

1. DEFINITIONS

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. 'Supplier,' 'we,' or 'us' means Kiss IT Limited trading as Kiss IT (our successors and assigns) or any person acting with the authority of Kiss IT Limited.
- 1.3. 'Client,' 'you,' or 'your' means the Client purchasing Services from us or any person acting on your behalf (including authorised agents).
- 1.4. 'Services' means all Goods (which includes any files, information, printed or virtual material, data or Software, whether supplied from a third party software development company or where custom developed or programmed for you) or Services (which includes any advice or recommendations, technical service, support and training) supplied by us to you (and where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5. 'Software' means the programs and other operating information (including documentation) used by a computer, tablet or mobile device. Applications developed for use by end users will be accessible through the website or cloud-based applications, while the business Software and user data are stored on servers based at an alternative location for security and backup purposes.
- 1.6. 'Incidental Items' means any goods, documents, or materials supplied by us incidentally in providing you with any Services.
- 1.7. 'Price' means the Price of the Services (in accordance with clause 6).
- 1.8. 'Agreement' means these terms & conditions of trade, as may be amended from time to time (including our privacy policy and any SLA, orders, purchases or schedules as applicable).
- 1.9. 'Amounts Owing' means any amount you owe to us, from time to time, including the Price, any interest payable, any of your liability under this Agreement and any enforcement expenses incurred by us in seeking payment of any Amounts Owing by you.
- 1.10. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
- 1.11. 'Confidential Information' means all information that could be reasonably regarded in the circumstances as confidential, including information that relates to the business, interests or affairs of a party, this Agreement, the Incidental Items or Services (as applicable), and intellectual property rights, but excludes information which is:
 - (a) in the public domain, other than as a result of a breach of this Agreement;
 - (b) in possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
 - (c) is independently developed or acquired by a party prior to the commencement of this Agreement without relying on information that would itself be Confidential Information.
- 1.12. 'Event of Default' means failure to comply with this Agreement (including your obligations in clause 6).
- 1.13. 'Insolvency Event' means an event of insolvency, including bankruptcy; the appointment of an insolvency administrator, manager, receiver or liquidator; any action related to winding up or making a material arrangement in relation to creditors; applying for any type of protection against creditors; being unable to pay your debts as they fall due; or taking or suffering any similar or analogous action in any jurisdiction as a consequence of debt.
- 1.14. 'Cookies' means small files 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 Website. They can be accessed either by the web server or your computer. If you do not wish to allow Cookies to operate in the background when ordering from the Website, you have the right to enable or disable the Cookies first by selecting the option provided on the Website prior to ordering Services.
- 1.15. 'Prohibited Content' means any content on any media (including advertising, posts, or comments) that:
 - (a) is, or could reasonably be considered to be in breach of the Broadcasting Act 1989, the CGA, the FTA or any other applicable law or applicable industry code of practice;
 - (b) contains, or could reasonably be considered to have any misrepresentations or is, or could be deemed to be misleading, deceptive, likely to mislead, deceive or is otherwise unlawful;
 - (c) is in breach of any person's intellectual property rights (including the distribution of music files or any other material in which you do not own the copyright);
 - (d) any internet relay chat Software, pirated Software, hacked sites, programs or archived files;
 - (e) 'Live Date' means the date we provide the Services as per the initial acceptance of our quotation.

- 1.16. 'Website' means a location accessible online through the world wide web and provides multimedia content via a graphical user interface.
- 1.17. 'SLA' means the Service Level Agreement detailing the Services (including any Incidental Items where appropriate) to be carried out at the designated location and timeframes as agreed.
- 1.18. 'SMP' means any Social Media Platform used as a social network tool accessible on the internet through the world wide web and provides multimedia content via a graphical user interface (including Facebook, Twitter, or LinkedIn).
- 1.19. 'Fixed Term' means an agreement for ongoing Services as set out in our SLA, where the initial Fixed Term shall be specified in our SLA documentation and agreed upon between both parties. If there are any inconsistencies between the two documents, this Agreement shall supersede the SLA.
- 1.20. 'Personnel' means directors, officers, employees, agents and contractors.
 - 1.21. 'FTA' means the Fair Trading Act 1986.
 - 1.22. 'CGA' means the Consumer Guarantees Act 1993.
 - 1.23. 'CCLA' means the Contract and Commercial Law Act 2017.
 - 1.24. 'PPSA' means the Personal Property Securities Act 1999.
 - 1.25. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
 - 1.26. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.
 - 1.27. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.

2. INTERPRETATION

- 2.1. In this Agreement, unless the context otherwise requires:
 - (a) headings are for convenience only and do not affect interpretation;
 - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (c) a reference to 'in writing' includes by email;
 - (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
 - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
 - (f) a word importing the singular includes the plural and vice versa.

3. ACCEPTANCE

- 3.1. All orders are subject to our acceptance. We may (at our sole discretion) accept any order in whole or part by issuing an invoice for the applicable Services, delivering the Goods or Services or otherwise confirming the order in writing. The necessary ordering information, including model numbers, item numbers or any other relevant information, must accompany all orders.
- 3.2. You are strongly recommended to place orders in writing (which should clearly state your particular requirements in detail). We will not be responsible for errors or omissions due to oversight or misinterpretation of verbal instructions.
- 3.3. You acknowledge and accept that:
 - (a) the supply of Goods on credit shall not take effect until you have completed a credit application with us and it has been approved with a credit limit established for the account;
 - (b) if the supply of Goods requested exceeds your credit limit or the account exceeds the payment terms, we reserve the right to refuse further delivery;
 - (c) where necessary, this Agreement will be modified or amended to the extent required to comply with any applicable legislation; and
 - (d) this Agreement shall supersede any other document or agreement between both parties.
- 3.4. If you place an order for or accept any Services from us, you are taken to accept this Agreement and are bound jointly and severally (including if you are part of a trust, in which case you shall be bound in your capacity as a trustee). You do not need to sign any formal documentation to indicate your acceptance. It will be assumed from you continuing to order any Goods or Services.
- 3.5. Your acceptance of this Agreement shall continue to all future orders, purchases or schedules (as applicable), and this Agreement will be or is deemed to be incorporated into and form part of each order, purchase or schedule as if this Agreement was set out or implied therein in full.
- 3.6. Both parties shall accept electronic signatures (including acceptance by a receiving mail server) provided both parties have complied with sections in Part 4, subpart 3 and all other relevant sections in Part 4 of the CCLA.

