

**BETWEEN:**

**WEBSITE SOFTWARE 2GO PTY LTD TRADING AS WEBSITE  
SOFTWARE 2GO  
(ABN 25 138 823 364)**

**AND:**

\_\_\_\_\_

**ABN/ACN** \_\_\_\_\_

## **RESELLER AGREEMENT**

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2010.

**BETWEEN:** **WEBSITE SOFTWARE 2GO PTY LTD TRADING AS WEBSITE SOFTWARE 2GO (ABN 25 138 823 364) (Website Software 2GO)**

**AND:** \_\_\_\_\_  
\_\_\_\_\_

here in referred to as the "Reseller Business"

**RECITALS:**

- A. Website Software 2GO provides the Services.
- B. Website Software 2GO wishes to appoint Reseller Business to resell the Services as defined in item 1 of the Schedule by way of online or other electronic forms of distribution and Reseller Business has agreed to accept the appointment on the terms and conditions of this agreement.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this agreement:

**WS2GO Sites** means [www.websitesoftware2go.com.au](http://www.websitesoftware2go.com.au) and such other websites as Website Software 2GO notifies to Reseller Business from time to time.

**Authorised Officer** of a party which is a corporation means:

- (a) an employee of the party whose title contains either of the words 'Director' or 'Manager';
- (b) a person performing the function of any of them;
- (c) a solicitor acting on behalf of the party; or
- (d) a person appointed by the party to act as an Authorised Officer for the purposes of this agreement and notified to the others;

**Business Day** means a day on which banking institutions generally are open in Brisbane but excluding Saturdays, Sundays and public holidays;

**Business Hours** means from 9 am to 5 pm on a Business Day;

**Confidential Information** means, in relation to a party, all trade secrets, ideas, know-how, concepts and information whether in writing or otherwise relating in any way to that party, its sub licensees, agents and employees, its affairs or businesses, sales, marketing or promotional information, the terms of this agreement and including any such information in the party's power, possession or control concerning or belonging to any third party but does not include information that:

- (a) is, or becomes part of, the public domain otherwise than by a breach of confidence or of this agreement by either party;
- (b) is lawfully obtained by either party from another person without any restriction as to use and disclosure; or
- (c) was in the receiving party's possession prior to disclosure to it by the other party;

**Delivery Date** means the date the Delivery Materials will be delivered to Reseller Business as set out in item 5 of the Schedule;

**Delivery Materials** means the materials that will be delivered to Reseller Business so that Reseller Business can distribute the Services as specified in item 6 of the Schedule;

**Delivery Mode** means the mode of delivery of the Services as set out in item 3 of the Schedule;

**Delivery Requirements** means the manner in which the Delivery Materials are to be delivered to, or otherwise accessed by, Reseller Business as set out in item 7 of the Schedule;

**End User** means a Subscriber who accesses the Services for end use;

**Force Majeure Event** means any:

- (a) act of God;
- (d) outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority;
- (e) industrial dispute;
- (f) governmental restraint; or
- (g) other event which is not within the reasonable control of the parties;

**Global Service** means the Online Service operated by Reseller Business referred to in item 2 of the Schedule;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Initial Term** means the initial term of this agreement as set out in item 9 of the Schedule;

**Ineffective** means void, illegal or unenforceable;

**Insolvency Event** means, in relation to a party:

- (a) a receiver, receiver and manager, trustee, administrator, controller (as defined in the *Corporations Act 2001* (Cth)) or similar official is appointed over any of the assets or undertakings of the party;
- (h) the party suspends payment of its debts generally;
- (i) the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the *Corporations Act 2001* (Cth) or the *Bankruptcy Act 1966* (Cth);

- (j) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (k) the party ceases to carry on business or threatens to cease to carry on business; or
- (l) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator to the party.

**Intellectual Property Rights** means any and all intellectual and industrial protection rights throughout the world including rights in respect of, or in connection with:

- (a) any confidential information;
- (m) copyright (including future copyright and rights in the nature of, or analogous to, copyright);
- (n) performers' protection;
- (o) Moral Rights;
- (p) inventions (including patents);
- (q) trade marks;
- (r) service marks;
- (s) designs; and
- (t) circuit layouts,

whether or not now existing, and whether or not registered or registrable and includes any right to apply for the registration of such rights and includes all renewals and extensions;

**Licence Terms** means the licence terms detailed in Annexure A;

**Moral Rights** means rights of integrity, rights of attribution and other rights of an analogous nature which now exist or which may exist in the future, including, without limitation, moral rights under Pt IX of the *Copyright Act 1968* (Cth);

**Online Service** means any service for carrying or transmitting data and/or communications by means of guided or unguided electromagnetic energy or both;

**Private Label Program** has the meaning set out in Item 11 of the Schedule;

**Recipient** means a party that has received a Supply;

**Release Date** means the date set out in item 4 of the Schedule;

**Services** means the e-commerce services described in item 1 of the Schedule;

**Subscriber** means a person who is a subscriber to, or recipient of, the Global Service;

**Supplier** means a party that has made a Supply;

**Supply** has the meaning given to it in the GST Act;

**Term** means the term of this agreement as determined in accordance with clause 16;

**Termination Event** means:

- (a) an Insolvency Event;
- (u) a warranty under this agreement made by either party proving to have been false, incorrect or misleading when made;
- (v) events specified in any of clauses 5.2, 9.8 or 14.2; or
- (w) a Force Majeure Event continues for more than twenty (20) Business Days or for periods in aggregate of more than thirty (30) Business Days; and

**Underlying Materials** means all materials embodied in the Services, including but not limited to, sound recordings, musical works, literary works (including software), artistic works, cinematograph films, photographs, patents, designs and trade marks.

