

WEBLITE HOSTING TERMS AND CONDITIONS

These terms and conditions (“**Agreement**”) are open to negotiation. Please ensure you review and consider this Agreement prior to proceeding with Weblite’s services. This Agreement may be accepted by returning the accepted Weblite Services Quote to Weblite, instructing Weblite to provide Services, paying a Weblite invoice or otherwise accepting the Services provided by Weblite (whichever occurs first).

1. Duration

Except as otherwise set out in the Weblite Services Quote, this Agreement commences on the Commencement Date and is on-going but may be terminated by either party by no less than 30 days’ written notice. Additional termination rights are set out in clause 11 below.

2. Access details

You must ensure the secrecy and confidentiality of all identification, password, log-in and other confidential relating to your Hosting Account. You are responsible for all actions, including any charges incurred, resulting from use of your identification or log-in information, whether or not authorized by you. You must notify Weblite immediately of any known or suspected unauthorized use of your Hosting Account, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of your password information.

3. Use of Weblite Systems and Hosting Services

3.1 Internet connectivity

You are responsible for securing and maintaining your own Internet connectivity to access the Weblite Systems.

3.2 Disk Space/Data Transfer

- (i) You may use only the amount of disk space on the Weblite Systems, bandwidth and network data transfer amount allocated to your Hosting Account (**Allocated Usage Amounts**). Allocated Usage Amounts are as set out in your Weblite Services Quote or as otherwise updated and advised to you in writing by Weblite from time to time. Any decreases in Allocated Usage Amounts are subject to 30 days’ advance written notice during which period you may terminate this Agreement by written notice. Failing your termination of this Agreement, you will be deemed to have accepted the updated Allocated Usage Amounts. You may confirm your current Allocated Usage Amounts by contacting Weblite at info@weblite.com.au.
- (ii) Even if your Allocated Usage Amounts specifies *unlimited* data transfer, if data transfer exceeds 5Mb/sec or otherwise degrades the network performance for other users, Weblite may review your Hosting Account and suspend its services, including Website hosting. Even if your Allocated Usage Amounts specifies *unlimited* email accounts, Weblite may suspend Services if the mail boxes associated with your Hosting Account exceed more than 10,000 aggregate messages.
- (iii) Additional charges will be incurred for exceeding the Allocated Usage Amounts. All disk space and data use in excess of the Allocated Usage Amounts will be charged in accordance with the rates set out in your Weblite Services Quote or as advised to you or otherwise updated in accordance with clause 7. These charges will fall due at the completion of the calendar month and are due 7 days from the date of the relevant invoice.
- (iv) You can opt to have your service automatically suspended if the bandwidth or storage space is exceeded.
- (v) Weblite will provide an online interface allowing you to monitor website data traffic.
- (vi) The Allocated Usage Amounts for disk space pertains only to files required for the normal operation of your Website and which are linked to in that website. Use of your Hosting Account as an online file repository is prohibited.
- (vii) Your Website may be suspended if it creates (or in Weblite’s view, is likely to create) file system damage by the rapid creation of large volumes of files.

3.3 Server Loads

Any Hosting Account that uses excessive CPU or Memory resources (25% or more) for a sustained period of time (ten minutes or more) may be suspended at any time without notice. Weblite may terminate or suspend websites that are repeatedly using excessive resources at any time. Weblite reserves the right to permanently filter or block repeated sources of high volumes of electronic traffic.

3.4 Back-Up Files and Processing

Weblite takes reasonable steps to safeguard the Weblite Systems and the data contained on the Weblite Systems, however Weblite will not be responsible for any loss of data or DNS records stored or intended to be stored on the Weblite Systems and/or back-up devices. While Weblite may undertake actions to backup data on the Weblite Systems, there may be times when the backups fail or are unavailable. You are responsible for your own backups and it is solely your responsibility to ensure backups of all your data stored on Weblite Systems and in relation to your Hosting Account. By accepting this Agreement, to the full extent permitted by law, you release Weblite from any liability or responsibility and from any legal action in the event of data loss.

3.5 Insurance

You are responsible for maintaining insurance cover in respect of any loss or damage to data stored on the Server. Weblite specifically excludes any warranty as to the accuracy or quality of information received by any person via the Server and in no event will Weblite be liable for any loss or damage to any data stored on the Server.

3.6 Domain Name Hosting Services

Where set out in the Weblite Services Quote or Prior Agreement, Weblite may provide domain name services, including the hosting of your registered domain name(s) (provided that such domain does not violate any of Weblite’s policies or any laws or regulations). Weblite may assign IP addresses to you as part of the Services. Any IP addresses or other network numbers

assigned are and shall remain the property of Weblite. If this Agreement is terminated or Weblite suspends Services, Weblite may, in its sole discretion, reassign or reuse the IP addresses. Weblite has sole discretion as to the Internet routing of any Weblite network numbers. Upon termination, Weblite will not have and you hereby release Weblite from any responsibility or liability for any actions or costs related to the reassignment or reconfiguration of your system for any new IP addresses.

