

## **IMPORTANT**

### **CONSULTATION MANAGER TERMS AND CONDITIONS READ THIS AGREEMENT CAREFULLY**

***MySite Design Pty Ltd (ACN 104 027 812) ("Us") have developed and have the right to grant Subscriptions to You to use the Application.***

***You should carefully read the following terms and conditions before accepting or using this Application. Your acceptance of these terms or use of this Application in any manner indicates Your acceptance of the terms of this Agreement which govern Your Subscription for access to the Application.***

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## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless the contrary intention appears:

"**Agreement**" means this agreement to provide You with access to the Application;

"**Application**" means the computer software application, more specifically called "Consultation Manager", which is to be made available by Us to You pursuant to this Agreement;

"**Charges**" means the charges for the Services as specified in the Customer Registration Form;

"**Commencement Date**" means the date You first have access to this Application;

"**Confidential Information**" has the meaning set out in paragraph 9.1 hereof;

"**Customer Registration Form**" means the form described as such and previously provided to You;

"**Force Majeure**" means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damages, sabotage and revolution; and
- (c) strikes;

"**Initial Term**" means the period so specified in clause 2;

"**Schedule**" means a schedule to this Agreement;

"**Subscription**" means the subscription to access the Application in accordance with and during the term of this Agreement;

"**Training Requirements**" means formal instruction to be provided by Us to You in the utilisation of the Application, as set out in Schedule 2 (if any);

"**Us**" means Mysite Design Pty Ltd (ACN 104 027 812) and includes "**Our**"

and "**We**";

"**You**" means you the user of the Application and "**Your**" refers to you also;

"**Your Data**" means data owned or supplied by You to which We are provided access pursuant to this Agreement or data which may otherwise be generated, compiled, arranged or developed using the Application by You.

## **1.2 Interpretation**

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and
- (m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

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## **2. DURATION OF AGREEMENT**

### **2.1 Initial Term**

The Initial Term of this Agreement shall commence on the Commencement Date and continue for the period of one (1) calendar year, or as otherwise agreed to in writing.

## **2.2 Termination**

At the end of the Initial Term, this Agreement shall be automatically renewed for subsequent terms of similar duration to the Initial Term, or as otherwise agreed to in writing. You may terminate this Agreement at any time after the end of the Initial Term by providing at least thirty (30) days notice in writing to Us.

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## **3. PROVISION OF ACCESS TO APPLICATION**

During the term of this Agreement, We will provide You with access to the Application in the manner specified in Schedule 2.

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## **4. SERVICE LEVEL**

### **4.1 Your Acknowledgement**

- (a) You acknowledge and agree that as with all computers, and internet driven software applications:
  - (i) there may be times that Our chosen server is not operational, or has been shut down for maintenance;
  - (ii) there may be software errors or other interruptions in use affecting Our chosen server or the Application;
  - (iii) despite taking all reasonable security measures, Our chosen server is vulnerable to hackers, viruses, and unauthorised access and We can not guarantee the integrity of data, and that as a result of any of these events there may be interruption of Your business.
- (b) Persons with access to Your username and password may access Your profile and Your client information.
- (c) If Your username and password are intercepted Your information may be accessed, changed and/or copied.
- (d) We will have no liability to You for anything referred to in paragraphs 4.1(a), (b), or (c).

### **4.2 Malfunction**

We do not warrant that the Application is or will be completely error free. It is Your responsibility to maintain other copies of Your Data to avoid its loss should the Application malfunction.

### **4.3 Our Right to vary**

We may exercise Our discretion as to the configuration of Our system and the nature and manner of internal technical support applied to the Application and, for the removal of doubt, We may vary Our procedures without prior notification to You.

### **4.4 Failure of the Application**

We shall not be responsible for any failure of the Application if such failure is caused by factors beyond Our reasonable control including, but not limited to, telecommunications failure or fault, defective network or Internet connections, defective equipment utilised by or incorrect

operation by You of Your own access facilities, or the loss of service from the service provider hosting the Application.

