



# KITCHEN CODE

## PRODUCT DISCLOSURE STATEMENT

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COMPANY OVERVIEW  
OUR SERVICES  
PAYMENTS AND BILLING  
OUR GUARANTEE  
TERMS AND CONDITIONS

31st July 2010

# Table of Contents

<b>Product Disclosure Statement</b>	<b>3</b>	<b>Pricing</b>	<b>9</b>
Overview	3	What are our costs?	9
Enquiries	3	Payments and Billing	10
		Enquiries	10
<b>The Websalad Way</b>	<b>4</b>	Payment Schedules	10
Who is Websalad?	4	Invoicing	10
What Sets Us Apart?	4		
Our Services	4	<b>Our Guarantee</b>	<b>11</b>
Website Development	4	What we guarantee	11
Web Marketing: SEO, PPC, SMO, ORM	4	What to do if you have a concern?	11
Email Marketing	4	What we will do?	11
Hosting	4	Communication with Websalad	11
		Online Project Management System	11
<b>Services &amp; Features</b>	<b>5</b>	Online Ticket Support	11
Website Development	5	Office Hours	11
Web Marketing	6		
Email Marketing	8	<b>Terms &amp; Conditions</b>	<b>12</b>
Hosting	8	<b>Glossary: Definitions</b>	<b>26</b>

# Overview

A Product Disclosure Statement (PDS) aims to provide you with enough information to help understand if our services meet your needs. It also helps you to compare our services with others you may be considering.

This PDS provides information about the following Websalad Services

- *Website Development (DEV)*
- *Web Marketing (SEO), (SEM), (SMO), (ORM)*
- *Email Marketing (EDM)*
- *Hosting (HOST)*

You should read all sections of this PDS before making a decision to acquire any of the Websalad Services. If you decide to acquire any of the Websalad Services, you should keep this PDS and all documentation relating to Websalad Services for future reference.

This PDS contains a summary of the key features of DEV, SEO, SEM, SMO, EDM, and HOST. It also contains the terms and conditions that govern the Websalad Services (Terms).

When you acquire any of the Websalad Services you agree to be bound by the Terms detailed in this PDS (as amended from time to time).

Any advice in this PDS has been prepared without taking into account your businesses objectives, financial situation or needs. Because of this, you should, before acquiring any of the Websalad Services or acting on any advice in this PDS, consider whether the Websalad Services, or the advice given is, appropriate to your businesses' objectives, financial situation and needs.

To assist you in understanding this PDS, the definition of some words is provided in the Glossary section of the Terms on page 26 of this PDS.

The information in this PDS may change from time to time and is up to date as at the date stated on the cover. If we update the information in this PDS and that updated information is not materially adverse information, we will make that updated information available on our website

[www.websalad.com.au/terms](http://www.websalad.com.au/terms).

## Enquiries

If you have any questions regarding the information contained in this PDS, or any other general enquiries in relation to Websalad Services, please contact Websalad support by email at [info@websalad.com.au](mailto:info@websalad.com.au) or by phone on (+612) 8028 4000 between 9.00am and 5.00pm (AEST) Monday to Friday.

If you would like to be sent a paper copy of this PDS, or any updates, please contact us using either the email address or telephone number shown above.

# The Websalad Way

## Who is Websalad?

Websalad is an industry leading Internet marketing agency which offers professional consultation and management services across multiple areas of search-engine marketing (Pay-Per-Click and SEO), social media, online reputation management, landing page optimisation and web development.

Our expertise in getting the right mix of web marketing “ingredients” working effectively is what sets us apart.

Our clients seek a coordinated solution for all aspects of their web marketing. They rely on Websalad to make their web sites stand out, draw more customers, and work harder for their business.

## What Sets Us Apart?

**Knowledge:** Our unique service integrates a broad range of tools including search engine optimisation, pay per click advertising, Taguchi Multivariate testing, and internet marketing strategies to deliver results every time.

**Creativity:** We go to great lengths to understand your business, your needs and your clients’ needs before we get to work.

**Attitude:** We love what we do and it reflects in our work. Our passion for making web sites work harder, through the delivery of better results, is what sets us apart.

## Our Services

- *Website Development*
- *Web Marketing - SEO, PPC, SMO*
- *Email Marketing*
- *Hosting*

## Website Development

Our expertise in the latest web development techniques, combined with SEO and usability, will ensure your online website assets will look great, provide high visibility and deliver a significant return on investment.

## Web Marketing: SEO, PPC, SMO, ORM

Our search strategies are designed to work specifically towards driving conversion, maximising website performance, and delivering results. We are constantly refining our techniques to better adapt to search behaviour and search engine changes

## Email Marketing

When used correctly, email marketing allows organisations to build customer retention and loyalty in an entirely unique way. Websalad helps clients to create coordinated emailing plans including the key elements of segmentation, effective design and messaging.

Websalad offer email campaign management with the ability to track the results and manage subscribers. We take the guess work out of email marketing and turn it in to educated decisions. Campaign Reporting tools allows us the ability to analyse and test each campaign for maximum performance.

## Hosting

Websalad provides premium Australian based hosting solutions for our clients. We operate our own dedicated client server which is backed by a mission critical Australian network with 99.9% uptime and 24/7 support.

The data centre we utilise for our client’s hosting is of a Tier-2 (upgradeable to Tier 3) standard and was designed to achieve maximum uptime, stability and redundancy.

# Service Features at a Glance

## Website Development

### Planning

The planning phase consists of face to face meetings to determine website functionality, site inclusions and exclusions, integration (if applicable), data management, sitemap and wire-framing. This data will create the scope document in which we will develop your website.

- *Project Plan*
- *Site navigation*
- *Wireframe*
- *Technical schema document*
- *Content Plan*
- *Platform Specs (if applicable)*

### Design Concept

In this stage we put together a design concept for the look and feel of the website. Information required will be a style guide (if applicable), logo, colour scheme, company overview and any other relevant imagery. All designs will be subject to usability testing prior to approval. This phase may be managed in parallel with the Planning Phase.

- *Design brief*
- *Homepage design concept*
- *Internal page design concepts (2)*
- *Image files*
- *Usability testing*

### Development

Once the above two steps have been approved we enter the development stage. During this phase the programmers will work on the site incorporating the above two steps (scope) to develop your new website. This is a good time for you to get your planned content in order; our Project Manager will liaise with you on items requiring your attention over this period.

- *Website Copy*
- *Functioning website*

# Service Features at a Glance

## Website Development (cont)

### Quality assurance testing

This is the post-development stage. During this time Websalad will be testing functionality and quality testing against the scope, design and industry standards. Once Websalad has confirmed development you will be given access to review.

- *100% functioning to Scope*
- *100% critiqued to design concept*

### Handover

You will receive training prior to your site going live this will consist of a 2 hour face to face training session with up to 4 people. During this stage our Project Manage will assist you in learning how to manage your website through the CMS database.

