

Cixel Pty Ltd

Terms and Conditions

The terms of use set out below ("Terms and Conditions") govern the Client's use of the Services and the Website, however accessed. By using the Services or the Website the Client agrees to be bound by these Terms and Conditions and the Privacy Policy. If the Client does not agree to these Terms and Conditions, the Client must not use the Services or the Website.

Cixel reserves the right to update and amend these Terms and Conditions from time to time. Cixel will communicate all changes on the Website. Unless otherwise stated, amendments will be effective immediately upon posting of the amended Terms and Conditions.

1. DEFINITIONS

Agreement means each contract between Cixel and the Client (which shall automatically include the Privacy Policy and these Terms and Conditions including any schedule thereto and all materials referred to in, or linked to by, these Terms and Conditions).

Business Day means, in respect of each payment or other transaction or calculation which needs to be made or done under an Agreement or for the purposes of an Agreement, a day on which business by and between banks may be carried on in Western Australia.

Cixel means Cixel Pty Ltd ACN 634 896 898.

Cixel Services means the services provided by Cixel including website and app development, content creation, SEO, hosting, domain registration, branding, outsourced services and any other features, content, applications or services offered from time to time by Cixel.

Client means the person or entity accessing the Website and/or using the Services.

Client Personnel means officers, agents and employees of, and contractors to, the Client.

Confidential Information means any and all commercially sensitive information relating to a Party's business including, but not limited to, know-how and trade secrets, however it does not include:

- a) information already known to the receiving Party at the time of disclosure by the other Party; or
- b) information in the public domain other than as a result of disclosure by a Party in breach of its obligations of confidentiality under an Agreement.

Default Rate means ten (10) percent per annum.

GST means goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999*.

IPR means intellectual property rights including any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

Licence has the meaning given in clause 3.1.

Party or **Parties** means Cixel and / or the Client as the context requires.

Personal Information means information or an opinion about an individual as defined in section 6 of the *Privacy Act 1988 (Cth)* which is collected, used, disclosed, stored or handled by Cixel pursuant to the Privacy Policy.

Permitted Use means the use of the Services and/or Website by the Client in the ordinary course of carrying on the Client's business, pursuant to the terms of any applicable Agreement, and at all times excluding any Resale or unlawful purpose.

Privacy Policy means Cixel's privacy policy, accessible on the Website.

Resale means to distribute, transfer, sell, sub-licence or pass possession of any Cixel products or services for the purpose of direct commercial benefit or gain by the Client.

Services means any services to be provided by Cixel to the Client in return for a fee, pursuant to the terms of an Agreement.

Term means a period agreed in writing by the Client and Cixel to be the term of an Agreement subject to any variation thereto agreed in writing.

Third Party Providers has the meaning given in clause 8.1.

Website means the internet site at the domain www.cixel.com.au or any other internet site operated by Cixel.

2. AGE

The Client represents and warrants that the Client is at least 18 years of age (if the Client is an individual) and

that the Client whether a corporation, partnership or individual and whether acting in its own right or in its capacity as a trustee has the legal capacity to enter into a legally binding contract under applicable law for access to and use of the Services and the Website.

3. GRANT OF LICENCE

- 3.1. Cixel agrees, on the terms of these Terms and Conditions and any Agreement, to grant to the Client a limited, non-exclusive, non-transferable licence to access and use the Services and the Website for the Permitted Use (**Licence**).
- 3.2. Notwithstanding the licence, the Services and the Website shall remain the property of Cixel (or Third Party Providers).

