

## GENERAL TERMS AND CONDITIONS FOR SERVICES PROVIDED BY IMPACT MEDIA LIMITED

IT IS HEREBY AGREED as follows:

### 1 DEFINITIONS

In an Agreement:

“**AGREEMENT**” means an Agreement between Impact Media Limited and The Client which may include Appendices and Annexures;

“**APPENDICES**” means the appendices to an Agreement;

“**ANNEXURES**” means the annexures attached to an Agreement;

“**COMMENCEMENT DATE**” means as at the date of an Agreement;

“**CONFIDENTIAL INFORMATION**” means all information in any form relating to a party (the owner) which becomes known to the other party (the recipient) as a result of the course of dealings between them but does not include any information to the extent the recipient can show the relevant information:

- is part of or legitimately enters the public domain;
- is already in the unrestricted possession of the recipient prior to disclosure;
- has been independently developed by the recipient (as evidenced by its records);
- is not intended to be confidential as evidenced by the owner's written agreement; or
- legally must be disclosed provided that prior to disclosing the information the recipient gives the owner notice and then, if reasonably requested the owner, obtains a confidentiality or similar protection order limiting persons to whom disclosure must be made;

“**HOSTING FEES**” means those fees payable to ensure continued service for the website.

“**INTELLECTUAL PROPERTY**” means any intellectual property, including copyright, rights in inventions (including patents and patent applications), trade marks, brand names, registered designs, know-how, Confidential Information, trade secrets and other rights, which may arise from intellectual activity;

“**PARTY**” means a party to an Agreement;

“**WEBSITE PROPOSAL**” means the written proposal submitted to The Client for their approval, specifying the work which will be undertaken by Impact Media Limited in order to provide those services as detailed in the written proposal;

“**WEBSITE SERVICES**” means the services as defined in an Agreement.

## 2 TERM OF AGREEMENT

### (a) Initial Term and Renewal Terms.

- i) An Agreement shall continue for an initial term of twelve (12) months from the Commencement Date (“Initial Term”) and shall be automatically renewed thereafter for subsequent twelve (12) month periods unless terminated in accordance with an Agreement.
- ii) During any renewed term, all terms and conditions in an Agreement shall continue in full force and effect.

### (b) Termination

- i) Either Party may terminate an Agreement:
- ii) At any time after the Initial Term has expired, by giving sixty (60) days prior written notice to the other Party.
- iii) If the other Party breaches an Agreement and has not rectified the breach within 30 days after receiving written notice requesting the breach to be remedied.
- iv) If the other Party is unable to pay its debts as and when they fall due or the other Party has a liquidator or other similar officer appointed to it or over the whole or part of any of its assets.

### (c) Survival of Obligations

- i) Termination of an Agreement for any reason shall not extinguish or otherwise affect any of the obligations under an Agreement which by their nature are intended to survive termination.

### (d) Obligations on termination

- i) Upon termination of an Agreement:
- ii) Impact Media Limited will provide The Client with such assistance and information as Impact Media Limited reasonably considers necessary to enable The Client to have an orderly transition and continuity of the Website Services to an alternative supplier;
- iii) Each party will deliver to the other party the property of the other party (including its Confidential Information) unless instructed otherwise;
- iv) Impact Media Limited will, for up to one month after termination, continue to offer to The Client such Website Services under the terms of an Agreement as The Client may reasonably require while The Client makes the transition to an alternative supplier, and Impact Media Limited will be entitled to charge The Client the charges which applied at the time of termination.

## 3 WEBSITE DESIGN AND IMPLEMENTATION

- (a) The Client agrees to pay Impact Media Limited such amounts as invoiced for the Website Services as detailed in the Website Proposal or an Agreement;
- (b) Impact Media Limited reserves the right to charge for any additions to the Website Services which varies from the Website Proposal or an Agreement in any way whatsoever;
- (c) The Website Proposal or an Agreement forms part of an Agreement. The terms of the Website Proposal or an Agreement will prevail in the event there is a conflict between an Agreement and the Website Proposal or an Agreement.

#### 4 HOSTING FEES

Impact Media Limited will charge Hosting Fees as notified to The Client at the time of entering into an Agreement for Web Services.