- *Website CMS/Database migration*
- *training*

## Web Marketing

### Search Engine Optimisation (SEO)

Websalad specialises in understanding your online customer and translating this knowledge into an effective 'search driven' website we follow the visitor's journey through the various stages of their conversion cycle.

Our in-depth keyword research reveals which of your visitors you are most likely to convert; which visitors are not; and most importantly which group of potential visitors you should be pursuing to improve your ROI.

Websalad using a variety of SEO techniques to drive more traffic to our client's websites. Our search strategies are designed to work specifically towards driving conversion and maximising website performance.

- *SEO blueprint/website overhauls*
- *Keyword research*
- *Directory Listings*
- *Article Submission*
- *Linking Research*
- *Monthly Reporting*
- *Local Search Optimisation*

# Service Features at a Glance

## Web Marketing (cont)

### Pay Per Click Advertising (PPC)

Pay-per-click advertising is a simple alternative to drawing leads via the internet's primary traffic portal. Through PPC, you are granted the flexibility of creating your own ads, refining your own keyword targets and deploying a budget that sits comfortably within your online business model. The end result is a clean and tangible return on investment through crystal clear metrics.

- *PPC Campaign set up*
- *Analytics*
- *Landing Page optimisation*

### Social Media Optimisation (SMO)

We believe that 'social media optimisation' is in essence, user-powered SEO. It's all about fostering existing online activity and leveraging it to genuinely boost your brand name awareness, whilst supplementing your search engine visibility. It's a complex medium that we feel we have mastered!

- *Establish and maintain Social Media Profiles*
- *Viral marketing campaigns*
- *Upload/Disseminate Video*

### Online Reputation Management

Websalad are the Australian leaders in this field of online marketing. We have developed our own tools and unique processes. Our specialist knowledge of SEO and social media is essential for effective Online Reputation Management.

Websalad's Online Reputation Management is about protecting the interests of our clients, who we regard as business partners. The trust we have developed with our long-term client base stems from our commitment to maintaining and driving their carefully managed online presence.

# Service Features at a Glance

## Email Marketing

### Email Marketing

We offer fully tailored Email marketing packages, from the design and construction of custom email templates, cross-browser compatibility checking, management of distribution lists, creation of keyword rich and brand-centred copy, A/B split testing as well as the tracking of statistical data and trends – our Email marketing solutions are masterfully devised to meet the precise needs of your business.

- *Manage lists and Subscribers*
- *Create and send emails from templates*
- *Analytics*

## Hosting

### Hosting

Websalad created a dedicated hosting solution as a convenient alternative for its online marketing clients. Past experience with third party hosting companies has frequently left us exasperated following many hours of 'call centre' frustration, extended down time, and frequent implementation issues as we attempted to apply the very latest SEO techniques for our clients.

We have found that by offering our own hosting solution we are able to make the changes we require, efficiently and effortlessly - providing us with more time to focus on our client's online marketing performance.

- *Websalad provides premium Australian based hosting solutions for our clients. We operate our own dedicated client servers which are backed by a mission critical Australian network with 99.9% uptime and 24/7 support.*
- *The data centre we utilise for our client's hosting is of a Tier-2 (upgradeable to Tier 3) standard and was designed to achieve maximum uptime, stability and redundancy.*
- *Our hosting offers full mirror and onsite/offsite backup scheduling.*

# What are our costs?

Service	Fee
Web Development Maintenance & Web Marketing	<p>\$175 per hour ad hoc                      \$150 per hour pre paid (minimum 10 hour purchases)                      +20% for Same day Turnaround</p> <p>Note: prepaid hours debited in 30 minute time periods. Ad hoc hours charged in 1 hour time periods.</p>
Hosting	<p>Business 1: 300mb / 1gb      \$30                      Business 2: 1gb / 3gb      \$50                      Business 3: 2gb / 5gb      \$80                      Enterprise:                      POA</p> <p>(disc space / bandwidth - per month)</p>
PPC	<p>Campaign set up              \$1500                      Management Fee              15% Media spend *</p> <p>* minimum \$500 per month</p>
Email Marketing	<p>Campaign set up              \$1500                      Design concept                \$450                      Template creation              \$750                      Copywriting 6 articles        \$450                      Distribution                    \$9.50 per campaign + 0.03c per email sent</p>
Domain name	<p>.com.au                            \$45 (2 yr registration)                      International                    POA</p>
Strategic Consultation	<p>Director                            \$425 per hour                      POA per day</p> <p>Associate                        \$175 per hour</p> <p>Retainer                            POA</p>

# Payments and Billing

## Enquiries

If you require any further information relating to the fees and charges please contact us on:

Level 2, 2 Barrack Street

Sydney NSW 2000

Phone: (+612) 8028 4000

Fax: (+612) 9262 3985

Emails: [accounts@websalad.com.au](mailto:accounts@websalad.com.au)

Please also refer to Terms & Conditions on page 15 of this PDS for full payment details.

Service	Payment Schedule
Web marketing Project Based Work Duration < 6 months Duration ≥ 6 months	50% Deposit + 50% on completion Monthly in advance
PPC	Campaign Set Up: In advance Management Fee: Monthly in advance Media Budget: Monthly in arrears
Web Development Projects < \$20,000 Projects ≥ \$20,000	50% Deposit + 50% Final Handover 50% Deposit + 25% Design Completion + 25% Final Handover.
Consulting	Project Completion
Hosting	Direct Debit on a monthly billing process

## Invoicing

All invoices are issued on a 7 days basis.

### Monthly Billing Process

All At the beginning of each month, Websalad will debit your nominated account for the fees payable for the next calendar month.

### Credit Card Payment

Payment by Credit Card may incur a surcharge.

Mastercard & VISA 1.5%

American Express 3%

### Fee Variations

Please note that certain fees and charges can vary or

may be waived from time to time, as a result of special offers by Websalad, or otherwise in accordance with the Terms.

Any such variations or waivers will be published in the PDS or communicated directly to you.

### Payment Methods

Websalad invoices made be paid using one of the following payment methods:-

- *BPAY*
- *POSTbillpay*
- *Credit Card (Mastercard, VISA, American Express)*
- *EFT*

# Our Guarantee

## What we guarantee

Our work is guaranteed. If you do not believe we have met the mutually established deliverables for your project, we will continue to work towards those deliverables with you for no additional fee or expense consideration.

If, after such an additional attempt, you still believe we have not met the deliverables for your project, we will refund our fees in full.

## What to do if you have a concern?

You should contact us immediately if you experience any problems. You should do this by either contacting us on:

Phone: (+612) 8028 4000 or  
Emails: [info@websalad.com.au](mailto:info@websalad.com.au)

## What we will do?

We will promptly look into your concern and decide what course of action should be taken. We will seek to resolve your concern immediately, however if that is not possible, we will aim to resolve it within 48 hours. If this is not possible, we will keep you informed of progress and how long it is expected to take to resolve.

## Communication with Websalad

To ensure your project with Websalad runs smoothly, we provide online communication and updates. Our online communication tools aim to ensure that all notifications and updates are documented and easily sourced for future reference.

