

ATTACHMENT B: TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATIONS

In this Agreement, unless the context otherwise requires;

Agreement means agreement for professional services agreement, (including the recitals, schedules, annexures and exhibits to it), as may later be amended or supplemented by the Parties in writing;

Business Day means Monday to Friday, excluding Public Holidays;

Commencement Date means the date specified as such in items a. of Attachment A, or if not specified in that place, the date of execution or signature (as the case may be) by the last Party to execute or sign (as the case may be) this Agreement;

Competitor of the Client means any third party that does or intends to develop, manufacturer, prompts, sell, license, distribute or provide products or services that are substantially similar to the Client's products or services;

Claim means, in relations to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, actions, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against a person, however arising and whether ascertained or unascertained, or immediate, future or contingent;

Completion Date means the date specified in item b. of Attachment A or as otherwise agreed;

Confidential Information means information that:

- a. Is by its nature confidential;
- b. Is designated by any Party as confidential; or
- c. A Party knows or ought to know is confidential,

and includes:

- a. Information of, or about, any entity in the Client, including financial information and other reports or records of or relating to the Client and its operations, acquired by Content Collective Co solely by virtue of the performance of the Services pursuant to this Agreement;
- b. Information created, discovered, developed or made known to Content Collective Co by the Client during the period of, or arising out of, Content Collective Co's performance of the Services;
- c. Trade secrets, procedures, designs, processes, inventions and marketing information of either Party;

- d. Matters of a technical nature, research and development details, financial statements, books and records, details of asset holding, liabilities, planning, management, marketing and promotional procedures, quotations, concepts, methods, Customer information, systems, databases and all sources of computer hard and software either Party;
- e. Information relating to either Party's customers and Content Collective Co's including, lists of customers and Content Collective Co's, details of contracts and dealings with customers and Content Collective Co's and other parties; and
- f. Any other information classifiable in equity as confidential information;

Client Intellectual Property means pre-existing Intellectual Property of the Client used in but not created as part of the development of the Deliverable by Content Collective Co, including the look and feel of the Clients website;

Defect means any performance characteristic of a Deliverables which makes the whole or any part of the Deliverables materially inoperable or unable to meet or materially inconsistent with the Project Specifications. **Defective** has a corresponding meaning;

Deliverables means an item, whether module development, software, website design, documentation, data migration services or otherwise, to be delivered or supplied by Content Collective Co under this Agreement, including those items specified in the Project Specifications;

Deliverables Acceptance Date means the date on which the Client must give notice to Content Collective Co confirming acceptance of the Deliverable provided or, if any Defects are located, give notice for Content Collective Co to rectify such Defects;

Expenses means any expenses incurred by Content Collective Co in performing the Services;

Intellectual Property means:

- a. Copyright;
- b. All rights conferred under statute, common law or equity in relation to inventions (including patents);
- c. Registered and unregistered trademarks;
- d. Registered or unregistered designs;
- e. Circuit layouts
- f. Confidential information; and
- g. All other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Force Majeure means any event beyond the reasonable control of the Party affected and includes any event due to natural causes that happens independently of human intervention;

GST means any tax, levy, charge or impost levied on the value of any facilities, Deliverables, services or other things supplied by Content Collective Co to the Client under this Agreement by any other Bill or Act of the Parliament of the Commonwealth of Australia;

Material means any material, whether tangible or intangible, and includes:

- a. Documents, records, equipment and any other Deliverables; and
- b. Software (whether in human or machine readable form), data and any other information;

Services means services provided or to be provided by Content Collective Co to the Client in accordance with the Project Specifications, including the development and/or delivery of any Deliverables.

Payment means the fees payable to Content Collective Co for Services performed as referred to in Attachment A;

Project Specifications means the Project Specifications as referred to in Attachment A;

Taxes means all taxes imposed by any government or authority of Australia or elsewhere including, but not limited to, all income tax, PAYG tax, capital gains tax, stamp duty, financial institutions duty, Customer tax, payroll tax and GST;

Tax Invoice means an invoice that has been submitted to the Client and:

- a. The amount claimed in the tax invoice is due for payment pursuant to this Agreement;
- b. The tax invoice complies with the requirements of the GST law;
- c. Term means the period from the Commencement Date to the Completion Date unless otherwise terminated earlier by either party pursuant to Clause 9 of this Agreement;

Termination Payment means the fees payable by the Client to Content Collective Co on termination of this Agreement pursuant to Clause 9, as calculated under item 4(c) of Clause 9;

Third Party Materials means textual, graphical, audio or like materials, together with any software, which is incorporated into a Deliverables;

Third Party Rights means Intellectual Property Rights owned by or licensed to third parties including:

- a. Computer programs owned by third parties and licensed by Content Collective Co and any subcontractors of Content Collective Co to develop a Deliverables; and
- b. Any literary, dramatic, artistic and musical works owned by third parties and licensed to Content Collective Co for inclusion in a Deliverables;

Third Party Software means any computer program or modification or enhancement of a computer programs, which is not owned by Content Collective Co or a related corporation of Content Collective Co and which is used by the Content Collective Co in connection with

performing the Services, or which is at any time supplied to the Client by Content Collective Co or its subcontractors or incorporated into a Deliverables;

Work Product means the finished product, as well as any drafts, texts, graphics, photos, videos, designs, visual elements, trademarks, code and anything else that Content Collective Co works on, conceives, creates, designs, develops, invent or reduces to practice as part of this practice.

