

## WebFox – Terms and Conditions

### 1. Definitions

- 1.1 “WebFox” means WebFox Developments Ltd T/A WebFox, its successors and assigns or any person acting on behalf of and with the authority of WebFox Developments Ltd T/A WebFox.
- 1.2 “Client” means the person/s requesting WebFox 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, printed or virtual material, data 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, technical service and support and training, etc.) supplied by WebFox 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 WebFox 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 WebFox.
- 2.2 These terms and conditions may only be amended with WebFox’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and WebFox.
- 2.3 None of WebFox’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of WebFox in writing nor is WebFox bound by any such unauthorised statements.
- 2.4 Once accepted by the Client, WebFox’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, WebFox 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 WebFox and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by WebFox, but not embodied in this agreement.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Change in Control

- 3.1 The Client shall give WebFox 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 WebFox as a result of the Client’s failure to comply with this clause.

### 4. Price and Payment

- 4.1 At WebFox’s sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by WebFox to the Client; or
  - (b) WebFox’s quoted price (subject to clause 4.2) which will be valid for the period stated in the proposal or otherwise for a period of thirty (30) days.
- 4.2 *Additional and/or Varied Services:*
- (a) WebFox agrees that there will be no charge in the preparation of the initial proposal, which may include Client discussions, project scoping, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at WebFox’s sole discretion).
  - (b) WebFox reserves the right to amend the Price where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of WebFox’s standard hourly rates (and double such rate for any Services provided outside WebFox’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.
  - (c) Where the performance of any contract with the Client requires WebFox to obtain products and/or services from a third party, the contract between WebFox and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to WebFox, and the Client shall be liable for the cost in full including WebFox’s margin of such products and/or services.
  - (d) Notwithstanding clause 4.1, the Client acknowledges that additional charges may apply to certain services and support provided by WebFox (including, but not limited to, reconfiguration of the Client’s computer or network). Any such charges shall be shown as a variation to the original Price.

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- 4.3 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by WebFox, which may be:
- (a) on completion of the Services;
  - (b) by way of instalments/progress payments in accordance with WebFox's payment schedule;
  - (c) for credit account approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by WebFox.
- 4.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and WebFox.
- 4.5 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

### 5. Provision of the Services

- 5.1 Any time specified by WebFox for provision of the Services is an estimate only and WebFox 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 WebFox is unable to provide the Services as agreed solely due to any action or inaction of the Client, then WebFox 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 15.3, terminate the agreement.

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

- 6.1 The Client acknowledges and agrees that WebFox 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 WebFox;
  - (c) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking of Services provided by WebFox. WebFox 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 WebFox providing the Services. The Client accepts full responsibility for the Client's software and data and WebFox is not required to advise or remind the Client of appropriate backup procedures (unless included as part of the Services);
  - (d) any loss or damage to the Client's software or hardware caused by any 'updates' provided for that software;
  - (e) It shall be the Client's sole responsibility to remove any removable media (including, but not limited to, diskettes, CDs, DVDs or PC Cards) from the hardware prior to submitting for repair or returning Goods for replacement under clause 6.6.
- 6.2 The Client acknowledges that any advice or recommendations by WebFox are provided on the basis of WebFox's industry knowledge and experience only and shall not be deemed as specialist advice.
- 6.3 WebFox, 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 WebFox to the Client.
- 6.4 The Services (and any associated software) are provided on an "as is, as available" basis. WebFox 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 a Web Site, such information may be accessible to all internet users. WebFox does 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 WebFox, or on the internet generally.
- 6.6 *Defects, Errors and Omissions:*
- (a) The Client shall inspect/review the Services on provision and shall within thirty (30) days of such time notify WebFox of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or proposal. The Client shall afford WebFox an opportunity to inspect/review the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
  - (b) For defective Services, which WebFox has agreed in writing that the Client is entitled to reject, WebFox's liability is limited to either (at WebFox's discretion) replacing the Services, or rectifying the Services, or refunding the Price, provided that the Client has complied with the provisions of sub-clause (a).

