

## WEB LISTING SERVICE TERMS

### Background

(A) The Customer has requested the Supplier to facilitate a Web Listing for the Business, then post the Web Listing onto the supplier's Web Site which the Supplier has agreed to do, on the terms and conditions contained herein and in the Service Contract.

(B) These terms and conditions form part of the Service Contract.

### 1. Definitions

1.1 In these terms and conditions, unless the contrary intention appears:

"Business" means the Customer's business as detailed in the Service Contract;

"Commencement Date" means the date the Supplier sends an email or other written notice to the Customer confirming that it has agreed to enter into the Service Contract;

"Confidential Information" means the confidential information of a Party which relates to the subject matter of the Service Contract and includes:

- (a) confidential information relating to the design of the Web Site;
- (b) information relating to the personnel, policies or business strategies of the Supplier;
- (c) information relating to the terms upon which the Services are provided pursuant to the Service Contract;

"Customer" means a person has signed the Service Contract and to whom the Supplier will provide the 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 the Service Contract or these terms and conditions. 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, sabotage and revolution; and
- (c) strikes;

"Initial Term" means the minimum contract period specified in the Service Contract;

"Intellectual Property Rights" means rights subsisting in a person other than the Customer in relation to any copyright, trade mark, design, logo, patent, advertising slogan, colour scheme, business get-up or other type of intellectual property;

"Party" means either the Supplier or the Customer as the context dictates, and "Parties" means each of them;

"Payment Amount" means the amount/s itemised in the Service Contract;

"Products" mean the Customer's products and/or services as listed in the Service Contract;

"Services" mean the services provided by the Supplier pursuant to this Service Contract, more specifically the services of allowing the Customer to advertise/display its Business and products on the Supplier's Web Site through either a Standard Listing or a Web Page Listing;

"Service Contract" means the contract entered into between the Customer and the Supplier in relation to the provision of the Services by the Supplier, and includes the terms and conditions contained herein;

"Standard Listing" means advertising of the Customer's Business details on the Web Site in the format promoted by the Supplier;

"Supplier" means MyVirtualHome Pty Ltd or its nominee;

"Third Party Materials" mean textual, graphical, audio or like materials, together with any software, which is incorporated into the Customer's Web Page;

"User" means a person other than the Parties who seeks access over the Internet;

"Web Listing" means either a Standard Listing or a Web Page Listing, or both (as the case may be);

"Web Page Listing" means advertising of the Customer's Business details on the Web Site in the format promoted by the Supplier;

"Web Site" means the website [www.myvirtualhome.com.au](http://www.myvirtualhome.com.au) and sub-directory, and such other website as the Supplier may from time to time use in providing the Services.

### 2. Interpretation

In these terms and conditions, unless the contrary intention appears:

- (a) the clause headings are for ease of reference only and shall not be relevant to interpretation;
- (b) words in the singular number include the plural and vice versa;
- (c) words importing a gender include any other gender;
- (d) a reference to a person include bodies corporate and unincorporated associations and partnerships;
- (e) 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;
- (f) monetary references are references to Australian currency.

### 3. Term of Service Contract

- 3.1 The Service Contract commences on the Commencement Date and shall remain in force until either party terminates it in accordance with this clause.
- 3.2 After the expiry of the Initial Term, either party may terminate the Service Contract after first providing 30 days written notice to the other Party, and the payment of all outstanding payments, costs and/or charges owing to the Supplier.
- 3.3 The Supplier is entitled to terminate the Service Contract in accordance with Section 12 of these terms and conditions.

### 4. Services

- 4.1 The Supplier shall provide the Services in the manner described in the Service Contract and as otherwise described in these terms and conditions.

