

PREAMBLE

1. Preamble

- 1.1 All Services of Stealth Media Limited, whether gratuitous or not, are supplied subject to these Conditions and:
- (a) the provisions of Part I shall apply to the provision of all and any Services.
 - (b) the provisions of Part II shall only apply to the provision of Website Hosting Services.
 - (c) the provisions of Part III shall only apply to the provision of Web Development Services.

PART I - GENERAL CLAUSES

2. Definitions

- 2.1 "Stealth Media LTD" shall mean Stealth Media Limited, its successors and assigns or any person acting on behalf of and with the authority of Stealth Media Limited.
- 2.2 "Customer" means the person/s requesting Stealth Media LTD to provide the Services as specified in any invoice, document or order, and if there is more than one person requesting the Services is a reference to each person jointly and severally.
- 2.3 "Services" means all Services (which includes any advice or recommendations, cloud computing and hosting services, product support, email and anti-spam filtering, remote support, etc.) and Goods (including hardware, software, applications, data, graphics, pictures, trademarks, manuals, and other associated documentation and/or goods) provided by Stealth Media LTD to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 2.4 "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 Website 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.
- 2.5 "Website" means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.
- 2.6 "Prohibited Content" means any content on a Website that:
- (a) is, or could reasonably be considered to be, in breach of the broadcasting standards 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.
- 2.7 "Network" means the telecommunications network that Stealth Media LTD uses to provide the Services to the Customer and to other customers (including any network to which Stealth Media LTD interconnects)
- 2.8 "Network Operator" means any entity with which Stealth Media LTD has entered into an interconnection agreement or arrangement (directly or indirectly) providing for the passing of the Customer's generated or Customer's destined communications between Stealth Media LTD and that entity.
- 2.9 "Term" means the non-cancellable period of twelve (12) months (from the date of this agreement) in which the Services will be provided to the Customer by Stealth Media LTD, unless otherwise terminated or suspended in accordance herewith. On expiry of the Term the Services will, unless terminated on or before the date of such expiry, automatically renew until terminated pursuant hereto.
- 2.10 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this agreement, a party's Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, Customer information and pricing details.
- 2.11 "Fees" shall mean the Fees payable for the Services as agreed between Stealth Media LTD and the Customer in accordance with clause 5 of this contract and shall be New Zealand dollars (\$NZ) unless otherwise specified.

3. Acceptance

- 3.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by Stealth Media LTD.
- 3.2 These terms and conditions may only be amended with Stealth Media LTD's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Stealth Media LTD.
- 3.3 The Customer shall as soon as practicable make available to Stealth Media LTD all information, documents, software, hardware, and other particulars required by Stealth Media LTD for the provision of Services.
- 3.4 The Customer acknowledges that it is their responsibility to ensure that the specifications provided to Stealth Media LTD (in writing) for the supply of Services are in sufficient detail to satisfy Stealth Media LTD's requirements of interpretation and understanding. Stealth Media LTD shall not accept any liability for the supply of Services contrary to the Customer's intention due to insufficient or inadequate provision of detailed specifications by the Customer.
- 3.5 None of Stealth Media LTD's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Stealth Media LTD in writing nor is Stealth Media LTD bound by any such unauthorised statements.
- 3.6 Any advice, recommendations, information, assistance or service provided by Stealth Media LTD in relation to Services provided is given in good faith, is based on information provided to Stealth Media LTD, and Stealth Media LTD's own knowledge, and experience. Whilst it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Services, human error is possible under these circumstances, and Stealth Media LTD shall make all effort to offer the best solution to the Customer.
- 3.7 The Customer agrees to be bound by these terms and conditions for the Initial Term as selected by the Customer on the Order Form. The Customer understands and accepts that this agreement will be automatically renewed (the Renewal Term) at the end of the Initial Term for the same period as the Initial Term unless the Customer provides Stealth Media LTD with notice of termination of the agreement no less than thirty (30) days prior to the end of the Initial Term or the Renewal Term.
- 3.8 The Customer acknowledges and accepts that the Fee stated will remain fixed for an initial period of twelve (12) months from the date of this agreement but will then be subject to revision on the basis of any movement in the Consumer Fee Index (CPI).
- 3.9 These terms and conditions are meant to be read in conjunction with the terms and conditions posted on Stealth Media LTD's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

- 3.10 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.
- 3.11 The Customer accepts and acknowledges where the performance of any contract with Stealth Media LTD requires the Customer to enter into a finance agreement with a third party ("finance agreement"), the contract between Stealth Media LTD and the Customer shall incorporate and shall be subject to, the conditions of supply of products and/or Services by Stealth Media LTD, and the Customer shall be liable for the cost in full for said agreement including Stealth Media LTD's margin for such products and/or Services.

