



1 PARTIES TO THE AGREEMENT

- 1.1 This Agreement is between: Keltree Pty Ltd atf The Kelly Family Trust t/a IBC Digital ABN: 81 986 424 356 of 30 Keymer Street, Belmont, Western Australia 6104, Western Australia (IBC); and the company, person or other legal entity (Client) named in the order form for the IBC hosting services (Order Form).

2 DURATION

- 2.1 This Agreement shall commence on the date agreed between the parties in writing and shall continue until terminated by the mutual written Agreement of the parties or as provided for in this Agreement.

3 PERIOD OF VALIDITY OF QUOTATION

- 3.1 All quotations provided by IBC are valid for 30 days from the date of the quotation or the period of time specified in the Order Form and expire if not accepted by the Client within that period.

4 IBC HOSTING SERVICE

- 4.1 IBC agrees to provide system, site and/or application hosting services (**Hosting Services**) for hosting of content, programs, or other data supplied by the Client and/or its users (**Supplied Items**).
- 4.2 IBC agrees to use all reasonable efforts to ensure the continuity and efficiency of the Hosting Services to achieve its desired service levels as may be determined by IBC from time to time.
- 4.3 IBC's current server reliability benchmark aims to provide server reliability up-time in excess of 99%, excluding time allocated for server maintenance, notwithstanding that IBC reserves the right to vary the benchmark at its discretion.
- 4.4 IBC reserves the right to undertake server maintenance of 2 hours per week at times selected at the discretion of IBC during which time the Hosting Services may be temporarily unavailable.
- 4.5 Subject to these terms and conditions, IBC will not be liable for server reliability uptime of less than 99%.

5 IBC HOSTING SERVICE: SECURITY AND INTEGRITY



- 5.1 It is the Client's responsibility to ensure that Supplied Items and any other material (in whatever form) supplied or uploaded through any restricted access area of the Client site does not contain any defects, viruses or other code that may interfere with the content or operation of the server on which the System is hosted (**Server**), or any other site hosted by IBC or any other third party.
- 5.2 If IBC considers that the Supplied Items or other content of the Hosting Service or the Client's use of the services provided by IBC is a threat to the security or proper functioning of its servers, IBC may immediately discontinue the Client's access to the Hosting Services, remove content from the server, and/or terminate this Agreement.
- 5.3 IBC may, at the cost of the Client, access or request copies of content or scripting programs to check for viruses or other code or to confirm that the content or programs will not threaten the integrity of the Server.
- 5.4 IBC may, at the cost of the Client, require Client files to be uploaded to a specified area on the Server for testing by IBC prior to the files being made operational on the Internet.

6 IBC HOSTING SERVICE: ACCEPTABLE USE

- 6.1 The Client must not use the IBC service in a manner that, in the opinion of IBC, may adversely affect the efficiency, security or operation of Hosting Services or the Server.
- 6.2 The Client must ensure all web applications utilised on the hosting service are kept secure, patched and up to date. Open source applications are vulnerable to attacks via exploits in the software, the developers of most Open source software routinely make available patches to prevent such attacks. The client is required to have these security patches applied within 10 days of release or sooner if possible.
- 6.3 IBC reserves the right to check, alter or delete files or content that are considered by IBC to be inappropriate, illegal or otherwise in breach of this Agreement and any costs incurred by IBC to do so will be payable by the Client.
- 6.4 The Client represents and warrants to IBC that:
 - (a) it is, and at all times will be, able to grant to IBC the licences and other rights contemplated by this Agreement to use the Supplied Items free of all third-party liens, claims and encumbrances;
 - (b) the Client is the true and lawful owner of the Intellectual Property Rights in the Supplied Items, or has obtained all necessary licences and approvals in respect of all or those parts of the Supplied Items of which the Client is not the true and lawful owner, to grant to IBC the licences and rights to which IBC is entitled to under this Agreement; and
 - (c) no part of the Supplied Items:



- (i) is or will be in breach of any Applicable Law;
 - (ii) is or will be defamatory or in contempt of any legal or other proceedings;
 - (iii) is or will be misleading or deceptive;
 - (iv) incites or will incite hatred or discrimination against any group of persons being a group defined by reference to colour, race, sex, origin, nationality or ethnic or national origins;
 - (v) denounces or will denounce religious or political beliefs;
 - (vi) includes or will include religious or political material which is or is likely to be offensive;
or
 - (vii) is or will be:
 - (1) illegal, indecent, obscene, vulgar, pornographic, offensive or of doubtful propriety;
 - (2) of a menacing character;
 - (3) likely to cause annoyance, inconvenience or anxiety;
 - (4) likely to encourage crime, public disorder, violence or hatred; or
 - (5) likely to damage public health, safety or morals or
 - (viii) infringes any third party's Intellectual Property Rights.
- (d) The Client hereby indemnifies and must keep indemnified IBC against any action, cost, liability, claim, loss, damage, proceeding, expense (including legal costs) suffered or incurred by IBC arising from, or which is directly or indirectly related to:
- (i) the Client's breach or non-observance of any term of this Agreement; or
 - (ii) any breach or inaccuracy in any of the Client's representations or warranties hereunder.
- (e) The Client hereby indemnifies, and will keep indemnified, IBC and its officers, employees and contractors against any claim in contract, tort (including but not limited to negligence), under statute and on any other basis by any third party arising in connection with or in relation to all or any part of the Supplied Items or this Agreement, including but not limited to any such claim brought by any of Client's customers.
- (f) In this Agreement:
- (i) **Intellectual Property Rights** means any and all intellectual and industrial property rights throughout the world including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), performers' protection, moral rights, patents, trademarks, service marks, designs and circuit layouts, whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of such rights and includes all renewals and extensions.
 - (ii) **Applicable Law** in relation to any person, action or thing means the following in relation to that person, action or thing:
 - (1) any law, rule or regulation;
 - (2) any obligation under any licence; and
 - (3) any lawful and binding determination, decision or direction of a regulator.



7 HANDLING OF DATA

- 7.1 IBC may monitor, record and store any data or information transmitted, received or stored by the Client or users of the Client's site (the **Data**).
- 7.2 IBC will treat the Data as confidential and will not without the Client's prior written consent intentionally disclose such confidential information to a third party except as required by law.
- 7.3 IBC will use reasonable commercial endeavours to secure the Data from unauthorised access and will require its employees who have access to the Data to execute a non-disclosure Agreement.
- 7.4 IBC's obligation under this clause shall survive the termination of this Agreement.

8 CONNECTIVITY & DATA TRANSFER TO REMOTE CLIENT LOCATIONS

- 8.1 IBC may provide connectivity between IBC's server facilities at IBC's data centre and the client's server facilities located remotely at a physical location other than IBC's data centre for the purpose of accessing or transmitting data at or to or from the client.
- 8.2 IBC takes responsible care to protect the data security and integrity of the data transfer between IBC's facilities and the client's facilities and is not responsible for any lack of connectivity, service downtime or the failure of any service provided by IBC or the client to work as intended.
- 8.3 IBC is not responsible for any direct or indirect interruptions or losses the client may experience as a result of IBC having the ability to make such connectivity or IBC transferring data to or from the client's servers and systems howsoever such interruptions or losses may be caused.

9 USER ACCESS CODES

- 9.1 IBC may issue the Client with user identification codes, names, numbers and passwords for use in logging onto the systems provided by IBC (**Codes**).
- 9.2 The Client is solely responsible for the use and proper protection of the Codes and agrees to take all reasonable precautions to protect the security of the Codes, and to prevent their unauthorised use.
- 9.3 The Client accepts all liability for any loss or damage arising from acts or omissions relating to the Codes.



