



DIGITAL SERVICES AGREEMENT

1. Services

1.1. In consideration of your payment of the Overall Total, we will perform the Services and provide the Deliverables in accordance with this Agreement and the Online Form, whether ourselves or through our Personnel or third-party providers.

1.2. If this Agreement expresses a time within which the Services are to be delivered to you by, you agree that such time is an estimate only.

1.3. If any services are not explicitly set out in the Online Form, these services will be excluded from this Agreement, unless expressly requested by you, and accepted by us, in writing, and in accordance with clause 4 of this Agreement.

2. Commencement Date

2.1. We will commence the performance of the Services within a reasonable time after the expiry of the Cooling Off Period and later of:

- (a) execution of this Agreement;
- (b) the receipt of payment of the Overall Total, first Monthly Fee payment or payment of the Deposit (if applicable); and
- (c) the satisfaction of any other conditions precedent contemplated by this Agreement.

2.2 The Commencement Date under this Agreement is the later of:

- a) first Business Day following the expiry of the Cooling Off Period; or
- b) the date all conditions in clause 2.1 are met.

3. Payment

3.1. You agree to pay us:

- (a) the Overall Total;
- (b) all Expenses; and
- (c) any other amount payable to us under this Agreement, in accordance with the Online Form or on any relevant invoice.

Upgrades/Downgrades

3.2. Depending on the Services we provide to you, you may upgrade the Services we provide by providing us with at least 2 weeks' notice in writing before the next billing date. You must pay us the difference in the Price as a result of this upgrade. For the avoidance of doubt, there will be no need for the Parties to re-execute the Agreement.

Monthly Fees

3.3. For any Services provided on a monthly fee basis, you will be subject to a Minimum Period. You must pay the full Overall Total during the Minimum Period. If applicable, the monthly fees (Monthly Fee) will set out in the Online Form or Key Terms.

Estimated Price

3.4. You agree we may provide you with an Estimated Price for Project Services, calculated in accordance with the Services and any Deliverables to be provided, as further particularised in the Online Form if applicable.

3.5. You agree an Estimated Price is an estimate only.

3.6. If circumstances arise which will increase the Estimated Price, we will contact you at our earliest convenience to explain the new circumstances and will provide you with a revised Estimated Price. We will suspend the Project Services, until you have agreed to any revised Estimated Price.

Payments

3.7. You may make payments of our invoices by bank transfer, by credit card, or by direct debit. If you select direct debit, your selected credit card or bank account will be charged on the due date of your invoice.

3.8. In the event that you have not paid for our Services within 30 days of our invoice due date, a charge of \$650 plus GST will apply. In the event that no payments have been made within 60 days of our invoice due date, an additional charge of \$850 plus GST will apply and we may refer your account to a debt collection agency which may impose further fees for pursuit of unpaid amounts. These charges represent our genuine estimate of the cost involved in pursuing payment of unpaid accounts and provisioning resources to provide the Services to you.

3.9. Unless permitted elsewhere in this Agreement, you will not be entitled to any part of the Services until the Amount Payable has been paid in full.

4. Variations

4.1. Subject to clause 4.2, you may request a variation or change to the Services, including the timing for the provision of the Services, (Variation) by providing written notice (including by email) to us, with details of the variation or change, (Variation Request).

4.2. We will not be obliged to comply with a Variation Request unless we:

- (a) accept the Variation Request, including any variation to the Overall Total to effect the Variation Request (Price Variation), in writing; and
- (b) the Overall Total has been adjusted to reflect the Price Variation.

4.3. If we consider that any instruction or direction from you constitutes a Variation, then we will not be obliged to comply with such instruction or direction unless a Variation Request has been issued in accordance with clause 4.1.

4.4. Where the Services are varied or changed, or the cost of providing the Services increases (Variation Event) and the cause of that Variation Event relates to, or is connected with, an event or circumstance beyond our reasonable control, you agree to pay us our additional costs and expenses that we may suffer or incur as result of the Variation Event, as a debt due and immediately payable.