4. Change in Control

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

5. Fees and Payment

- 5.1 At Stealth Media LTD's sole discretion the Fees shall be either:
- (a) as indicated on any invoice provided by Stealth Media LTD to the Customer; and
 - (b) all charges invoiced for additional Services are based on Stealth Media LTD Fee at the date of provision of the Services calculated by Stealth Media LTD's current hourly rates; or
 - (c) Stealth Media LTD's quoted Fees (subject to clause 5.2 and 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Stealth Media LTD reserves the right to vary the Fees:
- (a) if a variation to the plan of scheduled Services, or Customer specifications is requested (including, but not limited to, additional work required due to hidden or unidentifiable difficulties not evident prior to commencement of the Services, any request to investigate and/or repair any faults or defects outside Stealth Media LTD's normal business hours);
 - (b) as a result of increases beyond Stealth Media LTD's reasonable control in the cost of materials or labour (e.g. third-party network operator or Stealth Media LTD's costs (e.g. google), etc..
- 5.3 All Website base fixes and/or additional work to the Customer's Website will be subject to Stealth Media LTD's current hourly rates..
- 5.4 Notwithstanding clause 5.3 charges exclude any SEO (Search Engine Optimization) work. SEO charges are calculated per industry, demand, market saturation and SEO package options.
- 5.5 At Stealth Media LTD's sole discretion, a non-refundable fifty (50%) deposit will be required, prior to commencement of the Services, unless otherwise specified.
- 5.6 Time for payment for the Services being of the essence, the Fees will be payable by the Customer on the date/s determined by Stealth Media LTD, which may be:
- (a) on provision of the Services;
 - (b) by way of instalments/progress payments in accordance with Stealth Media LTD's payment schedule;
 - (c) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer'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 Customer by Stealth Media LTD.
- 5.7 Payment may be made by electronic/on-line banking, FeeFunders finance, (all associated documentation for this method of payment is to completed at the time of signing Stealth Media LTD's contract) or by any other method as agreed to between the Customer and Stealth Media LTD.
- 5.8 If any part of an invoice is in dispute then the Customer shall notify Stealth Media LTD in writing within three (3) business days once in receipt of the invoice, then the Customer may only withhold payment for that part of the invoice that is in dispute and shall pay the balance of the invoice when due.
- 5.9 Unless otherwise stated the Fees do not include GST. In addition to the Fees the Customer must pay to Stealth Media LTD an amount equal to any GST Stealth Media LTD must pay for any provision of Services by Stealth Media LTD under this or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Fees. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Fees except where they are expressly included in the Fees.
- 5.10 Receipt by Stealth Media LTD 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 Stealth Media LTD's ownership or rights in respect of the Services, and this agreement, shall continue.
- #### **6. Provision of the Services**
- 6.1 At its sole discretion and without notice to the Customer, Stealth Media LTD may at any time suspend the supply of Services for the purposes of maintaining, repairing or upgrading its systems or networks or if continuing the supply of Services places Stealth Media LTD general operations at risk. Stealth Media LTD will use best efforts to notify the Customer of any such Service suspension however at no time is under any obligation to inform the Customer of such action.
- 6.2 Any time specified by Stealth Media LTD for provision of the Services is an estimate only and Stealth Media LTD will not be liable for any loss or damage incurred by the Customer 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 Stealth Media LTD is unable to provide the Services as agreed solely due to any action or inaction of the Customer (including, but not limited to, where the Customer fails to provide any information, specifications or materials as required for the provision of the Services) then Stealth Media LTD shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 6.3 The failure of Stealth Media LTD to deliver shall not entitle either party to treat this contract as repudiated.

