

Website Development Agreement

DATE OF AGREEMENT

This Website Development Agreement is entered into on the date specified on the first paid website related invoice.

PARTIES

Jeal Tech Pty Limited ABN 58660920347 of Unit 5, 190 Queen Street, ST Marys NSW 2760, Australia ("**Developer**")

The **client** listed on the initial paid website related invoice ("**Client**")

RECITALS

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- A. The Developer is a software developer.
- B. The Client wishes the Developer to develop, and the Developer has agreed to develop, the Website, set out in the annexed Specifications to this document.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and Interpretation

1.1. Definitions

In this Agreement, the following words have the following meanings, unless expressly agreed otherwise:

Acceptance Tests means as defined in clause 10.1.

Agreement means this Website Development Agreement and including the Schedule and the Annexures.

Australian Consumer Law means schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Business Day means Monday - Friday excluding public holidays in New South Wales.

Business Hours means 9:00am - 5:00pm on Business Days.

Confidential Information means as defined in clause 16.

Client Keywords means as agreed between the Developer and the Client in writing from time to time.

Client Materials means as set out in clause 3.1.

Delivery Date means the date as set out in the Website Brief.

Developer Code means all software, Source Code, Object Code, graphics, text, libraries and other components of the Website.

Documentation means as set out in the Website Brief.

Domain Name means as set out in Annexure A.

EasyVend Platform means the Developer's software-as-a-service platform described by the Developer under that name.

EasyVend Platform Subscription Agreement means the agreement by that name entered into by the Developer and the Client.

Fees means as set out in the Schedule.

Force Majeure Event means a circumstance beyond a party's reasonable control which results in its inability to observe or perform on time an obligation under this Agreement.

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means: (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency; (b) where the party is a company, a resolution is passed or Court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law; (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or (d) the party is unable to pay its debts as and when they fall due.

Intellectual Property Rights means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under article 2 of the convention establishing the World Intellectual Property Organization, and all rights to enforce any of the foregoing rights.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Object Code means software code expressed in machine-readable form.

Payment Terms means as set out in the Invoice.

Personal Property Securities Register means the Personal Property Securities Register established under the *Personal Property Securities Act 2009* (Cth).

Personnel of a party means a party's officers, agents, and employees and subcontractors.

Search Engine means Google.com or as otherwise agreed between the parties.

Search Engine Optimisation means optimization of the Website in respect of the Client Keywords.

Services means the website development services the Developer is engaged by the Client to perform under this Agreement, as further described in the Website Brief.

Website means the website to be developed pursuant to this Agreement, as further set out in the Website Brief.

Source Code means software code expressed in human readable form, which when compiled, assembled, interpreted or translated becomes Object Code.

Website Brief means the specifications for the Website annexed to this Agreement in accordance with clause 2.

1.1. Interpretation

In this Agreement:

- (a) Headings and underlinings are for convenience only and do not affect the construction of this Agreement.
- (b) A provision of this Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision.
- (c) Currency refers to Australian dollars.
- (d) A reference to a statute or regulation includes amendments thereto.
- (e) A reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of this Agreement.
- (f) A reference to a subclause or paragraph is a reference to the subclause or paragraph in the clause in which the reference is made.
- (g) The recitals are correct and form part of this Agreement.
- (h) A reference to time is to time in the state or territory in New South Wales.
- (i) A reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity.
- (j) The words "includes", "including" and similar expressions are not words of limitation and shall be interpreted as if followed immediately by the words "but not limited to".

2. Website brief and Acceptance Test

2.1. The Developer and the Client must, within 10 days of the date of this Agreement, use their respective best endeavours to agree in writing on the Website Brief.

2.2. Once agreed, the Website Brief and Acceptance Test will form Annexure A to this Agreement.

2.3. For the avoidance of doubt, the Website brief is subject to change from time to time, as mutually agreed.

3. Delivery of Client Materials

3.1. The Client must, within 10 days of the parties agreeing on the Website Brief, deliver to the Developer copies of any logos, graphics, software, data and other materials and information which the Client wishes the Developer to incorporate into the Website (the "**Client Materials**").

