

1. Definitions

- 1.1 “Dabhand” means Dabhand Ltd, its successors and assigns or any person acting on behalf of and with the authority of Dabhand.
- 1.2 “Client” means the person/s requesting Dabhand 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.
- 1.3 “Services” means all Goods (including web site content, any printed or virtual material, samples, web sites, brands, designs, images, advertising, data, graphics, pictures, trademarks, software, applications, manuals, and other associated documentation and/or goods) and/or Services (which includes any advice or recommendations, consultancy, hosting, backups, design and/or maintenance of web sites, brands, designs, or advertising, project management work, brand integration, and strategising and analytical Services, etc.) provided by Dabhand 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 “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.
- 1.5 “Prohibited Content” means any content 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.
- 1.6 “Charges” shall mean the cost of the Services as agreed between Dabhand 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 Dabhand.
- 2.2 These terms and conditions may only be amended with Dabhand’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Dabhand.
- 2.3 None of Dabhand’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Director(s) of Dabhand in writing nor is Dabhand bound by any such unauthorised statements.
- 2.4 Once accepted by the Client, Dabhand’s quotation shall be deemed to interpret correctly the Client’s instructions, whether written or verbal. Where verbal instructions only are received from the Client, Dabhand shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 2.5 Any advice, recommendations, information, assistance or service provided by Dabhand in relation to Services provided is given in good faith, is based on information provided to Dabhand, and Dabhand’s own knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and Dabhand shall make all effort to offer the best solution to the Client.

3. Change in Control

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

4. Charges and Payment

- 4.1 At Dabhand’s sole discretion the Charges shall be either:
- (a) as indicated on any invoice provided by Dabhand to the Client; or
 - (b) Dabhand’s quoted Charges (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days; and/or
 - (c) as per Dabhand’s set non-refundable monthly Charges for the Services (“Plan”), which will be as stipulated (including when due and payable) by Dabhand in the Plan.
- 4.2 Dabhand reserves the right to vary the Charges:
- (a) if a variation to the plan of scheduled Services, or Client 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 Dabhand’s normal business hours or any delay caused by the Client in contravention of clause 7.2, etc.);
 - (b) as a result of increases beyond Dabhand’s reasonable control in the cost of materials or labour (e.g. third-party network operator or Dabhand’s costs (e.g. google) or fluctuations in currency exchange rates, etc.). Where the Client is on a Plan, Dabhand will provide one (1) month’s written notice to the Client of any variation to the Charges thereof.
- 4.3 At Dabhand’s sole discretion, a deposit may be required.
- 4.4 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by Dabhand, which may be:
- (a) on provision of the Services;
 - (b) by way of instalments/progress payments in accordance with Dabhand’s payment schedule;
 - (c) 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 Dabhand.
- 4.5 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 Dabhand.
- 4.6 Unless otherwise stated the Charges do not include GST. In addition to the Charges the Client must pay to Dabhand an amount equal to any GST Dabhand must pay for any provision of Services by Dabhand under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

5. Provision of the Services

- 5.1 Any time specified by Dabhand for provision of the Services is an estimate only and Dabhand 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 Dabhand is unable to provide the Services as agreed solely due to any action or inaction of the Client, then Dabhand shall be entitled to charge the Client additionally for re-providing the Services at a later time and date.
- 5.2 The Client acknowledges that, due to the nature of digital display, technical difficulties may arise which could prevent the provision of the Services; and the Client, therefore, agrees to indemnify Dabhand against any costs or losses incurred by the Client as a result of this.

6. Risk and Limitation of Liability for Client Data

- 6.1 The Client acknowledges and agrees that Dabhand 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 Dabhand;
 - (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 Dabhand. Dabhand 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 Dabhand providing the Services. The Client accepts full responsibility for the Client's software and data and Dabhand is not required to advise or remind the Client of appropriate backup procedures.
- 6.2 The Client acknowledges that any advice or recommendations by Dabhand are provided on the basis of Dabhand's industry knowledge and experience only and shall not be deemed as specialist advice.
- 6.3 Dabhand, 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 Dabhand to the Client.
- 6.4 The Services are provided on an "as is, as available" basis. Dabhand specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.
- 6.5 *Public Access:*
- (a) The Client understands that by placing information on the Web Site, such information may be accessible to all internet users. Dabhand 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 Dabhand, or on the internet generally.

