

PREAMBLE

1. Preamble

- 1.1 All Services of OmniHyper®, whether gratuitous or not, are supplied subject to these Conditions and:
- (a) The provisions of Part I shall apply to the provision of all and any Services.
 - (b) The provisions of Part II shall only apply to the provision of Website Hosting Services.
 - (c) The provisions of Part III shall only apply to the provision of Web Development Services.

PART I - GENERAL CLAUSES

2. Definitions

- 2.1 “Australian Clients” means Clients based in Australia and to any Clients serviced by OmniHyper PTY Limited (ACN 605 430 386, ABN 38 605 430 386);
- 2.2 “OmniHyper®” shall mean OmniHyper Limited (NZ Company Number 1343662, NZBN 9429035896043) and/or OmniHyper PTY Limited (ACN 605 430 386, ABN 38 605 430 386) T/A OmniHyper® (as relevant), and successors and assigns.
- 2.3 “Client” shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 2.4 “Guarantor” means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 2.5 “Materials” shall mean all data, graphics, pictures, trademarks, software and other materials to be incorporated in the Client’s Website (including, but not limited to), user data created by the operation of the Client’s Website (and where the context so permits shall include any supply of Services as hereinafter defined);
- 2.6 “New Zealand Clients” means Clients based in New Zealand and to any Clients serviced by OmniHyper Limited (NZ Company Number 1343662, NZBN 9429035896043);
- 2.7 “Price” shall mean the cost of the Services as agreed between OmniHyper® and the Client subject to clause 5 of this contract.
- 2.8 “Prohibited Content” means any content on a Website that:
- (a) is, or could reasonably be considered to be, in breach of any relevant laws or applicable industry code of practice; or
 - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - (c) is, or could reasonably be considered to be, in breach of any person’s Intellectual Property Rights.
- 2.9 “Services” shall mean all services supplied by OmniHyper® to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Materials as defined above).
- 2.10 “Website” means a location which is accessible on the Internet and which provides content via a graphical User Interface.

3. Acceptance

- 3.1 Any instructions received by OmniHyper® from the Client for the supply of Services and/or the Client’s acceptance of Services supplied by OmniHyper® shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of OmniHyper®.
- 3.4 None of OmniHyper®’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of OmniHyper® in writing nor is OmniHyper® bound by any such unauthorised statements.
- 3.5 The Client undertakes to give OmniHyper® not less than fourteen (14) days prior written notice of any proposed change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice).
- 3.6 The Client agrees to provide OmniHyper® with timely and necessary access to any digital assets required to perform website optimisation and digital marketing services, including but not limited to:
- (a) CMS (Content Management System) Access – Administrative or appropriate role-based access to manage SEO-related optimisations, metadata updates, content modifications, and integration of tracking scripts.
 - (b) FTP (File Transfer Protocol) Access – Direct access for the purpose of implementing necessary technical SEO changes, updating website files, and ensuring the proper functionality of digital assets.
 - (c) GTM (Google Tag Manager) and Analytics Access – Access to relevant Google Tag Manager containers and analytics accounts to facilitate tracking implementation, conversion tracking, and performance monitoring.
 - (d) Hosting and Server Access (if required) – Access to hosting environments or server configurations necessary for implementing structural optimisations and resolving technical SEO issues.
- Access must be granted within twenty-one (21) days of requesting OmniHyper®’s services for any given website. Failure to provide such access within this timeframe may impact the effectiveness of the services and may result in delays or additional costs. OmniHyper® will maintain strict confidentiality and security of all access credentials provided by the Client. Failure to provide such access within this timeframe will release OmniHyper® from any liability related to delays, performance issues, or incomplete implementation of SEO, tracking, or other digital optimisation services. OmniHyper® shall not be responsible for resolving access issues with any third-party service providers used by the Client, including but not limited to CMS providers, hosting providers, or digital asset management platforms. Any such delays will be the responsibility of the Client and may result in additional costs.

4. Services

- 4.1 The Services include the supply of Search Engine Marketing, website design services and/or the provision of any other web, graphic or other Services as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by OmniHyper® to the Client.