3.2. The Client warrants that all Client Materials that it or anyone on its behalf supplies to the Developer, and all use thereof by the Developer for the

purposes of this Agreement, will not infringe the rights of any person or breach any law or regulation.

- 3.3.** The Client must indemnify the Developer in respect of all and any loss and damage incurred by the Developer as a result of a breach of the warranty in clause 3.2.

4. Development and delivery of Website and Documentation

- 4.1.** The Developer must develop the Website in accordance with the Website brief as soon as reasonably practicable.
- 4.2.** For the avoidance of doubt, the Developer is not required to, and does not, assign, disclose or deliver, any Developer Code to the Client.
- 4.3.** In the course of developing the Website for the Client, the Developer:
- (a) must perform its obligations in a professional and workmanlike manner; and
 - (b) must exercise reasonable care and skill.

5. Licence to be granted to Client to use the Developer Code in the Website

- 5.1.** The Developer hereby grants to the Client a non-exclusive, non-assignable, non-sublicensable licence to enable the Client's customers to submit, and for the Client to receive, orders via the Website for the Client's goods advertised on the Website, but only:
- (a) configured so that the Website can only be accessed via the Domain Name and hosted with the Hosting Provider;
 - (b) while the Client has a current valid subscription to the EasyVend Platform for the purpose of receiving orders from the Client's customers from the Website in the EasyVend Platform,
- (the "**Licence**").
- 5.2.** The Client agrees and acknowledges that in addition to the Developer Code incorporated into the front-end of the Website, the Website also relies on back-end Developer Code that is held on the Developer's computer servers and the EasyVend Platform and that the Website will not operate in accordance with the Specifications if the front-end of the Website is unable to access the Developer Code held on the Developer's computer servers or the EasyVend Platform.

6. Licence Restrictions

- 6.1.** The Client may not make any use of the Developer Code except as expressly permitted by the Licence and may not do or authorise the commission of any act or omission that would or might invalidate or be inconsistent with the Developer's Intellectual Property Rights in the Developer Code. Without limiting the foregoing provisions, the Client agrees and acknowledges that, except as expressly permitted by the Licence, it must not and shall not, and will not permit, any person to:
- (a) license, sublicense, resell, assign, transfer, distribute, or provide others with access to, the Developer Code;

- (b) "frame", "mirror" or serve any of the Developer Code on any web server or other computer server over the Internet or any other network;
 - (c) host the Website itself or via any third party;
 - (d) transfer the Website to its own computer server or a computer server of a third party; or
 - (e) copy, alter, modify, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance the Developer Code (except as expressly permitted by the *Copyright Act 1968* (Cth)).
- 6.2.** The Client must not use the Developer Code or the Website in any way which is in breach of any statute, regulation, law or legal right of any person.

7. Search Engine Optimisation

- 7.1.** The provisions of this clause 7 are only applicable where the Services as specified in the Invoice expressly include Search Engine Optimisation of the Website.
- 7.2.** The Client authorises the Developer to submit details of the Website to the Search Engine(s).
- 7.3.** The Developer must submit the Website to the Search Engine(s) within 45 days following the development of the Website by the Developer.
- 7.4.** If the Client wishes the Developer to submit the Website to Search Engines which require payment of a fee for listing a website, or require payment of a fee to expedite the listing of a website, the Client shall be responsible for all fees payable to the relevant Search Engine associated with such submissions and listings in respect of the Website, and the Client must pay all such fees in advance to the Developer. The Developer must notify and obtain the approval of the Client to any such fees prior to submitting the Website to the fee-charging search engines.
- 7.5.** The parties acknowledge that the Client desires, and has engaged the Developer with the object of, having the Website listed on the first page of the Search Engines' natural or unpaid (also known as organic) results for searches carried out with the Search Engines using the Client Keywords.
- 7.6.** The Developer must, in the course of providing the Services, use its best endeavours to assist the Client secure first page Search Engine result rankings, but does not guarantee that the Website will be listed on the first page of the Search Engine results, in respect of the Client Keywords.
- 7.7.** The Developer is not obligated to disclose to the Client the techniques used by the Developer as part of the Services.
- 7.8.** The Client agrees and acknowledges that:
- (a) failure to achieve Website rankings with any Search Engines in any time period shall not constitute a breach of this Agreement;
 - (b) the Search Engines may regularly change the algorithms and policies used by the Search Engines to determine the ranking of websites in the Search Engines' search results;

- (c) the Developer has no control over any algorithms and policies of the Search Engines;
- (d) the Website ranking for the Client Keywords with the Search Engines may at any time change as a result of any changes made to the algorithms and policies of the Search Engines used by the Search Engines to determine ranking of websites in Search Engine results; and
- (e) Search Engines sometimes drop rankings for no apparent or predictable reason.

