

# SiteStart

## Terms and Conditions of Service

### **1.0 THE SERVICE**

This agreement is between McQuillans Pty Ltd (ABN 13 099 269 039) ("McQuillans") and you and governs your use of the SiteStart™ (the "Service"), an Internet subscription service operated by by or on behalf of McQuillans that provides users with access to a Website creation and hosting service ("SiteStart"). The SiteStart Service, owned and operated by or on behalf of McQuillans is provided to you under the terms and conditions of this SiteStart Terms and Conditions of Service agreement and any amendments thereto and any operating rules or policies issued by McQuillans (collectively, the "SiteStart TCOS").

By using the Service you agree to be bound by the SiteStart TCOS. Unless explicitly stated otherwise, any new features that augment or enhance the current service shall be subject to the SiteStart TCOS. The Service consists of website building services and software. Your participation in the Service is conditional upon your acceptance of these stated terms and conditions. Please read the following terms and conditions.

**Your acceptance of these Terms and Conditions of Service is indicated by your payment for the services contained in "The Offer" as detailed below.**

McQuillans reserves the right, in its sole discretion, to change, modify, add or remove all or part of the Service or the SiteStart TCOS at any time. Your continued use of the Service constitutes your binding acceptance of these terms and conditions, including any changes or modifications made by McQuillans as permitted above. If at any time these Terms and Conditions are no longer acceptable to you, you should immediately terminate your subscription to the Service.

### **2.0 THE OFFER**

Under your SiteStart™ agreement you receive the following:

- A professionally built SiteStart™ website
- A choice of templates (or a Customised Template – see Additions)
- Up to 3 minor edits within 30 days of your SiteStart website being built (minor edits include template change, typographical changes, and substitution of poor quality images and are limited to 15 minutes of labour time each)
- Access to the SiteStart™ software so you can make changes your own website
- Your SiteStart™ website submitted to Search Engines

Fees and Charges for building and hosting your website are set out in the Order Confirmation Form and are charged based on the number of web pages chosen. The Fees and Charges may vary from time to time. Further, upon payment of additional fees, you may choose to select the following additions to your SiteStart™ website:

- Additional text on any page
- Additional pages,
- A customised template (a template designed to your specifications)
- Professional assistance on the content for your website by a Content Consultant

Fees and Charges for these and any other Additional Services are set out in the Upgrade Order Confirmation Form and may vary from time to time. The Offer includes website hosting and the licence to use the SiteStart™ software. Your website cannot be hosted by another provider.

### **3.0 DELEGATION**

You understand that McQuillans requires the registry key for your domain name in order to publish your website to the Internet. It is your responsibility to provide your registry key to McQuillans with the information you return in your Starter Pack. You understand that any delay in providing your registry key to McQuillans will delay the publication of your website. You also understand that you will be billed for the construction of your website, even if you do not provide your registry key to McQuillans. You also understand that even if your registry key is provided in a timely manor, there may be a delay in the publication of your website due to latencies in the propagation of domain name information across the Internet. You understand that these propagation latencies are outside of McQuillans's control and McQuillans cannot be held accountable for such delays.