9.4 If the Client becomes aware of any unauthorised access or use of Codes, the Client must immediately notify IBC.

10 PAYMENT

- 10.1 In return for IBC's services under this Agreement, the Client will pay IBC the amounts set out in the Order Form, in the manner and on the terms set out in the Order Form and the attached schedule.
- 10.2 If a site goes live prior to the 10th of the month, IBC Digital will charge the Client the full hosting fee for the month. If the site goes live after the 10th of the month, IBC Digital will only start charging for hosting the following month.
- 10.3 Hosting invoices are sent out on the 15th of the month and payment is taken on the 1st of the following month.
- 10.4 Unless expressly stated in writing by IBC, all fees and charges are exclusive of government taxes and imposts applicable to the supply of goods and services or licences to use software including, without limitation, sales tax, import duty and goods and services tax (including any Australian GST in effect from time to time) and if any such taxes or imposts are or become applicable, an amount equal to them shall be added to the fees and charges under this Agreement and shall be payable by the Client to IBC.
- 10.5 IBC may increase services charges by giving the Client two months' written notice and such increase will apply from the first day of the applicable invoice period on or after the effective date specified in the notice.
- 10.6 If the Client defaults in any payment owing to IBC for more than 30 days:
- (a) IBC may suspend or cancel all further work or access to the System or Hosting Services, and the Client will pay all of IBC's collection costs and any legal fees incurred by IBC as a result of that default.
 - (b) The monetary currency to be applied for quotes and payments is Australian dollars unless otherwise specified in the attached schedule.

11 LIABILITY



- 11.1 Subject to Clause 11.2 the aggregate liability of IBC under or relating to this Agreement whether in contract, tort (including without limitation negligence), in equity, under statute or for any other cause of action, is limited as follows:
- (a) with respect to acts or omissions giving rise to a claim in the first 12 months of this Agreement, to the total fees paid by the Client to IBC pursuant to this Agreement during the period immediately preceding the claim; and
 - (b) after that initial 12-month period, to the total fees paid by Client to IBC in the 12 months immediately preceding the act or omission giving rise to the relevant claims.
- 11.2 The aggregate liability cap in this Clause 11 will not apply to liability on the part of IBC for personal injury or death.
- 11.3 IBC is not liable for, and no measure of damages will, under any circumstances, include:
- (a) special, indirect, consequential, incidental or punitive damages; or
 - (b) economic loss, loss of profits, revenue, goodwill, bargain, anticipated savings or loss or corruption of data,
- whether in an action in contract, tort (including without limitation negligence), product liability, statute or otherwise, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 11.4 To the extent permissible by law, IBC excludes all implied warranties in relation to any goods and services provided to Client.
- 11.5 If any condition or warranty is implied into this Agreement under the Competition and Consumer Act 2010 or any equivalent State or Territory legislation, and cannot be excluded, the liability of IBC for breach of the condition or warranty will be limited to one or more of the following as determined by IBC in its absolute discretion:
- (a) in the case of goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the 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) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.



12 TERMINATION

- 12.1 The Client may terminate this Agreement by giving IBC thirty (30) days prior notice in writing.
- 12.2 Subject to Clause 12.7, after the first 12 months of the term of this Agreement, IBC may terminate this Agreement without cause by giving the Client not less than ninety (90) days' notice in writing.
- 12.3 IBC may terminate this Agreement by notice if any payment due from the Client to IBC under this Agreement remains unpaid for a period of fourteen (14) days after the due date.
- 12.4 If the Client has breached Clause 6.3(c)(vii) IBC may terminate this Agreement immediately.
- 12.5 Without limiting the rights which either party may otherwise have arising from a breach of this Agreement, either party may terminate this Agreement immediately by notice in writing if the other party:
- (a) breaches any clause of this Agreement and such breach is not remedied within thirty (30) days of written notice;
 - (b) becomes subject to any form of insolvency administration;
 - (c) being a partnership, dissolves, or resolves to dissolve or is in jeopardy of dissolving; or
 - (d) being a natural person, dies.
- 12.6 Either party may terminate this Agreement by notice in writing if the System becomes unavailable for a period in excess of 30 days.
- 12.7 If this Agreement is terminated, pursuant to this Clause 12, IBC may, in addition to any additional or alternative remedies provided by law repossess computer programs and equipment owned by IBC and retain all moneys already received from the Client; charge a reasonable sum for work performed for which no sum has previously been paid; and be deemed to be discharged from any further obligations under this Agreement (unless terminated under Clause 12.2 in which case the client's fees which have been prepaid for services not yet rendered will be reimbursed).

