



# SERVICES AGREEMENT

## GARDEN DESIGNER

### GENERAL TERMS AND CONDITIONS

#### 1. OVERVIEW

- 1.1 This Services Agreement is between the Service Provider and the Client.
- 1.2 The Service Provider provides a range of Garden designer services, and the Client wishes to enter into an agreement for these services and as specifically set out in the Proposal.
- 1.3 This Services Agreement consists of these General Terms & Conditions (T&Cs) and the Proposal along with any subsequent Proposal between the parties from time to time (Agreement).
- 1.4 The Proposal contains the specific information that is relevant to the Service Provider's unique arrangement with the Client, and is designed to be read alongside the T&Cs.
- 1.5 If there is any inconsistency between the T&Cs and the Proposal, the content of the Proposal will prevail to the extent of the inconsistency. Subject to the nature of the Services being provided, additional Special Conditions may apply as set out in the Proposal.
- 1.6 Any variation to the Proposal must be mutually agreed upon in writing.
- 1.7 The Agreement will start on the Commencement Date and continue for the Term, unless terminated prior to that date in accordance with these Terms.

#### 2. CONSULTATION

- 2.1 Prior to the Commencement Date, Green Ink will invite the Client to attend a consultation in person or virtually at a mutually convenient time to discuss and determine:
  - a) The scope of the works, ideas and suggestions,
  - b) Budget parameters; and
  - c) Any additional expectations, inclusions and exclusions to the Services provided.
  - d) Prior to, during or after the consultation, we will request Client Information from you. This may include a request for property information, site plans as well as inspiration images for the works.
- 2.2 The Client agrees to provide the Service Provider with all relevant Client Information requested from the Client, within a reasonable timeframe in order to perform the Services and provide the Deliverables as outlined in the Proposal.
- 2.3 The Client acknowledges that the health and safety of the Service Provider and any third parties engaged to work at the Property Address is a priority and agree to advise the Service Provider of the presence of any [toxic/waste/hazardous] materials which will be present onsite during performance of the Services prior to the Commencement Date.

#### 3. SERVICES AND DELIVERABLES

- 3.1 Green Ink agrees to perform the Services and provide the Deliverables to the best of their ability, in compliance with any applicable codes of practice and in accordance with the Key Dates.
- 3.2 OPTIONAL: N/A We will also comply with any planning and development regulations governed by local councils and government bodies (which will be dependent upon the Property Address). If applicable, you agree that Hourly rates will be incurred for the preparation and lodgment of any development *approvals*.



- 3.3 The total scope of the Services is as set out in the Proposal, along with the Key Dates for delivery. If Services outside the scope are required, including additional advice surrounding the Services or changes to the Services or Deliverables following the Commencement Date, these will be quoted separately at the Service Provider's Hourly Rate.
- 3.4 The Services do not include third party services (such as architectural, electrical, plumbing, landscaping or engineering work, or modifications or alterations to structural or other systems) unless otherwise specified.
- 3.5 Measurements or dimensions referenced in the design drawings are approximate and based on property address information the Client provides to the Service Provider. These measurements or dimensions are not to be used for architectural, construction, building or engineering purposes. The Client agrees to indemnify the Service Provider where a third party (such as a building contractor, landscaper) relies upon the design drawings without completing their own measurements.
- 3.6 Permitted changes to the concept, design or to tender documentation which are included in the quoted Fee are set out in the Proposal.
- 3.7 During the Project, there may be deficiencies, errors, or issues to resolve. The Service Provider will of course attempt to resolve any potential issues by being on-site during critical parts of any renovation works, and by providing detailed briefs to trades and suppliers. When an issue occurs which could have been prevented by the Service Provider, the Service Provider will attempt to resolve it in the most efficient way possible on the Client's behalf and will not charge the Client for that time. Where mistakes have been made by third parties and could not have been prevented by the Service Provider, the Service Provider will discuss with the Client any potential costs prior to engaging in the resolution of those issues.

