

TERMS & CONDITIONS

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE SUBSCRIBING TO THE TM INFO-MEDIA SDN. BHD. (“TMIM”) SERVICE. BY INDICATING YOUR ACCEPTANCE TO THE SERVICE, YOU (“CUSTOMER”) ARE DEEMED TO HAVE ACKNOWLEDGED AND AGREED TO BE BOUND BY ALL THE TERMS AND CONDITIONS HEREIN. TMIM RESERVES THE RIGHT TO ADD, MODIFY, DELETE OR REVISE THE TERMS AND CONDITIONS FROM TIME TO TIME WITH NO OBLIGATION FOR NOTICE. CONTINUATION OF ACCESS OR USE OF THE SERVICE SIGNIFIES ACCEPTANCE OF THE CHANGES TO THE TERMS AND CONDITIONS.

1. DEFINITION

In this Agreement where the context so admits, the following expression shall have the meanings designated unless otherwise distinguished:-

“**Agreement**” means the terms and conditions stipulated herein;

“**Contract Date**” means the date when TMIM accepts and approves the request for the advertisement from the Customer;

“**Online Transfer**” means payment of Subscription by the customer from customer’s bank account to TMIM’s bank account by electronic or Internet means (i.e. online banking/ cash deposit machine).

“**Duration of Contract**” the duration of this Agreement shall commence from the Contract Date and shall continue for one (1) year unless otherwise terminated earlier in accordance with the provision of this Agreement (“Initial Term”). Upon the expiry of Initial Term, this Agreement is automatically be renewed on a monthly basis unless earlier terminated in accordance with the provision of this Agreement (“Subsequent Term”).

“**Official Publication Date**” means the date when TMIM announces to the public in the available media that the directory is available for collection or viewing at TMIM’s website;

“**Digital Marketing Solutions**” means an integrated marketing solution for businesses which increase business presence and promote business online via digital platform which comprises of Yellow Pages Digital, Instaweb, Google Ads and Facebook Ads (hereinafter referred to as “Service”);

“**Yellow Pages Digital**” means the Customer’s business listing displayed on www.yellowpages.my.

“**Instaweb**” means the website building services provided by Etesha Sdn Bhd, being a partner of TMIM.

“**Facebook Page**” means a public profile page on Facebook specifically created for businesses, brands, celebrities, causes and other organizations;

“**Free Trial**” means 30-day free access to Website Builder for Customer to experience the Service before subscribing to it;

“**Subscription**” means the action of Customer agreeing to the Agreement herein and using the Service by making payment to TMIM;

“Website Builder” means an online portal that contains the tools to manage and make changes or additions to the website.

“Parties” means TMIM and the Customer collectively;

2. LISTING OF CUSTOMER’S TELEPHONE NUMBER

2.1. The Customer hereby consents to the listing of its registered telephone number in the Yellow Pages Digital or any other directories published by TMIM or the posting of such information at TMIM’s website. TMIM reserves the right at all times to use the Customer’s registered telephone for the purpose of marketing and/or promoting of TMIM’s commercial product and consent for the aforementioned is hereby given by the Customer.

3. SIGNATORIES PROPERLY AUTHORISED/WARRANTY

3.1. The Customer warrants that he/she is authorised and entitled to advertise the business service or products described in this Agreement, copy sheet and customer proof furnished by TMIM. In the event this Agreement is being signed on behalf of the Customer by any person (“the Signatory”), the Customer warrants that the Signatory has the authority to enter into this Agreement on behalf of the Customer and bind the Customer accordingly.

3.2. The Customer is solely responsible for the information and content of the advertisement and warrants that all particulars and information provided in this Agreement are true in every respect and undertake to immediately notify TMIM of any change in such information.

3.3. The Customer shall be solely responsible for ensuring that all licences, permits, consents, approvals and intellectual property or other rights as may be required for providing the advertisement has been obtained.