#### 4.0 REGISTRATION

You must provide accurate, complete, and current registration information and you agree to provide McQuillans with an update of that information promptly should changes occur. Subscriptions to the Service are available only to individuals who are at least 18 years of age or to incorporated businesses or sole traders or partnerships or trusts or associations owned or operated by individuals who are at least 18 years of age. Your right to use the Service cannot be transferred to any other person or any other entity. You are responsible for all use of your account under any password by any person whether or not authorized by you and for ensuring that all use of your account complies with these terms. Without in any way limiting your obligations under Section 4 below, McQuillans reserves the right to delete any Web page or Website uploaded, posted or displayed by you or any other user, at any time, without prior notice, for any reason or no reason. McQuillans may terminate, at its own discretion, any registration, including without limitation any or all related information, communications, postings, Web pages or Websites, at any time, without notice, for any reason or no reason, including without limitation for conduct that violates local, state or federal laws or regulations or these Terms of Service, or material that MCQUILLANS, in its sole discretion believes is harmful to others, the business of MCQUILLANS or other third party information or service providers. You acknowledge that the Service contains information, software, photographs, graphics, and other material (collectively, the "Content") that is protected by copyright, trademark or other proprietary rights of MCQUILLANS or third parties. All Content on the Service is copyrighted as a collective work of MCQUILLANS pursuant to applicable copyright law. You agree to comply with any additional copyright notices, information, or restrictions contained in any Content available on or accessed through the Service. The Content is intended for the use of the registered subscribers of the Service. You may not modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit, any of the Content, in whole or in part, except as otherwise expressly permitted in this SiteStart TCOS. Content consisting of downloadable software may not be reverse engineered unless specifically authorised by the owner of the software's patent and/or copyright. Except as expressly permitted by the copyright laws, no copying, storage, redistribution or publication of any Content is permitted without the express permission of McQuillans or the owners of such Content or their authorised persons. You assume all risk and responsibility for determining whether any Content is in the public domain, regardless of any notices which may be posted on such Content. You grant to McQuillans the right to edit, copy, publish, distribute, translate and otherwise use any Content that you place on the Service, in any medium. You represent and warrant that you are authorised to grant all rights set forth in the preceding sentence. Any information supplied by you upon registration for the Service and certain other information which SiteStart™ may collect is subject to McQuillans's privacy policy in clause 12.0 below.

#### 5.0 USER CONDUCT

You, as a user of the Service, understand that all information, data, text, files, links, software, content, photographs, graphics, images, or other materials and terms of expression (collectively "Information"), whether publicly posted or privately transmitted, are the sole responsibility of the user generating the same. This means that you are responsible and may be held legally liable for all Information that you upload, post or otherwise transmit via SiteStart™. For example, you shall not: (a) transmit upload or post via SiteStart™ any Information that is offensive, vulgar, sexually explicit, racial, hateful, discriminatory, unlawful, invasive of another's privacy, exploitative of a minor, identifiable information pertaining to a minor, information or instructions concerning illegal activities, information that is harmful, threatening, abusive, harassing, defamatory, libelous, obscene, or otherwise objectionable; (b) harass, threaten, abuse, defame, embarrass or cause distress or discomfort to another; (c) transmit upload or post via SiteStart™ any Information that you are prohibited from transmitting by any law, including without limitation Information that infringes any patent, trademark, trade secret, copyright or other proprietary right; (d) transmit, upload or post any Information that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (e) disrupt the normal flow of Information available on or through SiteStart™ or otherwise act in a manner that negatively affects other participants or users, transmit, upload or post hidden pages or images, interfere with or disrupt the functionality of SiteStart™ or the SiteStart™ servers or networks, or violate any requirements, procedures, policies or regulations of networks connected to SiteStart™, the McQuillans network, servers, directories, databases and listings; (f) transmit, upload or post any unsolicited advertising, promotional materials, or any other forms of solicitation; (g) intentionally or unintentionally violate any applicable local, state, national or international law or regulation; (h) translate, decompile, reverse engineer, disassemble, modify, copy, alter, merge into other software, exploit, reproduce, duplicate, rent, lease, sell, resell, lend, distribute, remarket or otherwise dispose of SiteStart™, use of SiteStart™, or access to SiteStart™ or any part thereof; (i) impersonate in any way, including without limitation by way of forging headers or otherwise manipulating identifiers, any person, entity, leader, McQuillans official, operator or host; (j) collect or store personal data about other users in any way or form or solicit or harvest passwords or screen names in an illegal manner or without due regard to privacy laws in force; (k) use your allocated storage space on SiteStart™ as storage for remote loading of Information, or rent, sub-lease or transfer your allocated space on SiteStart™ to any third party; or (l) link your Website on SiteStart™ to Information not allowed on SiteStart™ under these Terms and Conditions of Service. McQuillans does not control, actively monitor or review the Information uploaded, posted, transmitted or made available on or through SiteStart™ and shall not be responsible for any Information and does not guarantee the accuracy, integrity or quality of such Information. You understand that by using SiteStart™, you may be exposed to Information that is offensive, indecent or objectionable.