3.7 Email Hosting Services – virus protection and anti-spam services

Where Weblite includes any virus protection software or anti-spam software in providing Services, you acknowledge and agree that no anti-virus software can guarantee to detect 100% of viruses and you accept use of the spam and virus services at your own risk. Weblite reserves the right to remove attachments from incoming email messages if there is any indication that the attachment is, or might be, infected with a virus. You acknowledge that Weblite cannot and does not warrant that the spam and virus services installed on Weblite's Servers will detect all viruses present in e-mails scanned by and transmitted via Weblite's Servers. The spam and virus services provide a high level of protection against viruses but you acknowledges and agrees that you are solely responsible for protecting your property and email accounts from virus threats hacking or website 'hijacking'. Weblite recommends that you also have anti-virus programs for extra protection for viruses that may arrive through your use of CD-ROM's, floppy disks and downloads. Weblite offers no guarantee that the spam and virus services will capture all unwanted email sent to you nor that all wanted email will be passed through the filter. You acknowledge and agree that some email may be made unavailable when using the spam and virus services and you assume all liability for any lost or altered email.

3.8 Lawful and proper purposes

You warrant to Weblite that you will only use your Hosting Account for lawful purposes. In particular, you further warrant and undertake to Weblite that:

- (i) You will not, nor will you authorize or permit any other person to, use the Weblite Systems in violation of any law or regulation;
- (ii) You will not knowingly or recklessly post, link to or transmit or allow to be posted, linked or transmitted any material:
 - a. that is unlawful, threatening, abusive, harmful, malicious, defamatory, violent or teaching violence, obscene, pornographic, profane or otherwise objectionable in any way;
 - b. containing a virus or other hostile computer program;
 - c. that shall constitute or encourage a criminal offence;
 - d. that gives rise to civil liability or that violates or infringes any trade mark, copyright, other intellectual property rights or similar rights of any person under the laws of any jurisdiction; and
- (iii) You will conform to the standards made available by Weblite from time to time and will not yourself, and will ensure that none of your end users, make excessive or wasteful use of the Weblite Systems to Weblite's detriment or that of Weblite's other customers. Weblite reserves the right to suspend your service and/or immediately terminate this Agreement in the event of service abuse or of ongoing lack of resolution of the associated issue(s).

3.9 Prohibited Activities

The following activities are expressly prohibited:

- (i) Any action or process that unreasonably consumes resources degrading the hosting server environment for other users, including the execution of scripts (PHP, ASP.NET, CGI/PERL, FTP, HTTP, database connections and the like);
- (ii) Running standalone, automated server-side processes including, but not limited to any daemon;
- (iii) Running any bit torrent application, tracker or client;
- (iv) Participating in file sharing or other peer to peer sharing activity;
- (v) Executing any script for longer than 180 seconds;
- (vi) Executing any database query that takes longer than 30 seconds to complete;
- (vii) Specifying cron tasks that execute more frequently than every 300 seconds; and
- (viii) Running gambling, pornographic material of any kind or products or services prohibited by law.

4. Content

4.1 Meaning

"Content" means the business name, logo, images, design, graphics, sound or video files, web links, code, data, text (whether or not perceptible by users), metatags, multimedia information (including, but not limited to sound, data, audio, video, graphics, photographs, or artwork), your domain(s), e-mail, chat room content, bulletin board postings, and any other items or materials of you or any third party that you provide or permit to reside on your Website or otherwise on the Weblite Systems, including any content or materials:

- (i) to be made visible on to your Website;
- (ii) which you use or otherwise instruct Weblite to use in relation to your Website and/or Hosting Account; and/or
- (iii) which is distributed, electronically transmitted or displayed to/on any Weblite Systems including by email, whether by you or through a third party, or otherwise in connection with your use of the Services.

4.2 License to use

You hereby grant Weblite a limited, non-exclusive, royalty-free license to host, reproduce, transmit, cache, store, exhibit, publish, display, distribute, perform, edit, adapt, modify, create derivative works from, and otherwise use the Content for the purpose of providing the Services.

4.3 Client responsibility Content

You are solely responsible for all Content, including any content or materials of a third party that you permit or enable to be posted onto or through the Weblite Systems. You agree that you will be singularly liable for all Content published through or via your Website and/or transmitted through the Weblite Systems, no matter by what means or by whoever or wherever such Content is created, generated or published. Subject to the terms of this Agreement: (a) you are solely responsible for the creation, posting, updating and maintenance of the Content; and (b) you will manage, renew, create, delete, edit, maintain and

otherwise control the editorial content of the Content. Weblite is not responsible for reviewing the Content prior to it being posted. Weblite is not responsible for keeping and maintaining a current version of the Content. You are entirely responsible for obtaining any insurance in relation to any loss or damage caused to the Content or any other of your data submitted to or located on the Weblite Systems.

4.4 Specific prohibitions

Without limiting the preceding sub-clause, you must at all times ensure and guarantee to Weblite that all Content:

- (i) if published on your Website, is at all times relevant to the Website;
- (ii) is accurate, complete and up to date;
- (iii) is not expressly or by implication misleading or deceptive;
- (iv) is not offensive to public interests or morals;
- (v) does not contain or contain references to any type of pornography or illegal drugs or substances;
- (vi) is not discriminatory including based on gender, race and age and does not promote hate;
- (vii) is not defamatory, threatening or harassing;
- (viii) does not infringe Weblite's or any other person's legal rights including Intellectual Property Rights and rights to privacy and confidentiality;
- (ix) does not contain file sharing music, software, bit torrents, video or pictures;
- (x) does not violate any applicable laws, legislation, statutory rules and regulations;
- (xi) contains no viruses or other computer programming defects which may result in damage to Weblite, the Weblite Systems or any third party; and
- (xii) complies with any acceptable use policy, standards and guidelines published on the Weblite website or otherwise advised to you from time to time.

