

## PREAMBLE

### 1. Preamble

- 1.1. All Services of Integrity Consultants Pty Ltd T/a BizHosting, whether gratuitous or not, are supplied subject to these terms and conditions and:
  - (a) the provisions of Part I shall apply to the provision of all and any Goods and/or Services;
  - (b) the provisions of Part II shall only apply to the provision of Web Development Services;
  - (c) the provisions of Part III shall only apply to the provision of Web Site Hosting Services.

## PART I - GENERAL CLAUSES

### 2. Definitions

- 2.1. "BizHosting" shall mean Integrity Consultants Pty Ltd T/A Biz Hosting, and its successors and assigns.
- 2.2. "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 2.3. "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 2.4. "Goods" shall mean all data, graphics, pictures, trade marks, software and other material, supplied by BizHosting, to be incorporated in the Client's web site (and where the context so permits shall include any supply of Services as hereinafter defined);
- 2.5. "Price" shall mean the cost of the Services as agreed between BizHosting and the Client subject to clause 5 of this contract.
- 2.6. "Prohibited Content" means any content on a Web Site that:
  - (a) is, or could reasonably be considered to be, in breach of the Broadcast Services Amendment (Online Service) Act 1999 (Cth); the Trade Practices Act 1974 (Cth); or any other applicable law or applicable industry code; or
  - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
  - (c) is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights.
- 2.7. "Services" shall mean all Services supplied by BizHosting to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods), as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by BizHosting to the Client.
- 2.8. "Web Site" means a location which is accessible on the Internet through the World Wide Web.

### 3. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 3.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 3.2. Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

### 4. Acceptance

- 4.1. Any instructions received by BizHosting from the Client for the supply of Services and/or the Client's acceptance of Services supplied by BizHosting shall constitute acceptance of the terms and conditions contained herein.
- 4.2. Where more than one Client has entered into this agreement, the Client's shall be jointly and severally liable for all payments of the Price.
- 4.3. Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the delegated representative of BizHosting.
- 4.4. None of BizHosting's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the delegated representative of BizHosting in writing nor is BizHosting bound by any such unauthorised statements.
- 4.5. The Client undertakes to give BizHosting not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice).

### 5. Price and Payment

- 5.1. At BizHosting's sole discretion the Price shall be either;
  - (a) as indicated on invoices provided by BizHosting to the Client in respect of Services supplied; or
  - (b) BizHosting's quoted Price (subject to clause 5.2) which shall be binding upon BizHosting provided that the Client shall accept in writing BizHosting's quotation within thirty (30) days.
- 5.2. BizHosting reserves the right to change the Price in the event of a variation to BizHosting's quotation.
- 5.3. At BizHosting's sole discretion, payment shall be due prior to delivery of the Services.
- 5.4. Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 5.5. Payment will be made by cash, cheque, bank cheque, or by credit card – MasterCard and Visa only (plus a surcharge of up to five percent (5.0%) of the Price), direct credit, or by any other method as agreed to between the Client and BizHosting.
- 5.6. The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by BizHosting.

### 6. Delivery

- 6.1. The failure of BizHosting to deliver shall not entitle either party to treat this contract as repudiated.

- 6.2. BizHosting shall not be liable for any loss or damage whatever due to failure by BizHosting to deliver the Services (or any of them) promptly or at all.

## **7. Errors and Omissions**

- 7.1. The Client shall inspect the Services on delivery and shall within seven (7) days of such time (being of the essence) notify BizHosting of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford BizHosting an opportunity to inspect the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which BizHosting has agreed in writing that the Client is entitled to reject, BizHosting's liability is limited to either (at BizHosting's discretion) replacing the Goods or rectifying the Services provided that the Client has complied with the provisions of clause 7.1, except where the Client has acquired Services as a consumer within the meaning of the Trade Practices Act 1974 (CWlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or rectification of the Services, or replacement of the Goods.
- 7.2. BizHosting shall not be held liable for any loss or corruption of data or files (including, but not limited to, software programmes) resulting from the supply of Services by BizHosting. It is the sole responsibility of the Client to back-up any data which they believe to be important, valuable or irreplaceable prior to providing to BizHosting.

