

**1. Definitions**

- 1.1 “WR” means Web Revolution Limited, its successors and assigns or any person acting on behalf of and with the authority of Web Revolution Limited.
- 1.2 “Client” means the person/s requesting WR to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 “Services” means all Goods (which includes any files, information, artwork, printed or virtual material, samples, websites, brands, designs, images, advertising, data, graphics, pictures, trademarks or software, whether supplied from a third party software development company or where custom developed or programmed for the Client) or Services (which includes any advice or recommendations, graphic design of brands, designs, images, or advertising, brand integration or strategies, analysis, training, project management or service sourcing and the organisation of copyrighting such any Goods and/or Services) supplied by WR to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Software” shall mean the programs and other operating information (including documentation) used by a computer, tablet and/or mobile device. Applications developed for use by end users will be accessible through the Web Site or cloud based applications while the business software and user data is stored on servers based at an alternative location for security and back-up purposes.
- 1.5 “Web Site” means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.
- 1.6 “Prohibited Content” means any content on any advertising media that:
- (a) is, or could reasonably be considered to be, in breach of the Broadcasting Act 1989; the Fair Trading Act 1986; or any other applicable law or applicable industry code; or
  - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
  - (c) is, or could reasonably be considered to be, in breach of any person’s Intellectual Property Rights (including, but not limited to, the distribution of music files or any other material in which the Client does not own the copyright);
  - (d) IRC software, pirated software, hacked sites, programs or archives, and/or Warez sites.
- 1.7 “Price” shall mean the cost of the Services as agreed between WR and the Client subject to clause 4 of this contract.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by WR.
- 2.2 These terms and conditions may only be amended with WR’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and WR.
- 2.3 None of WR’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of WR in writing nor is WR bound by any such unauthorised statements.
- 2.4 Once accepted by the Client, WR’s written estimate shall be deemed to interpret correctly the Client’s instructions, whether written or verbal. Where verbal instructions only are received from the Client, WR shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 2.5 This agreement constitutes the entire agreement between WR and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by WR, but not embodied in this agreement.

**3. Change in Control**

- 3.1 The Client shall give WR not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by WR as a result of the Client’s failure to comply with this clause.

**4. Price and Payment**

- 4.1 At WR’s sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by WR to the Client; or
  - (b) WR’s quoted price (subject to clauses 4.2 and 4.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 WR reserves the right to amend the Price where there is any variation to the accepted plan of scheduled Services, or design/specifications, which will be charged for on the basis of WR’s standard hourly rates (and double such rate for any Services provided outside WR’s normal business hours) and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 The Client acknowledges that all services and support for email and setup of the Web Site are chargeable in addition to the Price.
- 4.4 At WR’s sole discretion, a non-refundable deposit may be required.
- 4.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by WR, which may be:
- (a) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is sent to the Client;
  - (b) the date specified on any invoice or other form as being the date for payment; or
  - (c) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by WR.
- 4.6 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Client and WR.
- 4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to WR an amount equal to any GST WR must pay for any supply of Services by WR under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**5. Provision of the Services**

- 5.1 Any time specified by WR for provision of the Services is an estimate only and WR will not be liable for any loss or damage incurred by the Client as a result of provision being late. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that WR is unable to provide the Services as agreed solely due to any action or inaction of the Client, then WR shall be entitled to:
- (a) charge the Client additionally for re-providing the Services at a later time and date; or
  - (b) subject to clause 18.3, terminate the agreement.

**6. Risk and Limitation of Liability for Client Data**

- 6.1 The Client acknowledges and agrees that WR shall not be held responsible or liable for:

- (a) anything related to the Web Site, Hosting Services or any other Services provided;
  - (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of WR;
  - (c) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by WR. WR will endeavour to restore the Web Site, files or data (at the Client's cost), and it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to WR providing the Services. The Client accepts full responsibility for the Client's software and data and WR is not required to advise or remind the Client of appropriate backup procedures;
  - (d) any loss or damage to the Client's software or hardware caused by any 'updates' provided for that software.
- 6.2 The Client acknowledges that any advice or recommendations by WR are provided on the basis of WR's industry knowledge and experience only and shall not be deemed as specialist advice.
- 6.3 WR, its directors, agents or employees 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 the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by WR to the Client.
- 6.4 The Services are provided on an "as is, as available" basis. WR specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.
- 6.5 *Public Access:*
- (a) The Client understands that by placing information on the Web Site, such information may be accessible to all internet users. WR do not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by WR, or on the internet generally.
- 7. Web Site Development**
- 7.1 *WR's Responsibilities:*
- (a) Upon acceptance of WR's quotation, and in accordance with this agreement, WR will:
    - (i) use its best endeavours to develop the Web Site in accordance with the Client's instructions and specifications; and
    - (ii) to the extent specified in the Client's instructions and specifications, negotiate and procure any third-party agreements on behalf of the Client.
  - (b) The Client acknowledges that the development of the Web Site by WR is based upon current technology platforms (e.g. internet browsers, mobile, android, etc.), and therefore WR cannot guarantee that Web Site features and /or content will display correctly, and that the overall visual experience will be the same, for use by either superseded or presently undeveloped technology.
- 7.2 *Client's Responsibilities:*
- (a) The Client will, in addition to any other obligations expressed in this agreement, have the following responsibilities:
    - (i) provision of all data to be incorporated into the Web Site;
    - (ii) provision of logos, designs, graphic and related materials to be incorporated into the Web Site; and
    - (iii) provision of any other information, ideas or suggestions which are to be expressly considered by WR in developing the Web Site.
  - (b) The Client will ensure that WR is given such information and assistance as WR reasonably requires to enable WR to construct and maintain the Web Site.
  - (c) It shall be the Client's responsibility to ensure that any specific requirements they may have for mobile web browsers is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the Web Site shall be at the sole discretion of WR. In the event that additional Services are requested, or required (as per clause 7.1(b)), in order to meet any specific requirements for mobile web browsers, after WR has commenced work on the Web Site, shall be treated as a variation to the Price and a strict estimation of further work required shall be submitted to the Client for approval before proceeding with the variation work.
  - (d) WR will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Web Site which is attributable to:
    - (i) incorrect information provided by the Client, either pursuant to this clause or otherwise; or
    - (ii) failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or
    - (iii) any third-party products and/or services used by WR in creation of the Web Site.
- 7.3 *Additional Services:*
- (a) WR agrees that there will be no charge in the preparation of the initial quotation, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at WR's sole discretion). In the event the Client requires proofs, mock-ups, layouts, samples or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at WR's hourly rate unless specified otherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per clause 4.2.
  - (b) All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.
  - (c) Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice.
  - (d) Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at the Clients request for the job.
  - (e) Where the performance of any contract with the Client requires WR to obtain products and/or services from a third party, the contract between WR and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to WR, and the Client shall be liable for the cost in full including WR's margin of such products and/or services.
  - (f) Whilst every effort will be taken by WR to match virtual colours with physical colours, WR will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product. Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra and charged contra against final invoice.
- 7.4 *Proof Reading:*
- (a) Whilst every care is taken by WR to carry out the instructions of the Client, it is the Clients responsibility to undertake a final proof reading. WR shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Client's alterations require additional proofs this shall be invoiced as an extra.
  - (b) When style, type or layout is left to WR's judgement and the Client makes further alterations, this will be invoiced as an extra.
- 7.5 *Client's Property and Materials:*
- (a) In the case of property and materials left with WR without specific instructions, WR shall be free to dispose of them at the end of twelve (12) months after his receiving them and to accept and retain the proceeds, if any, to cover his own costs in holding and handling them.