7. Web Site Development

- 7.1 *Dabhand's Responsibilities:*
- (a) Upon acceptance of Dabhand's quotation, and in accordance with this agreement, Dabhand will:
 - (i) use its best endeavours to develop the Web Site in accordance with the Client's instructions and specifications; and
 - (ii) to the extent specified in the Client's instructions and specifications, negotiate and procure any third-party agreements on behalf of the Client.
 - (b) The Client acknowledges that the development of the Web Site by Dabhand is based upon current technology platforms (e.g. internet browsers, mobile, android, etc.), and therefore Dabhand cannot guarantee that Web Site features and /or content will display correctly, and that the overall visual experience will be the same, for use by either superseded or presently undeveloped technology.
- 7.2 *Client's Responsibilities:*
- (a) The Client will, in addition to any other obligations expressed in this agreement, have the following responsibilities:
 - (i) provision of all content (including data, logos, designs and/or graphic and related materials) to be incorporated into the Web Site;
 - (ii) provision of any other information, ideas or suggestions which are to be expressly considered by Dabhand in developing the Web Site.
 - (b) The Client will ensure that Dabhand is given such information and assistance as Dabhand reasonably requires to enable Dabhand to construct and maintain the Web Site.
 - (c) It shall be the Client's responsibility to ensure that any specific requirements they may have for mobile web browsers is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the Web Site shall be at the sole discretion of Dabhand. In the event that additional Services are requested, or required (as per clause 7.1(b)), in order to meet any specific requirements for mobile web browsers, after Dabhand has commenced work on the Web Site, shall be treated as a variation to the Charges, and a strict estimation of further work required shall be submitted to the Client for approval before proceeding with the variation work.
 - (d) Dabhand will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Web Site which is attributable to:
 - (i) incorrect information provided by the Client, either pursuant to this clause or otherwise; or
 - (ii) failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or
 - (iii) any third-party products and/or services used by Dabhand in creation of the Web Site.
- 7.3 *Additional Services:*
- (a) Dabhand agrees that there will be no charge in the preparation of the initial quotation, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at Dabhand's sole discretion). In the event the Client requires proofs, mock-ups, layouts, samples or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at Dabhand's hourly rate unless specified otherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per clause 4.2.
 - (b) All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.
 - (c) Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice.
 - (d) Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at the Client's request for the job.
 - (e) Where the performance of any contract with the Client requires Dabhand to obtain products and/or services from a third party, the contract between Dabhand and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Dabhand, and the Client shall be liable for the cost in full including Dabhand's margin of such products and/or services.
 - (f) Whilst every effort will be taken by Dabhand to match virtual colours with physical colours, Dabhand will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product. Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra and charged contra against final invoice.
- 7.4 *Proof Reading:*
- (a) Whilst every care is taken by Dabhand to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading. Dabhand shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Client's alterations require additional proofs this shall be invoiced as an extra.
 - (b) When style, type or layout is left to Dabhand's judgement and the Client makes further alterations, this will be invoiced as an extra.
- 7.5 *Client's Property and Materials:*
- (a) In the case of property and materials left with Dabhand without specific instructions, Dabhand shall be free to dispose of them at the end of twelve (12) months after their receiving them and to accept and retain the proceeds, if any, to cover their own costs in holding and handling them.
 - (b) Where materials or equipment are supplied by the Client, Dabhand accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