## **6.0 INFORMATION POSTED ON SITESTART**

By transmitting, uploading, posting or submitting any Information to SiteStart™ you (a) declare such Information is not confidential, secret or proprietary information; (b) warrant that no other party has rights to the Information and that your transmission, posting, uploading or submission of the Information to SiteStart™ does not violate any copyright or other laws; and (c) irrevocably grant McQuillans, a worldwide, royalty free, non-exclusive perpetual, worldwide license to use, display, perform, distribute, modify, reproduce and publish the Information in any form anywhere. You must evaluate, and bear the risk associated with, the accuracy, completeness or usefulness of any Information available on or through SiteStart™. McQuillans shall not be obligated to actively monitor, review, or otherwise control in any manner, the Information users post, upload or transmit through SiteStart™. However, McQuillans reserves the right but not the obligation, in its sole discretion, to refuse or remove any Information available on or through SiteStart™. Without limiting the foregoing, McQuillans shall have the right to remove any Information that violates these Terms and Conditions of Service or is otherwise objectionable in McQuillans's sole opinion. The information on SiteStart™ may include inappropriate material. By entering or using SiteStart™ you undertake full responsibility to: (a) determine whether the information complies with your needs (b) determine whether you have adequate legal rights to store, reproduce or otherwise use the information in any manner contemplated by you and (c) comply with any legal obligations, including without limitation obligations imposed by copyright, trade secret, defamation, indecency, online conduct and acceptable content, privacy and export laws. If you do not agree to these Terms and Conditions, do not enter or use SiteStart™.

## **7.0 THIRD PARTY LINKS**

Some portions of the SiteStart™ or users' Websites available on or through SiteStart™ may include links to third party sites. These links allow you to exit these Websites and enter third party or other users Websites. These links are provided only as a convenience. The linked Websites are not reviewed, controlled or examined by McQuillans and McQuillans is not responsible for the Information, advertising, products, resources or other material, of any linked site or any link contained in a linked site. The inclusion of any link does not imply endorsement of the linked site by McQuillans. In no event shall McQuillans be liable, directly or indirectly, to anyone for any damage or loss arising from or occasioned by the creation, use or reliance, on the third parties' Websites or the Information, advertising, products, resources or material accessed through these Websites. McQuillans reserves the exclusive right in its sole discretion to add, decline or remove, without warning, any icon or link to a Website, from SiteStart™ and SiteStart™ user amended Websites.

## **8.0 FEES AND PAYMENTS**

You will pay McQuillans the fees related to your Website as set forth in the Order Confirmation Form and Upgrade Order Confirmation Form (if any) and they form part of this SiteStart TCOS. You agree to pay all fees and charges incurred by you or any third party using your Service account (whether or not authorised by you) at the rates in effect for the billing period in which such fees and charges are incurred, including, but not limited to applicable taxes, and charges for any products or services offered for sale through the Service by McQuillans or by any third party. Your right to use the Service is subject to any limits established by your credit card company if billing is through a credit card. You shall be responsible for obtaining all telephone, telephone access lines, computer equipment and other products or services necessary to access and use the Service. You shall be responsible for all charges associated with accessing and maintaining a connection to the Service (e.g., charges imposed by an Internet access provider, or your local telephone company). All amounts in this SiteStart TCOS are payable in Australian dollars. Late payments will bear interest at the rate of one percent (1%) per month (being 12% per annum). In the event of any failure by you to make payment, you will be responsible for all reasonable expenses (including legal fees) incurred by McQuillans in collecting such amounts. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this SiteStart TCOS are exclusive of GST.

## **9.0 THE TERM AND CANCELLATIONS**

The initial term of the SiteStart TCOS will be 24 months from the date of this SiteStart TCOS. The initial term will automatically renew for successive periods at renewal rates applicable at the time and bill the then-current renewal fee to the same credit card or credit line your original subscription fee was billed to, or to the current credit card we have on our files. McQuillans will have the right, but not the obligation, to review any Website for compliance with the SiteStart TCOS as part of the renewal process, or at any time. You may cancel your SiteStart™ account at any time by notifying McQuillans in writing. If your account is cancelled prior to the end of the contract term, but after your website is built you will not be entitled to a refund of any monies. If your account is cancelled before we start to register, delegate or build your website you will be entitled to a refund of all monies except a \$150 (including GST) administration fee. You are responsible for all charges incurred up to the time the account is terminated, including the balance of the initial 24 month contract hosting charges or quarterly hosting charges applying after the end of the initial 24 month period. McQuillans reserves the right to change the amount of any fee or charge for the Service or to institute new fees or charges, effective on at least 30 days prior notice. McQuillans reserves the right, in its sole discretion, to restrict, suspend or terminate your access to all or any part of the Service at any time for any reason without prior notice or liability. McQuillans may change,

suspend or discontinue all or any aspect of the Service at any time, including the availability of any Service feature, database, or content, without prior notice or liability.