4. RESTRICTIONS ON RIGHT TO USE THE SERVICES AND THE WEBSITE

- 4.1. The Services and the Website may only be used for the Permitted Use.
- 4.2. The Licence is only granted to the Client. The Client must not transfer, resell, assign or sublicense any rights under the Licence or grant any third party access to the Services or the Website unless the Client has obtained the prior written consent of Cixel.
- 4.3. The Client must ensure that all Client Personnel comply with the terms of these Terms and Conditions and any Agreement as if they were a party to it. The Client accepts full responsibility and liability for the acts and omissions of Client Personnel in relation to use of the Services and the Website.
- 4.4. In the Client's access to and use of the Services and the Website, the Client must not (without the prior written consent of Cixel):
 - a) establish any link between the Website and any other URL;
 - b) attempt to undermine the security or integrity of Cixel's computing systems or networks or, where the Website is hosted by a third party, that third party's computing systems or networks;
 - c) use, or misuse, the Services or the Website in any way which may impair the functionality of the Services or the Website or other systems used to deliver the Services or the Website or impair the ability of any other user to use the Services or the Website;
 - d) make available, upload or distribute by any means any material or files that contain any viruses, bugs, corrupt data, "trojan horses", "worms" or any other harmful software;
 - e) falsify the true ownership of a product or other material or information made available by Cixel;
 - f) not attempt to gain unauthorised access to any materials other than those to which the Client has been given express permission to access or to the computer system on which the Website or the Services are hosted; and
 - g) use the Services or the Website otherwise than in accordance with these Terms and Conditions or an Agreement.

5. ACCESS TO SERVICES AND WEBSITE

- 5.1. The Client must ensure that all usernames and passwords issued to the Client to access the Website and the Services are kept secure and confidential. The Client must immediately notify Cixel of any unauthorised use of the Client's passwords or any other breach of security and Cixel will reset the Client's password and the Client must take all other actions that Cixel reasonably deems necessary to maintain or enhance the security of Cixel's computing systems and networks and the Client's access to the Services and the Website.

6. CLIENT WARRANTIES

The Client warrants that:

- a) any information the Client supplies to Cixel in respect of an Agreement is complete and correct;
- b) the Client will immediately notify Cixel upon becoming aware of any usage of the Services or the Website beyond the Permitted Use or other term of the Licence; and
- c) the Client will comply with all relevant laws relating to the Client's use of the Services and the Website.

7. THIRD PARTY PROVIDERS

- 7.1. Cixel utilises third party service providers ("**Third Party Providers**") in order to provide the Services and the Website (for example Google and Vercel). The Client agrees to comply with all requirements and restrictions that Third Party Providers may impose directly, or indirectly, on Cixel, in relation to their respective products and / or services, at the time of, or subsequent to, the date of an Agreement.
- 7.2. The Client acknowledges that the Licence is subject to, and conditional upon, adequate delivery of products and services by the Third Party Providers. In accordance with clause 14. 3, Cixel's liability is reduced to the extent that loss or damage of any kind is caused, or contributed by, Third Party Providers. For the Client's convenience, Cixel has set out in the Schedule links to the terms and conditions of certain Third Party Providers with which the Client is required to comply. The Client further acknowledges that, by entering into an Agreement, the Client agrees to comply with the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out in the Schedule. Third Party Providers and their terms of supply may change from time to time during the Term.

8. ACKNOWLEDGEMENTS

The Client acknowledges that:

- a) The Services and the Website are provided by Cixel "as is" with no warranty including as to performance or suitability for purpose (except to the extent required by law).
- b) Cixel's ability to provide the Services and the Website may be subject to agreements with Third Party Providers which:
 - (i) agreements may expire or terminate; or
 - (ii) Third Party Providers may not provide the services or products under such agreements,in which case, Cixel may not be able to, and will have no obligation to, provide some or all of the Services or the Website on a timely basis or otherwise.
- c) Cixel does not warrant that the use of the Services and the Website will be uninterrupted or error free. Amongst other things, the operation and availability of the systems used for providing the Services and the Website, including public telephone services, computer networks, computer software and the internet, can be unpredictable and may from time to time interfere with or prevent access to the Services and the Website. Cixel is not in any way responsible for any such interference with, or prevention of, the Client's access to or use of the Services or the Website.
- d) Cixel has no responsibility to any person other than the Client and nothing in an Agreement confers, or purports to confer, a benefit on any person other than the Client.
- e) It is the Client's sole responsibility to determine that the Services and the Website meet the needs of the Client's business and are suitable for the purposes for which they are used.

