

## webqem general terms

These webqem General Terms apply to each Customer Service Agreement between WEBQEM PTY LIMITED ACN 088 712 485 of Level 1, 130 Military Road, Neutral Bay, New South Wales, Australia (webqem) and the Customer that has signed an acceptance of the Quote (Accepted Quote) as provided to the Customer by webqem.

Each Customer Service Agreement consists of:-

- (a) the Accepted Quote; and
- (b) these webqem General Terms .

If there is any inconsistency between the Accepted Quote and these webqem General Terms, then these webqem General Terms will prevail.

All capitalised terms have the meaning that they have as set out in the Dictionary at the end of these webqem General Terms. The Dictionary also sets out the rules of interpretation which apply to the Customer Service Agreement

### 1. SERVICES

- (a) Subject to clause 4, webqem will provide the Services to the Customer in accordance with the Accepted Quote.
- (b) webqem may change, add, or remove any part of the Customer Service Agreement at any time by giving 14 days' notice in writing. The Customer has the right to terminate the Customer Service Agreement by giving written notice to webqem and ceasing to use the Services within the 14 day notice period.

### 2. FEES

- (a) In consideration for webqem providing the Services to the Customer, the Customer will pay webqem the Fees.

### 3. PAYMENT TERMS

- (a) The Customer must pay webqem the Fees in the manner provided in the Accepted Quote and, in any case, within 7 days of webqem issuing an invoice to the Customer.
- (b) Payment of the Fees must be made by cheque, electronic transfer or other pre-arranged payment method unless webqem has agreed to provide credit terms to the Customer.
- (c) If the Customer does not pay the full amount of the Fees, webqem may charge the Customer interest on the amount outstanding, at the Late Fee Rate calculated daily, for each day that the amount outstanding remains unpaid, or webqem may elect to terminate the Customer Service Agreement.
- (d) In the event of the payment of Fees being made by or on behalf of the Customer by cheque or other negotiable instrument the person signing the same warrants that the cheque or negotiable instrument will be paid upon the first presentation and personally indemnifies webqem against dishonor or non payment.
- (e) If webqem instructs its solicitors to collect an overdue amount, all Legal Fees shall be borne by the Customer and all payments made by the Customer will firstly be allocated towards such Legal Fees and then to the Late Fee Rate and finally to the overdue amount.
- (f) If the Customer is required to withhold or deduct Tax from the Fees, the Customer is required to pay webqem an additional amount to ensure that webqem receives a net amount equal to the full amount of the Fees.

### 4. CREDIT LIMIT

- (a) webqem may in its sole discretion at any time grant to the Customer a credit limit and shall confirm the terms and extent of such credit limit in writing to the Customer. For the avoidance of doubt, any credit terms agreed in writing between webqem and the Customer forms a part of the Customer Service Agreement.
- (b) The Customer must not exceed its credit limit without the prior written consent of webqem.
- (c) webqem may at any time in its sole discretion adjust or cancel the Customer's credit limit.
- (d) The Customer must submit financial information relating to the Customer from time to time as reasonably requested by webqem for the establishment and/or continuation of a credit limit.

## 5. DELIVERY, TITLE AND RISK

- (a) The Customer acknowledges that delivery dates for the Services to be provided by webqem as stated in the Accepted Quote are estimates only and that webqem is not liable for failure to deliver on such dates. Webqem reserves the right to make deliveries in installments.
- (b) Subject to clause 5 (c), title to any goods provided with the Services as stated in the Accepted Quote passes from webqem to the Customer on the date of delivery of such goods to the Customer.
- (c) For the avoidance of doubt,
  - (i) title to webqem's Intellectual Property Rights remains with webqem; and
  - (ii) title to any software provided to the Customer in connection with the Services remains with the applicable licensor of that software.
- (d) Any goods as provided with the Services by webqem to the Customer will be at the Customer's risk upon delivery to the Customer.

## 6. INTELLECTUAL PROPERTY RIGHTS

- (a) All Intellectual Property Rights (including those subsisting in the Content Management System as defined in the Accepted Quote, computer programs, databases, software and documentation) in any subject matter developed or supplied by or on behalf of webqem in the course of providing the Services are owned by Webqem, or a person nominated by webqem, ("webqem Intellectual Property Rights"). In the event that the Customer has any right, title or interest in any of the webqem Intellectual Property Rights, the Customer must execute all documents and do all things necessary or reasonable to assign to webqem any such webqem Intellectual Property Rights.
- (b) Notwithstanding Clause 6(a) the Customer owns all Intellectual Property Rights in any subject matter or material provided by the Customer to webqem under the Customer Service Agreement.
- (c) Webqem grants the Customer a personal, non-exclusive, non-transferable licence to use the subject matter delivered by or on behalf of webqem pursuant to the Customer Service Agreement including, but not limited to the webqem Intellectual Property Rights, solely for the purpose contemplated at the date of the Accepted Quote.

