



## **Web Logix Limited**

### **Hosting Services Agreement – Managed Plans**

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**THIS AGREEMENT** is between Web Logix Limited and you as the Customer if you are using managed hosting services provided by Web Logix Limited. By using managed hosting services provided by Web Logix it is assumed you have read and agreed to this agreement.

**WHEREAS:**

A. The Customer wishes Web Logix to provide hosting space and managed services for its website/s

**It is hereby agreed as follows:**

**1. DEFINITIONS**

1.1 In this Agreement, unless the content requires otherwise:

“Agreement” means this Agreement

“Business Day” means Monday to Friday, excluding recognised New Zealand public, and Locally Observed Holidays.

“Charges” means the charges and fees payable by the Customer to Web Logix for services provided by Web Logix.

“Commencement Date” means the date the services started being supplied by Web Logix

“Confidential Information” means the confidential information of a Party which relates to the subject matter of this Agreement and includes:

- (a) confidential information relating to the design of the website;
- (b) information relating to the personnel, policies or business strategies of the Supplier;
- (c) information relating to the terms upon which the Hosting Services are provided pursuant to this Agreement;

“Deliverables” means a product or outcome which is developed or achieved by Web Logix pursuant to the Estimate For Services;

“Force Majeure” means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, including hacker attack, sabotage and revolution; and
- (c) strikes;

“GST” means goods and services tax under the Goods and Services Act 1985;

“Hosting” means the physical hosting environment where the application is located

“Intellectual Property Rights” means, in respect of each of Web Logix and the Customer, all intellectual and industrial property rights and interests (including common law rights and interests) owned or held by that party, or lawfully used by that party, including without limitation:

- (a) patents, trade marks, service marks, copyrights, registered designs, trade names, symbols and logos;
- (b) patent applications and applications to register trade marks and designs; and
- (c) all formulae, methods, plans, data, drawings, specifications, equipment, designs, inventions, discoveries, improvements, know-how, software products, trade secrets, price lists, and other information used by that party in the course of its business;

“Non-Business Hours” means all times other than Business Hours;

“Party” means either Web Logix or the Customer as the context dictates, including its successors and assigns;

“Related Company” has the meaning ascribed to that term in section 2(3) of the Companies Act 1993;

“Users” means persons permitted by the Client to use the System;

“Web Logix” includes services provided by Web Logix’s hosting facilities supplier

“Website” or “Website Application” or “Application” means the system code and associated database/s

“Website Products” includes but is not limited to any 3<sup>rd</sup> party modules, certifications, images or other items accessible through the website

## 2. INTERPRETATION

2.1 In this Agreement, unless the contrary intention appears:

- (a) the clause headings are for ease of reference only and shall not be relevant to interpretation;
- (b) a reference to a clause number is a reference to its subclauses;
- (c) words in the singular number include the plural and vice versa;
- (d) words importing a gender include any other gender;
- (e) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- (f) a reference to a clause is a reference to a clause or subclause of this Agreement;
- (g) a reference to a subclause is a reference to a subclause of the clause in which that reference is made;
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) the recitals to this Agreement do not form part of the Agreement;
- (j) monetary references are references to New Zealand currency;
- (k) Any reference in this Agreement to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time;
- (l) A reference to a "person" includes an individual, firm, company, corporation, unincorporated body of persons, state or government or agency thereof and any other body or entity (in each case whether or not having separate legal personality);
- (m) Unless the context otherwise requires, all amounts payable under this Agreement are expressed exclusive of GST and in New Zealand dollars. If GST is payable on any amount it will be added to that amount and will be payable on each such amount at the time the amount itself is payable.