## **10.0 DISCLAIMER OF WARRANTIES**

You expressly agree that entering or using of SiteStart™ is at your own risk. No warranty, representation, condition, undertaking or term - express or implied, statutory or otherwise - including but not limited to the condition, quality, durability, performance, accuracy, reliability, non-infringement, merchantability, or fitness for a particular purpose or use of SiteStart™ is given or assumed by all such warranties, representations, conditions, undertakings and terms are hereby excluded. McQuillans makes no warranty that SiteStart™ will meet your requirements, or that SiteStart™ will be uninterrupted, timely, secure, or error free; McQuillans makes no representations as to the suitability of the information available on or through SiteStart™, including but not limited to user amended sites, for any purpose nor about its legitimacy, legality, validity, accuracy, correctness, reliability, quality, stability, completeness or currency. All such information on the user amended sites is provided by the users. The information available on or through SiteStart™ user amended sites is not reviewed, controlled or examined by McQuillans in any way before it appears on SiteStart™. McQuillans does not endorse, verify or otherwise certify the contents of any such information. Users are solely responsible for the contents of their websites and may be held legally liable or accountable for the contents of their websites (including without limitation in connection with infringement of intellectual property rights of any other party). McQuillans does not warrant or guarantee: (a) that any information available on or through SiteStart™ will be free of infection by viruses, worms, trojan horses or anything else manifesting contaminating or destructive properties; (b) that the information available on or through SiteStart™ will not contain adult-oriented material, or material which some individuals may deem objectionable; or (c) that the functions or services performed by McQuillans will be uninterrupted or error-free or that defects in SiteStart™ will be corrected. It is the sole responsibility of the user to isolate software and information, execute anti-contamination software and otherwise take steps to ensure that software or information, if contaminated or infected, will not damage user's information or system.

## **11.0 LIMITATION OF LIABILITY**

In no event shall McQuillans be liable to any party for any damages, including without limitation any direct, indirect, special, punitive, incidental or consequential damages (including, but not limited to, damages for loss of business profits, business interruption, loss of programs or information, loss of profits or goodwill or loss of use of facilities or equipment), or any other damages arising - in any way, shape or form - out of the availability, use, reliance on, inability to utilise or improper use of SiteStart™ even if McQuillans shall have been advised of the possibility of such damages or is negligent, and regardless of the form of action, whether in contract, tort, or otherwise. Because some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, the above exclusions of incidental and consequential damages may not apply to you. In no event shall McQuillans be liable to any party for any delays, inaccuracies, errors or omissions with respect to SiteStart™ or the information or the transmission or delivery of all or any part thereof, for any damage arising therefrom or occasioned thereby, or for the results obtained from the use of information available on or through SiteStart™. You expressly agree that McQuillans shall not be responsible or liable for any loss of data, nor shall McQuillans be required to return any lost data, resulting from the suspension or deletion of user websites or websites, network or system outages, file corruption or any other reasons. McQuillans urges you to maintain backup versions of your website's content to guard against losses of any kind. You expressly agree that McQuillans shall not be liable for any information transmitted, uploaded, posted or made available on or through SiteStart. You expressly agree to indemnify and hold harmless McQuillans, its subsidiaries, affiliates, officers, agents, co-branders and other partners, and its and their respective employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) arising from or in connection with your Information, your use of or connection to SiteStart™, your violation of these Terms and Conditions of Service or your violation of any rights of any third party.