## 7. THIRD PARTY SOFTWARE

- (a) All third party software provided to the Customer by webqem is provided subject to the licence agreement that is provided with the software.
- (b) The Customer is bound by the licence agreement on using the software.
- (c) Any warranty and technical support provided on third-party software purchased through webqem are provided by the original manufacturer and not by webqem.

## 8. CUSTOMER RESPONSIBILITIES AND OBLIGATIONS

- (a) The Customer must:
  - (i) provide webqem with all information and other assistance reasonably required by webqem to enable webqem to provide the Services;
  - (ii) if any third party consents are necessary or desirable to enable webqem to provide the Services, obtain those consents within such times as will enable webqem to provide the Services in accordance with the Accepted Quote;
  - (iii) be responsible for, and without limitation, any data owned by the Customer that is stored on the webqem system or any data transmitted or caused to be transmitted over the Internet;
  - (iv) only use the Services for the purpose contemplated at the date of acceptance of the Accepted Quote;
  - (v) comply with the licence terms and conditions of any software or hardware supplied to the Customer by webqem; and
  - (vi) comply with all applicable legislation, including anti-spam, anti-phishing, identity theft, defamation, privacy, pornography and Intellectual Property Rights legislation.
- (b) The Customer must not:
  - (i) interfere with or disrupt the network, any other user, or the service or equipment of webqem or any other user, or substantially affect the operation of the Services, including introduce or allow any software virus;
  - (ii) engage in the business of reselling or exporting the Services or any part of the Services
  - (iii) use the Services for any illegal, unauthorized or dangerous purpose;
  - (iv) use the Services or any webqem Intellectual Property Rights to develop technology the same as or similar to the Services or the webqem Intellectual Property Rights or to compete against webqem;
  - (v) publish any material for which the Customer is not the Intellectual Property Right owner or is so authorised to publish.
- (c) The Customer acknowledges that Webqem does not and cannot monitor or control the content and information accessed via the Internet and shall not hold Webqem responsible in any way for any content or information accessed via the Internet.
- (d) The Customer agrees to provide webqem with a client testimonial and the Customer consents to webqem referring to work done for the Customer in presentations webqem makes to third parties and on webqem's website, including but not limited to using the Customer's logo and a link to the Customer's website from webqem's website.

## 9. WEBQEM RIGHTS

Webqem may in its sole discretion, without notice or giving any reason or incurring any liability for doing so:

- (a) suspend the Services if the Customer is in breach of clause 8(b);
- (b) delete any data found on webqem's equipment or systems and/or refuse to publish any data which is, in webqem's opinion, unauthorised; illegal or possibly illegal; unlawful; obscene; infringes any Intellectual Property Right of any third party; defamatory; excessive in volume; uncollected for an excessive period; in an unauthorised area or otherwise dangerous;
- (c) take action if it suspects that malicious, illegal or unacceptable usage of the Services is occurring or has occurred.

## 10. EXCLUSIONS AND LIMITATION OF LIABILITY

- (a) Customer acknowledges that
  - (i) the Services supplied by webqem are not Services of a kind likely to be used, for personal, domestic or household use or consumption;
  - (ii) any Services supplied by webqem will be used by the Customer in trade or commerce
- (b) To the full extent allowed by law and subject to clause 10(c), webqem is not responsible for, without limitation:
  - (i) ensuring that the Services are suitable for the Customer's requirements or fit for any purpose;
  - (ii) any interruption to the Services due to, without limitation, equipment failure, the need for routine maintenance or peak demand;
  - (iii) the supply or maintenance of the Customer's equipment or software;
  - (iv) monitoring, controlling or ensuring the accuracy, appropriateness or content of any information or material on the Internet and does not do so;
  - (v) any failure to supply the Services to the extent the Customer has failed to comply with clause 8;
  - (vi) any loss of data provided by, uploaded, downloaded, stored, processed, accessed or shared by the Customer;
  - (vii) the acts or omissions of any third party including any breach of security.
- (c) If webqem fails to comply with any statutory guarantees and warranties that cannot be excluded by law, webqem's liability is limited to
  - (i) the supplying of the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.
- (d) Subject to clause 10(c), webqem is not liable to the Customer or any other person, and the Customer releases each of webqem and its officers, employees, advisers and related bodies corporate for any costs, loss, liability or claim whether direct, indirect or consequential arising out of Webqem's supply or failure to supply the Services or otherwise under the Customer Service Agreement, except as a result of negligence of Webqem or any of its officers, employees, advisers or related bodies corporate.
- (e) The Customer releases, indemnifies and must keep indemnified each of webqem and its officers, employees, advisers and related bodies corporate against all liability, claim, action, suit, demand, loss, cost or expense (including consequential loss) arising out of or in any way connected with the Customer's use of the Services and any data provided, uploaded, downloaded, stored, processed, accessed or shared by the Customer, including without limitation, the Customer's failure to comply with clause 8 (including the Customer's failure to comply with all applicable laws).
- (f) The Customer indemnifies webqem, its successors, assigns and licensees against any costs, loss, liability or claim suffered or incurred by any of them arising from the Customer's use of the Service, and any data provided, uploaded, downloaded, processed, stored, accessed or shared by the Customer, including the Customer's failure to comply with this clause 10.
- (g) webqem holds the benefit of the release in this clause 10 for each of its officers, employees, advisers and related bodies corporate from time to time.

