

OUR CUSTOMER TERMS – TELSTRA BUSINESS DIGITAL MARKETING SERVICES

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Certain words are used with the specific meanings set out below or in the General Terms section of Our Customer Terms.

1 ABOUT THE TELSTRA BUSINESS DIGITAL MARKETING SERVICES SECTION

- 1.1 This is the Telstra Business Digital Marketing Services section of Our Customer Terms ("**OCTs**").
- 1.2 Provisions in other parts of the Cloud Services section also apply. See section one of the General Terms of the Cloud Services section of OCTs at <https://www.telstra.com.au/customer-terms/business-government/cloud-services> for more detail on how the various parts of the Cloud Services section are to be read together.
- 1.3 Unless you have entered into a separate agreement with us which excludes them, the General Terms section of OCTs also applies. See section one of the General Terms of OCTs at <http://www.telstra.com.au/customer-terms/business-government/index.htm> for more detail on how the various sections of OCTs are to be read together.

2 TELSTRA BUSINESS DIGITAL MARKETING SERVICES

What is the Telstra Business Digital Marketing Services solution?

- 2.1 Telstra Business Digital Marketing Services is a cloud based "Do it For Me" website and online marketing solution for small to medium sized businesses. Telstra Business Digital Marketing Services can design, build, host and manage your website and online marketing campaigns and provide general and personalised content, website hosting services, access to software for managing the website, help and support tools, and e-commerce and customer management tools (collectively, referred to as the "**Services**") directly and through the website and associated domains of <https://www.telstra.com.au/telstradigitalmarketing> (the "**Website**" or "**Site**").
- 2.2 To be able to use Telstra Business Digital Marketing Services, you must accept and comply with these OCTs, including the Terms of Service.
- 2.3 Telstra Business Digital Marketing Services is available through the Telstra Apps Marketplace ("**TAM**"). To use the TAM, you need an internet connection and to create an account in the TAM. This section doesn't apply to the Extra Small (XS) Plan, which is available via the Website.
- 2.4 The TAM part of the Cloud Services section of OCTs (available at <https://www.telstra.com.au/customer-terms/business-government/cloud-services>) governs your use of the TAM.

3 SERVICE FEATURES

- 3.1 The full description of Telstra Business Digital Marketing Services, including website plans, e-commerce, digital marketing services, the features and additional services (also referred to as "**Add-Ons**") are set

out on the Telstra Business Digital Marketing Services product page (<https://telstradigitalmarketing.com.au>).

- 3.2 After you have signed-up, we may call, email, SMS or otherwise contact you for onboarding service purposes, quarterly coaching (where this is included in your Service) and for other purposes relevant to carrying out the Telstra Business Digital Marketing Services.

4 PLANS AND CHARGES

- 4.1 **Contract Term:** Your Telstra Business Digital Marketing Services Small, Medium and Large Website Plans and Online Marketing Plans are offered on a casual month to month subscription. Website Premium and Website Premium Add-Ons (E-Commerce and Bookings) plans are offered with one upfront fee in addition to a casual month to month subscription.

- 4.2 **Monthly charge in advance:** We charge you for each month in advance for Telstra Business Digital Marketing Services, except for additional Online Marketing Ad Spend. When you purchase additional Online Marketing Ad Spend, this will be charged in the following month. This does not apply to the Extra Small (XS) Plan where there is no charge.

4.3 Website Plans:

(a) Extra Small (XS) Plan:

- (a) From 25 May 2020, the Extra Small (XS) Plan is available for a period of 12 months from the date of publishing the website at no charge, after which the website will be cancelled.
- (b) Telstra may promote other Telstra Business Digital Marketing Services products and services to you during the 12 month period of your Extra Small (XS) Plan.
- (c) If the website is cancelled, the page and its contents will be deleted and the associated domain will be released (you can renew via Telstra or a third party). Your Google My Business service will be unaffected.

(b) Small, Medium and Large Website Plans:

You will be charged on a month to month basis. If you change your Website Plan, then you'll immediately be moved to the new plan, and at the end of the month you'll be billed a pro-rated amount based on how much time you spent on the new plan in addition to the charges related to the previous plan.

(c) Website Premium Plan and Website Premium Add-Ons:

You will be charged one upfront fee in addition to a month to month subscription for the Website Premium Plan and Website Premium Add-Ons (E-Commerce and Bookings). If you change to a different Telstra Business Digital Marketing website plan then you will immediately be moved to the new plan and at the end of the month you'll be billed a pro-rated amount of the monthly fee, based on how much time you spent on the new plan in addition to the charges

related to the previous plan. If you are a Website Premium or Website Premium Add-Ons (E-Commerce and Bookings) customer and cancel or change plans, the full upfront fee will be payable.