#### **4. CLIENT OBLIGATIONS**

- 4.1 The Client acknowledges and agrees to provide to the Service Provider, within a reasonable time, any Client Information required for the Service Provider to complete the Services outlined in the Proposal, including but not limited to
  - a) the most up-to-date architectural files;
  - b) Property specific restrictions, zoning, heritage protection, and environmental sustainability reports; and
  - c) any finalised finishes, materials, and fittings selections.
- 4.2 The Client acknowledges that the Service Provider will rely upon information the Client provides as being accurate to the extent of their knowledge and the Client is responsible for providing the Service Provider with updated information throughout the Term of the Agreement.
- 4.3 The Client acknowledges that the Service Provider's ability to meet the Key Dates is partially dependent on how promptly feedback or approval is provided by the Client. The Client agrees to provide written feedback or approval within seven 7 days of the Service Provider sending, materials to the Client at any stage during the Term of the Agreement.
- 4.4 Feedback or approval must be provided in writing via email and must include any and all requested changes (or approvals) relevant to the correspondence the Service Provider issues to the Client, within one email correspondence. Without written approval, the Service Provider will not proceed to the next stage of the Project.
- 4.5 Once each stage of work is approved in writing by the Client, any further changes outside the scope of works or listed in the proposal, it will be charged at the Service Provider's Hourly Rate as set out in the Proposal. An estimate of the number of hours to complete the Additional Work will be provided before proceeding with the work, and this amount will be due in full before the requested changes are made.
- 4.5 The Client acknowledges and agree that where more than one party are listed as the Client in the Proposal, both parties are jointly and severally liable for all obligations under this Agreement. This means that each party is responsible both individually and collectively for the full performance of all obligations, including any financial responsibilities or liabilities. If one Party fails to fulfill its obligations, the other party or parties may be required to fulfill those obligations in full, regardless of their individual role or responsibility in the matter.



## **5. FEES, PAYMENT METHOD, AND TERMS**

### **5.1 Deposit**

A non-refundable deposit as set out in the Deposit is due and payable within 4 days of signing the T&Cs or otherwise within the timeframe specified in the Proposal. The Services will not commence until the Deposit has been paid. If delays to the Commencement Date are requested by the Client, a Restart Fee may apply. For conditions regarding refunds or return of the Deposit, see clause 9.

### **5.2 Design Fees**

The Design Fees are outlined in the Proposal.

### **5.3 Additional work Fees**

If the Client engages the Service Provider to complete additional work (outside of the scope of the original Proposal) the Service Provider will issue the Client with an estimate of additional work fees, charged at the Service Provider's Hourly Rate. Once agreed by the Client, the Service Provider will issue the Client with a tax invoice for the additional work, payable within seven (7) days: The Service Provider will not be able to commence the additional work until the tax invoice has been paid in full.

### **5.4 Payment Method**

All Fees will be payable via electronic funds transfer, Swipe or cash to the Service Provider's nominated bank account or by another method nominated by them on the Payment Dates set out in the Proposal or in accordance with the date stipulated on the Tax invoice issued. The Client will receive a Tax Invoice prior to payment being due in each instance.

### **5.5 Delays**

Should any of the Key Dates be delayed, the Client may be charged at the Hourly Rate set out in the Proposal for additional Services required as a result of the delay in addition to a Restart Fee.

### **5.6 Third Party costs**

The Client agrees to provide prompt payment for the products or services of any third parties in connection with this Agreement and enter into separate contracts with third parties where required.

### **5.7 Variation to Hourly Rate**

The Service Provider is entitled to vary their Hourly Rate during the Term on providing the Client with 14 days' written notice.

### **5.8 Recovery of Unpaid Fees**

If the Client does not pay the Service Provider any portion of the Fees within the stipulated timeframe, the Service Provider may charge you interest at the Interest Rate set out in the Proposal. If unpaid Fees are recovered through an external agency, Client acknowledges that they will be responsible for the costs involved in the recovery, including any legal costs.

## **6. DELAYS, RESTARTING AND NON-COMPLETION**

6.1 The Client agrees that if they wish to delay any portion of the Services for any reason, they must submit this request to the Service Provider in writing including the intended re-start date for the Services to resume. Only one delay request is permitted during the Term of the Agreement and be for a maximum of 2 months.