We will train your key people in the following communication tools prior to commencement of your project:

### Online Project Management System

Websalad utilises the BasecampHQ online project management system for project communication, file uploads, to dos, and milestone tracking. The system utilises an easy to navigate online interface which ensures that key stakeholders are always up to date with your project's progress.

### Online Ticket Support

Websalad provides an online support ticket system for ongoing maintenance and general website development enquiries. Our ticketing system is also used to track the correct allocation of prepaid maintenance hours.

### Office Hours

Our Normal Operating Hour are:

**Monday to Friday 9.00am to 5.00pm**

Phone: (+612) 8028 4000 or  
Emails: [info@websalad.com.au](mailto:info@websalad.com.au)

# Terms & Conditions

## Websalad

JRW International Pty Limited trading as Websalad (“Websalad”).

ABN 19 053 573 256

### Introduction

These terms and conditions take effect 1 May 2010, and will apply to all existing or new customers acquiring services from Websalad from 1 May 2010. The terms also explain relationships involved in Websalad services and sets out our obligations to each other.

### 1. General Terms & Conditions

The Websalad Terms and Conditions set out our standard customer terms for all products and services provided by Websalad (“Websalad Services”). Our Websalad Terms and Conditions are divided into 2 sections:

**1.1.1** Websalad General Terms and Conditions - these apply to all Websalad Services; and

**1.1.2** Websalad Services Terms and Conditions - these apply to specific Websalad Services.

**1.2** Your Order Form, the Websalad General Terms and Conditions, and the Websalad Services Terms and Conditions form the basis of our Agreement with you for the provision of the Websalad Services.

**1.3** Where there is any inconsistency between any of the terms described in clause 1.2, the order of precedence in which they will apply are as follows:

**1.3.1** The Order Form,

**1.3.2** Websalad Services Terms and Conditions, and

**1.3.3** Websalad General Terms and Condition, but only to the extent of any conflict or inconsistency.

### 2. Changes to the terms and conditions

**2.1** We may change any of the Websalad Terms and

Conditions at any time on 30 days prior written notice, including prices and fees.

### 3. Term

**3.1** The Term of our Agreement with you will commence on the date specified in the Order Form, and shall continue until the end of the Support Period unless and until terminated in accordance with clause 11.

**3.2** If you wish to acquire additional Websalad Services which are not covered in your original Order Form, a new Order Form will be issued to you.

**3.3** You agree that when an Order Form is attached to a Websalad proposal document, the specific ‘Deliverables’ listed in the proposal document shall be interpreted as forming part of the Order Form.

### 4. Obligations

**4.1** You must:

**4.1.1** ensure that any information or material that you submit to us under this Agreement for use in the provision of the Websalad Services:

(i) is true and correct. You agree that we are entitled to rely on such information and material without independently verifying it, and that we are not liable to you or to any third parties for any false or inaccurate information or material supplied to us by you and/or relied upon by Websalad in the course of it performing its obligations or exercising its rights under this Agreement. You agree that where your supply of false or inaccurate information to Websalad under this Agreement directly or indirectly results in Websalad incurring any cost in order to correct or otherwise appropriately address any issues arising in respect of the false or inaccurate information or material, you will bear this cost;

(ii) is not unlawful or for an improper purpose. An improper purpose includes but is not limited to submitting material that is defamatory, is misleading or deceptive, infringes another person’s intellectual property or other rights, or which will or may expose us to any claim, loss,

liability, legal proceedings or other sanctions;

**4.1.2** ensure that you do not make, arrange or authorise any reference to us or our web site in any document (including promotional or merchandising material) or on any web site without our prior written consent;

**4.1.3** provide us with such relevant materials (including content to be included or edited on your website), promptly execute any document, make any arrangement or do anything that is reasonably requested by us in order to facilitate our provision of the Websalad Services to you, including, but not limited to, any necessary authorisation, permission or security passwords concerning access to codes, programs or other information in relation to your website held by any other party (e.g. a third party internet service provider that hosts your website);

**4.1.4** in relation to your performance of your obligations or exercise of any rights under this Agreement, comply with any applicable legislation, regulations, codes of conduct and relevant guidelines.

**4.1.5** keep secure any passwords relating to the Websalad Services.

## **5. General Acknowledgments and warranties**

**5.1** You agree that:

**5.1.1** you have had the opportunity to read the terms of this Agreement, our Acceptable Use Policy, our Privacy Policy, and all other legal notices posted

on the Websalad.com.au web site and you agree to be bound by the terms of those documents and notices.

**5.1.2** we are not under any obligation to monitor or censor the material that is generated by you or other users of our services and that will appear on your web site, but we reserve the right to do so.

**5.1.3** you are responsible for any costs that you incur for Internet access and other charges that you may incur in using the Websalad Services or in accessing our web

site.

**5.1.4** where the parties have agreed that Websalad may incur travel and accommodation expenses to provide you with the Websalad Services, you will pay all such travel and accommodation expenses in advance, unless otherwise agreed by the parties in writing.

**5.1.5** you will:

(i) notify Websalad immediately of any unauthorised use of any password or account or any other known or suspected breach of security;

(ii) report to Websalad immediately and use reasonable efforts to immediately stop any copying or distribution of content which is in breach of the Agreement (including any efforts to send unsolicited emails or spam), which is known to or reasonably suspected by you or your users; and

(iii) not provide false identity information in order to use the Websalad Services.

**5.2** You warrant that:

**5.2.1** where you provide us with personal information of your client or another person, you have the consent of that client or person to do so;

**5.2.2** you have the right to use the logos, graphics and other content or materials you submit to us under this Agreement,

**5.2.3** the content or materials you provide to us under this Agreement:

does not infringe the intellectual property rights or any other rights of any third party; and is not in breach of any legislation, regulations or relevant code of conduct.

## **6. Spam**

**6.1** You must not send unsolicited emails or spam (as referred to in, and in breach of the Spam Act 2003) using any of the Websalad Services or in any way connected with Websalad, its related companies, the Websalad

Services or our web site.

## 7. Privacy

7.1 We may need to collect and hold your personal information in order to provide the Websalad Services to you. Your personal information will be held subject to our Privacy Policy. [www.websalad.com.au/terms](http://www.websalad.com.au/terms)

7.2 Our Privacy Policy allows us to use your personal information for purposes related to your purchase of the Websalad Services, such as making you aware of our other products and services or notifying you of opportunities offered by our business partners.

7.3 We may disclose your personal information to our related companies, to credit reporting agencies and other third parties as part of provision of the Websalad Services. Where you owe us money, we may disclose your personal information to debt collection agencies to recover the amount due.

7.4 You may obtain a copy of our Privacy Policy at this link: [www.websalad.com.au/privacy](http://www.websalad.com.au/privacy)

## 8. Intellectual Property

8.1 The Intellectual Property Rights in all methodologies and technologies created and provided by Websalad for Websalad Services shall remain with Websalad. Websalad grants you in using Websalad Services (and for no other purpose) a non-assignable, non exclusive, royalty free licence to use intellectual property rights of Websalad that are inherent in the Service.