4. AUTHORISED AGENTS

- 4.1. We are not obligated to inquire about the authority of any person placing an order on your behalf.
- 4.2. If you introduce any third party to us as your authorised agent, you agree that the agent shall have your full authority to order any Services on your behalf, and such authority shall continue until the Services have been completed or you notify us in writing that the third party is no longer your authorised agent.
- 4.3. Where your authorised agent is to have only limited authority to act on your behalf, you must explain the parameters of the limited authority to us in writing.

5. CHANGES TO DETAILS

- 5.1. You agree that you will give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change to your name and any other changes to your details (including but not limited to changes to the ownership of the company, address, email, contact phone or business structure).
- 5.2. Should you fail to comply with clause 5.1, you agree that you will breach this Agreement and shall be liable for any expense or loss of profit suffered by us (including any Related Company).

6. PRICE AND PAYMENT

- 6.1. You will pay us the Price set out in any quotation or documentation that we provide to you under this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
- 6.2. Unless otherwise agreed by us in writing, the Price shall be:
 - (a) indicated on invoices provided to you in respect of the Services;
 - (b) the Price at the date of delivery of the Services according to our current price list;
 - (c) in accordance with the rates, minimum charges, inclusions and payment terms set out in the SLA. Where you are on a SLA, you are required to pay an agreed amount for the ongoing provision of the Services as stipulated under that Agreement; or
 - (d) our quoted Price, which will be binding, subject to your acceptance of our quotation in writing within thirty (30) days.
- 6.3. If the Price is not set out in quotations or other documentation, the Price for the relevant Incidental Items or Services will be at our standard rate according to our current Pricelist or at a rate notified to you.
- 6.4. The Price will be payable by you on the date(s) determined by us (at our sole discretion), which may be:
 - (a) on or before delivery of the Services;
 - (b) by way of instalments/progress payments in accordance with our payment schedule, which may be: (i) for any Software development Services, a fifty percent (50%) deposit shall be due (of the project value) upon acceptance of the quotation; (ii) we may request progress payments of twenty percent (20%) of the estimated total Software development payment at regular intervals where the Software development Services are provided over a month or more extended period of time; and (iii) any outstanding balance of the Software development payment will become due upon completion of the Software development Services;
 - (c) due twenty (20) days following the end of the month in which a statement or invoice is sent to your address or address for notices; or
 - (d) seven (7) days following the date of any invoice given to you by us if there is no notice to the contrary.
- 6.5. Where payment is to be made via a direct debit arrangement (as agreed between the parties), you accept that:
 - (a) if a deduction falls due on a non-business day, it will be debited to your account on the next business day following the scheduled withdrawal date;
 - (b) we will give you 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; or
 - (c) if you wish to discuss any changes to the initial arrangement, contact our representative directly. The changes may include: (i) deferring the monthly deduction; (ii) stopping an individual direct debit; (iii) suspending the direct debit; or (iv) cancelling the direct debit.
- 6.6. You agree that where you supply us with electronic hardware faults: (i) the inspection for Apple products is one (1) hour plus GST; and (ii) any other electronic hardware is thirty (30) minutes per piece of hardware.
- 6.7. You agree that you must pay in full before collecting any equipment. If the equipment is not collected within three (3) months, all data will be erased, and the hardware shall be sold or scrapped to cover any Amounts Owing.

- 6.8. The callout fee minimum is one (1) hour plus travel plus GST, and any callout outside our regular business hours shall be a minimum of two (2) hours.
- 6.9. We may (at our sole discretion) allocate any payment received from you towards any invoice that we determine and may do so at the time of receipt or at any time afterwards. We may re-allocate any previously received and allocated payments on any default by you. In the absence of any payment allocation by us, payment will be deemed to be allocated in a manner that preserves the maximum value of our Security Interests in the Services.
- 6.10. Where we pay any subcontractor's account on your behalf, you agree to reimburse us for the payment of the subcontractor's account within seven (7) days (unless otherwise agreed in writing).
- 6.11. We reserve the right at any time to alter any Price lists. Any alterations to any Price list will be effective from the date specified by us and apply to all orders or purchases we accept on or after that date.
- 6.12. Payment may be made by cash, electronic/online banking, or any other method that we agree to in writing.
- 6.13. Payment in any form other than cash shall not be taken as payment for the Amounts Owing, and all ownership rights of the Incidental Items or Services remain with us until that form of payment has been cleared and received (in accordance with clause 20.1).
- 6.14. We may require that you pay a deposit or provide a guarantee as security for paying any Amounts Owing.
- 6.15. You shall not withhold payment of any Amounts Owing because part of the Services are disputed, and if part of the Services is disputed, you agree that you will:
 - (a) perform all of your obligations to us under this Agreement and pay in full any Amounts Owing except for the amount that is in dispute; and
 - (b) provide a specific and detailed explanation of the dispute in writing within seven (7) days from delivery.
- 6.16. If an Insolvency Event occurs, all Amounts Owing will (whether or not due for payment) immediately become due and payable.

