

## IMPORTANT

### CONSULTATION MANAGER TERMS AND CONDITIONS READ THIS AGREEMENT CAREFULLY

***MySite Design Pty Ltd (ACN 104 027 812) ("Us") have developed and have the right to grant Subscriptions to You to use the Application.***

***You should carefully read the following terms and conditions before accepting or using this Application. Your acceptance of these terms or use of this Application in any manner indicates Your acceptance of the terms of this Agreement which govern Your Subscription for access to the Application.***

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, unless the contrary intention appears:

**"Agreement"** means this agreement to provide You with access to the Application;

**"Application"** means the computer software application, more specifically called "Consultation Manager", which is to be made available by Us to You pursuant to this Agreement;

**"Charges"** means the charges for the Services as specified in the Customer Registration Form;

**"Commencement Date"** means the date You first have access to this Application;

**"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 technology and design of the Application;
- (b) confidential information relating to Your Data;
- (c) information relating to Our personnel, policies or business strategies;
- (d) information relating to the terms upon which the access to the Application is provided to You pursuant to this Agreement;

**"Customer Registration Form"** means the form described as such and previously provided to You;

**"Enterprise Proposal"** means the document described as such and previously provided to You;

**"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 shall 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 damages, sabotage and revolution; and
- (c) strikes;

**"Initial Term"** means the period so specified in clause 2;

**"Intellectual Property"** means:

- (a) jointly and severally any rights as they relate to the Application, and any modifications or enhancements to the Application (but excluding Your Data), the copyright, the design rights, the patent rights, and the eligible layout rights;
- (b) all other rights resulting from the intellectual activity in the industrial, scientific literacy or artistic fields and
- (c) any application or right to apply for registration of any of the rights referred to in sub clause (a).

**"Schedule"** means a schedule to this Agreement;

**"Subscription"** means the subscription to access the Application in accordance with and during the term of this Agreement;

**"Training Requirements"** means formal instruction to be provided by Us to You in the utilisation of the Application, as set out in Schedule 2 (if any);

**"Us"** means Mysite Design Pty Ltd (ACN 104 027 812) and includes **"Our"** and **"We"**;

**"You"** means you the user of the Application and **"Your"** refers to you also;

**"Your Data"** means data owned or supplied by You to which We are provided access pursuant to this Agreement or data which may otherwise be generated, compiled, arranged or developed using the Application by You.

## 1.2 Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;

- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and
- (m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

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## **2. DURATION OF AGREEMENT**

### **2.1 Initial Term**

The Initial Term of this Agreement shall commence on the Commencement Date and continue for the period of one (1) calendar month.

### **2.2 Termination**

At the end of the Initial Term, this Agreement shall be automatically renewed for subsequent terms of similar duration to the Initial Term. You may terminate this Agreement at any time after the end of the Initial Term by providing at least thirty (30) days notice in writing to Us.

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## **3. PROVISION OF ACCESS TO APPLICATION**

### **3.1 Access**

During the term of this Agreement, We will provide You with access to the Application in the manner specified in Schedule 2.

### **3.2 Customisation**

We shall undertake the customisation of Application to the specifications and requirements and for the cost as described in the Enterprise Proposal (if any) and as may otherwise be agreed by You and Us in writing.

### **3.3 Intellectual Property**

Intellectual Property in the Application and any associated customisations or enhancements or modifications, whether at Your request or otherwise, is retained by Us. Nothing in this Agreement is to be taken to be a transfer or assignment of these rights to You.

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## **4. SERVICE LEVEL**

### **4.1 Your Acknowledgement**

- (a) You acknowledge and agree that as with all computers, and internet driven software applications:
  - (i) there may be times that Our chosen server is not operational, or has been shut down for maintenance;

- (ii) there may be software errors or other interruptions in use affecting Our chosen server or the Application;
  - (iii) despite taking all reasonable security measures, Our chosen server is vulnerable to hackers, viruses, and unauthorised access and We can not guarantee the integrity of data, and that as a result of any of these events there may be interruption of Your business.
- (b) Persons with access to Your username and password may access Your profile and Your client information.
  - (c) If Your username and password are intercepted Your information may be accessed, changed and/or copied.
  - (d) In accordance with clause 11, we will have no liability to You for anything referred to in paragraphs 4.1(a), (b), or (c).
  - (e) You will indemnify Us in accordance with clause 11.4, in relation to any breach of security at Your premises or to your computer system, which results in any loss or damage to Us.