8.2 Nothing in this Agreement shall be taken to prevent Websalad from using any expertise acquired or developed during the performance of this Agreement in the provision of Websalad Services for other companies or on its own behalf.

8.3 The intellectual property rights of any content or materials which you provide to us in the course of providing you with a Websalad Service, and which is substantially reproduced by us on your behalf, will

continue to be owned by you or your licensors. You grant us a royalty-free non-exclusive licence to use such content and materials for the purpose of supplying the Websalad Services to you.

## 9. Billing and payment

9.1 The fees and charges payable for the Websalad Services that you purchase from us are specified in your Order Form or in our current Price List on page 10 of this PDS. Your Order Form may also specify fees or charges that must be paid in advance.

9.2 Websalad will issue bills on a regular basis for Websalad Services purchased by you. Bills may not always include all relevant fees and charges incurred by you during the billing period reflected on the bill. Some bills may include charges from previous billing periods.

9.3 If you pay a bill by credit card, a surcharge may apply. Credit card payment options and the relevant surcharges that apply can be located on page 10 of the PDS.

9.4 If you do not pay a bill by its due date, in addition to other action we can take, we can:

9.4.1 suspend the supply of, or your access to, any of the Websalad Services purchased by you;

9.4.2 charge you an administration fee of \$25.00 plus GST per month;

9.4.3 charge you interest on any overdue amount at a rate equal to 2% per calendar month; and

9.4.4 demand that you pay for any costs of collecting the overdue amount, including but not limited to agency fees and legal fees.

9.5 If you pay a bill by cheque or direct debit and the cheque or direct debit is dishonoured, you must also pay us a fee of \$25.00 plus GST in respect of each dishonoured payment.

## 10. Goods and Services Tax (“GST”)

10.1 Any consideration specified in this agreement does not include any amount for GST.

10.2 If a supply under this agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the amount of the consideration multiplied by the applicable GST rate.

10.3 The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

10.4 If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

10.5 If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

## 11. Termination

11.1 Without limiting our other rights, we may immediately terminate your Agreement with us (which includes the immediate termination of the supply of, or your access to, any of the Websalad Services if:

11.1.1 you fail to pay any fees or charges by the due date;

11.1.2 you breach any terms and conditions relevant to the Websalad Services purchased by you and fail to rectify that breach within seven (7) days of our giving you written notice requiring rectification;

11.1.3 you become bankrupt or insolvent or appear likely to do so;

11.1.4 you die, or if you are in a partnership, your partnership is dissolved or an application for dissolution is filed; or

11.1.5 you are a company and are wound up or deregistered, or an application for winding up or deregistration is filed.

11.2 In addition to our rights in clause 11.1 above, we may terminate this Agreement at any time, without cause on thirty (30) days written notice to you.

11.3 You may terminate this Agreement at any time without cause following the expiry of the initial term this Agreement, on thirty (30) days written notice to Websalad

11.4 You must pay all outstanding amounts to us within seven (7) days of termination of this Agreement.

11.5 You agree that where your Agreement is terminated, or any of your Websalad Services or associated monthly services are terminated, cancelled or suspended for any reason in accordance with the terms of this Agreement:

11.5.1 Websalad will immediately disable any external service, other than Web Hosting where such service is supplied to you by a third party, linked to the product or service which has been terminated, cancelled or suspended (including but not limited to analytics tools, email alert etc).

11.5.2 Where relevant, Websalad will delete your hosting space from its servers. You acknowledge that you will duplicate any website content required by you beyond the date of termination, cancellation or suspension prior to this date.

11.5.3 Where you are receiving Web Hosting services from Websalad where such service is supplied to you by a third party (as opposed to Websalad itself), you agree that you must make any termination or cancellation arrangements directly with the third party supplier. You acknowledge that Websalad is not permitted to act on your behalf to terminate or cancel such arrangements on your behalf.

11.6 You acknowledge and agree that termination of

this Agreement under this clause 11 does not relieve you of your surviving obligations and liabilities under this Agreement.

## 12. Limitation of liability

12.1 We are not responsible for the content that you submit, generate or approve in relation to any of the Websalad Services, for any errors or omissions in any data provided by you or on your behalf, or for any use by you of the Websalad Services.

12.2 The failure of systems or technology may impede, prevent or delay access to all or any part of any data provided by you or on your behalf. This may include, without limitation, the incorrect transmission of data. You agree that you will not make any claim against us in the event of such failure.

12.3 We will take reasonable steps to ensure that data held by us is safe. However, you are solely responsible for the security and integrity of data at the time it is provided by you or on your behalf.

12.4 To the extent permitted by law, Websalad:

12.4.1 excludes all conditions and warranties implied into this Agreement;

12.4.2 excludes any liability for consequential or indirect loss or damage (including but not limited to loss of opportunity, loss of revenue and loss of profits);

12.4.3 limits its liability for breach of any condition or warranty that cannot be excluded to the greater of (at our option) re-supplying the relevant Websalad Service, or paying the cost of having the relevant Websalad Service re-supplied; and

12.4.4 limits its liability in respect of any other claim in connection with this Agreement, whether the claim is based in contract, tort (including negligence) or statute to the amount paid to us by you under this Agreement.

## 13. Indemnity

13.1 You indemnify us and our officers, employees and agents (“those indemnified”) against any direct or indirect or consequential liabilities, losses, damages, expenses and costs (including legal expenses on a solicitor and own client basis) incurred or suffered by any of those indemnified as a result of any claim or proceedings brought by a third party in respect of:

13.2 any material or content generated or approved by you in connection with any of our services or products; or

13.3 your breach of these terms and conditions, including a breach of any warranty; or

13.4 your negligence, or the negligence of your officers, employees and agents, in the performance of your obligations, or exercise of your rights under this Agreement.

## 14. Miscellaneous

14.1 This Agreement shall continue for the benefit of and be binding upon the successors in title of the parties, but you may not assign or transfer this Agreement, or any right or licence granted to you by us under this Agreement without our prior written consent. We may assign or transfer our rights and obligations under this Agreement at any time without consent. We will notify you prior to any assignment or transfer of our rights and obligations, unless such transfer is to a company in the JRW International Pty Ltd group of companies and will not materially affect the provision of products or services to you under this Agreement.

14.2 This Agreement sets out the entire agreement and understanding between you and Websalad or its related companies in relation to the Websalad Services, and it supersedes all prior agreements, understandings or arrangements (oral or written) in respect of the subject matter of this Agreement.

14.3 You acknowledge that you have entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Agreement.

14.4 If, due to circumstances beyond our reasonable control, we become wholly or partly unable to carry out our duties or obligations under this Agreement, we will inform you as soon as practicable of the nature of the circumstances and the likely duration. For the period of those circumstances or until those circumstances can be reasonably overcome, our duties and obligations under this Agreement will be suspended. You agree that Websalad will not be liable for any failure to perform such duties or obligations until the circumstance beyond our reasonable control has ceased.