3.4. The Customer shall ensure that the information and content provided for the advertisement are in compliance with and not in contravention of all applicable laws of Malaysia including but not limited to the Communications and Multimedia Act 1998 or any by-laws, rules, regulations or other subsidiary legislation under such Act, or any directions, order, requirement or instruction whatsoever given by any authority competent to do so under any written law.

3.5. The Customer shall ensure that the information and content for the advertisement will not infringe any intellectual property rights of any person.

3.6. The Customer represents and warrants that the use, reproduction distribution or transmission of the advertisement will not violate any applicable laws, regulations or any rights of any person or third parties, including but not limited to, such violations as infringement or misappropriation of any copyright, patent, trademark, trade secret, music, image, or other proprietary or property right, false advertising, unfair competition, defamation, invasion of privacy or rights of any person, celebrity, or any other rights of any person or entity.

4. INTELLECTUAL PROPERTY

- 4.1. All copyright in the advertisement & campaign item requested herein will vest in TMIM and the Customer is not permitted to reproduce all or any part of the advertisement without & campaign item TMIM's prior written approval.
- 4.2. By advertising on Yellow Pages Digital or any other directories published by TMIM, the Customer allows TMIM the usage of its copyright including brand name, visuals and content of advertisement for the purpose of promotions in relations to TMIM products.
- 4.3. The Customer shall defend any claim, suit or proceedings brought against TMIM so far as it is based on a claim that the advertising item or the content within the advertising item infringes the Intellectual Property Rights of any third party. The Customer shall indemnify TMIM against all damages and costs in any judgements entered in such a suit by a court of competent jurisdiction or proceedings and against settlements and costs arising out of such claim, suit or proceedings.
- 4.4. If any allegation or determination of infringement of Intellectual Property Rights is made in relation to the advertising item or the content within the advertising item, the Customer shall at its own expense:
- a) Edit or modify the advertising item or the content within the advertising item in order to avoid continuing infringement; or
 - b) Procure the right to use the advertising item or the content within the advertising item in accordance with this Agreement.

5. ADVERTISING & CAMPAIGN ITEM

5.1. Yellow Pages Digital

- a) The Digital Marketing Solution advertising item uploaded in Yellow Pages Digital shall comply with TMIM policies and relevant law.
- b) No specific position or paging is guaranteed for any listing.
- c) The name, address and telephone number of the Customer wherever appearing in Yellow Pages Digital will be as provided by the Customer.
- d) The classified headings will conform to the standard terms used by TMIM. TMIM shall have the absolute discretion to change all the listing item to conform TMIM practices.
- e) Photo and image is dependent upon the quality of the original supplied photo or image. Small or fine text especially used as reserves or colour text may not always be legible when the same has been uploaded in Yellow Pages Digital.
- f) Customer are given 3 working days to provide photo or image to TMIM. If TMIM do not receive any feedback after the given time, TMIM will published listing automatically based on customers' company name, SSM, email & contact number
- g) Customer may update/amend their listing by login to Yellow Pages Digital account using the login details provided by TMIM.

5.2. Instaweb

- a) The Customer shall be given access to the Free Trial of the Website Builder prior to the Subscription.
- b) The access to the Free Trial shall commence immediately after the website is created at the authorised portal as designated by TMIM.
- c) Upon expiration of the Free Trial period, the Customer may continue with the Subscription of the Service.
- d) The access to the Service upon Subscription shall commence after the completion of the following:
 - i. Subscription form with valid and legitimate information of the Customer is completed;
 - ii. Subscription payment is made via the authorised portal and in accordance to Clause 9;
 - iii. Payment is received in TMIM's account; and
 - iv. Domain name is approved and released by TMIM.
- e) Domain name represents the identification or address of a website within the Internet realm.
- f) The Customer may choose a domain name to represent its website subscribed under the Service. However and in the event where the domain name chosen by the Customer is unavailable, then the Customer will be immediately prompted and another domain name shall be selected. For avoidance of doubt, TMIM will only process a domain name that is still available and has not been taken by any other party.
- g) TMIM provides the domains such as ".com", ".net", ".biz" and ".org" only.
- h) For country code top-level domain that ends with ".my", an additional cost will be imposed ("Domain Payment"). Upon making the Subscription fee as stated under Clause 5.2.d)ii., the Customer is required to send a written request to TMIM via e-mail to wecare.enquiry@tm.com.my and shall thereafter allow an additional fourteen (14) days for TMIM to process the Customer's request ("Processing Period"). For avoidance of doubt, the Processing Period begins after the payment is received in TMIM's account as stated under Clause 5.2.d)iii
- i) In the event where the domain name as requested under Clause 5.2.f) is unavailable, the Customer may request for a refund of the Domain Payment.

