

# MOUSE & CO LTD- WEB HOSTING TERMS

This Web Hosting Agreement is made between You and MOUSE & CO LTD (**Service Provider, we or us**) to govern the web hosting service offered by the Service Provider (**Website**).

By instructing us to undertake work on your behalf or to provide you with services, You are indicating Your acceptance of this Web Hosting Agreement and agree to be legally bound by it.

## 1. Definitions and interpretation

**Commencement Date** means the date on which we register You as a registered user of the Hosting Service, based on the details submitted by You in Your Registration Form.

**Confidential Information** means all information provided by one party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding:

- (a) information that enters the public domain or is disclosed to a party by a third party, other than through a breach of this Agreement, and
- (b) information developed independently by a party.

**Fees** means the fees for the Hosting Services as specified in the price list set and as advised to You by email, website or otherwise and as may be updated and amended from time to time (Where the Fees have been amended, You shall pay the amended Fees, one (1) month from notice being given to you of the amended Fees).

**Force Majeure Event** means any event beyond the control of the relevant party.

**GST** has the meaning given in the Goods and Services Tax Act 1985, or any other similar tax.

**Hosting Service** means the service described in clause 3.1.

**Intellectual Property Rights** means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

**Moral Rights** has the meaning given under the Copyright Act 1994 and includes any similar rights existing in other countries.

**Registration Form** means any form of instruction given by You, whether by email, online registration form or otherwise, to register You for the Hosting Service.

**Your Site** means Your website, the subject of the Hosting Service, as specified in the Registration Form.

**You** means the entity described in Your Registration Form.

Unless the context requires otherwise:

- (a) a reference to a person includes a corporation or any other legal entity;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience and do not form part of this Agreement or otherwise affect the interpretation of this Agreement;
- (d) the term "includes" (or any similar term) means "includes without limitation"; and

- (e) a reference to any statute includes references to any subsequently amended, consolidated or re-enacted version of that statute and all delegated legislation or other statutory instruments made under it.

## 2. Term

2.1 This Agreement begins on the Commencement Date and continues until terminated in accordance with this Agreement.

## 3. Hosting Service

3.1 We will provide You with the hosting services specified in Your Registration Form for Your Site (**Hosting Service**).

## 4. Your Site

4.1 You are entirely responsible for:

- (a) the content on Your Site (including all content that we host on Your behalf as part of the Hosting Service);
- (b) ensuring that the content you provide does not contain any virus, malicious code or otherwise disrupt or corrupt the data or systems of any person; and
- (c) all dealings You have with users of Your Site.

4.2 You acknowledge and undertake that:

- (a) You will not upload any unlawful, objectionable or offensive material on to Your Site,
- (b) We can remove any material from Your Site, at our discretion, if we believe that Your Site contains unlawful, objectionable or offensive material,
- (c) What constitutes unlawful, objectionable and/or material is wholly at our discretion and shall include, but is not limited to: material that is pornographic, harassing, defamatory, threatening, obscene, abusive, racist, sexist, indecent, drug-related and/or harmful,
- (d) You will not undermine the security or integrity of our computing systems or networks, or where we engage a third party provider, that provider's computing systems or networks,
- (e) You will not use, or misuse, Your Site in any way which may impair the functionality of the Hosting Service or any systems used to deliver the Hosting Service,
- (f) You will not attempt to gain unauthorized access to any materials other than that to which you have been given express permission to access or to attempt to gain access to the computer system on which the Hosting Service is hosted,
- (g) You will not attempt to transmit from, or input into Your Site, any:
  - \* files that may damage any other person's computing devices or software,
  - \* content that may be offensive,
  - \* content that may be objectionable, or
  - \* any material or data in violation of any law,
- (h) You will not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Hosting Service.

- 4.3 You will indemnify the Service Provider against all costs (including legal costs), expenses, damages, accounts or other losses or liability, including those from any actions, suits, proceedings, claims or demands, made against or suffered by the Service Provider in connection with:
- (a) Your Site;
  - (b) the content that we host for You as part of the Hosting Service; and
  - (c) any failure by You to meet the responsibilities described in clause 4.1 and 4.2, including any and all claims made against the Service Provider:
    - (i) by users of Your Site;
    - (ii) by any third party alleging that the content on Your Site, or any content hosted by us on Your behalf, infringes any Intellectual Property Rights or Moral Rights or any person or otherwise breaches any law.

