

Levart Distribution Systems Pty Ltd (Levart)
Terms and Conditions of Web Development and Hosting Services

Background

- A. Levart carries on the business of providing Website development, maintenance and hosting services, and access to payment facilities.
- B. The Customer intends to sign an agreement with Levart for it to provide Website development, maintenance and/or hosting services, or access to payment facilities and these are the terms and conditions that are incorporated into that agreement.

THIS CONTRACT WITNESSES that the parties agree that:

Definitions

In this Agreement, unless the contrary intention appears:

"Additional Charge" means a charge in accordance with Levart standard rates in effect from time to time;

"Agreement" means this agreement for the development, maintenance and hosting of the Website including any covering sheets or schedules that may be annexed or incorporated into it;

"Charges" means the charges payable by the Customer to Levart for the Services, as specified in the covering sheets of this Agreement;

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

- a) confidential information relating to the design of the Website;
- b) information relating to the personnel, policies or business strategies of Levart;
- c) information relating to the terms upon which the Website has been developed and hosted pursuant to this Agreement;

"Development Specifications" means the specifications set out in the covering sheets or schedules of this Agreement (if any);

"Development Stages" means the stages specified in the Development Specifications for the interim and final completion of the Website;

"Documentation" means any manuals and other printed materials which are designed to:

- a) assist the Customer in interpreting information received from the Users; and
- b) enable the Customer to collate data and prepare materials in connection with Maintenance Services;

"Force Majeure" means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but not be limited to:

- a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;

- b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- c) strikes.

"Hosting Services" means the services provided by Levart pursuant to this Agreement relating to domain, email and/or Web hosting, more specifically set out in the covering sheets and appendices of this Agreement;

"Intellectual Property Rights" means copyright, trade mark, design, patent, semiconductor or circuit layout rights relevant to, amongst other things:

- a) textual, graphical, audio and other material displayed on the Website;
- b) the user interface of the Website including but not limited to screen layouts, organisation, and operation or control features; and
- c) all software associated with the Website;

"Internet" means the world wide interconnected computer networks commonly known by that name providing for the transmittal of information predominantly over the TCP/IP protocol;

"Link" means a hypertext link connecting the Website to other Websites;

"Maintenance Services" means all services relevant to:

- a) updating the content of the Website as directed by the Customer;
- b) maintaining and updating Links; and
- c) advising the Customer from time to time as to the extent to which the Website has become incompatible with software generally used to access the Internet;

"Party" means either Levart or the Customer as the context dictates;

"Levart " means Levart Distribution Systems Pty Ltd ACN 106 534 230 of suite 1A, 18 Gibberd Road, Balcatta in the State of Western Australia.

"Services" means the Hosting Services, Development Services, Maintenance Services or access to Payment Facilities as the context dictates;

"Third Party Materials" means textual, graphical, audio or like materials, together with any software, which is incorporated into the Website;

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

"Web Development Services" means the services provided by Levart pursuant to this Agreement relating to development, maintenance or modification of the Website, which may be more specifically set out in the covering sheets or schedules of this Agreement;

"Website" means the location on the Internet to be made accessible by Levart through the World Wide Web which provides hypertext, graphical or similar data content provided by or for the Customer to be accessed by Users;

"World Wide Web" means a method of representing and obtaining predominantly textual and graphical data and linking between data items.

1. Term of Agreement

The Agreement commences on the date it is signed by both parties and shall remain in force for two years. The Agreement will be automatically extended for a similar period until either party gives notice to the contrary to the other party at least 90 days before the next term commences.

2. Hosting Services

Levart to host site

Levart shall provide the Hosting Services (if any) described in the covering sheets of this Agreement, including where applicable:

- installing the Website on its computer network; and
- using reasonable endeavours to ensure that sufficient capacity is maintained on its network to enable Users to access the Website.

Disclaimers

Levart does not warrant that Users will have continuous access to the Website. Levart shall not be liable in the event that the Website is unavailable to the Customer or Users due to computer downtime attributable to malfunction, upgrades, preventative or remedial maintenance activities or the unavailability of services from suppliers.

Levart accepts no responsibility for any deficiency or inaccuracy in the Website attributable to a lack of maintenance.

3. Domain Registration

Levart to register

If specified in the covering pages of this agreement or otherwise agreed in writing between the Parties, Levart will:

- a) procure a domain name for the Customer; and
- b) endeavour to obtain the Customer's preferred domain name as nominated by the Customer.

