

## Module 2 - Web Services

This Module applies to any Web Services ordered in an Order Form.

### 1. Definitions

In this Module:

**Professional Services** means any professional services set out in an Order Form.

**Regulator** includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman, Communications Alliance Limited, and any other relevant government or statutory body or authority.

**Specific Terms** means the terms applicable to only some Web Services as set out in Annexure A.

**Website Support Services** means the Services set out in section 4 of the Specific Terms.

### 2. Web Services

- (a) We agree to provide you with the Web Services set out in your Order Form. The Specific Terms will apply to certain Web Services.
- (b) If the Web Services include Professional Services, we:
  - (i) will use appropriately trained and qualified Personnel to perform the Professional Services; and
  - (ii) will ensure our Personnel will use due care and skill when providing the Professional Services.

### 3. Term

- (a) The Web Services will expire at the end of the term specified in the relevant Order Form.
- (b) The Web Services will automatically renew if specified in the Specific Terms.
- (c) Any timescales, delivery dates or milestones set out in an Order Form are estimates only. We do not guarantee a time frame for completion of any Services.

### 4. Fees and Payment

- (a) For the purposes of this Module, the following Web Services are Non-Recurring Services:
  - (i) Professional Services;
  - (ii) Domain Name Services;

- (iii) Website Design Services; and
- (iv) Google Adwords Services.

Fees for all Non-Recurring Services are payable in advance unless otherwise set out in an Order Form. We will invoice you and the Fees must be paid prior to commencement of any Non-Recurring Services.

- (b) All Web Services not listed in clause 4(a) are Recurring Services.

## **5. Termination**

### **5.1 Termination of ongoing Services by Client**

- (a) If an Order Form includes ongoing Web Services (such as webhosting Services), you may cancel such ongoing Web Services by providing us with 30 days written notice.
- (b) If the Order Form provides that any ongoing Web Services are being provided on a fixed term basis, on termination under clause 5.1(a) you must pay us all Fees that would be payable during that fixed term.

### **5.2 Consequences of termination**

On termination of any Domain Name Registration Services, then you may transfer your domain name to another domain name registrar.

## Annexure A- Web Services Specific Terms

### 1. Domain Name Services

The following Specific Terms are applicable if the Order Form includes Domain Name Services.

#### 1.1 Definitions

The following definitions apply in this section 1:

**auDA** means .au Domain Administration Limited ACN 079 009 340, the regulatory body responsible for administering the Australian .com.au domains, or its successor;

**Dispute Resolution Policy** means the binding dispute resolution policy with respect to a domain name which forms part of the Registration Agreement and conditions for registration and maintenance of that domain name;

**Domain Name Registration Policies** means any naming policy, rules, procedures or terms and conditions of registration applicable to you in relation to the registration, transfer and maintenance of a domain name (including without limitation a Dispute Resolution Policy and the terms and condition of the Registration Agreement). The current Domain Name Registration Policies for each domain can be accessed via the Melbourne IT website at <http://www.melbourneit.com.au/policies/index>;

**Domain Name Services** means any domain name registration Services or Domain Name Transfer Services you order on the Order Form;

**Domain Name Transfer Services** means any domain name transfer Services your order on the Order Form;

**ICANN** means the Internet Corporation for Assigned Names and Numbers;

**Melbourne IT** means Melbourne IT Limited ACN 073 716 793, an accredited registrar of ICANN;

**Registration Agreement** means the agreement or agreements to be entered into between you and Melbourne IT to register, renew or transfer a Domain Name using Melbourne IT as the registrant of record. The current Registration Agreement for each domain can be accessed via the Melbourne IT website at <http://www.melbourneit.com.au/policies/index>; and

**Registry** means the entity authorised to administer the register for each domain.

#### 1.2 Fees

Except where we fail to comply with consumer guarantees under the Australian Consumer Law, you acknowledge and agree that all Fees for Domain Name Services are non-refundable. We cannot provide refunds for domain names that are incorrectly registered, including, without limitation, domain names that contain spelling errors. It is your responsibility to carefully check the domain name selected in the Order Form to ensure it is correct.

### **1.3 Automatic Renewal**

- (a) During the term of this Agreement, we will automatically renew any of your domain names successfully registered or transferred as and when such renewal is required for the same length as the previous registration period. You agree to pay any such renewal Fees added to your account in accordance with the payment terms set out in this Agreement
- (b) If you do not want Localsearch to renew a domain name, you must provide written notice at least 10 days prior to when the next domain name renewal fee falls due.