#### **4.2 Malfunction**

We do not warrant that the Application is or will be completely error free. It is Your responsibility to maintain other copies of Your Data to avoid its loss should the Application malfunction.

#### **4.3 Our Right to vary**

We may exercise Our discretion as to the configuration of Our system and the nature and manner of internal technical support applied to the Application and, for the removal of doubt, We may vary Our procedures without prior notification to You.

#### **4.4 Failure of the Application**

We shall not be responsible for any failure of the Application if such failure is caused by factors beyond Our reasonable control including, but not limited to, telecommunications failure or fault, defective network or Internet connections, defective equipment utilised by or incorrect operation by You of Your own access facilities, or the loss of service from the service provider hosting the Application.

### **5. CUSTOMER DATA**

#### **5.1 Your Data**

Subject to any lien arising because of unpaid Charges and subject further to any encumbrances arising outside Our control, We acknowledge that Your Data remains the property of You.

#### **5.2 Back Up Data**

We shall, at least five (5) days a week, make backup copies of Your Data in the manner and at intervals so prescribed by Us from time to time.

#### **5.3 Warranty**

- (a) You warrant that all information and files that You upload onto Our chosen server:

- (i) do not knowingly contain any viruses, and that You will take all reasonable measures to ensure this;
  - (ii) do not infringe the copyright of another person or organisation, and do not infringe any other industrial or intellectual property rights, or privacy rights, of another person or organisation;
  - (iii) are not defamatory, offensive, or obscene;
  - (iv) are not misleading or deceptive or likely to mislead or deceive;
  - (v) are not illegal.
- (b) You indemnify Us from and against all loss and damage You may suffer, and from all actions, claims, proceedings or demands by third parties against Us, arising in any way from a breach of Your warranty in paragraph (a).
- (c) We may remove or alter any data that does not comply with paragraph (a).

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## **6. YOUR FACILITIES**

### **6.1 Your Hardware**

You shall be responsible for providing Your own internal facilities (including terminal, software modem and telecommunications facilities) necessary for accessing the Application.

### **6.2 Assistance**

We shall, upon request from You, supply such information and assistance as is reasonably required by You to enable You to prepare and install Your own access facilities, at such cost as We shall agree from time to time.

### **6.3 We aren't Responsible**

Notwithstanding clause 6.2, We accept no responsibility for any deficiency in Your access facilities.

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## **7. CHARGES**

### **7.1 You must pay Charges**

You shall pay the Charges at the rate and in the manner specified in the Customer Registration Form or the Enterprise Proposal, whichever is applicable. You agree to pay Our Charges when requested. If You do not request the cancellation of Your account, You also agree to pay Our increased Charges of which You are notified. You will pay invoices sent by Us or Our nominated agent within thirty (30) days. If an invoice is unpaid for sixty (60) days, You understand that Your Subscription will be cancelled and You will not have access to the Application or Your Data. You also understand that there will be a setup fee charged to re-enable Your access to the Application.

## **7.2 Disputes**

If You dispute the whole or any portion of the Charges payable to You, You shall pay the whole of the amount of the Charges and shall notify Us in writing of the reasons for disputing the Charges. If it is resolved that some or all of the amount in dispute ought not properly to have been paid at the time, then We shall at Our discretion either pay to You the amount which You ought not have paid, or provide You with access to the Application for a period of time without charge, which We reasonably and fairly believe compensates You for such overpayment.

## **7.3 Exclusion of Taxes**

The Charges are exclusive of taxes, duties and charges imposed or levied in connection with Your access to the Application. Without limiting the foregoing, You shall be liable for any new taxes, duties or charges imposed subsequent to the Commencement Date in respect of the Access to the Application.

## **7.4 Increases in Charges**

We may increase the Charges from time to time. You will be notified by Us of any increased Charges at least thirty (30) days before the increase takes effect. If You agree to pay the increased fees there is nothing that You need to do. If You do not agree to pay the increased Charges, You must notify Us and request that We cancel Your Subscription.

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## **8. COMPLIANCE WITH LAW**

### **8.1 No Liability**

We are under no obligation to You under this Agreement or otherwise if and to the extent Your access to the Application constitutes a breach of any relevant law or regulation by You.