## **8. Intellectual Property**

- 8.1. Notwithstanding anything herein, the Intellectual Property Rights in BizHosting's Goods and the routines do not vest in the Client and there is no assignment of the Intellectual Property Rights in BizHosting's Goods or routines to the Client. BizHosting hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use BizHosting's Goods and routines for the purposes of this agreement only.
- 8.2. The Client warrants that all designs or instructions to BizHosting will not cause BizHosting to infringe any patent, registered design or trademark in the execution of the Clients order.
- 8.3. Where BizHosting has provided photographic or graphical (digital or otherwise) images for the Client, at BizHosting's sole discretion any such images may be subject to ongoing licence payments for use of such images. The period of any such licence is determined by BizHosting from time to time.
- 8.4. The Client agrees that BizHosting may use any documents, designs, drawings, Web Site or Goods created by BizHosting for the purposes of advertising, marketing, or entry into any competition.

## **9. Default and Consequences of Default**

- 9.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.2. In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by BizHosting.
- 9.3. If the Client defaults in payment of any invoice when due, the Client shall indemnify BizHosting from and against all BizHosting's costs and disbursements including on a solicitor and own Client basis and in addition all of BizHosting's nominees costs of collection.
- 9.4. Without prejudice to any other remedies BizHosting may have, if at any time the Client is in breach of any obligation (including those relating to payment), BizHosting may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. BizHosting will not be liable to the Client for any loss or damage the Client suffers because BizHosting exercised its rights under this clause.
- 9.5. If any account remains unpaid at the end of the second month after supply of the Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 9.1 hereof.
- 9.6. In the event that:
- (a) any money payable to BizHosting becomes overdue, or in BizHosting's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;
  - (d) then without prejudice to BizHosting's other remedies at law
  - (e) BizHosting shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
  - (f) all amounts owing to BizHosting shall, whether or not due for payment, immediately become payable.

## **10. Title**

- 10.1. It is the intention of BizHosting and agreed by the Client that property in the Goods shall not pass until:
- (a) The Client has paid all amounts owing for the particular Goods, and
  - (b) The Client has met all other obligations due by the Client to BizHosting in respect of all contracts between BizHosting and the Client, and that where practicable the Goods shall be kept separate until BizHosting shall have received payment and all other obligations of the Client are met.
- 10.2. Receipt by BizHosting of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then BizHosting's ownership of rights in respect of the Goods shall continue.

10.3. It is further agreed that:

- (a) Until such time as ownership of the Goods shall pass from BizHosting to the Client BizHosting may give notice in writing to the Client to return the Goods or any of them to BizHosting. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
- (b) BizHosting shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (c) If the Client fails to return the Goods to BizHosting then BizHosting or BizHosting's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods.
- (d) The Client is only a bailee of the Goods and until such time as BizHosting has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for BizHosting.
- (e) The Client shall not deal with the money of BizHosting in any way which may be adverse to BizHosting.
- (f) The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of BizHosting.
- (g) BizHosting may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to BizHosting arising out of these terms and conditions, and BizHosting may take any lawful steps to require payment of the amounts due and the Price.
- (h) BizHosting can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
- (i) Until such time that ownership in the Goods passes to the Client, if the Goods are so converted, the parties agree that BizHosting will be the owner of the end products.

## 11. Personal Property Securities Act 2009 ("PPSA")

11.1. In this clause:

- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement means the security agreement under the PPSA created between the Client and BizHosting by these terms and conditions; and
- (d) security interest has the meaning given to it by the PPSA.

11.2. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
  - (i) all Goods previously supplied by BizHosting to the Client (if any);
  - (ii) all Goods that will be supplied in the future by BizHosting to the Client.

11.3. The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which BizHosting may reasonably require to:
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
- (b) indemnify, and upon demand reimburse, BizHosting for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of BizHosting;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of BizHosting; and
- (e) immediately advise BizHosting of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

11.4. BizHosting and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

11.5. The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

11.6. The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

11.7. Unless otherwise agreed to in writing by BizHosting, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

11.8. The Client shall unconditionally ratify any actions taken by BizHosting under clauses 11.3 to 11.5.

## 12. Security and Charge

12.1. Despite anything to the contrary contained herein or any other rights which BizHosting may have howsoever:

- (a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to BizHosting or BizHosting's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that BizHosting (or BizHosting's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

- (b) Should BizHosting elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify BizHosting from and against all BizHosting's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause [12.1 (a) and (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint BizHosting or BizHosting's nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as BizHosting and/or BizHosting's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of BizHosting and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to BizHosting and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in BizHosting's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

### 13. Cancellation

- 13.1. BizHosting may cancel these terms and conditions or cancel the Services by giving written notice. BizHosting shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2. At BizHostings sole discretion the Client may cancel the Services. In the event that the Client cancels the Services the Client shall be liable for any costs incurred by BizHosting (including, but not limited to, any loss of profits) up to the time of cancellation.