### **1.4 Authorised reseller**

- (a) We are an authorised reseller of Melbourne IT's domain name registration services. We are not, and do not represent in any way that we are, an accredited ICANN or auDA registrar nor have the power or authority of an accredited ICANN or auDA registrar, including without limitation the power or authority to approve or refuse any registration or renewal application or to revoke any domain name licence.
- (b) To the extent permitted by law, we expressly disclaim any responsibility with respect to any decision by a Registry, court or any third party to refuse to register, terminate or transfer a domain name for any reason. We do not warrant or guarantee that any domain name applied for will be registrable or registered. You must not take any action with respect to a requested domain name until registration has been affected and you have been notified of such registration.

### **1.5 Appointment as agent**

- (a) You appoint us as agent for the purpose of entering into the Registration Agreement with Melbourne IT on your behalf and performing the domain name registration services contemplated by this Agreement and the Order Form. You agree you have read, understood and agree to be bound by the applicable Registration Agreement for the domain name being registered.
- (b) You agree you have read and understood the Domain Name Registration Policies applicable to your domain names and you agree to the consents, warranties and indemnities that you, as the registrant, are required to give pursuant to those Domain Name Registration Policies.

### **1.6 Domain Name Transfer Services**

- (a) You are responsible for any contractual obligations that may exist with the current or any other registrar.
- (b) In order to take advantage of the Domain Name Transfer Services, you will first need to retrieve the "domain password" (aka, "registry key", "transfer password", "transfer key", "EPP authentication code", "domain token", "authcode password", or "UDAI key") from your current registrar.
- (c) You will ensure that the domain is not locked by your current registrar.

- (d) You acknowledge that 60 days must have passed on the current domain name registration term (and that this term will not be expiring within 7 days) in order to transfer your domain name from its existing registrar to us.

## **2. Webhosting Services**

The following Specific Terms are applicable if the Order Form includes Webhosting Services.

### **2.1 Definitions**

The following definitions apply in this section 2:

**Email Hosting Services** means any email address hosting Services you order on the Order Form; and

**Webhosting Services** means any webhosting Services you order on the Order Form, including any Email Hosting Services.

### **2.2 Fees**

Fees for monthly hosting will be billed from the date that we deem construction of the website is complete and are recurrently billed every 30 days thereafter. We will notify you by email when construction of the website is completed.

### **2.3 Automatic Renewal**

- (a) Monthly contracts will continue on a monthly basis without notice until you cancel or terminate that contract in accordance with this Agreement. If the Order Form includes a fixed contract period for the Service, on expiry of that fixed contract period:
  - (i) if you have provided valid credit card, debit card or Payment Provider details, the Service will be automatically renewed on a month by month basis and you agree for us to automatically deduct the relevant Fees from the nominated card or account on the renewal date;
  - (ii) if you have not provided valid credit card, debit card or Payment Provider details (for example, the Service was paid for using EFTPOS or cheque at the time of entering into this Agreement), we will automatically renew the service for a further fixed contract period. We will invoice you 30 days before the renewal date and you agree to pay the Fees specified in the invoice when they fall due.
- (b) If you do not wish to renew the Service, you must notify us 30 days prior to the end of your contract period (or end of the month if the Order Form provides for a month-by-month Service).

### **2.4 Support**

Unless you have ordered Website Support Services in an Order Form, you acknowledge and agree that we will not provide any direct one-on-one support (via email, telephone or otherwise) for your Webhosting Services.

## 2.5 Data transfer usage

If, in any billing month, usage of the Webhosting Services exceeds:

- (a) the data transfer and usage limits associated with the Webhosting Services as set out in the Order Form; or
- (b) if no such limits are specified in the Order Form, the data transfer and usage limits set out in the Acceptable Use Policy,

we may (without limiting any of our rights under this Agreement) apply by way of limitation to the speed of your website a maximum of 256 kilobytes per second (upload speed) and a maximum of 256 kilobytes per second (download speed) for the remainder of that billing month.

## 2.6 Server storage limits

Your website is subject to a server storage amount as set out in the Order Form or the Acceptable Use Policy.

## 2.7 Email Hosting Services

- (a) Each Email Hosting Service will include 10 individual email accounts.
- (b) Use of the Email Hosting Services is subject always to compliance with the data usage and storage limits set out in the Order Form (if any) and the Acceptable Use Policy.
- (c) You agree to our use of spam and virus filters which may require the use of third party equipment or services to monitor and filter email traffic between our equipment and the internet. You agree that we will not be liable for any loss or damage resulting from the use of spam or virus filters.