## 11. CONTENT

- (a) The Customer may upload content to the Services in connection with the use of the Services.
- (b) Webqem does not verify, endorse or claim ownership of any content, and the Customer retains all right, title and interest to that content.
- (c) By maintaining the content on the Services, the Customer grants Webqem a non-exclusive, worldwide, perpetual, royalty-free and fully paid license under all Intellectual Property Rights to reproduce, copy, distribute, publish, communicate, transmit, publicly display, publicly perform and reformat the content solely to deliver the Services to the Customer.

## 12. DISPUTE RESOLUTION

- (a) If any dispute or difference arises between the parties in connection with any aspect of the Customer Service Agreement, webqem and the Customer undertake with each other to use all reasonable endeavours, in good faith, to settle the dispute or difference by negotiation.
- (b) If webqem and the Customer or their representatives do not settle the dispute by negotiation within 14 days, each party must appoint a senior executive to participate in the negotiations to settle the dispute or difference.
- (c) If the dispute is not resolved within one month after referral of the dispute to the senior executives or such longer period as agreed between webqem and the Customer, then either party may exercise any other rights they may have.
- (d) This clause is without prejudice to webqem's right to seek interlocutory relief on an urgent basis to restrain any actual or threatened breach of this Agreement or any applicable law.

## 13. GST

- (a) Any consideration or payment obligation in the Customer Service Agreement is exclusive of GST unless stated otherwise.
- (b) A party who receives consideration, whether monetary or otherwise, for a taxable supply under the Customer Service Agreement, must give the other party a tax invoice in a form which complies with the GST Law.

## 14. RELATIONSHIP BETWEEN THE PARTIES

- (a) The Customer Service Agreement does not create a relationship of employment, agency or partnership between webqem and the Customer.
- (b) Neither party is authorised to, nor may undertake to bind the other party in any way by any warranty, agreement, contract, representation or other written or oral or by any instrument or action of any kind.

## 15. TERMINATION

- (a) A party may terminate the Customer Service Agreement with immediate effect by giving written notice to the other party, if:
  - (i) the other party breaches a material obligation under the Customer Service Agreement and if the breach is capable of being remedied does not remedy that breach within 28 days after receipt of written notice requiring it to do so;
  - (ii) an Insolvency Event occurs in relation to the other Party.
- (b) Webqem may terminate the Customer Service Agreement with immediate effect by giving written notice to the Customer if
  - (i) the Customer does not pay any amount due under the Customer Service Agreement or any amount due under any other agreement or arrangement between webqem and the Customer
  - (ii) the Customer is in breach of a material obligation under another agreement between webqem and the Customer, and if the breach is capable of being remedied has not remedied that breach within 28 days after receipt of written notice requiring it to do so;
  - (iii) in webqem's opinion, the Customer has failed or is threatening not to comply with applicable laws including anti-spam, anti-phishing, identity theft, defamation, privacy, pornography and Intellectual Property Rights laws;
  - (iv) in webqem's opinion, it is or will be illegal for webqem to provide the Services to the Customer.
- (c) The Customer may terminate the Customer Service Agreement in accordance with clause 1(b).
- (d) On termination of the Customer Service Agreement:
  - (i) each party must immediately return to the other party all of the other party's confidential information in its possession or control, and remove it from its electronic systems; and
  - (ii) the Customer must immediately pay all outstanding amounts owing under the Customer Service Agreement as at the date of termination.