5. Price And Payment

- 5.1 At OmniHyper®'s sole discretion the Price shall be either;
- (a) as indicated on invoices provided by OmniHyper® to the Client in respect of Services supplied; or
 - (b) OmniHyper®'s quoted Price (subject to clause 5.2) which shall be binding upon OmniHyper® provided that the Client shall accept in writing OmniHyper®'s quotation within thirty (30) days; or
 - (c) OmniHyper®'s estimated Price which shall be agreed in writing between OmniHyper® and the Client prior to the commencement of the works. In the event of an estimate, the final Price can only be ascertained upon completion of the works. Variances in the estimated Price of more than fifteen percent (15%) will be subject to client approval before proceeding with the works.
- 5.2 Any variation from the plan of scheduled works or specifications (as stated in OmniHyper®'s brief, quotation, proposal, or work description) will be charged for on the basis of OmniHyper®'s quotation or hourly rate and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 The Client acknowledges and agrees that OmniHyper®'s cost for overseas transactions may increase as a consequence of variations in foreign currency rates of exchange for foreign sourced components. Any variation from OmniHyper®'s quoted Price will be detailed in writing and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.4 OmniHyper® may submit a detailed payment claim at intervals not less than one month for Services performed up to the end of each month. The value of Services so performed shall include the value of any variations, whether or not the value of such variations has been finally agreed between the parties.
- 5.5 At OmniHyper®'s sole discretion a non-refundable deposit may be required.
- 5.6 Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated, then payment shall be due seven (7) days following the date of the invoice.
- 5.7 OmniHyper® may withhold delivery of the Services until the Client has paid for them, in which event payment shall be made before the delivery date.
- 5.8 Payment must be made by bank transfer or by any other method as agreed to between the Client and OmniHyper®.
- 5.9 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by OmniHyper®.
- 5.10 At OmniHyper®'s sole discretion, all miscellaneous charges (including without limitation communication costs, couriers, printing, or mock-ups) shall be in addition to the Price.

6. Application of Payments

- 6.1 Any payments tendered by the Client will be applied as follows:
- (a) First as reimbursement for any collection costs incurred by OmniHyper®;
 - (b) Secondly, in payment of any interest charged to the Client under these Terms;
 - (c) Thirdly, to satisfy any other obligation that is not secured;
 - (d) Finally, to satisfy any other outstanding obligation,
- or, despite the foregoing, any manner OmniHyper® sees fit.

7. No Withholding or Offset

- 7.1 The Client must not withhold from any payment, or offset against any payment, due to OmniHyper® any amount in respect of any amount owed by or claim against OmniHyper®.

8. Delivery Of Services

- 8.1 At OmniHyper®'s sole discretion delivery of the Services shall take place when:
- (a) the Client takes possession of the Materials at OmniHyper®'s address; or
 - (b) the Client takes possession of the Materials at the Client's nominated address; or
 - (c) the Services are electronically submitted to the Client via email or website.
- 8.2 The failure of OmniHyper® to deliver shall not entitle either party to treat this contract as repudiated.
- 8.3 OmniHyper® shall not be liable for any loss or damage whatever due to failure by OmniHyper® to deliver the Services (or any of them) promptly or at all.

9. Email Transmissions

- 9.1 OmniHyper® may correspond with the Client and others by e-mail, where appropriate, unless the Client specifically instructs OmniHyper® to the contrary. The Client is aware that e-mail is not secure and may be read, copied or interfered with in transit or impaired. Therefore, the Client agrees to assume the risks associated with transmission and to release OmniHyper® from any claim the Client may have arising from transmission defects.

10. Extension of Time

- 10.1 If OmniHyper® is delayed in the supply of the Services, it will notify the Client as soon as it is aware of an actual or expected delay.
- 10.2 OmniHyper® will give the Client details of the circumstances giving rise to the delay, the anticipated duration of the delay, and the steps that OmniHyper® intends to take to minimize the delay.