1.2 In this agreement, unless the contrary intention appears:

- (a) a reference to:
  - (i) this agreement or another document includes any variation or replacement of it notwithstanding any change in the identity of the parties;
  - (ii) any statute, ordinance, code or other law includes regulations and other statutory instruments under any of them and consolidations, amendments re-enactments or replacement of any of them;
  - (iii) a person, firm, corporation, association or government body includes any other of them;
  - (iv) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns;
  - (v) a time is a reference to Brisbane time unless otherwise specified;
  - (vi) a right includes a benefit, remedy, authority, discretion and power;
- (b) the singular includes the plural and vice versa;
- (c) headings shall not affect the construction;
- (d) if the day on which:
  - (i) anything, other than a payment, is to be done is not a Business Day, that thing shall be done on the preceding Business Day; and
  - (ii) a payment is to be made is not a Business Day it shall be made on the next Business Day but if the next Business Day falls in the next calendar month it shall be made on the preceding Business Day;
- (e) if an act is required to be done on a particular day and the act is done after 5.00pm on that day, it will be deemed to have been done on the following day;

- (f) where two or more persons are defined as a party to this agreement that term means each of the persons jointly, each of them severally and any two or more of them jointly;
- (g) an agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.

## 2. APPOINTMENT

2.1 Website Software 2GO non-exclusively appoints Reseller Business to distribute the Services for the Term through the Global Service, but only by the Delivery Mode, on the terms and conditions set out in this agreement.

2.2 For the purposes of the distribution of the Services referred to in clause 2.1, Website Software 2GO grants to Reseller Business a worldwide, royalty-free licence during the Term:

- (a) to reproduce all available Underlying Materials embodied in the Services;
- (b) to reproduce, advertise and publicise the names, photographs and likenesses of any authors, producers, creators, performers, artists or other persons associated with the development or production of the Services, but only in the manner as may be directed by Website Software 2GO from time to time; and
- (c) to display the Services to prospective Subscribers in the course of reasonable promotion and marketing of the Services.

2.3 Website Software 2GO agrees to provide a minimum of three (3) Services accounts for use by Reseller Business, at no cost to Reseller Business during the Term, as a tool for Reseller Business's promotion of the Services and the Global Service to Subscribers and potential Subscribers. These accounts, in particular, comprise:

- (a) one (1) website for each online product from time to time comprising the Services, to enable Reseller Business to demonstrate the Services capabilities in a live environment. This facility is to be used for demonstration or training purposes only. This facility must only be accessible via a domain name taking the form *demo.domainname.extension* where *domainname.extension* must be a domain name owned or controlled by Reseller Business.

2.4 The Services may from time to time also comprise components such as the Private Label Program and Affiliate Programs and other programs, products, services or schemes developed by or for Website Software 2GO from time to time. Website Software 2GO licenses such programs to Reseller Business non-exclusively. Website Software 2GO must stipulate by notice in writing to Reseller Business what the terms are of such licence.

## 3. RESELLER BUSINESS'S OBLIGATIONS

3.1 Reseller Business will use its best endeavours:

- (a) to maintain and operate the Global Service;
- (b) to use its best endeavours to promote and market the Services;

- (c) to distribute the Services through the Global Service;
- (d) to make the Services available to Subscribers to the Global Service by the Release Date;
- (e) to be competent and knowledgeable in and conversant with all aspects of the Services;
- (f) to ensure that any notices relating to Intellectual Property Rights appearing in, on or in relation to, the Services or literature relating to the Services are not altered or removed;
- (g) to act in good faith at all times towards Website Software 2GO and provide assistance and cooperation as practicable on request by Website Software 2GO;
- (h) to furnish to Website Software 2GO, within two (2) Business Days of Website Software 2GO' request, any information sought by Website Software 2GO regarding Reseller Business's promotion and distribution of the Services;
- (i) not to make any false, misleading or deceptive statements with respect to the Services;
- (j) to maintain such insurances as are reasonably necessary to protect Reseller Business against risk of liability to Website Software 2GO arising out of the performance or non-performance of Reseller Business' obligations under this agreement.

#### 4. **TECHNICAL SUPPORT AND TRAINING**

- 4.1 Reseller Business will be responsible for providing technical support to its customers in relation to the Services, and Reseller Business must use its best endeavours to ensure such technical support is provided in a reasonably professional manner.
- 4.2 In the event that any of Reseller Business's customers contact Website Software 2GO for technical support, Website Software 2GO must refer them to Reseller Business.
- 4.3 Website Software 2GO must provide technical support to Reseller Business during the Term in relation to the Services in accordance with the terms set out in Annexure B. If is specifically requested by Reseller Business to talk directly to a Subscriber via the phone as an express exception to the support set out in Schedule B, the hourly rate for this will be AUD\$160 + GST payable by Reseller Business. If an in-person visit is required, then the above hourly rate and expected travel expenses will be required in advance.
- 4.4 Website Software 2GO will from time to time provide to Reseller Business without charge training in relation to the Services as detailed from time to time by written notice from Website Software 2GO to Reseller Business. Such training will be without charge to Reseller Business for up to two (2) staff from Reseller Business, but training may be provided at an extra cost for more than this number by agreement between the parties.
- 4.5 Reseller Business must use its best endeavours to ensure that at least one (1) of its staff members attend such training as is offered by Website Software 2GO pursuant to clause 4.4 provided that the times, places and duration of such training is agreed between the parties from time to time. Both parties must act in good faith towards each other for the purpose of forming such agreement.