## 3. Website Design Services

The following Specific Terms are applicable if the Order Form includes Website Design Services.

### 3.1 Definitions

The following definitions apply in this section 3:

**Advanced Design Processes** means the creation of elements of a website including, but not limited to the header, navigation, feature images and visual sections of the site. The determination of what is considered an "advanced design process" is in our absolute discretion.

**Bespoke Website Design Services** has the meaning given in section 3.6;

**Client Approval** has the meaning given in section 3.5;

**Core Website Design Services** has the meaning given in section 3.3

**Custom Templates** means new Templates created by us based on your particular specifications, designs or directions;

**Initial Build Cost** means the total amount of all Website Design Services you purchase as identified in the Order Form. The cost of any additional Services (such as for example Social Media Marketing Services) you purchase will be added as applicable to the Initial Build Cost.

**Live** means the point in time when your website is activated, rendering the website published and publically accessible on the internet through the World Wide Web;

**Management Site** means business.localsearch.com.au or another a link which we provide you from time to time;

**Minor change** means anything not deemed by us to be a Structural Change. The determination of what is considered a "minor change" is in our absolute discretion.

**Structural Change** means any changes to the website that requires moving elements of the website including, but not limited to the header, navigation, feature images and visual sections of the site. The determination of what is considered a "structural change" is in our absolute discretion.

**Templates** means our website design templates (including static pages, animations, forms and other data or materials) which are made available from time to time to use as a basis for designing websites and includes Custom Templates;

**Website Design Services** means any Core Website Design Services and Bespoke Website Design Services.

### 3.2 Fees

If you order Bespoke Website Design Services, you must provide an initial, non-refundable upfront deposit of the amount specified in the Order Form (or, if no amount is stated in the Order Form, \$1,000) and any other Fees for Bespoke Website Design Services provided are payable upfront, or as otherwise set out in the Client Order Form.

### 3.3 Website Design Services

- (a) We will (unless otherwise specified on an Order Form):
  - (i) provide you with initial access to the Templates so you can make a selection;
  - (ii) provide a reasonable amount of consultation with our personnel (which in our absolute discretion may be by phone, email or any other mode of communication) in order to design and set up your Website; and
  - (iii) make Live and publish the Website when completed, in accordance with the specifications for those packages in the Order Form,(together, **Core Website Design Services**).
- (b) We may require you to pay additional Fees based on our then-current consultation rates, including up to the total sum of the Initial Build Cost for each request, where we consider that you are requiring more than a "reasonable amount of consultation" and the determination of what is considered "reasonable amount of consultation" under this clause is in our absolute discretion.

- (c) We reserve the right to begin design and construction of the website after 45 days from the date the Order Form is agreed, regardless of the amount (if any) of content and imagery submitted by you. The website will be posted Live and accessible under a preview link as soon as the website construction is completed by us.
- (d) We will design and develop the website with your help and input. You may submit Your Materials to us by logging into your account at [the Management Site](#).
- (e) If you provide links to sample sites in Your Materials, this is for general information purposes only and to assist us with the design of your website. The functionality and detail of the sample sites will not be duplicated unless such functionality and detail are specifically requested and such duplication does not infringe upon the intellectual property rights of others. We will not be held liable for the accuracy of information, typos, or spelling errors in any of Your Materials approved by you and published on the website.
- (f) We will develop the website design and content proofs after we receive Your Materials including any imagery from you. We will provide you with an email to enable you to access and review the website design and content proofs. If you consider any changes are necessary, you must contact us. You may request up to two (2) Structural Changes. We will make all necessary consequential changes and will reissue new design and content proofs to check and track the changes by email. If you require more than two (2) Structural Changes then those may, in our discretion, be deemed beyond the "reasonable amount of consultation" and result in additional Fees to you
- (g) Once your approval of the design and content proofs is gained or is deemed to have been obtained in accordance with this Agreement, the construction phase of the website will begin.