4.5 Website Content updates

Where Weblite agrees to provide services to update Content appearing on your Website, Weblite will rely upon your communication of the Content to Weblite and your verification of the Content once published on the Website. You must ensure that all Content is in a form suitable for incorporation into the Website without modification by Weblite (unless otherwise agreed in writing).

4.6 Server compatibility

You are responsible for ensuring that the Content is "server ready" and remains fully compatible with the Weblite Systems (including all software and operating systems). You acknowledge that you are responsible for having the necessary knowledge and expertise to maintain the Content on Weblite Systems. Weblite reserves the right to remove any the Customer Content that is not compatible with the Weblite Systems. Upon your request and at your sole expense, Weblite may assist you in resolving any compatibility problems on a time and materials basis.

4.7 Deletion

Where Weblite determines any Content to be inappropriate or considers there is a risk of any Content being in breach of this Agreement, Weblite may (but is not obligated to) immediately delete such Content from your Website and/or Hosting Account without any recourse by you.

5. Domain Name Registration and Renewals

5.1 Registrations and Renewals

Upon accepting your application to register or renew a domain name, Weblite essentially acts as your sponsor for that application. Domain name registration and renewal applications may be processed through a third party provider. The registration and renewal process is not effective until the domain name registration or renewal information you provide to Weblite is delivered to the registry administrator for the relevant domain name and the registry administrator puts into effect your domain name registration or renewal. Weblite does not warrant that the domain name you request will be available for renewal or registration or capable of being registered by you. Therefore, you should take no action in respect of your requested domain name(s) until Weblite advises you in writing that a requested domain name has been registered in your name.

5.2 Acknowledgements

You acknowledge and agree that:

- (i) Weblite may, for any reason and in its sole discretion, elect to accept or reject your application for registration or renewal or cease providing services in relation to your application, including requests for registration or renewal of a prohibited domain name or domain name which a third party has any proprietary rights;
- (ii) although Weblite will use its reasonable endeavours, Weblite is not liable or responsible in any way for any errors, omissions or any other actions by any registry administrator arising out of or related to your application for and registration of, renewal of, or failure to register or renew a particular domain name;
- (iii) Weblite will use a third party registrar to process domain name registrations and renewals. Upon Weblite's termination of its relationship with such third party, Weblite may, in its sole discretion, assign your domain name registration to a new registrar at no additional charge to you;
- (iv) You must comply with the terms of the Domain name eligibility and allocation policy rules for open second level domains (2lds) found at <http://www.domainregistration.com.au/policies/aupolicies.php> and you are bound by the .au Registrant Agreement found at <http://www.domainregistration.com.au/policies/registratoragreement.php>. Any Australian domain name that no longer meets the allocation requirements may be cancelled;
- (v) It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights, including Intellectual Property Rights, and whether any foreign language translations of your domain name infringe or violate someone else's rights;

- (vi) the successful registration of a domain name does not give you any proprietary rights in any word composing the domain name; and
- (vii) Weblite makes no representations or warranties of any kind whatsoever that registration or use of a domain name under this Agreement will immunise you either from challenges to your domain name registration, or from suspension, cancellation or transfer of your domain name.

5.3 Registrant protocols

- (i) .com.au and .net.au domains can only be registered by an Australian registered company or business with a registered business number (ABN, ACN, BRN, BN) which you will need to supply during the order process. The domain name you order will need to be an exact match, acronym or abbreviation of the supplied business registration, or it should bear a close and substantial connection to the domain name. Domains can be two to 63 letters in length. Words can be separated by hyphens but not spaces.
- (ii) .org.au and .asn.au may only be registered by a "non-commercial organisation" and your chosen domain name must have a strong relationship to the organisation which it represents.
- (iii) .id.au domain names may be used by individuals who reside in Australia. The domain name can be an exact match, abbreviation or acronym of registrant's personal name or otherwise closely connected to the registrant.
- (iv) .au.com domain names are not restricted or regulated by .au policy rules and can be registered by anyone.
- (v) .com and .net domain names are not restricted and can be registered by anyone.
- (vi) .biz, .org and .info domain names are not restricted and can be registered by anyone.

5.4 Warranties

You represent and warrant to Weblite that:

- (i) all statements you make and information provided by or for you in connection with an application for registration, maintenance, or renewal of a domain name are complete, accurate and up to date;
- (ii) your registration, renewal and use of the domain name will not infringe upon or otherwise violate the rights of any third party (including any registered or unregistered Intellectual Property Rights, domain name, business name or any other name in which a third party has proprietary rights);
- (iii) you are not registering the domain name for an unlawful purpose; and
- (iv) you will not knowingly use the domain name in violation of any applicable laws or regulations.

5.5 Identification and authorization

You must provide to Weblite and keep current the following information: (i) your full name and the name of the authorised person for contact purposes, (ii) your postal address, (iii) your email address, (iv) your voice telephone number and fax number (if available), and (v) contact details for your technical contact and billing contact. Weblite may require you to supply photo identification (such as a passport or current drivers' licence) to verify your identity and, in the case of a company, authorization to act on behalf of the company. Weblite may also require you to provide evidence to its reasonable satisfaction of your right and authority to register a particular domain name. You acknowledge and agree that:

- (i) wilfully providing inaccurate or unreliable information or wilfully failing to update information promptly; and/or
- (ii) your failure to respond for over 15 calendar days to inquiries from Weblite concerning the accuracy of contact details associated with your domain name registration;

will constitute a material breach of this Agreement that will be sufficient basis for cancellation of your domain name registration.