**5. DELIVERY OF DELIVERY MATERIALS**

- 5.1 Website Software 2GO will deliver the Delivery Materials to Reseller Business in accordance with the Delivery Requirements on or before the Delivery Date unless otherwise agreed in writing.
- 5.2 If the Delivery Materials are not delivered to Reseller Business by the Delivery Date, such an event will constitute a Termination Event in relation to Website Software 2GO and the provisions of clause 16 will apply.

**6. TERMS OF AGREEMENTS BETWEEN RESELLER BUSINESS AND SUBSCRIBERS**

- 6.1 Reseller Business will include conditions in all agreements with its Subscribers which relate to the distribution of the Services whereby its Subscribers agree:
- (a) not to disseminate, distribute or make available the Services or any part of them via computer terminals or in machine readable form or otherwise without the prior written consent of Reseller Business;
  - (b) not to transfer the Services or any part of them to another information distribution network or publication system (whether in electronic form or otherwise) without the prior written consent of Reseller Business;
  - (c) not to use or permit the use of the Services for any unlawful purposes; and
  - (d) to accept and agree to be bound by the Licence Terms.
- 6.2 Upon request from Website Software 2GO, Reseller Business will supply to Website Software 2GO a copy of its agreement with Subscribers.
- 6.3 Where matters referred to in clause 6.1 require the prior consent of Reseller Business, Reseller Business will provide details of such matters to Website Software 2GO and obtain Website Software 2GO' prior written approval before consenting to the Subscriber's request.
- 6.4 Reseller Business will not supply the Services to anyone other than a Subscriber and will not supply the Services to a Subscriber on terms that would allow that Subscriber to do any act or thing that Reseller Business has agreed not to do under this agreement.
- 6.5 Website Software 2GO is not responsible for obtaining any necessary rights, licences, clearances, consents, authorisations or agreements as may be required by Subscribers.

**7. NO MODIFICATIONS**

- 7.1 Reseller Business will not, without the prior written consent of Website Software 2GO, modify, alter, adapt, disassemble, reverse engineer, decompile or amend the Services or any of the Underlying Materials in any way.
- 7.2 Reseller Business may, with the prior written approval of Website Software 2GO, affix Reseller Business's name and logo on the Services in the manner approved by Website Software 2GO.
- 7.3 Reseller Business will not remove the Licence Terms from the Services or otherwise amend or modify the Licence Terms embodied in the Services or otherwise attached to the Services other than:

- (a) to substitute its own name as the supplier under the Licence terms where the relevant licence will be between Reseller Business and customers of Reseller Business; or
- (b) otherwise as expressly allowed by Website Software 2GO.

## 8. **PAYMENT**

- 8.1 Reseller Business will pay Website Software 2GO for the Services acquired or resold by Reseller Business.
- 8.2 Reseller Business must pay Website Software 2GO for such Services in accordance with the pricing and terms set out in Item 8 of the Schedule.
- 8.3 Website Software 2GO will be responsible for paying any fees, royalties or other payments due to the owners, exclusive licensees or assignees of any of the Underlying Materials which are payable in respect of the distribution of the Services, unless agreed to the contrary in writing by the parties.
- 8.4 Reseller Business will deduct from sums payable to Website Software 2GO under this clause such taxes, levies or other charges as are required by the law of the territory to be paid by or withheld from Website Software 2GO and will submit to Website Software 2GO receipts for any sum which has been paid or withheld.

## 9. **WARRANTIES**

- 9.1 Each party warrants to the other that:
  - (a) it has authority to enter and to perform its obligations under this agreement; and
  - (b) it has the ability to perform its obligations under this agreement.
- 9.2 Website Software 2GO represents and warrants to Reseller Business that to the best of Website Software 2GO' knowledge at the time of execution of this agreement:
  - (a) the Services are not defamatory, obscene, false, misleading or deceptive and do not breach any statute;
  - (b) use of the Services and any materials on the WS2GO Websites in accordance with this agreement will not infringe the rights, including the Intellectual Property Rights, of any person; and
  - (c) the information provided to Reseller Business in relation to the subject matter of this agreement before its entry into this agreement is true and correct.
- 9.3 Website Software 2GO will:
  - (a) accept liability for the supply of the Services but only to the extent provided in this clause and in clause 11;
  - (b) not warrant that:
    - (i) the Services will be uninterrupted or error free;
    - (ii) the Services will meet your requirements, other than as expressly set out in this agreement; or