#### 5 PAYMENT TERMS

- (a) Terms of payment are 7 days following invoice date. Invoices for Website Services are required to be paid within 7 days based on the following:
- i) For contracts under 1 month:
    - (1) Payment of 33.3% on signing an Agreement; and
    - (2) Payment for the remainder at the end of the 1st Calendar Month;
  - ii) For contracts over 1 month:
    - (1) 33.3% on signing an Agreement;
    - (2) 33.3% at the end of the 1st Calendar Month; and
    - (3) The remainder at the end of the 2nd Calendar Month;
- (b) Impact Media Limited shall furnish The Client with invoices for all services in advance. Other than in relation to disputed invoices (as defined in clause 5(f)), The Client shall pay invoices to Impact Media Limited 7 days following invoice date.
- (c) The Client will pay Impact Media Limited the Hosting Fees as defined from time to time, in advance.
- (d) All amounts payable under an Agreement shall be exclusive of GST and The Client shall be responsible for any GST on that amount. Aside from GST, The Client will be responsible for all other taxes, levies, charges, and duties assessed on or in relation to the Website Services.
- (e) If The Client has not raised a dispute in relation to an invoice as per the provisions of section 5(f) then if The Client does not meet the obligations for payment as detailed in section 5, Impact Media Limited reserves the right to deny access to the Website Services based on the following:
- i) If the invoice is not paid in full with 7 days, Impact Media Limited will issue a letter advising that payment is overdue and payment must be made within 7 days;
  - ii) If the invoice remains unpaid for a further 7 days, Impact Media Limited will deny access to the Website Services;
  - iii) In the event that access to the Website Services is denied in accordance with this section 5(e) the Impact Media Limited will not be liable under any circumstances whatsoever for any costs incurred, compensation or loss of earnings due to the unavailability of the Website Services.
- (f) If The Client raises a dispute in relation to an invoice submitted under this section 5 (“disputed invoice”):
- i) The Client is to pay that part of the disputed invoice in respect of which no dispute exists, by the due date for that invoice; and
  - ii) in respect of that part of the disputed invoice which is disputed:
    - (1) if the dispute is resolved at least 10 working days before the due date for payment of that invoice, then the amount agreed by the parties to be payable, or determined under section 10 to be payable, must be paid by the due date

- (2) in all other cases, the amount agreed by the parties to be payable, or determined under section 10 to be payable, must be paid within 10 working days of such agreement or determination.

## 6 INDEMNITY AND LIABILITY

- (a) Subject to clause 6(b), each party shall indemnify and keep the other party and its personnel indemnified from and against all claims, costs (including reasonable legal costs), loss, damage and liabilities suffered by the other party and its personnel arising out of or in connection with the indemnifying party's performance, breach or failure to perform its obligation, as under an Agreement, or any wilful, unlawful, or negligent acts or omissions.
- (b) Except in relation to clauses 7 (confidentiality and security), 8(intellectual property) and 11 (insurance), negligence, deliberate misconduct and liability of personal injury (including sickness and death), neither party shall be under any liability to the other in respect of any indirect loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise in respect of goods or services supplied pursuant to the Agreement or in respect of a failure or omission on the part of the first party to comply with its obligations under an Agreement.
- (c) The Client warrants that it has not relied on any representation made by Impact Media Limited which has not been stated expressly in an Agreement, or upon any descriptions, illustrations, or specifications contained in any document including catalogues or publicity material produced by Impact Media Limited.

## 7 CONFIDENTIALITY AND SECURITY

- (a) A party (the "Recipient") receiving the other party's (the "Owner") Confidential Information shall:
- i) treat, and shall ensure that its personnel, agents, and any subcontractors treat, the Confidential Information with the utmost confidence;
  - ii) not use the Confidential Information (nor allow it to be used) for any purpose other than to perform its obligations under an Agreement;
  - iii) not disclose the Confidential Information to anyone other than personnel, subcontractors or agents who have a need-to-know for the purposes of fulfilling the Recipient's obligations under an Agreement;
  - iv) ensure that its relevant personnel, subcontractors, and agents are made aware and are bound by the duty of confidence that is owed by it to the Owner.
- (b) Impact Media Limited agrees to comply with The Client security, operational and confidentiality requirements.

## 8 INTELLECTUAL PROPERTY

- (a) Pre-existing Intellectual Property which is not developed or prepared under an Agreement ("Pre-existing Intellectual Property"), but is used for the purposes of an Agreement, shall remain the property of its current owner.
- (b) New Intellectual Property, or modifications, adaptations and additions to Pre-existing Intellectual Property, developed by, commissioned by, or contracted for The Client shall be Impact Media Limited property. Impact Media Limited will ensure The Client is licensed, in perpetuity and without further charge unless

otherwise specified, to have unrestricted use of such Intellectual Property to enable it to obtain the full benefit of any of the Website Services for its business activities.

- (c) Where Pre-existing Intellectual Property not owned by The Client forms part of any of the Website Services or any deliverable provided by Impact Media Limited, Impact Media Limited will ensure where it is able that The Client is licensed, in perpetuity and without further charge unless otherwise specified, to have unrestricted use of such Pre-existing Intellectual Property to enable it to obtain the full benefit of any of the Website Services for its business activities.