8. Domain Name Registration

- 8.1.** The provisions of this clause 8 are only applicable where the Services as specified in the Invoice expressly include "Domain Name Registration".
- 8.2.** If the Services include Domain Name Registration, the Developer agrees to procure the registration of the Domain Name as agent for the Client in the name of the Client (subject to availability).
- 8.3.** The registration of the Domain Name, and all matters related to the registration, will be subject to the terms and conditions of the registrar that the Developer engages to register the Domain Name ("**Registrar**") ("**Domain Name Supplier Terms**").
- 8.4.** A link to a copy of the Domain Name Supplier Terms (if any) is set out at www.easyvend.com.au/legal .
- 8.5.** Upon request, the Developer will provide a copy of the Domain Name Supplier Terms to the Client.
- 8.6.** The Developer is not a party to the Domain Name Supplier Terms.
- 8.7.** If agreed, the Developer will renew the Domain Name.
- 8.8.** In the event that the Domain Name is not registered in the name of the Client, is not renewed in the name of the Client or the Client for any reason no longer remains the registrant of the Domain Name, either party may terminate this Agreement by notice to the other party.

9. Website Hosting

- 9.1.** Websites provided by the Developer include website hosting.
- 9.2.** The Website may go down from time to time and may be interrupted from time to time, including for scheduled and unscheduled maintenance.
- 9.3.** The Client shall not have any right to access the hosting account for the Website at any time.

10. Acceptance Testing

- 10.1.** Within 20 days after the Delivery Date ("the **Acceptance Period**"), the Client must test the Website to evaluate whether the Website meets the Acceptance Test Criteria (the "**Acceptance Tests**").
- 10.2.** The Developer must provide all assistance reasonably required by the Client to conduct the Acceptance Tests.
- 10.3.** If the Client, acting reasonably, determines that the Website does not meet the Acceptance Test Criteria in all material respects, the Client must within

seven (7) days of the conclusion of the Acceptance Period, provide notice to the Developer setting out in detail a description of which of the Acceptance Tests have failed ("**Failure Notice**").

- 10.4.** The Developer must, within 10 days of receipt of the Failure Notice modify the Website so that it meets the Acceptance Test Criteria in all material respects and deliver the modified version to the Client.
- 10.5.** Following delivery of the modified version of the Website to the Client pursuant to clause 10.4, the Client shall repeat the Acceptance Tests of the Website pursuant to clause 10.1 and the above paragraphs of this clause 10 shall apply to the re-tested Website.

11. Fees

- 11.1.** The Client must pay the Fees to the Developer in accordance with the Payment Terms.
- 11.2.** The Fees are exclusive of GST and the Client agrees to pay the Developer all GST, in respect of any Supply (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) made by the Developer under this Agreement. The Client must pay all such taxes, duties and customs, including GST, at the same time as the Fees.

12. Ownership of Intellectual Property in the Website

- 12.1.** Nothing in the Agreement constitutes or creates an assignment of any Intellectual Property Rights.
- 12.2.** The parties agree that as between the Developer and the Client, the Developer shall own all Intellectual Property Rights in the Website (including in all front-end and back-end components) and the EasyVend Platform (including any Developer Code, databases and database structures incorporated into the Website but excluding Client Materials) and the Documentation. The Client must not represent that it owns the Developer's Intellectual Property Rights (or any part thereof).
- 12.3.** The parties agree that as between the Developer and the Client, the Client owns all Intellectual Property Rights in the Client Material.
- 12.4.** Each party must not directly or indirectly do anything that would or might invalidate, jeopardise, limit, interfere with or put in dispute the other party's Intellectual Property Rights.
- 12.5.** The Client hereby assigns to the Developer all and any Intellectual Property Rights in all and any comments in connection with the Website, the EasyVend Platform and Services and all and any Intellectual Property Rights in all and any requests for new features, that the Client and/or its employees, officers and agents may make or suggest regarding the Website, EasyVend Platform and Services (each, an **Improvement Suggestion**). Each such comment and Improvement Suggestion becomes the Developer's sole and exclusive property. This assignment is effective upon the Client or its employees, officers or agents making the comment or disclosing the Improvement Suggestion to the Developer including where applicable under section 197