Levart does not warrant that any preferred domain name of the Customer will be available and, in any event, Levart accepts no liability arising out of the inability of Levart to obtain the Customer's preferred domain name or the exercise of discretion by Levart in obtaining on behalf of the Customer an alternative and reasonably comparable domain name.

Customer's acknowledgements and warranties

The Customer warrants that:

- a) all information provided in the domain name application is true and correct; and

- b) the domain name sought does not breach any legal rights of a third party, including but not limited to Intellectual Property Rights.

The Customer acknowledges that the registration of its domain name may be the subject of licence conditions and that the licensor may revoke the licence for infringement of those conditions. The Customer shall indemnify Levart in respect of any liability arising, directly or indirectly, from a failure by the Customer to comply with any such licence conditions.

4. Web Development Services

Levart shall provide the Web Development Services (if any) described in the covering sheets of this Agreement, including where applicable:

- development and testing of the Website using the methodology and development tools described in the Development Specifications;
- completion of the Web Development Services in accordance with the time frame specified in the covering pages of this Agreement or as otherwise agreed between the parties in writing; and
- using its reasonable endeavours to adhere to the Development Stages.

5. Delay in Web Development Services

The Customer shall have no remedy against Levart in relation to delayed completion of a Development Stage, or failure to complete a Development Stage, where such delay or failure is the direct or indirect result of any act or omission of the Customer or a breach by the Customer of this Agreement. If Levart is unable to adhere to any Development Stage as a direct or indirect result of an act or omission of the Customer or as a direct or indirect result of a breach by the Customer of this Agreement, Levart may:

- a) make an Additional Charge for time, overtime, travel, materials, extra computer time or resource rationalisation resulting directly or indirectly from such act or omission of the Customer; and
- b) if such act or omission or breach causes delay exceeding thirty (30) days beyond the date of the final Development Stage, terminate this Agreement, after which it may pursue such remedies as may be available under this Agreement or at law.

6. Customer's Obligations

Provision of data, etc

The Customer shall, in addition to any other obligations expressed in this Agreement, have the following responsibilities:

- a) provision of all data to be incorporated into the Website;
- b) provision of all logos, designs, graphic and related materials to be incorporated into the Website;
- c) provision of any other information, ideas or suggestions which are to be expressly considered by Levart in creating the Website;
- d) ensuring Levart is given such information, facilities, services and accessories as Levart requires to enable it to comply with its obligations under this Agreement.

No liability for certain deficiencies

Levart shall not be responsible for any deficiency or alleged deficiency in the Website which is attributable to:

- a) incorrect information provided by the Customer, either pursuant to this clause or otherwise; or
- b) failure by the Customer to provide relevant information, either pursuant to this clause or otherwise.

Warranties of non-infringement

The Customer undertakes to ensure that any material provided to Levart for inclusion on the Website:

- a) does not infringe the Intellectual Property Rights of any person;
- b) is not obscene, offensive, upsetting, defamatory, personally offensive or in any way unsuitable for people under the age of eighteen (18) years; and
- c) does not comprise and cannot be used for any purpose or activity of an illegal, fraudulent or defamatory nature.

7. Levart may exercise its own judgment

Nothing in these Terms and Conditions shall affect Levart's right to exercise its own judgment and utilise its creative skills as it considers most appropriate in order to develop the Website in accordance with the Development Specifications. Without limiting the foregoing, Levart may exercise its total creative discretion in developing the Website to the extent that the exercise of such discretion is not inconsistent with the Development Specifications.

8. Payment Facilities

Levart may provide access to facilities for processing credit card payment and direct debit transactions, as described in the covering sheets to this agreement. The customer can choose the payment gateway. Access to these facilities is made possible through an arrangement provided to Levart by the third party who is the owner and operator of the payment processing facilities.

Access is provided for the sole purpose of enabling the Customer's clients to pay amounts owing to the Customer in the normal course of the Customer's business. Levart's service is limited to establishing access to the Payment Facilities and providing assistance to the Customer in their use.

Customer's Obligations

The Customer shall provide to Levart all configuration details, and obtain and maintain all permits and licences reasonably required to enable Levart to allow payment transactions to occur via the Payment Facilities. Levart shall be under no obligation to provide access to the Payment Facilities if the Customer fails to obtain all necessary configuration information, permits and licences.

The Customer undertakes to ensure that the Payment Facilities are not knowingly used for any illegal or fraudulent purpose.