- 10.3 On receipt of a notice of delay, the Client will extend the time for the supply of the Services by a reasonable period if the delay is beyond OmniHyper®'s reasonable control and OmniHyper® has used (or are using) all reasonable efforts to minimize the delay

11. Risk

- 11.1 If OmniHyper® retains property in the Services nonetheless, all risk for the Services passes to the Client on delivery.
- 11.2 OmniHyper® does not warrant that the functions or features undertaken in the Search Engine Optimisation & Marketing Process of a website will meet the Client's requirements or that operation of the website will be uninterrupted or error free. All risk as to the quality and performance of the website shall remain with the Client. The Client agrees to indemnify OmniHyper® against any loss or damage (including loss of profit, loss of savings or any other incidental, consequential or special damages) arising out of the operation of or the inability to operate the website, even when OmniHyper® has been advised of the possibility of such damages. Unless OmniHyper® receives a specific request from the Client in writing, OmniHyper® will not support any Netscape browser versions or any non-PC operating systems including but not limited to Apple Macintosh and Linux.

12. Disclosure of relevant information

- 12.1 The Client must disclose all relevant information to OmniHyper® relating to the terms, conditions and circumstances in which it is to supply the Services. Without limitation, the Client will disclose to OmniHyper®:
- (a) Accurate, complete and sufficient information concerning the Services to allow OmniHyper® to comply with all laws and regulations concerning the supply of the Services; and
 - (b) All foreseeable hazards associated with the supply of the Services.
- 12.2 The Client confirms that all information provided by it is true, accurate and complete in all material respects, and may be relied upon by OmniHyper® in the supply of the Services.
- 12.3 The Client indemnifies OmniHyper® against all losses, costs, penalties and expenses which it pays or incurs as a result of the Client failing to fully discharge the obligations in this clause 12.

13. Materials left with OmniHyper®

- 13.1 Any artwork, bromides, film, video or other material supplied to OmniHyper® by the Client shall be at the Client's risk and if lost, destroyed or damaged the Client will not be entitled to make any claim against OmniHyper®.

14. Errors and Omissions

- 14.1 The Client shall inspect the Services on delivery and shall within five (5) days of delivery notify OmniHyper® of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford OmniHyper® an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 14.2 For defective Services, which OmniHyper® has agreed in writing that the Client is entitled to reject, OmniHyper®'s liability is limited to either (at OmniHyper®'s discretion) replacing the Materials or rectifying the Services provided that the Client has complied with the provisions of clause 14.1.
- 14.3 For Materials not manufactured by OmniHyper®, the warranty shall be the current warranty provided by the manufacturer of the Materials. OmniHyper® shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

15. Client's Disclaimer

- 15.1 To the fullest extent allowed by law the Client hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of OmniHyper® and the Client acknowledges that he buys the Services relying solely upon his own skill and judgment.

16. Consumer Guarantees Act 1993 (New Zealand Clients)

- 16.1 This clause 16 applies to New Zealand Clients.
- 16.2 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the *Consumer Guarantees Act 1993* in New Zealand do not apply to the supply of Materials by OmniHyper® to the Client.

17. IMPORTANT – Exclusion of Implied Warranties (Australian Clients)

- 17.1 This clause 17 applies to Australian Clients.
- 17.2 The only conditions and warranties binding on OmniHyper® in respect of the state, quality or nature of any Service supplied by it (or its employees, servants or agents) to the Client, are those imposed and required by law to be binding on OmniHyper® (including under the *Competition and Consumer Act 2010* (Cth) in Australia and applicable state fair trading laws). All other conditions and warranties, whether express or implied by law, in respect of the Services which may apart from this clause be binding on OmniHyper®, are hereby expressly excluded and negated.

18. IMPORTANT – Limitation of Liability

- 18.1 To the fullest extent permitted by law, OmniHyper®'s liability (if any) arising from a breach of any applicable terms, conditions or warranties is, at its option, limited to, and completely discharged by the supplying of the Services again, or the refund by OmniHyper® of the fee paid for those Services during the period of 12 months prior to the liability arising.