## 16. NOTICES

- (a) Any notice or other communication, given under the Customer Service Agreement must be in English and is deemed to be received by the addressee in accordance with clause 16(b).
- (b) A notice is deemed to be received:
  - (i) if sent by hand, when delivered to the party;

(ii) if by post, two (2) business days after it is sent if it is sent to the address for the party set out in this Agreement or such other address nominated by the party in writing;

(iii) if by facsimile transmission, on receipt of a successful facsimile transmission report ; or

(iv) if sent by email, on receipt of a read acknowledgement email,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm in the place of delivery or receipt it is regarded as received at 9.00 am on the following Business Day.

## 17. GOVERNING LAW

The laws of New South Wales govern the Customer Service Agreement. Each party submits to the non-exclusive jurisdiction of the Courts of that State.

## 18. CONFIDENTIALITY

A party may not disclose the provisions of the Customer Service Agreement or Confidential Information about the other party except:

(i) after obtaining the written consent of the other party;

(ii) on a confidential basis to an officer, employee or professional adviser; or

(iii) as required by any applicable law,

and must use its best endeavours to ensure all permitted disclosures are kept confidential by the party to whom the disclosure was made.

## 19. PRIVACY POLICY

(a) webqem is bound by the National Privacy Principles, and the subsequent Notifiable Data Breaches (NDB) scheme under Part IIIC, set out in the Privacy Act 1988 (Cth), and it is committed to upholding these principles.

(b) webqem respects the privacy of the Customer.

(c) webqem only collects information which is necessary for the provision of the Services to the Customer.

(d) In providing the Services to the Customer, it may be that webqem will collect from the Customer, or store on behalf of the Customer, personal information, such as names, addresses, occupations and contact details of persons within the Customer's organisation or associated with the Customer. When webqem collects or stores personal information, it does so with the consent of the Customer. Any personal information so collected will only be used in connection with the Services which webqem supplies to the Customer, unless otherwise stated. Webqem may hold your information in its CRM, accounting, ticketing, marketing, web conferencing and intranet/ wiki solutions.

(e) webqem may at times need to share personal information with other organisations related to webqem. webqem does this within the standards set out in this privacy policy, and webqem will never share personal information without the consent of the Customer. webqem requires that any party it shares information with will protect it to the same level that webqem does.

(f) webqem uses a variety of electronic and physical security measures, including restricting access to the offices of webqem and the use of firewalls and security databases to secure personal information. webqem does all that it reasonably can to protect all personal information from misuse, loss, unauthorised access and disclosure. While webqem strives to protect the information of the Customer and to prevent unauthorised access to any information, no data transmission over the Internet can be guaranteed as totally secure. webqem cannot ensure the security of any information transmitted to or from its systems.

(g) webqem and its directors, officers, employees and consultants do not accept any liability for any loss, damage, cost or expense incurred by any person or company whatsoever arising out of or referable to any unauthorised access to any information in webqem's systems or information transmitted to or from webqem's systems.

(h) The Customer has the right to access personal information webqem holds and webqem will act to correct that personal information if it is inaccurate or incomplete. If webqem denies a request for access, webqem will explain the reasons why it has done so. If the Customer does want access to (or the removal of) the personal information that webqem holds, then the Customer should [contact](#) the General Manager at webqem's offices.

(i) If the Customer wishes to make a complaint about the way webqem handles personal information it collects or stores, then the Customer should [contact](#) the General Manager at webqem's offices.

(j) Where webqem is providing services such as managed services of your application in our data centre, under the General Data Protection Regulation, your organisation would be considered the data controller and webqem would be considered the data processor. In this role webqem is there to help you manage and report on your data obligations as a data controller. (Please note that webqem will charge on a time and material basis for such requests). As a data controller, webqem assumes that that you have clear, intelligible and easy to access consent forms that are using plain language. It must also be easy for your end users to withdraw their consent to use their data. Explicit consent is required only for processing sensitive personal data that has been opted in. However, for non sensitive data, "unambiguous " consent will suffice. For the record, webqem's data protection officer is the General Manager or COO. If there is a data breach, webqem will report to the appropriate regulators in Australia (under the Notifiable Data Breaches Scheme) and EU (under the General Data Protection Regulation) to meet the obligations. We advise all our clients to understand their privacy obligation in Australia and if their end users are located in the EU they are also bound to the regulations of the GDPR.

## **20. NO ASSIGNMENT**

A party may not assign the Customer Service Agreement or otherwise transfer the benefit of the Customer Service Agreement or a right or remedy under it, without the prior written consent of the other party. The Customer acknowledges that webqem may assign the benefit of the Customer Service Agreement to another person as part of a corporate restructure or as part of the sale of substantially the whole of webqem's business.