5.3. Facebook Ads and Google Ads

- a) Duration of Facebook Ads and Google Ads (Campaign) is one (1) month. The campaign will be run only after full payment of the Subscription from the Customer is received. If the payment is delay, it will affect campaign duration.
- b) Campaign cost is included 25% of management fee.
- c) The ad format for Facebook Ads are Still Image, Carousel, Slide Show, Video or Promo Video (Graphic 20 second). The ad format for Google Ads is Google Keyword Search.
- d) Customer are required to provide own materials (i.e. logo, product image, video etc.) for campaign to run. If TMIM do not receive any feedback from customer, TMIM will not run the campaign and it will affect campaign duration.
- e) Customer are given 3 working days to approve a Campaign design. If TMIM do not receive any feedback or approval after the given time, TMIM will take it as the design has been approved and the design will be published automatically.
- f) Customer are given one (1) chance to amend a Campaign design before the Campaign is activated. Once Campaign activated, customer are given one (1) more chance to amend the Campaign design in a year of subscription.

- g) Customer may choose to add on Campaign to their chosen packages. This will act as a one-time campaign with the duration of one (1) month.
- h) TMIM shall use its best endeavours to ensure the efficiency of the Campaign. TMIM makes no warranty of any kind, either expressed or implied, and expressly disclaims all implied warranties on total reachability or total impressions from the Campaign.

5.4. TMIM reserves the right to remove the advertising & campaign item at any time if TMIM is of the view of such advertising & campaign item contravenes with TMIM policies & relevant law.

6. CUSTOMER'S RESPONSIBILITIES

6.1. The Customer agrees that it shall:

- a) allow access to its Facebook Page and its content to create a website using the Service;
- b) be solely responsible for the content published on Facebook Page and website and ensure that the content does not contravene any laws, regulations and directions by the local authorities, regulators or censorship bodies in Malaysia and that the content does not contain material or activities that are threatening, obscene, disparaging or hate related, abusive, containing materials of pornography, nudity, erotica or sex related merchandising and includes promotions of any illegal or prohibited activities;
- c) ensure its business operation is valid, legitimate and in compliance with all applicable Malaysian Laws;
- d) make duly payment for the Subscription of Service herein;
- e) be responsible of other accounts and registrations of tools related to the Service;
- f) not resell, share or sublet the Service to third parties without prior written consent from TMIM;
- g) comply with all notices or instructions or directions issued by TMIM from time to time in respect of the use of the Service;
- h) comply with the rules of any network to which the Customer has access through the Service;
- i) be solely responsible for all information retrieved, stored and transmitted by the Customer through the use of the Service;
- j) abide and adhere to the terms and condition of this Agreement;
- k) not use the Service in any manner, which in the opinion of TMIM may adversely affect the use of the Service by other Customers or efficiency or security as a whole;
- l) ensure that the contents, images, materials and information created from the Facebook page which are used for the purpose of the Service herein do not infringe intellectual property rights of any person or third party; and
- m) comply with all the applicable laws and regulations of Malaysia.