- 18.2 Except to the extent already set out in this clause, OmniHyper® has no liability (including liability for negligence or recklessness) to any person for any loss or damage (direct, consequential or otherwise) suffered or incurred by any person in relation to any goods or Services supplied by OmniHyper® (or any of its employees, officers or agents). Without limiting the generality of this limitation, OmniHyper® has no liability for any loss or damage resulting from any failure, defect or deficiency of any kind in any goods or Services, and it is not liable for any loss of profit or special, indirect or consequential damages of any kind.
- 18.3 Any valid claim by the Client against OmniHyper® must be presented in writing to OmniHyper® within a reasonable time, and in no event longer than 60 days after the goods or Services have been supplied. No action may be maintained by the Client against OmniHyper® unless a timely written claim has been given under this clause,

19. Third Party Supply – Pass Through Terms

- 19.1 The terms set out in this clause 19 have priority over any other terms.
- 19.2 From time to time, OmniHyper® may provide the Client with goods and/or Services (a **Third Party Supply**) from or on behalf of a third-party provider (the **Principal**). OmniHyper® may provide a Third Party Supply as principal or as agent.
- 19.3 OmniHyper® does not warrant the performance or integrity of any Third Party Supply. It merely passes through to the Client whatever end-user representations and warranties the Principal provides to or through OmniHyper® with the Third Party Supply.
- 19.4 OmniHyper® is not responsible for any acts or omissions of the Principal, for any obligations undertaken or representations that they may make, or for any other products or services they may supply to the Client, either directly or through OmniHyper®.
- 19.5 OmniHyper® has no control over the intellectual property in a Third Party Supply, and therefore does not take any responsibility for any liability arising as a result of the Third Party Supply. OmniHyper® does not indemnify the Client for claims by third parties that may arise as a result of a Third Party Supply infringing any intellectual property of any third party. OmniHyper® will pass through to the Client any indemnity or cover provided by the Principal in respect of the Third Party Supply.
- 19.6 The Client's sole and exclusive remedy for any breach of warranty or other liability is as stated in the Principal's own terms and conditions.

20. Intellectual Property

- 20.1 Notwithstanding anything herein, the Intellectual Property Rights in OmniHyper®'s Materials and OmniHyper®'s Routines do not vest in the Client and there is no assignment of the Intellectual Property Rights in OmniHyper®'s Materials or OmniHyper®'s Routines to the Client. OmniHyper® hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use and reproduce OmniHyper®'s Materials and OmniHyper®'s Routines for the purposes of this agreement only.
- 20.2 Unless otherwise agreed in writing by the parties, all work products designed, developed or produced by OmniHyper® in connection with the supply of the Services is and remains OmniHyper®'s exclusive property.
- 20.3 Where OmniHyper® has provided photographic (digital or otherwise) images for the Client, at OmniHyper®'s sole discretion any such images may be subject to ongoing licence payments for use of such images. The period of any such licence is determined by OmniHyper® from time to time.
- 20.4 The Client agrees that OmniHyper® may use the client's name and any logos in the promotion of OmniHyper®'s business operations during and after the completion of work
- 20.5 Where the Client has supplied drawings, sketches, files or logos to OmniHyper®, the Client warrants such material does not breach any patent, trademark, design or copyright. The Client agrees to indemnify OmniHyper® against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising from delivering the Material or providing Services.
- 20.6 OmniHyper® may grant the Client a licence to use the Intellectual Property referred to in clause 20.1 in relation solely to the operation of the Client's business however, the Client shall not use nor make copies of such Intellectual Property in connection with any work or business other than the work or business specified in writing to OmniHyper®, unless express approval is given in advance by OmniHyper®. Such licence shall terminate on default of payment or any other terms of this agreement by the Client.
- 20.7 All PHP, SQL, Java, JavaScript, HTML, Dynamic HTML and CSS coding and other supplied code (if any) remains the intellectual property of OmniHyper®. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.