- (b) Where materials or equipment are supplied by the Client, WR accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.
- 7.6 *Maintenance:*
- (a) Subject to clause (b), WR will provide the Maintenance Services in accordance with the maintenance terms set out in WR's maintenance schedule.
- (b) The Client will procure all necessary authorisations, licences and consents to enable WR to have access to the Web Site in order to provide the Maintenance Services.
- 8. Hosting Services**
- 8.1 "Live Date" means the date in which WR provides the Hosting Services as per initial acceptance of WR's quotation.
- 8.2 Hosting Services shall only be used by the Client for lawful purposes. Any use which violates any applicable national or international laws is strictly prohibited (e.g. posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind – including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability).
- 8.3 *Term:*
- (a) The Client is required to pay a non-refundable annual fee for the Hosting Services, which is stipulated via WR's quotation and is due and payable as per the payment terms stated therein. This fee excludes domain registrations and SSL Certificates, and where the Client is changing from another hosting provider the install and set-up of the Web Site on WR's web servers, which shall be charged to the Client additionally. WR may adjust the annual fee from time to time upon providing one (1) month's written notice to the Client. Renewal of the Hosting Services will be billed to the Client one (1) month prior the anniversary of the Term, and annually thereafter.
- (b) The Hosting Services may be terminated by way of the Client providing WR with a minimum of three (3) months written notice prior to the current anniversary of the Term. If no notice is given in accordance with this clause, the Client shall be liable for the full amount of the annual fee for Hosting Services for the current yearly Term.
- 8.4 WR will, at its sole cost and expense:
- (a) host the Web Site on WR's web servers;
- (b) ensure that from the Live Date:
- (i) sufficient capacity is maintained on WR's webserver to enable users access to the Web Site in a timely manner;
- (ii) the Web Site is accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or (where applicable) Maintenance in accordance with clause 7.6);
- (c) provide the Client with reasonable access to the Web Site to perform maintenance services.
- 8.5 WR will not:
- (a) alter or amend, or permit any person to alter or amend the Web Site without the written consent of the Client;
- (b) post or display on the Web Site any advertisement, sponsorship or promotion without the written consent of the Client;
- (c) use any user data for marketing, referral or other purposes except as expressly authorised by this agreement;
- (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Web Site; or
- (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this agreement.
- 8.6 WR will make best efforts to ensure that the Client receives continual and uninterrupted Services (including network or hosting servers) during the term of this agreement, however WR does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of WR. In no event though, shall WR be liable to the Client 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) of WR to provide Services under this agreement, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this agreement.
- 8.7 WR may, at their sole discretion, limit or deny access to the Services is, in the judgement of WR, 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.
- 8.8 *Client's Obligations:*
- (a) The Client will, at its sole cost and expense:
- (i) subject to any contract with WR for Web Site Development, develop and maintain the Web Site;
- (ii) provide the content to WR, in such form as reasonably prescribed by WR from time to time, and hereby grants WR a non-exclusive, worldwide, irrevocable licence to use such content for the purposes of hosting the Web Site;
- (iii) do all things reasonably necessary to enable WR to host the Web Site on WR's webserver;
- (iv) ensure that content supplied to WR do not contain Prohibited Content, a link to any web site that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.
- (b) The Client will not:
- (i) logon to an account that the Client is not authorised to access;
- (ii) access data or take any action to obtain services not intended for the Client;
- (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) transmit any material outlined in clause 8.8(a)(iv);
- (vi) do anything that prevents or hinders WR from providing Hosting Services to any other person.
- (c) The Client acknowledges that spamming (i.e. the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited.
- 8.9 *Network Traffic:*
- (a) Network traffic shall be measured by WR and may include all forms of traffic to and from the Web Site. Domestic data transfer is provided free of charge, but WR reserve the right to suspend Hosting Services (at any time and without notice to the Client) for what it deems to be excessive traffic usage.
- 8.10 *Limitation of Liability for Hosting Services*
- (a) in consideration of clause 21.3, in the event the Hosting Services provided to the Client are disrupted or malfunction for any reason, WR's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Client to WR for the Hosting Services during the period of disruption or malfunction.

**9. Search Engine Optimisation, Paid Search, Online Promotion**

9.1 Although WR shall use their knowledge and experience to gain the best results possible, WR gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Web Site, or warranty that the Web Site will be effective in promoting the Client's business or result in any increase in sales of the products/services of the Client. Periodic reporting will be sent to the Client's nominated email address, at the sole discretion of WR.

**10. Title**

10.1 WR and the Client agree that the Client's obligations to WR for the supply of Services shall not cease (and ownership of any Goods shall not pass) until:

- (a) the Client has paid WR all amounts owing to WR for the Services; and
- (b) the Client has met all other obligations due by the Client to WR in respect of all contracts between WR and the Client.

10.2 Receipt by WR of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then WR's ownership or rights in respect of the Services shall continue.

10.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to WR on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for WR and must pay to WR the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for WR and must pay or deliver the proceeds to WR on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of WR and must sell, dispose of or return the resulting product to WR as it so directs.
- (e) the Client irrevocably authorises WR to enter any premises where WR believes the Goods are kept and recover possession of the Goods.
- (f) WR may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of WR.
- (h) WR may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

**11. Personal Property Securities Act 1999 ("PPSA")**

11.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods and/or all collateral (account) – being a monetary obligation of the Client for the Services – that have previously been provided, and that will be provided in the future, by WR to the Client.

11.2 The Client undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which WR may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, WR for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of WR.

11.3 WR and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

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

11.6 The Client shall unconditionally ratify any actions taken by WR under clauses 11.1 to 11.5.

**12. Security and Charge**

12.1 In consideration of WR agreeing to supply the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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

12.3 The Client irrevocably appoints WR and each director of WR as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

**13. Client's Disclaimer**

13.1 The Client hereby disclaims any right to rescind, or cancel any contract with WR or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by WR, and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.

**14. Intellectual Property**

14.1 The Client warrants that all designs or instructions to WR will not cause WR to infringe any patent, registered design or trademark in the execution of the Client's order.

