

TERMS OF SERVICE

1. ACCEPTANCE

- 1.1 These Terms and Conditions (**Terms**) are between Aitken Creek Ventures Pty Ltd (ABN 90 611 692 730) trading as Pacific Online Solutions, its successors and assignees (referred to as “**we**”, “**us**” or “**our**”) and you, the person, organisation or entity set out in the Quote (referred to as “**you**” or “**your**”), and collectively, the Parties. These Terms apply to all Services provided by us to you.
- 1.2 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions relating to this agreement. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older.
- 1.3 On request to commence providing services to you, an on-boarding fee may apply which must be made before we commence work.

2. SERVICES

- 2.1 These Terms commence on your request to us to perform Services for you, and will continue until such time as you request cancellation of the services and the services cease.
- 2.2 Any future Services which you request will be provided under these Terms unless otherwise agreed by us.
- 2.3 We agree to perform the Services with due care and skill.
- 2.4 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.
- 2.5 In providing the Services we rely on your expertise, advice, information and instructions.
- 2.6 We may provide the Services to you using our employees, subcontractors and third party providers (Representatives). Where we do so, we will ensure that such Representatives are skilled and experienced in their respective trade or occupation and will further ensure that they comply with these Terms in all respects.
- 2.7 In certain circumstances you may require us to deal with third parties who are not our Representatives in connection with these Terms. Such third parties will not be our responsibility and you agree that our dealing with such third parties does not create any direct contractual relationship between us and those third parties.

3. LIABILITY

- 3.1 While all reasonable efforts are made to keep your website online at close to 100% availability, we are not responsible for any loss that you may incur due to your website being offline or not functioning correctly.
- 2.8 **PRICE, INVOICING AND PAYMENT**
- 2.9 You agree to pay us the Fees for the Services that you have requested, using the Payment Method, as advised to you. All amounts are stated in Australian dollars. All amounts include Australian GST (where applicable).
- 2.10 The Fees and Services can be varied by written agreement between us, including by email.
- 2.11 We may charge interest at the rate of 2% per month on any amounts unpaid after the expiry of 7 days after the Payment Date.
- 2.12 If invoices are unpaid after this period, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 2.13 We reserve the right to report bad debts to independent credit data agencies.
- 3. YOUR OBLIGATIONS AND WARRANTIES**
- 3.1 You warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Services to you.
- 3.2 You warrant that throughout the term of these Terms that:
- there are no legal restrictions preventing you from agreeing to these Terms;
 - you will cooperate with us, and provide us with information that is reasonably necessary to enable us to perform the Services (including but not limited to logon credentials for your online systems), as requested by us from time to time, and comply with these requests in a timely manner;
 - the information you provide to us is true, correct and complete;
 - you will not infringe any third party rights in working with us and receiving the Services;
 - you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
 - you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;

- (g) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
- (h) if applicable, you hold a valid ABN which has been advised to us; and
- (i) if applicable, you are registered for GST purposes.

4. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS

- 4.1 You agree to provide information including any Intellectual Property to us to enable us to provide the Services.
- 4.2 You further agree to provide us with your logo for the purpose of enabling us to market that we have undertaken work on your behalf:
 - (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
 - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
 - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 4.3 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
 - (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us for the purposes of providing Services to you;
 - (b) irrevocably consent to us using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
 - (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
 - (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statements.
- 4.4 This clause will survive the termination of these Terms.

5. CONFIDENTIAL INFORMATION

- 5.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than, where necessary); to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you and ancillary business purposes, and not for any other purpose.
- 5.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all

reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.

- 5.3 These obligations do not apply to Confidential Information that:
 - (a) is authorised to be disclosed;
 - (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
 - (c) is received from a third party, except where there has been a breach of confidence; or
 - (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 5.4 This clause will survive the termination of these Terms.

