

**Terms of Service – Leased Websites  
March 2019**

**RECITALS**

- A. TMMJ is in the business of creating and developing websites and providing complimentary services (the **Services**).
- B. The Customer has requested that TMMJ provide the Services to the Customer.
- C. The Customer wishes for TMMJ to create the Website on behalf of the Customer.
- D. TMMJ is to be the owner of the Website.
- E. The Customer wishes to receive, from TMMJ, a licence to use the Website.
- F. The TMMJ wishes to grant to the Customer, a licence to use the Website, upon the terms and conditions contained in this Agreement.

**The Parties covenant and agree as follows:**

**1 Definitions and Interpretation**

- 1.1 The words and phrases used in this Agreement have the meanings as set out at Schedule 1 to this Agreement.
- 1.2 In the interpretation of this Agreement, unless the context otherwise requires, the rules set out at Schedule 1 shall apply.

**2 Commencement and Term**

- 2.1 This Agreement shall commence on the Commencement Date and will continue until such time that it is terminated under clause 19 of this Agreement.

**3 Licence**

- 3.1 In consideration of the Customer's payment of the Initial Fee and the Ongoing Fee to TMMJ, TMMJ grants to the Customer, an exclusive licence to use the Website.
- 3.2 The Customer will not use the Website for any purpose, other than as permitted under this Agreement.

**4 Acknowledgement**

- 4.1 The Customer agrees and acknowledges that ownership in the Website will, at all times, remain the property of TMMJ and that the Website shall only be used or dealt with, by the Customer, as permitted under the terms and conditions contained in this Agreement.

**5 Agreement**

- 5.1 The Customer agrees to all the terms within this agreement, if:
  - (a) The main contact logs into the backend or administrative area of the website,
  - (b) Any staff member within the customers business logs into the backend or administrative area of the website.

**6 Payment**

- 6.1 Initial Fee
  - (a) The Customer must pay the Initial Fee to TMMJ.
  - (b) TMMJ will provide the Customer with a tax invoice for the Initial Fee, via a web link.
  - (c) The Customer must pay the Initial Fee:
    - (i) via credit card; and
    - (ii) by the specified due date.
- 6.2 Ongoing Fee
  - (a) The Customer must pay the Ongoing Fee to TMMJ.
  - (b) The Ongoing Fee will be payable to TMMJ on the Live Date and on each monthly anniversary date of the Live Date.
  - (c) The Customer must pay the Ongoing Fee to TMMJ, by way of TMMJ direct debiting the credit card nominated by the Customer, or by an alternate, pre-approved method.
  - (d) In the event that the Customer delays the provision of information to TMMJ, for a period exceeding 21 days, then the Customer's payment of the Ongoing Fee commences.
  - (e) TMMJ may increase the Ongoing Fee by providing the Customer with 30 days' written notice.
- 6.3 Plug-Ins
  - (a) The Customer agrees to pay an additional fee for any premium Plug-Ins that may be required to be incorporated into the Website.
  - (b) The cost of any Plug-Ins will be charged, to the Customer, as part of the Ongoing Fee.
- 6.4 Hosting services
  - (a) The Customer, where required, agrees to pay an additional fee for hosting services to be provided by

TMMJ, with respect to the Website, where the requirements of the customers website fall outside the standard offering. This fee can be imposed;

- (i) At the commencement of this agreement *or*;
- (ii) At any point during the agreement, if TMMJ deems the requirements of the customers website have changed *and* TMMJ is required alter capacity to accommodate for the changed requirements.

- (b) The cost of the hosting services will be charged, to the Customer, as part of the Ongoing Fee.

**6.5 Non-payment**

- (a) In the event that the Customer fails to pay any Ongoing Fee or other amount payable to TMMJ, within seven (7) days of the date of a payment falling due, then TMMJ may, in its own discretion, suspend and/or terminate access to the Website and any related services, including hosting services and email access.
- (b) TMMJ may charge the Admin Fee, to the Customer, if TMMJ is required to manually intervene to facilitate payment by the Customer, if any credit card payment to be made under this Agreement is declined.
- (c) The Customer agrees that it is the responsibility of the Customer to keep all credit card payment details updated.
- (d) The customer agrees that should an overdue balance occur, TMMJ will
  - (i) share the details of the debt and customer with TMMJ's nominated debt collection agency
  - (ii) share the details of the customer and debt with a register of debts, be that individual or company.
  - (iii) not be required to remove or revoke impacts of the debt, until such time the debt is paid, or within the requirements of the collective action taken.
  - (iv) not be required to amend the debt
  - (v) be entitled to sell the debt and details pertaining to debt to another organisation

**6.6 GST**

All payment amounts referred to within this Agreement are inclusive of GST.