5.6 Payment of fees

Your domain name application or renewal application will not be processed by Weblite until Weblite receives payment of the registration or renewal fee, or what Weblite considers (in its sole discretion) reasonable assurance of payment of the registration or renewal fee.

5.7 Compliance with authority's terms

You must at all times comply with all applicable terms and conditions of use of the relevant naming authority and it is your responsibility to ensure you are aware of such terms. You irrevocably waive any claims you may have against Weblite in respect of any action or decision of a naming authority (including to refuse to register or cancellation of a domain name). Any administration fee Weblite charges you in respect of a domain name registration and/or renewal is non-refundable notwithstanding any failure of or suspension by the naming authority to register and/or continue the registration of the domain name to you.

All domain registrars are bound by the 2009 Registrar Accreditation Agreement (RAA) between ICANN and its accredited registrars. You should refer to this document to understand your rights and responsibilities.

5.8 Third party disputes

Weblite accepts no responsibility in respect of your use of a domain name and any dispute between you and any other individual or organization regarding a domain name must be resolved between you and the other party(s) concerned without the requirement for Weblite to be involved in any way. Upon becoming aware of such a dispute, Weblite may (in its discretion) suspend or cancel the domain name and/or to make appropriate representations to the relevant naming authority.

5.9 Outbound domain transfers

Outbound domain transfers will incur an administration charge as advised to you by Weblite. This charge is not applicable for domains transferring for the purpose of receiving Weblite Services.

5.10 Suspension and cancellation

In addition to the other rights and obligations set out in this Agreement, you acknowledge and agree that:

- (i) Weblite may suspend, cancel, transfer or modify your use of Weblite's domain name related Services at any time, for any reason, in Weblite's sole discretion;

- (ii) Weblite may suspend, cancel, transfer or modify your domain name registration if you materially breach this Agreement, use your registered domain name to send unsolicited commercial messages in breach of any laws or regulations or otherwise use your domain name in connection with any unlawful activity;
- (iii) your domain name registration may be subject to suspension, cancellation, transfer or modification pursuant to the terms of any rules or policies applicable to the relevant domain name registry or other third party service provider; and
- (iv) Weblite may, in its sole discretion, suspend, cancel, transfer or otherwise modify your domain name registration at such time as Weblite receives a properly authenticated notification from a court of competent jurisdiction or arbitration award requiring such suspension, cancellation, transfer or modification of your domain name registration.

6. Other conditions for use of Services

6.1 Legal compliance

You must seek independent legal advice and ensure the operation of your Website and use of the Services complies with all applicable laws and regulations and does not give rise to any third party claims or liabilities, including:

- (i) ensuring the inclusion of appropriate any Terms of Use and a Privacy Policy;
- (ii) complying with all legal and regulatory requirements in respect of your Website and your business; and
- (iii) ensuring your business and the Website do not give rise to any third party legal claims against you or against Weblite (including any claims by any government body or agency).

Any transactions within your Hosting Account which are contracts for the sale of goods or services will be between you as the merchant and your end-user customer. The information contained within your Hosting Account must comply with all applicable law and relevant codes of practice including in relation to distance selling and data protection.

6.2 Weblite directions and cooperation

You must comply with the reasonable directions of Weblite in relation to access to and use of the Services. You agree to do all that is reasonably required to facilitate provision of the Services including ensuring your prompt response to Weblite's communications and your prompt approval of any items required in relation to the Services.

6.3 Use of software

In accessing and using the Services you may only use software that you are legally entitled to use and you must ensure your compliance with all third party licensing requirements. You must not use proxy server software (of any type) used to hide users IP or cache content. Further, you must refrain from challenging or attempting to challenge the ownership of any Software, reverse engineering or attempting to reverse engineer any Software, copying or attempting to copy any Software, using or attempting to use any Software except as agreed in the relevant licence agreement, laying claim or attempting to lay claim to any part of any Software, giving or attempting to give any Software or access to any Software to anyone else, modifying or attempting to modify any Software, or otherwise using or attempting to use the Software in any unauthorized manner.

6.4 Spam

You must ensure all electronic mail and other communications are made by or on your behalf are in accordance with all relevant legislation, including the Spam Act 2003 (Cth). In the event of deliberate transmission of unsolicited commercial email, Weblite may, in its discretion, suspend or terminate all or any part of the Services without prior notification.

6.5 Disruptive activities

You must refrain from all disruptive activities including the circulation of any unsolicited publicity or advertising material, propagation of computer worms and viruses, gaining unauthorized access to any computer system(s), sending harassing, obscene, offensive or threatening electronic mail, forgery of electronic mail and/or identity and the placement or transmission or storage of any defamatory material on the Internet.

6.6 Mailing lists and publicity

You agree that Weblite may link its website to yours, provide discussion of your Website and frame parts of your Website (including your Content) for promotional and/or educational purposes. In addition to general Hosting Account, invoices and Service communications, Weblite may send you email communications relating to its services and the services of its business associates, including e-newsletters, announcements, promotional offers and surveys. You agree to receive all such email communications but may choose to unsubscribe from Weblite's promotional email marketing by emailing Weblite or clicking on the "unsubscribe" link contained within an email.