## 5. Maintenance

- 5.1 We reserve the right to perform maintenance at any time
- 5.2 Maintenance includes, but is not limited to, updates and changes to the website to ensure continued service, and to reduce security risks.
- 5.3 Maintenance may result in down-time and/or require short notice.
  - (a) we will ensure steps are taken to minimize down-time, including making changes in off peak hours where required
  - (b) details of down-time and/or maintenance will be provided as soon as practical after becoming aware of the need for unscheduled maintenance that will result in an outage of more than 60 minutes."

## 6. Disaster Recovery

- 6.1 We archive data on a regular basis for the purpose of disaster recovery and, in the event of data corruption or equipment failure, will restore Your website from the data we have retained.
- 6.2 You acknowledge that the data we have retained may be out of date.
- 6.3 To the full extent permitted by law:
  - (a) clause 6.1 sets out the Service Provider's entire obligation with respect to disaster recovery and loss of data; and
  - (b) the Service Provider hereby excludes all liability to You arising from any loss of, or corruption of data, other than liability arising directly from a breach by the Service Provider of clause 6.1.

## 7. Intellectual Property Rights

- 7.1 We retain the rights and ownership of materials created or provided by us until they have been paid for in full, at which time the rights and ownership will be transferred to You.
- 7.2 You must not directly or indirectly do anything that would or might invalidate or put in dispute the Service Provider's title in the Website Materials.

## **8. Payment**

8.1 You must pay the Service Provider the Fees.

## **9. GST**

9.1 All amounts payable under this Agreement are expressed exclusive of GST.

9.2 In respect of any taxable supply, You must pay to the Service Provider an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Fees, subject to the receipt by You of a valid tax invoice.

## **10. Audit**

10.1 You must permit the Service Provider (or its nominated auditor) to audit the records and premises of You at any time during the Term and for 3 years following the end of the Term, on at least 5 days written notice, for the purpose of confirming Your compliance with this Agreement.

## **11. Confidentiality**

11.1 A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.

11.2 A party may:

- (a) use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and
- (b) disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.

11.3 Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the receiving party's possession or control.

11.4 Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of the Service Provider's request or on termination of this Agreement for any reason.

## **12. Liability**

12.1 To the full extent permitted by law, the Service Provider excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages.

12.2 To the full extent permitted by law, the Service Provider excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.

12.3 The Service Provider's total aggregate liability for all claims relating to this Agreement is limited to the Fees payable under this Agreement.

12.4 Either party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.

12.5 This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, the Service Provider limits its liability in respect of any claim to, at the Service Provider's option:

(a) in the case of goods:

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of having the goods repaired, and (b) in the case of services:
- (i) the supply of the services again; or
- (ii) the payment of the cost of having the services supplied again.

### **13. Termination**

13.1 A party may terminate this Agreement by providing one month written notice to the other party.

13.2 Prepaid services will not be refunded.

### **14. Consequences of Termination**

14.1 If this Agreement is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available:

- (a) the parties are immediately released from their obligations under the Agreement except those obligations in clauses 6.3, 7, 10, 11, 12, 14 and 15, and any other obligations that, by their nature, survive termination;
- (b) each party retains the claims it has against the other;
- (c) migration of materials from our control to yours can be done on request at a cost yourself.

### **15. General**

15.1 You must not assign, sublicence or otherwise deal in any other way with any of Your rights under this Agreement without the prior written consent of the Service Provider.

15.2 Nothing contained in this Agreement creates any relationship of partnership or agency between the parties.

15.3 If a provision of this Agreement is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.

15.4 Each party must at its own expense do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.

15.5 This Agreement (and any documents executed in connection with it) is the entire Agreement of the parties about its subject matter and supersedes all other representations, arrangements or agreements. Other than as expressly set out in this Agreement, no party has relied on any representation made by or on behalf of the other.

- 15.6 This Agreement may be amended only by a document signed by all parties.
- 15.7 A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.
- 15.8 A party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.
- 15.9 Without limiting any other right to terminate under this Agreement, if a Force Majeure Event affects a party's performance under this Agreement for more than thirty (30) consecutive days, the other party may immediately terminate this Agreement by written notice.
- 15.10 All government charges in relation to this Agreement must be paid by You.
- 15.11 This Agreement is governed by the laws of New Zealand and each party submits to the jurisdiction of the courts of New Zealand.