## 3. TERM OF AGREEMENT / CANCELLATION

- 3.1 This Agreement commences on the Commencement Date and shall remain in force for the duration until the agreement is cancelled in writing.
- 3.2 To cancel this agreement Web Logix must receive notice of cancellation in writing (email is acceptable). Cancellations are processed at the end of each month. All services are payable up until the end of the month the cancellation is received.
- 3.3 No refunds are due if Web Logix is not notified of a hosting account cancellation in writing. If Web Logix is not notified in writing and/or a website domain name is pointed away from a hosting account without informing Web Logix, Web Logix is not required to provide a refund.

## 4. SERVICES

- 4.1 Web Logix shall provide hosting and managed services.
- 4.2 Web Logix shall provide space on its hosting server/s and provide the ability for Users to access the website via the Internet.
- 4.3 Web Logix shall use reasonable endeavours to ensure that sufficient access is maintained on its hosting facilities to enable Users to have access to the website.
- 4.4 Notwithstanding subclause 3, Web Logix does not warrant that Users will have continuous access to the website. Web Logix shall not be liable in the event that any service is unavailable to the Customer or Users due to downtime attributable to malfunction, upgrades or preventative or remedial maintenance activities, 3<sup>rd</sup> party faults, certificates, security or browser problems outside of Web Logix's control.
- 4.5 Web Logix accepts no responsibility for deficiency or inaccuracy in the website, or its associated products or content provided by the Customer or attributable to a lack of maintenance.
- 4.6 Managed Hosting Services include the provision of qualified software development resources with supported systems knowledge. The provision of processes that review the impact of changes, provides advice to users of the impacts and potential risks, and schedules the release of the changes.
- 4.7 Managed Hosting Services do not include:
  - (a) any maintenance and/or support of the website/s, website content, and/or 3<sup>rd</sup> party website products which are not specifically included and documented as part of the managed services hosting plan
  - (b) any email or DNS management

**4.8** The Customer and Web Logix agree that in the event the Customer's hosting service experiences Service Unavailability then the following terms shall apply for the purpose of providing a reasonable pre-estimate of losses by the Customer, and damages payable to the Customer are limited to the sums, and only for the events, here described:

- (a) The term "Service Unavailability" means the total number of minutes in a particular month that access to the website is unavailable. Service Unavailability does not include performance slowdowns or delays.
- (b) Web Logix guarantees service uptime of 98% a month. Web Logix will reimburse in the form of credits to the Customer "Service Unavailability" greater than 2% of the accepted downtime in accordance with the following schedule, with the credit being calculated on the basis of the monthly service charge for the affected website:

<b>Service Unavailability</b>	<b>Credits</b>
Less than 30 minutes	25% of monthly fee
Between 30 minutes and 90 minutes	50% of monthly fee
More than 90 minutes	100% of monthly fee

Unavailability equals time offline on a given 24 hour period.

- (c) Web Logix shall not be liable to reimburse in any form where such failure arises from any one or more of the following:
  - (i) Site wide disasters including, but not limited to flood, tsunami, earthquake, fire, pandemic, terrorism, or act of war.
  - (ii) Any event caused by any entity outside of the Service Provider's direct control.
  - (iii) Planned outages.
  - (iv) Incidents caused by the Customer including, but not limited to faults caused by the Customer's equipment, applications, interconnected equipment, networks, systems or gateways and/or the acts or omissions of the Customer, third party components whether within or outside Web Logix Network or the acts or omissions of local exchange carriers or failure of third party services.
  - (v) Disconnection and/or reconnection of services due to non-payment of any charges payable to Web Logix or where the services are disconnected by reason of it being used for any illegal, unlawful or other objectionable purpose described in Web Logix's Terms of Service or Acceptable Use Policy (hereby incorporated by reference).
  - (vi) Scheduled or routine maintenance or reconfiguration of the Network or Web Logix's equipment, including without limitations maintenance by local public telecommunications and telegraph service provider on access circuits between Web Logix and the Customer's services.
  - (vii) Faults arising from reasons beyond Web Logix's reasonable control and force majeure events or any causes whether similar or otherwise outside Web Logix's control.
  - (viii) Scheduled maintenance and emergency maintenance and upgrades.
  - (ix) DNS (Domain Name Server) issues outside the direct control of Web Logix.
  - (x) DNS propagation.
  - (xi) Email outages or delays, undelivered incoming or outgoing mail, spam or virus problems.
  - (xii) Outages elsewhere on the Internet that hinder access to the Customer's account or services. Web Logix is not responsible for browser or DNS caching that may make website appear inaccessible when others can still access it. Web Logix will guarantee only those areas considered under the control of Web Logix.
  - (xiii) The Customer's acts or omissions (or acts or omissions of others engaged or authorised by customer), including, without limitation, custom scripting or coding, eg CGI, PERL, HTML, PHP, ASP, ASP.NET2 etc, any negligence, wilful misconduct, or use of the Service in breach of Web Logix's Terms of Service and Acceptable Use Policy.