7. Risk and Limitation of Liability

- 7.1 The Customer agrees that, in view of their nature, the Customer's use of the Services is at their sole risk. Whilst Stealth Media LTD will endeavour to ensure that the Services are of a high quality, neither Stealth Media LTD (nor any of their agents, contractors, licensees, employees or information providers involved in providing the Services) give any guarantee that the Services will be uninterrupted or free from error. Where necessary for commercial, technical or other reasons:
- (a) a network or service provider connected to the Services may suspend or terminate its connection to the Services; and
 - (b) the Services may suspend or terminate their connection to another network or service provider.
- 7.2 The Customer agrees that any such suspension or termination referred to above will not constitute a breach of this agreement by Stealth Media LTD and that the Services are provided on an "as is" basis without guarantee of any kind.
- 7.3 The Customer further agrees that Stealth Media LTD will not be held liable for any costs, expenses, losses, damages or other liabilities (howsoever arising) which you may incur as a result of a suspension of the Services in accordance with clause 7.1(a) above.
- 7.4 The Customer acknowledges and agrees that Stealth Media LTD shall not be held liable for:
- (a) anything related to the Website, or any other Services provided;
 - (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of Stealth Media LTD;
 - (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 Stealth Media LTD. Stealth Media LTD will endeavour to restore the Website, files or data (at the Customer's cost), and it is the sole responsibility of the Customer to back-up any data which they believe to be important, valuable, or irreplaceable prior to Stealth Media LTD providing the Services. The Customer accepts full responsibility for the Customer's software and data and Stealth Media LTD is not required to advise or remind the Customer of appropriate backup procedures;
 - (d) any loss or damage to the Customer's software or hardware caused by any 'updates' provided for that software.
- 7.5 All third-party software is provided at the Customer's own risk and is not in any way warranted by Stealth Media LTD nor shall Stealth Media LTD be in any way responsible for the implementation or effects of any "patches", "updates", or "fixes" offered by the manufacturer of the software.
- 7.6 The Customer acknowledges that the Internet is separate from the Services and that use of the Internet is at their own risk and subject to any applicable Laws. Stealth Media LTD has no responsibility for any goods, services, information, software, or other materials which the Customer may obtain from a third party when using the Internet.
- 7.7 Furthermore, the Customer accepts and acknowledges that Stealth Media LTD may exercise editorial control over the content of their servers, but that Stealth Media LTD does not have the resources to ensure, nor are they capable of checking, the full content of their servers at all times. Neither Stealth Media LTD (nor any of their agents, contractors, licensees, employees and information providers involved in providing the Services) are able to control the content of the Internet. The Customer, therefore, agrees that Stealth Media LTD shall not be held responsible for the publication, transmission or reception of any defamatory material or information of any kind, other than information which is inserted by Stealth Media LTD. The Customer specifically acknowledges that Stealth Media LTD has given no warranties as to the quality, content or accuracy of information received through, or as a result of the use of, the Services.
- 7.8 In the event the Customer requests to change to another website development or website hosting company, such request must be provided in writing and only upon receipt of full payment of monies owed to Stealth Media LTD shall the release of the website content (including but not limited to logins and passwords) will occur. Stealth Media LTD accepts no liability should the website not look nor operates correctly post the transfer when the website was operational prior to the change.

8. Changes to Approved Copy

- 8.1 As part of Stealth Media LTD's search engine optimisation process, changes may be required to the copy of the website. Stealth Media LTD shall provide amended copy for approval prior to updating the website. Any time required to make substantive changes to the approved copy after website optimisation has been completed shall be an additional charge based on Stealth Media LTD's hourly rate.

9. Materials left with Stealth Media LTD

- 9.1 Any artwork, bromides, film, video or other material supplied to Stealth Media LTD by the Customer shall be at the Customer's risk and if lost, destroyed or damaged the Customer will not be entitled to make any claim against Stealth Media LTD.
- 9.2 In the case of property and materials left with Stealth Media LTD without specific instructions, Stealth Media LTD shall be free to dispose of them at the end of twelve months after receiving them and to accept and retain any proceeds gained from such disposal to cover Stealth Media LTD's costs in holding and handling such items.