7. DELETION AND OMISSION

7.1. In the event of any deletion, error or omission howsoever arising in any or all of the advertising items in Yellow Pages Digital or any other directories or media published by TMIM or the posting of the advertisement at TMIM's website, the Customer's sole remedy is a pro-rated amount of the Subscription subject to the following:

- a) Such deletion, error or omission affects the entire advertisement or listing and not minor deletion, error or omission that does not affect the presentation of the

advertisement. However, TMIM has the final decision as to the gravity of the deletion, error or omission and whether such deletion, error or omission would warrant a pro-rated amount of the Subscription; and

b) TMIM has the final and sole discretion as to the final amount to be pro-rated.

8. DURATION OF PUBLICATION / NON PUBLICATION

- 8.1. The Digital Marketing Solution items described in this Agreement will appear in Yellow Pages Digital or any other directories or media published by TMIM or posted on TMIM's website at any time during the current publication year at TMIM's sole discretion. TMIM is not liable for any claims from the Customer and/or Signatory for any late publication or posting.
- 8.2. TMIM reserves the right not to publish or post any or all of the advertising & campaign items requested by the Customer without giving any reason whatsoever to the Customer notwithstanding any entry that may appear in this Agreement, the copy sheet and/or the Customer's proof.
- 8.3. If full payment of the Subscription has been received by TMIM but any of the advertising & campaign items is not published or posted during the current publication year, TMIM shall refund the payment for the said advertising item within ninety (90) days after the end of the Publication Year.

9. PAYMENT

- 9.1. The mode of payment shall be as selected by the Customer either Online Transfer or Cheque.
- 9.2. If customer choose to pay via Cheque, customer need to bank in to TMIM's account
- 9.3. TMIM shall issue invoice based on the payment term selected by the Customer either monthly or yearly basis.
- 9.4. Billing and notifications (if deemed necessary by TMIM) may be issued and forwarded to the customers' email address.
- 9.5. Customer payment cycle will follow the date of the invoice.
- 9.6. Payment of the Subscription as stated in invoice is to be paid within thirty (30) days from the date of invoice.
- 9.7. For Service to activated, upon making the payment of the Subscription, the customer is obligated to send a proof of payment to TMIM via e-mail to wecare.instaweb@tm.com.my.
- 9.8. Customers' accounts that are outstanding for three (3) consecutive months will be suspended. Upon suspension, the Customer may, at the discretion of TMIM, be allowed to reconnect to the subscription by paying the full amount of outstanding invoices with an additional reconnection fee of RM10.
- 9.9. For the avoidance of doubt, the Customer's responsibility to fully pay TMIM the Subscription and any payment charges imposed shall remain and survive the expiry or termination of this Agreement.
- 9.10. TMIM reserves the right at all times to use any other means permitted by law to recover any/all amounts outstanding to TMIM

10. AMENDMENT, CANCELLATION OR TERMINATION

- 10.1. Any amendment, cancellation or termination of this Agreement shall only be made by the Customer with prior written notice duly acknowledged by TMIM within fourteen (14) days from the Contract Date ("Cancellation Window Period")