**7 Live Date**

- 7.1 TMMJ and the Customer will agree on a Live Date and TMMJ will make its best efforts to launch the Website on the Live Date.
- 7.2 Despite clause 6.1 above, TMMJ may move the Live Date, as required by TMMJ.
- 7.3 The Customer may, on one (1) occasion only, postpone the Live Date to an alternate date that is up to four (4) weeks later than the Live Date originally agreed upon.

**8 Upgrading Website and Changing Plan**

- 8.1 The Customer may, at any time, choose to upgrade the Website and the Plan. Doing so will result in the Ongoing Fee being adjusted accordingly.
- 8.2 In the event that the Customer wishes to downgrade the Plan, then the decision to do so, will be at the sole discretion of TMMJ.

**9 Plug-Ins**

- 9.1 In the event that TMMJ is of the opinion that any Plug-In incorporated into the Website is no longer suitable for use, then TMMJ may remove it from the Website.
- 9.2 Where possible, TMMJ will provide the Customer with reasonable notice, should a Plug-In be removed from the Website.
- 9.3 Any Plug-In or code that is to be incorporated into the Website must be provided by TMMJ.

**10 Hosting**

- 10.1 The Customer agrees that the Website is to be hosted on servers nominated by TMMJ and that the hosting services, to be provided by TMMJ, may be subject to separate terms and conditions.

**11 Support**

- 11.1 TMMJ will provide the customer with support for their website in accordance with their nominated plan.
- 11.2 The customer agrees to raise support all requests via email to support @tmmjconsulting.com.au.

- 11.3 The customer agrees not to attempt to raise support requests via any other method. The customer also agrees that should an attempt be made to raise a request via an alternate method, this will not be considered as a support request.
- 11.4 The customer agrees that TMMJ will respond to support requests via email.
- 11.5 The customer agrees to monitor their SPAM or JUNK folders for responses to their support requests.

## **12 Acknowledgments**

- 12.1 The Customer acknowledges that:
- (a) ownership of the Website remains the property of TMMJ and that it shall only be used or dealt with by the Customer, as permitted under this Agreement.
  - (b) confidential information and any material, document or medium making reference to confidential information constitutes valuable and proprietary information belonging to TMMJ and it remains the property of TMMJ, at all times.

## **13 No guarantee as to performance or results**

- 13.1 TMMJ provides no guarantee as to the performance of the Website or any results achieved, via the Website.
- 13.2 By licensing the Website from TMMJ, you agree and acknowledge that you are fully responsible for the results derived from, and outcomes achieved, via the Website.
- 13.3 The Customer agrees that TMMJ will not be liable for any results or outcomes achieved via the Website.

## **14 Obligations of the Customer**

- 14.1 The Customer must:
- (a) fulfil any obligation that it may have under this Agreement;
  - (b) attribute TMMJ as being the owner of the Website by displaying the words *This website was provided under licence by TMMJ Consulting Pty Ltd*, in the footer of the Website.
  - (c) not cause any unnecessary delay in providing TMMJ with any information that it reasonably requests.
  - (d) comply with all relevant laws and regulations that may apply to the Customer's business and/or the Website;
  - (e) notify TMMJ, as soon as possible, if the Customer is expecting a high volume of visitors or web traffic to the Website;
  - (f) at all times, keep its own backup and/or record of the Content;
  - (g) as reasonably required, run anti-virus and anti-spam updates on any computer that accesses any service provided by TMMJ;
  - (h) have an effective firewall on any computer that accesses any service provided by TMMJ;
  - (i) cover any costs (legal or otherwise) associated with any external audit or investigation of the Website that the Customer has caused to be undertaken;
  - (j) assist TMMJ with any Website compliance activity that TMMJ reasonably requires assistance with; and
  - (k) keep confidential at all times all information relating to this Agreement and in particular, any information relating to any fees payable to TMMJ, by the Customer, under this Agreement.
- 14.2 The Customer must not
- (a) sell, or attempt to sell, the Website to any third party, without TMMJ's prior written consent;
  - (b) share Website login details with any third party;
  - (c) host, or cause to be displayed, any video on the Website, without first obtaining written approval from TMMJ;
  - (d) bulk extract any data from the Website;
  - (e) execute, or cause to be executed, any penetration or security test, in relation to the Website, without the prior written consent of TMMJ;
  - (f) in any way, defame TMMJ, or any of its directors, employees or contractors; or
  - (g) use or engage any third party to perform services with respect to the Website, unless TMMJ provides its prior written consent.