10. Personal Property Securities Act 1999 ("PPSA")

- 10.1 Upon assenting to these terms and conditions in writing the Customer 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 collateral (account), being a monetary obligation of the Customer to Stealth Media LTD for Services previously provided (if any) and that will be provided in the future by Stealth Media LTD to the Customer.
- 10.2 The Customer 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 Stealth Media LTD may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Stealth Media LTD 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 Stealth Media LTD.
- 10.3 Stealth Media LTD and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by Stealth Media LTD, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Customer shall unconditionally ratify any actions taken by Stealth Media LTD under clauses 10.1 to 10.5.

11. Customer's Disclaimer

11.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Stealth Media LTD or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Stealth Media LTD and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

12. Defects, Errors & Omissions

12.1 Any alleged fault, defect, shortage in quantity, errors, omissions or failure to comply with the description or quote of the Services which the Customer detects must be reported to Stealth Media LTD as soon as is practically possible. Any emails or telephone messages which are received outside Stealth Media LTD's normal business hours will be processed the following business day. The Customer shall afford Stealth Media LTD an opportunity to inspect the Services within a reasonable time following such notification if the Customer believes the Services are defective in any way. If the Customer 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.

12.2 For defective Services, which Stealth Media LTD has agreed in writing that the Customer is entitled to reject, Stealth Media LTD's liability is limited to either (at Stealth Media LTD's discretion) rectifying the Services or re-providing the Services, provided that the Customer has complied with the provisions of clause 12.1.

13. Warranties

13.1 For Goods not manufactured by Stealth Media LTD, the warranty shall be the current warranty provided by the manufacturer of the Goods. Stealth Media LTD shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

14. Consumer Guarantees Act 1993

14.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Stealth Media LTD to the Customer.

15. Intellectual Property

15.1 If during the course of providing the Services, Stealth Media LTD develops, discovers, or puts into operation a new concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of Stealth Media LTD and the Customer shall not use or supply the same in any way whatsoever without first obtaining the written consent of Stealth Media LTD.

15.2 Where Stealth Media LTD has designed Goods for the Customer to use, then the Customer undertakes to acknowledge Stealth Media LTD's intellectual property in those Goods in the event that images of those Goods are utilised in advertising or marketing material by the Customer. Further the Customer agrees that Stealth Media LTD itself may utilise images of any Goods so designed for the purposes of advertising, marketing, or entry into any competition.

15.3 Where Stealth Media LTD has designed and/or provided computer software and documentation, Stealth Media LTD retains ownership of the computer software and documentation, but grants the Customer a non-exclusive and non-transferable licence for its use (solely in relation to the operation of the Customer's own business). The Customer agrees to use any third-party software supplied by Stealth Media LTD, and identified as such, strictly in compliance with the terms of the licence under which it is supplied.

15.4 The Customer further agrees that they shall not:

- (a) use in any way, or rely on the Software for any purpose other than what it was designed or is suitable for;
- (b) combine the software with any other software;
- (c) copy, reproduce, translate, adapt, vary, merge, modify, or create any derivative work based on the Software;
- (d) reverse engineer, decompile, disassemble, reconfigure or otherwise attempt to discover the source code of the Software, or assist another party to do the same;
- (e) sell, market, network, transfer, lease, licence, sub-licence, rent, lend, or otherwise distribute, the Software in any way whatsoever;
- (f) use the software to commit a crime (including, but not limited to, sending spam) and the Customer agrees to indemnify Stealth Media LTD against any action taken by a third party against Stealth Media LTD in respect of any such infringement.

15.5 The Customer shall indemnify Stealth Media LTD against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Goods or any other deficiency therein. Where the Customer has supplied drawings, sketches, files or logo's to Stealth Media LTD, the Customer warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Customer agrees to indemnify Stealth Media LTD against any action taken by a third party against Stealth Media LTD.

15.6 All Flash, PHP, Java Script, HTML and Dynamic HTML coding and other supplied code (if any) remains the intellectual property of Stealth Media LTD. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.