2. SERVICES

Content Collective Co will:

- a. Provide the Services to the Client;
- b. Develop and provide to the Client the Deliverables; and
- c. Deliver the Services in accordance with:
 - I. The Project Specifications
 - II. The other terms and conditions of this Agreement (including any Change Requests).

3. PROJECT

3.1 Project. Content Collective Co will provide to the Client:

- a. Services in the form of Ongoing Works in accordance with the Project Specifications.
- b. Deliverables which conform to the requirements specified in the Project Specifications.

3.2 Time Frame. Content Collective Co must provide the Services and Deliverables required under Clause 3.1 to the Client by no later than the Completion Date.

3.3 Deliverables Acceptance Date. The Client must notify Content Collective Co within 7 days from receipt of the Services if it confirms acceptance of the Deliverables as provided or, if any Defects are located, give notice for Content Collective Co to rectify such Defects.

3.4 Change Requests. The client must notify Content Collective Co at least two weeks prior to the Completion Date of any Change Requests. Content Collective Co will provide the Client with a quote for any additional Payments or Expenses associated with the Change Requests within one week. Content Collective Co will not commence any works under the Change Requests until the quote is accepted in writing by the Client.

PAYMENTS AND EXPENSES

- a. **Payment Terms.** Content Collective Co will charge clients upfront. Payment must be received before work commences.
- b. **Reimbursement of Expenses.** The Client will reimburse Content Collective Co's expenses. Expenses do not need to be pre-approved by the Client.

- c. **Termination Payment.** The Client will pay Content Collective Co for the work done up until when the Contract ends and will reimburse Content Collective Co for any agreed-upon, non-cancellable expenses.

4.1 The Client must pay the Payment to Content Collective Co upon completion of the Project according to the Project Specifications.

4.2 Pursuant to Clause 4.1, Content Collective Co will invoice the Client for work done monthly. The Client will pay the amount owed within 14 days of receiving the invoice.

4.3 In the event that payment required under Clause 4.2 is not made within the required time frame, an additional amount of a late fee of 3.0% per month on the outstanding payment is due.

4.4 The Client agrees to pay for the documented expenses in the Project Specifications and for any other expenses Content Collective Co may incur after receiving authorisation and approval from the Client in writing.

5. OWNERSHIP AND RIGHTS

- a. **Ownership.** The Client Owns All Work Product.
- b. **Permitted Use by Content Collective Co.** Once Content Collective Co gives the work product to the Client and is paid in full, Content Collective Co will only have rights to the work outlined here: The Client gives Content Collective Co permission to use the work product as part of the Content Collective Co's portfolio and websites, in galleries, and in other media, so long as it is to showcase Content Collective Co's work and not for any other purpose. Content Collective Co is not allowed to sell or otherwise use the work product to make money or for any other commercial use. The Client is not allowed to take back this license, even after the Contract ends.
- c. **Credit to Content Collective Co.** The Client is under no obligation to give credit to Content Collective Co each time it published the work product.

5.1 Assignment. Content Collective Co agrees to assign and hereby assigns, absolutely and beneficially to the Client all rights, titles and interests to all existing and Intellectual Property Rights arising out of the Deliverables. The Client agrees that Content Collective Co may use the Deliverables for the purpose outlined in item 5(b) above.

5.2 Proof of Ownership. Content Collective Co agrees to assist the Client to prove ownership of the Deliverables if required in the future provided that any required expenses are paid by the Client.

5.3 Pre-Existing Material. This Agreement does not affect any pre-existing Intellectual Property rights owned by Content Collective Co or licensed from a third party which may be used to create the Deliverables and performance of the Services or part of the Deliverables.

5.4 Content Collective Co's Right to use IP. The Client agrees to grant permission for Content Collective Co to use the Client's Intellectual Property for the sole purpose of the creation of the Deliverables and performance of the Services or part of the Deliverables.