## **21. ENTIRE AGREEMENT**

The Customer Service Agreement constitutes the entire agreement between webqem and the Customer and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

## **22. FURTHER ASSURANCE**

Each party must do all things necessary to give full effect to the Customer Service Agreement and the transactions contemplated by the Customer Service Agreement.

## **23. PERFORMANCE OF THE CUSTOMER SERVICE AGREEMENT**

The Customer acknowledges that webqem may use a related body corporate to perform any of its obligations or otherwise do anything that webqem is required or permitted to do under the Customer Service Agreement.

## **24. SEVERABILITY**

If any provision of the Customer Service Agreement is held to be ineffective, unenforceable or illegal for any reason, that decision will not affect the validity or enforceability of any or all of the remaining provisions.

## **25. WAIVER**

Either party's failure on any occasion to insist on the strict performance of any term or condition of the Customer Service Agreement will not constitute a waiver of compliance with the particular term or condition or a waiver of any default.

## **26. AMENDMENTS**

Subject to clause 1(c), the Customer Service Agreement may only be amended by a written document signed by the parties.

## **27. AUTHORITY TO ENTER AGREEMENT**

The person who signs the Customer Service Agreement on behalf of the Customer warrants that he or she has the authority and power to enter into the Customer Service Agreement and bind the Customer.

## Dictionary

### Part 1 – Definitions

**Business Day** means a day on which banks are open for business in New South Wales excluding a Saturday, Sunday or public holiday.

**Confidential Information** includes:

- (a) all trade secrets, ideas, concepts, knowhow, technology, operating procedures, processes, knowledge, pricing, know-how, customer lists, and other information which is not in the public domain;
- (b) all notes and reports incorporating or derived from information referred to in paragraph (a); and
- (c) all copies of the information, notes and reports referred to in paragraphs (a) and (b).

**Dollars, A\$ and \$** means the lawful currency of Australia.

**Fees** has the meaning set out in the Services Schedule.

**GST** means good and services tax under the GST Law, as that expression is defined in A New Tax System (Goods and Services Tax) Act, 1999.

**Initial Term** has the meaning set out in the Services Schedule.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to any party:

- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator or an administrator is appointed;
- (c) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (d) it ceases to carry on business or threatens to do so; or
- (e) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

**Intellectual Property Rights** means all intellectual property rights at any time protected by statute or common law, including but not limited to:

- (a) patents, patent rights, copyrights, rights in circuit layouts, registered designs, design rights, trade marks, trade names, licenses, utility models, logotypes and service marks and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in (a).

**Late Fee Rate** means, at any time, the lower of 2% per month calculated daily, compounded monthly, or the maximum rate allowed by law.

**Legal Fees** means those fees charged by the lawyers of webqem to webqem on a solicitor client basis.

**Quarter** means each period of 3 months.

**Services** has the meaning set out in the Services Schedule.

**Tax** means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including, without limitation, stamp and transaction duty, which is imposed, withheld or collected by a government agency.

**webqem Intellectual Property Rights** means all Intellectual Property Rights (including those subsisting in the Content Management Systems as defined in the Accepted Quote, computer programs, databases, software and documentation) in any subject matter developed or supplied by or on behalf of webqem in the course of providing the Services

### Part 2 - Interpretation

(a) Unless the context otherwise requires:

- (i) words importing the singular include the plural and vice versa;
- (ii) words which are gender neutral or gender specific include each gender;
- (iii) other parts of speech and grammatical forms of a word or phrase defined in the Customer Service Agreement has a corresponding meaning;
- (iv) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a Government Agency;
- (v) a reference to a thing (including, but not limited to, a chose-in-action or other right) includes a part of that thing;
- (vi) a reference to a clause, party, schedule or attachment is a reference to a clause of the Customer Service Agreement, and a party, schedule or attachment to, the Customer Service Agreement and a reference to the Customer Service Agreement includes a schedule and attachment to the Customer Service Agreement;

(vii) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, bylaw judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;

(viii) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it;

(ix) a reference to a party to a document includes that party's successors and permitted assigns;

(x) an agreement on the part of two or more persons binds them severally; and

(xi) a reference to an agreement, other than the Customer Service Agreement, includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing.

(b) Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the following Business Day.

(c) Headings are for convenience only and do not affect the interpretation of the Customer Service Agreement.

(d) The Customer Service Agreement may not be construed adversely to a party just because that party prepared the agreement.

(e) A term or expression starting with a capital letter:

(i) which is defined in this Dictionary, has the meaning given to it in this Dictionary; and

(ii) which is defined in the Corporations Act but is not defined in this Dictionary, has the same meaning as in the Corporations Act.