7. VARIATIONS

- 7.1. We agree that there will be no charge for preparing the initial quotation, which may include discussions and project scoping. However, in some instances, the Services above may be charged to you additionally (at our sole discretion).
- 7.2. We reserve the right to vary the Price:
 - (a) if a variation to the plan of scheduled Services or specifications is requested (including additional work required due to hidden or unidentifiable difficulties not evident prior to commencement of the Services);
 - (b) any information supplied by you is inaccurate; or
 - (c) as a result of increases beyond our reasonable control in the cost of materials or labour (including any variation resulting from fluctuations in currency exchange rates, increases in the cost of taxes, insurance charges or increases in third-party network operator costs).
- 7.3. Variations will be charged based on our quotation, detailed in writing, and shown as variations on the invoice. You must respond to any variation we submit within seven (7) days. Failure to do so will entitle us to add the cost of the variation to the Price.
- 7.4. When quotations are based on specifications, roughs, layouts, samples or a manuscript copy, any extra work or cost caused by any variation requested by you to the original instructions or by the manuscript copy being (in our opinion) poorly prepared or from your requirements being different from those submitted initially, the cost of such variations may be charged to you and shown as a variation on the invoice (in accordance with clause 7).
- 7.5. Any tabulated work or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to you and shown as an additional charge on the invoice.
- 7.6. Additional expenses may be charged to you for any necessary action (including photography and art direction, photography searches, media conversion, digital image processing or data entry services).
- 7.7. The Price will be adjusted to reflect any extra cost or expense incurred by us because of any instruction received from you (or your authorised agent) or any action or inaction on your part.
- 7.8. We reserve the right to amend the Price where there is any variation to the accepted plan of scheduled Services, or instructions or specifications, which will be charged based on our standard hourly rates (and double such rate for any Services provided outside our regular business hours) and will be shown as variations on the invoice.
- 7.9. You acknowledge that additional charges may apply to certain Services and support provided by us (including reconfiguration of your computer or

network), and any such charges shall be shown as a variation to the original Price.

8. REIMBURSABLE EXPENSES

8.1. We shall be reimbursed for all expenses reasonably and appropriately incurred in connection with the provision of the Services, except where such expenses are expressly stated in the quotation or in writing by us as being non-reimbursable. All reimbursable expenses (including travel, accommodation, communications, or couriers) will be charged at the cost (including GST) to you, plus an administration fee that reflects the time involved with performing such Services.

9. PROVISION OF SERVICES

9.1. The Services are provided based on specifications, information and instructions provided by you (whether written or verbal). You acknowledge that it is your responsibility to ensure that such are detailed sufficiently to satisfy our requirements of interpretation and understanding. Once accepted by you, our quotation shall be deemed to interpret those specifications, information and instructions correctly. We shall not accept any liability for the supply of Services contrary to your intention, errors, or omissions due to insufficient or inadequate provision of detailed specifications, information or instructions (including misinterpretation). We may charge you additional costs incurred in remedying the Services (and, if reasonably practical, notify you of such costs before they are incurred).

9.2. Whilst we endeavour to enable the Services to be provided at the time and place as was arranged between both parties (subject to our regular service hours on Business Days), you acknowledge that any time specified for the provision of the Services is an estimate only. We will not be liable for any expenses or losses incurred due to your reliance on our estimated time for delivery, nor can you cancel any order for any delay in delivery that is less than fourteen (14) days after our estimated time for delivery, or any delay in delivery due to any event beyond our control.

9.3. We may supply Incidental Items to you where it is required for the provision of Services, and it is agreed that:

- (a) delivery of the Incidental Items is taken to occur at the time that we (or our nominated carrier) deliver the Incidental Items to your nominated address, even if you are not present at the address; and
- (b) risk of damage to, or loss of, the Incidental Items passes to you on delivery, and you must insure the Incidental Items on, or before, delivery.

9.4. If we are unable to provide the Services as agreed solely due to any of your actions or inaction, then we shall be entitled to:

- (a) charge you additionally for re-providing the Services at a later time and date; or
- (b) subject to clause 18, terminate the agreement.

9.5. We may deliver the Incidental Items in separate instalments, which will be invoiced and paid as individual transactions under this Agreement.

10. SUPPLIED CONTENT

10.1. You warrant that all content or materials supplied to us to be used for the provision of the Services shall:

- (a) be true and correct;
- (b) does not contain Prohibited Content;
- (c) be non-political and non-religious by nature and suitable for viewers of all ages;
- (d) not contain anything that is defamatory of any person or is indecent or obscene;
- (e) complies with all laws, regulations, codes of practice, guidelines or any standards applicable to the advertising industry or determined by any relevant Regulator (including the advertising codes of practice of the Advertising Standards Authority (ASA));
- (f) does not infringe copyright, trademark or any other legal rights of another person or entity (including the name or images of any person without their consent);
- (g) does not contain anything that may give rise to any cause of action by a third party against us (including material that may cause damage or injury to any person or entity);
- (h) is not false or misleading and is confirmed in substance and fact;
- (i) not contain nor constitute a statement that is misleading or deceptive or likely to deceive or to mislead or which is otherwise in breach of a provision of the FTA, the CGA or any other applicable legislation; and
- (j) be in the form and delivered to us by the date agreed to by both parties. If you fail to adhere to this sub-clause, we shall not be liable if we cannot provide the Services at the time and location as agreed.

10.2. You shall provide us with data in the following formats:

- (a) for text, files shall be in an electronic format as standard text (.txt), Pages (.pages) or Word (Docx) document on a USB or via email; and

(b) for images, in an electronic format as advised by us on a USB or via email, with the images of a suitable quality applicable for the use intended and without any subsequent image processing being required (and we shall not be responsible for the quality of images scanned from printed materials).

10.3. You shall be responsible for providing accurate data where you supply us with plans, specifications or other technical information (such as electronic Software that provides detailed and specific technical information). We shall be entitled to rely on the accuracy of any plans, specifications or other technical information supplied by you.

10.4. We are not responsible for any errors in the Incidental Items or Services or additional expenses caused by you supplying inaccurate plans, specifications or other technical information.

11. ERRORS AND OMISSIONS

11.1. You agree that we have no liability in respect of any errors or omissions:

- (a) resulting from an inadvertent mistake made by us in the formation or administration of this Agreement; or
- (b) contained in any documentation supplied to you by us regarding the Services.

11.2. If such an error or omission occurs and is not attributable to our negligence or wilful misconduct, all obligations or rights under or in connection with this Agreement shall continue in full force and effect.

12. DEFECTIVE SERVICES

12.1. Any alleged fault, defect, shortage in quantity, errors, omissions or failure to comply with the description or quote of the Services which you detect must be reported to us as soon as possible. You shall allow us to inspect the Services within a reasonable time following such notification if you believe the Services are defective. If you fail to comply with clause 12.1, the Services shall be presumed free from any defect or damage.