7. Charges and Payment Terms

7.1 Charges

You agree to pay the Charges in respect of the Services. Payment of all Charges in accordance with the stated payment terms is a condition precedent to the continued performance by Weblite of its obligations under this Agreement. Charges may be updated in accordance with this Agreement and/or any subsequent agreement between you and Weblite (such as in relation to Additional Services).

7.2 Invoices

You agree to pay all invoices within 30 days of the date of the invoice or such other period as may be stated on the invoice. Invoices will be sent to the email address most recently advised to Weblite in relation to contacting you. Weblite generally issues invoices monthly in arrears for on-going Services but may (at its discretion) issue invoices on alternative terms, such as in advance or on longer/shorter periodic or payment terms.

7.3 AUD and GST

Unless specified otherwise, all amounts are specified and payable in Australian Dollars and are exclusive of GST and other government taxes, charges or imposts. Any such charge, tax or impost shall be additionally charged to you at the required rate.

7.4 Credit card payments

Upon provision of a credit card account details, you authorize us or our payment service provider to automatically debit your credit card for all charges on specified in a valid invoice.

7.5 Interest and recovery costs

Weblite reserves the right to charge you interest at the rate of Cash Rate Target set by the Reserve Bank of Australia plus 2% on any amount remaining unpaid 14 days after the due date for payment. If any amount remains unpaid for a further 14 days, Weblite may commence actions to recover such overdue amounts and you will be responsible for compensating Weblite for all costs, fees and charges in relation to the collection and recovery of such amounts, including reasonable administration and legal fees.

7.6 Increases to Charges

Weblite may increase Charges applicable to any or all of the Services by providing you with no less than 30 days' advance written notice (**Notice Period**). Upon your receipt of notice advising of any increase, you may terminate this Agreement by written notice to Weblite within the Notice Period, such termination to take effect on the last day of the Notice Period, failing which you will be deemed to have agreed to the increase(s) as advised by Weblite.

7.7 Cessation of Services

Weblite reserves the right to cease the provision of Services and access to your Hosting Account if you fail to pay any amounts due under this Agreement within the agreed period.

8. Intellectual Property Rights

8.1 Your responsibilities

You are solely responsible for obtaining any and all necessary rights, licensing, authorizations, clearances and consents in relation to your use of the Services, your domain name, Content and your Website, ensuring your on-going compliance with any associated terms and conditions and ensuring all third party licensing rights are granted to the extent required to use any third party materials in relation to your Website, domain name and the Services.

8.2 Retention of intellectual property rights

- (i) Subject to this clause and clause 6.6 and as between you and Weblite, you remain the exclusive owner of and retain all right, title and interest (including all Intellectual Property Rights) in your brand name, logo and Content. To the extent Weblite uses such materials in providing the Services or in relation to this Agreement, you grant Weblite a worldwide, perpetual, irrevocable and royalty-free license to use such materials as contemplated by this Agreement.
- (ii) As between you and Weblite, all rights and any Intellectual Property Rights relating to the Services, Weblite Systems, Software, Developed Materials and Databases remain the exclusive property of Weblite. Subject to the continuation of this Agreement and your payment in full of all amounts when due pursuant to this Agreement, Weblite grants you a non-exclusive and non-transferable license (with no right to sublicense) to use the Weblite Systems and any Developed Materials to the extent and for the limited purpose(s) agreed in writing between you and Weblite. Such purposes do not include the exploitation of the intellectual property referred to in this clause or the supply of that intellectual property to third parties.
- (iii) Nothing in this Agreement in any way limits any Weblite's continued use of any Intellectual Property Rights in the Developed Materials or which may otherwise be developed in the course of Weblite providing the Services, including the use of such Intellectual Property Rights for other clients (except to the extent that doing so would cause an infringement of your Intellectual Property Rights, such as in relation to the use of your brand).

8.3 Third party products

You acknowledge that Weblite Systems and Services may include the licensing or sub-licensing of third party intellectual property rights, including (as applicable) the underlying software platform(s) used to build your Website, web design templates, add-on functionality, fonts, content, images and web links. Some providers of commercial intellectual property, such as software, fonts and web design templates, have specific terms which dictate how they may be used. You agree that it is entirely your responsibility to ensure that your use of all software, functionality, layout, fonts, Content, images and other material incorporated in or used in relation to the Website at all times complies with the third party licensing requirements.

8.4 Third party infringements

If you become aware of a third party infringing Weblite's Intellectual Property Rights you must notify Weblite as soon as practicable and agree to comply with all reasonable directions of Weblite.