**4.9** To receive a reimbursement in the form of credit, the Customer must make a request to Web Logix. Each request in connection with this Agreement must include the dates and times and description of the unavailability of the service and must be received by Web Logix within thirty (30) days of each event. If the unavailability is confirmed by Web Logix, credits will be applied within sixty (60) days after Web Logix's receipt of the Customer credit request. In the event that Web Logix disputes the claim, the Customer

shall not be entitled to the reimbursement specified, until and unless the dispute has been resolved, using the process let out in this Agreement.

**4.10** Notwithstanding anything to the contrary herein, the total amount credited to the Customer in a particular month under this Agreement shall not exceed the total services fee paid by the Customer for such month for the affected service. Credits are the Customer's sole and exclusive remedy with respect to any failure or deficiency in the service.

**4.11** The parties agree that only measurements carried out by Web Logix shall be used for the calculation of unavailable time and Web Logix's records shall be conclusive evidence thereof.

## **5. SUPPORT HOURS**

**5.1** Website support is available during New Zealand Business Hours. New Zealand Business Hours are Monday to Friday 8.30am to 5.30pm excluding weekends and New Zealand National and Local Public Holidays.

## **6. CUSTOMER'S OBLIGATIONS**

**6.1** The Customer shall be responsible for all aspects of the website/s which are not included as part of the managed services plan including, but not limited to design, content, testing, and notifying WebLogix of errors the website/s may be experiencing.

**6.2** The Customer undertakes to ensure that website/s and any customised configuration:

- (a) does not infringe the Intellectual Property Rights of any person;
- (b) will not at any stage during the term of this Agreement contain material which is obscene, offensive, upsetting, defamatory, personally offensive or in any way unsuitable for people under the age of eighteen (18) years;
- (c) does not comprise and cannot be used for any purpose or activity of an illegal, fraudulent or defamatory nature.
- (d) does not accept, contain, or store sensitive or private information including credit cards details or any other sensitive or private information which could cause harm to any person
- (e) does not allow through act or omission (or acts or omissions of others engaged or authorised by customer), including, without limitation, damaging or illicit custom scripting or coding, any negligence, wilful misconduct, or any other breach of service.

**6.3** Unless Web Logix's written consent is obtained in advance, the Customer shall use the website for its own purposes and shall not sub-let space for any other individual or entity.

**6.4** The Customer shall indemnify Web Logix in respect of any liability arising directly or indirectly, from a failure by the Customer to comply with this clause 5.

