



***Brainwire Pty Ltd (Brainwire) Terms and Conditions of Web Design,
Development and Hosting Services***

Background

- A. Brainwire carries on the business of providing Web Site design, development, maintenance and hosting services, and access to payment facilities.
- B. The Client intends to sign an agreement with Brainwire for it to provide Web Site development, maintenance and/or hosting services, and/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:

When we refer to "We" "Brainwire" "Brainwire.com.au" "Us" and "our service" we are referencing Brainwire PTY LTD and its products and services.

Respectively, when we refer to "You" "Your" "Client" "Client" "User" and so forth, we are referring to you and/or your representative agents. If a client contravenes these terms and conditions, Brainwire reserves the right to terminate the service immediately with no refund.

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

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

"Charges" means the charges payable by the Client to Brainwire 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 Web Site;
- b) information relating to the personnel, policies or business strategies of Brainwire;
- c) information relating to the terms upon which the Web Site has been developed and hosted pursuant to this Agreement;

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

"Development Stages" means the stages specified in the Solution Design for the interim and final completion of the Web Site;

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

a) assist the Client in interpreting information received from the Users;

and

b) enable the Client 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 Brainwire 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 Web Site;

b) the user interface of the Web Site including but not limited to screen layouts, organisation, and operation or control features; and

c) all software associated with the Web Site;

"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 Web Site to other Web sites;

"Maintenance Services" means all services relevant to:

a) updating the content of the Web Site as directed by the Client;

b) maintaining and updating Links; and

c) advising the Client from time to time as to the extent to which the Web Site has become incompatible with software generally used to access the Internet;

"Party" means either Brainwire or the Client as the context dictates;

"Brainwire" means Brainwire Pty Ltd ACN 145 739 993 of 17 Berringar Street, Wynnum in the State of Queensland.

"Services" means the Hosting Services, Design 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 Web Site;

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

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

"Web Site" means the location on the Internet to be made accessible by Brainwire through the World Wide Web which provides hypertext, graphical or similar data content provided by or for the Client 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.

Term of Agreement

The Agreement commences on the date it is signed by both parties and shall remain in force for the period specified. The Agreement will be automatically extended for a similar period until either party gives notice to the contrary to the other party at least 30 days before the next term commences.

1. Hosting Services

Brainwire to host

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

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

Disclaimers

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

2. Domain Registration

Brainwire to register

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

- a) Procure a domain name for the Client; and
- b) Endeavour to obtain the Client's preferred domain name as nominated by the Client.

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

Client's acknowledgements and warranties

The Client 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 Client 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 Client shall indemnify Brainwire in respect of any liability arising, directly or indirectly, from a failure by the Client to comply with any such licence conditions.

3. Web Development Services

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

- development and testing of the Web Site using the methodology and development tools described in the Solution Design (if applicable);
- 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.

4. Delay in Web Development Services

The Client shall have no remedy against Brainwire 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 Client or a breach by the Client of this Agreement. If Brainwire is unable to adhere to any Development Stage as a direct or indirect result of an act or omission of the Client or as a direct or indirect result of a breach by the Client of this Agreement, Brainwire may:

- a) make an Additional Charge or time, overtime, travel, materials, extra computer time or resource rationalisation resulting directly or indirectly from such act or omission of the Client; 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.

5. Client's Obligations

Provision of data

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

No liability for certain deficiencies

Brainwire shall not be responsible for any deficiency or alleged deficiency in the Web Site which is attributable to:

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

Warranties of non-infringement

The Client undertakes to ensure that any material provided to Brainwire for inclusion on the Web Site:

- 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.

6. Brainwire may exercise its own judgment

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

7. Payment Facilities

Brainwire may and does provide access to facilities for processing credit card payment and direct debit transactions, as described in the covering sheets to this agreement. Access to these facilities is made possible through an arrangement provided to Brainwire by sYra reseller system Pty Ltd, and sYra reseller system Pty Ltd is the owner and operator of the payment processing facilities.