9. Disclaimers

You acknowledge and agree that, to the full extent permitted by law:

- (i) Any and all Services, Weblite Systems and any other goods or services provided by or on behalf of Weblite are provided "as is" and Weblite makes no representations or warranties of any kind whatsoever, express or implied, in connection with this Agreement, the Services, the Weblite Systems, any related goods or services supplied in relation to this Agreement or the results to be achieved through any such services, systems or supplies, including but not limited to warranties of merchantability, fitness for a particular purpose, non-infringement of third party rights or arising from a course of dealing, usage or trade practice;
- (ii) Without limiting the foregoing, Weblite does not warrant and expressly disclaims any express or implied warranty:
 - i. Regarding the Services and Weblite Systems availability, accessibility or performance;
 - ii. That you will be satisfied with the results of the Services and Weblite Systems or that they will suit your purpose(s);
 - iii. That the Weblite Systems and Services will be available on a continuous basis and, further, you acknowledge and agree that there may be delays in and unavailability of the Services and Weblite Systems;
 - iv. That any defects, errors or issues will be corrected as soon as possible;
 - v. That any security methods employed will be sufficient;

- vi. That the Weblite Systems will be free from unauthorised users or hackers;
 - vii. That Weblite's virus protection services will stop every virus from reaching your computer network, that the any spam and virus services will be error free or free from interruption of failure; or
 - viii. That Weblite Systems and Services will be error free or free from interruption of failure;
- (iii) Any advice, suggestions or opinions Weblite offers should not be construed as professional advice on how to run your business, domain name and/or Website or on any aspect of your business, domain name and/or Website; and
- (iv) No oral or written material, information or advice given by Weblite, its resellers, agents, representatives or employees shall create a warranty or in any way increase the scope of the express warranties hereby given, and you may not rely on any such material, information or advice.

10. Liability and indemnity

10.1 Australian Consumer Laws

Under the Competition and Consumer Act 2010 or any other applicable law, when implied conditions and warranties cannot be expressly excluded, Weblite limits its liability for any breach of those conditions and warranties to, in the case of Services, the supplying of the Services again or the payment of the cost of having the Services supplied again and, in the case of any products or goods, the replacement or repair of such products or goods or the cost of replacing or repairing such products or goods, in all cases with such decision at the sole discretion of Weblite.

10.2 Weblite liability

(i) Limited liability

To the full extent permitted by law, Weblite's maximum aggregate liability to you for any claim in contract, tort, negligence, equity or otherwise arising out of or in connection with this Agreement, the Services, the Weblite Systems and any related goods or services shall not exceed the amount of fees and charges paid by you to Weblite in respect of the relevant Services during the previous 6 month period in which such claim(s) arises.

(ii) Liability exclusions

Without limiting the foregoing and to the full extent permitted by law, Weblite shall have no liability, obligation or responsibility to you, whether in contract, tort (including but not limited to negligence), under statute or on any other basis for:

- (i) for any lost profits, business or revenue, opportunity costs and/or loss of business opportunity(s), loss of management time or failure to realize savings or anticipated savings or for any indirect, incidental, consequential, special or exemplary damages of any nature whatsoever arising in connection with this Agreement, the Services, the Weblite Systems, and any related goods or services even if Weblite has been advised of the possibility of such damages;
- (ii) termination of this Agreement or suspension of any or all of the Service(s);
- (iii) loss of, damage to, corruption of, non-delivery, mis-delivery or or inability to retrieve data;
- (iv) deletion, misdirection or delay of emails and/or non-receipt or mis-routing or any other failure of email;
- (v) any delays, Service interruptions or down time of the Weblite Systems or any component thereof;
- (vi) the performance or failure of any spam and virus protection services and systems (including software);
- (vii) the processing of your domain name application or renewal, suspension, loss, or modification of your domain name registration and/or use of your domain name registration;
- (viii) delays, interruptions, accessibility, functionality and/or performance of the Services, Weblite site, your Website, your Hosting Account and/or domain name;
- (ix) any events, occurrence(s) or failure(s) outside Weblite's control;
- (x) delays, interruptions or loss of business operations, reputation, goodwill, customer relationship(s) or suppliers relationship(s).

10.3 Indemnity

You agree to indemnify, defend and hold harmless Weblite from and against any and all claims, judgements, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) incurred by Weblite and arising out of or related to:

- (i) your Hosting Account, your Website, your domain name and/or your use (or the use through your user credentials) of the Weblite Systems;
- (ii) the provision, transmission, storage and/or use of any Content;
- (iii) your application for and registration of, renewal of, or failure to register or renew, a particular domain name and/or your use of any domain name registered in your name;
- (iv) the violation of any third party's Intellectual Property Rights or other proprietary rights arising in connection with the Content, your Website, your domain name, your Hosting Account and/or Weblite's provision of Services and any other goods or services including where such violation arises in relation to Weblite's reliance on your instructions or specifications;
- (v) Your failure to comply with the terms of this Agreement and any Weblite policies or procedures advised to you or made publicly available;
- (vi) Your failure to comply with any applicable laws, regulations, licensing and other third party agreements and policies and, to the extent Weblite acts upon instructions by you or on your behalf, any failure by Weblite to comply with such laws, regulations, licensing and other third party agreements and policies.

10.4 Acknowledgement

Without in anyway limiting this clause 10, you acknowledge and agree that the indemnity and liability provisions set out in this clause 10 are reasonable in light of the fees and charges incurred by you in relation to the Services as compared with the potential exposure of Weblite to risk, liability and economic loss in providing the Services.