5. Premises

5.1. You agree to provide us (and our Personnel) with reasonable access to the Premises (and the facilities at the Premises), and any other premises reasonably necessary for us to perform the Services, free from harm or risk to health or safety:

- (a) at the times and on the dates requested by us; and/or
- (b) to enable us to comply with our obligations under this Agreement or at Law.

6. Acceptance of Deliverables

6.1. If it is agreed between the Parties in writing (including via email), that a Deliverable will be subject to your acceptance, within 5 Business Days of receiving a Deliverable, you must notify us of your acceptance or tell us if you require any modifications, acting reasonably. If after 5 Business Days, you have not notified us of your acceptance or requested any modifications you will be deemed to have accepted the Deliverable.

6.2. You will be deemed to have accepted the Deliverable if you have used the Deliverable in a Non-Production Environment.

6.3. Where you request any modifications, in accordance with clause 6.1, we will perform one round of modifications where these are within the scope of the agreed Services and return the Deliverable to you for acceptance in accordance with clause.

6.4. This process may be repeated twice.

6.5. If following a second round of modifications, any further modifications are still required or if any of the requested modifications are outside of the agreed Services (in the Online Form or as otherwise agreed between the Parties) they will be considered a variation and will require you to submit a Variation Request.

6.6. We are not responsible for any delays caused by your failure to accept any Deliverables in a timely manner.

7. Ongoing Website Support

7.1. Where our Services include designing or developing a website for you, you agree that any ongoing support we offer for your website will continue for no more than 14 days after we deem to have completed the supply of the website Deliverable to you.

7.2. Unless agreed otherwise in the Online Form or any accepted Variation Request, any ongoing website support is limited to fixing minor bugs or processing functionality updates for the website, as reasonably determined by us, and where directly related to the website Deliverable as it was provided to you.

7.3. We reserve the right to refuse to provide support or charge further fees for ongoing support assistance where any bug or required update is caused by you.

8. Website Proof Disclaimer

8.1. It is your responsibility to ensure that the website proof is correct in all areas. Please be sure to check spelling and grammar, layout and design before approving artwork.

8.2. Simple artwork and design changes can be made at no cost. Substantial change that affects workflow or core design will be considered a Variation.

8.3. You are responsible for copyright, trademark use and licensing of images, logos and other symbols.

8.4. All artwork image concept, web design, and layout concept must be approved before a job enters our production environment.

8.5. Upon approval of the proof, you release us from liability arising from the use of an artwork or design.

9. Third Parties

9.1. We are not responsible for the services provided to you by third parties (Third Party Services), including social media platforms, email marketing service providers, website hosting providers and internet search engines.

9.2. You must provide us access to any accounts you have with Third Party Services as reasonably necessary for us to provide the Services to you.

9.3. If you provide us with your account credentials to a Third Party Service (Credentials), you acknowledge that we are authorised to use the Credentials to access your relevant accounts with the Third Party Service, for the purpose of

performing the Services.

9.4. Where, with your written approval, we create an account for you on a Third Party Service, or purchase a new service on your behalf, via an existing account you have with a Third Party Service, you must provide personal information and payment details to the applicable Third Party Service, or authorise us to provide the personal information and payment details on your behalf to, and pay directly, the applicable Third Party Service. You acknowledge and agree that by giving us written approval you will be directly responsible for any:

- (a) compliance with terms and conditions or licence of any Third Party Service; and/or
- (b) fees charged by any Third Party Service.

9.5. Where we create an account on a Third Party Service for you we will provide you with details of your Credentials and retain a copy in our systems where we require access to the Third Party Service to perform the Services.

9.6. Your Credentials and any personal information you provide to us is stored securely in our systems and can only be accessed by the necessary Personnel that assist with performing the Services.

9.7. Upon termination of this Agreement, we recommend you change your Credentials in order to ensure that your security is not compromised.