21. Default & Consequences Of Default

- 21.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgment.
- 21.2 In the event that the Client's payment is dishonoured or reversed for any reason the Client shall be liable for any bank or other fees incurred by OmniHyper®.
- 21.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify OmniHyper® from and against all OmniHyper®'s costs and disbursements including on a solicitor and own Client basis and in addition all of OmniHyper®'s nominees' costs of collection.
- 21.4 Without prejudice to any other remedies OmniHyper® may have, if at any time the Client is in breach of any obligation (including those relating to payment) OmniHyper® may suspend or terminate the domain name assigned to the Client, or the Client's website or any web Services currently offered by OmniHyper® to the Client. OmniHyper® reserves the

right to then re-sell to any other party any such cancelled domain name or web Service, provided the Client has received written notice within seven (7) days.

- 21.5 If any account remains unpaid at the end of the second month after supply of the Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 21.1 hereof.
- 21.6 In the event that:
- (a) any money payable to OmniHyper® becomes overdue, or in OmniHyper®'s opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;
- then without prejudice to OmniHyper®'s other remedies at law:
- (d) OmniHyper® shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
 - (e) all amounts owing to OmniHyper® shall, whether or not due for payment, immediately become payable.

22. Security And Charge

- 22.1 Despite anything to the contrary contained herein or any other rights which OmniHyper® may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to OmniHyper® or OmniHyper®'s nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that OmniHyper® (or OmniHyper®'s nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should OmniHyper® elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify OmniHyper® from and against all OmniHyper®'s costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint OmniHyper® or OmniHyper®'s nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 22.1.

23. Cancellation

- 23.1 OmniHyper® may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. OmniHyper® shall not be liable for any loss or damage whatever arising from such cancellation.
- 23.2 At OmniHyper®'s sole discretion the Client may cancel delivery of the Materials and/or Services. In the event that the Client cancels delivery of the Materials and/or Services the Client shall be liable for any costs incurred by OmniHyper® up to the time of cancellation.

24. Personal Property Securities Act 1999 (NZ Clients)

- 24.1 This clause 24 applies to New Zealand Clients.
- 24.2 For the purposes of this clause 24, PPSA means the *Personal Property Securities Act 1999* in New Zealand.
- 24.3 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials previously supplied by OmniHyper® to the Client (if any) and all Materials that will be supplied in the future by OmniHyper® to the Client.
- 24.4 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which OmniHyper® may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, OmniHyper® for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of OmniHyper®; and
 - (d) immediately advise OmniHyper® of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 24.5 OmniHyper® and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 24.6 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 24.7 Unless otherwise agreed to in writing by OmniHyper®, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 24.8 The Client shall unconditionally ratify any actions taken by OmniHyper® under clauses 24.1 to 24.7.

25. Personal Property Securities Act 2009 (Cth) (Australian Clients).

- 25.1 This clause 25 applies to Australian Clients.