- (iii) the Services will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or systems of Website Software 2GO;
  - (c) where the End User is a Consumer (as that word is defined by the *Trade Practices Act 1974*), accept liability where:
    - (i) the Services are not supplied with due care and skill;
    - (ii) any material supplied in connection with the Services is not reasonably fit for the purpose for which it was supplied; and
    - (iii) Website Software 2GO is otherwise required to do so by the *Trade Practices Act 1974*; and
  - (d) maintain such insurances as are reasonably necessary to protect Website Software 2GO against risk of liability to Reseller Business arising out of the performance or non-performance of Website Software 2GO' obligations under this agreement.
- 9.4 To the extent that the Services are not of a kind ordinarily acquired for personal, domestic or household use, Website Software 2GO' liability is limited, at its option, to the resupply of the Services again or payment of the cost of having the Services supplied again.
- 9.5 Except as expressly provided to the contrary in this agreement, Website Software 2GO excludes all liability for indirect and consequential loss or damage of any kind, loss or corruption of data, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to this agreement and/or its subject matter.
- 9.6 Other than liability accepted by Website Software 2GO as expressly set out in this agreement, Website Software 2GO' total liability for loss or damage of any kind not excluded by clause 9.5, however caused, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to this agreement is limited in aggregate for any and all claims to \$10.
- 9.7 Reseller Business represents and warrants to Website Software 2GO that:
- (a) subject to clause 9.8, it is authorised by all necessary government and other agencies and authorities and will, throughout the Term, continue to be authorised to distribute the Services in the Delivery Mode in the territory;
  - (b) it will not alter the Delivery Mode without the prior approval of Website Software 2GO, which approval may be withheld by Website Software 2GO in its absolute discretion; and
  - (c) the information provided to Website Software 2GO in relation to the subject matter of this agreement before its entry into this agreement is true and correct.
- 9.8 Subject to anything in this agreement to the contrary, if compliance with the specified warranty in clause 9.7 or any other term of this agreement would require an amendment, variation or modification to the Services, then no such amendments, variations or modifications are to be made without the prior approval of Website Software 2GO, which approval may be withheld in its absolute discretion. If such approval is withheld, such an

event will constitute a Termination Event in relation to Website Software 2GO and the provisions of clause 16 will apply.

## 10. **ACKNOWLEDGMENT**

10.1 Reseller Business acknowledges and accepts that it will not, as a result of entering into this agreement, acquire any Intellectual Property Rights in the Services, the Underlying Materials or the Delivery Materials or in any copies thereof or any materials contained on the WS2GO Websites.

10.2 Website Software 2GO acknowledges and accepts that it will not, as a result of entering into this agreement, acquire any Intellectual Property Rights or any ownership interest in any such rights as are upon, or become after, entry into this agreement held by Reseller Business.

## 11. **SCOPE OF LIABILITY**

11.1 Website Software 2GO will at all times indemnify and keep indemnified Reseller Business and its sub distributors and both their respective officers, employees and agents (in this clause 11.1 referred to as **those indemnified**) from and against any loss (including solicitor and client legal costs and expenses on the indemnity basis) or liability incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose out of:

- (a) any breach of (including any warranties in) this agreement by Website Software 2GO;  
or
- (b) any infringement or alleged infringement of the rights, including the Intellectual Property Rights of any person occurring by the use of the Services in accordance with this agreement.

11.2 Reseller Business will at all times indemnify and keep indemnified Website Software 2GO, its officers, employees and agents (in this clause 11.2 referred to as **those indemnified**) from and against any loss (including reasonable legal costs and expenses) or liability incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose out of:

- (a) any use of the Services by Reseller Business otherwise than in accordance with this agreement; and
- (b) any other breach of this agreement by Reseller Business.

11.3 Website Software 2GO acknowledges and accepts that, to the extent permitted by law, Reseller Business will be under no liability to Website Software 2GO whatsoever, whether in:

- (a) contract or tort (including, without limitation, negligence);
- (b) breach of statute; or
- (c) any other legal or equitable obligation,

in respect of any loss or damage referred to in clause 11.4.

- 11.4 The loss or damage referred to in clause 11.3 is loss or damage (including loss of profit or savings), howsoever caused, which may be:
- (a) suffered or incurred or which may arise directly or indirectly in respect of any infringement by any Subscriber or other person of the Intellectual Property Rights of Website Software 2GO or any other right of Website Software 2GO in or in relation to the Services; or
  - (b) which may be caused directly or indirectly by any act or omission of any Subscriber or any other person who may access the Services,
- except to the extent that Reseller Business has knowledge of, authorised, or otherwise permitted such infringement, act or omission.
- 11.5 Reseller Business will notify Website Software 2GO in writing as soon as practicable and, in any event, within two (2) Business Days of any claim or demand made, or action, suit or proceeding threatened or brought, against Reseller Business arising from any of the matters referred to in clause 11.1.
- 11.6 After notice has been given under clause 11.5 and upon Website Software 2GO admitting its obligations under the indemnity in clause 11.1 and, where requested by Reseller Business, lodging security in a reasonable amount with Reseller Business, Reseller Business will:
- (a) continue to keep Website Software 2GO informed of all developments; and
  - (b) to the extent permitted by law, act in accordance with the reasonable directions of Website Software 2GO in respect of those developments including in relation to application for leave to withdraw from the litigation and in relation to the settlement of claims or demands that do not result in litigation.
- 11.7 Where litigation is commenced against Reseller Business in respect of any matter involving any breach of the warranties referred to in clause 11.1 (a) or any infringement or alleged infringement referred to in clause 11.1 (b), Reseller Business will, on leave being granted by the court in which the litigation is being conducted, withdraw from the litigation and Website Software 2GO will, in its own name and its own expense, conduct the litigation.
- 11.8 Where leave is not granted to Reseller Business to withdraw from the litigation and for Website Software 2GO to conduct the litigation in its own name, Reseller Business will, upon Website Software 2GO admitting its obligations under the indemnity in clause 11.1 and to the extent that it is permitted by law, defend, arbitrate, mediate, appeal, settle or otherwise conduct the litigation as Website Software 2GO may from time to time reasonably direct.
- 11.9 For the purpose of clause 11.8, Website Software 2GO will lodge security in a reasonable amount with Reseller Business to offset Reseller Business's costs of conducting the litigation at Website Software 2GO's direction.
- 11.10 If a final judgment or award is made against Reseller Business in the litigation referred to in clause 11.8, or if a settlement is reached with the plaintiff, which has been approved by Website Software 2GO (in a situation where Website Software 2GO is providing an indemnity under clause 11.1), Website Software 2GO will:
- (a) not less than five (5) Business Days before the date on which Reseller Business must pay the amount referred to in the judgment, award or settlement; or