12.2. For defective Services, which we have agreed in writing that you are entitled to reject, our liability is limited to either (at our sole discretion) rectifying the Services or re-providing the Services (provided that you have complied with clause 6).

13. FIXED TERM

13.1. You acknowledge and accept that the Price stated in the SLA will remain fixed for twenty-four (24) months from acceptance and be subject to revision (or in accordance with any term under that agreement).

13.2. Any Fixed Term shall revert to a monthly rollover basis automatically upon completion unless agreed otherwise and shall continue until terminated by either party giving at least ninety (90) days written notice.

13.3. We reserve the right to suspend the Services if you fail to maintain your SLA fees as agreed.

14. WARRANTY AND RETURNS

14.1. To the extent permitted by law, no warranty is given by us as to the quality or suitability of the Services for any purpose, and any implied warranty is expressly excluded. We shall not be responsible for any loss or damage to the Services or caused by the Services (whether directly or indirectly).

14.2. For Incidental Items not manufactured by us, the warranty shall be the current warranty provided by the manufacturer of the Incidental Items, and we shall not be bound by any condition, representation or warranty other than that which the manufacturer of the Incidental Items gives.

14.3. We will not accept the return of Incidental Items for credit (unless agreed in writing).

15. PRIVACY ACT 2020

15.1. You authorise us (and our agents) to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:

- (a) exercising our rights or performing our obligations under this Agreement;
- (b) using the services of credit reporting and debt collection agencies, and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
- (c) registering any Security Interest under this Agreement;
- (d) direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and

- (e) the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.
- 15.2. Clause 15.1 is authority and consent from you in accordance with sections in Part 3 and all other relevant sections in the Privacy Act 2020.
- 15.3. You (if you are an individual) have the right under information privacy principles 6 and 7, and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access and request correction of any of your personal information held by us, and if you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the relevant individual, and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
- 15.4. If the Services are expected to involve the sharing of any data sets or other personal information, to you by us or us to you, we will enter into a separate data protection agreement with you.
- 15.5. If you do not provide the personal information requested, we may be unable to perform our obligations under this Agreement.

16. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

- 16.1. Each party must keep confidential all Confidential Information, however, nothing in clause 16 prevents a party from disclosing Confidential Information:
- (a) in the circumstances expressly provided for in this Agreement;
- (b) if the disclosure is required by law or Regulator (but only to the extent necessary); or
- (c) if the disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.
- 16.2. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.
- 16.3. We own all right, title and interest (including all intellectual property rights) in the Incidental Items or Services at all times.
- 16.4. Any new intellectual property created as a result of, or in connection with, the provision of our Incidental Items or Services will be owned by us (unless otherwise agreed in writing).
- 16.5. If, notwithstanding clauses 16.3 and 16.4, any intellectual property rights in any of our Incidental Items or Services vests in you, you assign those intellectual property rights to us with effect from creation and agree to do all things reasonably required by us to give effect to such assignment.
- 16.6. You warrant that the use by us of any designs, instructions, plans, specifications or other technical information provided by you will not infringe the intellectual property rights of any other person and indemnify us against any expenses or losses (including full legal costs on a solicitor-client-basis) that we may incur or suffer in the event of any such infringement.
- 16.7. Where we have provided Software (and associated documentation) and for any of our source code, we retain ownership but grant you a non-exclusive and non-transferable licence for its use (solely in relation to the operation of your business). You will use any third-party Software or source code supplied by us and identified as such, strictly in terms of the licence (or any other conditions imposed by us) under which it is provided. You further agree that you shall not, without our prior written consent: (i) copy the Software or source code; or (ii) allow any third party to have access to the Software or source code; (iii) alter, modify, tamper with, or reverse engineer the Software or source code; (iv) combine the Software or source code with any other software or program. Subject to the Copyright Act 1994 and the conditions therein, you agree that you shall not in any way sell, reproduce, adapt, distribute, transmit, publish, or create derivative works from any part of the Software (if supplied by us) without our prior written consent.
- 16.8. You hereby authorise us to utilise images of the Services we created in advertising, marketing, or competition material (provided that your address and contact details will only be displayed if already in the public domain).

17. CONSUMER GUARANTEES ACT 1993 AND FAIR TRADING ACT 1986

- 17.1. Subject to clause 17.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under the CGA).
- 17.2. For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Incidental Items or Services in trade:
- (a) to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and
- (b) it is fair and reasonable for the parties to be bound by clause 17.2.
- 17.3. If you are acquiring the Incidental Items or Services to resupply the Incidental Items or Services in trade, you undertake that you will:
- (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your clients; and
- (b) procure that your clients and each person in the distribution chain thereafter contract out of the CGA to the maximum extent permitted by law in their contracts with clients.
- 17.4. For the purposes of section 5D of the FTA, the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Incidental Items or Services in trade:
- (a) to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and
- (b) it is fair and reasonable for the parties to be bound by clause 17.4.
- 17.5. You will indemnify us against any expenses or losses incurred by us due to your breach of clause 17.

18. CANCELLATION

- 18.1. We may cancel this Agreement or the provision of the Services at any time before the Services are provided by giving you written notice. We shall not be liable for any loss or damage arising from such cancellation. If you cancel any Services to which this Agreement applies, you shall be liable for any loss incurred (whether direct or indirect) by us due to the cancellation (including any loss of profits). If you request termination of the Agreement prior to the expiration date, you shall also be liable to pay for the provision of the Services until the expiration of the Agreement, regardless of whether or not you request us to discontinue the Services before the expiration date. We are not obligated to refund you for the value of any unused portion of the Services if you cancel the Services before the expiration of the monthly term.
- 18.2. If you fail to give notice of your intention to cancel the Agreement at least one (1) month before the expiration date, the Agreement shall automatically renew for the period specified in the Agreement, and you shall be liable to pay all associated costs.
- 18.3. Should you, 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 us (at our sole discretion), and all Services completed but not billed or paid, will be payable in full.
- 18.4. If you do not comply with any of the provisions of this Agreement and do not rectify such non-compliance within twenty (20) Business Days of us giving notice either in writing, via fax or email, then we may, without prejudice to any other rights or remedies, and without being liable to you for any loss or damage that may result, give notice to you terminating your right to use the Website, Software and Services. Upon termination of this Agreement, you shall lose all rights to use the Website and shall immediately deliver any of our property to us and destroy all copies made. You shall certify in writing that the copies have been destroyed (and in cut circumstances, the Services must be re-instated under a new Agreement at the current rates). No credits or discounts will be granted, and reinstatement costs shall apply.
- 18.5. We shall be entitled to cancel all or part of any order of yours which remains unperformed, and all Amounts Owing to us shall (whether or not due) become immediately payable if:
- (a) any Amounts Owing to us become overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
- (b) an Insolvency Event occurs, and you become insolvent/bankrupt, convene a meeting with your creditors or a receiver, liquidator or similar person is appointed for you or any of your assets.
- 18.6. Orders to your specifications or non-stock-list items cannot be cancelled once production has commenced.