4.4 **Online Marketing Plans:** The costs and inclusions for the Online Marketing Plans are available at <https://www.marketplace.telstra.com/home> and provide that the:

- (a) Online Advertising Plan includes \$180 of marketing budget;
- (b) Online Marketing Performance Plan includes \$250 of marketing budget.

4.5 **Online Marketing Plans Ad Spend**

- (a) Any Ad Spend included in your Online Marketing Plans that is not spent during the allocated month will carry over to the following month for use.
- (b) You may place a hold on Ad Spend included in your Online Marketing Plan. During any hold on Ad Spend, you will continue to be charged the monthly amount for your selected Online Marketing Plan.
- (c) Any Ad Spend amount on hold will be available for use up to 6 months from the hold date, and if not used within this period, will be no longer available to you.

4.6 **Publishing your Website**

- (a) We must receive your Website brief and final approval of your Website to enable us to publish your Website to your nominated domain.
- (b) If we have not received final approval for your Website within 30 days of purchasing your Telstra Business Digital Marketing Services Website Plan, we will publish a draft version of your Website based on your brief, on a sub domain.

4.7 **We may cancel your Telstra Business Digital Marketing Services Plan**

- (a) We may cancel your Telstra Business Digital Marketing Services Website Plan if you do not provide us with your:
 - (a) Website brief within 30 days of purchasing your Telstra Business Digital Marketing Services Website Plan, or
 - (b) final approval of your Website within 6 months of purchasing your Telstra Business Digital Marketing Services plan.
- (b) Where we cancel your Telstra Business Digital Marketing Services plan before we have provided the Service to you, we can charge you any reasonable costs we incurred as a result of preparing to provide the service to you.

4.8 You may cancel your Telstra Business Digital Marketing Services plan

You may cancel your Telstra Business Digital Marketing Services Plan at any time. You will be required to pay all remaining charges for the billed month (which may include the full month charge for the month in which you cancel).

4.9 Add-Ons

- (a) You may add Add-Ons to your Telstra Business Digital Marketing Services Plan from time to time through the TAM.
- (b) You may cancel your Add-Ons at any time. You will be required to pay all remaining charges for the billed month (which for Ad Spend may include the full month charge for the month in which you cancel).
- (c) If you cancel your Add-Ons, your Plans will continue until you cancel them.

5 THIRD PARTY SERVICE PROVIDERS

5.1 You acknowledge that we rely on third party service providers in order to supply the Telstra Business Digital Marketing Services solution to you. You must comply with the following terms, which we are required by our third party service providers to impose on you.

5.2 Google Terms and Google AdWords Terms

- (a) You warrant and represent that you will at all times comply with all terms set out in this clause 5.2 in connection with any advertising via Google AdWords.
- (b) You will defend and indemnify us (and our directors, officers, employees, affiliates, and agents) from and against all claims, demands, suits, or other assertions of rights by any third party, and all resulting judgments, settlements, and expenses (including attorneys' fees and costs), that arise out of or relate to the Google AdWords advertising service. You acknowledge and agree that this indemnity is not subject to any cap set out in this agreement.
- (c) You warrant and represent that you have read, understood and will at all times comply with all Google AdWords Terms and Conditions as amended from time to time and Google Policies as set out at <https://support.google.com/adwordspolicy/answer/54818?hl=en> (**Google Terms**).
- (d) You acknowledge that Telstra is separately required to comply with Google Terms and Google Policies and you warrant and represent that you will take all actions necessary to enable Telstra's compliance.
- (e) Without limiting clauses 5.2 (a) to (d) above in any way, you acknowledge you have read, understood, and agree to comply with

Google's "Working with a third-party disclosure notice" at <http://www.google.com/adwords/thirdpartypartners/>.