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## **5. CUSTOMER DATA**

### **5.1 Your Data**

Subject to any lien arising because of unpaid Charges and subject further to any encumbrances arising outside Our control, We acknowledge that Your Data remains the property of You. Your Data will be stored and processed in Canada.

### **5.2 Back Up Data**

We shall, at least five (5) days a week, make backup copies of Your Data in the manner and at intervals so prescribed by Us from time to time.

### **5.3 Warranty**

- (a) You warrant that all information and files that You upload onto Our chosen server:
  - (i) do not knowingly contain any viruses, and that You will take all reasonable measures to ensure this;
  - (ii) do not infringe the copyright of another person or organisation, and do not infringe any other industrial or intellectual property rights, or privacy rights, of another person or organisation;
  - (iii) are not defamatory, offensive, or obscene;
  - (iv) are not misleading or deceptive or likely to mislead or deceive;
  - (v) are not illegal.
- (b) You indemnify Us from and against all loss and damage You may suffer, and from all actions, claims, proceedings or demands by third parties against Us, arising in any way from a breach of Your warranty in paragraph (a).
- (c) We may remove or alter any data that does not comply with paragraph (a).

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## **6. YOUR FACILITIES**

### **6.1 Your Hardware**

You shall be responsible for providing Your own internal facilities (including terminal, software modem and telecommunications facilities) necessary for accessing the Application.

### **6.2 Assistance**

We shall, upon request from You, supply such information and assistance as is reasonably required by You to enable You to prepare and install Your own access facilities, at such cost as We shall agree from time to time.

### **6.3 We aren't Responsible**

Notwithstanding clause 6.2, We accept no responsibility for any deficiency in Your access facilities.

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## **7. CHARGES**

### **7.1 You must pay Charges**

You shall pay the Charges at the rate and in the manner specified in the Customer Registration Form. You agree to pay Our Charges when requested. If You do not request the cancellation of Your account, You also agree to pay Our increased Charges of which You are notified. You will pay invoices sent by Us or Our nominated agent within thirty (30) days. If an invoice is unpaid for sixty (60) days, You understand that Your Subscription will be cancelled and You will not have access to the Application or Your Data. You also understand that there will be a setup fee charged to re-enable Your access to the Application.

### **7.2 Disputes**

If You dispute the whole or any portion of the Charges payable to You, You shall pay the whole of the amount of the Charges and shall notify Us in writing of the reasons for disputing the Charges. If it is resolved that some or all of the amount in dispute ought not properly to have been paid at the time, then We shall at Our discretion either pay to You the amount which You ought not have paid, or provide You with access to the Application for a period of time without charge, which We reasonably and fairly believe compensates You for such overpayment.

### **7.3 Exclusion of Taxes**

The Charges are exclusive of taxes, duties and charges imposed or levied in connection with Your access to the Application. Without limiting the foregoing, You shall be liable for any new taxes, duties or charges imposed subsequent to the Commencement Date in respect of the Access to the Application.

### **7.4 Increases in Charges**

We may increase the Charges from time to time. You will be notified by Us of any increased Charges at least thirty (30) days before the increase takes effect. If You agree to pay the increased fees there is nothing that You need to do. If You do not agree to pay the increased Charges, You must notify Us and request that We cancel Your Subscription, and We shall refund any unused portion of the Agreement.

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## **8. COMPLIANCE WITH LAW**

### **8.1 No Liability**

We are under no obligation to You under this Agreement or otherwise if and to the extent Your access to the Application constitutes a breach of any relevant law or regulation by You.

## **8.2 Delivery of Your Data**

We are under no obligation to refrain from delivering Your Data or related data, documentation or records into the custody of a duly authorised law enforcement officer or government representative, officer or agency or from providing such persons or instrumentalities with access to Your Data or related data, documentation or records if We receive a request or demand for such information. We shall notify You immediately upon receiving such a request.

## **8.3 Payment of Our Costs**

You shall to the extent permissible by law indemnify Us against all costs and liability incurred as a result of:

- (a) Our possession, processing, use or other handling of Your Data or related data, documentation or records in accordance with clause 8.2;
- (b) delivering materials or information to a third party in accordance with clause 8.2.

except as a result of Our acts or omissions.

