

# Terms and Conditions

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**Updated: 31 January 2012**

**Managed Content Webs PTY LTD Trading as Potent Web**

**ABN 57 811 928 405**

## **1. These Terms**

This document sets out the terms and conditions (“**Terms**”) under which we provide you with the Services. By making any payment, using or continuing to use the Services you agree to be bound by these Terms.

In addition to these Terms, there may also be specific terms which govern the provision of certain services and your use of, and access to, certain sections of Our Website. You also agree to be bound by any such additional terms.

## **2. Services**

### **2.1 Web content services**

We will provide you with a service (including a licence, granted on the terms and conditions contained in these Terms, to use the Templates) that enables you to create content, maintain and update Your Website.

### **2.2 Hosting Services**

We will provide you with a hosting service that enables Your Website to be accessed on the internet. However, no guarantee is and can be made that Your Website is accessible on the internet at all times. You acknowledge and agree that, despite our best efforts, our hosting service may from time to time be interrupted.

Accordingly, Your Website may, from time to time, be unavailable for access through the internet.

## **3. Your Content and Your Website**

You represent and warrant that your use of third party products (including any links to any Third Party Websites) shall be in accordance with the terms and conditions of that product or service (as the case may be) and does not and will not infringe any one’s rights.

You acknowledge and agree that, if your site includes features that allow visitors to your site to add content, then you are responsible for that content and, without limiting any other provision of these Terms, you agree to indemnify us for any damages, losses and expenses arising as a result of or in connection with that content as if that content was put on Your Website by you.

Without limiting this paragraph or these Terms, while we are under no obligation to monitor or moderate the content of Your Website, we reserve the right to remove any content from Your Website which we in our absolute discretion determine or deem to be inappropriate for any reason.

## **4. Our content and Our Website**

Our Website may contain links to Third Party Websites. However, we do not endorse or approve the content or operators of any Third Party Web Sites. You acknowledge that we do not (and, subject to any applicable law, cannot be considered to) make any representations or warranties regarding the information, content, downloads or any other products on those sites. Despite our best efforts, we do not guarantee that Our Website (or any relevant Third Party Website) will be free from viruses or other malware, or that access to Our Website (or any relevant Third Party Website) will be uninterrupted.

## **5. Licence to use Template**

We grant you a non-exclusive, non-assignable royalty free licence to use our Templates solely for Your Website.

## **6. Fees and Charges**

### **6.1 Initial fees and charges**

Unless we have agreed with you that the setup fee can be paid in instalments, you must pay the agreed deposit portion of the setup fee before we will commence development of Your Website or provide any Service to you. You must pay the remaining portion of the agreed setup fee and ongoing charges for one billing period in advance before Your Website is launched and becomes accessible on the internet (i.e., before we will provide the hosting services to you).

Where we have agreed that the setup fee can be paid in Instalments, you must pay the first instalment and ongoing charges for one billing period before Your Website will be launched and we will provide the hosting services to you. Payment of all agreed instalments will be required irrespective of any termination of these Terms and this provision survives any termination of these Terms.

### **6.2 Ongoing fees and charges**

We shall from time to time invoice you for the ongoing charges for the Services in advance for the agreed period (being monthly, quarterly, six monthly or annually). You acknowledge that we will not agree to monthly billing unless we have been provided with credit card or bank account details and are authorised to direct debit any unpaid fees or charges. You shall pay all ongoing charges within 14 days of receipt of the relevant invoice. If, from time to time, you have not paid us an amount lawfully owed to us, we may apply a late payment fee, we may also refuse to or cease to (as applicable) provide you with all or any of the Services until all such amounts are paid in full. All costs and expenses (including debt collection and legal costs) incurred in respect of any action taken to recover monies due and payable under this agreement will be added to the outstanding amount.

## 7. Warranties

Each party warrants to each other party that it has full power and authority to enter into and perform this agreement.

## 8. Limitation of Liability

To the maximum extent permitted by law, you agree that we are not (and will not be) liable to you for any losses, damages (both direct and indirect), liabilities, claims and expenses (including without limitation legal costs) whatsoever arising out of or in connection to the Services, Our Website, Your Website or any third party claim, whether in contract, tort (including negligence), statute or otherwise. Without limiting the foregoing, you agree that, if we are held liable for any loss, damage, liability, claim or expense, the maximum amount we can in aggregate be liable to you is the amount you have paid us for (or in relation to) the Services.

## 9. Indemnity

You agree to indemnify and hold us harmless against all claims, actions, proceedings, damages (both direct and consequential), liabilities (whether in contract, tort (including without limitation negligence), statute or otherwise), claims and expenses (including without limitation legal costs) in relation to any third party claim or liability whatsoever and howsoever arising out of or in connection to the Services, Our Website, Your Website or your inclusion or use of any Third Party Websites or other third party material or content.

## 10. Termination

These Terms (and any other agreement between us and you) may be terminated at any time by us without prior notice to you. You agree that all licences granted and indemnities given by you to us and all limitations of our liability to you will survive termination of this agreement. Accordingly, you acknowledge that, upon termination of this agreement, Your Website will not be able to be transferred to another host.

Upon termination of these Terms, the licence granted to you by us to use the Templates (and any other licence we have granted, or are deemed to have granted, you) terminates.

## 11. Reservation of rights

We reserve any rights not expressly granted in these Terms.

## 12. Changes to these Terms

We may at any time vary the Terms by publishing the varied Terms on Our Website and by notice to you by email. You acknowledge and agree that by continuing to use the Services you accept the varied Terms.

## 13. Assignment

We may assign these Terms to any party (including, without limitation, to any one of us) at any time in our absolute discretion.

## 14. Jurisdiction

These terms and conditions are governed by the law in force in Victoria and you submit to the non-exclusive jurisdiction of the courts of Victoria and courts which may hear appeals from those courts.

## 15. Interpretation

### 15.1 Definitions

"Privacy Policy" means our privacy policy which can be found at [potent.com.au/privacy-policy](http://potent.com.au/privacy-policy)

"Our Website" means the website operated by us under the domain name [potent.com.au](http://potent.com.au) and any sub-domains through which, among other things, we provide the Services. "Services" means the website services we provide you, including website design, marketing, domain name administration and hosting services (which are described in part in paragraph 2 above). "Terms" means these terms and conditions and includes any variation, amendment and additions to them.

"Templates" means the website layout, design and management service which form the framework into which you insert your content for Your Website.

"Third Party Websites" means any web sites of any third parties. "We, us, our" means Managed Content Webs PTY LTD ABN 57 811 928 405, its principals, employees, agents and contractors and, as the context requires it, means each of us severally and each of us jointly.

"You" means the person or persons (or your permitted successors and assigns) to whom we provide the Services. If that is more than one person, "you" means each of them separately and every two or more of them jointly.

"Your Website" means the site we created for you through the Services and which utilises the Templates.

### 15.2 Interpretation principles

In these Terms:

- headings are for convenience only and do not affect the interpretation or meaning of these Terms;
- the singular includes the plural, and vice-versa;
- if a word is defined, another part of speech has a corresponding meaning;
- a word which suggests one gender includes the other gender; and
- if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

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