## **15 Obligations of TMMJ**

- 15.1 TMMJ must keep confidential at all times all information relating to this Agreement and in particular, any information relating to the fees payable to TMMJ, by the Customer, under this Agreement.
- 15.2 TMMJ is not responsible for:
- (a) causing any amount of visitors or web traffic to the Website;

- (b) keeping any up to date backup of the Website; or
- (c) at any time, providing the Customer with a backup of the Website, including upon termination of this Agreement.

## **16 Passwords and account information**

- 16.1 You agree and acknowledge that you are solely responsible for:
- (a) keeping account username, passwords and other security features, confidential and secure to prevent unauthorised access; and
  - (b) any conduct associated with the Website.

## **17 Sub-contract**

- 17.1 TMMJ may sub-contract any of its rights and/or responsibilities under this Agreement.

## **18 Liability**

- 18.1 To the extent permitted by law, including but not limited to any act or omission on your part, we will not be liable for any loss, damage, costs or expense whether direct, indirect, incidental, special and/or consequential, including loss of profits, suffered by you, or claims made against you, which result from any use or access of, or any inability to use or access, the Website.

## **19 Termination and suspension**

- 19.1 Termination by TMMJ
- (a) TMMJ may terminate this Agreement at any time and for any reason, by providing the Customer with 90 days' written notice.
  - (b) TMMJ may terminate this Agreement at the end of any current billing cycle, if the Customer:
    - (i) makes any threat, in writing, to cancel or terminate this Agreement; or
    - (ii) abuses or threatens and staff or contractor of TMMJ, either orally, or in writing.
  - (c) TMMJ may terminate this agreement immediately, if the customer:
    - (i) makes any threat, in writing, to cancel or terminate this Agreement; or
    - (ii) abuses or threatens and staff or contractor of TMMJ, either orally, or in writing.
    - (iii) and the customer is not on a regular billing arrangement; or
    - (iv) the customer has been on their current billing arrangement for less than 30 days
- 19.2 Termination by the Customer
- (a) The Customer may terminate this Agreement at any time by providing TMMJ with 90 days' written notice.
  - (b) In the event that the Customer terminates this Agreement within 180 days of the Live Date, for any reason other than permitted under clause 17.3 below, then the Customer agrees to pay the termination fee to TMMJ, as follows:
    - (i) If within **30 days** of the Live Date - \$10,000, including GST;
    - (ii) If between **31 and 60 days** of the Live Date - \$7,500, including GST;
    - (iii) If within **61 and 90 days** of the Live Date - \$5,000, including GST; or
    - (iv) If within **91 and 180 days** of the Live Date - \$2,500, including GST;
  - (c) The Customer must pay the termination fee to TMMJ, as required under clause 17.2(b) above, within seven (7) days of notifying TMMJ of the Customer's decision to terminate the Agreement.
  - (d) Upon termination, TMMJ will calculate any outstanding amounts, unbilled amounts, or amounts not paid, which will be payable by the customer within seven (7) days.
- 19.3 Termination by either party  
This Agreement may be terminated by either party by written notice to the other party, if a party commits any breach of any provision of this Agreement, and has failed to remedy such breach within 21 days of receipt of written notice requiring it to do so.
- 19.4 Any termination of this Agreement pursuant to clause 17.3 shall be without prejudice to the rights of the party terminating to seek and obtain damages for any breach of this Agreement by the other party.
- 19.5 Termination of this Agreement, for whatever reason, will not entitle the Customer to receive a refund of the Initial Fee or any Ongoing Fee already paid, or any part thereof.
- 19.6 Suspension

TMMJ may suspend the services provided by TMMJ under this Agreement and access to the Website if:

- (a) the Customer is using the Website for any malicious purpose; or
- (b) the Customer shares its Website login details with any third party.

## **20 Effect of termination**

- 20.1 In the event of termination of this Agreement, for any reason:
- (a) the licence provided to the Customer under this Agreement will terminate;
  - (b) TMMJ will terminate the Customer's access to the Website;
  - (c) the hosting services provided by TMMJ will terminate;
  - (d) TMMJ will no longer provide the Customer with any technical or other support; and
  - (e) TMMJ may, in its own discretion, licence the Website to a third party.

## **21 Amendments to agreement**

- 21.1 TMMJ reserves the right to add, change or remove clauses from this agreement as it deems necessary, at any time.
- 21.2 It is the customers responsibility to monitor changes to, and understand the terms of service.