14.5 This Agreement shall be governed and construed in accordance with the laws for the time being in force in the State of New South Wales, Australia and the parties agree to the exclusive jurisdiction of the Courts and Tribunals of that State.

14.6 If any provision of this Agreement shall be held to be invalid or in any way unenforceable, it shall be severed and the remaining provisions shall not in any way be affected or impaired.

14.7 Any provision of this Agreement capable of surviving and intended to survive the termination of this Agreement shall survive.

14.8 Any notices served under this Agreement must be served in writing by post, facsimile or by hand to the last known address of the other party.

#### Websalad Services

The Websalad Services for which there are specific Terms and Conditions set out below in these Websalad Services Terms and Conditions are as follows:

1. *Website Development*
2. *Web Hosting*
3. *Domain Name Services*
4. *Search Engine Optimisation Services*
5. *Pay Per Click Advertising*
6. *Email Marketing*

1.1 You will pay us as agreed by the parties in writing,

either in advance for the complete Website Development project, or alternatively at the different stages of the project set out in the Order Form.

1.2 You acknowledge that the Web Design services will be provided to you on the following terms:

(a) PHASE 1 – PLANNING. We will invoice you 50% of the full fee for the Web Design project when we receive your Order Form. You agree that this 50% fee is non-refundable. The deliverable for the planning phase is a definition document outlining our agreed specifications for your website. We will require your sign off at each stage of the planning phase. You agree that any version of the definition scoping document or other content supplied to you for sign off during the planning phase will be in final form. Any further work requested by you will be supplied to you as agreed with Websalad but subject to the payment of further charges.

(b) PHASE 2 - DESIGN. The deliverable for the design phase is a design mock up of the look and feel of the website signed off by you. We will require your sign off at each stage of the design phase. You agree that we will supply you with a maximum of one full set of design mock ups and two revisions to this. Any further work requested by you will be supplied to you as agreed with Websalad but subject to the payment of further charges. We will invoice you 25% of the full fee for the Web Design project on your sign off of the completed website design. You agree that you will provide your feedback to enable completion and your final sign off on completion of the design phase within one month of our submitting the final design form to you for review. Any delay or further time required to be spent by us in completing the design phase will be supplied to you as agreed with Websalad but subject to the payment of further charges.

(c) PHASE 3 - BUILD The deliverable for the build phase is your sign off on the completed build of the website according to the definition document and design mock up previously agreed by you. We will invoice you the

remaining 25% of the full fee for the Web Design project on your sign off of the completed website build. We will also commence billing you the monthly fee for the hosting of your website if applicable. You acknowledge that this date may be prior to the actual launch date for the website. You agree that you will provide your feedback to enable completion and your final sign off on completion of the website build within one month of our submitting the final form website to you for review. Any delay or further time required to be spent by us in completing the build of your website will be supplied to you as agreed with Websalad but subject to the payment of further charges.

**1.3** You may cancel the Web Development project at any time, subject to the following terms:

(i) 7 days prior written notice;

(ii) if cancelling during Phase 1 subject to payment of the full fees due for this phase of the Web Development project (50%), and if during Phase 2, subject to payment of the full fees due for this phase of the Web Development project (a further 25%), as well as an additional 10% cancellation fee in either case, and

(iii) if during Phase 3, subject to payment of the full fees due for this phase of the Web Development project (remaining 25%).

**1.4** If you have failed to provide us with required information or material for a period of two months or more, you will be deemed to have cancelled the Web Development service, or any Change Request service (as described below).

**1.5** You may request us to place your Web Development project on hold for a period of up to three months. Any Web Development project recommenced after three months as agreed by the parties will incur a recommencement fee. You should enquire about the current recommencement fee at the time you request that the project be put on hold. Any Web Development project put on hold by you and not recommenced within

6 months will be deemed to be cancellation of the Web Development service by you.

## **Change Request**

**1.6** Where the fee for completion of the Change Request is over \$1000 you agree that:

(i) You will pay us as agreed by the parties in writing, either in advance for the complete Change Request project, or alternatively at the different stages of the project set out below:

(A) 30% when we receive your Order Form for the Change Request. You agree that this fee is non-refundable.

(B) 70% on your sign off of the completed Change Request project. You acknowledge that this date may be prior to the actual launch date for the website.

**1.7** Where the fee for completion of the Change Request is under \$1000 you agree that:

(i) You will pay us as agreed by the parties in writing, either in advance for the complete Change Request project, or alternatively as set out below:

(A) 100% on your sign off of the completed Change Request project. You acknowledge that this date may be prior to the actual launch date for the website.

**1.8** You may cancel the Change Request project at any time, subject to the following terms:

(i) 7 days prior written notice;

(ii) if the fee for completion of the Change Request is over \$1000 you agree that you will pay the 30% non-refundable payment when we receive your Order form, as well as an additional 10% cancellation fee, and

(iii) if the fee for completion of the Change Request is under \$1000 you agree that you will pay 100% of the fee for completion of the Change Request or such part of

that fee as is reasonably determined by us in our sole discretion, taking in to account such factors as time already spent on the project prior to our receipt of your request for cancellation.

### **1.9 Website Maintenance & Support**

Websalad will provide a 30 day Support Service free of charge following the final hand over all Web Development projects completed by us. Our Support Service will cover all bugs, errors, and required fixes on all completed work.

**1.9.1** You agree that Websalad is not responsible for any subsequent changes, alternations or updates made to the Web Development project by you, or any other third party during this support period. If you, your agent, or third party other than Websalad attempts amending, altering, or updating the Web Development, time to repair will be assessed at the normal Website Maintenance hourly rate, and is not included as part of the 30 day Support Service.

**1.9.2** You agree that for all subsequent Website Maintenance requests made, the following charges and payment options will apply:-

**1.9.3** You will pay us either as agreed by the parties in advance, or alternatively on an ad hoc basis as each Website Maintenance project is completed.

**1.9.4** Website Maintenance hours can be purchased in advance in minimum 10 hour periods of time. (Prepaid hours)

**1.9.5** If you nominate to purchase Website Maintenance hours in advance, the time required to complete a project will be debited in minimum 30 minute time periods for completed development.

**1.9.6** If a balance of unused hours remains at the end of a calendar month, an email will be issued to you that outlines (i) the balance of hours remaining in credit. (ii) the work completed within that calendar month and corresponding time allocated for the completed project.

**1.9.7** Prepaid hours remain valid for 12 months from the date of purchase.

**1.9.8** You agree that any unused prepaid hours are non-refundable.

**1.9.9** You agree that Web Maintenance hours invoiced on an ad hoc basis for work completed will be charged in one hour periods.

### **Web Hosting**

**2.0** You agree to an initial twelve (12) month contractual term of service ("Term"). The length of contract required is based on the type of service desired by you and shall be determined solely Websalad.

**2.1** You agree that you will abide by our Web Hosting Acceptable Use Policy, as amended from time to time. The most up-to-date version of our Web Hosting Acceptable Use Policy is available on our website at <http://www.websalad.com.au/terms>.