9.8. On request by you, we may provide you with contact details of a Third Party Service. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about any Third Party Service, and we disclaim all responsibility and liability for any Third Party Services.

9.9. Where we provide Digital Services, you agree to provide us with the following:

- (a) administrative/backend access to the website for analysis of content and structure;
- (b) permission to make changes for the purpose of optimisation, and to communicate directly with any third parties, e.g., your web designer, if necessary;
- (c) unlimited access to existing website traffic statistics for analysis and tracking purposes;
- (d) authorisation for our use of all your logos, trademarks, website images, etc., for use in creating informational pages and any other uses as deemed necessary by us for search engine positioning and optimisation; and
- (e) If your website is lacking in textual content, you will provide additional text content in electronic format for the purpose of creating additional or richer web pages. We can create site content at additional cost to you.

10. Acceptance and Term

10.1. You accept this Agreement by the earlier of:

- (a) signing and returning the Agreement and Online Form to us, including by email or any electronic executions platform acceptable to us;
- (b) confirming by email that you accept this Agreement and/or the Online Form;
- (c) instructing us (whether orally or in writing) to proceed with the performance of the Services; and
- (d) making part or full payment of the Overall Total.

10.2. Subject to each Party's right to terminate this Agreement in accordance with its Terms, this Agreement will commence on the Commencement Date and will continue for the Term (Initial Term). On the expiry of the Initial Term, this Agreement will be automatically renewed for subsequent 12 month periods (each a Renewal Period), unless either Party provides 30 days' written notice before the end of the Initial Term or the then-current Renewal Period (as applicable) that it does not wish to renew this Agreement. There may be a price increase effectively from the next Renewal Period. We will notify you at least 60 days prior to the expiry of the Initial Term or the then-current Renewal Period that you have an opportunity to terminate this Agreement if you do not wish to renew this Agreement.

11. Obligations and Warranties

11.1. You represent, warrant and agree:

- (a) that there are no legal restrictions preventing you from entering into this Agreement;
- (b) that all information and documentation that you provide to us in connection with this Agreement is true,

correct and complete;

- (c) that you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in this Agreement;
- (d) to comply with this Agreement, our reasonable requests or requirements, and all applicable Laws;
- (e) to provide all assistance, information, documentation, access, facilities, authorities, consents, licences and permissions reasonably necessary to enable us to comply with our obligations under this Agreement or at Law;
- (f) that the Services are provided to you solely for your benefit and you will not (or you will not attempt to) disclose, or provide access to, our Services to third parties without our prior written consent;
- (g) that you will be responsible for the use of any part of the Services, and you must ensure that no person uses any part of the Services:
 - (1) to break any Law or infringe any person's rights (including Intellectual Property Rights);
 - (2) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
 - (3) in any way that damages, interferes with or interrupts the supply of the Services;
- (h) that where you have provided information, representations, data, reports, copy, designs, specifications and/or other materials (Provided Materials) to use for use in the Services, you have the right to do so;
 - (i) that Provided Materials:
 - (1) do not infringe the Intellectual Property Rights of any third party;
 - (2) are factually accurate;
 - (3) are not misleading or deceptive;
 - (4) are not defamatory or unlawful;
 - (5) have not been obtained unlawfully;
 - (6) are compliant with any necessary regulations for advertising, packaging or labelling; and
 - (7) have been processed in a manner that complies with all applicable privacy legislation;
- (j) that you are not and have not been the subject of an Insolvency Event;
- (k) that if applicable, you hold a valid ABN which has been advised to us; and
- (l) that if applicable, you are registered for GST purposes.

12. Intellectual Property

12.1. As between the Parties:

- (a) we own all Intellectual Property Rights in Our Materials;
- (b) you own all Intellectual Property Rights in Your Materials; and
- (c) nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.

12.2. As between the Parties, ownership of all Intellectual Property Rights in any New Materials or Improvements will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials and/or Improvements do not automatically vest in us, you agree to do all things necessary or desirable to assure our title in such rights.