Disclaimers

Levart does not warrant that the Customer will have continuous access to the Payment Facilities. Levart shall not be liable in the event that the Payment Facilities are unavailable to the due to computer downtime attributable to malfunction, upgrades, preventative or remedial maintenance activities or the unavailability of services from suppliers.

9. Maintenance

Maintenance Services

Levart does not provide any design or content maintenance services under this Agreement. Any changes required should be obtained separately.

Customer's Obligations

The Customer shall be responsible for procuring all necessary authorisations, licences and consents necessary to enable Levart to have access to the Website in order to provide the Maintenance Services. Levart shall be under no obligation to provide the Maintenance Services if the Customer fails, or in the reasonable opinion of Levart has failed, to obtain all necessary licences, authorisations and consents pursuant to this subclause.

10. Deficiencies and Errors

When reporting a suspected software deficiency or operational error encountered in the operation of the Website or associated Payment Facilities, the Customer must provide Levart with a documented example of the defect or error and all available identifying information.

Where the information provided is not sufficient to enable Levart to identify the origin of the defect or error, Levart shall be under no obligation to investigate or remedy the defect or error.

11. Additional charges

In the event that:

- a) the provision of the Services is delayed;
- b) Levart is required to perform the Services in circumstances other than those expressly or reasonably anticipated in relation to an Agreement of a similar nature; or
- c) there is a change in the timing or complexity of the Services;

and such circumstances are not the result of a breach of this Agreement by Levart, then Levart shall be entitled to make an Additional Charge.

12. Excess Storage, Processing and Traffic

The storage of files on Levart's hosting facilities, the use of computer processing time and the transfer of information such as web pages to and from the hosting facilities, will be subject to limits. Fees will be charged for excess consumption over the limits, however Levart reserves the right to terminate immediately any service where its usage threatens the proper operation of the facilities.

The current limits and applicable fees are set out on the Levart website with the hosting service fees listing.

13. Confidentiality

A Party shall not, without the prior written approval of the other Party, disclose the other Party's Confidential Information, except in circumstances where it is legally compelled to do so. Each party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other Party's Confidential Information. Notwithstanding any other provision of this clause, Levart may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants. This clause shall survive the termination of this Agreement.

14. Sub-Contracts

Levart may Sub-Contract for the performance of this Agreement or any part of this Agreement or engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of services pursuant to this Agreement.

15. Intellectual Property Rights

Ownership

Intellectual Property Rights in the Website content shall vest in the Customer, apart from Intellectual Property Rights in:

- a) any pre-existing material (including but not limited to Levart's software, documentation, templates and data) which is incorporated into or which has been used in the course of developing the Website; or
- b) the User interface of the Website;

which shall remain property of Levart.

Clearances

The Customer shall be responsible for:

- a) obtaining all necessary permission, authorisations, licences and consents in relation to the use and incorporation of Third Party Materials into the Website; and
- b) payment of all royalties or licence fees associated with the use of a third party's Intellectual Property Rights in connection with the Website.

Indemnity

The Customer shall indemnify Levart against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging such infringement if such infringement, suspected infringement or alleged infringement arises from:

- a) failure by the Customer to comply with its obligations under this Agreement;
- b) without limiting paragraph (a), the provision by the Customer of infringing materials for inclusion on the Website and/or the failure of the Customer to obtain any necessary permission, authorisation, licence or consent of a third party in relation to the use and Incorporation of Third Party Materials into the Website;
- c) modification or alteration of the Website without prior consent in writing of Levart; or
- d) any transaction entered into by the Customer relating to the Website without Levart's prior consent in writing.

16. Implied Terms

Any condition or warranty which would otherwise be implied in this Agreement is hereby excluded to the extent permitted by law. If the full exclusion of any condition or warranty is not permitted by law, the liability of Levart for any breach of such condition or warranty shall be limited, at the option of Levart, to one or more of the following:

- a) if the breach relates to goods:
 - i. the replacement of the goods or the supply of the equivalent goods;
 - ii. the repair of such goods;
 - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - iv. the payment of the cost of having the goods repaired; and
- b) if the breach relates to services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.

17. Exclusions

Limitation of liability

Levart shall be under no liability to the Customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this Agreement or in respect of a failure or omission on the part of Levart to achieve compliance with its obligations under this Agreement.