## **9. CONFIDENTIALITY**

### **9.1 Confidential Information**

"Confidential Information" means all information of a proprietary, intellectual or similar nature, including consultation records, technical, financial, operational, marketing, accounting, employee, transportation, and processing information or data, including, but not limited to business plans, surveys, engineering data, manuals, consultation histories and plans, third party data and studies whether factual or interpretative, disclosed directly or indirectly, or acquired by either party hereto from the other party, its Affiliates, employees or representatives, in written, oral, visual or electronic form. Each party (the "Disclosing Party") shall maintain exclusive ownership in the Confidential Information which it discloses hereunder and shall have the sole and absolute discretion to determine what, if any, information it will disclose to the other party (the "Recipient")

### **9.2 Need to Know Basis**

The Confidential Information shall be kept in strict confidence by the Recipient and shall only be disclosed to the Recipient's sub-contractors, consultants, agents, directors, officers and senior employees ("Representatives") on a "need-to-know" basis for the purpose of carrying out the Agreement .

### **9.3 No Disclosure**

The Confidential Information received by the Recipient shall not be disclosed to any party other than those described in Article 9.2 above, nor to any other third party without the Disclosing Party's express written consent.

### **9.4 Representatives to Comply**

The Recipient shall require that all of its Representatives comply with the provisions of this Agreement and shall take all reasonable measures to

restrain its Representatives from unauthorized disclosure or use of the Confidential Information.

#### **9.5 Obligations of the Parties**

Each party's obligations herein shall not apply to any part of the Confidential Information which:

- (a) is lawfully in the public domain at the date of disclosure to the Recipient or which thereafter enters the public domain other than by any act or failure to act on the part of the Recipient;
- (b) is already known to the Recipient (as evidenced by the Recipient's written records) at the time of disclosure;
- (c) was lawfully acquired by the Recipient from a third party (as evidenced in the Recipient's written records); or
- (d) is developed independently at any time by the Recipient without the use of Confidential Information, alone or in conjunction with a third party.

#### **9.6 Permitted Disclosure**

The Recipient shall be entitled to disclose Confidential Information to a court of competent jurisdiction or any regulatory body having jurisdiction, provided that the Recipient shall promptly inform the Disclosing Party of any request for disclosure.

#### **9.7 Restriction**

The Recipient shall not use any of the Disclosing Party's Confidential Information other than to perform the Agreement.

#### **9.8 Survival of Confidentiality**

The Recipient duty of confidentiality shall survive expiry of the Agreement.

#### **9.9 Return of Confidential Information on Termination**

Upon termination of the Agreement, or otherwise upon the Disclosing Party's written request, the Recipient shall promptly return or destroy all Confidential Information then in its possession, including all copies, reproductions or extracts thereof, whether furnished by the Disclosing Party or prepared by or for the Recipient or the Recipient's Representatives. Upon request by the Disclosing Party, a senior officer of the Recipient will promptly certify that all of the documents constituting the Confidential Information held by the Recipient or the Recipient's Representatives, have been returned to the Disclosing Party or destroyed.

#### **9.10 No License**

The disclosure of Confidential Information hereunder shall not be construed as granting to the Recipient any licence or rights under any patents, patent applications, copyright, or other intellectual property of the Disclosing Party in any country relating to any Confidential Information which the Disclosing Party or its affiliate may now or hereafter own or under which the Disclosing Party or its affiliate may now or hereafter hold licensing rights.

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**10. IMPLIED TERMS****10.1 No Implied Terms**

Subject to clause 10.2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

**10.2 Terms Implied by Law**

Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this Agreement. However, Our liability for any breach of such condition or warranty shall be limited, at Our option, to one or more of the following:

- (a) if the breach related to goods:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of such goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

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**11. LIABILITY OF MYSITE****11.1 No Liability**

Except in relation to liability for personal injury (including sickness and death), We shall be under no liability to You in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this Agreement or in respect of a failure or omission on Our part to comply with Our obligations under this Agreement.

