

Terms & Conditions

Website Development Agreement

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, the following words have the following meanings, unless expressly agreed otherwise:

Agreement means Part A and Part B of this Website Development Agreement.

Australian Consumer Law means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Business Day means Monday to Friday excluding public holidays in Sydney.

Business Hours means 9:00am to 5:00pm on Business Days.

Confidential Information means any information or document about or in any way relating to the terms of this Agreement or JCS in any media or form that is acquired by or made available to the Client in the course of the relationship between the Parties, including but not limited to any information or documents about the Website and development process, the JCS' business, organisational structure, activities, operating procedures, products and services, trade secrets and know how, finances, plans, transactions and policies.

Client Keywords means as agreed between JCS and the Client in writing from time to time.

Client Materials means as set out in clause 2.1.

Domain Name means as set out in Part A.

Fees means as set out in Part A.

Force Majeure Event means war, strike, lockout, natural disaster, flood, earthquake, act of God, or other circumstances beyond the reasonable control of JCS.

GST has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth)).

Insolvency Event means: (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency; (b) where the party is a company, a resolution is passed or Court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law; (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or (d) the party is unable to pay its debts as and when they fall due.

Intellectual Property Rights means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under article 2 of the convention establishing the World Intellectual Property Organization, and all rights to enforce any of the foregoing rights and Intellectual Property means any property that has these rights, including the Client Materials.

JCS Code means all software, Source Code, Object Code, graphics, text, libraries and other components of the Website.

Licence means as set out in clause 4.1.

Object Code means software code expressed in machine-readable form.

Payment Terms means as set out in the Part A.

Part A means the section marked "Part A – Commercial Terms" of this Agreement.

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Part B means this document.

Personal Property Securities Register means the Personal Property Securities Register established under the Personal Property Securities Act 2009 (Cth).

Search Engines means Google.com or as otherwise agreed between the parties.

Services means as set out in Part A.

Source Code means software code expressed in human readable form, which when compiled, assembled, interpreted or translated becomes Object Code.

Specifications means the specifications for the Website set out in your website brief.

Website means the website to be developed under this Agreement as set out in Part A and your website brief.

1.2 Interpretation

In this Agreement:

- (a) Headings and underlinings are for convenience only and do not affect the construction of this Agreement.
- (b) A provision of this Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision.
- (c) Currency refers to Australian Dollars.
- (d) A reference to a statute or regulation includes amendments thereto.
- (e) A reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of this Agreement.
- (f) A reference to a subclause or paragraph is a reference to the subclause or paragraph in the clause in which the reference is made.
- (g) The recitals are correct and form part of this Agreement.
- (h) A reference to time is to time in Sydney.
- (i) A reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity.
- (j) The words "includes", "including" and similar expressions are not words of limitation.

2. Delivery of Client Materials

- 2.1 The Client must, within 14 days of the parties entering into this Agreement, deliver to JCS copies of all logos, graphics, software, data and other materials and information which the Client wishes JCS to incorporate into the Website (the "Client Materials").
- 2.2 The Client warrants that all Client Materials that it or anyone on its behalf supplies to JCS, and all use thereof by JCS for the purposes of this Agreement, will not infringe the rights of any person or breach any law or regulation.
- 2.3 The Client indemnifies JCS in respect of all and any loss and damage incurred by JCS as a result of a breach of the warranty in clause 2.2 or in respect of any use of Client Materials supplied by or on behalf of the Client to JCS.

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3. Development of Website

- 3.1 JCS must develop the Website in accordance with the Specifications as soon as reasonably practicable.
- 3.2 For the avoidance of doubt, JCS is not required to, and will not, assign, license, disclose or deliver any Source Code or Object Code to the Client.

4. Licence to be granted to Client to use JCS Code in the Website.

- 4.1 JCS hereby grants to the Client a non-exclusive, non-assignable, non-sublicensable licence to operate the Website (including the Object Code version of any JCS Code in the Website), solely in the form developed by JCS, and only in conjunction with the Domain Name (the "Licence").
- 4.2 The Client agrees and acknowledges that in addition to JCS Code incorporated into the Website, the Website also relies on other JCS Code that is stored on JCS' computer servers and that the Website will not operate in accordance with the Specifications if the Website is unable to access the JCS Code held on JCS' computer servers or if the Website is transferred to a third party hosting provider that is incompatible with JCS' computer servers.