of the *Copyright Act 1968* (Cth) and in equity. The Client must procure from its Personnel an irrevocable and freely given written consent from each of them to the infringement of any Moral Rights that any of them may have in any such Improvement Suggestions by the Developer and by any third parties who the Developer authorises to operate or modify the Website and/or Services.

- 12.6.** Nothing in the Agreement gives the Client any rights to access any Source Code or Object Code in the Website or the EasyVend Platform.

13. Development for other clients of the Developer

- 13.1.** The Client recognises that the Developer currently develops materials internally, or through the receipt of information from others, that is similar to the Website or any part of it and the Developer performs services similar to the Services provided hereunder for others.
- 13.2.** The parties agree that the Developer is not prevented from providing services or developing materials in relation to services that are competitive with those provided by the Developer to the Client hereunder regardless of any similarity to the Website or any part thereof.

14. Liability

- 14.1.** Except to the extent such loss and damage cannot be excluded from this Agreement under non-excludable applicable law, a party's (the first party) aggregate liability for all claims for loss and/or damage that the other party may incur due to the first party's breach of this Agreement, that is not otherwise excluded by the terms and conditions of the Agreement, is capped at an amount equivalent to the quantum of the Fees paid or payable under this Agreement.
- 14.2.** Where liability for breach of any guarantees under the Australian Consumer Law can be limited, the Developer's liability arising from any breach of those guarantees (if any) is limited, at the Developer's option: (i) with respect to the supply of goods, to the replacement or repair of the goods or the cost of resupply or replacement of the goods; and/or (ii) with respect to services, to the supply of the services again or the cost of re-supplying the services again.
- 14.3.** This clause 13 does not:
- (a) limit a party's liability with respect to any indemnity specified in this Agreement;
 - (b) apply with respect to any liability that cannot be excluded by Applicable Law; or
 - (c) apply with respect to any wilful breach of this Agreement.
- 14.4.** Other than any non-excludable guarantees implied into this Agreement under the Australian Consumer Law (if any), all implied conditions, warranties and guarantees that would be implied in this Agreement are hereby excluded from the Agreement.

15. Indemnity from the Developer for third party IP infringement claims

- 15.1.** The Developer agrees to indemnify the Client against any loss and damage that may be incurred by the Client directly as a result of a claim that the Client's use of the Website in accordance with this Agreement breaches the Intellectual Property Rights of any third party ("**IP Claim**"), provided that:
- (d) the Client must notify the Developer immediately upon receipt by the Client of notice of any IP Claim or upon the Client suspecting or having reasonable cause to suspect that such an IP Claim may be made;
 - (e) the Client must not make any admission or settlement of such IP Claim without the Developer's prior written consent;
 - (f) the Client must give the Developer sole control of the defence and any negotiations for compromise; and
 - (g) the Client must provide such assistance as the Developer reasonably requires.
- 15.2.** If the Website becomes the subject of any such IP Claim referred to in sub-clause 15.1, the Client must permit the Developer if, and as the Developer considers appropriate:
- (a) to replace all or part of the Website with functionally equivalent website; and/or
 - (b) to modify the Website as necessary to avoid such claim; and/or
 - (c) to procure a licence from the relevant complainant to continue using the Website.
- 15.3.** If in the above circumstances the Developer is unable to procure for the Client the right to continue using the Website, or to provide the Client with functionally equivalent non-infringing website, or to modify the Website as necessary to avoid the IP Claim, this Agreement and the licences granted by the Developer to the Client under this Agreement may be terminated by the Client.
- 15.4.** The Developer shall have no liability for any claim of Intellectual Property Rights infringement in respect of the Website to the extent such claim is caused by or arises out of:
- (a) any modification of the Website not authorised by the Developer;
 - (b) where the claim for infringement arises in respect of a feature of the Website which was requested by the Client or which is specified in any requirements specification provided to the Developer by the Client which sets out the Client's requirements for the Website;
 - (c) the Client Materials; or
 - (d) the Client's breach of this Agreement.