5.3 Microsoft Advertising Terms

- (a) You warrant and represent that you will at all times comply with the terms set out in this clause 5.3 in connection with any advertising via Microsoft Advertising.
- (b) You will defend and indemnify us (and our directors, officers, employees, affiliates, and agents) from and against all claims, demands, suits, or other assertions of rights by any third party, and all resulting judgments, settlements, and expenses (including attorneys' fees and costs), that arise out of or relate to your participation in the use of the Microsoft Advertising service. You acknowledge and agree that this indemnity is not subject to any cap set out in this agreement.
- (c) Data and content: Any information that you submit to us or to Microsoft in connection with any advertising via Microsoft Advertising, including registration information and other information about your company, will be subject to the terms of Microsoft's privacy policy, found at this link: <https://privacy.microsoft.com/en-ca/privacystatement>. By entering into this agreement, you agree to Microsoft's collection and use of your personal information in accordance with such policy, including the use of your personal information to send email updates and other information from Microsoft and its affiliates. If you provide us with any content in connection with your participation in the Microsoft Advertising product, then you grant Microsoft and its affiliates a worldwide, royalty-free, sub licensable, license to use, host, store, reproduce, modify, create derivative works, publicly perform, publicly display, and distribute such content solely for the purpose of operating, promoting, and improving its programs and services. This license continues even if you stop participating in the Microsoft Advertising service. You retain all rights you may have in your content. You represent and warrant that you have the necessary rights to grant this license for any content you submit.
- (d) Termination: You acknowledge and agree that Microsoft may terminate your participation or our participation in Microsoft Advertising at any time for any or no reason, in its sole discretion. Upon such termination, you must immediately stop accessing the Microsoft Advertising functions made available under this agreement and stop using any related services and materials.
- (e) Microsoft Advertising Agreement: You agree to the terms of the Microsoft Advertising Agreement at: <https://about.ads.microsoft.com/en-us/resources/policies/microsoft-advertising-agreement>.

5.4 Facebook Terms and Policies

- (a) You warrant and represent that you will at all times comply with the terms set out in this clause 5.4 in connection with any advertising via Facebook ads.
- (b) You will defend and indemnify us (and our directors, officers, employees, affiliates, and agents) from and against all claims, demands, suits, or other assertions of rights by any third party, and all resulting judgments, settlements, and expenses (including attorneys' fees and costs), that arise out of or relate to your participation in the use of the Facebook ads service. You acknowledge and agree that this indemnity is not subject to any cap set out in this agreement.
- (c) You warrant and represent that you have read, understood and will at all times comply with all Facebook Terms as amended from time to time as at https://www.facebook.com/legal/commercial_terms and at <https://www.facebook.com/legal/terms> (**Facebook Terms**).
- (d) You warrant and represent that you have read, understood and will at all time comply with Facebook's Advertising Policies as set out at <https://www.facebook.com/policies/ads> and Facebook's Community Standards at <https://www.facebook.com/communitystandards> (**Facebook Policies**).
- (e) You acknowledge that Telstra is separately required to comply with Facebook Terms and Facebook Polices and you warrant and represent that you will take all actions necessary to enable Telstra's compliance.

5.5 Other third party terms

If you have a Website Premium plan, or a Website Premium Add-On, you warrant and represent that you (and each of your end users) have read, understood and accept all third party end-user terms set out at www.telstradigitalmarketing.com.au (as updated from time to time), and will at all times comply with these third party end-user terms.

6 TERMS OF SERVICE

1 Definitions and Interpretation

In these Terms of Service, unless the subject matter or context requires otherwise, the following words and expressions shall have the meanings respectively assigned to them below:-

- "we" or "us" mean Telstra, its affiliates, subsidiaries and our directors, officers, employees and agents or licensors and other commercial partners and their directors, officers, employees and agents
- "you" means the person or entity who uses the solution and accepts our hosting and support services and includes your directors, officers, employees and agents, as the case may be

- “Consequential Loss” means any Loss suffered or incurred by the other party in connection with this agreement that does not arise naturally (that is according to the usual course of things) from the event giving rise to the Loss and can include but is not limited to loss of profit, loss of reputation, loss of goodwill, loss of sales, loss of data
- “Content” means information, material, content, language, imagery, links or other similar things
- “Contract” means the agreement formed between you and us by your use of the Software and the acceptance of the Service and our support services identified in clause 5 in accordance with these Terms of Service
- “Documentation” means the operating manuals and other printed materials relating to the Software including but not limited to users' manuals, programming manuals, modification manuals, flow charts, drawings and software listings, which are designed to assist or supplement the understanding or application of the Software
- “Force Majeure” means any circumstances beyond our or your reasonable control including but not limited to storm, tempest, fire, lightning, above average levels of rainfall, flood, other inclement weather, earthquake, volcanic eruption, acts of God or enemies, declared or undeclared war, piracy, riot, sabotage, terrorism, civil disturbance, power failure, shortage of fuel, labour dispute, strike, lock-out, other industrial disturbance, Denial of Service (“DOS”), Distributed Denial of Service (“DDOS”) attack, third party provider outages, cable cuts and material changes in the law but excludes the inability, for whatever reason, to make any payments in accordance with these Terms of Service
- “GST” means the goods and services tax as provided by the GST law
- ‘GST Act’ means the *A New Tax System (Goods and Services Tax) Act 1999* as it stands from time to time
- “GST law” means the GST Act and associated legislation including without limitation delegated legislation;
- “the Installation Date” means the date of installation of the Software on our equipment
- “Intellectual Property Rights” mean any copyright rights, trade mark rights, design rights, patent rights, semiconductor or circuit layout rights or any proprietary rights similar to any of the aforesaid rights
- “Loss” means loss, damage, liability, charge, expense, outgoing, payment or cost of any nature of kind, including all legal and other professional costs on a full indemnity basis.
- “notice” means a written notice, consent, approval, direction, order or other communication
- “Personal Information” has the same meaning as that given to this term in the Privacy Act 1988 (Cth)