6.2 The Service Provider reserves the right to charge the Client a Restart Fee as set out in the Proposal upon resumption of Services at the Service Provider's discretion for the time it will take for the Designer to re-familiarise themselves with the Project and associated documents. The Restart Fee is calculated based on the length of time the Project execution has been delayed. An Administration Fee may also apply.

6.3 The Service Provider will not be liable for any failure to perform the Services or meet the Key Dates to the extent that it is caused by the Client's noncompliance with their obligations under the Agreement or issues beyond the Service Provider's control, such as failure to organise, or delays with regard to, building approval or any requisite permits.



- 6.4 If the Service Provider is delayed or prevented from performing the Services or meeting the Key Dates, either due to the Client's noncompliance with their obligations or a Force Majeure Event, the Service Provider reserves the right to reschedule the Key Dates.
- 6.5 If the Service Provider are unable to reschedule the Key Dates due to a Force Majeure Event, this shall not be deemed a breach of the Agreement.
- 6.6 If the Service Provider are unable to perform the Services for any reason and are unable to reschedule the Key Dates, the Client is entitled to terminate the Agreement and receive a refund of Fees paid, less deductions for Services already performed.

## **7. NATURAL MATERIALS, VARIATIONS, CUSTOM OR VINTAGE ITEMS**

- 7.1 Materials such as stone, concrete, fabric, leather, and handmade items will have natural variations or irregularities and differ from piece to piece. The Service Provider will use all reasonable endeavours to provide accurate dimensions and samples of finishes, however due to many factors outside of their control, the final products may differ from the samples provided. Natural variations and tolerances will often not be covered under the supplier's warranty and whilst the Service Provider can assist with the process of replacement ordering the Service Provider cannot guarantee that any refunds will be applicable, particularly in relation to custom orders).
- 7.2 Where the Service Provider has ordered the accurate item, colour and dimensions as approved by the Client, they agree to indemnify the Service Provider for any colour variations or adjusted dimensions of products as delivered by a Third Party Supplier.
- 7.3 The Service Provider will not be liable for any errors or defects in the Deliverables after they have been accepted by the Client, and the correction of any errors or defects after completion of the Deliverables will be subject to the Service Provider's Hourly Rate as set out in the Proposal.
- 7.4 The Client acknowledges that where the Service Provider is procuring Purchased Items on their behalf, lead times and stock availability it outside of the Service Provider's control, and subject to change. The Service Provider will keep the Client informed if selected items become out of stock or delivery lead times are delayed. The Service Provider is not liable for any manufacturing and / or delivery delays from Third Party Suppliers.
- 7.5 The Service Provider shall not be held responsible or liable for any delays, disruptions, or non-performance resulting from the insolvency or bankruptcy of Third Party Suppliers engaged in the procurement of Purchased Items for the Project. The Client acknowledges and agrees that the financial stability and operations of such Third-Party Suppliers are beyond the Service Provider's control and influence.
- 7.6 In the event of a Third Party Supplier's insolvency or bankruptcy, the Service Provider shall use its reasonable efforts to promptly notify the Client of the situation and endeavor to find alternative sources for the affected Purchased Items, provided that doing so is commercially feasible.
- 7.7 The Client understands and accepts that any impact on the project schedule, additional costs incurred due to supplier changes, or any other consequences arising from the insolvency or bankruptcy of Third Party Suppliers shall be borne solely by them, as the client, and the Service Provider shall not be held accountable for such occurrences.

## **8. ENGAGEMENT OF CONTRACTORS (PROFESSIONAL SERVICES)**

- 8.1 The Client agrees that the Service Provider may provide referrals to third party contractors such as builders, contractors, plumbers, landscapers, electricians, and carpenters to complete professional services that the Service Provider is not qualified to perform.
- 8.2 The referrals are made based on previous experience with that contractor and their quality of work, however unless the Service Provider expressly informs the Client otherwise, the Service Provider does not in any way control, nor are they responsible for the performance of any such third parties.
- 8.3 If applicable, the Service Provider may request tenders from several third parties (contractors) to consider their engagement for specific work. Whilst the Service Provider will use their best endeavours to adhere to the approved estimate/budget, the Client acknowledges and agrees that due to several factors outside of the Service Provider's control, they are unable to provide any guarantees that tenders from third parties, will not exceed the estimate/budget.