### 14. Privacy Act 1988

- 14.1. The Client and/or the Guarantor/s (herein referred to as the Client) agree for BizHosting to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by BizHosting.
- 14.2. The Client agrees that BizHosting may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client.The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.3. The Client consents to BizHosting being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4. The Client agrees that personal credit information provided may be used and retained by BizHosting for the following purposes (and for other purposes as shall be agreed between the Client and BizHosting or required by law from time to time):
  - (a) the provision of Services; and/or
  - (b) the marketing of Services by BizHosting, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 14.5. BizHosting may give information about the Client to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 14.6. The information given to the credit reporting agency may include:
  - (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that BizHosting is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of BizHosting, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Clients credit obligations);
  - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Client by BizHosting has been paid or otherwise discharged.

### 15. General

- 15.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2. If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 15.3. These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of Hornsby Local Court.
- 15.4. BizHosting shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by BizHosting of these terms and conditions.
- 15.5. In the event of any breach of this contract by BizHosting the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of BizHosting exceed the Price.
- 15.6. The Client shall not set off against the Price amounts due from BizHosting.
- 15.7. BizHosting may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.8. BizHosting reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which BizHosting notifies the Client of such change. Except where BizHosting supplies further Services to the Client and the Client accepts such Services, the Client shall be under no obligation to accept such changes.
- 15.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

## PART II: DEVELOPMENT OF THE WEB SITE

### 16. What BizHosting Will Do

- 16.1. Upon approval of the specifications and quotation in accordance with this agreement, BizHosting will:
  - (a) use its best endeavours to develop the Web Site in accordance with the development stages; and
  - (b) to the extent specified in the Specifications, negotiate and procure third party agreements on behalf of the Client.

### 17. What the Client Will Do

- 17.1. The Client will, 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;
  - (b) provision of logos, designs, graphic and related Goods to be incorporated into the Web Site; and
  - (c) provision of any other information, ideas or suggestions which are to be expressly considered by BizHosting in developing the Web Site.
- 17.2. The Client will ensure that BizHosting is given such information and assistance as BizHosting reasonably requires to enable BizHosting to construct and maintain the Web Site.
- 17.3. BizHosting will not be responsible for, and accepts no liability 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; or
  - (c) any third party material used by BizHosting in creation of the Web Site.

### 18. Maintenance

- 18.1. Subject to clause 18.2, BizHosting will provide Maintenance to the Web Site in accordance with BizHosting's maintenance schedule.
- 18.2. The Client will procure all necessary authorisations, licences and consents to enable BizHosting to have access to the Web Site in order to provide the Maintenance Services.

## PART III: WEB SITE HOSTING

### 19. What BizHosting Will Do

- 19.1. BizHosting will, at its sole cost and expense:
  - (a) install the Client Goods on BizHosting's Webserver;
  - (b) host the Client's Web Site on BizHosting's Webserver;
  - (c) ensure that from the Live Date:
    - (i) sufficient capacity is maintained on BizHosting's Webserver to enable Users access to the Client Web Site in a timely manner;
    - (ii) the Client Web Site is accessible to Users in accordance with the Service Levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or Web Site Maintenance in accordance with Clause 19.1(d));
  - (d) provide the Client with reasonable access to the Client Web Site to perform maintenance services.

### 20. What BizHosting Will Not Do

- 20.1. BizHosting will not:
  - (a) alter or amend, or permit any person to alter or amend the Client's Web Site without the written consent of the Client;
  - (b) post or display on the Client's Web Site any advertisement, sponsorship or promotion without the written consent of the Client;
  - (c) use any User Data for marketing, referral or other purposes except as expressly authorised by this agreement;
  - (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Client's Web Site; or
  - (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this agreement.

**21. What the Client Will Do**

21.1. The Client will, at its sole cost and expense:

- (a) develop and maintain the Client's Web Site (in the event BizHosting is NOT contracted to develop and maintain the Client's Web Site);
- (b) provide Goods to BizHosting, in such form as reasonably prescribed by BizHosting from time to time, and hereby grants BizHosting a non-exclusive, worldwide, irrevocable licence to use the Goods for the purposes of hosting the Web Site;
- (c) do all things reasonably necessary to enable BizHosting to host the Web Site on BizHosting Webserver;
- (d) ensure that the Goods supplied to BizHosting do not contain:
  - (i) Prohibited Content;
  - (ii) a Link to any Web Site that contains Prohibited Content; or
  - (iii) any viruses, trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.

**22. What the Client Will Not Do**

22.1. The Client will not do anything that prevents or hinders BizHosting from providing hosting services to any other person.