- “post” and “posting” means posting, uploading, contributing, submitting, transmitting, publishing or otherwise disseminating
- “Pricing Schedule” means the list of our fees, charges and costs published on TAM
- “Service” means our managed hosting service to host the Software on the Website outlined in clause 4
- “Software” means our software program marketed under the name Telstra Business Digital Marketing Services or any other name which replaces that name from time to time
- “TAM” means the Telstra App Marketplace

Interpretation

- A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision.
- Headings in these Terms of Service are used for convenience only and are to be disregarded in the interpretation of these Terms of Service.

2 Supply of the Service and Material and Payments

- 2.1 All material and Services available on the Site, and all material and Services we provide by or through Telstra Business Digital Marketing Services, our affiliates, subsidiaries, employees, agents, licensors or other commercial partners including, but not limited to the domain, software, all informational text, software documentation, design of and “look and feel,” layout, photographs, graphics, audio, video, messages, interactive and instant messaging, design and functions, files, documents, images, or other materials, whether publicly posted or privately transmitted as well as all derivative works thereof (collectively, the “Materials”), are owned by us or other parties that have licensed their material or provided services to us, and are protected by copyright, trademark, trade secret and other Intellectual Property Rights. For the avoidance of doubt, this section excludes the material you have added to your Site yourself which you own the Intellectual Property Rights (such as your wording or photographs owned and provided by you on the Site). You must use the Service and Materials through a user identification reference provided by Telstra Business Digital Marketing Services (“User ID”) to the extent, and only to the extent, necessary to access and use the Services in accordance with the terms of this Agreement.

3 Licence to use Service

- 3.1 We hereby grant you a non-exclusive, limited, non-transferable licence to use the Service and Material on a monthly basis subject to payment of all moneys payable under these Terms of Service by you to us until such time as the Contract is terminated in accordance with clause 12.

- 3.2 You acknowledge that there is no transfer of title or ownership to you of the Software, Material and the Documentation or any modifications, updates or new releases of the Software, Material and the Documentation.
- 3.3 You may only use the Service and Material in accordance with the normal operating procedures which we notify to you.
- 3.4 Except to the extent specified to the contrary in these Terms of Service, we will not be obliged to support the Service and Material, whether by providing modifications, updates, new releases or enhancements of the software or otherwise.
- 3.5 You must not copy, alter, modify or reproduce the Service and Material except to the extent otherwise authorised by these Terms of Service or as expressly authorised under Part III Division 4A of the Copyright Act 1968 (Cth).
- 3.6 You must not copy or reproduce the Service and Material or the Documentation by any means or in any form without our prior written consent.
- 3.7 If you modify or alter the Service and Material with our permission:-
 - (a) you will be solely responsible for the costs associated with the modifications or alterations and the costs arising out of the investigation of the effects of the proposed modifications or alterations; and
 - (b) you must indemnify and keep us indemnified from and against all and any losses, loss of profits, claims, damages, actions, suits, demands, costs (including reasonable legal costs and disbursements on a full indemnity basis), interest, charges and expenses of any kind whatsoever ("Losses") which we may suffer or incur or be called upon to suffer or incur if such modifications or alterations infringe any Intellectual Property Rights of a third person.
- 3.8 The Service and Material as modified or altered will remain our property in all respects, whether modified by you, us or a third party and whether or not authorised pursuant to these Terms of Service. Specifically, you assign to us any Intellectual Property Rights arising out of any modifications to the Service and Material made by you and you must procure the assignment to us of all Intellectual Property Rights arising out of any modifications to the Service and Material made by any third party at your direction.
- 3.9 These Terms of Service shall apply to the Service and Material as modified or altered.
- 3.10 You must on demand by us execute and procure any third party to execute all such documents and perform all such other acts as are necessary in order to give effect to clause 3.8.