- 7.6 *Maintenance:*
- (a) Subject to sub-clause (b), Dabhand will provide the Maintenance Services in accordance with the maintenance terms set out in Dabhand's maintenance schedule.
 - (b) The Client will procure all necessary authorisations, licences and consents to enable Dabhand to have access to the Web Site in order to provide the Maintenance Services.
- 8. Hosting Services**
- 8.1 "Live Date" means the date in which Dabhand provides the Hosting Services as per initial acceptance of Dabhand's quotation.
- 8.2 Hosting Services shall:
- (a) exclude domain registrations and SSL Certificates, and where the Client is changing from another hosting provider, the install and set-up of the Web Site on Dabhand's web servers, which shall be charged to the Client additionally; and
 - (b) only be used by the Client for lawful purposes. Any use which violates any applicable national or international laws is strictly prohibited (e.g. posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind – including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability).
- 8.3 Dabhand will, at its sole cost and expense:
- (a) host the Web Site on Dabhand's web servers;
 - (b) ensure that from the Live Date:
 - (i) sufficient capacity is maintained on Dabhand's web server to enable users access to the Web Site in a timely manner;
 - (ii) the Web Site is accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or (where applicable) Maintenance in accordance with clause 7.6);
 - (c) provide the Client with reasonable access to the Web Site to perform maintenance services.
- 8.4 Dabhand will not:
- (a) alter or amend, or permit any person to alter or amend the Web Site without the written consent of the Client;
 - (b) post or display on the Web Site any advertisement, sponsorship or promotion without the written consent of the Client;
 - (c) use any user data for marketing, referral or other purposes except as expressly authorised by this agreement;
 - (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Web Site; or
 - (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this agreement.
- 8.5 Dabhand will make best efforts to ensure that the Client receives continual and uninterrupted Services (including network or hosting servers) during the term of this agreement, however Dabhand 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 Dabhand. In no event though, shall Dabhand 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 Dabhand to provide Services under this agreement, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this agreement.
- 8.6 Dabhand may, at their sole discretion, limit or deny access to the Services is, in the judgement of Dabhand, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.
- 8.7 *Client's Obligations:*
- (a) The Client will, at its sole cost and expense:
 - (i) subject to any contract with Dabhand for Web Site Development, develop and maintain the Web Site;
 - (ii) provide the content to Dabhand, in such form as reasonably prescribed by Dabhand from time to time, and hereby grants Dabhand 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 Dabhand to host the Web Site on Dabhand's web server;
 - (iv) ensure that content supplied to Dabhand does not contain Prohibited Content, a link to any web site that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.
 - (b) The Client will not:
 - (i) logon to an account that the Client is not authorised to access;
 - (ii) access data or take any action to obtain services not intended for the Client;
 - (iii) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
 - (iv) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
 - (v) transmit any material outlined in clause 8.7(a)(iv);
 - (vi) do anything that prevents or hinders Dabhand from providing Hosting Services to any other person.
 - (c) The Client acknowledges that spamming (i.e. the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited.
- 8.8 *Limitation of Liability for Hosting Services*
- (a) in consideration of clause 16.6, in the event the Hosting Services provided to the Client are disrupted or malfunction for any reason, Dabhand's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Client to Dabhand for the Hosting Services during the period of disruption or malfunction.
- 9. Search Engine Optimisation (SEO)**
- 9.1 Although Dabhand shall use their knowledge and experience to gain the best results possible, Dabhand gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Web Site, or warranty that the Web Site will be effective in promoting the Client's business or result in any increase in sales of the products/services of the Client. Periodic reporting will be sent to the Client's nominated email address, at the sole discretion of Dabhand.
- 10. Errors and Omissions**
- 10.1 Any alleged fault, defect, shortage in quantity, errors, omissions or failure to comply with the description or quote of the Services which the Client detects must be reported to Dabhand as soon as is practically possible, but no later than three (3) days after detection. Any emails or telephone messages which are received outside Dabhand's normal business hours will be processed the following business day. Upon such notification the Client must allow Dabhand to review the Services that were provided.
- 10.2 For defective Services, which Dabhand has agreed in writing that the Client is entitled to reject, Dabhand's liability is limited to either (at Dabhand's discretion) rectifying the Services or re-providing the Services, provided that the Client has complied with the provisions of clause 10.1.