12.3. We grant you a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Our Materials that we provide to you, the New Materials and Improvements, solely for the purposes for which they were developed and for your use and enjoyment of the Services, as contemplated by this Agreement.

12.4. You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Your Materials that you provide to us solely for the purposes for which they were developed and solely for the performance of our obligations under this Agreement.

12.5. If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with this Agreement, you agree to (and agree to ensure that your Personnel) consent to our use or infringement of those Moral Rights.

12.6. This clause 12 will survive termination or expiry of this Agreement.

13. Confidential Information

13.1. Each Receiving Party agrees:

- (a) not to disclose the Confidential Information of the Disclosing Party to any third party;
- (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
- (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.

13.2. The obligations in clause 13.1 do not apply to Confidential Information that:

- (a) is required to be disclosed in order for the Parties to comply with their obligations under this Agreement;
- (b) is authorised to be disclosed by the Disclosing Party;
- (c) is in the public domain and/or is no longer confidential, except as a result of a breach of this Agreement; or
- (d) must be disclosed by Law or by a regulatory authority, including under subpoena.

13.3. Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 13. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 13.

13.4. This clause 13 will survive the termination or expiry of this Agreement.

14. Termination

14.1. In the event that you wish to cancel the delivery of Services or terminate this Agreement, you can do so free of charge within ten Business Days (Cooling Off Period) of receipt of the Agreement by email. After the Cooling Off Period has expired, the balance of this clause 14 will apply.

14.2. Where we are providing Services that include a Minimum Period, you may not terminate this Agreement during the Minimum Period unless it is in accordance with clause 14.3. However, if you wish to terminate this Agreement without cause, you will be liable to pay the Overall Total in full for the Minimum Period. You acknowledge and agree that the Monthly Fees are a discounted fee for our Services offered to you and that the initial set-up assistance included in the Services (which may include strategic planning, website set-up, design or production services or as otherwise set out in the Online Form) will be provided at the beginning of the Term and the associated fees will be recovered throughout the Minimum Period. The Overall Total includes our allocation of resources to provide you the Services during the Minimum Period. You acknowledge and agree that your liability to pay the Overall Total in full for the Minimum Period is a genuine pre-estimate of the loss we may suffer as a result of your termination under this clause 14.2.

14.3. This Agreement will terminate immediately upon written notice by:

- (a) us, if:
 - (1) you (or any of your Personnel) breach any material provision of this Agreement and that breach has not been remedied within 10 Business Days of being notified by us;
 - (2) you fail to provide us with clear or timely instructions or information to enable us to perform the Services; or
 - (3) you are unable to pay your debts as they fall due; and
- (b) you, if we:
 - (1) are in breach of a material term of this Agreement, and that breach has not been remedied within 10 Business Days of being notified by you; or
 - (2) are unable to pay our debts as they fall due.

14.4. Upon expiry or termination of this Agreement:

- (a) we will immediately cease providing the Services;
- (b) you agree that any payments made by you to us are not refundable to you, and you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you and Minimum Period fees, payments to third-parties on your behalf, and all other amounts due and payable under this Agreement;
- (c) pursuant to clauses 14.3(a), you also agree to pay us our additional costs arising from, or in connection with, such termination; and
- (d) you agree to promptly return (where possible), or delete or destroy (where not possible to return), any information, documentation or Intellectual Property owned by us that is in your possession or control and any New Materials (where you have not paid the Overall Total in full).

14.5. Unless otherwise agreed between the Parties, if this Agreement is terminated, then any current Online Form will also terminate on the date of termination.

14.6. We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to this Agreement constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of this Agreement.

14.7. Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.

14.8. This clause 14 will survive the termination or expiry of this Agreement.

15. Australian Consumer Law

15.1. Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the performance of the Services by us to you which cannot be excluded, restricted or modified (Statutory Rights).

15.2. Our Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Services, you are entitled:

- (a) to cancel this Agreement with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

15.3. You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the Services rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

15.4. If the ACL applies to you as a consumer, nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the Services provided to an entity defined as a consumer under the ACL is governed solely by the ACL and this Agreement.

