



# Advertising Terms & Conditions

These terms and conditions (the "Terms") shall be deemed incorporated by reference into any Advertising Order (the "AO") submitted by the Advertiser or its agency set forth in the AO (collectively, "Advertiser") and shall govern the AO, superseding all terms therein except for those relating to advertisement scheduling and pricing. All AOs are subject to acceptance by Leisurenet Aust. Pty Ltd (the "Leisurenet Aust"). Rates and the Terms are subject to change. Leisurenet Aust reserves the right to refuse or cancel any AO, without cause, at any time. The Terms and AO shall be collectively known as the "Agreement." Advertiser and its agency (if applicable) shall be jointly and severally responsible under this Agreement.

## 1. Term of Agreement.

The term of this Agreement commences on the Acceptance Date set forth in the AO and terminates on the End Date set forth in the AO.

## 2. Terms of Payment.

Advertiser, if advertising with Leisurenet Aust for the first time, must submit a completed Leisurenet Aust application. If Advertiser request credit, Leisurenet Aust reserves the right to request the Advertiser to submit a completed Leisurenet Aust application for credit. If no application is submitted or the request credit is denied by Leisurenet Aust (at its sole discretion), the AO must be paid in advance of the advertisement Start Date set forth in the AO. If Leisurenet Aust approves the request for credit, Leisurenet Aust will invoice Advertiser as set forth in the AO. Payment as set forth in the AO shall be made to Leisurenet Aust within 30 days of the date of invoice. Amounts paid after such date shall bear interest at the rate of (1.5%) one-and-one-half percent per month (or the highest rate permitted by law, if less) until paid in full. In the event of any failure by Advertiser to make payment, Advertiser will be responsible for all reasonable expenses (including legal fees) incurred by Leisurenet Aust in collecting such amounts. All payment amounts in this Agreement are in Australian dollars and are subject to the addition of the Australian Goods & Services Tax (GST)

## 3. Positioning.

Except as otherwise expressly provided in the AO, positioning of advertisements within the Leisurenet Aust web site or on any page is at the sole discretion of Leisurenet Aust.

## 4. Renewal.

Except as expressly set forth in the AO, any renewal of the AO and acceptance of any additional AO shall be at Leisurenet Aust's sole discretion. Pricing for any renewal period is subject to change without notice by Leisurenet Aust.

## 5. No Assignment or Resale of Ad Space.

Advertiser may not resell, assign, or transfer any of its rights hereunder. Any attempt by Advertiser to resell, assign or transfer such rights shall result in immediate and automatic termination of this Agreement, without liability to Leisurenet Aust.

## 6. Provision of Advertising Materials.

(a) Advertiser will provide all materials for the advertisement in accordance with Leisurenet Aust's Banner Advertising Requirements and Technical Specifications and policies then in effect, including without limitation the manner of transmission to Leisurenet Aust and the lead-time prior to publication of the advertisement. Leisurenet Aust shall not be required to publish any advertisement that is not received in accordance with such policies and reserves the right, at Leisurenet Aust's sole discretion, to charge Advertiser, at the rate specified in the AO, for inventory held by Leisurenet Aust pending receipt of acceptable materials from Advertiser which are past due, or publish in substitution any prior advertisement submitted by Advertiser until such time as Leisurenet Aust can reasonably begin publication of the advertisement set forth in the AO. All changes to advertisement must be made in writing to advertising.com.au prior to the lead-time deadline. Advertiser hereby grants to Leisurenet Aust a non exclusive, worldwide, fully paid license to use, perform, reproduce, display, transmit, and distribute the advertisement and all contents therein in accordance herewith. (b) If Advertiser uses third parties to serve the advertisement hereunder ("Third Parties"), Advertiser shall be responsible for such Third Parties complying with the terms of this Agreement.

## 7. Statistics.

Unless specified in the AO, Leisurenet Aust makes no guarantee with respect to usage statistics or levels of impressions for any advertisement. Advertiser

acknowledges that delivery statistics provided by Leisurenet Aust are the official and definitive measurements of Leisurenet Aust's performance on any delivery obligations provided in the AO. No other measurements or usage statistics (including those of Advertiser or Third Parties) shall be accepted by Leisurenet Aust or have any effect on this Agreement. An "impression" means each occurrence of a display of an advertisement.

## 8. Right to Reject Advertisement.

All contents of advertisements (including those served by Third Parties) are subject to Leisurenet Aust's approval. Leisurenet Aust reserves the right to reject or cancel any advertisement, AO, URL link, space reservation or position commitment, at any time, for any reason whatsoever (including belief by Leisurenet Aust that any placement thereof may subject Leisurenet Aust to criminal or civil liability).

## 9. No Warranty.

LEISURENET AUST MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER, INCLUDING WITHOUT LIMITATION ADVERTISING AND OTHER SERVICES, AND EXPRESSLY DISCLAIMS THE WARRANTIES OR CONDITIONS OF NON INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR ANY PARTICULAR PURPOSE.