- 8.4 The Client may also be required to enter into separate agreements with those third parties, outlining their scope of work and fees and the Service Provider encourages the Client to read any applicable terms and conditions as presented by those third parties before entering into any contracts. Fees will be payable directly to third parties in accordance with their terms and conditions.
- 8.5 Whilst the Service Provider will undertake inspections of the works and use their best endeavours to identify and request rectification of any defects for the professional services provided by the third parties, as well as minimise delays, the Client agrees to indemnify the Service Provider for any issues arising from the methods, techniques, sequences, or procedures employed by such third parties.

## 9. REFUNDS OR RETURN OF FEES

### 9.1 Deposit Fees

Subject to the payment terms set out in clause 5, if the Agreement is terminated by you within 4 days from the Commencement Date, the Deposit will be refunded less an Administration Fee as set out in the Proposal. If the Agreement is terminated after 7 days from the Commencement Date, the full Deposit amount is understood to have been forfeited by you and is considered reasonable to cover administrative costs, pre-allocated designer time, and lost opportunity to accommodate other clients.

### 9.2 Design Fees

Due to the nature of the Services and Deliverables, the Client cannot request a refund from the Service Provider where:

- a. the Client has changed their mind;
- b. the Client's personal or financial circumstances have changed;
- c. the reason for termination is outside of the Service Provider's control; and/or
- d. the Client insists on Services being performed in a way that is against their advice.

Refunds will be offered in accordance with both Australian Consumer Law and applicable state Fair trade legislation. The Service Provider is permitted to exercise their discretion in any circumstances where a refund of any fees already paid by the Client may be appropriate.

### 9.3 Processing

Where it is determined that a refund is due, the Service provider will organise prompt payment via:

- a. the original payment method;
- b. third party payment provider or
- c. as otherwise agreed between the parties.

Where a third-party processor is required for the transaction, the Client acknowledges and agrees that transaction/processing fees may be deducted from the refund amount

### 9.4 Post-Refund Obligations

- a) Where the Client receives a refund either directly from the Service Provider or via a Chargeback the Client acknowledges, agrees, and accepts that they will:
  - i. destroy all electronic copies of any Intellectual Property issued to the Client by the Service Provider during the Term of the Agreement and provide written confirmation to [Michelle@greeninkgardendesign.com](mailto:Michelle@greeninkgardendesign.com) once completed; and
  - ii. not use any Intellectual Property of the Service Provider for any purpose.
- b) Where the Client does not comply with clause 7.6 the Service Provider is entitled to recover the fees refunded through a formal debt recovery process including any interest on the outstanding amount and seek further legal remedies, where appropriate.
- c) For the purposes of these Terms, "Chargeback" means the reversal of a payment in response to a request that a customer files directly with their issuing bank or payment network provider.

### 9.5 Purchased Items

Where we have ordered the accurate item, colour and dimensions as approved by you, we cannot take responsibility for or offer refunds for change of mind once goods have been paid for. If there are defects or faults with the purchased items, you may be able to seek remedies directly from the manufacturer/ supplier in



accordance with Australian Consumer Laws. Please note that natural variations and tolerances will often not be covered under the supplier's warranty.

## 10. INTELLECTUAL PROPERTY

- 10.1 On receipt of full payment of the Fees, the Service Provider will assign ownership rights (excluding Moral Rights) in the Assigned IP outlined in the Proposal to the Client. The Assigned IP may only be used for the Agreed Purpose.
- 10.2 Where additional costs are associated with said assignment, the Client acknowledges that they will be responsible for covering these.
- 10.3 The Service Provider retains ownership of all Intellectual Property Rights in the Retained IP outlined in the Proposal and grants the Client a limited license to use it for the Agreed Purpose on full payment of the Fees.
- 10.4 The Client acknowledges that all Third Party Materials are the exclusive property of their respective owners, and where such materials are required to perform the Services, the Client agree to pay the costs associated with their use.
- 10.5 By entering into this Agreement, for the purposes of internal quality and control purposes, the Client agrees and authorise the Service Provider to take progress photos throughout the Term and final photos at the conclusion of the Term.
- 10.6 The Client acknowledges and agrees that the Service Provider retains the ownership rights to any photos taken in relation to the provision of the Services and will be entitled to share anonymised progress photos, before and after's, feedback and testimonial on websites, social media and any other media for recognition or professional advancement purposes.
- 10.7 For the avoidance of doubt, unless the Service Provider has sought express authority from the Client to share personal information, the Service Provider will not disclose or publish any of the Client's personal information.
- 10.8 This clause 10 survives termination or expiry of this Agreement.