19. EVENT OF DEFAULT

- 19.1. If an Event of Default occurs, you agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including but not limited to administration fees, debt collection agency fees and full legal expenses on a solicitor-client basis).
- 19.2. Unless waived by us in writing, we may charge interest at a rate of two and a half percent (2.5%) per calendar month on the outstanding amount

from the due date of payment until the date the outstanding amount is paid (and any interest shall compound monthly at such a rate).

20. RETENTION OF TITLE

- 20.1. Ownership (including all right, title and interest) of the Incidental Items or Services remains with us and does not pass to you until:
- we have received all Amounts Owing; and
 - you have performed all of your obligations under this Agreement.
- 20.2. It is further agreed that:
- you are only a bailee of the Incidental Items and must return the Incidental Items to us immediately upon request by us;
 - you hold (to the benefit of us) an insurance policy for the Incidental Items on trust for us and must pay us the proceeds of any insurance claim should the Incidental Items be lost, damaged or destroyed;
 - you shall not charge or grant an encumbrance over the Incidental Items nor give away any interest in the Incidental Items while they remain our property; and
 - you irrevocably authorise us to enter any premises where we believe the Incidental Items are kept and recover possession of the Incidental Items.
- 20.3. If any Amounts Owing is overdue, or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Incidental Items may be stored to remove any Incidental Items. We shall not be liable in contract, tort or otherwise for any damages, expenses, or losses incurred by you or any third party, and you indemnify us against any liability we may have to any third party (including full legal expenses on a solicitor-client basis), as a result of us exercising our rights under clause 20.3, except where damages, expenses or losses are due to our negligence or fraud.
- 20.4. If you resell or use any Incidental Items before ownership of the Incidental Items has passed to you (including combing or processing the Incidental Items), the proceeds of such sale or use will be received and held by you (in whatever form) in trust for us to the extent of the Amounts Owing (where our interest as beneficiary under that trust will be that portion of the proceeds which is equivalent to the Amounts Owing to us and the balance of the proceeds (if any) will be your beneficial interest under that trust).
- 20.5. If any Incidental Items are damaged where full payment has not been received, and therefore ownership remains with us, you agree that we are entitled to:
- receive all insurance proceeds paid for the Incidental Items; and
 - supply this Agreement as a binding legal agreement, which is sufficient evidence for us to deal directly with the insurance company to receive all proceeds for the Incidental Items, which we legally own under clause 20.1.
- 20.6. We may commence proceedings to recover the Price of the Services provided, notwithstanding that ownership of the Incidental Items or Services has not passed to you.

21. SECURITY AND LIEN

- 21.1. Subject to us providing any Incidental Items or Services, you charge all of your right, title and interest (whether joint or several) in any land, real estate or other assets capable of being legally charged with a lien owned by you either now or in the future, to secure the performance of all obligations (including full payment of all Amounts Owing) under this Agreement.
- 21.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 21.1 of this Agreement (including signing any document on your behalf).
- 21.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 21 to secure the performance of your obligations under this Agreement.
- 21.4. In accordance with Part 5, subpart 5 of the CCLA, we hold a lien for work done and may sell at public auction any property that has been left by you for Services if any Amounts Owing are outstanding.
- 21.5. It is fair and reasonable for the parties to be bound by clause 21.

22. PERSONAL PROPERTY SECURITIES ACT 1999

- 22.1. You acknowledge and agree that:
- this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Incidental Items or Services or the proceeds of such Incidental Items or Services; and

(b) the Security Interest granted to us secures the payment of all Amounts Owing (all present and after-acquired personal property) you may owe us from time to time and at any time.

- 22.2. You agree that you will sign any further documentation and provide any information which we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement, including by registration of a financing statement and ensuring that we have a first ranking perfected Security Interest in the Incidental Items or Services, or a Security Interest in the proceeds of any Incidental Items or Services (a Security Interest taken in all collateral and any proceeds of any collateral).
- 22.3. To the extent permitted by law, we each contract out of:
- sections 114(1)(a), 133 and 134 of the PPSA; and
 - your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.
- 22.4. You waive your right to receive a verification statement under section 148 of the PPSA regarding any financing statement relating to a Security Interest.
- 22.5. Nothing in this Agreement is to be construed as an agreement that a Security Interest in the Incidental Items (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; a Security Interest in all after-acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.
- 22.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.
- 22.7. You must provide us with information and any associated documentation reasonably requested by us from time to time relating to your financial status.
- 22.8. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interests as security for the Amounts Owing, and we may suspend or cancel further supply of Incidental Items or Services until you have provided such Security Interests.
- 22.9. You shall unconditionally ratify any actions taken by us under clause 22.