## **22 Disputes**

- 22.1 Neither party will start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause.
- 22.2 A party (the **Claimant(s)**) claiming that a dispute has arisen must notify the other party (the **Respondent(s)**), giving details of the dispute.
- 22.3 During the 21-day period after a notice is given under clause 19.2 (or longer period agreed in writing by the parties to the dispute) (**Initial Period**) the parties must use their best efforts to resolve the dispute.
- 22.4 If the parties are unable to resolve the dispute within the Initial Period, each party agrees that the dispute must be referred for mediation, at the request of any party, to:
- (a) a mediator agreed on by the parties; or
  - (b) if the parties are unable to agree on a mediator within seven (7) days after the end of the initial period, a mediator nominated by the then current president of the Law Institute of Victoria or the president's nominee.
- 22.5 The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.
- 22.6 Any information or documents disclosed by a party under this clause:
- (a) must be kept confidential; and
  - (b) may not be used except to attempt to resolve the dispute.
- 22.7 Each party must bear its own costs of complying with this clause and the party must bear equally the costs of any mediator engaged.
- 22.8 After the Initial Period, a party that has complied with clause 19.1, 19.2 and 19.3 may terminate the dispute resolution process by giving notice to the other party.
- 22.9 If in relation to a dispute a party breaches any provision of clauses 19.1 to 19.6, the other party need not comply with clauses 19.1 to 19.6 in relation to that dispute.

## **23 Ownership of Website, Plug-Ins and Content**

- 23.1 Website  
TMMJ will, at all relevant times, own the Website.
- 23.2 Plug-Ins  
TMMJ will, at all relevant times, own the Plug-Ins. In the event that TMMJ licenses use of a Plug-In that is owned by a third party, then TMMJ will provide the Customer with the benefit of the Plug-ins, under licence.
- 23.3 Content
- (a) The Customer will, at all relevant times, maintain ownership of the Content.
  - (b) The Customer provides TMMJ with a perpetual, non-exclusive, worldwide, irrevocable and royalty-free licence to use the Content.
- 23.4 Other  
The Customer provides TMMJ with a perpetual, non-exclusive, worldwide, irrevocable and royalty-free licence to use the Customer's name, logo and business description, for the purpose of TMMJ marketing and promoting its own business and services.

## **24 Recording of interactions**

- 24.1 The Customer agrees that TMMJ:
- (a) may record any or all interactions that TMMJ may have with the Customer;
  - (b) may store and use any interactions that may be recorded under clause 21.1(a) above for an indefinite period of time; and
  - (c) is not obliged to share with the Customer, any information or interaction recorded by TMMJ, under clause 21.1(a) above.

## **25 Sale of the Customer's business**

- 25.1 In the event that the Customer sells its business, and the purchasing party wishes to continue use of the Website, then the purchasing party will be required to enter into a new agreement with TMMJ and pay the Ongoing Fee.

## **26 Sale of the TMMJ's business (or part thereof)**

- 26.1 In the event that TMMJ sells its business, or part of the business:
- (a) This agreement will automatically be novated to the new party
  - (b) The customer will be notified of any alterations to the leased website offering

## **27 The Customer's Indemnity**

- 27.1 The Customer hereby indemnifies and agrees to keep TMMJ indemnified, against any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs (including solicitor and Customer costs), charges and expenses (**Loss**) arising:
- (a) from the use of the Content by TMMJ, its servants or agents; or
  - (b) in connection with the Website.
- 27.2 The Customer warrants that the Content and/or the exercise of the Customer's rights under this Agreement, will not infringe upon any third party intellectual property rights.
- 27.3 A party is to have no liability to the other party in respect of special or indirect damages, loss of profit or loss of business opportunity.

## **28 General**

- 28.1 *Waiver.* Any waiver or forbearance in regard to the performance of this agreement shall operate only if in writing and shall apply only to the specified instance, and shall not affect the existence and continued applicability of the terms of it thereafter.
- 28.2 *Entire agreement.* This Agreement embodies all the terms binding between the parties and replaces all previous presentations or proposals not embodied therein.
- 28.3 *Assignment.*
- (a) The Customer shall not assign all or any of its rights hereunder, without TMMJ's prior written consent. TMMJ may or may not grant consent, in its absolute discretion.
  - (b) TMMJ may at its discretion assign all or any of its rights hereunder.
- 28.4 *Applicable law.* This Agreement shall be read and construed according to the laws of the State of Victoria and the parties submit to the jurisdiction of that State.
- 28.5 *Amendments.* This Agreement may not be varied except in writing signed by the parties.
- 28.6 *Severability.* If any provision of this Agreement is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation the validity and enforceability of the remaining provisions shall not be thereby affected.
- 28.7 *Notices.* All notices shall be in writing and shall be given by any one of the following means:
- (a) by sending it to the address of the party by ordinary post; or
  - (b) by sending it by email.
- 28.8 A notice shall be deemed to be given and received:
- (a) if given in accordance with clause 24.7(a) five (5) clear Business Days after the day of posting the place of delivery.
  - (b) if given in accordance with clause 24.7(b) immediately.