9. CONFIDENTIALITY AND PRIVACY

- 9.1. A Party will not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- 9.2. A Party will not be in breach of clause 10.1 to the extent to which it is legally compelled to disclose the other Party's Confidential Information.
- 9.3. Each Party must take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of an Agreement, do not make public, disclose or use the other Party's Confidential Information for any purpose other than the performance of an Agreement.
- 9.4. Cixel maintains a privacy policy that sets out the Parties' obligations with respect to Personal Information. The Client should read that policy on the Website. The Client will be deemed to have accepted that policy when the Client uses the Services or the Website.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. Nothing in these Terms and Conditions or an Agreement constitutes a transfer of any IPR. Cixel reserves all rights not expressly granted to the Client.
- 10.2. The Client:
 - a) acknowledges that the Cixel (or Third Party Providers) own all IPR in Services and the Website; and
 - b) will not directly or indirectly do anything that would or might invalidate or put in dispute Cixel's (or Third Party Providers) title in the Services and the Website.
- 10.3. If to the knowledge of the Client any person makes any claim alleging that any of the Services or the Website infringes any IPR of any person, the Client must promptly notify Cixel in writing and:
 - a) must not make any admission or take any action in relation to the claim without Cixel's written consent;
 - b) must permit Cixel to have control over any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and
 - c) must cooperate with, assist and act at all times in accordance with the reasonable instructions of Cixel, in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.
- 10.4. The Client must not modify or copy:
 - a) the layout of the Website;
 - b) any computer software or code contained in the Services or the Website.

11. TERMINATION AND EXPIRY

- 11.1. Cixel may by notice in writing to the Client terminate an Agreement if:
 - a) the Client fails to perform or observe any of the covenants or provisions of an Agreement and (if capable of remedy) such default continues for more than five (5) Business Days after notice in writing from Cixel requiring the Client to remedy the same;
 - b) the Client, or any guarantor of the Client, negotiates for or enters into a Composition with Creditors generally (being an agreement between a financially pressed debtor and two or more creditors whereby a specific partial payment is divided pro rata among the creditors in full satisfaction of their claims);

- c) being an individual the Client dies, becomes permanently incapacitated, or has a trustee appointed;
- d) being an individual the Client commits any act of insolvency;
- e) being a body corporate or other legal person, the Client or any guarantor of the Client calls any meeting of its creditors or has a liquidator, provisional liquidator, official manager, mortgagee's agent, receiver or administrator as to all or any of its assets appointed or enters into any liquidation (or commits any other act of insolvency); or
- f) the financial position of the Client, or some other fact or circumstance, leads Cixel to believe on reasonable grounds that the Client is likely to materially fail to complete its obligations under an Agreement.

12. WARRANTY AND LIABILITY

- 12.1. To the maximum extent permitted by law, Cixel shall not be liable for, and excludes liability for, any loss (including indirect, special, incidental or consequential loss) or damage or injury of any kind whatsoever caused to the Client or its customers arising from or in connection with the Services or the Website whether such loss or damage was caused by an act, default, omission or negligence by Cixel or otherwise.
- 12.2. The total aggregate liability of Cixel (including special, indirect or consequential damages, which damages will be deemed to include loss or revenue, loss or profit and opportunity loss) in respect of any act or omission of Cixel in connection with its obligations under an Agreement will not exceed the amount of the fees paid by the Client to Cixel, even if Cixel has been advised by the Client as to the possibility of such losses being incurred.
- 12.3. The Client acknowledges that Cixel relies on the services of Third Party Providers in order to supply the Services and the Website. Without limiting the above, and for the avoidance of doubt, to the fullest extent permitted by law, Cixel will not be liable for any loss, damage, or cost of any kind, to the extent to which it is caused, or contributed to, by any Third Party Provider.