- (b) if no date for payment is fixed by that judgment, award or settlement, within five (5) Business Days of receipt of a notice in writing from Reseller Business that it intends to pay the amount referred to in that judgment, award or settlement,

pay to Reseller Business by bank cheque a sum equal to the sum that Reseller Business is required to pay.

- 11.11 Website Software 2GO' approval to the settlement referred to in clause 11.10 will not be unreasonably withheld.
- 11.12 Website Software 2GO will pay to Reseller Business all other sums required to be paid under the indemnity provided under clause 11.1 within five (5) Business Days of receipt by Website Software 2GO of a notice in writing from Reseller Business requiring payment of those sums.
- 11.13 Without prejudice to any other right or action or remedy which Reseller Business may have, if Website Software 2GO fails to comply with this clause 11, Reseller Business will have the right to suspend payment of other sums to Website Software 2GO otherwise due under this agreement until such claim, demand, suit, action or proceeding has been resolved.
- 11.14 Save as otherwise provided in this agreement, Website Software 2GO will not be liable to Reseller Business in any way for any loss or damage howsoever caused arising out of Website Software 2GO' provision of the Services to Reseller Business or Subscribers' use of the Services save to the extent that any such loss or damage arose out of a breach of warranty or of this agreement by Website Software 2GO.

## 12. **MARKETING AND PROMOTION**

- 12.1 Reseller Business may during the Term at its discretion use materials available on the WS2GO Websites.
- 12.2 Reseller Business is not required to submit any advertising, sales promotion or public relations material used from time to time by Reseller Business and relating to the Services to Website Software 2GO for any approval.
- 12.3 Reseller Business must ensure that its marketing and promotion in relation to the Services:
  - (a) is not misleading or deceptive;
  - (b) does not contravene the law of any jurisdiction to which such material is made available; and
  - (c) is of a reasonably professional standard.
- 12.4 If Website Software 2GO reasonably decides that Reseller Business's marketing or promotion in relation to the Services does not comply with clause 12.3, then Website Software 2GO may give written notice to Reseller Business to remove and rectify such marketing or promotion, specifying in the notice the manner in which Website Software 2GO believes such marketing or promotion to be in breach of that clause.
- 12.5 Reseller Business must reasonably comply with any notice provided to it under clause 12.4.
- 12.6 Website Software 2GO may immediately upon written notice to Reseller Business suspend or remove (at Website Software 2GO' discretion) any Subscriber's website and/or account obtained via the Global Service if:

- (a) such website:
  - (i) promotes sexually explicit materials, violence, illegal activity or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; or
  - (ii) violates the Intellectual Property Rights or any person; or
- (b) such Subscriber uses the Services to breach any legislation in any jurisdiction relating to unsolicited emails.

### 13. **CONTRACT MANAGEMENT**

- 13.1 The Commercial prime contacts for Reseller Business and Website Software 2GO shall meet at least once every quarter during the term at times and places mutually agreed between those parties from time to time to consult on commercial and management matters concerning or arising out of the Services or other matters arising out of the relationship between the parties to this agreement.
- 13.2 The Operations prime contacts for Reseller Business and Website Software 2GO shall meet from time to time upon reasonable notice of at least one (1) day by one such contact to the other to consult on operational matters concerning or arising out of the Services.
- 13.3 The relevant contact parties are, unless otherwise agreed between the parties in writing from time to time:
  - (a) Reseller Business:
    - (i) Commercial prime contact – \_\_\_\_\_;
    - (ii) Operations prime contact – \_\_\_\_\_; and
  - (b) Website Software 2GO:
    - (i) Commercial prime contact – Vanya Markiewicz;
    - (ii) Operations prime contact – Vanya Markiewicz.

### 14. **WITHDRAWAL OF SERVICES**

- 14.1 If Website Software 2GO ceases to trade or intends to cease to trade or ceases to provide or intends to cease to provide the Services, Website Software 2GO undertakes to notify Reseller Business immediately and, notwithstanding any termination of this agreement under clause 16 or otherwise, undertakes to use its best endeavours to assist Reseller Business to receive services as nearly the same as possible as the Services and on terms as nearly as possible to the terms of this agreement from other providers known to Website Software 2GO, with a little interruption to business or the Global Service as possible.
- 14.2 Receipt of a notice under clause 14.1 constitutes a Termination Event in relation to Website Software 2GO and the provisions of clause 16 will apply.