## 9 FORCE MAJEURE

- (a) Neither Party shall be liable for the delay or failure to perform its obligations pursuant to an Agreement if such delay is due to circumstances beyond its reasonable control ("Force Majeure"). Such circumstances shall include but not be limited to:
- i) acts of God, acts of nature, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
  - ii) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
  - iii) power failure; and
  - iv) strikes.
- (b) If a delay or failure by either Party to perform its obligations due to Force Majeure exceeds sixty (60) days, the other Party may immediately terminate the Agreement by notice in writing.

## 10 DISPUTES

- (a) If any dispute arising out of or in connection with an Agreement ("Dispute") cannot be settled by negotiation between the Parties or their representatives either Party may serve on the other Party a notice of dispute ("Notice of Dispute") setting out the nature of the Dispute, what outcome the Party wants and what action the Party thinks will settle the Dispute
- (b) If the Parties are not able to settle the Dispute within 10 Working Days after service of the Notice of Dispute, either Party may refer the matter to an arbitrator agreed between the Parties. The arbitrator will decide the time and place for the arbitration after consultation with the Parties.
- (c) If the Parties are not able to agree who should be appointed as arbitrator, the arbitrator will be appointed by the NZ Employers and Manufacturers Association.
- (d) The Parties must attend the arbitration but may be legally represented.
- (e) Prior to referring a matter to an arbitrator pursuant to this clause, the Parties shall:
- i) formally refer the Dispute to their respective contract managers for consideration; and
  - ii) in good faith explore the prospect of mediation.
- (f) Nothing in this clause shall prevent a Party from seeking urgent equitable relief before an appropriate court.

## 11 INSURANCE

- (a) Before Impact Media Limited provides any Services under an Agreement, Impact Media Limited must effect and maintain valid and enforceable public liability insurance policies which cover Impact Media Limited, all permitted personnel of Impact Media Limited and any permitted subcontractors engaged by Impact Media Limited in connection with the provision of the Services under an Agreement for their respective rights and interests and liabilities to third parties.
- (b) The public liability policy shall be for an amount of NZ\$1million in respect of any one occurrence giving rise to liability arising out of or in connection with an Agreement.

## 12 WARRANTIES & COVENANTS

Impact Media Limited warranties and covenants with The Client that Impact Media Limited:

- (a) Will exercise the standards of skill, care and diligence in the performance of the Website Services that are accepted practice in New Zealand for the type of Website Services being provided by Impact Media Limited;
- (b) Has the specific skills and experience necessary to provide the Website Services;
- (c) Will use its best endeavours to provide the Website Services in an appropriate, effective and timely manner and will at all times in its dealings with The Client act in good faith and in the best interests of The Client
- (d) Will comply with and will ensure that the Website Services comply with all laws, ordinances, rules, codes, regulations, requirements and orders of under all relevant statutes;
- (e) Has full power and authority (including from all relevant service providers and licensors) necessary to validly enter into and perform its obligations under an Agreement.

## 13 GENERAL PROVISIONS

- (a) Modifications to be in writing.
  - i) An Agreement may only be modified or amended by written agreement signed by both parties.
  - ii) Any variation or change to the Scope of Works or that service which has been described in the Website Proposal or an Agreement and has been accepted by both parties as the services being delivered may only be modified or amended by written agreement. Any instruction to alter the Scope of Works or that service which has been agreed upon, may be sent by electronic mail but will not be deemed as accepted until acknowledgement has been received from the other party.
- (b) Waiver.

A single or partial exercise or waiver of a right relating to an Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) Entire agreement.

An Agreement is intended by the Parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement and supersedes any prior agreement, representation, or understanding, with respect to the subject matter of an Agreement. The Parties do not intend that an Agreement benefit or create any right or cause of action in any third person.

(d) Governing law.

An Agreement shall be interpreted and governed exclusively by the laws of New Zealand.

(e) Notice.

i) All notices required or permitted to be given under an Agreement shall be in writing, shall be delivered personally, by facsimile, or by certified mail, return receipt requested (first class postage pre-paid) at the address shown on page one of an Agreement, unless a Party subsequently designates a different address in accordance with this clause.

ii) All notices shall be deemed to be delivered at the following times:

- if delivered personally, at the time of delivery;
- if delivered by facsimile, at the time the facsimile is transmitted in its entirety as evidenced by the facsimile transmission sheet;
- if delivered by certified mail, two (2) Working Days after posting.

(f) Assignment

An Agreement and the rights or obligations conferred by it shall not be assigned, transferred, or sublicensed in whole or in part by Impact Media Limited without the prior written consent of The Client.