16. Confidentiality

16.1 Both parties agree that, unless they have the prior written consent of the other, they will not use or disclose to any third party (other than for the purpose of performing this agreement) the terms and conditions of this agreement or any information confidential to the other party. The obligations of this clause 16.1 shall survive termination or cancellation of this agreement.

16.2 The Customer agrees to protect all authorisation details, including but not limited to usernames and passwords and agrees that those details shall not be written or stored in any manner which could result in their unauthorised disclosure.

16.3 In the event that Stealth Media LTD requests the Customer to change any password or identifier as part of its Services, the Customer acknowledges that Stealth Media LTD recommends that the Customer not use commonly known details such as birthdays and or names.

17. Default & Consequences Of Default

17.1 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 Stealth Media LTD's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

- 17.3 Without prejudice to any other remedies Stealth Media LTD may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Stealth Media LTD may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Stealth Media LTD will not be liable to the Customer for any loss or damage the Customer suffers because Stealth Media LTD has exercised its rights under this clause.
- 17.4 Without prejudice to Stealth Media LTD's other remedies at law Stealth Media LTD shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Stealth Media LTD shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Stealth Media LTD becomes overdue, or in Stealth Media LTD's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer 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 Customer or any asset of the Customer.

18. Security And Charge

- 18.1 In consideration of Stealth Media LTD agreeing to provide Services, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 18.2 The Customer indemnifies Stealth Media LTD from and against all Stealth Media LTD's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Stealth Media LTD's rights under this clause.
- 18.3 The Customer irrevocably appoints Stealth Media LTD and each director of Stealth Media LTD as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Customer's behalf.

19. Cancellation

- 19.1 Stealth Media LTD may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Stealth Media LTD shall repay to the Customer any sums paid in respect of the Fees. Stealth Media LTD shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by Stealth Media LTD (including, but not limited to, any loss of profits) up to the time of cancellation.
- 19.3 In the event that the Customer cancels delivery of Services the Customer shall be liable for the whole of the contract balance (including all fixed price Website hosting contracts), plus any additional costs, and any loss incurred by Stealth Media LTD (including, but not limited to, any amounts owing for Services already performed any loss of profits), up to the time of cancellation.

20. Privacy Act 1993

- 20.1 The Customer authorises Stealth Media LTD or Stealth Media LTD's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Stealth Media LTD from the Customer directly or obtained by Stealth Media LTD 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 Customer.
- 20.2 Where the Customer is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Customer shall have the right to request Stealth Media LTD for a copy of the information about the Customer retained by Stealth Media LTD and the right to request Stealth Media LTD to correct any incorrect information about the Customer held by Stealth Media LTD.

21. Disputes And Remedies

- 21.1 The parties agree to use their best efforts to resolve any dispute which may arise under this agreement through good faith negotiations. No party shall commence any arbitration or litigation in relation to this agreement unless it has first invited the chief executive of the other party to meet with its own chief executive for the purpose of endeavouring to resolve the dispute on mutually acceptable terms.
- 21.2 Any dispute arising under this agreement which cannot be settled by negotiation between the parties or their respective representatives shall be submitted to mediation before commencing any litigation. Either party may initiate mediation by giving written notice to the other party.
- 21.3 If the parties cannot agree a mediator within two (2) working days of the notice, then the mediator will be selected by the President for the time being of LEADR (Lawyers Engaged in Alternative Dispute Resolution) or its successor.
- 21.4 The parties shall continue to perform their obligations under the agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to mediation.
- 21.5 Nothing in this clause shall preclude either party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

22. General

- 22.1 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.
- 22.2 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 New Zealand.
- 22.3 Stealth Media LTD shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Stealth Media LTD of these terms and conditions.
- 22.4 In the event of any breach of this contract by Stealth Media LTD the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Fees of the Goods.
- 22.5 The Customer shall not be entitled to set off against, or deduct from the Fees, any sums owed or claimed to be owed to the Customer by Stealth Media LTD nor to withhold payment of any invoice because part of that invoice is in dispute.