13. CONSUMER GUARANTEES

The Client warrants and represents that the Client is acquiring the right to access and use the Services and the Website for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction do not apply to the supply of the Services or the Website or any Agreement.

14. INDEMNITY

The Client hereby fully indemnifies, and agrees to hereafter hold Cixel, its agents and affiliates and all Third Party Providers, fully indemnified, against all liability or loss whatsoever, including consequential damage, costs, charges and expenses (including legal costs on a solicitor / client indemnity basis), to the extent to which it arises directly or indirectly from or in connection with:

- a) any breach of the Client's obligations under these Terms and Conditions or an Agreement;
- b) the Client's negligence;
- c) any violation of law or regulation arising from the Client's use of the Services or the Website;
- d) any actual or alleged infringement by the Client of the intellectual property, privacy or confidentiality rights of any third party (including a Third Party Provider); and
- e) any act or omission by any of the Client Personnel which, if done or omitted to be done by the Client, would be a breach of the Client's obligations under these Terms and Conditions or an Agreement.

15. AUTHORITY

If these Terms and Conditions are accepted by a person on behalf of the Client, that person warrants by his or her acceptance that he or she has authority to agree to the Terms and Conditions on behalf of the Client.

16. ACCRUED RIGHTS

Termination of an Agreement is without prejudice to any rights and obligations of Cixel accrued up to and including the date of termination. On termination of an Agreement the Client will remain liable for any accrued charges and amounts which become due for payment before or after termination.

17. HELP DESK

In the case of technical problems the Client must make all reasonable efforts to investigate and diagnose problems before contacting Cixel. If the Client still needs technical help, please check the support provided by Cixel on the Website or failing that email Cixel at lachlan@cixel.com

18. WAIVER

If Cixel waives any breach of an Agreement by the Client, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

19. ALTERATION OF TERMS AND CONDITIONS

Cixel reserves the right to update and amend these Terms and Conditions from time to time. Cixel will communicate all changes on the Website.

20. NO ASSIGNMENT

Cixel may assign or otherwise transfer its rights under these Terms and Conditions or an Agreement. The Client may not assign or otherwise transfer any rights under these Terms and Conditions or an Agreement to any other person without Cixel's prior written consent.

21. GOVERNING LAW AND JURISDICTION

These Terms and Conditions are governed by the laws of Western Australia, without giving effect to any principles of conflicts of laws. The Client agrees to the jurisdiction of the courts of Western Australia to determine any dispute arising with respect to these Terms and Conditions.

22. SEVERABILITY

If any part of these Terms and Conditions are found to be void, unlawful, or unenforceable then that part will be deemed to be severed without affecting the validity and enforceability of the remaining provisions.

23. NOTICES

The Client's notices to Cixel must be sent by registered mail to 172A Gaebler Road, Aubin Grove, Western Australia 6164. Cixel will send notices to the Client via the email address the Client provided at the time of setting up an account, or by registered mail. Notices sent by registered mail will be deemed received five days following the date of mailing.

SCHEDULE

Example Third Party Providers

a) Google

Cixel utilises Google for the supply of maps and imagery. By using the Services or the Website, the Client agrees to Google's and Map data's terms of service as they may apply to the Client's access to and use of the Services and the Website.

<https://www.google.com.au/permissions/geoguidelines.html>

b) Google Analytics

Cixel utilizes Google Analytics for data analysis and website usage tracking. By using the Services or the Website, the Client agrees to comply with Google Analytics' terms of service, which govern the Client's access to and use of the Services and the Website.

<https://marketingplatform.google.com/about/analytics/terms/us/>

c) Vercel

Cixel utilises Vercel for the supply of hosting and deployment services. By using the Services or the Website, the Client agrees to Vercel's terms of service as they may apply to the Client's access to and use of the Services and the Website.

<https://vercel.com/legal/terms>