28.9 The address and email address referred to in clause 24.7 shall in the absence of notice to the contrary be as set out below:

**TMMJ**

Name: TMMJ Consulting Pty Ltd  
Contact: Matt Ratcliffe  
Address: PO Box 4049, Alfredton, Victoria 3350  
Email: [legal@tmmjconsulting.com.au](mailto:legal@tmmjconsulting.com.au)

**Interpretation**

In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words used in this Agreement and defined in the dictionary will have the meaning set out in the dictionary. Other grammatical forms of defined words or expressions have corresponding meanings;
- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures attached to this Agreement;
- (d) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (e) a reference to a right includes a benefit, remedy, authority, discretion and power;
- (f) a reference to a Party includes its executors, administrators, successors and permitted assigns and if more than one, includes those persons jointly and each of them severally, their respective executors administrators and assigns;
- (g) words and expressions importing natural persons include partnerships, bodies corporate, associations (whether incorporated or not), firms, joint ventures, trusts, authorities, governments and governmental, semi-governmental and local authorities and agencies;
- (h) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable, and includes a reference to an enactment, amendment or consolidated statute and any enactment substituted for the enactment and all legislation and statutory instruments issued under, such legislation or provision;
- (i) any agreement, covenant, obligation, representation, undertaking, indemnity, guarantee or warranty entered into by a Party for or with another person binds them jointly and severally and an agreement, covenant, obligation, representation, undertaking, indemnity, guarantee or warranty in favour of a Party for or with another person is for the benefit of them jointly and severally. A release given to the other person shall not release the Party from any other obligation. The granting of time or another indulgence to another person will not release the Party of its obligations under this Agreement; and
- (j) If the day on which:
  - (i) anything, other than a payment, is to be done is not a Business Day, that thing shall be done on the preceding Business Day;
  - (ii) a payment is to be made is not a Business Day it shall be made on the next Business Day but if the next Business Day falls in the next calendar month it shall be made on the preceding Business Day; and
  - (iii) if an act, other than a payment or the giving of a communication, is required to be done on a particular day and the act is done after 5:00pm on that day, it will be deemed to have been done on the following day.

**Schedule 1 Definitions and Interpretation**

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**Definitions**

<b>Admin Fee</b>	means an administrative fee of \$52.50, including GST.
<b>Agreement</b>	means this document, including any schedule or annexure to it.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
<b>Business Hours</b>	means the hours between 9.00am and 5.00pm Victoria time.
<b>Commencement Date</b>	means the date specified in Item 1 of Schedule 2.
<b>Content</b>	means the material that the Customer provides to TMMJ, for display on the Website.
<b>Intellectual Property</b>	means all intellectual property and intellectual property rights associated with the Website.
<b>Initial Fee</b>	means the once-off payment amount specified in Item 3 of Schedule 2 of this Agreement, being for set-up costs, including domain name registration/s and establishment of email account/s.
<b>Live Date</b>	means the date upon which the Website becomes publicly available for access OR the date the customer is provided access to an email account provided by TMMJ.
<b>Ongoing Fee</b>	means the ongoing monthly amount, as specified in Item 4 of Schedule 2 of this Agreement.
<b>Plan</b>	means a monthly plan, as advertised or promoted by TMMJ, from time to time.
<b>Plug-In</b>	means any third party plug-in that is incorporated into the Website.
<b>Website</b>	means the website created by TMMJ and licensed for use by the Customer.

**Schedule 2      Reference Data**

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**Item 1 – The Customer**

An authorised representative, that is a business user with access to the website backend.

**Item 2 – Commencement Date**

Please contact TMMJ for confirmation of this date.

**Item 3 – Initial Fee**

\$199.00, including GST.

**Item 4 – Ongoing Fee**

Specific to the plan chosen by the customer;  
\$50, \$75, \$100 or \$200 per month.