## 11. TERMINATION

### 11.1 Termination by Service Provider

We may terminate the Agreement with immediate effect if:

- a) you do not pay the Fees by the Payment Dates or within the specified timeframe;
- b) you fail to provide the Client Content or other information within a reasonable time of our request;
- c) you otherwise breach any obligation under the Agreement; or
- d) we consider that mutual trust or confidence no longer exists.

### 11.2 If we terminate the Agreement in accordance with clause **Error! Reference source not found.**, we will, at our sole discretion:

- a) complete all work for which you have paid the associated Fees; or
- b) refund Fees paid for work not yet performed, or not able to be performed as a result of termination in accordance with clause 9.

### 11.3 You cannot request a refund if:

- a) the reason for termination is outside of our control;
- b) you change your mind with regard to any part of the Services or Deliverables at any stage following concept approval and/or a deposit being paid for third party items;
- c) you fail to clearly explain your needs to us; or



- d) you insist on the Services being performed in a way that is against our advice.

11.4 Termination by Client (for Breach)

- a) The Client may terminate this Agreement by providing written notice to the Service Provider in the event of a material breach by the Service Provider such as a failure to deliver the Services as agreed in the Proposal and has not remedied the same within 7 days of the date of written notice.
- b) Upon termination for the Service Provider's breach, the Service Provider shall promptly refund any Fees paid by the Client for Services not yet provided.

11.5 Either party may terminate the Agreement immediately if the other party (breach or Force Majeure):

- a) is unable to meet their obligations due to a Force Majeure Event for a period exceeding 30 days;
- b) commits a material breach of the Agreement that is capable of remedy, and fails to remedy it within 7 days;
- c) commits a material breach of the Agreement that is not capable of remedy; or
- d) enters liquidation or administration or becomes insolvent or bankrupt.

**12. POST TERMINATION OBLIGATIONS**

12.1 Outstanding Fees

The Client shall pay all outstanding Fees and expenses incurred up to and including the termination date within 7 days of receiving the final invoice.

12.2 Revocation of Access

Upon termination, the Client's access to any exclusive services, websites and resources provided by the Service Provider will cease.

12.3 Return of Property

- a) the Service Provider will promptly return any property provided by the Client for the purpose of performing the Services; and
- b) where the Client has any property belonging to the Service Provider, they must promptly return such property to the Service Provider.

12.4 Maintain Confidentiality

- a) each party must continue to maintain the confidentiality of any confidential information disclosed during the term of the Agreement and return or destroy (at the other party's request) all Confidential Information of the other party; and
- b) the Service provider may be required to retain Client's records for a period consistent with legal and ethical record keeping requirements as stipulated by applicable law and will hold such records in compliance with privacy legislation.

**13. WARRANTIES AND INDEMNITIES**

13.1 The parties warrant that they have full power, capacity and authority to enter into and perform their obligations under the Agreement.

13.2 The Services and Deliverables are provided on an "as is" basis, without representation, warranty or condition of any kind including any implied warranty of merchantability, fitness for a particular purpose. Any express or implied warranty or condition relating to the Agreement or its subject matter that are not contained in the Agreement are excluded to the maximum extent permitted by law.

13.3 The Service Provider is not responsible for any faults or defects in any items included in the Deliverables, whether detected within or outside of the manufacturer's warranty, after the Services have been performed.



The Client will be responsible for liaising with the third party from which said items were purchased should any issues arise.