11. Termination and Suspension

11.1 Additional termination and suspension rights

In addition to the termination rights set out in clause 2 (Duration), Weblite may immediately terminate this Agreement or suspend any or all Services to you (including access to your Hosting Account, domain name and any Weblite Hosting Services), without any liability to you (to the full extent permitted by law) if:

- (i) any Charges are not paid when due;
- (ii) you breach this Agreement or any Weblite policy or procedures advised to you or published on Weblite's website;
- (iii) in Weblite's reasonable opinion, its continued provision of Services to you are detrimental to the Weblite business and/or reputation;
- (iv) you breach the terms of any agreement with a third party supplier or domain name registry in relation to this Agreement, Content, your Website, domain name or the Services;
- (v) if a relevant third party supplier suspends or terminates provision of its services to Weblite and/or you; or
- (vi) if your business or company becomes or threatens to become insolvent (or, in the case of an individual, bankrupt).

Notwithstanding Weblite's suspension of any Service(s), all your obligations and liabilities under this Agreement shall continue until such time as this Agreement is terminated. Weblite's suspension of any Service(s) does not preclude Weblite from proceeding to terminate this Agreement or exercising any other rights pursuant to this Agreement.

11.2 Consequences

- (i) On termination of this Agreement Weblite may immediately cease providing Services to you and is not required to hold any backup data for retrieval by you. At Weblite's discretion, (a) Weblite may without notice to you, delete or retain data located on your Hosting Account and any back-up data and (b) Weblite may (but is not obliged to) provide you with access to such data.
- (ii) On Suspension of any Services Weblite may immediately block your Hosting Account, domain name and Website and remove all data located on it but will not delete such data from Weblite's Systems until this Agreement is terminated. Notwithstanding the foregoing, Weblite does not guarantee retention of any Content or any other data beyond 30 days after termination or suspension.
- (iii) In the case of either suspension of Service(s) or termination of this Agreement, Weblite may post such notice in respect of the non-availability of your Hosting Account, Website and/or domain name as Weblite thinks fit.
- (iv) You acknowledge and agree that Weblite is in no way liable for any loss, damage or otherwise suffered by you or any third party in relation to Weblite's termination or suspension of this Agreement in accordance with its terms.
- (v) If any Charges are paid in advance, you will be entitled to a pro-rata refund of Charges for Services not yet delivered as at the termination date except to the extent Weblite has incurred charges in relation to the provision of Services which cannot be refunded from a third party supplier. Any Charges incurred in arrears will become payable upon termination for Services provided up to the date of termination.
- (vi) Termination of this Agreement does not affect any accrued rights or liabilities of either party. Clauses 8, 9, 10 and 11 shall survive termination of this agreement, in conjunction with any other clauses required to give effect to such clauses or otherwise including disclaimers or limitations on liability by Weblite.

12. General

12.1 Third party providers

You acknowledge that, as a part of Weblite Systems, Weblite may retain one or more third-party service providers to supply facilities, equipment, services and/or connectivity required in relation to the Services.

12.2 Contact points

Weblite will address and send emails to the person notified by you as your contact person at the email address you supply. You authorize your contact person to communicate and act on your behalf in communicating with Weblite, including in relation to agreeing or incurring additional charges. You are solely responsible for ensuring that your contact person and their relevant contact details are current and correct, that your email services is operational and that you check your emails regularly. You must inform Weblite of any changes to your contact details and the contact details of your nominated contact person by email to info@weblite.com.au within 7 days of any change. If Weblite sends an email or other communication to an address or number in your most recently advised contact details, you are deemed to have received that communication and Weblite is not obliged to take any further action to confirm that you received, opened and/or read the communication unless you promptly notify Weblite that the email was not delivered to its email address.

12.3 Notices

Any notice to be given by either party to the other may be sent by either email, post or courier to the address of the other party as appearing in this Agreement, subject to any other address as such party may later have communicated to the other party in writing, and if sent by email, shall unless the contrary is proved, be deemed to be received on the day it was sent or if sent by post or courier shall be deemed to be served two days following the date of posting.

12.4 Updates to Agreement

Weblite may change and/or update the terms of this Agreement by notifying you in writing or by publishing an updated version on its Website provided that any changes to pricing payment terms must be made in accordance with clause 7. Updates may be made as Weblite considers appropriate to protect and further its legitimate commercial interests, including as required to comply with any legal requirements, third party agreements and/or pursuant to legal advice, and to reflect changes in the way Weblite or any third party service provider offers its services and/or its business generally. Any updates to this Agreement will become applicable to you upon the earlier of (i) payment of the first invoice following the date on which such updates are published or otherwise advised to you and (ii) 30 days from the date such updates are published or otherwise advised to you.

You acknowledge and agree that your sole and exclusive remedy in relation to any updates to this Agreement is termination of this Agreement within 30 days of such updates being published or otherwise advised to you.

12.5 Confidentiality

- (i) **"Confidential Information"** means this Agreement and all non-public information disclosed by one party and identified by that party as confidential or which would reasonably be considered as confidential to that party.
- (ii) Each party agrees: (i) to use the other party's Confidential Information solely for the purpose for which it was provided or as otherwise permitted by this Agreement; and (ii) to not disclose the other party's Confidential Information except as expressly permitted by that party, as permitted by this Agreement, as required by law or as reasonably necessary for the purpose of obtaining professional advice (provided such disclosure to professional advisor(s) is on no lesser terms of confidentiality).
- (iii) Each party will implement reasonable security measures to prevent unauthorized use or disclosure of the other party's Confidential Information. Except to the extent required by law and reasonable business practices, upon termination of this Agreement, each party will return and/or destroy all the other party's Confidential Information and certify to its return and/or destruction.
- (iv) The above obligations do not apply to any information which: (i) was previously known to the party to whom it was disclosed (**"the Recipient"**); (ii) is or becomes publicly available through no fault of the Recipient; (iii) is disclosed to the Recipient by a third party having no obligation of confidentiality to the party disclosing the information; or (iv) is independently developed by the Recipient.
- (v) Each party acknowledges that any use or disclosure of the other party's Confidential Information other than in accordance with this Agreement may cause irreparable damage to that party for which remedies other than injunctive relief may be inadequate, and that party may request injunctive or other equitable relief seeking to restrain such use or disclosure.
- (vi) This clause is subject to clause 6.6.