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

Client's Obligations

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

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

Disclaimers

Brainwire does not warrant that the Client will have continuous access to the Payment Facilities. Brainwire 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.

8. Refund Terms

Prior to concept design commencement:

The client is eligible for a complete refund of their initial purchase less an \$80 admin fee if no work or production has commenced on the website concept from when we receive payment, to when we receive notice in writing, phone contact or email that you are cancelling your website design and request a refund.

Once concept design has commenced:

The client is eligible for a partial refund of between 70% - 90% of their initial purchase price once concept design has commenced. This partial refund is determined by the work that has already been undertaken on our end. Work may include, but is not limited to; purchasing of client domain name, web hosting and technology setup, contact made between the client and any representative of Brainwire, the production of concepts, mockups and wireframes for your project, the research and development associated with your website design, the sourcing of imagery and related material and the initial GUI development of your website.

After concept design approval and before website construction and coding:

The client will only be eligible for a 50% refund after the client has approved the concept design.

Once website construction and coding has commenced:

The client may be eligible for a partial refund of between 10% - 50% of their initial purchase price once website construction, coding and development has commenced.

Upon website delivery:

The client will not be eligible for a refund, full or partial, on the total website price after the website has finalised construction, and/or been delivered and/or taken online. Should you decide to discontinue your website, you will have ownership of the concepts, mockups and wireframes related to your website. However, you will not be granted ownership of source code, CMS themes or stock photography and/or other materials not owned by either party that have been supplied.

9. Website Content

Under no circumstances shall your website be used to communicate, store, transmit, disseminate or broadcast the following:

1. Mail bombers/Spam scripts
2. Content deemed illegal
3. Escrow/Bank debentures
4. Trade secret protected data
5. Data that infringes upon any intellectual property, trademarks, publicity rights or privacy rights
6. Content that contains deliberately misleading, incomplete or deceptive content or data
7. High-Yield Interest Programs or related sites
8. Lottery/Gambling sites
9. Hateful/Racist/Harassment/Defamatory/Threatening orientated sites
10. Hacker focused sites/archives/programs
11. Sites promoting or related to illegal activities
12. Fraudulent sites
13. Pirated software/warez
14. Content sexually explicit in nature
15. Information and data that contains virus', worms, spyware or other malicious software.
16. Copyright infringing data
17. Scripts – any script that creates a load on the server will be removed.

If your website is found to be breaching the above terms your website will be terminated immediately, and if required, reported to the appropriate authorities. Under no circumstances will Brainwire be held

responsible for infringing content, images, media or files of any type the client places, or provides for us, to place on their website.

10. FTP Access

Brainwire does not provide access to FTP services to you or a third party. If required, express permission must be obtained from Brainwire management before FTP access can be granted. As such we will not be held responsible for any errors in the design or loss of information or data as a result of your use or inability to use FTP access. If this occurs you will be required to pay a fee of \$75/hr for the support or additional service of restoring or fixing your website.

If given access you will be given a unique login for you and you only. All FTP access is logged and if we are aware that access has been granted to a third party we will investigate and take appropriate action.

11. Search Engine Optimisation

We include on-page Search Engine Optimisation (SEO) with the 'Koala', 'Wallaby' and 'Kanagroo' packages and utilise "white-hat" SEO standards to greaten the website's ability to rank higher in Google and other search engines.

Brainwire also provides monthly subscriptions to search engine optimisation packages. These packages provide the Client with increased number of back-links across an extended period of time. Under no circumstances do we guarantee top positions, or any positions at all for any keywords.

12. Maintenance

Maintenance Services

Brainwire will provide design and/or content maintenance services under this Agreement as defined in the covering sheets.