**6.5** The Customer agrees to:

- (a) make sure all information you give Web Logix is current, correct, complete and provided in a timely fashion
- (b) comply with all Separate Terms applying to your use of our Services
- (c) comply with all applicable laws, regulations, standards and codes including, but not limited to, the Privacy Act 1993, Fair Trading Act 1986, Copyright Act 1994, Defamation Act 1992, the Crimes Act 1961
- (d) comply with PCI DSS standards
- (e) comply with any image, video, or other multimedia licencing for items on the website
- (f) make sure everyone who uses the Services Web Logix provides to you or under your Account, or does anything in relation to them, is also aware of, and meets, these responsibilities
- (g) be responsible and liable for any use by any other person (authorised or unauthorised) of the Services we provide to you or under your Account, including any charges associated with that use and any consequences if such person misuses the Services, breaches these Customer Terms or any Separate Terms.
- (h) provide written notification of cancellation as per section 3 of this agreement

**6.6** Identification codes, your Account, password and security

- (a) We will allocate identifiers (e.g. IP addresses) to you to use depending on the kinds of Services you want. Web Logix may change any identifiers at any stage. We will try to notify you of such a change beforehand.
- (b) You are entirely responsible for maintaining the confidentiality of your account details, and any user name, login, password and other identifier used by or allocated to you in connection with your Account (together, your "identifiers"). You are also entirely responsible for any and all activities that occur under your Account, Services or through the use of your identifier/s.
- (c) We are entitled to rely on your identifier/s as conclusive evidence of your identity and authority without further investigation.

- (d) You agree to change your password at regular intervals, and at any time upon request by us. You also agree to notify us immediately of any actual or suspected unauthorised use of your Account or identifier/s or other breach of security. However, notice provided by you under this clause does not release you from your responsibilities under these Customer Terms and the Separate Terms.
- (e) We will not be liable for any loss that you may incur as a result of someone else using your Account or any identifier. However, you could be held liable for losses incurred by Web Logix or another party due to someone else using your Account or any identifier.
- (f) We retain ownership of all identifiers used by or allocated to you, and all rights in them.

**6.7** The Customer agrees not to undertake any form of spamming activities. Web Logix reserves the right, in its sole discretion, to identify material transmitted over the Web Logix network as "spam". Web Logix reserves the right to take all legal and technical steps available to prevent spam, unsolicited bulk email or other unauthorised email from entering, utilising or remaining within the Services or Web Logix network. The following are examples of spamming activities that are not permitted through your use of the services:

- (a) Using or causing to be used Web Logix's services or systems to facilitate the transmission of unsolicited or unauthorised material. This includes any promotional materials, URLs, "junk mail", "chain letters", "pyramid schemes", or any other form of unauthorised solicitation that you may upload, post, email, transmit, or otherwise make available
- (b) Manipulating or forging identifiers, such as email headers or domain names, to disguise the origin of any content transmitted to or through Web Logix's services or systems.
- (c) Relaying email from a third party's mail servers without the permission of that third party, or using similar techniques to hide or obscure the source of the email.
- (d) Harvesting or collecting email addresses from the Web Logix Web sites for purposes of sending unsolicited or unauthorised material.
- (e) Uploading, posting, emailing, or transmitting the same message, URL, or post multiple times.
- (f) Disrupting the normal flow of dialogue, or causing the screen to "scroll" faster than other users of the service are able to type, or otherwise acting in a manner that negatively affects other users' ability to engage in real-time exchanges.
- (g) Certain Services may have additional spam guidelines explaining appropriate conduct for those services. It is your responsibility to check each Service's guidelines for additional details regarding spam.

## **7. DISBURSEMENTS**

**7.1** All costs incurred by Web Logix in providing the Services including costs for out of town travelling including accommodation, meals, toll calls, facsimile, courier fees, will be charged to the Client with an administration charge of 10%. Disbursements shall not be incurred without the Client's prior approval.

## **8. CHARGES AND PAYMENTS**

**8.1** Payments shall be made in NZ Dollars to WebLogix.

**8.2** Website hosting services charges are due for payment on the 1<sup>st</sup> of each month (for that month's services) as cleared funds by automatic payment into a nominated Web Logix bank account without exception.

**8.3** If for any reason a payment is processed late due to a bank error or any other issue you agree it is your responsibility to ensure Web Logix is notified immediately and the situation is rectified for ongoing payments.

**8.4** You agree Web Logix may suspend your website hosting without notification if your payments are not received as cleared funds in Web Logix's nominated bank account by the due dates.