### 15. **CONFIDENTIALITY**

- 15.1 Each party acknowledges that it, its employees or agents, may be given access to Confidential Information of the other party in the course of negotiating or performing this agreement.

- 15.2 Each party (**First Party**) will keep confidential the Confidential Information of the other party and will not disclose it to any third party or use it otherwise than:
- (a) for the purposes of this agreement;
  - (b) as authorised in writing by the other party;
  - (c) as required by any law, judicial body or governmental agency; or
  - (d) by way of disclosure to the First Party's professional advisors who have agreed to keep the Confidential Information confidential.
- 15.3 Neither party will copy any document containing Confidential Information of the other party except as necessary to perform this agreement or as otherwise expressly permitted by the other party.
- 15.4 On termination of this agreement, each party will return all documents or copies of documents containing information which is, at the date of termination, Confidential Information of the other party.
- 15.5 Each party will ensure that its employees, agents, contractors and other persons within its control to whom Confidential Information of the other party may be disclosed comply with this clause 15 as if they were a party to this agreement.

16. **TERM AND TERMINATION**

- 16.1 This agreement commences on the date of this agreement and continues for the Initial Term unless terminated under the terms of this agreement, including, without limitation, under clause 16.2.
- 16.2 This agreement will terminate at the expiry of the Initial Term provided that one party gives notice of termination to the other not less than sixty (60) Business Days before the expiry of the Initial Term.
- 16.3 If no notice is given under clause 16.2, this agreement will continue automatically for successive periods equivalent to the Initial Term after the expiry of each such period on the same terms and conditions unless and until one party gives the other party at least sixty (60) Business Days of prior written notice that it wishes to terminate this agreement.
- 16.4 If Reseller Business is in breach of this agreement:
- (a) Website Software 2GO may give Reseller Business a notice:
    - (i) specifying the breach; and
    - (ii) requiring Reseller Business to rectify the breach within seven (7) Business Days of the date Reseller Business received the notice; and
  - (b) Website Software 2GO may terminate the agreement if after the expiry of the notice Reseller Business has not rectified the breach specified in the notice.
- 16.5 This agreement may be terminated immediately by notice from:
- (a) Website Software 2GO to Reseller Business if a Termination Event occurs in relation to Reseller Business; and



- (b) Reseller Business to Website Software 2GO if a Termination Event occurs in relation to Website Software 2GO.
- 16.6 The termination of this agreement is without prejudice to any rights which have accrued to a party before the date of termination.
- 16.7 In the event of a termination of this agreement under clauses 5.2, 9.8 or 14.2, Reseller Business will be entitled to be paid by Website Software 2GO an amount which is equal to the costs incurred by Reseller Business (including costs incurred by third parties) in fulfilling its obligations under this agreement less the amount of all Gross Receipts (if any) received or accrued up to the date of termination. Reseller Business will on request by Website Software 2GO furnish to Website Software 2GO any and all documents necessary to verify its calculation of such costs.
- 17. **FORCE MAJEURE**
  - 17.1 Subject to clause 16, a party is not liable for its inability to perform, or for any delay in performing, any of its obligations under this agreement if that inability or delay is caused by a Force Majeure Event.
  - 17.2 Subject to clause 16, the time for performance of any obligation by any party under this agreement will be extended by a period equal to the period of any Force Majeure Event which causes the inability to perform, or delay in performing, the obligation.
- 18. **RELATIONSHIP OF THE PARTIES**
  - 18.1 This agreement does not create any partnership, joint venture or agency relationship between the parties.
  - 18.2 Neither party may enter into any agreements or incur any liabilities on behalf of the other party without the other party's prior written consent and may not represent to any person that it has any authority to do so.
- 19. **NOTICES**
  - 19.1 A notice under this agreement will be in legible writing and in English addressed to the party concerned at that party's address.
  - 19.2 For the purpose of the notice under clause 19.1, a party's address is the address specified at the commencement of this agreement or as notified to each other party.
  - 19.3 A notice may be served by giving it to the other party personally, by posting it by security post or by faxing it.
  - 19.4 If the notice is posted by security post it is deemed to be received by the receiving party two (2) Business Days after posting.
  - 19.5 If the notice is faxed it is deemed to be received by the receiving party when the completed transmission report is received, unless:
    - (a) the sending party's machine indicates a malfunction in transmission or, the receiving party within a reasonable time (and, in any event, within two (2) Business Days), informs the sending party of an incomplete transmission; or

- (b) the transmission is completed outside Business Hours at the receiver's address in which case the notice is regarded as received at the commencement of business on the following Business Day in that place.

20. **CUMULATIVE RIGHTS**

The rights arising out of this agreement do not exclude any other rights of any party.

21. **ENFORCEABILITY**

- 21.1 Any clause or part of a clause of this agreement which is Ineffective in any jurisdiction is Ineffective only to that extent in that jurisdiction.
- 21.2 Where any clause or part of that clause is Ineffective, it may be severed without affecting any other part of this agreement.

22. **WAIVER**

- 22.1 No right under this agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right.
- 22.2 A waiver by one party under clause 22.1 does not prejudice its rights in respect of any subsequent breach of this agreement by the other party.
- 22.3 A party does not waive its rights under this agreement because it grants an extension or forbearance to the other party.

23. **VARIATION**

A variation of this agreement will be in writing and signed by each of the parties.