- 3.11 We will not be obliged to provide any support services in respect of the Service and Material which has been modified by you but may at our sole discretion elect to do so.
- 3.12 You must not reverse engineer, reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Service and Material.
- 3.13 You will be solely responsible for the use, supervision, management and control of the Service and Material and the Documentation.
- 3.14 You must ensure that the Service and Material are protected at all times from theft, misuse, damage, destruction or any form of unauthorised use.
- 3.15 We may from time to time update the Service and Material for many reasons including but not limited to:-
- (a) maintaining security compliance;
 - (b) fixing bugs or problems in previous versions of the Software; and
 - (c) enhancing functionality or features.
- 3.16 We will not be liable to you for any costs arising from the effect any update may have on any code which is not provided by us and for any modifications to any such code to restore functionality.
- 3.17 In addition to any other remedies available to us under these Terms of Service or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Service and Material will entitle us to any available equitable remedy against you.

4 Our Managed Website Hosting service

- 4.1 You must:-
- (a) comply with any additional terms and conditions of use (apart from those contained in these Terms of Service) which may apply to the Service and which we notify you of from time to time and also any reasonable directions which we give you from time to time regarding its use. If any such additional terms and conditions are unacceptable to you, you will be entitled to terminate the Contract pursuant to clause 12.1;
 - (b) keep secret and secure your identification and log-in information for accessing and using the Service;
 - (c) keep confidential and not disclose to anyone any information belonging to us; and
 - (d) ensure that our remote access to your systems is not blocked or prevented in any way.

- 4.2 You must not post any Content on or through your website, or through any other component of the Telstra Business Digital Marketing Services:-
- (a) unless you hold all necessary rights, licences and consents to do so;
 - (b) that would cause you or us to breach any law, regulation, rule, code or other legal obligation; or
 - (c) that would bring our name and/or the Service into disrepute.
- 4.3 You will be personally and solely responsible and liable for all Content which you post on or through your website, or through any other component of the Telstra Business Digital Marketing Services, and with regard to your interactions with other persons.
- 4.4 You must not post Content on or through your website, or through any other component of the Telstra Business Digital Marketing Services, that:-
- (a) promotes racism, hatred, bigotry, blasphemy, discrimination, encourages violence against any person or groups or any illegal or unlawful activities;
 - (b) is abusive, offensive, obscene, vulgar, harmful, threatening, harassing, sexually explicit, defamatory, fraudulent or otherwise unlawful or objectionable;
 - (c) is inaccurate, misleading or false and if any Content which you post subsequently becomes inaccurate, misleading or false, you must promptly notify us and make all necessary corrections;
 - (d) infringes or violates another person's legal and moral rights including but not limited to Intellectual Property Rights and rights of privacy and publicity;
 - (e) you do not have a right to post including but not limited to Content which you are prohibited by law or under contractual or fiduciary relationships (such as insider information and proprietary and confidential information) from posting or which infringes the trade secret or proprietary rights of any person;
 - (f) contains viruses, Trojan horses, worms, time bombs, computer codes, files or programs designed to interrupt, destroy or limit the functionality of any computer software or other harmful or disruptive mechanisms or devices which may cause financial or other Loss to us and others;
 - (g) constitutes phishing, trolling, junk mail or which breaches any legislation relating to spam emails or which amounts to similar unlawful conduct; and
 - (h) is otherwise unlawful.

- 4.5 Notwithstanding clause 4.4, you must specifically not use the Telstra Business Digital Marketing Service in any way:-
- (a) for any illegal or fraudulent activities including activities which may breach any legislation relating to intellectual property matters, discrimination, criminal activities, defamation or otherwise;
 - (b) which is likely to interfere with or disrupt our or other internet users' or their service providers' activities and their respective computers or other hardware or software including but not limited to sending, distributing, publishing, reproducing and spreading computer worms, Trojans, viruses, unsolicited mass emails, promotions, advertisements, announcements or other material constituting spam and any other matters which are similar to any of the aforesaid things;
 - (c) to send obscene, indecent, harassing, offensive or threatening emails; and
 - (d) to access another person's computer or network without written authorisation.
- 4.6 Subject to clause 10, you agree to assume and accept all risk when using the Telstra Business Digital Marketing Service.
- 4.7 You must not post on or through your website any Content, or through any other component of the Telstra Business Digital Marketing Services, that we reasonably consider to be in competition with our business without our express written consent.
- 4.8 We will notify you and you consent to, prior to removing any Content which we in our absolute discretion believe may be unlawful or not permitted under these Terms of Service or which any third party requests us to remove on what we believe, in our absolute discretion, to be reasonable grounds.
- 4.9 We will make a full backup of your website files daily for website restoration purposes only and will retain that backup for a period of thirty (30) days after which time that backup will be deleted from our servers. You will be responsible for keeping your own backup of website files on your own equipment. If data is lost due to your act or omission, we will use reasonable endeavours to recover lost data from the most recent backup archive and will advise you in advance of any applicable fees we may charge for the recovery depending on the complexity of the recovery. You may choose to not proceed with the recovery if you do not wish to pay any applicable fees.
- 4.10 If you exceed your permitted storage space under the plan you have subscribed to, you must upgrade the plan you have subscribed to. You acknowledge that the storage capacity on email is 5GB.
- 4.11 If you elect to install third party software and seek our assistance in connection with the installation of that software, you:-