5. Licence Restrictions

- 5.1 The Client may not make any use of JCS Code except as expressly permitted by the Licence and may not do or authorise the commission of any act or omission that would or might invalidate or be inconsistent with JCS's Intellectual Property Rights in JCS Code. Without limiting the foregoing provisions, the Client agrees and acknowledges that, except as expressly permitted by the Licence, it must not and shall not, and will not permit any person to:
 - (a) licence, sublicense, resell, assign, transfer, distribute, or provide others with access to, JCS Code;
 - (b) "frame", "mirror" or serve any of JCS Code on any web server or other computer server over the Internet or any other network; or
 - (c) copy, alter, modify, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance JCS Code (except as expressly permitted by the Copyright Act 1968 (Cth)).
- 5.2 The Client must not use JCS Code or the Website in any way which is in breach of any statute, regulation, law or legal right of any person.

6. Fees

- 6.1 The Client must pay the Fees to JCS in accordance with the Payment Terms.
- 6.2 The Fees are exclusive of all taxes, duties and customs including GST and the Client agrees to pay JCS all taxes, duties and customs, including GST, in respect of any Supply (as that term is defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) made by JCS under this Agreement. The Client must pay all such taxes, duties and customs, including GST, at the same time as the Fees.

7. Client Obligations and Warranties

- 7.1 The Client warrants that it will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from JCS, any employee or contractor that was employed by or contracted to JCS during the term that JCS provides Services to the Client or the prior twelve (12) month period.
- 7.2 The Client warrants throughout the term of this Agreement that:
 - (a) there are no legal restrictions preventing it from entering into this Agreement;
 - (b) it will cooperate with us and provide JCS with information including any images and log in details as required, and comply with requirements in a timely manner, as requested by JCS from time to time, that are reasonably necessary to enable JCS to perform the Services;
 - (c) the information it provides to JCS is true, correct and complete;
 - (d) it will not infringe any third party rights in working with JCS and receiving the Services;

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- (e) it will inform JCS if it has any reasonable concerns relating to the provision of Services under this Agreement;
- (f) it is responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at its own cost, and for providing JCS with the necessary consents, licences and permissions;
- (g) it consents to the use of its name and Intellectual Property in relation to the Services in a way which may identify it;
- (h) if applicable, it has a valid ABN which has been advised to JCS; and
- (i) if applicable, it is registered for GST purposes.

8. Intellectual Property and Moral Rights

8.1 The Client agrees to provide information including Intellectual Property to JCS to enable JCS to provide the Services. The Client:

- (a) warrants that it has all necessary rights to provide the Intellectual Property to JCS;
- (b) grants JCS a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable right and licence to use the Intellectual Property in any way JCS requires to provide the Services; and
- (c) consents to any act or omission which would otherwise constitute an infringement of its Moral Rights.

8.2 If the Client (or any employee or agent) have Moral Rights in any Intellectual Property that the Client provides to JCS, the Client:

- (a) irrevocably consents to any amendment of the Intellectual Property in any manner by JCS for the purposes of providing Services;
- (b) irrevocably consents to JCS using or applying the Intellectual Property for the purposes of providing Services without any attribution of authorship;
- (c) agree that its consent extends to acts and omissions of any of JCS' licensees and successors in title; and
- (d) agree that its consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.

9. Ownership of Intellectual Property in the Website

9.1 The Client agrees and acknowledges that this Agreement and the development of the Website by JCS, does not transfer or assign any Intellectual Property Rights to it.

9.2 As between JCS and the Client, JCS owns all Intellectual Property Rights in JCS Code and in the Website.

9.3 The Client has no rights in JCS Code other than the rights granted to it pursuant to the Licence.

9.4 The Client must not take any step to invalidate or prejudice JCS's (or JCS's licensors') Intellectual Property Rights in JCS Code or otherwise. Without limiting the foregoing provisions, the Client must not register any security interest or purchase money security interest on the Personal Property Securities Register, or otherwise encumber or charge its rights in respect of JCS Code or under any licence granted by JCS under this Agreement.