- 25.2 For the purposes of this clause 25, PPSA means the *Personal Property Securities Act 2009* (Cth) in Australia.
- 25.3 The Client must:
- (a) Do anything (including making amendments to these Terms or executing a new security document) for the purpose of:
 - (i) ensuring that a Security Interest created under, or provided for by, these Terms:
 - (a) attaches to the collateral that is intended to be covered by that Security Interest;
 - (b) is enforceable, perfected, maintained and otherwise effective; and
 - (c) has the priority contemplated by these Terms;
 - (ii) enabling OmniHyper® to prepare and register a financing statement or financing change statement if it in its absolute discretion deem necessary;
 - (iii) enabling OmniHyper® to exercise any of its powers in connection with any Security Interest created under or provided by these Terms; and
 - (b) provide any information requested by OmniHyper® in connection with these Terms to enable it to exercise any of our powers or perform its obligations under the PPSA.
- 25.4 The Client must not change its name (including but not limited to any entity name or trading name), address or place of incorporation or any other details required to be contained in a financing statement under the PPSA without OmniHyper®'s prior written consent.
- 25.5 Except if section 275(7) of the PPSA applies, each party agrees not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available and the Client agrees not to provide any authorisation for the disclosure of such information.
- 25.6 The Client agrees that:
- (a) OmniHyper® is under no obligation to dispose of or retain any PPSA personal property it seizes within a reasonable time under section 125 of the PPSA;
 - (b) It will not complain of any damage, cost or inconvenience caused by OmniHyper® in taking apparent possession of any PPSA personal property under section 126 of the PPSA;
 - (c) Following a default, the Client has no rights to redeem the PPSA personal property under section 142 of the PPSA; and
 - (d) It has no rights to reinstate these Terms following a default under section 143 of the PPSA.
- 25.7 The Client waives its rights to receive:
- (a) A notice of OmniHyper®'s proposal to remove PPSA personal property which has become an accession under section 95 of the PPSA;
 - (b) A notice of OmniHyper®'s proposal to exercise its rights in accordance with land law under section 118(1)(b) of the PPSA;
 - (c) A notice of OmniHyper®'s action (such action arising under section 120(2) of the PPSA) in relation to an interest in collateral under section 121(4) of the PPSA;
 - (d) A notice of OmniHyper®'s seizure of certain PPSA personal property under section 123(2) of the PPSA;
 - (e) A notice of OmniHyper®'s proposal to dispose of any PPSA personal property under section 130 of the PPSA;
 - (f) Details of the amounts paid to other secured parties in a statement of account provided by OmniHyper® under section 132(3)(d) of the PPSA;
 - (g) A statement of account under section 132(4) of the PPSA;
 - (h) A notice of OmniHyper®'s proposal to retain PPSA personal property under section 135 of the PPSA; and
 - (i) A copy of, or notice of, any verification statement confirming registration of a financing statement or a financing change statement relating to any Security Interest under, or provided for by these Terms.
- 25.8 The Client waives any rights it may have to:
- (a) Object to OmniHyper®'s proposal to purchase PPSA personal property under section 129(2)(b) of the PPSA; and
 - (b) Object to OmniHyper®'s proposal to retain PPSA personal property under section 134(2)(b) of the PPSA.
- 25.9 Anything that is required by OmniHyper® to be done under this clause 25 shall be done by the Client at the Client's own expense. The Client agrees to reimburse OmniHyper®'s costs in connection with any action taken by OmniHyper® under or in connection with this clause 25.
- 25.10 The terms 'security interest', 'attaches', 'collateral', 'financing change statement', 'financing statement', 'perfected' and 'personal property' as used in this clause 25 have the meaning given to them in the PPSA.

26. Privacy

- 26.1 The Client and the Guarantor/s (if separate to the Client) authorises OmniHyper® to:
- (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
 - (b) disclose information about the Client and/or Guarantors, whether collected by OmniHyper® from the Client and/or Guarantors directly or obtained by OmniHyper® from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client and/or Guarantors.
- 26.2 For New Zealand Clients, where the Client and/or Guarantors are an individual, the authorities under clause 26.1 are authorities or consents for the purposes of the *Privacy Act 2020* in New Zealand and any subsequent legislation.
- 26.3 OmniHyper® will collect and store personal information in accordance with the requirements of any applicable laws.
- 26.4 The Client and/or Guarantors shall have the right to request OmniHyper® for a copy of the information about the Client and/or Guarantors retained by OmniHyper® and the right to request OmniHyper® to correct any incorrect information about the Client and/or Guarantors held by OmniHyper®.

27. Disclosure for Promotional Purposes

27.1 Except as the Client may otherwise direct OmniHyper®, and subject to any confidentiality undertakings of which OmniHyper® are made aware between the Client and any other party with respect to particular Services, the Client agrees that OmniHyper® may include, in a list of Services OmniHyper® has provided which it uses for promotional purposes, a summary description of all completed supplies of Services and any pending Services which OmniHyper® provides to the Client.