Client's Obligations

The Client shall be responsible for procuring all necessary authorisations, licences and consents necessary to enable Brainwire to have access to the Web Site in order to provide the Maintenance Services. Brainwire shall be under no obligation to provide the Maintenance Services if the Client fails, or in the reasonable opinion of Brainwire has failed, to obtain all necessary licences, authorisations and consent pursuant to this sub-clause.

13. Deficiencies and Errors

When reporting a suspected software deficiency or operational error encountered in the operation of the Web Site or associated Payment Facilities, the Client must provide Brainwire with a documented example of the defect or error and all available identifying information. This can be in the form of an email outlining the issue.

14. Additional charges

In the event that:

- a) the provision of the Services is delayed; and/or
- b) Brainwire is required to perform the Services in circumstances other than those expressly or reasonably anticipated in relation to an Agreement of a similar nature; and/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 Brainwire, then Brainwire shall be entitled to make an Additional Charge.

15. Excess Storage, Processing and Traffic

The storage of files on Brainwire'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. As outlined in the covering sheets there are a number of hosting plan options dependent on the Clients usage requirements. If the Client exceeds their current plan limit they will be subject to review and potentially upgraded accordingly.

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

16. 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, Brainwire 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.

17. Sub-Contracts

Brainwire 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.

18. Intellectual Property Rights

Ownership

Intellectual Property Rights in the Web Site shall vest in the Client, apart from Intellectual Property Rights in:

- a) any pre-existing material (including but not limited to Brainwire's software, documentation, templates and data) which is incorporated into or which has been used in the course of developing the Web Site; or
- b) the User interface of the Web Site; which shall remain property of Brainwire. Clearances

The Client 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 Web Site; 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 Web Site.

Indemnity

The Client shall indemnify Brainwire 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 Client to comply with its obligations under this Agreement;
- b) without limiting paragraph (a), the provision by the Client of infringing materials for inclusion on the Web Site and/or the failure of the Client 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 Web Site;
- c) modification or alteration of the Web Site without prior consent in writing of Brainwire; or
 - d) any transaction entered into by the Client relating to the Web Site without Brainwire's prior consent in writing.

19. 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 Brainwire for any breach of such condition or warranty shall be limited, at the option of Brainwire, 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.

20. Exclusions

Limitation of liability

Brainwire shall be under no liability to the Client 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 Brainwire to achieve compliance with its obligations under this Agreement.

No representations

The Client acknowledges that to the extent Brainwire has made any representation which is not otherwise expressly stated in this Agreement, the Client has been provided with an opportunity to independently verify that the accuracy of that representation. Subject to the above, the Client warrants that it has not relied on any representation made by Brainwire 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 Brainwire

Indemnity

The Client shall at all times indemnify and hold harmless Brainwire 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 Client of its obligations under this Agreement; or
- b) any wilful, unlawful or negligent act or omission of the Client

21. Agency

The Client appoints Brainwire as its agent and attorney for the purposes of the management, testing and control of the Client'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) Web Site including the right to correspond with third parties as the Client'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

Web Site using Internet fora, provided that no expense shall be incurred by Brainwire in doing so without the prior approval of the Client.

- g) access to payment facilities.

22. Termination

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

- a) the Client is in breach of any term of this Agreement and such breach is not remedied within thirty (30) days of it being notified by Brainwire;
- b) the Client becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- c) the Client, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- d) the Client, being a natural person, dies; or
- e) the Client ceases or threatens to cease conducting its business in the normal manner.

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

- a) repossess any of its property in the possession, custody or control of the Client;
- 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.

23. 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 or 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, Brainwire shall refund moneys previously paid by the Client pursuant to this Agreement for goods or services not provided by Brainwire to the Client.

24. 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 Queensland govern this contract. Any dispute arising from this contract is to be determined by the courts of Queensland and any court of appeal from a Queensland court.

Assignment

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

Waiver not to affect rights

If Brainwire 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 Brainwire enforcing those rights in the future or taking advantage of any remedies that it may as a result of the Client'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 enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not enure 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.