### 7. Hosting and Other Services

- 7.1 "Live Date" means the date in which WebFox provides the Services as per initial acceptance of WebFox's proposal.
- 7.2 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).
- 7.3 *Term:*

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- (a) The Client is required to pay a non-refundable monthly or annual fee for the Services, which is stipulated via WebFox's proposal 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 provider the install and set-up of the Web Site on WebFox's web servers, which shall be charged to the Client in addition to the Price. WebFox may adjust the fee from time to time upon providing three (3) months' written notice to the Client. Services are billed to the Client one (1) month in advance (unless otherwise specified).
  - (b) The Services may be terminated by way of the Client providing WebFox with a minimum of one (1) month's 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 monthly fee for Services for the current Term.
- 7.4 WebFox will, at its sole cost and expense:
- (a) host the Web Site and/or provide the agreed service;
  - (b) ensure that from the Live Date:
    - (i) sufficient capacity is maintained on WebFox's network and servers to enable service levels to be maintained;
    - (ii) the Web Site and/or agreed service 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 (either in writing or electronically) prior to the commencement of the downtime);
  - (c) provide the Client with the agreed access to perform maintenance services.
- 7.5 WebFox 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.
- 7.6 WebFox will make best efforts to ensure that the Client receives continual and uninterrupted Services (including, but not limited to, network or hosting servers, internet services, Cloud backup/storage services, and Telephony services) during the term of this agreement, however WebFox 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 WebFox. In no event though, shall WebFox 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 WebFox to provide Services under this agreement, or any loss of data, if such delays or failures are due to circumstances beyond WebFox's control. Such a failure or delay shall not constitute a default under this agreement.
- 7.7 WebFox may, at their sole discretion, limit or deny access to the Services if, in the judgement of WebFox, 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.
- 7.8 *Web Hosting / Development - Client's Obligations:*
- (a) The Client will, at its sole cost and expense:
    - (i) subject to any contract with WebFox for Web Site Development, develop and maintain the Web Site;
    - (ii) provide the content to WebFox, in such form as reasonably prescribed by WebFox from time to time, and hereby grants WebFox 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 WebFox to host the Web Site on WebFox's webserver;
    - (iv) ensure that content supplied to WebFox 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 7.8(a)(iv);
    - (vi) do anything that prevents or hinders WebFox 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.
- 7.9 *Network Traffic:*
- (a) Network traffic shall be measured by WebFox and may include all forms of traffic to and from the Service requested. Domestic data transfer is provided free of charge, but WebFox 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.
  - (b) Further to clause 7.9(a), traffic for internet connections shall also be measured by WebFox and shall include all forms of traffic flowing over the Client's connection. Where unlimited traffic is specifically provided, this provision is subject to 'fair use' which shall be determined at WebFox's sole discretion.
- 7.10 *Limitation of Liability*
- (a) in consideration of clause 18.3, in the event that the Services provided to the Client malfunction or are disrupted for any reason, WebFox's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Client to WebFox for the Services during the period of disruption or malfunction.

## 8. Title

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- 8.1 WebFox and the Client agree that the Client's obligations to WebFox for the supply of Services shall not cease (and ownership of any Goods shall not pass) until:
- (a) the Client has paid WebFox all amounts owing to WebFox for the Services; and
  - (b) the Client has met all other obligations due by the Client to WebFox in respect of all contracts between WebFox and the Client.
- 8.2 Receipt by WebFox 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 WebFox's ownership or rights in respect of the Services, and this agreement, shall continue.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to WebFox on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for WebFox and must pay to WebFox 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 WebFox and must pay or deliver the proceeds to WebFox 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 WebFox and must sell, dispose of or return the resulting product to WebFox as it so directs.
  - (e) the Client irrevocably authorises WebFox to enter any premises where WebFox believes the Goods are kept and recover possession of the Goods.
  - (f) WebFox 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 WebFox.
  - (h) WebFox may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Client.

## 9. Personal Property Securities Act 1999 ("PPSA")

- 9.1 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 WebFox to the Client.
- 9.2 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 WebFox may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, WebFox 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 WebFox.
- 9.3 WebFox and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by WebFox, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Client shall unconditionally ratify any actions taken by WebFox under clauses 9.1 to 9.5.