**8.5** Each managed website hosting service is allocated space and monthly traffic according to the service plan chosen. Each hosting plan provides physical space on a server and a standard amount of traffic per month. Below are target bandwidth/resource limits for each hosting service plan. The following limits are designed to enable Web Logix's web servers to operate at optimal efficiency: Plan Max traffic per site 50MB 1 Mbps, 100MB 2.5 Mbps, 500MB 5.0 Mbps, 1000MB 10.0 Mbps. We require a reasonable-use traffic volume on website plans therefore if additional traffic is being used or the website hosting size increases to exceed your hosting services plan you may be charged for additional usage and be required to move to a more suitable plan. Web Logix is under no obligation to provide any proof of usage or statistics to prove excess usage has occurred.

**8.6** Web Logix may increase the charges for services by providing one months notice.

- 8.7** If, due to bank charges, transfer fees or the like, WebLogix should receive less than its invoiced amount, payment is still due for the shortfall.
- 8.8** You agree to pay for the Services we provide for you or under your Account, no matter who uses them. For example, you are responsible for the charges for anyone else's use of the Services we provide for you whether under your Web Logix account, under any additional user-account established under your Web Logix account, or otherwise.
- 8.9** Charges for our Services, and any other amounts you may owe to us, form part of the bill for your Web Logix account (depending on the Service), and as such you agree to be subject to any terms and conditions applicable to those accounts, including in relation to late payment or credit conditions. You agree that we may assign any amounts you owe us to another of our related companies ("related company" has the meaning set out in section 2(3) of the Companies Act 1993), or to anyone else, without notice.
- 8.10** If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by Web Logix, the Customer shall pay the portion of the amount stated in the invoice which is not in dispute and shall notify Web Logix in writing (within seven (7) days of receipt of the invoice) of the reasons for disputing the remainder of the invoice. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first invoiced, then the Customer shall pay the amount finally resolved together with interest on that amount in accordance with the terms of payment set out in this Agreement. You may be required to pay any costs that are incurred by anyone (including agents) in recovering the money you owe, or in exercising any other rights, including commissions, credit collection and legal costs on a solicitor and client basis.
- 8.11** The Charges are exclusive of taxes, duties and charges imposed or levied in New Zealand or overseas in connection with the Hosting Services. Without limiting the foregoing, the Customer shall be liable for any new taxes, duties or charges imposed subsequent to the Commencement Date in respect of this Agreement.
- 8.12** We may withhold, suspend, restrict or terminate any Service we provide to you or the entire agreement you have with us, or take such other steps as we believe are reasonably necessary or appropriate, if you do not meet any of your responsibilities or other obligations under these Customer Terms or any Separate Terms or which you have to any of our related companies. Our Services to you may also be restricted if you are a new customer or have asked us to provide additional Services, until a satisfactory payment history is established.
- 8.13** Where we suspend or terminate a Service for the reasons set out above, we may require you to pay a reconnection charge before you can use it again. Cancellation of our agreement will also automatically cancel any Services you have subscribed to. Where we have changed or replaced an existing service, your use of the changed or replaced Service will show your acceptance of it (and any terms and conditions relating to it), in place of the changed or replaced service (and terms and conditions), unless you promptly unsubscribe to the Service or notify us that you no longer wish to receive the Service.
- 8.14** In most cases, normal charges continue to apply during the suspension or restriction of any Service.

## **9. NO REPRESENTATIONS**

- 9.1** Except to the extent specifically stated in these Customer Terms or any Separate Terms or required by law, Web Logix and any of our related companies and our and their respective officers, employees, contractors, agents and suppliers make no representations about the suitability, reliability, availability, timeliness, lack of viruses or other harmful features, or accuracy of information, the Services or other materials provided to you, which are provided "as is" without warranty of any kind, including all implied warranties and conditions of merchantability, fitness for a particular purpose, title and non-infringement of the rights of any third party.