10. Development for other clients of JCS

10.1 The Client recognises that JCS and/or its related bodies corporate may currently or in the future develop materials internally, or through the receipt of information from others, that is similar to the Website and/or the JCS Code or any part of them and JCS and/or its related bodies corporate may perform services similar to the Services provided hereunder for others.

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10.2 The parties agree that JCS and its related bodies corporate are not prevented from providing services or developing materials in relation to services that are competitive with those provided by JCS to the Client hereunder regardless of any similarity to the Website or any part thereof.

11. Search Engine Optimisation

11.1 The provisions of this clause 11 are only applicable where the Services expressly include Search Engine Optimisation of the Website.

11.2 The Client authorises JCS to submit details of the Website to the Search Engines.

11.3 JCS must submit the Website to the Search Engines within 45 days following the development of the Website by JCS.

11.4 If the Client wishes JCS to submit the Website to search engines which require payment of a fee for listing a website, or require payment of a fee to expedite the listing of a website, the Client shall be responsible for all fees payable to the relevant Search Engine associated with such submissions and listings in respect of the Website, and the Client must pay all such fees in advance to JCS. JCS must notify and obtain the approval of the Client to any such fees prior to submitting the Website to the fee-charging search engines.

11.5 The parties acknowledge that the Client desires, and has engaged JCS with the object of, having the Website listed on the first page of the Search Engines' natural or unpaid (also known as organic) results for searches carried out with the Search Engines using the Client Keywords.

11.6 JCS must, in the course of providing the Services, use its best endeavours to assist the Client secure first page Search Engine result rankings, but does not guarantee that the Website will be listed on the first page of the Search Engine results, in respect of the Client Keywords.

11.7 JCS may employ any legal techniques it chooses to employ in the course of providing the Services.

11.8 JCS is not obligated to disclose to the Client the techniques used by JCS as part of the Services.

11.9 The Client agrees and acknowledges that:

(a) failure to achieve Website rankings with any Search Engines in any time period shall not constitute breach of this Agreement;

(b) the Search Engines may regularly change the algorithms and policies used by the Search Engines to determine the ranking of websites in the Search Engines' search results;

(c) JCS has no control over any algorithms and policies of the Search Engines;

(d) the Website ranking for the Client Keywords with the Search Engines may at any time change as a result of any changes made to the algorithms and policies of the Search Engines used by the Search Engines to determine ranking of websites in Search Engine results;

(e) Search Engines sometimes drop rankings for no apparent or predictable reason.

12. Domain Name Registration

12.1 The provisions of this clause 12 are only applicable where the Services as specified in Part A expressly include "Domain Name Registration".

12.2 If the Services include Domain Name Registration, JCS agrees to procure the registration of the Domain Name in the name of the Client (subject to availability).

12.3 The registration of the Domain Name, and all matters related to the registration, will be subject to the terms and conditions of the registrar that JCS engages to register the Domain Name ("Registrar") ("Domain Name Supplier Terms").

12.4 A link to a copy of the Domain Name Supplier Terms is set out in Part A. The Domain Name Supplier Terms are incorporated into this Agreement by reference.

12.5 Upon request, JCS will provide a copy of the Domain Name Supplier Terms to the Client.

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- 12.6 The Client indemnifies JCS and the Registrar against all claims, losses, damages, proceedings, fees, costs and expenses incurred by either or both of them as a result of the breach by the Client of its obligations under the Domain Name Supplier Terms.
- 12.7 The Client releases JCS from all and any claims, costs, proceedings and allegations that the Client would otherwise have in connection with any non-performance or other act or omission of the Registrar.
- 12.8 Either party may terminate the provision of domain name registration in respect of the Domain Name by 30 days notice to the other party.

13. Website Hosting

- 13.1 The provisions of this clause 13 are only applicable where the Services as specified in Part A expressly include "Website Hosting".
- 13.2 If the Services include Website Hosting, JCS agrees to procure the hosting of the Website.
- 13.3 The hosting of the Website, and all matters related to the hosting of the Website, will be subject to the terms and conditions of the hosting provider that JCS engages to host the Website ("Hosting Provider") ("Hosting Provider Supplier Terms").
- 13.4 A link to a copy of the Hosting Provider Supplier Terms is set out in Part A. The Hosting Provider Supplier Terms are incorporated into this Agreement by reference.
- 13.5 The Client indemnifies JCS and the Hosting Provider against all claims, losses, damages, proceedings, fees, costs and expenses incurred by either or both of them as a result of the breach by the Client of its obligations under the Hosting Provider Supplier Terms.
- 13.6 The Client releases JCS from all and any claims, costs, proceedings and allegations that the Client would otherwise have in connection with any non-performance or other act or omission of the Hosting Provider.
- 13.7 Either party may terminate the provision of website hosting in respect of the Website by 30 days notice to the other party.