**2.2** You acknowledge that:

**2.2.1** Any breach of the Web Hosting Acceptable Use Policy will be considered a breach of this Agreement;

**2.2.2** Websalad will not provide any regular reports to you in respect of the Web Hosting service

**2.2.3** Websalad will use spam and virus filters in respect of the provision of the Web Hosting service to you which may require us to use third party equipment or services to monitor and filter email traffic between our equipment and the Internet. You acknowledge that where we use such filters, Websalad has no obligation to retain copies of such spam or filtered emails.

**2.2.4** You will not take any steps to disable any spam or virus filters and that we will not be liable for any loss or damage resulting from the use of spam or virus filters, including, without limitation, our non-retention of any spam or filtered emails.

**2.2.5** Whilst Websalad shall use reasonable endeavours

to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers.

**2.3** Websalad will undertake scheduled maintenance to servers from time to time. We will attempt to ensure all scheduled maintenance takes place at times which will affect the fewest customers. If scheduled maintenance requires the services to be offline for more than 30 minutes, Websalad will use its reasonable endeavours to advise you of the details of the scheduled maintenance by email at least 36 hours in advance of the maintenance.

**2.4** Websalad may undertake unscheduled maintenance from time to time. If unscheduled maintenance requires the services to be offline for more than 30 minutes, Websalad will use its reasonable endeavours to advise you of the details of the unscheduled maintenance by email within a reasonable time after the maintenance has been completed.

**2.5** Websalad will archive your data onto backup systems on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will restore from the last known good archive. In the event of corruption of all our archives, or

in the event that an old archive is used to restore data, where requested by Websalad you agree that you will provide your data to us in digital format. You agree that Websalad will not be liable for incomplete, out-of-date, corrupt or otherwise deficient data recovered from our backup systems.

**2.6** We reserve the right to supply you with the Web Hosting service either internally or using third party services, at our sole discretion on written notice to you. Websalad reserves the right to migrate your website to a new operating system platform if our operating system supplier ceases to provide support for any legacy operating system, or if the server from which the service is provided fails or, in our reasonable opinion, becomes unreliable. Websalad will use its reasonable endeavours

to notify you but will have no liability to you for website failure if you have failed to keep your contact details up-to-date or if you have not checked the operation of your website post-migration and notified us of any required changes to the website configuration.

**2.7** You agree that you are solely responsible for the care and maintenance of your data. Websalad will provide additional support services on a consultancy basis at our standard rates as listed on page 10 of this PDS.

**2.8** In performing each Web Hosting service request we will follow generally accepted web hosting industry standards and practices in carrying out the services. We warrant that the services will be provided with due skill and care but we do not warrant that they will meet a certain standard, or will be suitable and fit for your purposes.

**2.9** You will provide to us, within the timeframe reasonably required by us, access to: your premises; employees and contractors; source code and object code; data and databases; legacy systems; and documents, as we reasonably require in order to fulfil our obligations or exercise our rights under this Agreement. Websalad is not liable for any loss suffered by you if you do not provide us with this access, and we will be entitled to stop work if your failure to provide access means that we cannot reasonably fulfil our obligations or exercise our rights under this Agreement.

**2.10** You grant us permission to use your technical identification in a non-identifying format for problem resolution, internal troubleshooting, product functionality enhancements and fixes, and in any descriptions of problems or solutions to problems, which we record in our systems. We will not identify you or publish your confidential information in any item we record in our systems.

**2.11** In addition to the fees payable in respect of the Web Hosting service and set out in your Order Form, you agree to also pay any registration fees or delegation charges imposed by domain name authorities. If we incur

these costs on your behalf, you must reimburse us.

**2.12** You agree that you will bear the costs of:

(i) installation and use of telephone lines and other equipment needed to access the Web Hosting service; and

(ii) all government taxes, duties and levies (if any) imposed on either you or us in respect of the Web Hosting service.

### **3. Domain Name Services**

**3.1** You agree that where you require Websalad to register or renew domain names for you in the context of its provision of other Websalad Services to you:

(i) Websalad will ensure that such domain names are registered on your behalf by a relevant Registrar or Registry (as required) in the relevant domain space.

(ii) You acknowledge that you will be bound by the Registration Agreements of the relevant Registrar or Registry in respect of those domain names. You agree that you have sole responsibility for ensuring that you are aware of those terms and conditions and can and do comply with them.

(iii) You agree that the decision of the relevant Registrar or Registry to licence a domain name to you, or to revoke that licence, are in the sole discretion of the Registrar or Registry, and that Websalad makes no representation to you and has no liability for any loss claimed or suffered by you as a result of a Registrar or Registry refusing to licence a domain name to you, or revoking such licence at any time.

(iv) Where you require Websalad to renew a domain name for you, where WebSalad is not listed as the billing contact for your domain name and you receive the renewal notice or other invoice in respect of the domain name, you will promptly send on such renewal notice or invoice to Websalad in a timeframe which will reasonably permit Websalad to renew the domain name on your behalf. You acknowledge that Websalad will have no

liability to you for any loss claimed or suffered by you as a result of your failure to comply with the obligations in this clause 3.1(iv).

**3.2** You agree that in addition to the agreed Domain Name service fees, you must also pay any disbursements incurred by Websalad in providing the service (such as registration fees or delegation charges imposed by domain name authorities). If we incur these costs on your behalf, you must reimburse us.

**3.3** You agree to bear the costs of all government taxes, duties and levies (if any) imposed on either you or us in respect of the service.

### **4. Search Engine Optimisation Services**

**4.1** You agree that we may provide you with advice and recommendations and services in order to optimise your ranking on search results on search engines.

**4.2** You agree that our services do not relate to all search engines. Our services aim to optimise your ranking on 'primary' search engines (the search engines that we consider to be effective, popular and appropriate for your website to be listed on).

**4.3** You agree that in order to achieve the best results, you are required to work in cooperation with us. You agree to respond promptly to our requests for access and to implement our recommendations. You agree to let us know if you make any changes to your website, especially to your home page. You agree that if we are required to restore pages that you have changed we will charge you for such restoration at our hourly rates.

**4.4** You agree that in order to provide you with the Search Engine Optimisation services, you must provide us with the access, data and information reasonably requested by us.

**4.5** You acknowledge that:

(i) While we will make all reasonable efforts to ensure that your search engine ranking is optimised, we cannot and do not guarantee a certain search engine ranking for

your website. We cannot guarantee traffic to your website or the profitability or effectiveness of your website.

(ii) Our advice and recommendations are often integrated and are designed to be implemented as a whole. We will not be responsible for any change in the performance of your rankings as a result of your failure to implement our recommendations in their entirety.

4.6 You agree that the services are most effective if they are provided to you exclusively by us during the relevant period of time. We will not be responsible for any change in performance as a result of any interference with our work by you, any third party or any person acting on your behalf.

4.7 You acknowledge that your search engine ranking is not likely to remain the same for a long period of time as search engines change their ranking algorithms on a regular basis. In addition, you acknowledge that other websites are being optimised and submitted every day.