14.2 Where WR has provided Software (and associated documentation) and/or for any of WR's source code, WR retains ownership thereof, but grants the Client a non-exclusive and non-transferable licence for its use (solely in relation to the operation of the Client's own business). The Client will use any third-party Software and/or source code supplied by WR, and identified as such, strictly in terms of the licence (or any other conditions imposed by WR) under which it is supplied. The Client further agrees that they shall not without WR's prior written consent:

- (a) copy the Software and/or source code; or
- (b) allow any third party to have access to the Software and/or source code; or
- (c) alter, modify, tamper with, or reverse engineer the Software and/or source code; or
- (d) combine the Software and/or source code with any other software and/or item, etc.

- 14.3 Subject to the Copyright Act 1994 and the conditions therein, the Client agrees that they shall not in any way sell, reproduce, adapt, distribute, transmit, publish, or create derivative works from, any part of the Software (if supplied by WR) or Web Site without WR's prior consent in writing (including, but not limited to, underlying code elements, or any part of the Web Site's design or layout).
- 14.4 The Client hereby authorises WR to utilise images of the Web Site designed or created by WR in advertising, marketing, or competition material by WR.
- 15. Consumer Guarantees Act 1993**
- 15.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by WR to the Client.
- 16. Default and Consequences of Default**
- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at WR's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes WR any money the Client shall indemnify WR from and against all costs and disbursements incurred by WR in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, WR's collection agency fees, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies WR may have, if at any time the Client is in breach of any obligation (including those relating to payment, whether or not the payment is due to WR) WR may suspend or terminate the provision of Services to the Client, (this includes but is not restricted to, withholding domain codes, passwords and Goods, and/or blocking or restricting public and Client access to the Web Site, or removing the Web Site from the web completely) and any of its other obligations under the terms and conditions. WR will not be liable to the Client for any loss or damage the Client suffers because WR has exercised its rights under this clause.
- 16.4 Without prejudice to WR's other remedies at law WR shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to WR shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to WR becomes overdue, or in WR's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 17. Confidentiality**
- 17.1 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 18. Cancellation and Termination**
- 18.1 WR may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. WR shall not be liable for any loss or damage whatever arising from such cancellation.
- 18.2 At WR's sole discretion the Client may cancel delivery of the Services. In the event that the Client cancels delivery of the Services the Client shall be liable for any costs incurred by WR up to the time of cancellation.
- 18.3 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this agreement will be terminated by WR (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within fourteen (14) days from the date of the submitted invoice.
- 18.4 If the Client fails to comply with any of the provisions of this agreement and does not rectify such non-compliance within seven (7) days of WR giving notice either in writing, via fax or email, then WR may without prejudice to any other rights or remedies, and without being liable to the Client for any loss or damage that may result, give notice to the Client terminating their right to use the Web Site, Software and Services. Upon termination of the agreement, the Client shall lose all right to use the Web Site and products, and shall forthwith deliver the Goods to WR and destroy all copies made. The Client shall certify in writing that the copies have been destroyed.
- 18.5 In the event the Services are terminated as per clauses 18.3, 18.4 or 8.3(b), the Services can be re-instated under a new contract at the prevailing rates; however no credits or discounts will be granted, and reinstatement costs shall apply.
- 19. Privacy Act 1993**
- 19.1 The Client authorises WR or WR's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by WR from the Client directly or obtained by WR from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Client shall have the right to request WR for a copy of the information about the Client retained by WR, and the right to request WR to correct any incorrect information about the Client held by WR.
- 20. Dispute Resolution**
- 20.1 WR and the Client will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of, or relate to, this agreement, or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.
- 21. General**
- 21.1 The failure by WR to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect WR's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of the Waitakere District Court, Auckland, New Zealand.
- 21.3 WR shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by WR, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by WR of these terms and conditions, caused by any failure by the Client to comply with their obligations under this agreement, or that arise from any claim relating to the Services by any person that the Client authorises to use the Services, or where due to server downtime or programming errors (alternatively WR's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 21.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by WR nor to withhold payment of any invoice because part of that invoice is in dispute. Any invoice query/dispute will not be recognised if notified outside of fourteen (14) days from the date of the invoice.
- 21.5 WR may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.6 The Client agrees that WR may amend these terms and conditions at any time. If WR makes a change to these terms and conditions, then that change will take effect from the date on which WR notifies the Client of such change via email. The Client will be taken to have accepted such changes if the Client makes a further request for WR to provide Services to the Client.
- 21.7 Neither party shall be liable for any default due to fires, explosions, severe weather, industrial disputes, insurrection, requirements or regulations, or any civil or military authority, acts of war (whether declared or not), civil unrest, acts of God, earthquake, flood, riot, embargo, government act, strike, lock-out, storm, terrorism, DNS caching, propagation, or other DNS issues outside the reasonable control of either party, or failure or outage of any telecommunications links or other connections forming part of the Internet which are beyond the reasonable control of either party.
- 21.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.