15.5. Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services (including the Services) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis.

15.6. This clause 15 will survive the termination or expiry of this Agreement.

16. Exclusions to Liability

16.1. Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:

- (a) your or your Personnel's unlawful, negligent or fraudulent acts or omissions;
- (b) any use or application of the Services by a person or entity other than you, or other than as reasonably contemplated by this Agreement;
- (c) any works, services, goods, materials or items which do not form part of the Services (as expressed in this Agreement), or which have not been provided by us;
- (d) any Third Party Inputs; and/or
- (e) any event outside of our reasonable control.

16.2. You acknowledge and agree that:

- (a) we are not responsible for back links or toxic links, including, but not limited to, URLs dropped or excluded for any reason or any incorrect email addresses;
- (b) if under the Services, we provide search engine optimisation services:
 - (1) the results of our Services may be impacted by different factors, including, but not limited to, your website history, your industry, the content on your website and your content management system, and we do not guarantee any results; and
 - (2) if such Services are suspended for any reason, we do not guarantee the same or similar website rankings;
- (c) if under the Services, we provide services relating to Google AdWords, we do not guarantee:
 - (1) a particular, or consistent, position or ranking of your advertising across any medium;
 - (2) that your submissions will be accepted;
 - (3) that we will be able to purchase selected keywords or distribute your ads on any site requested by you;
 - (4) the position of your ads on any site;
 - (5) the cost per click; and/or
 - (6) that any unused campaign spend will rollover to the next monthly period.
- (d) we are not responsible for removing reviews on your business listing on any medium;
- (e) we only manage the Services during our standard business hours, and we have no obligation to respond to comments or posts outside these hours;
- (f) failure to provide content, items or other information within the timeframe agreed between the Parties may lead to our delay in the provision of the Services; and
- (g) you are responsible for backing up your website.

16.3. This clause 16 will survive the termination or expiry of this Agreement.

17. Limitations on Liability

17.1. Despite anything to the contrary, to the maximum extent permitted by law:

- (a) neither Party will be liable for Consequential Loss;
- (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel); and
- (c) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to us resupplying the Services to you or, in our sole discretion, to us repaying you the amount of the Overall Total paid by you to us in respect of the supply of the relevant Services to which the Liability relates.

17.2. This clause 17 will survive the termination or expiry of this Agreement.

18. GST

18.1. If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.

18.2. If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made.

18.3. If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or

outgoing that the supplier is entitled to.

18.4. The terms “adjustment event”, “consideration”, “GST”, “input tax credit”, “recipient”, “supplier”, “supply”, “taxable supply” and “tax invoice” each has the meaning which it is given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

19. General

19.1. **Publicity:** You agree that we may advertise or publicise the broad nature of our performance of the Services to you, including on our website or in our promotional material.

19.2. **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.

19.3. **Assignment:** A Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

19.4. **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.

19.5. **Online execution:** This Agreement may be executed by means of such third party online document execution service as we nominate, including by email or any electronic executions platform acceptable to us, subject to such execution being in accordance with the applicable terms and conditions of that document execution service.

19.6. **Governing Law and Disputes:** This Agreement is governed by the laws of Victoria. A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (Dispute) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, then the parties may commence any legal action available to them. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

19.7. **Entire agreement:** This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

19.8. **Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and your obligations under it.

19.9. **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under this Agreement if such delay is due to any circumstance beyond our reasonable control.

19.10. **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

19.11. **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

19.12. **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

DEFINITIONS AND INTERPRETATION

20. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them within this Agreement, in the Online Form, and:

ACL or Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth), as amended, from time to time.

Agreement means these terms and conditions and any Online Form issued under it and any documents attached to, or referred to in, each of them.

Business Day means a day on which banks are open for general banking business in Victoria, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date this Agreement is accepted in accordance with its terms.