13 ALTERATION OF TERMS & CONDITIONS OF ENGAGEMENT

- 13.1 IBC may at any time alter these terms and conditions, and as of the date of such alteration all subsequent Order Forms received from Clients who are not existing Clients at that time shall be subject to the new terms and conditions.



13.2 Existing Clients will be notified in writing of any changes to the terms and conditions as soon as practicable from the date of any change.

14 JOINT AND SEVERAL LIABILITY

14.1 The Client acknowledges that where one or more persons or entities comprise the Client, then each shall be jointly and severally liable in respect of the Client's obligations under this Agreement.

15 FORCE MAJEURE

15.1 Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to fire, flood, meteorological event, strike, industrial action, war, civil disturbance, act of God or any other event outside the reasonable control of a party which causes the delay or failure by the party in the performance of its obligations under this Agreement.

16 SUB-CONTRACTING

16.1 IBC may at its discretion sub-contract for the performance of this Agreement or any part of this Agreement.

17 ASSIGNMENT

17.1 This Agreement shall not be dealt with in any way by the Client (whether by assignment, sub-licensing or otherwise) without IBC's prior written consent.

17.2 IBC reserves the right to assign its rights and obligations to a third party at its discretion.

18 ENTIRE AGREEMENT

18.1 This Agreement is comprised of these terms and conditions, the Order Form and any accompanying proposal from IBC and constitutes the entire Agreement between the parties for the subject matter of this Agreement.

18.2 Any prior arrangement, agreements, representations or undertakings are superseded and are excluded.



18.3 No modification or alteration of any clause of this Agreement will be valid except by written agreement of the parties.

19 WAIVER

19.1 If IBC fails or neglects to enforce at any time the provisions of this Agreement, this shall not be constructed, nor shall it be deemed to be, a waiver of IBC's right; or in any way affect the validity of the whole or any part of this Agreement or prejudice IBC's right to take subsequent action.

20 SEVERABILITY

20.1 In the event that any part of these terms, conditions or provisions shall be deemed invalid, unlawful or unenforceable to any extent, such terms, conditions or provisions shall be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

21 PLACEMENT OF ORDER

21.1 Any Order Form submitted by the Client does not form a part of this Agreement until IBC acknowledges receipt and acceptance.

22 NON-SOLICITATION

22.1 Non-Solicitation of Services

(a) The Client agrees not to solicit directly or indirectly any IBC employee or contractor to IBC to perform work for the Client which is work which IBC could perform.

(b) Should such work be performed the client agrees that it shall be liable to pay damages to IBC in a sum calculated as the higher of the amount paid by the Client to the employee or contractor for the work, or an estimate (arrived at on a reasonable basis with due care) of the cost of such work if it had been performed by IBC at the time it was performed by the employee or contractor.

22.2 Non-solicitation of Personnel

(a) The Client acknowledges and agrees that the employees and contractors of IBC are a valuable asset to IBC and difficult to replace.

(b) Accordingly, the Client agrees that, during the term of this Agreement and for a period of twelve (12) months after the expiration and non-renewal or termination of this Agreement, the Client will not solicit or attempt to solicit any employee or contractor of IBC.



23 THE LAW OF THIS CONTRACT

23.1 The law of Western Australia shall be the proper law in respect of this contract and the parties agree to submit to the jurisdiction of the Courts of Western Australia to resolve any dispute in relation to the same.