12.6 Non-reliance

Each party is acting for its own account and has made its own independent decision to enter into this Agreement based upon its own judgement and is not relying on any communication (written or oral) by the other party as a recommendation to enter this Agreement. Each party has had the opportunity to and has sought legal advice as it has determined necessary.

12.7 Entire Agreement

This Agreement is the whole agreement between the parties relating to its subject matter and supersedes all oral and written communications by or on behalf of any of the parties (including any term sheet or letter of intent).

12.8 Variation

Except as expressly set out in this Agreement, any further changes to this Agreement must be agreed in writing by both parties.

12.9 Waiver

A party's failure to exercise or delay in exercising a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude its future exercise or the exercise of any other power or right.

12.10 Novation and Assignment

You may not assign or attempt to assign or otherwise transfer any right or obligation arising out of this Agreement without the prior written consent of Weblite.

12.11 Reading Down.

If part or all of any clause of this Agreement is declared by any judicial or other competent authority to be void, illegal, invalid or otherwise unenforceable it will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable, but if that is not possible: (i) the relevant part or clause will be severed from this Agreement and the remaining provisions of this Agreement will continue to have full force and effect; and (ii) the parties will attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' original intention in relation to the subject matter of the severed clause.

12.12 Further Assurance.

At any time after the date of this Agreement each of the parties shall execute or procure the execution of such documents and do or procure the doing of such acts and things required for the purpose of giving the full benefit of all the provisions of this Agreement.

12.13 Interpretation

- (i) Unless the context requires otherwise: (a) headings are used for convenience only and do not affect interpretation; (b) the singular includes the plural and conversely; (c) the words "includes", "including" or "such as" are not words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to examples of a similar kind; and (d) a reference to writing includes email.
- (ii) The following capitalized terms have the meanings set out below:
 - "Additional Services"** means any services provided by Weblite pursuant to a written agreement for additional services;
 - "Commencement Date"** means (i) in respect of Continuing Weblite Customers, 21 July 2016 and (ii) in respect of New Customers, the date on which you accept the relevant Weblite Services Quote, instruct Weblite to provide Services, pay a Weblite invoice for Services or otherwise accept the Services provided by Weblite;
 - "Charges"** means, for Continuing Weblite Customers, charges are incurred in accordance with the Prior Agreement and, for New Customers, charges are incurred in accordance with the Weblite Services Quote, in both cases, subject to any updates to charges in accordance with this Agreement and/or any agreement for additional charges or otherwise between you and Weblite;

“Continuing Weblite Customer” means a person or entity who was a customer of Associated IT Pty Ltd trading as Weblite, as at 21 July 2016, and is now a customer of Freescape Pty Ltd trading as Weblite;

“Databases” means all database, compilation, collective and similar rights, title and interests worldwide in Weblite’s proprietary information databases and all information and derivative works generated from those databases;

“Developed Materials” means any code, graphics, text, website pages, and any other materials whatsoever, whether in real or intangible form, developed by or for Weblite in relation to this Agreement or otherwise;

“GST” means a Goods and Services Tax payable pursuant to the A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time;

“Hosting Account” means the part of the servers allocated for the use of your Website;

“Intellectual Property Rights” means all registered and unregistered intellectual property rights and including in relation to present and future copyright, trademarks, designs, know-how, trade secrets and patents and all other similar industrial property rights and legal entitlements, in any jurisdiction throughout the world;

“New Customer” means any customer of the Services who is not a Continuing Weblite Customer;

“Prior Agreement” means the agreement previously in place between a Continuing Weblite Customer and Associated IT Pty Ltd, previously trading as Weblite;

“Server” means the server(s) used in relation to the Services, whether owned and operated by Weblite or through its third party service provider(s);

“Services” means the Weblite Hosting Services, domain name registration and renewal services, Additional Services and any other services provided by Weblite in relation to this Agreement;

“Software” means the Weblite proprietary or licensed software, as updated or amended from time to time, used in relation to the Services and/or Weblite Systems;

“Weblite” means Freescape Pty Ltd ACN 607 125 119 trading as Weblite;

“Weblite Hosting Services” means website hosting and related services provided by Weblite;

“Weblite Services Quote” means any quote or document of a similar nature issued by Weblite and offering to provide Services to you;

“Weblite Systems” means the computer equipment, server(s), operating software, network equipment and components operated by or for Weblite in connection with the provision of the Services;

“Website” means your website in relation to which Weblite provides Weblite Hosting Services, domain name and/or Additional Services; and

“you” and **“your”** mean the customer engaging Weblite to provide the Services.

12.14 Governing law

This Agreement is governed by the laws of the State of New South Wales and the parties irrevocably submit to the jurisdiction of the courts of that State.