- 4.2 The Supplier shall use reasonable endeavours to ensure that sufficient capacity is maintained on its computer facilities to enable Users to access the Web Site.
  - 4.3 Notwithstanding subclause 4.2, the Supplier does not warrant that Users will have continuous access to the Web Site. The Supplier shall not be liable in the event that the Web Site is unavailable to the Customer or Users due to computer downtime attributable to malfunction, upgrades or preventative or remedial maintenance activities, and any other causes resulting in the non-availability of the service.
  - 4.4 The Services do not include maintenance of the Web Listing. The Supplier accepts no responsibility for any deficiency or inaccuracy in the Web Listing attributable to a lack of maintenance of the Web Listing on the part of the Customer, or any act or omission of the Customer.
  - 4.5 The Customer may ask the Supplier to modify or upgrade the Web Listing and the Supplier may agree to undertake this further work to be charged at its prevailing rate, costs and charges for such work at the time of the request.
  - 4.6 The Customer may make modifications to its Web Listing via logging into the Web Site and the Customer will be liable to pay the Supplier at the Supplier's prevailing rate, costs and charges for making any upgrades.
- ### 5. Customer's Obligations
- 5.1 The Customer shall be entirely responsible for providing all information required by the Supplier to enable the Web Listing.
  - 5.2 The Customer must supply the following to the Supplier within 14 days of the Commencement Date:
    - (a) advertising copy of the Products to be displayed on the Web Site;
    - (b) full details of the Products and the Business to be displayed on the Web Site;
    - (c) any Intellectual Property relating to the Products which the Customer wishes to have displayed on the Web Site;
    - (d) any other information, technical descriptions or images of Products and/or the Business which the Customer wishes to have displayed on the Web Site; and
    - (e) the web site address of the Customer's web site for posting to the Web Site.
  - 5.3 The Supplier retains the right to be paid the Payment Amount as per clause 6, notwithstanding the Customer's failure or lateness to provide any of the items specified in this clause.
  - 5.4 The Customer warrants that:
    - (a) the form and content of the Customer's advertising in relation to the Products and the Business on the Web Site does not constitute a breach of any third party's legal rights, including without limitation any Intellectual Property right, and is not illegal, fraudulent, misleading, deceptive, offensive or obscene and that the Customer is authorised to provide the material listed on the Web Site;
    - (b) the Customer has all required registration and licences to engage in the Business; and
    - (c) the Customer has entered into the Service Contract on the basis of its own inquiries.
  - 5.5 The Customer undertakes to continually ensure that the information provided and the Web Page Listing:
    - (a) does not infringe any third party's legal rights, including without limitation any Intellectual Property Rights of any person;
    - (b) does not comprise and cannot be used for any purpose or activity of an illegal, fraudulent or defamatory nature.
  - 5.6 The Supplier shall not be responsible for any deficiency or alleged deficiency in the Web Listing which is attributable to incorrect information provided by the Customer or failure by the Customer to provide relevant information.

Nothing in this clause shall affect the Supplier's rights to exercise its own judgement and utilise its creative skills as it considers most appropriate in order to develop the Web Listing in accordance with the Service Contract.
- ### 6. Charges
- 6.1 The Customer shall pay the Supplier the Payment Amount and any other charges at the rates and in the manner specified in the Service Contract or as amended from time to time on the Supplier's Web Site.
  - 6.2 The Payment Amount must be paid by the Customer within the timeframe stipulated in the Service Contract. In the event of any default by the Customer in paying the Payment Amount, the Supplier shall, without notice to the Customer, be immediately entitled to terminate the Service Contract and remove all content relating to the Customer from the Web Site. This right is in addition to any and all other rights of action that may accrue as a consequence of default of payment to the Supplier.
  - 6.3 The Payment Amount and any charges, unless expressly stated, are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the Services, and the Customer is liable for any taxes, duties or charges imposed now or subsequent to the Commencement Date.
- ### 7. Confidentiality
- 7.1 A party shall not, without prior written approval of the other Party, disclose the other Party's Confidential Information.
  - 7.2 A Party shall not be in breach of subclause 7.1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
  - 7.3 Each Party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Service Contract, do not make public or disclose the other Party's Confidential Information. Notwithstanding any other provision of this clause, the Supplier may disclose the terms of the Service Contract (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers, accountants or franchisees and shall ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to the Supplier. Further, the Customer expressly consents to the Supplier and its related companies, franchisees or consultants collecting, using and disclosing the Customer's information (including the Confidential Information) for internal research purposes to develop marketing strategies.
- ### 8. Third Party Materials
- 8.1 The Customer shall be responsible for:
    - (a) obtaining all necessary permission, authorisations, licences and consents in relation to the use by the Supplier of third party materials in providing the Services; and
    - (b) payment of all royalties and other fees associated with the use of such third party materials.