- 10.2. A twenty percent (20%) Cancellation Fee (“Cancellation Fee”) of the Subscription will be charged if any amendments, cancellation or termination is made after the expiry of the Cancellation Window Period.
- 10.3. The Customer may at the discretion of TMIM be allowed to reduce the size of the advertisement & campaign item subject to the Cancellation Fee.
- 10.4. Subscription fees are due thirty (30) days from the date of invoice. Customers’ accounts that are outstanding for three (3) consecutive months will be suspended. Upon suspension, the Customer may, at the discretion of TMIM, be allowed to reconnect to the subscription by paying the full amount of outstanding invoices with an additional reconnection fee of RM10.
- 10.5. This Agreement may be terminated by giving thirty (30) days prior written notice by either Party if:
- a) any of the warranties and representations under Clause 3 are untrue; or
 - b) it is required by law; or
 - c) winding up petition has been served to the other party; or
 - d) if the other party becomes insolvent or bankrupt, assigns all or a substantial part of its business or assets for the benefit of its creditor(s), permits the appointment of a receiver or a receiver and manager for its business or assets, or becomes subject to any legal proceedings relating to insolvency, reorganization or the protection of creditors’ rights or otherwise ceases to conduct business in the normal course; or
 - e) upon occurrence of a Force Majeure event, which continues for a period of thirty (30) days; or
 - f) either party commits a material breach of this Agreement which is not capable of remedy; or
 - g) the other party breaches this Agreement and the defaulting party has been given a written notice specifying the act of default and required to rectify the default within fourteen (14) Days of the notice; and the defaulting party failed to so rectify or remedy the breach.
- 10.6. Customer who wishes to terminate the Agreement during the Initial Term shall be liable to pay the outstanding subscription fee to TMIM before the date of termination (if any) and the subscription fee for the remaining duration of Initial Term. (calculation: Outstanding amount + (Subscription fee X Remaining month of the contract period))
- 10.7. Termination by TMIM
- a) Notwithstanding the above, in the event the Customer commits a breach or potential breach of any term herein, TMIM reserves the right to take necessary action including but not limited to termination of this Agreement. TMIM shall take all reasonable effort to notify the Customer of any breach or potential breach prior to such termination.
 - b) TMIM reserves the right to terminate the Agreement without assigning any reason by giving thirty (30) days written notice to the Customer.
- 10.8. The termination of this Agreement shall not prejudice the rights of TMIM to sue for damages or to obtain any other relief in respect of any antecedent breach of the terms of this Agreement prior to such termination.

11. ADVERTISEMENT COMPLAINT

- 11.1. Any complaint on Customer’s advertisement after the publication of the advertising items in Yellow Pages or any other directories or media published by TMIM or the posting of the advertisement at TMIM’s website, must be made within thirty (30) days from the receipt of a copy of the directory through a written notice to TMIM.
- 11.2. Complaints filed or received after the stipulated timeline will not be entertained and TMIM is not responsible or liable to the Customer for any loss, damages or cost suffered or incurred due to the publication of the advertising items.

12. WAIVER

12.1. Failure or neglect by TMIM to enforce any of the provisions in this Agreement shall not be construed nor shall it be deemed to be a waiver of its rights hereunder nor shall such failure or neglect in any way affect the validity of the whole or any part of this Agreement or prejudice TMIM's rights to take subsequent action.

13. HEADINGS

13.1. The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to affect the meaning or interpretation of any of the terms and conditions of this Agreement.

14. LIMITATION OF LIABILITY

14.1. TMIM shall not be liable to the Customer whether such liability is asserted on the basis of contract, tort (including negligence and strict liability) or other legal or equitable grounds, for any economic loss and loss of interest, loss of profits, loss of goodwill loss of business, loss of data or its use or loss of revenue or any consequential, indirect, incidental, special, punitive and/or exemplary damages suffered by the Customer arising out of or in relation to this Agreement.

14.2. Notwithstanding anything to the contrary, TMIM's entire liability under this Agreement shall be limited to the amount of the Subscription.

15. INDEMNITY

15.1. The Customer hereby irrevocably undertakes to indemnify in full and hold TMIM harmless from any and all costs, expenses, losses, damages, liabilities, proceedings, claims and demands (including agency and solicitors fees, costs and court fees) whatsoever arising out of or in any way caused by the advertising copy, printing or listing of the same in Yellow Pages Digital or posting at TMIM's website in the event that it becomes necessary for TMIM to institute or defend any legal proceedings of any nature in order to enforce or protect its rights in respect of or arising from this Agreement.

16. AMENDMENT AND MODIFICATION

16.1. TMIM reserves the right to add, delete, alter or amend any of these terms and conditions at any time by giving notice to the Customer through any mode that TMIM deems fit and shall become effective and binding on the date as notified by TMIM.

17. NOTICE

17.1. The Customer hereby irrevocably consents to the service of any notice under this Agreement by post to the address stated in this Agreement and such service shall be deemed effective three (3) days after posting.

18. SEVERABILITY

18.1. If any of the provision of this Agreement becomes invalid, illegal and unenforceable in any respect under the law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired.