Confidential Information includes information which:

- (a) is disclosed to the Receiving Party in connection with this Agreement at any time;
- (b) is prepared or produced under or in connection with this Agreement at any time;
- (c) relates to the Disclosing Party's business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

Consequential Loss includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

Deliverables means any materials, goods, items or other deliverables forming part of the Services, as particularised in the Online Form.

Deposit means any amount set out in the Online Form as a deposit.

Digital Services means any digital or SEO services, as particularised in the Online Form.

Disclosing Party means the party disclosing Confidential Information to the Receiving Party.

Expenses means any disbursements, including travel and accommodation costs, advertisement buying costs, website template costs, software purchasing costs, printing costs and other third party costs, reasonably and directly incurred by us for the purpose of the performance of the Services.

Improvements means any development, modification, adaptation or improvement of Our Materials or any New Materials made by or on behalf of either Party (or any of their respective Personnel), or in respect of which Intellectual Property Rights are acquired by, either Party during the Term.

Insolvency Event means any of the following events or any analogous event:

- (a) a Party disposes of the whole or any part of the Party's assets, operations or business other than in the ordinary course of business;
- (b) a Party ceases, or threatens to cease, carrying on business;
- (c) a Party is unable to pay the Party's debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Party's assets, operations or business;
- (e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a Party's creditors or any class of a Party's creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of a Party's assets, operations or business.

Intellectual Property means any copyright, registered or unregistered designs or trade marks, domain names, know-

how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Breach means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third party rights including any Intellectual Property Rights of third parties), including, but not limited, to you (or your Personnel):

- (a) copying, altering, enhancing, adapting or modifying any of our Intellectual Property;
- (b) creating derivative works from our Intellectual Property;
- (c) providing or disclosing our Intellectual Property to, or allowing our Intellectual Property to be used by, any third party;
- (d) assigning or transferring any of our Intellectual Property Rights or granting sublicences of any of our Intellectual Property Rights, except as expressly permitted in this Agreement;
- (e) reverse engineering or decompiling any of our Intellectual Property Rights, except where permitted by Law; or
- (f) using or exploiting our Intellectual Property for purposes other than as expressly stated in this Agreement (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties).

Intellectual Property Rights means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

Laws means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with this Agreement or the performance of the Services.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

Minimum Period means any minimum period for the whole or part of the Services, as further particularised in the Online Form.

Moral Rights has the meaning given in the Copyright Act 1968 (Cth).

New Materials means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with this Agreement or the performance of the Services, whether before or after the date of this Agreement.

Non-Production Environment means an application environment that is not designated for live use, and includes development, system testing, pre-production, integration testing, performance testing, and staging.

Online Form means the Online Form relevant to this Agreement.

Our Materials means all work, models, processes, technologies, strategies, materials, information, documentation and services that we may provide to you under this Agreement, and which may contain material which is owned by or licensed to us, and is protected by Australian and international laws.

Overall Total means the fees set out in the Online Form.

Party means a party to this Agreement from time to time, and Parties means all of them.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

Premises means any location where you request and we agree to provide the Services.

Project Services means Services delivered on a project basis, as particularised in the Online Form.

Receiving Party means the party receiving Confidential Information from the Disclosing Party.

Services means the services set out in the Online Form, and includes any term applicable for the relevant services.

Term means the term of this Agreement, commencing on the Commencement Date and continuing until the Services are complete or as set out in the Online Form, unless the Agreement is terminated earlier in accordance with its terms.

Third Party Inputs means third parties or any goods and services provided by third parties, including customers, end users, suppliers, transportation or logistics providers which the performance of the Services may be contingent on, or impacted by.

Your Materials means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned, licensed or developed by or on behalf of you or your Personnel before the Commencement Date and/or developed by or on behalf of you or your Personnel independently of this Agreement.

21. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) a reference to a person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (d) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (e) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (f) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (g) a reference to time is to local time in Melbourne, Victoria; and a reference to \$ or dollars refers to the currency of Australia from time to time.