

WEBTRIM PTY LTD
WEBTRIM
STANDARD TERMS AND CONDITIONS

1	GRANT OF LICENCE	4.4	WEBTRIM P/L will make available to the Client any standard upgrades. The Client will be required to accept any upgrades, within twelve months of release.
1.1	As long as the Client complies with these terms and conditions and pays the Ongoing Services and Licensing Fee, WEBTRIM P/L hereby grants to Client a non-exclusive and non-transferable licence to use the one instance of the Software on the Equipment solely for its own business activities in the manner and for the purposes described in the documentation provided by WEBTRIM P/L.	5	INTELLECTUAL PROPERTY
1.2	This agreement (and the licence hereby granted) commences on delivery of the Software to the Client and continues while the Client pays the Ongoing Services and Licensing Fee unless terminated earlier in accordance with these terms and conditions.	5.1	Client acknowledges that there is no transfer of title or ownership of any Intellectual Property Rights with respect to the Software to Client. All Software including any copies, upgrades, modifications and enhancements and any associated documentation (including all associated Intellectual Property Rights) are owned by WEBTRIM P/L and the Software is licensed to the Client strictly upon these terms and conditions. WEBTRIM P/L reserves the right to grant licences to use the Software to any other party or parties.
2	RESTRICTIONS AND OBLIGATIONS	5.2	Client shall notify WEBTRIM P/L immediately of any unauthorised use of the whole or any part of the Software by any person. Subject to reasonable prior notification, Client will permit WEBTRIM P/L to verify the use of the Software by Client at all reasonable times.
2.1	Except to the extent permitted by law and allowed by these terms and conditions, Client shall not directly or indirectly allow or cause a third party to (without WEBTRIM P/L prior written consent): (a) copy or reproduce the Software by any means or in any forms; (b) modify or alter the Software or merge all or any part of the Software with any other product; (c) reverse assemble or reverse compile the whole or any part of the Software; or (d) sell, lease, assign, transfer, sublicense or otherwise deal with the Software.	6	WARRANTIES
2.2	Client may take one back-up copy of the Software for archival purposes.	6.1	WEBTRIM P/L represents and warrants to Client in relation to the Software that the Software will perform substantially in accordance with the documentation provided by WEBTRIM P/L with the Software for 90 days following installation of the Software while on the Equipment. All warranty claims must be made within the 90 day period and the maximum liability of WEBTRIM P/L in relation to the warranty is replacement of the Software or a full refund of the licence fees paid by the Client.
2.3	Client is solely responsible for the use, supervision, management and control of the Software and must effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorised person. The Client is responsible for all of its information stored on the Equipment and is responsible for backup procedures to recover lost or damaged information.	6.2	WEBTRIM P/L does not provide any warranty in relation to the Equipment. Any warranty provided by the manufacturer or supplier will be passed through to the Client (to the extent permitted). Any services provided by WEBTRIM P/L in relation to the Equipment (including but not limited to inspections, warranty returns, replacement) may attract additional fees.
3	FEES	6.3	Except as expressly provided in these terms and conditions, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement or to this agreement generally, are excluded. Where any 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, such condition or warranty shall be deemed to be included in this agreement. However, the sole and exclusive liability of WEBTRIM P/L for any breach of such condition or warranty shall, if permitted by that Act, at the option of WEBTRIM P/L, be limited to any one or more of the following: (a) if the breach relates to goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of 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.
3.1	Client shall pay to WEBTRIM P/L the amounts set out in the WEBTRIM P/L Proposal (if any) including but not limited to the Initial license fees; fees in relation to the Equipment; the Implementation fees; and the Ongoing Services and Licensing Fee. All amounts include GST which is payable by the Client. Any change in taxes including GST will be passed onto the Client.	7	LIMITATION OF LIABILITY
3.2	The fees in relation to the Equipment, implementation and initial licensing are payable on or before implementation of the Software, unless otherwise agreed in writing. WEBTRIM P/L may request a deposit upon signing of the Proposal. The Ongoing Services and Licensing Fee is payable monthly in advance or yearly in advance as agreed by the parties. The Client will pay via direct debit or internet transfer or cheque. All amounts are payable upon presentation of the invoice.	7.1	UNDER NO CIRCUMSTANCES SHALL WEBTRIM P/L BE LIABLE TO CLIENT FOR ANY SPECIAL INCIDENTAL, INDIRECT, STATUTORY, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS OR LOST OR DAMAGED DATA, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE BREACH THEREOF EVEN IF WEBTRIM P/L HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT TO THE EXTENT IT IS NOT PERMISSIBLE AT LAW, WEBTRIM P/L'S MAXIMUM AGGREGATE LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE
3.3	The Client may organise finance however installation will not proceed until the finance has been approved and payment made in accordance with clause 3.2.		
3.4	The Ongoing Services and Licensing Fee covers the ongoing licensing of the Software, upgrades as made available by WEBTRIM P/L and online and/or telephone support as set out in these terms and conditions. If the Client does not pay the Ongoing Services and Licensing Fee by the due date, WEBTRIM P/L reserves the right to suspend or cancel the licence and/or any of the services provided as part of that fee.		
3.5	WEBTRIM P/L will provide tax invoices for each of the fees.		
3.6	WEBTRIM P/L may increase the Ongoing Services and Licensing Fee upon 30 days written notice.		
4	INSTALLATION, TRAINING, SUPPORT, UPGRADES		
4.1	WEBTRIM P/L will agree dates for installation of the Software.		
4.2	WEBTRIM P/L will provide implementation, analysis and training to a maximum of 10 man-days over the first three months during normal working hours on business days.		
4.3	WEBTRIM P/L will provide the telephone support for all matters relating to WebTRIM, including usage and technical support during normal working hours on business days.		

	ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR THE SOFTWARE SHALL BE LIMITED TO THE AMOUNT EQUAL TO THE ONGOING SERVICES AND LICENSING FEE PAYABLE FOR THE 12 MONTH PERIOD AT THE TIME THE LIABILITY AROSE.	10.2	This agreement shall not be varied or modified in any way after its execution except by an instrument in writing executed by all of the parties.
7.2	Nothing in this agreement limits WEBTRIM P/L's liability in relation to personal injury or death due to its negligence or fraud.	10.3	If any provision of this agreement is held to be invalid, unenforceable or illegal for any reason, this agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.
8	TERMINATION	10.4	No right under this agreement shall be deemed to be waived except by notice in writing signed by each party. A waiver by a party will not prejudice its right in respect of any subsequent breach of the agreement by the other party. Any failure by a party to enforce any clause of this agreement, or any forbearance, delay or indulgence granted by a party to the other party, will not be construed as a waiver of that party's rights under this agreement.
8.1	In addition to other rights under this agreement, either party may by written notice to the other party terminate this agreement forthwith if: (a) the other party fails to observe or perform any material provision of this agreement and fails to remedy such material breach within 30 days after written notice thereof has been given to the party in breach; (b) the other party is or is likely to become insolvent.	10.5	This agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.
8.2	The Client may terminate this agreement by giving WEBTRIM P/L at least 30 days prior written notice.	10.6	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.
8.3	Termination of this agreement shall not extinguish or affect any rights of either party against the other which accrued prior to the time of termination; or the provisions of this agreement which by their nature survive termination.	10.7	WEBTRIM P/L is an independent contractor and this agreement does not create a partnership or joint venture between the parties and neither party shall be deemed an agent of the other nor shall it hold itself out as an agent of the other.
8.4	Upon termination of this agreement Client shall return to WEBTRIM P/L the Software in all forms and all copies of the whole or any part thereof or, if requested by WEBTRIM P/L, shall destroy the same and certify in writing to WEBTRIM P/L that they have been destroyed.	10.8	This agreement will be governed by and construed in accordance with the laws of Victoria and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria.
9	CONFIDENTIALITY	11	DEFINITIONS AND INTERPRETATION
9.1	Each party agrees: (a) to keep all the other party's Confidential Information confidential; (b) not to use the other party's Confidential Information other than for the purposes of this agreement; and (c) not to disclose the other party's Confidential Information to any third party without the prior written consent of the other party.	11.1	In this agreement, unless stated to the contrary: "WEBTRIM P/L" means WebTRIM Pty Ltd (ACN082 893 605). "Client" means the person accepting the Software upon these terms and conditions. "Equipment" means the pre-configured server provided by WEBTRIM P/L with the Software and any other hardware specified, including, but not limited to, barcode stations or scanners. "Intellectual Property Rights" means any rights of any kind in: (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques; (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist; (c) confidential information and trade secrets; (d) trade and service marks (whether registered or unregistered); (e) proprietary rights under the Circuit Layouts Act (Cth) 1989; and (f) designs available on Internet sites. "Software" means the operational release of WebTRIM Professional provided by WEBTRIM P/L to the Client and any associated documentation provided by WEBTRIM P/L.
9.2	Notwithstanding any other provision of this agreement, a party may disclose the other party's Confidential Information: (a) to their employees and subcontractors who need to know the information to fulfil the obligations under this agreement; (b) to the extent required by any applicable law; and (c) to their related companies, solicitors, auditors, insurers and accountants for the purpose enabling those persons to use the information for the purpose of advising or reporting.		
9.3	This clause shall survive the termination of this agreement.		
9.4	"Confidential Information", in relation to a party, means all trade secrets and any other information (whether in tangible or intangible form) relating to any of the disclosing party's software, products, services, systems, affairs, businesses, strategies, customers or employees which are disclosed to the recipient by the disclosing party or otherwise obtained or accessed by the recipient, but does not include: (a) information which is or becomes generally available in the public domain (other than through a breach of this agreement); (b) information rightfully received by recipient from a third person who is under no obligation of confidentiality to the disclosing party and who has not obtained that information directly or indirectly as a result of a breach of any duty of confidence owed to the disclosing party; or (c) information which has been independently developed by the recipient.		
9.5	WEBTRIM P/L agrees to ensure that all personal information held in connection with this agreement is held and used in accordance with the Privacy Act 1988 (Cth), as amended. The Client consents to WEBTRIM P/L using the Client's information for the purposes of performing its obligations under this agreement and providing data on the WEBTRIM P/L websites. Access to this data will be restricted to WebTRIM authorised staff and those parties specifically authorised by the Client in writing and the Client may withdraw its consent to use such information for this purpose at any time upon written notice.	11.2	In this agreement, unless stated to the contrary the word person includes a company, firm, a body corporate, an unincorporated association or an authority; a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns; a reference to any thing is a reference to the whole or any part of it; where a word or phrase is specifically defined other parts of speech and grammatical forms of that word or phrase have corresponding meanings; headings are inserted for convenience and do not affect the interpretation of this agreement; a reference to \$ is a reference to Australian dollars.
10	GENERAL		
10.1	Neither party may assign or novate any rights or obligations under this agreement without the written consent of the other party, which consent shall not be unreasonably withheld or delayed.		