23. LIABILITY FOR CLIENT DATA

- 23.1. You acknowledge and agree that we shall not be held responsible or liable for:
- anything related to the Web Site, hosting Services or any other Services provided;
 - any supplied content breaching any legislation or regulations, unless due to our negligence;
 - any loss, corruption, or deletion of files or data (including Software programs) resulting from illegal hacking of Services provided by us. We will endeavour to restore the Website, files or data (at your cost), and it is your sole responsibility to back up any data that you believe to be important, valuable, or irreplaceable prior to us providing the Services. You accept full responsibility for your Software and data, and we are not required to advise or remind you of appropriate backup procedures (unless included as part of the Services);
 - any loss or damage to your Software or hardware caused by any updates provided for that Software; or
 - removing any removable media (including USB inputs, CDs, DVDs or PC cards) from the hardware prior to submitting for repair or returning Goods for replacement.
- 23.2. We (including our personnel) will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by you or any person related to or dealing with you out of, in connection with or reasonably incidental to the provision of the Services.
- 23.3. The Services (and any associated Software) are provided on an 'as is, as available' basis. We specifically disclaim any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.

24. INSURANCE AND RISK

- 24.1. Where we are to supply Services, we shall maintain an insurance policy until completion, at which point all risk shall immediately pass to you.
- 24.2. Whilst every care is taken by us to carry out your instructions, it is your responsibility to undertake final proofreading and revision of the proposed Services. We shall not be liable for any errors not corrected by you in the final proofreading and revision stage.

- 24.3. We retain the right to suspend or cancel the Services (including web hosting, email hosting, the provision of software and internet access) without liability for any loss.
- 24.4. If authorised personnel leave your business, we must be notified, and no damages will be accepted for unauthorised access by any former employee or contractor if we are not informed.
- 24.5. We shall not be held liable for any loss, corruption, or deletion of files or data (including the unintended introduction of viruses) resulting from our Services. It is your sole responsibility to back up any data you believe to be important, valuable, or irreplaceable prior to us providing the Services (unless we are providing this as a charged service).
- 24.6. If a virus or malware is suspected, we must be told before repairs, or an inspection commences to prevent damage and loss to other hardware.
- 24.7. By submitting equipment for data recovery, you warrant that you have the legal right to the stored data under the Privacy Act 2020 and indemnify us from any liability.
- 24.8. Camera installation is offered as an installation service only, and no legal advice is provided with the Services. It is your responsibility to ensure that all legislative requirements regarding surveillance (including the Privacy Act 2020 and the Employment Relations Act 2000) are adhered to and that appropriate professional advice has been sought.
- 24.9. Where we are requested to modify, create or otherwise develop any software application or bespoke solution, all time and costs incurred will be payable by you. If all Amounts Owing are not paid, we reserve the right to provide the software or solution as a licence and retain all intellectual property rights.
- 24.10. Any advice, recommendations, information, or assistance provided by us in relation to the Services provided is given in good faith and is based on information provided to us and our knowledge and experience. Whilst we will take all care when providing our Services, human error is possible under these circumstances. We shall make all efforts to offer the best solution to you in these circumstances (in accordance with clause 17).
- 24.11. Unless otherwise agreed, you shall bear the cost of fonts, colour proofs, or artwork specially bought at your request for the Services.
- 24.12. Where the performance of any agreement with you requires us to obtain services from a third party, the Agreement between the parties shall incorporate and be subject to the conditions of supply of such services to you (including registering your business with such services or setting up SMP accounts where required). You shall be liable for the full cost (including our margin on such Services).
- 24.13. Any changes and comments resulting from proofreading/revision undertaken by you shall be provided to us in one (1) complete brief and not multiple email notifications. Any extended modifications outside this scope shall be charged at our hourly rate.
- 24.14. Any change or correction to any video, photographs, and artwork supplied by you that we deem necessary to ensure correctly finished work shall be invoiced as a variation (in accordance with clause 7).
- 24.15. Any expected or estimated outcomes concerning increased sales, market share, or penetration achieved by you derived from marketing activities undertaken by us, expressed in consultation or estimates, are speculative and in no way constitute a guarantee. In addition, if you make changes to the Software without prior discussion with us, such changes may negatively affect costs or results.
- 24.16. We reserve the right not to undertake any Services, refuse to accept any content supplied by you, or withdraw any advertisement or publication for any reason (including where, in our opinion, it is or may be unlawful, offensive, contains Prohibited Content or is otherwise inappropriate). We shall not be liable to you for any such action.
- 24.17. You agree to indemnify us, our employees, agents and affiliates, and their employees and agents against any claim, loss or expense arising from the production of the Software, publication of the Services, or cancellation of, or failure to produce the Software, the Incidental Items, or to publish any Services (including costs, losses or expenses suffered or incurred by you as a result of any breach by us of this Agreement, or any other agreement between both parties).
- 24.18. You agree that, due to the nature of the digital display, technical difficulties may arise which could prevent the provision of the Services, and you, therefore, agree to indemnify us against any costs or losses incurred by you as a result of this.
- 24.19. You accept that we are only responsible for Incidental Items or Services that are provided or replaced by us, and we do not accept any responsibility for previous Services carried out by any third party or for any loss or damage to the Incidental Items or Services that are caused by any other third party after the completion of the Services.
- 24.20. Should you request us to leave Incidental Items outside our premises for collection or deliver the Incidental Items to an unattended location, you agree that those Incidental Items shall be left at your sole risk.

25. HEALTH AND SAFETY AT WORK ACT 2015

- 25.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act and all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 25.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as inform us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.
- 25.3. Each party must consult, cooperate and coordinate activities with all other persons with a health and safety duty in relation to the same matter in providing the Incidental Items or Services (including in connection with the delivery of the Incidental Items or Services).