## **10. DISCLAIMER AND EXCLUSION**

- 10.1** To the fullest extent permitted by law, you agree that Web Logix will not be responsible for unauthorised access to or alteration of your data, any material or data sent or received or not sent or received, any transactions entered into through use of our Services or our Websites, any threatening, defamatory, obscene, offensive or illegal content or conduct of any other party or any infringement of another's rights, including intellectual property rights. You also agree that Web Logix is not responsible for any content sent using, or included in, our Service or Websites by any third party.
- 10.2** To the fullest extent permitted by law, in no circumstances (including those circumstances set out above) will we be liable to you or any third parties for any loss of content, data, revenue, profits or lost business or any indirect, incidental, consequential, special, punitive or exemplary damages or losses which you may incur as a result of anything we have done or not done, or otherwise in connection with Web Logix, the Services, the Internet or communications network generally, or your use of any of

them, regardless of the type of claim or the nature of the cause of action, even if we have been advised of the possibility of damage or loss.

**11. NO OTHER REMEDY**

**11.1** You agree that this clause 8 sets out your sole and exclusive rights and remedies against Web Logix, any of our related companies, our and their respective officers, employees, contractors, agents and suppliers in relation to any claims brought by you or any third party, whatever you are claiming for and however liability arises or might arise (whether out of contract, tort (including negligence), equity, breach of statutory duty or otherwise) and that none of us or any of them will be liable for any additional amounts or other forms of compensation, damages, loss, or expenses whatsoever.

**12. OUR RIGHTS TO COMPENSATION FROM YOU**

**12.1** Where you do not meet your responsibilities and other obligations to us, you must pay any resulting loss of revenue and reasonable expenses we incur in collecting any money you owe us or in exercising any of our other reasonable rights. You agree to indemnify and keep indemnified us and our related companies and our and their respective officers, employees, contractors, agents and suppliers from and against all actions, claims, suits, demands, damages, liabilities, costs or expenses (including solicitor-client costs) arising out of or in any way connected to the use of the Services we provide to you or someone using your name and/or password, or under your Account or otherwise.

**13. CONFIDENTIALITY**

**13.1** A Party shall not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.  
**13.2** A Party shall not be in breach of subclause 1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.  
**13.3** Each Party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other Party's Confidential Information.  
**13.4** Notwithstanding any other provision of this clause, Web Logix may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants, and shall ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to Web Logix.  
**13.5** This clause shall survive the termination of this Agreement.

**14. INTELLECTUAL PROPERTY**

**15.** The client acknowledges that, to the maximum extent permitted by law, the client will be the sole owner of, and own the intellectual property rights in, all software, documentation and other materials that Web Logix prepares and provides for/to the client under this agreement. The client will have a non-exclusive, non-transferable perpetual licence to use such materials in-house in its business. This provision does not apply to Third Party products and materials supplied by or through Irongate. Any such products and materials will be subject to the Terms and Conditions of the relevant Third Party license(s).

**16. THIRD PARTY MATERIALS**

**16.1** The Customer shall be responsible for:  
(a) obtaining all necessary permission, authorisations, licences and consents in relation to the use of third party materials used on the website; and  
(b) payment of all royalties and other fees associated with the use of such third party materials.  
**16.2** The Customer shall indemnify Web Logix in respect of any liability arising, directly or indirectly, from a failure by the Customer to observe its obligations arising under subclause 1.

**17. IMPLIED TERMS**

**17.1** Subject to subclause 2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.  
**17.2** Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or

warranty shall be deemed to be included in this Agreement. However, the liability of Web Logix for any breach of such condition or warranty shall be limited, at the option of the Supplier, to one or more of the following:

- (a) if the breach relates to goods:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of such goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services, as setout in clause 4 hereof.