4.8 We will not violate any guidelines of indexing by any search engine or directory in providing the service to you. We will not cloak any pages or hide same colour content on same colour background or otherwise knowingly use spam methods to provide the services.

4.9 We reserve the right to terminate the service at any time if we suspect that your website is involved in any practice that we consider to be unethical or illegal, or likely to bring Websalad or its related companies in to disrepute.

## 5. PPC

5.1 We will manage your campaign within the allocated time and budget as outlined on your Order Form.

5.2 Cancellation at any other time by either party is subject to a notice period of one calendar month. If you wish to cancel your service please contact Websalad. You will be invoiced for one further month from the date we receive your cancellation email.

5.3 You have the option to pause our service for up to a

maximum of three months. If you have not resumed your service by the end of the three month period then we will automatically cancel your contract and issue you with a final invoice to cover your cancellation period.

5.4 Websalad reserves the right to revise the terms and conditions of this agreement with one months notice.

5.5 Charges & Billing. Websalad agrees that we will not modify your daily PPC budget without your approval.

The normal cost of our management services is the equivalent of 15% of your PPC budget or a minimum fee of \$500. All charges will be made to your nominated Credit Card. In the event Websalad Credit Card is to be used there will be a 5% surcharge on the total costs charged. Invoices are sent out at the beginning of each month or at the beginning of a new month by month campaign. If you wish to change the credit card from which we take payment please email

[accounts@websalad.com.au](mailto:accounts@websalad.com.au)

5.6 Security. You must immediately inform Websalad if there is any reason to believe that a user ID or password has been or is likely to be compromised or used in an unauthorised way. Websalad reserves the right to suspend access to the Service if at any time Websalad considers that there is or is likely to be a breach of security.

5.7 Confidentiality. We agree not to disclose or otherwise make available to anyone confidential information relating to your advertising campaigns.

5.8 Limitation of Liability. In no event will Websalad be liable to you for any indirect, incidental or consequential loss or damages arising under this Agreement. You agree to indemnify and keep Websalad indemnified from any claim brought by a third party resulting from Websalad's provision of the Service including but not limited to infringement of any intellectual property right of any kind, legislation or regulation or any breach by you of any of obligations under these Terms. The service is scheduled to be available 24 hours per day,

7 days a week but Websalad accepts no liability for failure to maintain this level of availability. Emergency maintenance, updates and any other procedures will be scheduled on a case-by-case basis. In the event of unforeseen disruptions to the Service, Websalad will use reasonable efforts to restore Service within 24 hours but does not guarantee it will always be able to do so or accept any liability for failure to do so.

5.8.1 Websalad accepts no responsibility for policies of PPC Advertising Networks, third-party search engines, directories or other web sites (“Third-Party Resources”) that Websalad may submit to with respect to the classification or type of content it accepts, whether now or in the future. Your website or content may be excluded or banned from any Third-Party Resource at any time. You agree not to hold Websalad responsible for any liability or actions taken by Third-Party Resources under this Agreement.

5.9 Matters Beyond Either Parties Reasonable Control  
If either party is unable to perform any obligation under this Contract because of a matter beyond that party’s reasonable control that party will have no liability for failure to supply the Service. If any of these events continue for more than 2 weeks either party may serve notice on the other terminating this Contract.

5.10 Assignment. The Client will not assign, resell, sublease or in any other way transfer the Service (or any element thereof), or any of its rights or obligations under the Terms of this Agreement without the prior written consent of Websalad. Contravention of this restriction in any way, whether successful or not will entitle Websalad to terminate the Service and/or the Agreement immediately. Websalad may assign or transfer its rights or obligations under this contract by written notice to the Client.

#### 5.11 Data Protection

Websalad are committed to protecting your privacy. We adhere to the policies and regulations set out under the Data Protection Act.

#### 5.12 Acceptance Notice;

Approvals by emails will be accepted by Websalad within the online project management system. Alternatively you can sign and fax back the Change Request Form to 02 9262 3985 or Scan and email to info@websalad.com.au

5.12 In the event that it is deemed necessary and vital to install ROI tracking or other metric measurement software, Websalad will install, update, upgrade and configure software packages as outlined in the Order Form. Websalad shall provide documentation and instructions to you on using all software installed by Websalad. Websalad shall provide 1 hour of training to You, and turn over all disks, CD-ROMs, digital media, downloads, links or other software purchased for You under this Agreement. Websalad shall not be responsible for keeping copies, back-ups or any other form of the software after turning over the original copies, or login accessibility, to You. Websalad will not maintain the Installation, updates, licences, or any daily tasks required for the maintenance of the software under this Agreement unless otherwise specified in the Order Form.

#### 6. Email Marketing

6.1 . You agree that Websalad is in the business of providing Email Marketing Services and Email Campaign Management Services for a fee.

6.2 The Services enable corporate web sites, small business web sites, and community sites to sign up web site visitors, collect and retrieve visitor sign-up data, and develop and execute e-mail communications with visitors and other targeted prospects.

6.3 All email delivery prices are subject to change at any time. All fees paid to Websalad for Websalad Email Marketing Services are non-refundable, unless an account is terminated by Websalad for a reason other than violation of the Anti-Spam Policy. Payment for Services will be made by a valid credit card accepted by Websalad, unless other payment arrangements have been made between you and Websalad.

**6.4** It is understood that Websalad makes no guarantee that HTML messages will be rendered properly on all recipients' e-mail programs, due to the wide variety of HTML generation tools available. Websalad makes every attempt to make sure that all e-mail messages sent through our servers follow e-mail standards, but we cannot guarantee that messages will look consistent across all e-mail platforms due to the number of different HTML composition tools available. For example, if you use Microsoft Word to generate HTML e-mail messages, it is expected that recipients of your message using a non-Microsoft e-mail application may have difficulty reading your message. For best results Websalad recommends, but does not guarantee, the use of HTML editors that generate HTML that adheres to W3C standards.

#### **6.5 Limited Warranty and Limitation on Damages**

**6.6** You agree to indemnify and hold Websalad harmless with respect to any claim, loss, lawsuit, liability or judgment suffered by you that results from the use of any material prepared or execution of service by Websalad or at the direction of Websalad that has been materially changed by any advertisers, publishers, hosts, radio and television broadcasts, quotes, testimonials, print journalism, or other third party entity.

**6.7** You agree that Websalad is not responsible for the results obtained from any of the Services rendered under this Agreement.

**6.8** You represent, covenant, and warrant that you will use the Services only in compliance with the Agreement and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). You agree you will not access or otherwise use third party mailing lists in connection with preparing or distributing unsolicited e-mail to any third party. You hereby agree to indemnify and hold harmless Websalad against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees)

in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to your use of the Services. Although Websalad has no obligation to monitor the content provided by you or your use of the Services, Websalad may do so and may remove any such content or prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing.

**6.9** The Services may only be used for lawful purposes. Transmission or solicitation of any material that violates Australian federal, state or other laws that may apply in your local area is prohibited. This may include material that is obscene, threatening, harassing, libellous, or in any way a violation of intellectual property laws or a third party's intellectual property rights.