24. **ASSIGNMENT**

Neither party may assign its rights or obligations under this agreement without the prior written consent of the other party, which will be within that party's sole discretion.

25. **CURRENCY**

- 25.1 Unless the contrary intention appears, all references to currency in this agreement will be construed as being references to Australian currency.
- 25.2 Unless the other party consents in writing to payment in a currency other than Australian currency, any payments which are required to be paid under this agreement by a party to another party will be paid in Australian currency.

26. **FURTHER STEPS**

Each party will do all things and execute all further documents necessary to give full effect to this agreement.

27. **ENTIRE AGREEMENT**

This agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

28. **COUNTERPARTS**

This agreement may be executed in any number of counterparts.

29. **SURVIVAL**

The terms of this agreement survive its termination to the extent permitted by law.

30. **LEGAL ADVICE**

Each party acknowledges that in relation to this agreement it has received legal advice or has had the opportunity of obtaining legal advice.

31. **COSTS AND TAXES**

31.1 Each party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery and completion of this agreement and any other related documentation.

31.2 Website Software 2GO will pay all stamp duty, taxes and other governmental charges payable or assessed on this agreement and any other related documentation.

32. **GOVERNING LAW AND JURISDICTION**

32.1 This agreement is governed by the laws of the state or territory set out in item 10 of the Schedule.

32.2 The parties irrevocably submit to the non-exclusive jurisdiction of any court having jurisdiction in the state or territory set out in item 13 of the Schedule.

33. **GST**

33.1 Subject to clauses 33.2 and 33.3, if the Supplier of any Supply under this agreement is or becomes liable to pay any tax under the GST Act in relation to that Supply, the Supplier may, by notice in writing to the Recipient, recover such amount from the Recipient.

33.2 The Recipient will not be liable to make any payment to the Supplier pursuant to clause 33.1 if the consideration in relation to the Supply is expressed in the Schedule to include an additional amount related to the Supplier's liability to pay GST or to be GST inclusive.

33.3 The amount payable by the Recipient to the Supplier pursuant to clause 33.1 will be reduced to the extent that the abolition or reduction of any existing taxes, duties or statutory charges as a direct result of the GST Act reduces the cost to the Supplier of making the Supply.

33.4 The Supplier will provide the Recipient with a tax invoice or a document adequate to entitle the Recipient to claim an input tax credit in relation to any payment made by the Recipient in accordance with clause 33.1.

**EXECUTED** as an agreement.

**EXECUTED** by \_\_\_\_\_ ]  
 \_\_\_\_\_ in accordance with section 127 ]  
 of the *Corporations Act* 2001 (Cth) with the ]  
 authority of the \*Directors/\*\*Sole Director and ]  
 Secretary: ] \*Director/\*\*Sole Director and Secretary  
 \* Delete if a sole director/secretary ]  
 proprietary company ]  
 \*\* Delete if not a sole director/secretary ]  
 proprietary company ]

*If Reseller Business not a Company then use this area below*

**SIGNED** by \_\_\_\_\_ ]  
 \_\_\_\_\_ ]  
 \_\_\_\_\_ in the ]  
 presence of:

.....  
Signature of Witness

.....  
Name of Witness (BLOCK LETTERS)

.....  
Address of Witness

.....  
Occupation/Office of Witness

*If Reseller Business is a Company then use this area below*

**EXECUTED** by \_\_\_\_\_ ]  
 \_\_\_\_\_ in accordance with section 127 ]  
 of the *Corporations Act* 2001 (Cth) with the ]  
 authority of the \*Directors/\*\*Sole Director and ]  
 Secretary: ] \*Director/\*\*Sole Director and Secretary  
 \* Delete if a sole director/secretary ]  
 proprietary company ]  
 \*\* Delete if not a sole director/secretary ]  
 proprietary company ]

## **SCHEDULE**

### **Item 1 — Services**

The Services comprise e-commerce services software and internet web hosting services. The software referred to comprises internet web pages which are programmed to connect to a database and store and record information regarding End Users' websites' look and operation. The web hosting services comprise use of computer servers stored in a high security data centre building. The servers store the End Users' internet web pages, databases and emails used from day to day for the End Users' websites to operate.

### **Item 2 — Global Service**

The Global Service comprises resale of the Services by Reseller Business via internet websites owned and/or controlled by Reseller Business.

### **Item 3 — Delivery Mode**

Online via Reseller Business's website(s).

### **Item 4 — Release Date**

12 months (1 year) from the Delivery date in Item 5.

### **Item 5 — Delivery Date**

17/05/2010

### **Item 6 — Delivery Materials**

All the briefing and support materials, available as at the time of execution of this agreement, within the Website Software 2GO Reseller online admin web page.

### **Item 7 — Delivery Requirements**

The materials must be accessible at the commencement of the term of this agreement and throughout the term of this agreement within the admin area of the Website Software 2GO website or available in that manner within 24 hours of request.

### **Item 8 — Pricing:**

Website Software 2GO will provide Reseller Business discounted rates on Services accounts, purchased from their Reseller Account.

Accounts Prices are provided and are on display on the Admin Area Reseller Pricing page of Reseller Business's website.

The Reseller Account Services for Website Software and Website Hosting also include:

- 1 x 12 months of Upgrades and Updates
  - 1 x SLA Level 2\*\* Technical support by Email and Phone
  - 1 x SLA Level 3\*\* Technical support by Email and Phone
- \*\* SLA Levels 2 and 3 as defined in the Service Level Agreement as part of this agreement.