- (a) must pay us any applicable fees we charge to assist you with the installation of third party software, which we will advise to you prior to the installation. You may choose to not to receive any assistance from us in connection with the installation if you do not wish to pay any applicable fees;
- (b) represent and warrant to us that you have or will have the right to use and install that third party software, that you have paid or will pay any relevant fees pertaining thereto and that the third party software does not infringe the Intellectual Property Rights of any person; and
- (c) agree to indemnify and keep us indemnified from and against all and any Losses which we may suffer or incur or be called upon to suffer or incur as a result of assisting you with the installation of the third party software, except where the Loss arises as a result of our negligence or unlawful act or omission.

4.12 If your website is the target of a Distributed Denial of Service Attack ("DDoS") or any similar attack or threat, you agree to:-

- (a) using reasonable endeavours in taking such mitigation measures including but not limited to taking your website offline, moving your website to a quarantine server, implementing access control lists ("ACL"), IP filtering and IP blocking as we, in our absolute discretion, consider to be necessary, with or without prior notice to you, and without us becoming liable in any way to you for any Consequential Loss, delay, disruption or interruption of Service; and
- (b) to any mitigation measures taken by us remaining in place until your website experiences at least forty eight (48) hours of continuous non-malicious "normal" traffic.

4.13 Any confidential information belonging to you including but not limited to inventory information and images entered by you or your customers on your website is and will remain your property. For the avoidance of doubt, this section doesn't apply to images supplied to you by us (or our partners), which will not be owned by you.

4.14 If your website, or any other component you are using of the Telstra Business Digital Marketing Services, contains links to websites of third parties including but not limited to advertisers which are not under our control ("Third Party Sites"), you agree that:-

- (a) we will not be responsible or liable for any content or for any updates or changes to Third Party Sites and any content posted on such Third Party Sites;
- (b) all dealings between you and the operators and owners of any Third Party Sites are at your risk; and
- (c) to the full extent permitted by law, we will not be liable for any claims, Losses or damages of any kind which you may

directly or indirectly incur by dealing with the operators and owners of any Third Party Sites.

- 4.15 Our payment terms are contained in our invoices. Any invoice which is not paid in full by the due date will result in access to your website, email addresses and domain name being blocked until the full amount of the invoice is paid. If your website is blocked for non-payment of an account within our specified payment terms it may take up to forty-eight (48) hours for your website, email addresses and domain name to be unblocked.

5 Service Levels

- 5.1 We will use reasonable endeavours to make our network available ninety nine per centum (99.0%) of the time in each month (twenty four (24) hours per day) except where any of the following performance issues apply:-

- (a) where factors outside our reasonable control disrupt the network;
- (b) where your act or omission or any act or omission of any third party not associated with us disrupts our network e.g. where there is a DDoS attack on your website or on another person's website hosted on the same server;
- (c) where the disruption is caused by your equipment or a third party's equipment;
- (d) where the disruption is caused by an software issue beyond our control;
- (e) where the disruption results from our scheduled maintenance and/or updating programs in respect of the Software, the Website and our network.

- 5.2 For the avoidance of any doubt, the measurement of network availability expressly excludes downtime caused by any of the performance issues identified in clauses 5.1(a) to 5.1(e) inclusive.

- 5.3 In this clause 5.3, "Network Downtime" exists when your website is unable to transmit or receive data and you report such downtime to us via our support ticket system.

- (a) Network Downtime will be measured from the time we receive the support ticket from you to the time when your website is once again able to transmit and receive data.
- (b) If, subject to clause 5.2, network availability is less than ninety nine per centum (99%) in a month, we will refund to you for each period of thirty (30) minutes of Network Downtime, five per centum (5%) of the Monthly Subscription fee paid by you to us for that period up to but not exceeding one hundred per centum (100%) of the Monthly Licence and Hosting Fee paid by you to us for that period.