- 13.4 The nature of certain Services means that the Service Provider is unable to guarantee particular results, and any examples of Services provided to or created for other clients is a representation of potential results only.
- 13.5 Nothing in the Agreement excludes, restricts, or modifies any condition, warranty, right or remedy implied or imposed by any law that cannot be lawfully excluded, restricted or modified.
- 13.6 If any warranty or condition is implied into the Agreement and cannot be excluded, the Service Provider's liability is limited to resupplying the Services or payment of the cost of having the Services resupplied.
- 13.7 The nature of certain Services means that the Service Provider is unable to guarantee particular results, and any examples of Services or Deliverables provided to or created for other clients is a representation of potential results only.
- 13.8 All warranties for Purchased Items are subject to the individual supplier. Warranty information for each item will be provided to you at the conclusion of the Project.
- 13.9 We are not responsible for any faults or defects in any items included in the Deliverables, whether detected within or outside of the manufacturer's warranty, after the Services have been performed. You will be responsible for liaising with the third party from which said items were purchased should any issues arise.
- 13.10 Client agrees to indemnify and hold harmless the Service Provider, their respective affiliates, officers, directors, agents, and employees from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to any breach of this Agreement, due to negligent acts or omissions, wilful misconduct, by the Client.
- 13.11 Neither party will be liable or held in breach of the Agreement for any failure to perform its obligations to the extent that said failure is caused by the other party's noncompliance, negligence, or willful misconduct.
- 13.12 Neither party will be liable to the other for any Consequential Loss, whether foreseeable or not and however caused, except for confidentiality and indemnification obligations.
- 13.13 It is agreed that the Service Provider is not responsible or to be held liable for any errors contained in any concept, design or tender documentation after the materials have been approved by the Client.
- 13.14 You agree to indemnify us for any material, component, system, or workmanship failing to perform according to the claims of the manufacturers, suppliers, contractors or subcontractors.
- 13.15 We will not be liable for any loss or damage suffered by a third party in connection with the Agreement.
- 13.16 Each party agrees to take reasonable steps to mitigate any loss, damage, or expense it may suffer or incur, arising out of anything done or not done by the other party in connection with the Agreement.
- 13.17 This clause 13 survives termination or expiry of this Agreement.

#### **14. LIMITATION OF LIABILITY**

- 14.1 The Service Provider's liability to the Client (including under indemnity) is limited to:
  - a) in the case of goods:
    - i. to the replacing of the goods;
    - ii. acquiring equivalent goods; or
    - iii. payment of the cost of having the goods repaired;
  - b) in the case of services:
    - i. supplying the services again; or
    - ii. the cost of having the services supplied again.





- iii. Any liability will be reduced to the extent that the Client's acts or omissions contribute to or cause the liability.

## **15. CONFIDENTIALITY AND PRIVACY**

- 15.1 Each party agrees that, unless it has the prior written consent of the other party, it will:
  - a) keep the Confidential Information of the other party confidential at all times;
  - b) ensure that any person to whom Confidential Information is disclosed is aware of and complies with this clause; and
  - c) where there is prior consent, inform the other party of any proposed disclosure, including the form of disclosure, within a reasonable timeframe.
- 15.2 These obligations of confidentiality do not apply to any disclosure that:
  - a) is for the purpose of performing the Agreement or exercising a party's rights under the Agreement.
  - b) is required by Applicable Law; or
  - c) relates to Confidential Information that is publicly available through no fault of the receiving party or was rightfully received from a third party without restriction and without the breach of any obligation of confidence.
- 15.3 Any Confidential Information supplied to us that incorporates personal information will be dealt with in accordance with our Privacy Policy, which is available on our website.
- 15.4 This clause 15 survives termination or expiry of this Agreement.

## **16. MARKETING AND PROMOTION**

- 16.1 Recognition

The parties agree that unless otherwise expressly agreed in the Proposal, the Service Provider will retain the right to reproduce, publish and display their involvement in the Services together with reference to the Client (including Client's name, business name, logo and any trade marks) in portfolios, on websites, and in galleries, design periodicals and other media (including social media) or exhibits for the sole purpose of recognition of Services provided.
- 16.2 Testimonials

The Client consents to the use of any testimonials, reviews, or feedback provided to the Service Provider for promotional and marketing purposes. The Client understands that these testimonials may be published on the Service Provider's website, social media platforms, marketing materials, and other promotional channels.
- 16.3 Right to Withdraw Consent

The Client has the right to withdraw their consent at any time. To do so, the Client must notify the Service Provider in writing, and the Service Provider will promptly cease the use of such materials for promotional purposes.