- 22.6 Stealth Media LTD may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 22.7 Stealth Media LTD reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Stealth Media LTD notifies the Customer of such change.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 22.9 The failure by Stealth Media LTD to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Stealth Media LTD's right to subsequently enforce that provision.

PART II: WEBSITE HOSTING

23. What Stealth Media LTD Will Do

- 23.1 Unless expressly included in the agreement, Hosting Services does not include the building or development of a Website.
- 23.2 Where Stealth Media LTD hosts websites, Stealth Media LTD use third party servers and cannot guarantee or support data transfer speed, disk space, document upload speed and transfer, Website uptime and email uptime as this is then all handled by an external source.
- 23.3 Stealth Media LTD will, at its sole cost and expense:
 - (a) Install and host the Customer's content (including Website) on Stealth Media LTD's recommended approved third party's webserver;
 - (b) ensure that from the "live date":
 - (i) sufficient capacity is maintained on Stealth Media LTD's webserver to enable users access to the Website in a timely manner;
 - (ii) the Website is accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to the Customer prior to the commencement of the downtime or Maintenance in accordance with clause 23.2(c);
 - (c) provide the Customer with reasonable access to the Website to perform maintenance services.
- 23.4 Stealth Media LTD will not:
 - (a) alter or amend, or permit any person to alter or amend the Website without the written consent of the Customer;
 - (b) post or display on the Website any advertisement, sponsorship or promotion without the written consent of the Customer;
 - (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 Website; or
 - (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this agreement.
- 23.5 Stealth Media LTD will make best efforts to ensure that the Customer receives continual and uninterrupted Services during the term of this agreement. In no event though, shall Stealth Media LTD be liable to the Customer for damages resulting from or in relation to any failure or delay of Stealth Media LTD to provide Services under this agreement 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.

24. Search Engine Optimisation (SEO)

- 24.1 Although Stealth Media LTD shall use their knowledge and experience to gain the best results possible, Stealth Media LTD gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Website. Periodic reporting will be sent to the Customer's nominated email address, at the sole discretion of Stealth Media LTD.

25. What The Customer Will Do

- 25.1 The Customer will, at its sole cost and expense:
 - (a) develop and maintain the Website;
 - (b) provide the content to Stealth Media LTD, in such form as reasonably prescribed by Stealth Media LTD from time to time, and hereby grants Stealth Media LTD a non-exclusive, worldwide, irrevocable licence to use such content for the purposes of hosting the Website;
 - (c) do all things reasonably necessary to enable Stealth Media LTD to host the Website on Stealth Media LTD's webserver;
 - (d) ensure that the content supplied to Stealth Media LTD do not contain:
 - (i) Prohibited Content;
 - (ii) a link to any Website that contains Prohibited Content; or
 - (iii) any viruses, trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.
- 25.2 The Customer will not do anything that prevents or hinders Stealth Media LTD from providing hosting services to any other person.

26. Termination

- 26.1 Stealth Media LTD reserves the right to withdraw the Services at any time, subject to fourteen (14) days written notice to the Customer, and Stealth Media LTD shall not be liable for any consequential loss or damages incurred by the Customer due to termination of the Services.
- 26.2 Subject to clause 26.1 Stealth Media LTD reserves the right to immediately terminate the Services, without notice or liability to Stealth Media LTD where the Customer has participated in:
 - (a) deployment of adult, hate or gambling websites;
 - (b) participation in undirected bulk email delivery (spamming); or
 - (c) any sites promoting or participating in illegal activities..
- 26.3 The contract may be terminated upon the expiration of the minimum term by way of the Customer serving upon Stealth Media LTD written notice to this effect. Such notice must be provided not less than thirty (30) days and not more than three (3) months prior to the termination date and must be sent recorded delivery.
- 26.4 Subject to clause 26.2, after the expiration of the minimum term, the contract shall continue for an additional period equivalent to the initial term of the contract, (or a minimum term of twenty-four (24) months, whichever is greater) and shall continue in this manner upon each purported termination date. If any special offer or discount was made in the initial term, that special offer or discount shall only be available for that period.
- 26.5 If the Customer wishes to terminate the contract during the term stipulated, the Customer must pay to Stealth Media LTD the whole of the remaining contract Fees which would otherwise have been payable to Stealth Media LTD during the contract term.