6 General Search Engine Rankings

- 6.1 You acknowledge that as the popularity of a website in any major search engine is determined by a number of factors outside our control, we do not guarantee any search engine rankings from any of the Services provided as part of Telstra Business Digital Marketing Services.
- 6.2 We may, on your request and in our absolute discretion, provide you with limited advice on how you may generally improve your search ranking.
- 6.3 Apart from any limited general advice we provide as outlined clause 6.2, if you require us to provide specific search engine optimisation Services, we will provide such Services at the fee charged by us for that Service as set out on the TAM.

7 Credit Card Processing and Sensitive information

- 7.1 If you choose to store credit card information or other sensitive information on your website, you do so at your own risk and we do not accept any liability for any Loss suffered by you in respect thereof.

8 Assignment and Subcontracting

- 8.1 Your rights, duties and obligations under the Contract are personal to you and may not be assigned or disposed of by you in any manner whatsoever, unless you obtain prior written approval from us.
- 8.2 We may assign our rights and obligations under the Contract without your consent if we obtain from the assignee a deed in your favour whereby the assignee agrees to be bound by the Contract as if the assignee were named in these Terms of Service as the other contracting party with you in place of us.
- 8.3 You must accept the deed identified in clause 8.2 in full satisfaction and discharge of our obligations under these Terms of Service insofar as the same remain to be performed.
- 8.4 We may subcontract all or any part of our obligations under these Terms without your consent.

9 Force Majeure

- 9.1 Notwithstanding any other provision in these Terms of Service, neither you nor we will be liable for any failure to fulfil any provision in these Terms of Service if such fulfilment is delayed, prevented, restricted or interfered with as a result of Force Majeure.
- 9.2 If you are unable to perform your obligations or we are unable to perform our obligations due to Force Majeure, you or we, as the case may be, must:-
 - 9.2.1 notify the other as soon as reasonably practicable of any delay; and
 - 9.2.2 use reasonable efforts to resume performance in accordance with these Terms of Service as soon as possible.

9.3 If Force Majeure continues for more than one (1) month, either you or we may terminate these Terms of Service forthwith by giving to the other a notice of termination in accordance with clause 12.1.

10 Liability

10.1 To the full extent permitted by law, we exclude all liability in respect of loss of data, interruption of business or any consequential or incidental damages, except where we have been negligent in our performance of the Service.

10.2 To the full extent permitted by law, we exclude all representations, warranties or terms (whether express or implied) other than those set out in these Terms of Service.

10.3 These Terms of Service must be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions or obligations. If such legislation applies, to the extent possible and permitted, we limit our liability in respect of any claim, at our option:-

(a) in the case of goods to:-

- 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 to:-

- i. the supply of the Services again; or
- ii. the payment of the cost of having the Services supplied again.

10.4 Subject to clause 10.3 and otherwise to the full extent permitted by law, our liability to you for all Loss or damage suffered or incurred by you from any breach by us of these Terms of Service will be limited for each claim to the payments (excluding GST) made by you to us in respect of the Monthly Licence and Hosting Fees in the preceding period of twelve (12) months commencing on the date when your claim first arose.

11 Indemnity

11.1 To the full extent permitted by law, you must indemnify and keep us indemnified from and against all and any Losses which we may suffer or incur or be called upon to suffer or incur by virtue of:-

- (a) you have been negligent in your use of the Service
- (b) a breach by you of these Terms of Service;

- (c) a breach by you of the rights of any third party; or
- (d) or any violation by you of any applicable laws, rules or regulations.

12 Termination

12.1 You may at any time terminate the Contract without for any reason and the Contract will end at the expiry of that billing period. We may at any time terminate the Contract upon giving at least two (2) month's prior written notice to you without any reason and the Contract will end at the expiry of that period.

12.2 Either you or we may terminate the Contract, effective upon the delivery of written notice of such termination to the other, if:-

- (a) you fail to pay us any moneys payable hereunder within fourteen (14) days of receipt of a written demand for payment of the said moneys from the other; or
- (b) there is a continued and material breach by the other of any of these Terms of Service, provided that you or we have given the other seven (7) days prior written notice of such breach, the other has not remedied the breach within a reasonable period thereafter and it is possible for the other to take such remedial action;
- (c) there is an irremediable breach by the other of any of these Terms of Service; or
- (d) the other becomes insolvent, makes an assignment for the benefit of creditors or, if a corporation, shall go into administration or liquidation (otherwise than for the purpose of reconstruction or amalgamation) or has presented against it a petition for its winding up or does or omits to do any act matter or thing which constitutes a ground for a court to order that it be wound up or, if an individual, commits an act of bankruptcy or is made bankrupt.