11. Intellectual Property and Confidentiality

- 11.1 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 Goods without Dabhand's prior consent in writing (including, but not limited to, underlying code elements, or any part of the Web Site design or layout).
- 11.2 The Client hereby authorises Dabhand to utilise images of any Goods designed or created by Dabhand in advertising, marketing, or competition material by Dabhand.
- 11.3 The Client shall indemnify Dabhand 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 Client has supplied drawings, sketches, files or logo's to Dabhand, the Client warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Client agrees to indemnify Dabhand against any action taken by a third party against Dabhand.
- 11.4 Notwithstanding anything herein, the Intellectual Property Rights in Dabhand's Services do not vest in the Client and there is no assignment of these Intellectual Property Rights to the Client. Dabhand hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use and reproduce the Services for the purposes of this agreement only, and solely for the operation of the Client's business however, the Client shall not use nor make copies of such Intellectual Property in connection with any work or business other than the work or business specified in writing to Dabhand unless express approval is given in advance by Dabhand. Such license shall terminate on default of payment or any other terms of this agreement by the Client.
- 11.5 All Flash, PHP, Java Script, HTML and Dynamic HTML coding and other supplied code (if any) remains the intellectual property of Dabhand. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 11.6 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.

12. Default and Consequences of Default

- 12.1 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 Dabhand's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Client owes Dabhand any money the Client shall indemnify Dabhand from and against all costs and disbursements incurred by Dabhand in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Dabhand's collection agency costs, and bank dishonour fees).
- 12.3 Without prejudice to any other remedies Dabhand may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Dabhand may, at their sole discretion (without being liable to the Client for any loss or damage the Client suffers because Dabhand has exercised its rights under this clause):
- (a) suspend or terminate this agreement and/or any of the Services without notice or refund;
 - (b) make an additional charge to the Client; or
 - (c) block access to any part of the Services.
- 12.4 Without prejudice to Dabhand's other remedies at law Dabhand shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Dabhand shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Dabhand becomes overdue, or in Dabhand's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 12.5 Dabhand will not be liable to the Client for any loss or damage the Client suffers because Dabhand has exercised its rights under this clause 12.

13. Cancellation

- 13.1 Dabhand may cancel these terms and conditions or cancel provision of Services at any time before the Services have commenced by giving written notice. On giving such notice Dabhand shall repay to the Client any money paid by the Client for the Services. Dabhand shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Client cancels provision of the Services the Client shall be liable for any and all loss and any costs incurred (whether direct or indirect) by Dabhand up to the date of cancellation and/or as a direct result thereof (including, but not limited to, any loss of profits)

14. Suspension and Termination

- 14.1 Either party may terminate this agreement by providing the other party sixty (60) days prior written notice thereof, after which time the Services (and this agreement) will automatically terminate at the end of the then current month.
- 14.2 Any termination of this agreement by the Client without the appropriate notice will render the Client liable to pay the Charges due in respect of the notice period as stated herein.
- 14.3 Where this agreement is terminated for any reason, the Services will automatically terminate and the Client shall lose all right to use the Web Site and products, and shall forthwith deliver any Goods to Dabhand and destroy all copies made. The Client shall certify in writing that the copies have been destroyed.
- 14.4 Upon termination of this agreement, Dabhand will immediately delete all files and content relating to the Client and the Services provided thereto.
- 14.5 It is the Client's responsibility to make arrangements for the transfer of their data prior to the termination date. Dabhand accepts no liability for any loss or damage incurred by the Client as a result of the deletion of such data.
- 14.6 In the event the Services are suspended as per, the Services can be re-instated (at Dabhand's sole discretion) under a new contract at the prevailing rates; however no credits or discounts will be granted, and reinstatement costs shall apply.
- 14.7 Any suspension of the Services by Dabhand in accordance with clause 12.3 will not constitute a termination of the agreement and Dabhand may require the Client to pay a reconnection fee to recommence the Services together with the relevant Charges.

