environment or the provision of hosting services to the Client or any other client of the Supplier (or the Supplier's contractors or other third party hosters).

27.2 The Client must not do (or permit any other person to do) anything that prevents or hinders the Supplier (or the Supplier's contractor or any other third party hoster) from providing hosting services to any other person.

28 Change of Hosting Environment

28.1 The Supplier reserves the right to change the Client's hosting level and move the Developed Software to a different Hosting Environment at any time, where the Supplier considers such actions to be appropriate with reference to (among other things) the level of usage of the Developed Software and any transactions being carried out via the Developed Software (for example e-commerce transactions that might require a more secure Hosting Environment).

28.2 The Client acknowledges that a change in the Hosting Environment may result in an increase in the Price, and the Client agrees to pay any additional hosting costs associated with any change in the Hosting Environment in accordance with clause 28.1, provided that the Supplier notifies the Client in writing of the exercise of its rights and the increased cost prior to effecting the change.

29 Maintenance of Hosting Environment

29.1 The Supplier reserves the right to install updates and perform maintenance to the Supplier's Hosting Environment and network equipment at all times.

29.2 The Client agrees that the Supplier's contractors or third party suppliers shall have the right at any time to install updates and perform maintenance to any Third Party Hosting Environment and associated network equipment.

PART 3 – SOFTWARE DEVELOPMENT SERVICES

30 Delivery

30.1 Where the Supplier is providing installation Services in relation to a Hosting Environment, Delivery of the Developed Software will take place on completion of the installation.

31 Testing

31.1 If reasonably required by the Supplier, the Client will undertake Production Testing at all times requested by the Supplier and will comply with all reasonable instructions of the Supplier in relation to such Production Testing.

31.2 The Client will commence the Delivery Testing Phase on Delivery. Any alleged defects, shortages in quality or quantity, errors, omissions or failure to comply with the Specifications must be notified to the Supplier in writing within 90 days of Delivery. If no notice is given pursuant to this clause, the Deliverable shall be conclusively presumed to be in accordance with the Agreement and the free from any defect or damage.

31.3 Where the Client notifies the Supplier of any defect or damage within the timeframe specified in clause 31.1, the Client will allow the Supplier an opportunity to inspect the Developed Software within a reasonable time following Delivery.

31.4 Unless otherwise agreed by the Supplier in writing, the Supplier shall not be liable for any claims in relation to the Deliverables for any alleged defects, errors, omissions or failures to comply with the Specifications where the Client has not participated in any reasonably requested Production Testing. The cost of remedying any such matters shall be at the Client's sole cost.

32 Intellectual Property

32.1 Unless otherwise specified in the Agreement (or otherwise in writing between the parties), sole and exclusive ownership in Developed Software and all other Deliverables shall remain with the Supplier.

32.2 Subject to clause 32.3, the Supplier grants to the Client an irrevocable (subject to clause 18.11), royalty free, non-exclusive licence to access, possess, store, use and/or adapt any Developed Software or other Deliverable as may be reasonably required by the Client to enable it to obtain the full use, benefit and enjoyment of the Deliverables, subject to any limitations or restrictions on such rights imposed by any supplier of Third Party Software to the extent that Developed Software incorporates Third Party Software.

32.3 The Client agrees that it will not without the Supplier's prior written consent:

32.3.1 copy the Developed Software;

32.3.2 allow any third party to have access to the Developed Software;

32.3.3 alter, modify, tamper with or reverse engineer the Developed Software; or

32.3.4 combine the Developed Software with any other software.

32.4 Other than as allowed under the Copyright Act 1994 and the conditions therein, the Client agrees that it will not in any way sell, reproduce, adapt, distribute, transmit, publish or create derivative works from any part of the Developed Software without the Supplier's prior written consent (including underlying code elements).