6. FEEDBACK AND DISPUTE RESOLUTION

- 6.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
 - 6.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
 - (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
 - (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Victoria to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
 - 6.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
 - 6.4 This clause will survive the termination of these Terms.
- #### **7. TERM AND TERMINATION**
- 7.1 You must give 28 day's notice in writing to terminate our service. These Terms will end at the completion of this period and the receipt in full of any outstanding amounts due.
 - 7.2 We may end our service by giving you 28 day's notice in writing.
 - 7.3 Either Party may terminate these Terms, if there has been a material breach of these Terms,

subject to the dispute resolution procedure in these Terms.

7.4 We may terminate these Terms immediately, at our sole discretion, if:

- (a) we consider that a request for the Service is inappropriate, improper or unlawful;
- (b) you fail to provide us with clear or timely instructions to enable us to provide the Services;
- (c) we consider that our working relationship has broken down including a loss of confidence and trust;
- (d) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
- (e) you fail to pay an Invoice within 10 Business Days of the payment date as set out in the Invoice.

7.5 On termination of these Terms you agree that any Deposit or payments made are not refundable to you, and you are to pay all Invoices for Services rendered to you.

7.6 If you terminate these Terms before the Services are provided in full, you must pay for all Services provided prior to termination, including any Services which have been performed and have not yet been invoiced to you.

7.7 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.

7.8 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.

7.9 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.

7.10 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

8. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS

8.1 **ACL:** If you are a consumer as defined in the ACL, the following applies to you: You are entitled to a replacement or refund for a major

failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the services remedied if they are not rendered with due care and skill or they are not fit for purpose and the failure does not amount to a major failure. To the extent we are able to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.

8.2 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out in the Quote where it is affected by your delay in response, or supply of incomplete or incorrect information. Such delay is expressly excluded and does not count towards the Estimated Period.

8.3 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.

8.4 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.

8.5 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and these Terms, except those set out in these Terms, including but not limited to:

- (a) the Services being unavailable; and
- (b) any loss, damage, costs (including legal costs), expense (whether direct, indirect, incidental, special, consequential and/or incidental), loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruptions or otherwise, suffered by you or claims made against you, arising out of or in connection with your inability to access or use the Services, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.

8.6 **Limitation:** To the extent permitted by law our total liability arising out of or in connection with

the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made, as applicable.

8.7 This clause will survive the termination of these Terms.

9. INDEMNITY

9.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) this engagement and any breach of these Terms;
- (c) any misuse of the Services from or by you, your employees, contractors or agents; and
- (d) your breach of any law or third party rights.

9.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

9.3 This clause will survive the termination of these Terms.

10. GENERAL

10.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

10.2 **Publicity:** You consent to us using advertising or publicly announcing that we have undertaken work for you, including by way of displaying your logo on our website and promotional materials. You may also advertise that we have undertaken work for you by displaying our name and logo on your site and promotional materials.

10.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you.

10.4 **GST:** If and when applicable, GST payable on the Services will be set out on our Invoices. By accepting these Terms, you agree to pay us an amount equivalent to the GST imposed on these charges.

10.5 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with

the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).

10.6 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid.

10.7 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control.

10.8 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to you at the address in the Quote. Our address is set out in the Quote. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

10.9 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Victoria and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.

10.10 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

11. DEFINITIONS

11.1 In this Agreement, the following terms have the following meanings:

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Victoria, Australia.

Claim/Claims includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.

Confidential Information includes confidential information about you, your credit card or payment details, the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, technology, and other

information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".

Deposit is set out in the Quote.

End Clients means your customers, clients or users, as the case may be.

Estimated Period is set out in the Quote.

Fees is set out in the Quote

GST means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.

Intellectual Property includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions, patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).

Payment Method as advised to you.

Unless otherwise defined herein or the context otherwise requires, capitalised terms used in these Terms will have the meanings given to them in the Quote.

Contact details:

Please refer to our website for our contact details.

www.pacificsoln.com

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