26. SOFTWARE DEVELOPMENT

- 26.1. Our responsibilities:
- (a) upon acceptance of our quotation under this Agreement, we will: (i) use our best endeavours to develop the Software in accordance with your instructions and specifications (including development stages); and (ii) to the extent specified in your instructions and specifications, negotiate and procure any third-party agreements on your behalf;
 - (b) you acknowledge that the development of the Software is based upon current technology platforms (including internet browsers and mobile platforms), and therefore, we cannot guarantee that Software features or content will display correctly or that the overall visual experience will be the same.
 - (c) upon our receipt of payment in full, we shall provide you with the last backup of the Software and associated data and ensure the Software is functional (in accordance with the documentation provided);
 - (d) we shall advise you of all third party Software or platforms that you are recommended to have in place to assist you in setting up those accounts with your details and billing information; and
 - (e) all Software and components not developed by us retain the original licence and terms associated with that Software.
- 26.2. Your responsibilities:
- (a) you will ensure that we are given information and assistance (including access to computer systems, hosting account, disk space, creation databases, or applications) as we reasonably require to enable us to construct and maintain the Software;
 - (b) when approval is sought or required from you following the completion of a development stage, you will not delay the consent of that development stage beyond seven (7) days (time being of the essence) of being requested unless otherwise agreed to by us in writing. In the event of delays beyond this time frame, then we shall be entitled to charge a holding fee of a fair and reasonable amount to be determined by us;
 - (c) subject to clause 25.2(a), you shall supply access to any computer system, usernames and passwords required to remove data, Software or sites for failure to comply with this Agreement;
 - (d) it shall be your responsibility to ensure that any specific requirements for mobile web browsers are included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in developing the Software shall be at our sole discretion. If additional Services are requested or required to meet any specific requirements for mobile web browsers after we have commenced work on the Software, it shall be treated as a variation to the Price, and a strict estimation of further work required shall be submitted to you for approval before proceeding with the variation; and
 - (e) we will not be responsible for and accept no liability for any deficiency or alleged deficiency in the Software attributable to any third-party products or services used by us in creating the Software.
- 26.3. Domain registration:
- (a) where we are to register a domain name on your behalf, we cannot guarantee the availability of the domain or the successful registration of such a name.
 - (b) we will not be responsible for renewing any domain name registration unless specifically requested; and
 - (c) you will be responsible for complying with all terms and conditions relating to any registered domain name, as may be required by the registering service responsible for administering such domain name registration.
- 26.4. Your property and materials:

- (a) graphic files should be supplied in an editable digital format, and photographs in a high-resolution digital form. If you choose to purchase stock photographs, we can suggest stock libraries;
- (b) in the case of property and materials left with us without specific instructions, we shall be free to dispose of them (in accordance with clause 21.4) and to accept and retain the proceeds, if any, to cover their costs in holding and handling them; and
- (c) where you supply materials or equipment, we accept no responsibility for imperfect work caused by defects in or caused by the unsuitability of such materials or equipment.

26.5. Maintenance:

- (a) subject to clause 25.5(b), we will provide the maintenance Services in accordance with the maintenance terms set out in our SLA;
- (b) you will procure all necessary authorisations, licences and consents to enable us to have access to the Software to provide the maintenance Services; and
- (c) should you, during the development of or after the handover of the Software, attempt to update, edit or alter the Software, infrastructure, source files or the Software architecture, the time that we provide to repair pages shall be treated as additional Services (in accordance with clause 7).

26.6. You understand that by placing information on a Website, such information may be accessible to all internet users. We do not (unless expressly requested by you) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. You assume full responsibility for their use of the Services, and it is your sole responsibility to evaluate the accuracy, completeness and usefulness of all opinions, advice, services, and other information on the Website.

27. WEBSITE HOSTING AND DEVELOPMENT

- 27.1. You agree that you will, at your sole cost and expense: (i) provide the content to us in such form as reasonably requested by us and hereby grant us a non-exclusive, worldwide, irrevocable licence to use such content to host the Website; (ii) do all things reasonably necessary to enable us to host the Website on our server; (iii) ensure that content supplied to us do not contain Prohibited Content, a link to any website that contains Prohibited Content, or any viruses, trojan horses, worms, bots or any other Software program or Software designed for or capable of interfering with the operation of the hosting Services.
- 27.2. You agree that you will not: (i) log on to an account that you are not authorised to access; (ii) access data or take any action to obtain services not intended for you; (iii) attempt to probe, scan or test the vulnerability of any system, subsystem or network; (iv) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation; (v) do anything that prevents or hinders us from providing the hosting Services to any other person.
- 27.3. You acknowledge that spamming (including the sending of unsolicited emails), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited.
- 27.4. We shall measure network traffic and may include all traffic to and from the Service requested. Domestic data transfer is provided free of charge, but we reserve the right to suspend the hosting Services (at any time and without notice to you) for what we deem to be excessive traffic usage. We shall also measure internet connection traffic and include all traffic flowing over your connection. Where unlimited traffic is specifically provided, this provision is subject to fair use, which shall be determined at our sole discretion.
- 27.5. If the Services provided to you malfunction or are disrupted for any reason, our liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by you to us for the Services during the period of disruption or malfunction.

28. WEB HOSTING AND OTHER SERVICES

- 28.1. The Services shall only be used by you for lawful purposes. Any use that violates any applicable national or international legislation is strictly prohibited (including posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind, and any transmission constituting or encouraging conduct that would constitute a criminal offence or give rise to civil liability).
- 28.2. You are required to pay a non-refundable monthly fee for the Services, which is stipulated via our quotation and is due and payable as per the payment terms stated therein. This fee excludes domain registrations, SSL Certificates, and where you are changing from another provider. The installation and set-up of the Website on our servers shall be charged to

you monthly. We may adjust the monthly fee from time to time upon providing you with three (3) months written notice. Services are billed to you one (1) month in advance (unless otherwise specified). The Services may be terminated by way of you providing us with a minimum of one (1) month's written notice. If no notice is given in accordance with this clause, you shall be liable for the full amount of the monthly fee of the Services for the current term.

28.3. We will, at our sole cost and expense:

- (a) host the Website and provide the agreed Services; and
- (b) ensure that from the Live Date: (i) sufficient capacity is maintained on our network and servers to enable service levels to be maintained; (ii) the Website and agreed Services are accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to you (either by post or electronically) prior to the commencement of the downtime); provide you with the agreed access to perform maintenance services.

28.4. We agree that we will not: (i) alter, amend, or permit any person to alter or amend the Website without your written consent; (ii) post or display on the Website any advertisement, sponsorship or promotion without your written consent; (iii) use any user data for marketing, referral or other purposes except as expressly authorised by this Agreement; (iv) sublicense, rent, time-share, lease, lend or grant any rights to use the Website; or (v) assign, transfer or authorise anyone else to exercise the rights in any licence granted under this Agreement.