## 10. Limitations of Liability.

In the event that Leisurenet Aust fails to publish an advertisement in accordance with the schedule provided in the AO, or in the event that Leisurenet Aust fails to deliver the number of impressions specified in the AO (if any) by the End Date specified in the AO, or in the event of any other failure, technical or otherwise of such advertisement to appear as provided in the AO, the sole liability of Leisurenet Aust and exclusive remedy of Advertiser shall be limited to, at Leisurenet Aust's sole discretion, placement of the advertisement at a later time in a comparable position, or extension of the End Date specified in the AO until the total impressions are delivered. In no event shall Leisurenet Aust be liable for any act or omission, or any event directly or indirectly resulting from any act or omission, of Third Parties (if any). IN NO EVENT SHALL LEISURENET AUST BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, SPECIAL, LOST PROFITS, INDIRECT OR OTHER DAMAGES, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, EVEN IF LEISURENET AUST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. LEISURENET AUST'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY CLAIM IS LIMITED TO THE AMOUNT RECEIVED BY LEISURENET AUST FROM ADVERTISER FOR THE AO GIVING RISE TO THE CLAIM. Without limiting the foregoing, Leisurenet Aust shall have no liability for any failure or delay resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, riot, explosion, embargo, strikes whether legal or illegal, labor or material shortage, transportation interruption of any kind, work slowdown, or any other condition affecting production or delivery in any manner beyond the control of Leisurenet Aust. Advertiser acknowledges that Leisurenet Aust has entered into this Agreement in reliance upon the limitations of liability set forth herein and that the same is an essential basis of the bargain between the parties.

## 11. Advertiser's Representations; Indemnification.

Advertiser represents and warrants to Leisurenet Aust, and Third Parties (if any), that Advertiser holds all necessary rights to permit the use of the advertisement by Leisurenet Aust for the purpose of this Agreement; and that the use, reproduction, distribution, transmission or display of advertisement, any data regarding users, and any material to which users can link, or any products or services made available to users, through the advertisement will not (a) violate any criminal laws or any rights of any third parties or (b) contain any material that is unlawful or otherwise objectionable, including without limitation any material that encourages conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any applicable law. Advertiser agrees to indemnify, defend and hold Leisurenet Aust and Third Parties (if any) harmless from and against any and all liability, loss, damages, claims or causes of action, including reasonable legal fees and expenses, arising out of or related to (i) breach of any of the foregoing representations and warranties, or (ii) any third-party claim arising from use of or access to the advertisement under this Agreement or any material to which users can

link, or any products or services made available to users, through the advertisement under this Agreement.

## 12. Cancellations.

Except as otherwise provided in the AO, the AO is cancelable by Advertiser with a 30 day notice. If Advertiser cancels the AO, in whole or in part, Advertiser agrees to pay the 30 day notice period up to the cancellation day.

## 13. Construction.

No term or condition other than those set forth in the Terms or in the AO relating to advertisement scheduling and pricing shall be binding on Leisurenet Aust unless in a writing signed by duly authorized representatives of the parties. In the event of any inconsistency between the AO and the Terms, the Terms shall control. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements and communications, whether oral or written, between the parties relating to the subject matter hereof, and all past courses of dealing or industry custom. The terms and conditions hereof shall prevail exclusively over any written instrument submitted by Advertiser, including Advertiser's AO, and Advertiser hereby disclaims any terms therein, except for terms therein relating to advertisement scheduling and pricing.

## 14. Confidentiality.

"Confidential Information" shall mean (i) advertisements, prior to publication; (ii) the AO and any Leisurenet Aust statistics that shall be deemed Leisurenet Aust Confidential Information; and/or (iii) any information designated in writing, or identified orally at time of disclosure, by the disclosing party as "confidential" or "proprietary." During the term of this Agreement, and for a period of two years following any End Date, neither party will use or disclose any Confidential Information of the other party except as specifically contemplated herein. The foregoing restriction does not apply to information that: (i) has been independently developed by the receiving party without access to the other party's Confidential Information; (ii) has become publicly known through no breach of this Section 14 by the receiving party; (iii) has been rightfully received from a third party authorized to make such disclosure; (iv) has been approved for release in writing by the disclosing party; or (v) is required to be disclosed by a competent legal or governmental authority.

## 15. Termination; Effect of Termination.

In the event of a material breach by Advertiser, Leisurenet Aust may terminate this Agreement immediately without notice or cure period, without liability to Leisurenet Aust. In the event of any termination, Advertiser shall remain liable for any amount due under an AO for advertisement delivered by Leisurenet Aust and such obligation to pay shall survive any termination of this Agreement. If the parties contemplate any provision to survive any termination or expiration of this Agreement, such provision shall survive such termination or expiration. At the request of the disclosing party, the receiving party shall return all of the disclosing party's Confidential Information to the disclosing party.

## 16. Miscellaneous.

This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales, without giving effect to principles of conflicts of law. This Agreement may be amended only in writing executed by a duly authorized representative of each party. Advertiser shall make no public announcement regarding the existence or content of the AO without Leisurenet Aust's prior written approval, which approval shall not be unreasonably withheld. Any dispute hereunder will be negotiated in good faith between the parties within 45 days commencing upon written notice from one party to the other. Any notices under this Agreement shall be sent to the addresses set forth in the AO (or in a separate writing) by facsimile or nationally recognized express delivery service and deemed given upon receipt. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. If any provision contained in this Agreement is determined to be invalid, illegal, or unenforceable in any respect under any applicable law, then such provision will be severed and replaced with a new provision that most closely reflects the original intention of the parties, and the remaining provisions of this Agreement will remain in full force and effect.