No representations

The Customer acknowledges that to the extent Levart has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify that the accuracy of that representation. Subject to the above, the Customer warrants that it has not relied on any representation made by Levart which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Levart

Indemnity

The Customer shall at all times indemnify and hold harmless Levart and its officers, employees and agents from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified where such loss or liability was caused by:

- a) a breach by the Customer of its obligations under this Agreement; or
- b) any wilful, unlawful or negligent act or omission of the Customer.

18. Agency

The Customer appoints Levart as its agent and attorney for the purposes of the management, testing and control of the Customer's:

- a) Internet domain names if any including without limitation the maintenance of name server records at its discretion;
- b) IP address allocations if any including the management of routing issues;
- c) Website including the right to correspond with third parties as the Customer's Webmaster;
- d) email services if applicable including maintenance of mail exchangers and receipt of administrative mail;
- e) intellectual property on the Internet including without limitation the power to correspond with third parties who misuse that intellectual property; and
- f) marketing on the Internet including the right to publicise the Website using Internet fora, provided that no expense shall be incurred by Levart in doing so without the prior approval of the Customer.
- g) access to payment facilities.

19. Termination

Without limiting the generality of any other clause in this Agreement, Levart may terminate this Agreement immediately by notice in writing if:

- a) the Customer is in breach of any term of this Agreement and such breach is not remedied within fourteen (14) days of it being notified by Levart;
- b) the Customer becomes, threatens or resolves to be come or is in jeopardy of becoming subject to any form of insolvency administration;
- c) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- d) the Customer, being a natural person, dies; or
- e) the Customer ceases or threatens to cease conducting its business in the normal manner.

If a notice of breach is not remedied by the Customer, Levart may, in addition to terminating the Agreement:

- a) repossess any of its property in the possession, custody or control of the Customer;
- b) retain any moneys paid;
- c) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- d) be regarded as discharged from any further obligations under this Agreement; and
- e) pursue any additional or alternative remedies provided by law.

20. Force Majeure

Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure. If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended. If a delay of failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party. If this Agreement is terminated pursuant to this clause, Levart shall refund moneys previously paid by the Customer pursuant to this Agreement for goods or services not provided by Levart to the Customer.

21. Miscellaneous provisions

Interpretation

References to a party to this contract include the party, his executors, administrators, or permitted assigns (or in the case of a corporation, the party

and its successors and assigns or permitted assigns). The word "person" includes a corporation. Words written in the singular shall include the plural and vice versa, and the masculine or neuter genders shall include every gender. References to statutes shall include all statutes, amending, consolidated or replacing them. If two or more parties enter into covenants, obligations or agreements together, those covenants, obligations or agreements shall bind them all jointly and severally. The words "in writing" include any communication sent by letter, facsimile or email.

Time

Where under this contract:

- a) anything is required to be done on the 29th, 30th, or 31st day of a month which does not contain such a date, references to that date shall be construed as references to the last day of the month;
- b) anything falls due to be done on a Saturday, Sunday or gazetted public holiday or a notice is deemed to be served on that date, the next day which is not a Saturday, Sunday or gazetted public holiday will be the date by which that thing falls due or when service is deemed to occur.

Further acts

Each party do whatever further acts and execute whatever further documents as might be required by law or reasonably requested by the other party in order to carry out and affect the intent and purpose of this contract.

Governing law

The laws of Western Australia govern this contract. Any dispute arising from this contract is to be determined by the courts of Western Australia and any court of appeal from a Western Australian court.

Assignment

Levart may assign the benefit of this contract to any related body corporate of Levart as that term is defined in the Corporations Law. The Customer may not assign this contract without the prior written consent of Levart

Waiver not to affect rights

If Levart fails to enforce its rights under this contract or to require the consultant to comply with any of its obligations under this contract, this shall not prevent Levart enforcing those rights in the future or taking advantage of any remedies that it may as a result of the Customer's breach.

Variation

This contract may not be varied after it has been executed except in writing signed by both parties.

Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understanding, whether verbal or in writing.

Severability

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

Survival of Agreement

Subject to any provision to the contrary, this Agreement shall endure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not endure to the benefit of any other persons. The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

Notices

Notices under this agreement may be delivered by hand, mail, facsimile or email to the appropriate address specified by either party to the other in writing. Notice will be deemed given:

- a) in the case of hand delivery, upon written acknowledgement of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- b) in the case of posting, three (3) days after despatch;
- c) in the case of facsimile, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission;

in the case of email, at the commencement of the first business day following transmission unless a non-delivery message is received by the sender in the meantime.