### **3.4 Website Construction Phase**

- (a) Construction of the website will begin based on the approved design and content proofs arising out of the Website Design Services. No Structural Changes can be made during this website construction phase without you incurring additional Fees.
- (b) Any Advanced Design Processes requested that are not specified in the description of the product or service initially purchased, may result in additional Fees for which you will be notified of in advance.
- (c) You will be notified by email or phone when construction of the website is completed.
- (d) During the website construction phase, you may contact us to request free of charge two (2) Minor Changes. We will make all necessary consequential changes and notify you via email or phone to check and track the changes. If you require more than two (2) Minor Changes then those may, at our discretion, be deemed to be beyond the "reasonable amount of consultation" and result in additional Fees.



### 3.5 Client Approval

- (a) You agree that if you fail to respond within 21 days to our notification or requests for:
  - (i) review of design and content proofs; or
  - (ii) missing information,the website, along with the functionality of the website and the Services rendered, will be deemed to have your approval, and the website will be designed, constructed and taken Live with the missing information "as-is" or "under construction".
- (b) Your website will be posted Live and accessible under a preview link as soon as the website construction is completed by us. You are responsible for testing the functionality of the website upon our request for approval, and notification that the website has been completed. This includes, but is not limited to, functionality of all website pages, database, e-commerce store, payment functions, galleries, applets, forums etc.

### 3.6 Bespoke Website Design Services

If you have ordered "Bespoke" website packages in the Order Form, we may provide additional or alternative Services to the Core Website Design Services, such as:

- (a) analysis and advice on your current website;
- (b) creation of a new Website using our Templates; or
- (c) creation of a new Website using a Customer Template,

in accordance with the specifications for that package in the Order Form (together, **Bespoke Website Design Services**).

### 3.7 Website modification

- (a) If you have purchased Core Website Design Services, then you may only make modifications to your Materials by:
  - (i) using the customer content management system on the Management Site; or
  - (ii) paying additional Fees as specified by us (unless you have signed up for Website Support Services), by calling us and directing our personnel to make changes in accordance with section 3.7(a)(i).
- (b) If you have purchased Bespoke Website Design Services, then you may:
  - (i) make modifications to Your Materials on the Website in accordance with sections 3.7(a)(i) and 3.7(a)(ii); and
  - (ii) request us to make other changes to the Website (including any Template) at additional Fees to be agreed.

### 3.8 Search engine optimisation services

Where we provide you with any search engine optimisation services, you agree that we may access the website and systems for the purpose of providing those services.

## 4. Website Support Services

The following Specific Terms are applicable if the Order Form includes Website Support Services.

### 4.1 Definitions

The following definitions apply in this section 4:

**Support Services** means any support Services for website design Services you order on the Order Form or which are otherwise requested by you.

### 4.2 Automatic Renewal

- (a) If you do not wish to renew the Website Support Services at the end of any fixed period for provision of those Services, you must notify us 10 days prior to the end of that period (or end of the month if you have agreed to a month by month contract in the Client Order Form).
- (b) If you do not notify us in accordance with section 4.2(a), the Client Support Services will be automatically renewed for a further fixed contract period (of the same length as the initial period) at the end of the term and we will pay the Fees associated with this renewal.

### 4.3 Support Services

- (a) Our personnel will:
  - (i) provide up to one hour's work on your website per billing month. This includes any time we spend on Search Engine Optimisation Services. If you do not use this service, this time will not roll over into the next billing month;
  - (ii) if requested by you, conduct a monthly review of your website and use reasonable endeavours to ensure all links are working and all images can be viewed;
  - (iii) provide technical support via email or phone during office hours between the hours of 8 am and 5 pm on Mondays - Fridays (except any day that is a public holiday in Queensland or the state from which we are providing the Support Services);
  - (iv) provide, if requested by you quarterly reports on the work we have carried out for you;
  - (v) backup the content of your website on a daily basis. While we will use reasonable endeavours to ensure that your website is fully and accurately backed up each day, you acknowledge and agree that (to the extent permitted by law) we will have no responsibility for any data

loss or any other loss that you or your End Users incur as a result of our backup service (or our failure to implement the backup service);

- (vi) if you have selected to receive Social Media Marketing Services from us in the Order Form, update your social media sites with content on your website from time to time; and
  - (vii) use reasonable endeavours to make any requested changes to your website within five (5) Business Days.
- (b) You acknowledge and agree that our Personnel may access and edit your website without providing notice in order to perform any technical aspect of the Support Services (such as search engine optimisation) that we reasonably consider necessary.

## 5. Social Media Marketing Services

The following Specific Terms are applicable if the Order Form includes Social Media Marketing Services.