Website Software 2GO reserves the right to change the prices or services offered and will provide at least one (1) months notice by email or post or both. Website Software 2GO will where possible provide up to three (3) months notice of any such price or service changes.

Reseller Business may add funds to its Reseller account by Credit Card or Direct Deposit and then order Services accounts from its Reseller Admin Area. Minimum Credit required to open a Reseller Account is AUD\$0.00.

Upon the acceptance of this Agreement and each year on the anniversary date of this agreement, a AUD\$995.00 annual fee is due to Website Software 2 GO to remain an active Reseller and provide websites.

Funds must be available in Reseller Business's Reseller Account for any purchases to be able to be processed. Funds paid by credit card are available immediately upon completing the successful payment, while Direct Deposit can take up to 24-48 hours to process.

#### **Item 9 — Initial Term**

12 months

#### **Item 10 — State or territory**

Queensland, Australia

#### **Item 11 – Private Label Program**

The Private label Program provided to the Website Software 2GO Reseller, allows for total re-branding of the product and service/s provided for resell.

The ability to re-brand the Reseller's Customer's websites or materials provided with the Reseller's details are as follows

1. By choice, provide a link at the bottom of each Reseller's Customer's website that links back to the Reseller's website.
2. Re-brand the user manual and tutorial guides with the Reseller's details and graphics.
3. Provide Name servers based on the Main Reseller's website eg. ns1.resellerdomain.com and ns2.resellerdomain.com.  
Name servers are provided to customers in order to configure Domain Names purchased/registered not by Reseller.
4. Support Tickets and Emails are all set to be [support@resellerdomain.com](mailto:support@resellerdomain.com) and when sent to the Reseller's Customer are all branded to the Reseller's Business name and Domain.

The ability to re-brand is controlled by the Reseller in the Reseller's Admin Area under Reseller Admin > Reseller Settings.

## **ANNEXURE A**

### **Website License**

**See Website Terms & Conditions at the link the following hyperlink.**

[www.websitesoftware2go.com.au/website](http://www.websitesoftware2go.com.au/website)

The Website License document is what all customers using your ordering link on your reseller website area agree to when ordering a website and also what you will pass on the agreement on when ordering the website on the client's behalf in your Website Reseller Admin Area.

## **ANNEXURE B**

### **Service Level Agreement Terms**

Website Software 2GO will provide at all times the ability to Reseller Business to place with Website Software 2GO Reseller Support Tickets relating to the relevant Subscriber's Account if Reseller Business does not know or cannot correct the issue with the Subscriber's Account. Reseller Business must not pass on the Support Ticket to Website Software 2GO without first verifying the Subscriber's related issue is not able to be answered within the support structure of Reseller Business's support team trained on the use of the website-software-hosting.

The five (5) types of Support Tickets are:

1. "Cannot use" or "do not know How to use" a specific feature of the software. The first option in this scenario that must be taken by Reseller Business is to ask the Subscriber whether they have reviewed the User Manual or a relevant tutorial or user guide made available from time to time to Reseller Business to brand and provide to the Subscribers. SLA Level 1 is usually all that is needed to perform this.
2. "Bug in Software". This is where the website software is giving an error or performing differently from its documented or usual function. SLA Level 2 Support is required after the Bug has been confirmed by Reseller Business.
3. "Email Issues". This relates to an inability to connect an Outlook Express or Outlook (Email Client) application. Incorrect email client configuration can be tested by logging into the Webmail facility. If this can be logged in then the details are correct and the settings of Outlook or Outlook Express will need revision. Usually SLA Level 1 will handle this and Reseller Business can log into the Admin and reset passwords if required. SLA Level 2 will be needed if the account cannot be accessed by Webmail using the provided details or if the problem is in the Webmail facility and its operations are not working correctly.
4. "Bouncing Email Issues". This is when emails are bouncing back to the sender unsent and where it has been verified by Reseller Business not to have been caused by an account not being set up and/or are not emails that have bounced due to an email address that does not exist. This is called a Failed delivery. These are where the account is configured correctly and Webmail is working and it has been verified by using the Webmail facility that an "email Issue" exists.
5. "Updates or Upgrades" that are requested from time to time from clients. These will only be undertaken by Website Software 2GO as decided and given notification of this decision is final. Updates and Upgrades that are requested and accepted will be done and completed without any time restriction or deadline due to the nature of programming taking longer than expected to upgrade or update.

Service Level 1 – Accounts for all Support tickets provided to Reseller Business by a Subscriber. This level of support will require basic Technical knowledge of setting up Email Accounts, using Internet Explorer and Firefox and understanding the abilities and configurations available in the website-software-hosting.

Service Level 2 – Accounts for all Support tickets provided to Reseller Business by a Subscriber that Reseller Business is unable to handle and requires support direct to Reseller Business to then relay to the Subscriber as required. Website Software 2GO will not speak directly to the Subscriber unless expressly requested by Reseller Business to do so. Reseller Business must relay this to the Subscriber. All receipts for reason of proof of such activities will be provided to Reseller Business as required and requested.

Service Level 3 – Accounts for all Server related issues such as ALL websites cannot be accessed or ALL email accounts cannot be accessed. Website Software 2GO will in this case work directly with Reseller Business to reinstate services.