

## **Walk Different Services Terms and Conditions**

This Agreement is made between you and Walk Different ABN 45 489 258 986 of PO Box 394 Figtree NSW 2525. By using the Walk Different services you are indicating your acceptance of this Walk Different Services Terms and Conditions, the Walk Different Website Terms of Use and the Walk Different Privacy Policy and agree to be legally bound by them.

### **1. Definitions and interpretation**

**‘Commencement Date’** means the date on which you agree to the Walk Different set of terms and conditions indicated above in the Recitals.

**‘Confidential Information’** means all information provided by one party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding:

- (a) information that enters the public domain or is disclosed to a party by a third party, other than through a breach of this Agreement, and
- (b) information developed independently by a party.

**‘Documentation’** means any and all proprietary documentation made available to you by Walk Different including any documentation available online.

**‘Fees’** means cost of the Walk Different services.

**‘Force Majeure Event’** means any event beyond the control of the relevant party.

**‘GST’** has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth), or any other similar tax.

**‘Intellectual Property Rights’** means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

**‘Meanings’** Unless the context requires otherwise:

- (a) a reference to a person includes a corporation or any other legal entity;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience and do not form part of this Agreement or otherwise affect the interpretation of this Agreement;
- (d) the term "includes" (or any similar term) means "includes without limitation"; and
- (e) a reference to any statute includes references to any subsequently amended, consolidated or re-enacted version of that statute and all delegated legislation or other statutory instruments made under it.

**‘Services’** means the Walk Different services and any documentation .

### **2. Grant of Licence**

2.1 Walk Different grants you a personal, non-exclusive, world-wide, non-transferable, perpetual licence to use the Walk Different services and the documentation, subject to and in accordance with the terms and conditions set out in this Agreement.

2.2 You must not:

- (a) use the Services for any purpose or in any manner other than as set out in clause 2.1;
- (b) use the Services in any way that could damage the reputation of Walk Different or the goodwill or other rights associated with the Services;
- (c) permit any third party to use the Services;

- (d) reproduce, make error corrections to or otherwise modify or adapt the Services or the Documentation or create any derivative works based upon the Software or the Documentation;
- (e) modify or remove any copyright or proprietary notices on the Services or the Documentation.

### **3. Intellectual Property Rights**

- 3.1 Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights.
- 3.2 You acknowledge that Walk Different owns all Intellectual Property Rights in the Walk Different services.
- 3.3 You must not directly or indirectly do anything that would or might invalidate or put in dispute the Walk Different **Trade Marks**.
- 3.4 You must comply with the Walk Different usage guidelines and directions with respect to the services and the Trade Marks as notified to you from time to time.

### **4. Payment**

- 4.1 You must pay the Walk Different scheduled Fees.
- 4.2 The Walk Different payment policy is compliant with the [PayPal Acceptable Use Policy](#) and the [Paypal Buyer Protection Policy](#).

### **5. GST**

- 5.1 All amounts payable under this Agreement are expressed exclusive of GST.
- 5.2 In respect of any taxable supply, you must pay to Walk Different an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Fees, subject to the receipt by you of a valid tax invoice.

### **7. Confidentiality**

- 7.1 A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.
- 7.2 A party may:
  - (a) use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and
  - (b) disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- 7.3 A party must be aware that they **may be seen** by someone they know, when participating in the Walk Different program.

### **8. Liability**

- 8.1 To the full extent permitted by law, Walk Different excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages.
- 8.2 To the full extent permitted by law, Walk Different excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.
- 8.3 Walk Different's total aggregate liability for all claims relating to this Agreement is limited to the Fees payable under this Agreement.
- 8.4 Either party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.

## **Limitation of liability**

- 8.5 You acknowledge that you use the Services at you own risk and you act on the basis of any advice given by Walk Different at your own risk. You agree that any employee or agent, or subcontractor of Walk Different providing advice on behalf of Walk Different is not liable for any loss, damage or injury occasioned to the you arising from or caused by the provision of the Services, advice or support under this Agreement or the use made by you.
- 8.6 This Agreement is to be read subject to any legislation, which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions or obligations. If such legislation applies, to the extent possible, Walk Different limits its liability in respect of any claim to, at Walk Different's option:
- (a) in the case of goods:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;  
or
    - (iv) the payment of having the goods repaired, and
  - (b) in the case of services:
    - (i) the supply of the services again; or
    - (ii) the payment of the cost of having the services supplied again.

## **9. Termination**

- 9.1 A party may terminate this Agreement by written notice to the other if any of the following events has occurred in respect of the other party:
- (a) a material breach of this Agreement which is not remediable or if capable of remedy, where the other party fails to remedy within 14 days of written notice;

## **10. Consequences of Termination**

- 10.1 If this Agreement is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available:
- (a) the parties are immediately released from their obligations under the Agreement except those obligations in clauses 7, 8 and 10, and any other obligations that, by their nature, survive termination;
  - (b) each party retains the claims it has against the other;
  - (c) your right to use the Services and the Trade Marks immediately ceases and the licences granted under this Agreement terminate;

## **11. General**

- 11.1 You must not assign, sublicense or otherwise deal in any other way with any of its rights under this Agreement without the prior written consent of Walk Different.
- 11.2 Nothing contained in this Agreement creates any relationship of partnership or agency between the parties.
- 11.3 If a provision of this Agreement is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 11.4 Each party must at its own expense do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.
- 11.6 This Agreement (and any documents executed in connection with it, the Walk Different

Website Terms of Use and the Walk Different Privacy Policy) is the entire Agreement of the parties about its subject matter and supersedes all other representations, arrangements or agreements. Other than as expressly set out in this Agreement, no party has relied on any representation made by or on behalf of the other.

- 11.7 This Agreement may be amended only by a document signed by all parties.
- 11.8 A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.
- 11.9 A party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.
- 11.10 Without limiting any other right to terminate under this Agreement, if a Force Majeure Event affects a party's performance under this Agreement for more than thirty (30) consecutive days, the other party may immediately terminate this Agreement by written notice.
- 11.11 This Agreement and the Schedule 1 Walk Different New Client Form represents the entire agreement between the parties and replaces all representations.
- 11.12 This Agreement is governed by the laws of New South Wales and each party submits to the jurisdiction of the courts of New South Wales, Australia.