### **8.2 Delivery of Your Data**

We are under no obligation to refrain from delivering Your Data or related data, documentation or records into the custody of a duly authorised law enforcement officer or government representative, officer or agency or from providing such persons or instrumentalities with access to Your Data or related data, documentation or records if We receive a request or demand for such information.

### **8.3 Payment of Our Costs**

You shall to the extent permissible by law indemnify Us against all costs and liability incurred as a result of:

- (a) Our possession, processing, use or other handling of Your Data or related data, documentation or records in accordance with clause 8.2;
- (b) delivering materials or information to a third party in accordance with clause 8.2.

except as a result of Our acts or omissions.

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## **9. CONFIDENTIALITY**

### **9.1 Disclosure**

A party shall not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.

### **9.2 No Liability**

A Party shall not be in breach of clause 9.1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.

### **9.3 Employees**

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.

### **9.4 Privacy**

We provide the Application for Your use. The Application assists the collection and analysis of potentially sensitive information. We do not collect or use this information. You collect and use this information for Your own purposes. How You use this information is up to You and We assume no liability for its use.

### **9.5 Authorised Disclosure**

Notwithstanding any other provision of this clause, We may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to Our related companies, agents, solicitors, auditors, insurers or accountants.

### **9.6 Authorised Disclosure by You**

Notwithstanding any other provision of this clause, You may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to Your related companies, solicitors, auditors, insurers or accountants.

### **9.7 Survival**

This clause shall survive the termination of this Agreement.

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## **10. IMPLIED TERMS**

### **10.1 No Implied Terms**

Subject to clause 10.2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

### **10.2 Terms Implied by Law**

Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in

this Agreement. However, Our liability for any breach of such condition or warranty shall be limited, at Our option, to one or more of the following:

- (a) if the breach related to goods:
  - (i) the replacement of the goods or the supply of 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.

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## **11. LIABILITY OF MYSITE**

### **11.1 No Liability**

We shall be under no liability to You 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 Our part to comply with Our obligations under this Agreement.

### **11.2 No Reliance on Representations**

Subject to clause 11.3, You warrant that You have not relied on any representation made by Us 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 Us.

### **11.3 Representations**

You acknowledge that to the extent that We have made any representations which are not otherwise expressly stated in this Agreement, You have been provided with an opportunity to independently verify the accuracy of that representation.

### **11.4 Indemnity**

You shall at all times indemnify and hold harmless Us and Our officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by You of Your obligations under this Agreement;
- (b) any wilful, unlawful or negligent act or omission of You; or
- (c) any breach of Your security resulting in unauthorised access to the Application and/or Your Data.

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## **12. TERMINATION**

### **12.1 Termination by Us**

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

- (a) You are in breach of any term of this Agreement and such breach is not remedied within thirty (30) days of Us notifying You of that breach;
- (b) You become, threaten or resolve to become or are in jeopardy of becoming subject to any form of insolvency administration;
- (c) You, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (d) You, being a natural person dies; or
- (e) You cease or threaten to cease conducting Your business in the normal manner.

### **12.2 Effect of Termination**

If notice is given to You pursuant to clause 12.1, We may, in addition to terminating the Agreement, cancelling Your Subscription, and stopping Your access to the Application:

- (a) retain any moneys paid by You;
- (b) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- (c) be regarded as discharged from any further obligations under this Agreement; and
- (d) pursue any additional or alternative remedies provided by law.

### **12.3 Acknowledgment**

You acknowledge and agree that:

- (a) We can suspend the operation of Your Subscription if You breach any promise or obligation in this Agreement;
- (b) if You cancel Your Subscription, or Your Subscription is cancelled or suspended by Us, You understand that You are not entitled to a refund of any prepaid amount.
- (c) if Your Subscription is cancelled:
  - (i) Your Data will be removed from all publicly accessible areas on the Application's server; and
  - (ii) Your Data will be stored for sixty (60) days and returned to you on request for a fee provided there are no outstanding amounts owing.

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**13. FORCE MAJEURE****13.1 No Obligation**

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.

**13.2 Suspension of Obligation**

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.

**13.3 Termination**

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.