15. Privacy Act 1993

- 15.1 The Client authorises Dabhand or Dabhand's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Dabhand from the Client directly or obtained by Dabhand 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.
- 15.2 Where the Client is an individual the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Client shall have the right to request Dabhand for a copy of the information about the Client retained by Dabhand and the right to request Dabhand to correct any incorrect information about the Client held by Dabhand.

16. Liability

- 16.1 The Client agrees that, in view of their nature, the Client's use of the Services is at their sole risk. Whilst Dabhand will endeavour to ensure that the Services are of a high quality, neither Dabhand (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.
- 16.2 The Client agrees that any such suspension or termination referred to in clause 16.1(b) above will not constitute a breach of this agreement by Dabhand and that the Services are provided on an "as is" basis without guarantee of any kind.
- 16.3 The Client further agrees that Dabhand 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 16.1(a) above.
- 16.4 The Client 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. Dabhand has no responsibility for any goods, services, information, software, or other materials which the Client may obtain from a third party when using the Internet.
- 16.5 The Client also acknowledges that Dabhand may exercise editorial control over the content of their servers, but that Dabhand does not have the resources to ensure, nor are they capable of checking, the full content of their servers at all times. Neither Dabhand (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 Client, therefore, agrees that Dabhand 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 Dabhand. The Client specifically acknowledges that Dabhand 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.
- 16.6 Dabhand shall be under no liability whatsoever to the Client for any indirect, incidental, special and/or consequential loss and/or expense, claim and/or cost (including legal fees and commissions, loss of profit, business, contracts, opportunity, goodwill, reputation and/or anticipated saving) and/or for any loss or corruption of data suffered by the Client arising out of a breach by Dabhand 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 Dabhand's liability shall be limited to damages which under no circumstances shall exceed the Charges).

17. Title

- 17.1 Dabhand and the Client agree that the Client's obligations to Dabhand for the supply of Services shall not cease (and ownership of any Goods shall not pass) until:
- (a) the Client has paid Dabhand all amounts owing to Dabhand for the Services; and
 - (b) the Client has met all other obligations due by the Client to Dabhand in respect of all contracts between Dabhand and the Client.
- 17.2 Receipt by Dabhand 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 Dabhand's ownership or rights in respect of the Services, and this agreement, shall continue.
- 17.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 17.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Dabhand on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Dabhand and must pay to Dabhand 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 Dabhand and must pay or deliver the proceeds to Dabhand 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 Dabhand and must sell, dispose of or return the resulting product to Dabhand as it so directs.
 - (e) the Client irrevocably authorises Dabhand to enter any premises where Dabhand believes the Goods are kept and recover possession of the Goods.
 - (f) Dabhand 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 Dabhand.
 - (h) Dabhand may commence proceedings to recover the Charges notwithstanding that ownership of the Goods has not passed to the Client.

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

- 18.1 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 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 Dabhand to the Client.
- 18.2 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 Dabhand may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Dabhand 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 Dabhand.
- 18.3 Dabhand and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 18.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 18.5 Unless otherwise agreed to in writing by Dabhand, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 18.6 The Client shall unconditionally ratify any actions taken by Dabhand under clauses 18.1 to 18.5.

19. Security and Charge

- 19.1 In consideration of Dabhand agreeing to provide Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 19.2 The Client indemnifies Dabhand from and against all Dabhand's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Dabhand's rights under this clause.
- 19.3 The Client irrevocably appoints Dabhand and each director of Dabhand as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 19 including, but not limited to, signing any document on the Client's behalf.

20. General

- 20.1 The failure by Dabhand to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Dabhand'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.
- 20.2 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 Rotorua Court of New Zealand.
- 20.3 Dabhand may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.4 The Client agrees that Dabhand may amend these terms and conditions at any time. If Dabhand makes a change to these terms and conditions, then that change will take effect from the date on which Dabhand notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Dabhand to provide Services to the Client.
- 20.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.6 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to them by any servant or agent of Dabhand and the Client acknowledges that they purchase the Services relying solely upon their own skill and judgement.
- 20.7 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 provision of Services by Dabhand to the Client.
- 20.8 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.