13 Consequences of Termination

13.1 Any termination of the Contract is without prejudice to your rights against us or our rights against you in respect of any antecedent breach or non-observance of any of these Terms of Service.

13.2 If you are entitled to a credit or refund with respect to your applications or services, such credit or refund will be applied to your method of payment.

13.3 We will allow you until the end of your Contract term following termination of the Contract to download your data before we cancel the licence for your website, domain and email addresses and remove your website and its contents and email addresses from our servers. Upon removal, you will no longer be able to access your website, domain and email addresses unless you choose to reactivate your Service, which is possible for up to three (3) months from the end of your Contract term.

13.4 You must pay to us upon demand all fees and other moneys payable by you to us under these Terms of Service, which as at the date of termination of the Contract is or becomes due and payable by you to us.

14 Notices

14.1 Any notice or other communication given by either you or us under these Terms of Service:-

- (a) must be in writing and for this purpose email will constitute writing;
- (b) may, in addition to any other method of service by law, be sent by email to any email address of the addressee shown in any correspondence or documents between the addressee and the sender and for this purpose you and we consent to this method of communication for the purposes of any legislation governing this method of communication; and
- (c) will be treated as given and received if sent by email before 3.00 p.m. on a day which is not a Saturday or Sunday or a holiday in the place of receipt, on the day it is sent and otherwise on the next day at the place of receipt provided that the sender requests a delivery receipt for the email and receives a mail system delivery report giving the date and time of delivery.

14.2 Any notice sent or delivered in accordance with clause 14.1 will be treated as validly given to and received by the addressee notwithstanding that the addressee is absent from the place to which it is sent.

14.3 Any notice from either you or us may be given and signed by your lawyer or our lawyer, as the case may be, and any notice to you or us may be given to your lawyer or our lawyer, as the case may be, by any of the methods listed in this clause 14 to the lawyer's business address or facsimile number.

15 General

15.1 If a provision of these Terms of Service 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.

15.2 You must at your expense and we must at our expense do everything reasonably necessary to give full effect to these Terms of Service.

15.3 Terms operating to our benefit following termination of the Contract under these Terms of Service, including clauses 10, 11, 13 and 14, survive the termination of the Contract to the full extent permitted by law.

15.4 None of your or our rights under these Terms of Service will be waived or deemed to be waived except by notice in writing signed by you or by us to the other waiving the right and any such waiver by either you or us

will not prejudice either your or our rights in respect of any subsequent breach of these Terms of Service.

15.5 Apart from in clauses 12.2(a) and 12.2(b), time is not of the essence in these Terms of Service.

15.6 The Contract and these Terms of Service will be governed by and construed in accordance with the laws of the State of Victoria and the Commonwealth of Australia and each party hereby agrees to submit all disputes arising between them to the Melbourne Registry of any such Victorian or Commonwealth court as is competent to hear the matter.

16 Privacy

16.1 Except as required by law, you have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Personal Information you provide to us using the Service.

16.2 Telstra will treat Personal Information in accordance with our Privacy Policy (available at <https://www.telstra.com.au/privacy/privacy-statement>). You acknowledge that the Service uses data transmissions over the public internet and except as required by law, neither we nor our Telstra will be responsible for any Loss, destruction, alteration or disclosure of Personal Information caused by any third party whose services are used only incidentally and without our direct involvement (for instance, third party network providers over whose networks internet traffic is transported).

16.3 To the extent we are required to process Personal Information in connection with the Service, and in addition to the matters set in our Privacy Policy:

- (a) you grant Telstra a licence to collect, store and use the your Personal Information for the purposes of providing the Service;
- (b) you consent to Telstra receiving, sharing and disclosing Personal Information arising from your use of the Service with telecommunications or other third party service providers used in conjunction with the Service;
- (c) you confirm you are entitled to disclose the relevant Personal Information to us so that we may lawfully use, process and disclose the Personal Information required to provide the Service;
- (d) you warrant to us that (i) the terms and conditions applicable to the use of your website by third parties clearly advises those third parties of what Personal Information is collected from them and the security controls related to that collection (and storage) of that Personal Information by you, and (ii) you will at all times comply with your obligations to those third parties in respect of your use of any such Personal Information in accordance with your said terms and conditions.

- (e) you must ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and disclosure by us and our third party service provider as required under the Privacy Act;
- (f) you must comply with your obligations under our Privacy Policy, the Privacy Act 1988 (Cth) and any other applicable law in relation to the Personal Information you disclose to us in connection with your use of the Service.