**13.4 Refund**

If this Agreement is terminated pursuant to clause 13.3, We shall refund moneys previously paid by You pursuant to this Agreement for goods or services not provided by Us to You.

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**14. SUB-CONTRACTS****14.1 Our Right**

We may sub-contract for the performance of this Agreement without obtaining Your prior consent .

**14.2 Third Parties**

We may, without Your consent, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of services and access to the Application pursuant to this Agreement.

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**15. ENTIRE AGREEMENT**

This Agreement and the Customer Registration Form constitute the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings whether verbal or in writing.

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**16. PRECEDENCE****16.1 Order of Applicability**

The documents comprising this Agreement shall be read in the following order of precedence:

- (a) the clauses of this Agreement;
- (b) the Schedules;

- (c) the Customer Registration Form or the Enterprise Proposal which contain the applicable fees.

## **16.2 Conflict**

Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

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## **17. ASSIGNMENT AND NOVATION**

### **17.1 No Assignment by You Without Consent**

The benefit of this Agreement shall not be assigned by You without Our written consent.

Licenses of the Application are personal to You and licenses do not permit use by associated companies or any other person or entity other than employees, contractors or third parties who are reasonably required to access the system for use on Your Projects unless otherwise agreed in writing by Us.

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## **18. WAIVER**

### **18.1 Notice of Waiver**

No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party.

### **18.2 No Prejudice**

A waiver by Us pursuant by clause 18.1, will not prejudice Our rights in respect of any subsequent breach of the Agreement by You.

### **18.3 No Waiver**

Subject to clause 18.1, any failure by Us to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by Us to You, will not be construed as a waiver of Our rights under this Agreement.

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## **19. VARIATION**

### **19.1 Variation in Writing**

The provisions of this Agreement shall not be varied, except by agreement in writing.

### **19.2 Variation by Us**

If We wish to vary the Agreement, You will be prevented from accessing the Application until you have clicked and accepted the amended terms and conditions.

### **19.3 Acceptance**

If You accept the variations, the Agreement shall be deemed to be so amended from the date of acceptance.

### **19.4 Rejection**

If You reject the proposed variations as submitted by Us, We may elect to terminate this Agreement by thirty (30) days notice to You.

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## **20. DISPUTES**

### **20.1 Arbitration**

Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives shall be submitted to arbitration in accordance with the Rules for the Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators Australia. During such arbitration, both Parties may be legally represented.

### **20.2 Negotiation**

Prior to referring a matter to arbitration pursuant to clause 20.1, the Parties shall:

- (a) formally refer the dispute to their respective contract managers for consideration;
- (b) if the respective contract managers are unable to resolve the dispute after five (5) days (or such other period as is agreed between the Parties) from the date of referral, refer the dispute to the respective chief executive officers of each Party; and;
- (c) in good faith explore the prospect of mediation..

### **20.3 Urgent Relief**

Nothing in this clause shall prevent a Party from seeking urgent equitable relief before an appropriate court.

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## **21. OUR RIGHTS**

Any express statements of Our rights under this Agreement are without prejudice to any other of Our rights of expressly stated in this Agreement or existing at law.

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**22. SURVIVAL OF AGREEMENT****22.1 Succession**

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.

**22.2 Survival**

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.

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**23. 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.

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**24. GOVERNING LAW**

This Agreement will be governed by and construed according to the law in the State of Queensland, Australia.

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**25. NOTICES****25.1 Method**

Notices under this Agreement may be delivered by hand, by mail or by facsimile to Us at the addresses specified in Schedule 1, and to You at the addresses You specify to Us in Your application to apply for access to the Application.

**25.2 Service**

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;
  - (d) in the case of emails on the day they are sent, it being the obligation of each party to maintain the currency to their email addresses.
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**SCHEDULE 1  
Contact Details**

MySite Design Pty Ltd  
Unit 117/1 Gray Street  
New Farm Qld 4005

PO Box 1217  
New Farm Qld 4005

Phone: 07 1300 850 058  
Fax: 07 3358 3229

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**SCHEDULE 2  
Services**

Consultation Manager is a web-enabled database application that enables Consultation Professionals to collect, manage and analyse stakeholder data.

Consultation Manager is accessed through a web browser over a secure connection. Encryption of the information between the User and Consultation Manager is provided by an industry standard 128-bit SSL encryption.

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