5.5 Content Collective Co's Rights. Permitted Uses The Client grants permission in the form of a license for Content Collective Co to use the Deliverables in the following ways: The Client gives Content Collective Co permission to use the work product as part of the Content Collective Co's portfolio and websites, in galleries and in other media, so long as it is to showcase Content Collective Co's work and not for any other purpose. Content Collective Co is not allowed to sell or otherwise use the work product to make money or for any other commercial use. The Client is not allowed to take back this license, even after this Contract ends.

COMPETITIVE ENGAGEMENTS

6.1. Content Collective Co agrees not to provide work or services for a Competitor of the Client until this Contract ends, unless Content Collective Co obtains written pre-approval from the Client.

7. NON-SOLICITATION

7.1 For the duration of this Contract, Content Collective Co agrees to:

- a. Encourage or induce any of the Client's employees or service providers to stop working for the Client;
- b. Encourage or induce any of the Client's customers or clients to stop doing business with the Client; or
- c. Employ or engage anyone who has worked for the Client within six months of the Completion Date.

7.2 Clause 7.1 applies to actions taken by Content Collective Co for itself or on behalf of Third Parties.

7.3 Clause 7.1(c) is not breached if Content Collective Co hires a former Client employee not directly linked to this project through general advertisements to the public.

8. REPRESENTATIONS

8.1 Authority to Enter Into Contracts. The Parties warrant that they each have the authority to enter into this Agreement and perform all of the obligations required.

8.2 Degree of Skill, Care and Diligence. Content Collective Co represents and warrants that it will perform the Services with the degree of skill, care and diligence expected of a consultant experience in providing the same or similar services; that it will comply with any applicable laws and standards relating to the performance of the Services; and that any materials supplied will be reasonably fit for the purpose for which they are supplied.

8.3 No infringements of Intellectual Property Rights - Content Collective Co. Content Collective Co warrants that the Deliverables, the performance of the Services and the Deliverables will not infringe the Intellectual Property Rights of any person including any Third Party Rights, Materials or Software.

8.4 Compliance with Laws and Defamation. Content Collective Co warrants that the creation of the Deliverables, performance of the Services or delivery of the Deliverables will comply with the laws of Australia and that none of the material created will be defamatory or obscene.

8.5 Client Review. The Client warrants that it will review the Deliverables, answer any questions regarding the Project Specifications and provide feedback within a reasonable timeframe if requested.

8.6 No Infringements of Intellectual Property Rights - Client. The Client warrants that any material provided to Content Collective Co for the purpose of incorporation into the Deliverables will not infringe the Intellectual Property Rights of any person including any Third Party Rights, Materials or Software.

9. TERM AND TERMINATION

9.1 Termination Clause. This Agreement commences or is deemed to have commenced on the Commencement Date, and continues until the end of the contract period or earlier termination in accordance with this Clause.

9.2 Termination. The Client may terminate this Agreement for any reason with 30 days written notice. Content Collective Co reserves the right to terminate this Agreement and discontinue work at any time. All written notice to the other Party must be in compliance with Clause 14.

9.3 Content Collective Co must immediately cease working on the Deliverables if it sends or receives a notice under Clause 9 or unless otherwise agreed upon in writing.

9.4 Ongoing Clauses. The following Clauses may continue to apply even after termination of the Agreement pursuant to Clause 9:

- a. Clause 5 (Ownership)
- b. Clause 7 (Non-Solicitation)
- c. Clause 8 (Representations)
- d. Clause 11 (Confidential Information)
- e. Clause 12 (Limitation of Liability)

- f. Clause 13 (Indemnity)
- g. Clause 15 (General)

9.5 Payment for Termination. If either Party elects to terminate this Agreement after the Commencement Date, then the Client must pay the outstanding amount for all the work undertaken up to and including the date of termination and have completed so far (including development work that is yet to be delivered as a Deliverable to the Client);

RELATIONSHIP OF PARTIES

10.1 The Parties agree that it is intended that this Agreement shall create the relationship of Client and Independent Contractor between them and that it is not their intention to create any other relationship and, in particular, the relationship of employer and employee or the relationship of partners. Content Collective Co shall not:

- a. Represent itself or allow itself to be represented as an employee or agent of the Client; or
- b. By virtue of this Agreement be or become an employee or agent of the Client.

10.2 The Parties agree that:

- a. Content Collective Co will use its own equipment, tools and material to complete the work;
- b. Content Collective Co is responsible for the day to day performance and operation of the project;
- c. The Client will not intervene and control the way in which Content Collective Co carries out the work; and
- d. The Client will not provide Content Collective Co with any training.

10.3 Neither Party can bind the other to any agreement with a third party.

CONFIDENTIAL INFORMATION

11.1 Content Collective Co agrees to keep the Confidential Information provided to it or obtained by it pursuant to or as a result of this Agreement strictly confidential and not to disclose or divulge the same to any other person or entity except if disclosure is required by law.