14. Liability

- 14.1 Neither party is liable to the other party for any indirect, special or consequential loss or damage incurred by the other party, including liability for loss of profits, loss of business opportunity, loss of savings, or loss of data.
- 14.2 JCS is only liable for direct loss incurred by the Client as a direct result of one or more breaches by JCS of its obligations under this Agreement. However, JCS's liability for all such direct loss is capped, in the aggregate, at an amount equivalent to the Fees paid by the Client under this Agreement, and which cap is reduced to the extent the Client or any Force Majeure Event caused or was responsible for such loss.
- 14.3 The goods and services supplied under this Agreement may come with implied non-excludable guarantees which are regulated by the Australian Consumer Law. The extent of the implied guarantees depend on whether the Client is a 'consumer' of goods or services within the meaning of that term pursuant to the Australian Consumer Law as amended. Where the Client is a 'consumer' for the purposes of the Australian Consumer Law, JCS is required to provide the following mandatory statement (and shall be deemed to have hereby provided the statement) to the Client: "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. 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 goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."
- 14.4 If the goods or services supplied by JCS to the Client are supplied to the Client as a 'consumer' of goods or services within the meaning of that term in the Australian Consumer Law as amended the Client will have the benefit of certain non-excludable rights and remedies in respect of the goods or services and nothing in these terms and conditions excludes or restricts or modifies any condition,

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warranty, guarantee, right or remedy which pursuant to the Competition and Consumer Act 2010 (Cth) is so conferred. However, if the goods or services are subject to a non-excludable condition, warranty, guarantee, right or remedy implied by the Australian Consumer Law and the goods or services are not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to s 64A of the Australian Consumer Law, JCS limits its liability for breach of any such non-excludable warranty, guarantee, right or remedy implied by the Australian Consumer Law (other than a guarantee implied by sections 51, 52 or 53 of the Australian Consumer Law) or expressly given by JCS to the Client, in respect of each of the goods and services, where it is fair and reasonable to do so, at the option of JCS, to one or more of the following:

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

14.5 In order for the Client to claim against JCS under a non-excludable warranty, guarantee, right or remedy provided by the Australian Consumer Law, or under an express warranty given in respect of the goods or services provided under this Agreement, the Client must provide written notice to JCS with documentary evidence substantiating the claim, for JCS's review, and, in respect of the Website, must continue to use it only in accordance with the provisions of this Agreement.

14.6 Upon receipt of a valid claim from the Client under an implied warranty, guarantee, right or remedy provided by the Australian Consumer Law, JCS will contact the Client to arrange a suitable remedy. The Client may claim reasonable expenses incurred in making a valid claim under such a warranty, guarantee, right or remedy by providing documentary evidence of the expenses to JCS. The Client will be responsible for any expenses incurred in relation to an invalid claim.

14.7 Where JCS elects to repair goods, the Client agrees that the goods may be replaced by refurbished goods of the same type rather than being repaired and refurbished parts may be used to repair goods. The Client acknowledges that where the goods are repaired and are capable of retaining user-generated data, it is possible that the repair of the goods may result in loss of data.

14.8 Any warranty against defects provided by JCS to the Client as a 'consumer' under the Australian Consumer Law is in addition to other rights and remedies of the Client under a law in relation to the goods or services to which the warranty relates.

14.9 Where the Client is not a 'consumer' for the purposes of the Australian Consumer Law, all conditions, warranties and guarantees implied in this Agreement are excluded, to the extent possible by law.

15. Confidentiality

15.1 Each party agrees and acknowledges that it may receive Confidential Information of the other party during the term of this Agreement.