28.5. We will make our best efforts to ensure that you receive continual and uninterrupted Services (including network or hosting servers, internet services, cloud backup, storage services, and phone services) during the term of this Agreement, however, we do not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many circumstances beyond our control. In no event shall we be liable to you for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, lack of connection or slow connection) to provide the Services under this Agreement, or any loss of data (if such delays or failures are due to circumstances beyond our control), and such a failure or delay shall not constitute a default under this Agreement.

28.6. We may, at our sole discretion, limit or deny access to the Services if, in our judgement, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.

29. CLIENT'S RESPONSIBILITIES

- 29.1. In addition to any other obligations expressed in this Agreement, you agree to:
 - (a) provide all content (including data, logos, designs or graphics and related materials) to be incorporated into the Software within five (5) days of being requested by us;
 - (b) the provision of any information, ideas or suggestions which are to be expressly considered by us in developing the Services; and
 - (c) to ensure that content supplied to us does not contain Prohibited Content, a link to any Website that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancelbots or any other Software program designed for or capable of interfering with the operation of the Software.
- 29.2. You agree that payments to third parties for general advertising, social media advertising and lead generation costs shall be your responsibility. Any budgets for such expenses shall be set in consultation between both parties.

30. NON-SOLICITATION

- 30.1. You agree that during the term of the Agreement and for six (6) months following the termination of the Agreement for any reason, you will not:
 - (a) attempt to encourage or persuade any of our contractors, employees or consultants to terminate their contract or employment with us or utilise in any way an employee or past employee of us (other than through us); and
 - (b) you agree that the restraints are fair and reasonable for properly preserving our goodwill and business.
- 30.2. If clause 30.1 is contravened, you agree to pay a placement fee equal to fifteen percent (15%) of the employee's annual salary (and you expressly consent to this prior to the candidate's appointment). You agree that this placement fee applies if you engage our employees through a different labour-hire company or other third party.

31. NOMINATED CONSULTANTS

31.1. We may (if we consider it appropriate to do so) recommend the engagement of third-party consultants, whom you shall engage at your expense. We do not warrant the accuracy or quality of the consultant's work or warrant that the consultants' recommendations are appropriate or adequate, fit for their purpose, or are not given negligently. You accept that you shall not make any demand on us or commence any legal proceedings against us, and we shall have no liability to you in relation to any Services performed by the consultants.

32. LIABILITY

32.1. We accept no liability for any defect, error or omission in any Services you approve. We will not be responsible for any costs or losses incurred by you because of any error in the Services after the proofreading/revision stage (including offering no refund or credit).

32.2. None of our agents or representatives is authorised to make any representations, statements, conditions or agreements not expressed by our manager in writing, nor are we bound by any such unauthorised information.

32.3. To the extent permitted by law, we shall have no liability whatsoever to you for any direct or indirect expense or loss of profit suffered by you arising out of a breach by us of this Agreement (including any unintentional misrepresentation made to you by us regarding any of the Incidental Items or Services).

32.4. To the extent permitted by law, our liability shall not exceed the Price of the Services provided by us under this Agreement.

32.5. To the extent permitted by law, our total liability under or in connection with this Agreement and the Incidental Items or Services is limited to, at our option:

(a) in the case of Incidental Items, any one or more of the following: (i) the replacement of the Incidental Item(s) or the supply of equivalent Incidental Item(s); (ii) the repair of the Incidental Item(s); (iii) the payment of the expense of replacing the Incidental Item(s) or of acquiring equivalent Incidental Item(s); or (iv) the payment of the expense of having the Incidental Item(s) repaired; or

(b) in the case of Services: (i) resupplying the Services; or (ii) the payment of the expense of having the Services resupplied.

32.6. If, notwithstanding clause 31, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:

(a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid by you to us for the applicable Incidental Items or Services; or (ii) the actual loss or damage suffered by you; and

(b) we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, clients, opportunities or loss of or damage to reputation.

32.7. The limitations and exclusions on liability in this clause 32 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.

32.8. In no circumstances will we have any liability whatsoever under or in connection with this Agreement:

(a) for the acts or omissions of any third party;

(b) any act or omissions performance in accordance with your instructions (or instructions from your authorised agents); or

(c) to any third party.

33. GENERAL

33.1. **Governing law:** This Agreement is governed by and to be construed in accordance with the laws of New Zealand, and each party submits to the exclusive jurisdiction of the courts of New Zealand.

33.2. **Entire Agreement:** This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.

33.3. **Priority:** To the extent of an inconsistency between:

(a) this Agreement;

(b) all other schedules to this Agreement;

(c) any privacy or data agreement (if applicable); and

(d) the order of priority set out above will apply (with (a) having the highest priority).

33.4. **Subcontracting:** We may subcontract the performance of our obligations (including to a Related Company) on the basis that we remain solely liable to you for the performance of our obligations.

33.5. **Assignment:** You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld at our sole discretion). We may assign this Agreement to

any other person. Without limiting the foregoing, we may assign to any other person all or part of the Amounts Owed by you.

33.6. **Amendments:** Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws, in which case we can give you notice of any such amendments required, and you will be bound by the same.

33.7. **Notices:** Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the sender's email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.

33.8. **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god). You agree that we shall not be liable for any DNS caching, propagation, or other DNS issues, failure, or outage of any telecommunications links or other connections forming part of the internet beyond our reasonable control.

33.9. **Severability:** If any part of this Agreement is illegal or unenforceable, you agree that part shall be amended to the extent permitted by law to allow the enforceability of any rights, and if it is not able to be amended, then it will be severed, and all remaining rights in this Agreement will continue in full force and effect.

33.10. **Waiver:** A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

33.11. **Termination:** Either party may terminate this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.

33.12. **Survival:** Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive termination of this Agreement by either party.

33.13. **Rights of third parties:** This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.

33.14. **Relationship:** We will provide Incidental Items or Services to you as an independent contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.

33.15. **Non-exclusive:** This Agreement is not exclusive, and you agree that we are not restricted from providing any Incidental Items or Services to any other person.

33.16. **Counterparts:** This Agreement may be executed in any number of counterparts (including by electronic signature or email exchange of pdf copies), constituting one instrument.