27. What Stealth Media LTD Will Do

- 27.1 Upon approval of the specifications and quotation in accordance with this agreement, Stealth Media LTD will:
- (a) use its best endeavours to develop the Website in accordance with the development stages; and
 - (b) to the extent specified in the specifications, negotiate and procure third party agreements on behalf of the Customer.
- 27.2 In the event that it is required of Stealth Media LTD to acquire an internet domain name on behalf of the Customer, as specified, the Customer agrees to indemnify Stealth Media LTD all associated costs in obtaining and maintaining a domain name on behalf of the Customer, these additional costs will be detailed and invoiced in accordance with clause 5.2.
- 27.3 Stealth Media LTD shall carry out the instructions of the Customer but it shall be the Customers responsibility to give final approval before the website is to go "live" by the due date advised by Stealth Media LTD, failure to authorize approval by the designated due date will result in Stealth Media LTD right to release and activate the Website as agreed. Furthermore, Stealth Media LTD will provide a seven (7) day period in which the Customer can exercise the right to two (2) revisions for corrections or reasonable alterations inclusive of the Fee. At the end of this seven (7) day period, the work shall be deemed complete and final payment due. If no contact is made after the seven (7) day period all work will be considered complete and any changes after this period shall be subject to additional Fees as per clause 5. Stealth Media LTD shall be under no liability whatsoever for any errors not corrected by the Customer in the final proof reading.
- 27.4 Upon completion and activation of the Website Stealth Media LTD will provide the Customer with details of a unique login to the new Websites admin panel which will give full access to the Customer's Website to make changes.
- 27.5 Stealth Media LTD do not take any responsibility for any changes made by the Customer or any anyone else acting on behalf of the Customer that logs into the Website which may have an adverse impact resulting in loss or damage to data on:
- (a) pages, functionally, boxes, text, page layouts; and
 - (b) info/code deletions; or
 - (c) any changes that cause the Website to not function or look as originally designed by Stealth Media LTD.

28. What The Customer Will Do

- 28.1 The Customer will, in addition to any other obligations expressed in this agreement, have the following responsibilities:
- (a) provision of all data to be incorporated into the Website;
 - (b) provision of logos, designs, graphic and related materials to be incorporated into the Website; and
 - (c) provision of any other information, ideas or suggestions which are to be expressly considered by Stealth Media LTD in developing the Website;
 - (d) ensure all information and data supplied to Stealth Media LTD is accurate and valid.
- 28.2 The Customer will ensure that Stealth Media LTD is given such information and assistance as Stealth Media LTD reasonably require to enable Stealth Media LTD to construct and maintain the Website.
- 28.3 Stealth Media LTD will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Website which is attributable to:
- (d) incorrect information provided by the Customer, either pursuant to this clause or otherwise; or
 - (e) failure by the Customer to provide relevant information, either pursuant to this clause or otherwise; or
 - (f) any 3rd party Materials used by Stealth Media LTD in creation of the Website.

29. Proof Reading

- 29.1 Whilst every care is taken by Stealth Media LTD to carry out the instructions of the Customer, it is the Customers responsibility to undertake a final proof reading. Stealth Media LTD shall be under no liability whatever for any errors not corrected by the Customer in the final proof reading. Should the Customer's alterations require additional proofs this shall be invoiced as an extra.
- 29.2 When style, type or layout is left to Stealth Media LTD's judgement and the Customer makes further alterations, this will be invoiced as an extra.

30. Customer's Property and Materials

- 30.1 In the case of property and materials left with Stealth Media LTD without specific instructions, Stealth Media LTD 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.
- 30.2 Where materials or equipment are supplied by the Customer, Stealth Media LTD accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

31. Maintenance

- 31.1 Subject to Clause 31.2, Stealth Media LTD will provide the Maintenance Services in accordance with the maintenance terms set out in Stealth Media LTD's maintenance schedule.
- 31.2 The Customer will procure all necessary authorisations, licences and consents to enable Stealth Media LTD to have access to the Website in order to provide the Maintenance Services.