15.2 Each party (the first party) agrees and acknowledges that the Confidential Information of the other party will be received and held by the first party in strict confidence and will not be disclosed by the first party, except:

- (a) with the prior written consent of the other party;
- (b) where disclosed to the employees or professional advisors of the first party on a confidential basis;

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- (c) as required by the rules of any stock exchange; or
- (d) as required by a court of competent jurisdiction, and then, only to the extent required, and provided that the first party must promptly notify the other party of such requirement of disclosure and provide full particulars to the other party of the disclosure.

15.3 Confidential Information does not include any information:

- (a) that is independently developed, obtained or known by a party, without any obligation of confidence to the other party; or
- (b) that is in the public domain, except where due to a breach of this Agreement or any breach of any obligation of confidence.

16. Termination

16.1 Either Party may terminate this Agreement at any time by giving at least 20 Business Days' notice in writing to the other Party.

16.2 Either party may terminate this Agreement if the other party (the "Defaulting Party") is in material breach of this Agreement and the breach is not capable of remedy, or where the breach is capable of remedy and the Defaulting Party fails to remedy the breach within thirty (30) days of notice.

16.3 Either party may terminate this Agreement by notice to the other party if the other party suffers an Insolvency Event.

16.4 If this Agreement is terminated:

- (a) JCS must, at the option of the Client, destroy or return all Confidential Information of the Client to the Client;
- (b) the Licence granted by JCS under this Agreement will immediately and automatically terminate and the Client must, at the option of JCS, promptly destroy or return all Confidential Information of JCS to JCS, and must immediately cease using the JCS Code and the Website.

16.5 Termination does not affect any accrued rights of either party.

17. Notices

17.1 A notice under this Agreement shall be sent by hand delivery, post or email, using the address specified at the top of the first page of this Agreement or the email address for the recipient's representative specified in Part A.

17.2 Any notice issued by hand shall be deemed delivered upon delivery.

17.3 Any notice issued by post shall be deemed delivered 3 Business Days after posting if posted domestically, or 10 Business Days after posting if posted internationally.

17.4 Any notice issued via email shall be deemed to be delivered upon the email being sent, provided that if an email is sent out of Business Hours, it shall be deemed to be delivered at 9am on the next business day.

18. Dispute Resolution

18.1 If a dispute arises out of, or in any way in connection with, or otherwise relates to this Agreement, or the breach, termination, validity or subject matter hereof, or as to any related claim at law, in equity or pursuant to any statute, the parties agree to refer their dispute to Mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.

18.2 The Mediation shall be conducted in Sydney in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the dispute is referred to ACDC and which terms are hereby deemed incorporated into this Agreement.

18.3 The costs of the mediator shall be shared equally between the parties.

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18.4 Nothing in this clause shall limit either party's right to seek urgent interlocutory relief from any court of competent jurisdiction at any time.

19. General

19.1 Amendment: JCS may amend these terms and conditions from time to time. JCS will endeavour to provide written notice, and the current terms will be displayed at www.jcs.com.au/terms-and-conditions.

19.2 Assignment: If there is a change of control of our business or a sale or transfer of business assets, we reserve the right to transfer to the extent permissible at law, this Agreement and all of JCS' rights and obligations under this Agreement. The Client may not assign, transfer, licence or novate its rights or obligations under this Agreement without the prior written consent of JCS.

19.3 Severability: If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain enforceable.

19.4 Relationship: The parties are independent contractors and this Agreement does not create any relationship of partnership, joint venture, or employer and employee or otherwise.

19.5 Australian Consumer Law: The exclusions and limitations of liability set out in this Agreement shall apply to the fullest extent permissible at law, but the parties do not exclude or limit liability which may not be excluded or limited by law. Without limiting the foregoing provisions, JCS does not exclude liability under the Australian Consumer Law which is prohibited from being excluded. The parties acknowledge and agree that the limitations and exclusions of liability contained in this Agreement constitute an allocation of risks that form part of the negotiated commercial terms of this Agreement.

19.6 Entire Agreement: This Agreement constitutes the entire agreement between the parties and to the extent possible by law, supersedes all prior understandings, representations, arrangements and agreements between the parties regarding its subject matter.

19.7 Jurisdiction: This Agreement will be interpreted in accordance with the laws in force in New South Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts situated in New South Wales.