16. Confidentiality

- 16.1.** Each party agrees and acknowledges that it may receive confidential information of the other party during the term of this Agreement ("**Confidential Information**").
- 16.2.** Each party (the first party) agrees and acknowledges that it will take all prudent steps to ensure that the Confidential Information of the other party that comes into the possession or control of the first party will be received

and held by the first party in strict confidence and will not be disclosed by the first party, except:

- (a) with the prior written consent of the other party;
- (b) where disclosed to the employees or professional advisors of the first party on a confidential basis;
- (c) as required by the rules of any stock exchange; or
- (d) as required by a court of competent jurisdiction, and then, only to the extent required, and provided that the first party must promptly notify the other party of such requirement of disclosure and provide full particulars to the other party of the disclosure.

16.3. Confidential Information does not include any information:

- (a) that is independently developed, obtained or known by the first party, without any obligation of confidence to the other party; or
- (b) that is in the public domain, except where due to a breach of this Agreement or any breach of any obligation of confidence.

17. Term and Termination

17.1. This Agreement will begin and end on the date/term specified on the initial paid website invoice and will continue until:

- (a) the EasyVend Platform Subscription Agreement is terminated or expires; or
- (b) either party terminates this Agreement due to the other party's (the "**Defaulting Party**") material breach of this Agreement which is not capable of remedy, or where the breach is capable of remedy and the Defaulting Party fails to remedy the breach within thirty (30) days of notice; or
- (c) either party terminates this Agreement by notice to the other party if the other party suffers an Insolvency Event.

17.2. If this Agreement is terminated:

- (a) the Client must cease using the Website and the Documentation;
- (b) the Developer may cease procuring the hosting of the Website and any other Services;
- (c) the Developer must, at the option of the Client, destroy or return all Confidential Information of the Client to the Client; and
- (d) the Client must, at the option of the Developer, promptly destroy or return all Confidential Information of the Developer to the Developer.

17.3. Termination does not affect any accrued rights of either party, including payment of agreed term invoices specified on the initial paid website invoice.

18. Notices

18.1. A notice under this Agreement shall be sent by hand delivery, post or email, using the address specified at the top of the first page of this Agreement or the email address for the recipient's representative specified in the Schedule.

- 18.2.** Any notice issued by hand shall be deemed delivered upon delivery.
- 18.3.** Any notice issued by post shall be deemed delivered six (6) Business Days after posting if posted domestically, or twenty (20) Business Days after posting if posted internationally.
- 18.4.** Any notice issued via email shall be deemed to be delivered on the day on which it is transmitted if the sender receives a read or delivery receipt confirming delivery or receipt of the email or a reply to the email.

19. General

- 19.1. Amendment:** This Agreement may only be amended by a written document signed by the parties.
- 19.2. Assignment:** Neither party may assign, transfer, license or novate its rights or obligations under this Agreement without the prior written consent of the other party.
- 19.3. Severability:** If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain enforceable.
- 19.4. Relationship:** The Developer is an independent contractor and this Agreement does not create any relationship of partnership, joint venture, or employer and employee or otherwise.
- 19.5. Counterparts:** This Agreement may be executed in counterparts provided that no binding agreement shall be reached until the executed counterparts are exchanged. A counterpart of a document may be exchanged in hard copy or by email. A counterpart exchanged by email shall constitute evidence of the execution of the original. Execution (including, but not limited to, via DocuSign) by a party signifies its intention to be bound by this Agreement.
- 19.6. Entire Agreement:** This Agreement constitutes the entire agreement between the parties and to the extent possible by law, supersedes all prior understandings, representations, arrangements and agreements between the parties regarding its subject matter.
- 19.7. Jurisdiction:** This Agreement will be interpreted in accordance with the laws in force in New South Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts situated in New South Wales in connection with any dispute concerning this Agreement.