## **18. LIABILITY OF SUPPLIER**

**18.1** Except in relation to liability for personal injury (including sickness and death), Web Logix shall be under no liability to the Customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this Agreement or in respect of a failure or omission on the part of Web Logix to comply with its obligations under this Agreement, apart from that provided in clause 4.

**18.2** Subject to subclause 3, the Customer warrants that it has not relied on any representation made by Web Logix which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Web Logix.

**18.3** The Customer acknowledges that to the extent Web Logix has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

**18.4** The Customer shall at all times indemnify and hold harmless Web Logix and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by the Customer of its obligations under this Agreement; or
- (b) any wilful, unlawful or negligent act or omission of the Customer.

## **19. TERMINATION**

**19.1** Without limiting the generality of any other clause in this Agreement, Web Logix may terminate this Agreement immediately by notice in writing if:

- (a) the Customer is in breach of any term of this Agreement and such breach is not remedied within the timeframe set out by Web Logix once the Customer is notified in writing of such breach;
- (b) the Customer becomes threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (c) the Customer, being a partnership, dissolves threatens or resolves to dissolve or is in jeopardy of dissolving;
- (d) the Customer, being a natural person, dies, or
- (e) the Customer ceases or threatens to cease conducting its business in the normal manner
- (f) the Customer behaves or communicates to Web Logix in a way that Web Logix deems to be inappropriate and/or unacceptable.

**19.2** If notice is given to the Customer pursuant to subclause 1, Web Logix may, in addition to terminating the Agreement:

- (a) repossess any of its property in the possession, custody or control of the Customer;
- (b) retain any moneys paid;
- (c) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- (d) be regarded as discharged from any further obligations under this Agreement; and
- (e) pursue any additional or alternative remedies provided by law.

## **20. FORCE MAJEURE**

**20.1** Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to force majeure.

- 20.2** If a delay or failure of a Party to perform its obligations is caused or anticipated due to force majeure, the performance of that Party's obligations will be suspended.
- 20.3** If a delay or failure by a Party to perform its obligations due to force majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.
- 20.4** If this Agreement is terminated pursuant to subclause 3, Web Logix shall refund moneys previously paid by the Customer pursuant to this Agreement for goods or services not provided by Web Logix to the Customer.

**21. SUB-CONTRACTS**

- 21.1** Web Logix may sub-contract for the performance of this Agreement or any part of this Agreement without obtaining the Customer's prior consent.
- 21.2** The Customer shall not unreasonably withhold consent for the supply of a sub-contractor in accordance with subclause 1.
- 21.3** Web Logix may, without the consent of the Customer, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of services pursuant to this Agreement.

**22. ENTIRE AGREEMENT**

- 22.1** This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

**23. PRECEDENCE**

- 23.1** The documents comprising this Agreement shall be read in the following order of precedence:
- (a) the clauses of this Agreement;
  - (b) the Schedules.
- 23.2** Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

**24. ASSIGNMENT AND NOVATION**

- 24.1** The benefit of this Agreement shall not be assigned by the Customer without Web Logix's written consent.
- 24.2** Web Logix may consent to the assignment or novation of this Agreement by the Customer subject to such conditions as it chooses to impose.
- 24.3** Web Logix may assign this contract to another party or third party without written consent from the Customer.

**25. WAIVER**

- 25.1** No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party.
- 25.2** A waiver made by Web Logix pursuant by subclause 1 will not prejudice its rights in respect of any subsequent breach of the Agreement by the Customer.
- 25.3** Subject to subclause 1, any failure by Web Logix to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the Supplier to the Customer, will not be construed as a waiver of the Supplier's rights under this Agreement.

**26. SEVERABILITY**

- 26.1** If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

**27. SURVIVAL OF AGREEMENT**

**27.1** Subject to any provision to the contrary, this Agreement shall enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not enure to the benefit of any other persons.

**27.2** The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

**28. GOVERNING LAW**

**28.1** This Agreement will be governed by and construed according to the law of New Zealand.