28. General

- 28.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 28.2 New Zealand Clients: These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand (including the provisions of the *Contract and Commercial Law Act 2017*), and are subject to the jurisdiction of the courts of New Zealand.
- 28.3 Australian Clients: These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 28.4 OmniHyper® shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by OmniHyper® of these terms and conditions.
- 28.5 In the event of any breach of this contract by OmniHyper® the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of OmniHyper® exceed the Price of the Services.
- 28.6 The Client shall not set off against the Price amounts due from OmniHyper®.
- 28.7 OmniHyper® may licence or sub-contract all or any part of its rights and obligations without the Client's consent.
- 28.8 OmniHyper® reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which OmniHyper® notifies the Client of such change.
- 28.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, public health event, or other event beyond the reasonable control of either party.
- 28.10 The failure by OmniHyper® to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect OmniHyper®'s right to subsequently enforce that provision.

PART II: WEBSITE HOSTING

29. What OmniHyper® Will Do

- 29.1 OmniHyper® will, at its sole cost and expense:
- (a) install the Client Materials on OmniHyper®'s Web Server;
 - (b) host the Client Website on OmniHyper®'s Web Server;
 - (c) ensure that from the Live Date:
 - (i) sufficient capacity is maintained on OmniHyper®'s Web Server to enable Users access to the Client Website in a timely manner;
 - (ii) the Client Website is accessible to Users (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or Website Maintenance);
 - (d) provide the Client with reasonable access to the Client Website to perform maintenance services.

30. What OmniHyper® Will Not Do

- 30.1 OmniHyper® will not:
- (a) alter or amend, or permit any person to alter or amend the Client's Website without the written consent of the Client;
 - (b) post or display on the Client's Website any advertisement, sponsorship or promotion without the written consent of the Client;
 - (c) use any User Data for marketing, referral or other purposes except as expressly authorised by this agreement;
 - (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Client's Website; or
 - (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this agreement.

31. What The Client Will Do

- 31.1 The Client will, at its sole cost and expense:
- (a) develop and maintain the Client's Website;
 - (b) provide the Client's Materials to OmniHyper®, in such form as reasonably prescribed by OmniHyper® from time to time, and hereby grants OmniHyper® a non-exclusive, worldwide, irrevocable licence to use the Client's Materials for the purposes of hosting the Client's Website;
 - (c) do all things reasonably necessary to enable OmniHyper® to host the Client's Website on OmniHyper® Web Server;
 - (d) ensure that the Client's Materials supplied to OmniHyper® do not contain:
 - (i) Prohibited Content;
 - (ii) a Link to any Website that contains Prohibited Content; or
 - (iii) any viruses, trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.

32. What The Client Will Not Do

- 32.1 The Client will not do anything that prevents or hinders OmniHyper® from providing hosting services to any other person.

PART III: DEVELOPMENT OF THE WEBSITE

33. What OmniHyper® Will Do

- 33.1 Upon approval of the Specifications and Quotation in accordance with this agreement, OmniHyper® will:
- (a) use its best endeavours to develop the Website in accordance with the Development Stages; and
 - (b) to the extent specified in the Specifications, negotiate and procure Third Party Agreements on behalf of the Client.

34. What The Client Will Do

- 34.1 The Client will, in addition to any other obligations expressed in this agreement, have the following responsibilities:
- (a) provision of all data to be incorporated into the Website;
 - (b) provision of logos, designs, graphic and related materials to be incorporated into the Website; and
 - (c) provision of any other information, ideas or suggestions which are to be expressly considered by OmniHyper® in developing the Website.
- 34.2 The Client will ensure that OmniHyper® is given such information and assistance as OmniHyper® reasonably requires to enable it to construct and maintain the Website.
- 34.3 OmniHyper® will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Website which is attributable to:
- (a) incorrect information provided by the Client, either pursuant to this clause or otherwise; or
 - (b) failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or
 - (c) any third party Materials used by OmniHyper® in creation of the Website.

35. Maintenance

- 35.1 Subject to clause 35.2, OmniHyper® will provide the Maintenance Services in accordance with the maintenance terms set out in OmniHyper®'s maintenance schedule.
- 35.2 The Client will procure all necessary authorisations, licences and consents to enable OmniHyper® to have access to the Website in order to provide the Maintenance Services.