**6.10** Websalad will not use any of your subscriber lists or any other customer information for any other purposes than those intended with the service. Your customer information will not be shared with any other parties. In addition, Websalad will not use your customer information for the purpose of sending unsolicited commercial e-mail.

**6.11** You will adopt and maintain the Websalad Privacy Policy, which may be modified by Websalad from time to time.

**6.12** You may not use the Service to distribute illegal contests, pyramid schemes, chain letters, or multi-level marketing campaigns

**6.13** You may not use the Service to send email campaigns that link to or display nudity, obscene content, pharmaceutical related content, illegal software, viruses, or to distribute any other content that we deem inappropriate.

**6.14** Termination. You may terminate this Agreement at any time by sending an e-mail message to [accounts@websalad.com.au](mailto:accounts@websalad.com.au) or by sending written notice to Websalad, Level 2, 2 Barrack St Sydney NSW 2000.

**6.15.** Websalad may terminate this Agreement or the

Services at any time with or without cause, and with or without notice. Websalad shall have no liability to you or any third party because of such termination. If Websalad terminates this agreement because you violated the Anti-Spam policy, no refund will be issued.

**6.16** Websalad may delete any of your archived data within 30 days after the date of termination. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, ownership, warranty disclaimers and limitations of liability.

**6.17. Warranty Disclaimer Remedies.** Use of the Services and any reliance by you upon the Services, including any action taken by you because of such use or reliance, is at your sole risk. Websalad does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. The Services are provided “as is” and Websalad disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose and non infringement.

Your sole and exclusive remedy for any failure or non performance of the Services shall be for Websalad to use commercially reasonable efforts to adjust or repair the Services.

#### **6.18. Limitation of Liability**

You agree to indemnify and hold Websalad harmless with respect to any claim, loss, lawsuit, liability or judgment suffered by you that results from the use of any material prepared or execution of service by Websalad or at the direction of Websalad that has been materially changed from the Specifications by any advertisers, publishers, hosts, radio and television broadcasts, quotes, testimonials, print journalism, or other third party entity.

If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

You agree that the Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.

In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees.

The Agreement shall be governed by the laws of the State of NSW Australia without regard to its choice or law or conflict of law's provisions. All legal actions in connection with the Agreement shall be brought in the state or federal courts located in Sydney, New South Wales, Australia.

#### **Compliance rules for sending e-mail**

You agree to follow the rules of the federal CAN-SPAM act and Websalad's Anti-Spam policy when sending e-mails through the service.

# Glossary: Definitions

In these Terms and the rest of the PDS:

**Advertisement** means the digital material (including any Creative) submitted by you to be published by us on Our Sites.

**Advertising Campaign** means a group of Advertisements published across Our Sites during a set period, as specified on your Insertion Order.

**Agreement** means:

- (i) these Terms and Conditions;
- (ii) your Order Form;
- (iii) any additional terms in addendum agreed by us; and
- (iv) the Specifications.

**Applicable Rate** means the Reserve Bank's Official Cash Rate (as published in the Australian Financial Review at the time the price became due) plus 5%.

**Bonus Impressions** means additional Impressions above the commitments outlined in your Order Form.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales.

**Client** means the person (if different to you, for example if you are an advertising agency) being promoted, marketed or advertised in the Advertisement or, if a product or service is being advertised, the person whose products or services are being advertised.

**Corporations Act** means the Corporations Act 2001 (Cth) as amended from time to time.

**Creative** means any information, material, name, trademark, logo, artwork, text, graphic or other material provided or to be provided by you to us for the purpose of providing the Advertisement.

**Creative Partner** means the party selected by you to undertake the creative design work associated with developing the Landing Page Creative Elements.

**Government Agency** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

**Impression** means the number of times an ad request is called from a browser to our ad server and when the ad server selects and serves the ad. The message or Creative may not be displayed or seen in all cases for the ad server to count an impression.

A person is Insolvent if:

(a) it is (or states that it is) an insolvent under administration or insolvent (each as

defined in the Corporations Act); or

(b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or

(c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or

(d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or

(f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or

(g) it is otherwise unable to pay its debts when they fall due; or

(h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Landing Page Creative Elements means the user interacts or engages past the ad click.

Laws means all statutes, regulations, laws, codes of practice and other regulatory instruments (including any applicable standards made by a regulatory or self-regulatory body).

Loss means any damages, costs, penalties or liabilities.

Mobile Sites means the versions of websites available to mobile phone users.

Order Form means means the agreed order setting out details of the Services to be provided to you and signed by you.

(a) web site that we own or operate including, but not limited to websalad.com.au

(b) any other web sites notified to you by us from time to time (including third party web sites).

Performance Campaign is a method of payment for advertising where the basis of payment is the number of user initiated actions or events such as transactions, clicks and registrations.

Price means the rate payable by you under this Agreement for the Advertising Campaign(s).

Server means the computer server equipment operated by Websalad in conjunction with the provision of the Services.

Service means a service forming part of the Websalad project be provided by to you under this Agreement as set out in your Order Form. (for example, SEO, described in page 6 of this PDS);

Specifications means any project specifications and creative documents that we produce and that relate to projects or creatives, including, but not limited to:

(i) the "Project Specs" produced as part of the project scoping process.

Start Date means the date specified in your Order Form (or otherwise agreed by the parties) for the start of an Advertising Campaign or Project such other date agreed by the parties from time to time.

you, your means the customer identified in your Order Form.

Terms means these terms and conditions governing Websalad Services.

### Interpretation

In these Terms, headings and bold type are for convenience only and do not affect interpretation and, unless the context requires otherwise:

(a) the singular includes the plural and vice versa;

(b) other parts of speech and grammatical forms of a word or phrase defined in these Terms have a corresponding meaning;

(c) a reference to a person includes an individual and a company, partnership, joint venture, association, corporation or other body corporate and a government agency;

(d) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause (d) implies that performance of part of an obligation constitutes performance of the obligation;

(e) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;the beginning of paragraphs)are for convenience only and do not affect the interpretation of this Agreement.

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

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

(h) no provision of these Terms may be construed adversely to us on the ground that we were responsible for the preparation of these Terms or that provision;

(i) a reference to an agreement other than these Terms includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;

(j) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;

(k) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;

(l) a reference to a body, other than us or you (including an institute, association or authority), whether statutory or not:

(1) which ceases to exist; or

(2) whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

(m) examples are descriptive only and not restrictive or exhaustive; and

(n) 'we', 'us', 'our' and equivalent terms refer to JRW International Pty Ltd (and where relevant, our Personnel) and

'you', 'your' and equivalent terms refer to an applicant for, or participant in, Websalad Services (and where relevant, your Personnel).(c) (person) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency;

(d) (calculation of time) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;

(e) (meaning not limited) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

(f) (next day) if an act under this Agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and

(g) (headings) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.

All matters concerning the interpretation of these Terms and their application, in any specific or general case, may be determined by us in our sole discretion, and we need not give any reasons for our determination.