**11.2 No Reliance on Representations**

Subject to clause 11.3, You warrant that You have not relied on any representation made by Us which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Us.

**11.3 Representations**

You acknowledge that to the extent that We have made any representations which are not otherwise expressly stated in this Agreement, You have been provided with an opportunity to independently verify the accuracy of that representation.

#### **11.4 Indemnity**

You shall at all times indemnify and hold harmless Us and Our officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by You of Your obligations under this Agreement; or
- (b) any wilful, unlawful or negligent act or omission of You.

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## **12. TERMINATION**

### **12.1 Termination by Us**

Without limiting the generality of any other clause in this Agreement, We may terminate this Agreement immediately by notice in writing if:

- (a) You are in breach of any term of this Agreement and such breach is not remedied within thirty (30) days of Us notifying You of that breach;
- (b) You become, threaten or resolve to become or are in jeopardy of becoming subject to any form of insolvency administration;
- (c) You, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (d) You, being a natural person dies; or
- (e) You cease or threaten to cease conducting Your business in the normal manner.

### **12.2 Effect of Termination**

If notice is given to You pursuant to clause 12.1, We may, in addition to terminating the Agreement, cancelling Your Subscription, and stopping Your access to the Application:

- (a) retain any moneys paid by You;
- (b) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- (c) be regarded as discharged from any further obligations under this Agreement; and
- (d) pursue any additional or alternative remedies provided by law.

### **12.3 Acknowledgment**

You acknowledge and agree that:

- (a) We can suspend the operation of Your Subscription if You breach any promise or obligation in this Agreement;
- (b) if You cancel Your Subscription, or Your Subscription is cancelled or suspended by Us, You understand that You are not entitled to a refund of any prepaid amount.
- (c) if Your Subscription is cancelled:
  - Your Data will be removed from all publicly accessible areas on the Application's server; and

Your Data will be stored for sixty (60) days and returned to you on request provided there are no outstanding amounts owing.

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## **13. FORCE MAJEURE**

### **13.1 No Obligation**

Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.

### **13.2 Suspension of Obligation**

If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.

### **13.3 Termination**

If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.

### **13.4 Refund**

If this Agreement is terminated pursuant to clause 13.3, We shall refund moneys previously paid by You pursuant to this Agreement for goods or services not provided by Us to You.

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## **14. SUB-CONTRACTS**

### **14.1 Our Right**

We may sub-contract for the performance of this Agreement without obtaining Your prior consent .

### **14.2 Third Parties**

We may, without Your consent, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of services and access to the Application pursuant to this Agreement.

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## **15. ENTIRE AGREEMENT**

The Agreement, these Terms, the Customer Registration Form and all attached Schedules, Addenda or Appendices constitute the entire agreement between the Parties and supersede all prior representations, agreements, statements and understandings whether verbal or in writing.

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**16. PRECEDENCE****16.1 Order of Applicability**

The documents comprising this Agreement shall be read in the following order of precedence:

- (a) the clauses of this Agreement;
- (b) the Schedules;
- (c) the Customer Registration Form which contains the applicable fees.

**16.2 Conflict**

Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

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**17. ASSIGNMENT AND NOVATION****17.1 No Assignment by You Without Consent**

The benefit of this Agreement shall not be assigned by You without Our written consent.

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**18. WAIVER****18.1 Notice of Waiver**

No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party.

**18.2 No Prejudice**

A waiver by Us pursuant by clause 18.1, will not prejudice Our rights in respect of any subsequent breach of the Agreement by You.

**18.3 No Waiver**

Subject to clause 18.1, any failure by either party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by either party to the other, will not be construed as a waiver of any rights under this Agreement.

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**19. VARIATION****19.1 Variation in Writing**

The provisions of this Agreement shall not be varied, except by agreement in writing.

**19.2 Variation by Us**

If We wish to vary the Agreement, We shall submit a copy of the proposed variations to You, specifying a reasonable period in which You are to provide written notice of acceptance or rejections of the proposal. Should You not notify Us that You reject such variation, You will be deemed to have consented to such variations twenty eight (28) days after a copy of the proposed variation is emailed to You.