### 5.1 Definitions

The following definitions apply in this section 5:

**Social Media Account** means an account created in your name with a Social Media Site;

**Social Media Marketing Services** means any social media marketing services ordered by you in an Order Form or as otherwise requested by you;

**Social Media Page** means a page on a Social Media Site created via a Social Media Account;

**Social Media Site** means one or more of:

- (a) Facebook at [www.facebook.com](http://www.facebook.com);
- (b) Twitter at [www.twitter.com](http://www.twitter.com);
- (c) LinkedIn at [www.linkedin.com](http://www.linkedin.com);
- (d) Google+ at [plus.google.com](http://plus.google.com);
- (e) Our online directory page at [www.localsearch.com.au](http://www.localsearch.com.au);
- (f) YouTube at [www.youtube.com](http://www.youtube.com);
- (g) Google Places at [places.google.com](http://places.google.com);
- (h) Instagram; or
- (i) Pinterest,

as selected by you in the Client Order Form or as agreed from time to time.

## **5.2 Fees**

All Social Media Marketing Services are provided on a per domain name basis. If you require Social Media Marketing Services in relation to another domain name, you must purchase additional Social Media Marketing Services from us.

## **5.3 Services**

We will use reasonable efforts to provide you with the Social Media Marketing Services, including:

- (a) setting up Social Media Pages for you on the Social Media Sites as agreed in the Order Form;
- (b) setting up your Social Media Account on the Social Media Sites as agreed in the Client Order Form (if required); and
- (c) uploading your Materials onto your Social Media Pages.

## **5.4 Information required**

You agree to provide us with all information necessary to enable us to provide you Social Media Marketing Services and warrant that all of Your Materials are true and correct, and belong to you. You acknowledge that any failure to provide such requested information will be detrimental to our ability to provide the Services, and we will not be responsible for any resultant failure in delivering the Services

## **5.5 Appointment as agent**

You appoint us to act as your agent in providing the Social Media Marketing Services, including, but not limited to:

- (a) access and utilise the Social Media Sites for the purposes of providing the Social Media Marketing Services;
- (b) use Your Materials for the purposes of providing the Social Media Marketing Services;
- (c) enter into all applicable Social Media Site terms and conditions you are required to accept and agree to in using and accessing the Social Media Sites on your behalf; and
- (d) if you have agreed in an Order Form to receive ongoing Social Media Marketing Services from us as part of Website Support Services, to do the acts set out in sections 5.5(a) to 5.5(c) above on an ongoing basis for the period you receive Website Support Services from us.

## **5.6 Password security**

You will at all times keep the Social Media Account and Social Media Page passwords and log-in details secure. You agree to be entirely responsible for when and how the Social Media Account or Social Media Page are used, including use by us in providing the Social Media Marketing Services in accordance with this Agreement.

## 5.7 Your use of the Service

You agree that:

- (a) you are responsible for all content displayed on your Social Media Page, and that we have no connection or responsibility either to you or any third party for any content displayed;
- (b) you are solely responsible for your Social Media Page;
- (c) your use (and our use on your behalf) of the Social Media Sites is at your own risk;
- (d) unless you have selected in the Order Form to receive ongoing Social Media Marketing Services from us as part of the Website Support Services, our association with the Social Media Accounts or Social Media Pages is limited to our creation of your Social Media Accounts (if required) and Social Media Pages as your agent. Our association with the Social Media Accounts or Social Media Pages will cease immediately upon creation of your Social Media Accounts and Social Media Pages (if required) and you have been notified of the same; and
- (e) you have read, understood and agreed to all applicable terms and conditions relevant to the Social Media Sites.

## 6. Google Adwords Services

The following Specific Terms are applicable if the Order Form includes Google Adwords Services

### 6.1 Definitions

The following definitions apply in this section 6:

**Campaign** means a digital marketing campaign, the particulars of which are set out on the Order Form; and

**Key Phrases** means the mutually agreed search phrases applicable to the campaign.

### 6.2 Fees

The Fees for the Google Adwords Services are payable on a Campaign basis as set out in the Order Form.

### 6.3 Campaign

- (a) The Campaign will continue for the period set out in the Order Form.
- (b) We agree to set up the Campaign in Google Analytics using the Key Phrases as keywords.
- (c) You agree to provide all YourMaterials as may be necessary for the campaign, such as advertising copy, product listings and video content.

#### **6.4 Development Services**

We may assist you with the development of the necessary Client Materials. Any such assistance will be deemed to be Website Development Services under an Order Form.