## **17. MISCELLANEOUS**

- 17.1 Relationship of Parties

The Service Provider are independent contractors and the relationship between the Client and the Service Provider does not constitute that of a partnership, joint venture, agency or employer and employee. Nothing in this Agreement gives either party the authority to bind the other in any way, nor impose any fiduciary duties on the other party. The Service Provider may use subcontractors to perform some or all the Services.
- 17.2 Exclusivity

The parties agree that this agreement does not establish an exclusive relationship between the Service Provider and the Client. The Service Provider is free to provide their services to other clients and engage in



similar projects, including those that may be in direct competition with the Client's business. The Client acknowledges and agrees that the Service Provider may work with other clients.

#### 17.3 Non-Disparagement

- a) Without limiting either party's rights, each party agrees not to disparage the other or provide negative feedback in a public forum (such as social media or an online review platform) at any time during or following the Term. Where one party is dissatisfied, the issue must be dealt with in accordance with the provision of this Agreement relating to disputes.
- b) In the event that either party breaches this provision by engaging in disparagement or posting negative feedback in a public forum, the non-breaching party has two options:
  - i. The non-breaching party may initiate the dispute resolution process as outlined in clause 17.5 of this Agreement to resolve the matter amicably.
  - ii. The non-breaching party may pursue legal action to seek remedies, including injunctive relief and damages, as allowed by applicable laws.

The choice between these options will be at the sole discretion of the non-breaching party.

#### 17.4 Conflict of Interest

Each party warrants that they are free to enter into this Agreement and that it shall not violate the terms of any other agreement between that the party and a third party.

#### 17.5 Disputes

- a) In the event of any dispute arising under or in connection with this Agreement during the Term, the parties shall first seek to resolve the matter amicably through direct negotiation. Both parties agree to engage in good faith efforts to settle any dispute promptly. If the dispute cannot be resolved within thirty (30) days following the date of a written notice of dispute, either party may propose to enter into alternative dispute resolution (ADR).
- b) ADR may include mediation or arbitration conducted by a neutral and recognised entity, pursuant to its rules and procedures. The parties shall mutually agree upon the choice of ADR method and the governing rules. Any decision or award resulting from such ADR shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.
- c) Each party shall bear its own costs in connection with the ADR process, and the parties shall equally share the fees and expenses of the mediator or arbitrator unless otherwise agreed by the parties or as directed by the arbitrator or mediator according to applicable rules.
- d) Except where urgent interim relief is sought from a court, neither party may initiate formal legal proceedings until the ADR process has been concluded.

#### 17.6 Notices

Where a party gives notice, it must be done in writing to the email address specified in the Proposal, or by post to the residential or business address specified in the Proposal, the notice will be considered delivered on the date it was sent, unless a delivery failure notice was received.

#### Entire Agreement

This Agreement constitutes the Service Provider entire agreement with the Client about the subject matter. It supersedes all previous agreements, understandings and negotiations, whether written or verbal.

#### 17.7 Governing Law

The formation, construction, performance and enforcement of the Terms will be in accordance with the laws in force where the Service Provider resides. The Client and The Service Provider submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

#### 17.8 Execution and Counterparts



The Agreement will become binding when any one or more counterparts individually or taken together, are signed by the parties. The Agreement may be executed by way of electronic signature, including by clicking "I consent" or similar. If the Agreement is executed in this way, it will be considered an original that has been properly executed.

17.9 Amendment or Variation

Any amendment or variation to the Agreement is not effective unless agreed by the Client and the Service Provider in writing.

The Service Provider reserve the right to amend or vary the Agreement and the Service Provider will notify the Client of the changes. The Client can choose to terminate if they do not accept the amendments and/or variations. If the Client continues to engage the services, the Client is deemed to have accepted the amendments and/or variations to these Terms.

17.10 Validity

If any provision of the Agreement is held invalid or unenforceable, it will either be severed from the Agreement or replaced by a valid or enforceable provision. If applicable, any new provision will take effect immediately. All other provisions will remain in effect throughout.

17.11 Assignment

The Client is not permitted to assign the Agreement or otherwise deal with any rights under it without the Service Provider prior written consent. Conversely, the Service Provider may do so without the Clients consent.