**19.3 Acceptance**

If You accept the variations, the Agreement shall be deemed to be so amended from the date of acceptance.

**19.4 Rejection**

If You reject the proposed variations as submitted by Us, We may elect to terminate this Agreement by thirty (30) days notice to You and shall refund to You any unused portion of the Agreement.

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**20. DISPUTES****20.1 Arbitration**

Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives shall be submitted to arbitration in accordance with the Rules for the Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators Australia. During such arbitration, both Parties may be legally represented.

**20.2 Negotiation**

Prior to referring a matter to arbitration pursuant to clause 20.1, the Parties shall:

- (a) formally refer the dispute to their respective contract managers for consideration;
- (b) if the respective contract managers are unable to resolve the dispute after five (5) days (or such other period as is agreed between the Parties) from the date of referral, refer the dispute to the respective chief executive officers of each Party; and;
- (c) in good faith explore the prospect of mediation..

**20.3 Urgent Relief**

Nothing in this clause shall prevent a Party from seeking urgent equitable relief before an appropriate court.

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**21. OUR RIGHTS**

Any express statements of Our rights under this Agreement are without prejudice to any other of Our rights of expressly stated in this Agreement or existing at law.

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**22. SURVIVAL OF AGREEMENT****22.1 Succession**

Subject to any provision to the contrary, this Agreement shall enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not enure to the benefit of any other persons.

**22.2 Survival**

The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

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**23. SEVERABILITY**

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

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**24. GOVERNING LAW**

This Agreement will be governed by and construed according to the law in the State of Queensland, Australia.

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**25. NOTICES****25.1 Method**

Notices under this Agreement may be delivered by hand, by mail or by facsimile to Us at the addresses specified in Schedule 1 or to such other addresses as We may notify You in writing from time to time, and to You at the addresses You specify to Us in Your application to apply for access to the Application or to such other addresses as You may notify Us in writing from time to time.

**25.2 Service**

Notice will be deemed given:

- (a) in the case of hand delivery, upon written acknowledgement of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- (b) in the case of posting nationally, three (3) days after despatch;
- (c) in the case of posting internationally by airmail, seven (7) days after despatch;

- (d) in the case of facsimile, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission;
- (e) in the case of emails on the day they are sent, it being the obligation of each party to maintain the currency to their email addresses.

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## **26. PRIVACY**

- (a) Without limiting the generality of anything in this Agreement, We acknowledge that You are subject to legislation governing privacy and the collection, use and disclosure of personal information.
- (b) We will not access Your data except where requested by You in order to facilitate training and support of the Application.
- (c) We agree that We shall comply with all applicable Canadian privacy legislation provided that you have advised us of the legislation.
- (d) We shall notify You of any disclosure demands, as well as any loss or unauthorized access to personal information, as soon as such demand is received or such loss is identified.
- (e) We shall not allow any personal information to reside on servers outside of Canada without Your prior written consent.
- (f) Upon providing Us with fourteen (14) days notice in writing, You shall be entitled to examine Our personal information handling policies and procedures to ensure We are in compliance with this Agreement.

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### **SCHEDULE 1 Contact Details**

MySite Design Pty Ltd  
c/- Sustained Software Solutions Inc  
Suite 910, 1111 Melville Street  
Vancouver, BC, V6E 3V6  
Canada

Phone: +1(604) 717-4327  
Fax: +1(604) 736-9531

MySite Design Pty Ltd  
Unit 117/1 Gray Street  
New Farm Qld 4005  
Australia

PO Box 1217  
New Farm Qld 4005  
Australia

Phone: +617 3358 3346  
Fax: +617 3358 3229

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### **SCHEDULE 2 Services**

Consultation Manager is a web-enabled database application that enables Consultation Professionals to collect, manage and analyse stakeholder data.

Consultation Manager is accessed through a web browser over a secure connection. Encryption of the information between the User and Consultation Manager is provided by an industry standard 128-bit SSL encryption.

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