19. STAMP DUTY

19.1. The Customer shall bear all costs and expenses incurred by TMIM in enforcing this Agreement or in bringing any action or proceeding to recover any money, costs and expenses due and payable by the Customer to TMIM. The stamp duty shall be payable by the Customer.

20. GOVERNING LAW AND JURISDICTION

20.1. This Agreement is governed by in all respects and shall be construed according to the Laws of Malaysia and the Court of Malaysia shall have exclusive jurisdiction.

21. SUCCESSORS-IN-TITLE

21.1. This Agreement shall be binding upon the heirs, assigns, personal representative and successors-in-title and assigns of the Parties.

22. SALES AND SERVICE TAX

22.1. All fees under this Agreement are exclusive of any taxes, levies, duties or similar governmental charges including but not limited to the Sales and Service Tax ("Taxes") required to be paid by law and the fees and Taxes shall be payable to TMIM by the Customer in full. In the event where Taxes are required to be paid by law, TMIM is obliged to charge and the Customer shall pay such Taxes in addition to the fees in full.

23. TIME

23.1. Time wherever mentioned herein shall be of the essence of this Agreement.

24. FORCE MAJEURE

24.1. TMIM shall not be in breach of its obligations under this Agreement if it is unable to perform or fulfil any of its obligations under this Agreement (or any part of it) as a result of Force Majeure event. "Force Majeure" shall mean:

- a) War (whether declared or not), hostilities, invasion, act of foreign enemies;
- b) Insurrection, revolution, rebellion, military or usurped power civil war or act of terrorism;
- c) Natural catastrophes including but not limited to earthquakes, flood, tsunami or any operation of the force of nature against which TMIM could not reasonably have been expected to take precautions;
- d) Nuclear explosion, radioactive or chemical contamination or radiation; and
- e) Pressure wave caused by aircraft or other aerial devices travelling at sonic or supersonic speed.

25. ASSIGNMENT

25.1. The Customer may only assign its rights under this Agreement to a third party with prior written consent of TMIM. TMIM may assign or novate this Agreement or any part thereof to any entity within TM group of companies and consent for the aforementioned is hereby given by the Customer.

26. ENTIRE AGREEMENT

26.1. This Agreement shall constitute the entire agreement between the Parties hereto and shall supersede all other agreements, correspondence, discussions or understandings with respect to or in connection with any of the matter to which this Agreement refers to.

27. CONFIDENTIALITY

27.1. The Customer shall keep confidential the content of this Agreement, and not disclose the same to others except to the minimum extent:

- a) required by laws;
- b) required by a lawful authority (including a court or regulator);
- c) disclosure to its authorised representative for the purpose of this Agreement; or
- d) agreed in writing between the parties.

28. PERSONAL DATA PROTECTION

28.1. Definitions

“Personal Data” shall have the meaning as defined in the Personal Data Protection Act 2010.

28.2. Data Sharing

The Customer hereby acknowledges that TMIM shall have the right to share the Customer’s data with TMIM’s related companies for the purpose of marketing activities in respect of products and services of TMIM and/or its related companies from time to time as TMIM deems fit provided always that TMIM and its related companies shall observe the applicable confidentiality obligations as imposed by law or by contract and shall abide by the same strictly.

28.3. Data Protection

Customer agrees that it will comply and will procure warranties from any employees, agents and/or subcontractors that may process the Personal Data to:

- a) comply with all applicable data protection laws of Malaysia which shall include Personal Data Protection Act 2010;
- b) On the request from TMIM, provide an up-to-date copy of the Personal Data in the format supplied by TMIM and within any reasonable time periods required by TMIM.
- c) Integrity and Access to Customer’s Own Personal Information

28.4. The Customer will ensure that personal information and preferences provided to TMIM are accurate, complete and up to date. Any modification to the said information can only be done by the Customer. For any of personal information which cannot be directly rectified, the Customer may request TMIM to correct such information if it is incorrect/inaccurate or to delete it if it is no longer applicable or not required to be retained. However, TMIM reserves the right to decline to process requests which jeopardize