17.12 Interpretation

All headings are for ease of reference and do not affect the interpretation of the Agreement. Words in the singular include the plural and vice versa, and references to "including" and similar words do not imply any limit.



## DEFINITIONS

In the Agreement, the following terms have the stated meaning unless a contrary intention appears.

Term	Definition
Agreed Purpose	means the purpose set out in the Proposal for which we are performing the Services and you are entitled to use the Deliverables.
Agreement	means these Terms and Conditions, the Proposal and any Subsequent Proposal.
Applicable Law	means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or local government that may apply to the Services or either party's obligations under the Agreement.
Business Day	means a day other than a Saturday, Sunday or public holiday in the city of our address in the Proposal.
Business Hours	means 9am to 5pm on any Business Day.
Client Information	means all information and materials provided by you to us for use in the performance of the Services and/or incorporation into the Deliverables as specified in the Proposal.
Commencement Date	means the date that the Agreement comes into effect as stipulated in the Proposal.
Confidential Information	means information of a confidential nature, including information about a party's business, operations, strategy, policies, procedures, administration, technology, financial position, affairs, clients, customers, employees, contractors or suppliers, and the terms of the Agreement, but does not include any information in the public domain (other than through a breach of confidence).
Consequential Loss	means any liability in relation to incidental, indirect, consequential, punitive or special damages (including but not limited to damages to business reputation, lost business, or lost profits) arising out of or in connection with the Agreement.
Deliverables	means all content developed by or for us, as incorporated into and delivered as part of the Services.
Deposit	means the first payment made, being a non-refundable portion of the Fees as set out in the Proposal, that secures provision of the Services in accordance with the Key Dates.
Employees	means each party's employees, contractors, consultants, suppliers, subcontractors, agents, and advisors.
Fees	means the amounts payable by you to us as set out in the Proposal.
Force Majeure	means illness, injury, emergency, pandemic, epidemic, war, act of God, sudden event or other circumstance beyond our control.
GST	means goods and services tax chargeable under A New Tax System (Goods & Services Tax) Act 1999 Cth.
Interest Rate	means the annual interest rate that applies to unpaid Fees as set out in the Proposal.
Intellectual Property Rights	means all current and future registered and unregistered rights in respect of patents, copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, inventions (including patents), domain names, discoveries, data, databases, business strategies, digital products, templates, and all other rights resulting from intellectual activity, whether created before or after the Commencement Date and whether in Australia or otherwise, that is connected with the products or services of the Service Provider or is invented, created, produced and/or conceived by the Service Provider (independently or jointly with a third party) in the course of their engagement under the Agreement.
Key Dates	means the dates on or by which the Services and/or Deliverables will be performed and/or delivered respectively as set out in the Proposal.
Moral Rights	means the moral rights granted under the Copyright Act 1968 (Cth) including the right of attribution of authorship, the right not to have authorship falsely



	attributed and the right of integrity of authorship and any similar rights existing under foreign laws.
Our Assigned IP	means the Intellectual Property Rights assigned to you by us in respect of the items listed in the Proposal, to be used in accordance with the Agreed Purpose.
Our Retained IP	means the Intellectual Property Rights that we retain ownership in, whether in existence prior to the Commencement Date or created by virtue of the Agreement, as set out in the Proposal.
Payment Dates	means the dates by which payment of the Fees is due as set out in the Proposal.
Proposal	means the Proposal attached to the Agreement and any subsequent Proposal.
Restraint Period	means the period of time set out in the Proposal during which you are prevented from utilising the services of our employees or contractors.
Services	means the scope of the services set out in the Proposal.
T&Cs	means these General Terms and Conditions.
Tax Invoice	has the meaning as set out in A New Tax System (Goods & Services Tax) Act 1999 (Cth).
Term	means the term of the Agreement starting on the Commencement Date and ending when the Services have been performed and the Deliverables have been provided, or when the Agreement is otherwise terminated.
Third Party Materials	means any materials, such as documents, designs, and information, belonging to a Third Party.
You/Client	means you (the Client) .
We/Us/Our/ Service Provider	means the party set out in the Proposal.