## **12.0 PRIVACY**

Your Information. McQuillans maintains information about you and your Website on McQuillans servers, including but not limited to your account registration information, your customer order information, sales information, and click-stream data ("Your Information"). You agree that McQuillans may use your Information in aggregate form (i.e., Your Information is not individually attributable to you) for marketing or other promotional purposes. You agree that McQuillans may disclose Your Information in the good faith belief that such action is reasonably necessary: (a) to comply with the law; (b) to comply with legal process; (c) to enforce the SiteStart TCOS; (d) to respond to claims that you or Website is engaged in activities that violate the rights of third parties; or (e) to protect the rights or interests of McQuillans, SiteStart or others; provided, however, that nothing in this section will impose a duty on McQuillans to make any such disclosures. You agree that McQuillans may delete customer credit card information from McQuillans servers 14 days after you retrieves such information, and may delete all other of Your Information from McQuillans servers at the end of each calendar year. Password. You will receive a password from McQuillans to provide access to and use of the Software and online Website

Services. You are entirely responsible for any and all activities that occur under your account and password. You agree to keep its password confidential, to allow no other person or company to use its account, and to notify McQuillans promptly if you has any reason to believe that the security of its account has been compromised. 9.3 Technical Access. You acknowledge and agree that technical processing of you Information is and may be required: (a) for the Service to function; (b) to conform to the technical requirements of connecting networks; (c) to conform to the technical requirements of the Service; or (d) to conform to other, similar technical requirements. You also acknowledge and agree that McQuillans may access your account and its contents as necessary to identify or resolve technical problems or respond to complaints about the Service.

### **13.0 MISCELLANEOUS**

McQuillans reserves the right in its sole discretion to (a) make improvements, corrections, adaptations, conversions and/or any other change in SiteStart™ and to any part thereof and/or to revise or modify these Terms and Conditions of Service; (b) change, limit, terminate, remove or cease to provide at any time, temporarily or permanently, SiteStart™ or any part thereof, to all users or any number thereof including without limitation the use of or access to SiteStart™, granted to you or to any other user, at any time, without notice, for any reason or no reason; (c) refrain from publishing on this site and delete or remove from SiteStart™, at its sole discretion, any Web page or Information or material provided for display, posted, uploaded or transmitted by any user or any part thereof; (d) establish a new operating and usage policy for SiteStart™ and change it at any time for any reason or no reason; and (e) cancel, change, hold, de-list, introduce different options and features to different users or refrain from publishing McQuillans numbers or any other details of the users using SiteStart™, at any time. These Terms and Conditions of Service do not grant to you or any other user any license or right in or to any patent, copyright, trademark, trade secret or other proprietary rights of McQuillans. McQuillans may revise or replace these Terms and Conditions of Service from time to time. You agree that your use of SiteStart™, beyond a period of 15 days after a notice of such change has been provided on the SiteStart™ network or Website for the first time, shall constitute your consent to the new or revised SiteStart™ Terms and Conditions of Service. Any reference made in this document to McQuillans or SiteStart™ shall be deemed to have been made to McQuillans, its suppliers, co-branders and licensors and each of their subsidiaries, successors, assignees, affiliates as well as any company that controls SiteStart™, directly or indirectly, and any other subsidiary of that controlling company. You agree not to resell or assign or otherwise transfer its rights or obligations under the SiteStart TCOS without the express written authorisation of McQuillans, and any such resale, assignment or transfer without consent will be null and void. Neither party will be liable to the other for any delay or failure in performance under the SiteStart TCOS resulting directly or indirectly from acts of nature or causes beyond its reasonable control.

### **14.0 GENERAL**

Any notices or communications under the SiteStart TCOS will be by electronic mail or in writing and will be deemed delivered upon receipt to the party to whom such communication is directed, at the addresses specified below. If to McQuillans, such notices will be addressed to [info@sitestart.com.au](mailto:info@sitestart.com.au) or 16 Bruce Street, Leederville WA 6007, Australia. If to you, such notices will be addressed to the electronic or mailing address specified when you open an account with SiteStart, or such other address as either party may give the other by notice as provided above. The SiteStart TCOS constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous proposals, both oral and written, negotiations, representations, writings and all other communications between the parties. The SiteStart TCOS and the relationship between you and McQuillans will be governed by and construed in accordance with the laws of the state of Western Australia. You and McQuillans unconditionally agree to submit to the personal and non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts. McQuillans's failure to exercise or enforce any right or provision of the SiteStart TCOS will not constitute a waiver of such right or provision. If any provision of the SiteStart TCOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties intentions as reflected in the provision, and agree that the other provisions of the SiteStart TCOS remain in full force and effect. you agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the SiteStart TCOS must be filed within one (1) year after such claim or cause of action arose, or be forever barred. The section titles in the SiteStart TCOS are for convenience only and have no legal or contractual effect.