- 8.2 The Customer shall fully indemnify the Supplier in respect of any loss, damage, liability and/or expense of whatsoever nature arising directly or indirectly, from a failure by the Customer to observe its obligations arising under subclause 8.1.
- 9. Implied Terms**
- 9.1 Subject to subclause 9.2, any condition or warranty which would otherwise be implied in these terms and conditions and the Service Contract is hereby excluded.
- 9.2 Where legislation implies in these terms and conditions and/or the Service Contract any condition or warranty, and that legislation avoids or prohibits 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 the Service Contract. However, the liability of the Supplier 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:
- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again.
- 10. Liability, Limitation and Indemnification**
- 10.1 Content in relation to the Products and the Business is provided on the Web Site without any condition, warranty or representation from the Supplier of any kind, either express or implied.
- 10.2 No condition, warranty or representation of any kind is made by the Supplier as to the accuracy or completeness of any and all materials contained on the Web Site. The Customer acknowledges that the Supplier has relied upon the representations the Customer has made in the items provided to the Supplier regarding the Customer's Business or Products.
- 10.3 The Supplier may periodically add, change, improve and update the materials (including advertisements relating to the Products) on the Web Site without notice. The Supplier will not be liable, under any circumstances, for any loss, damage, liability or expense suffered (direct or indirect), which is claimed to have resulted from the existence, use, or functionality of the Web Site, including, but not limited to, any fault, error, omission, interruption, or delay.
- 10.4 The Supplier 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 the Service Contract and these terms and conditions or in respect of a failure or omission on the part of the Supplier to comply with its obligations under the Service Contract and these terms and conditions.
- 10.5 Subject to subclause 10.6, the Customer warrants that it has not relied on any representation made by the Supplier or the Supplier's representatives which has not been stated expressly in the Service Contract or these terms and conditions or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by the Supplier and are current at the time of entering into the Service Contract.
- 10.6 The Customer acknowledges that the Supplier or the Supplier's representatives have made no financial or web traffic projections or forecasts to the Customer in relation to the impact the Services may have on the Customer's Business.
- 10.7 The Customer shall at all times indemnify and hold harmless the Supplier and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses), damage, liability or expense 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 the Service Contract; or
- (b) any wilful, unlawful or negligent act or omission of the Customer; and
- (c) the Supplier's advertising of the Customer's Business or Products.
- 11. Intellectual Property**
- 11.1 Throughout the Term and for a period of 30 days after the conclusion of the Term, the Customer provides the Supplier with a free, non-exclusive licence to:
- (a) use the Intellectual Property of the Customer on the Web Site for the purpose of providing the Services;
- (b) reproduce, adapt and modify the copyright materials of the Customer relating to the Products, and display these copyright materials on the Web Site for the purpose of providing the Services;
- (c) reproduce images of the Customer's industrial designs of the Products on the Web Site for the purpose of providing the Services.
- 11.2 The Customer acknowledges that there is no assignment of Intellectual Property Rights in:
- (a) any pre-existing material (including but not limited to the Supplier's software, documentation, templates and data) which is incorporated into or which has been used in the course of developing the Web Listing; or
- (b) the User interface of the Web Listing.
- 12. Termination**
- 12.1 Without limiting the generality of any other clause in these terms and conditions or the Service Contract, the Supplier may terminate the Service Contract immediately by notice in writing if:
- (a) the Customer is in breach of any term or condition contained herein or in the Service Contract and such breach is not remedied within thirty (30) days of it notifying the Supplier;
- (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.
- 12.2 If notice is given to the Customer pursuant to subclause 12.1, the Supplier may, in addition to terminating the Service Contract:
- (a) retain any moneys paid by the Customer pursuant to the terms and conditions contained herein or in the Service Contract;
- (b) charge a reasonable sum for work performed in respect of which no sum has been previously charged;
- (c) be regarded as discharged from any further obligations under the terms and conditions contained herein and in the Service Contract; and
- (d) pursue any additional or alternative remedies provided by law.
- 13. Force Majeure**
- 13.1 Neither Party shall be liable for any delay or failure to perform its obligations pursuant to the terms and conditions contained herein and in the Service Contract if such delay is due to a Force Majeure.
- 13.2 If a delay or failure of a Party to perform its obligations is caused or anticipated due to a Force Majeure, the performance of that Party's obligations will be suspended.
- 13.3 If a delay or failure by a Party to perform its obligations due to a Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Service Contract on providing notice in writing to the other Party.
- 13.4 If the Service Contract is terminated pursuant to subclause 13.3, the Supplier shall refund moneys previously paid by the Customer pursuant to the terms and conditions contained herein and in the Service Contract for goods or services not provided by the Supplier to the Customer.
- 14. Sub-Contracts**
- 14.1 The Supplier may sub-contract for the performance of the Service Contract or any part thereof without obtaining the Customer's prior consent.
- 14.2 The Supplier 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 the terms and conditions contained herein and in the Service Contract.
- 15. Entire Agreement**
- The terms and conditions contained herein and in the Service Contract constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing. The terms and conditions contained herein and in the Service Contract cannot be changed without the mutual agreement in writing of both parties.
- 16. Assignment and Novation**
- 16.1 The benefit of the Service Contract shall not be assigned by the Customer, without the Supplier's written consent.
- 16.2 The Supplier may consent to the assignment or novation of the Service Contract by the Customer subject to such conditions as it chooses to impose.
- 16.3 The Customer hereby agrees that the Supplier may assign the benefits, burdens, obligations, rights and interests under the Service Contract at any time.
- 17. Waiver**
- 17.1 No right under the Service Contract shall be deemed to be waived except by notice in writing signed by each Party.
- 17.2 A waiver made by the Supplier pursuant to subclause 17.1 will not prejudice its rights in respect of any subsequent breach of the Service Contract by the Customer.
- 17.3 Subject to subclause 17.1, any failure by the Supplier to enforce any term or condition contained herein or in the Service Contract, 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 the terms and conditions contained herein or in the Service Contract.
- 18. Severability**
- If any term or condition contained herein or in the Service Contract is held invalid, unenforceable or illegal for any reason, the remaining terms and conditions contained herein and in the Service Contract shall remain otherwise in full force apart from such provisions which shall be deemed deleted.
- 19. Survival of Service Contract**
- 19.1 Subject to any provision to the contrary, the terms and conditions contained herein and in the Service Contract shall ensure 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.
- 19.2 The covenants, conditions and provisions contained herein which are capable of having effect after the expiration of the Service Contract shall remain in full force and effect following the expiration of the Service Contract.
- 20. Governing Law**
- The Service Contract is governed by the laws of the State of Queensland. The parties submit all disputes arising between them to the courts of the State of Queensland.
- 21. GST**
- 21.1 The parties agree that any Goods and Services Tax (GST) will apply to any supply under the Service Contract. The Customer agrees to pay to the Supplier at the same time as making any payment, the GST payable and will indemnify the Supplier in all respects for such payment.
- 22. Notices**
- 22.1 Notices under the Service Contract may be delivered by hand, by mail, by email or by facsimile to the addresses specified in the Service Contract.
- 22.2 Notice will be deemed given:
- (a) in the case of hand delivery, upon written acknowledgement of receipt by an officer or other duly authorised employee, agent or representative or the receiving Party;
- (b) in the case of posting, three days after despatch;
- (c) in the case of facsimile and/or email, upon receipt of transmission if received on a business or otherwise at the commencement of the first business day following transmission.
- DATE OF PREPARATION:** 7 NOVEMBER 2005