## 10. Client's Disclaimer

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

## 11. Intellectual Property

- 11.1 The Client warrants that all designs or instructions to WebFox will not cause WebFox to infringe any patent, registered design or trademark in the execution of the Client's order.
- 11.2 Where WebFox has provided Software (and associated documentation) and/or for any of WebFox's source code, WebFox 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 WebFox, and identified as such, strictly in terms of the licence (or any other conditions imposed by WebFox) under which it is supplied. The Client further agrees that they shall not without WebFox'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.
- 11.3 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 WebFox) without WebFox's prior consent in writing.
- 11.4 The Client hereby authorises WebFox to utilise images of the Services created by WebFox in advertising, marketing, or competition material by WebFox.

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### 12. Consumer Guarantees Act 1993

- 12.1 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 WebFox to the Client.

### 13. Default and Consequences of Default

- 13.1 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 WebFox's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes WebFox any money the Client shall indemnify WebFox from and against all costs and disbursements incurred by WebFox in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, WebFox's collection agency fees, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies WebFox 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 WebFox) WebFox 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; or disabling the Client's internet, Cloud and telephone services) and any of its other obligations under the terms and conditions. WebFox will not be liable to the Client for any loss or damage the Client suffers because WebFox has exercised its rights under this clause.
- 13.4 Without prejudice to WebFox's other remedies at law WebFox shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to WebFox shall, whether or not due for payment, become immediately payable if:
- any money payable to WebFox becomes overdue, or in WebFox's opinion the Client will be unable to make a payment when it falls due;
  - 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
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 14. Confidentiality

- 14.1 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.

### 15. Cancellation and Termination

- 15.1 WebFox may cancel these terms and conditions or cancel provision of the Services at any time before the Services are provided by giving written notice. WebFox shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 At WebFox's sole discretion the Client may cancel provision of the Services. In the event that the Client cancels any contract to which these terms and conditions apply, then the Client shall be liable for any and all loss incurred (whether direct or indirect) by WebFox as a direct result of the cancellation (including, but not limited to, any loss of profits). Furthermore, if the Client requests termination of the contract prior to the contract's expiration date, then the Client shall also be liable to pay for the provision of the Services until the expiration of the contract, regardless of whether or not the Client requests WebFox to discontinue the Services before the expiration of the contract. WebFox is not obligated to refund the Client for the value of any unused portion of the Services in the event that the Client cancels the services before the expiration of the monthly Term.
- 15.3 In the event that the Client fails to give notice of intention to cancel the contract at least one (1) month before the expiration date of the contract, the contract shall automatically renew for the period specified in the agreement, and the Client shall be liable to pay all associated costs.
- 15.4 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 WebFox (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.
- 15.5 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 WebFox giving notice either in writing, via fax or email, then WebFox 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 WebFox and destroy all copies made. The Client shall certify in writing that the copies have been destroyed.
- 15.6 In the event the Services are terminated as per clauses 15.3, 15.5 or 7.3(a), 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.

### 16. Privacy Act 1993

- 16.1 The Client authorises WebFox or WebFox's agent to:
- access, collect, retain and use any information about the Client;
    - (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - for the purpose of marketing products and services to the Client.
  - disclose information about the Client, whether collected by WebFox from the Client directly or obtained by WebFox 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.
- 16.2 Where the Client is an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 The Client shall have the right to request WebFox for a copy of the information about the Client retained by WebFox, and the right to request WebFox to correct any incorrect information about the Client held by WebFox.

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### 17. Dispute Resolution

- 17.1 WebFox 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.

### 18. General

- 18.1 The failure by WebFox to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect WebFox'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.
- 18.2 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 Court of New Zealand.
- 18.3 WebFox 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 WebFox, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by WebFox 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 WebFox's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 18.4 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 WebFox 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.
- 18.5 WebFox may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.6 The Client agrees that WebFox may amend these terms and conditions at any time. If WebFox makes a change to these terms and conditions, then that change will take effect from the date on which WebFox 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 WebFox to provide Services to the Client.
- 18.7 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.
- 18.8 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.