11.2 Both the Client and Content Collective Co agree to keep Confidential Information relating to a Third-Party provided or obtained as a result of this Agreement strictly confidential and not to disclose or divulge the same to any other person or entity except if disclosure is required by law.

11.3 Each Party must also:

- a. Use the Confidential Information, only for the purpose of this Agreement;
- b. Maintain the Confidentiality of the Confidential Information and ensure that the Confidential Information is not disclosed to or used for the benefit of any third party without the prior written consent of the other Party;

- c. Take all steps and do all things as may be necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information.

12 LIMITATION OF LIABILITY

Neither party is liable for breach-of-contract damages that the breaching party could not reasonably have foreseen when it entered this contract.

13 INDEMNITY

13.1 Liability of Client. The Client will not be liable to Content Collective Co for:

- a. Any variations to the Services or Deliverables made by Content Collective Co without the prior written approval of the Client;
- b. Any loss arising out of use of the Services or the Deliverables not performed in accordance with this Agreement; and
- c. The accuracy of resources, information or documents provided to or for the use of Content Collective Co.

13.2 Liability of Content Collective Co. Content Collective Co will not be liable to the Client for:

- a. In no circumstances will Content Collective Co be liable for any loss of interest, revenue, profit or any data, or for any consequential, indirect, incidental or special damages suffered by the Client relating to the subject matter of this Agreement, including but not limited to:
 - i. The maintenance of confidentiality of any and all access codes, log in details and passwords;
 - ii. The installation of security mechanisms to maximise the use of the Services;
 - iii. The failure of computer equipment, software or any other Deliverables used in connection with use of the Services;
 - iv. The unauthorized use of the Services, access codes, log in details and passwords;
 - v. The failure to achieve any goals through the use of the Services; and
- b. To the fullest extent permitted by law, Content Collective Co's liability to the Client (whether such liability is in contract, tort, negligence or for any breach of warranty, representation or statute) for any act or omission done in connection with the subject matter of this Agreement, will be limited in aggregate to an amount equal to any outstanding Fees.

13.3 Indemnity of the Client. Content Collective Co agrees to indemnify the Client on a full indemnity basis from and against all third party claims or proceedings arising out of:

- a. The work completed by Content Collective Co under this Agreement;
- b. A breach of Content Collective Co's obligations under this Agreement; or
- c. A breach of a Representation or Warranty under Clause 8 of the Agreement.

13.4 Indemnity of Content Collective Co. The Client agrees to indemnify Content Collective Co on a full indemnity basis against any loss or damage from and against all third party claims or proceedings arising out of:

- a. A breach of the Client's obligations under this Agreement; or
- b. A breach of a Representation or Warranty under Clause 8 of the Agreement.

14. NOTICE

14.1 Form of Notice. All notices and other communications by or to the Parties to this Agreement shall be in writing and signed by a director, secretary or other duly authorised officer or the solicitor of the party giving such notice or communication.

14.2 Addresses for Notices. Notices and communications may be delivered by hand or sent by post or email to the party to which it is addressed at the head of this Agreement or at such other address as the addressee may specify for such purpose to the other parties by notice in writing.

14.3 Time of Service. Such notices and communications shall be deemed to be duly given, served or made when the recipient has replied confirming receipt of the email.

15. GENERAL

15.1 Assignment. Content Collective Co cannot assign its rights or delegate its obligations under this Agreement to a third party without first receiving the Client's written permission. The Client may assign its rights and delegate its obligations under the Agreement to a third party in the event that the Client is bought out or on-sells the work product to another party.

15.2 Counterparts. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

15.3 Further Assurances. Each Party to this Agreement shall do all things necessary and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by notice from another Party to carry out and give effect to the terms and intentions of this Agreement and to perfect, protect and preserve the rights of the other Parties to this Agreement.

15.4 Costs. Each Party must bear its own costs of and incidental to the preparation and execution of this Agreement. Content Collective Co must pay all stamp duties or taxes of a similar nature on this Agreement.

15.5 Force Majeure. If by an act of Force Majeure a Party is unable to perform in whole or in part any obligation of this Agreement, that Party is relieved of that obligation to the extent and for the period that it is unable to perform and is not liable in respect of such inability.

15.6 Severability. This Agreement shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- a. That provision shall, so far as is possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- b. If the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provision of this Agreement shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

15.7 Independent Legal Advice. The Client acknowledges that it has read the terms of this Agreement and understands the same. It further acknowledges that it has had the opportunity to obtain independent legal advice regarding the effect and impact of the Agreement.

15.8 Governing Law and Jurisdiction.

- a. This Agreement shall be governed by and construed in accordance with the laws of Australia.
- b. The Parties irrevocably submit to and accept, generally and unconditionally, the non exclusive jurisdiction of any of the Courts of Australia with respect to any legal actions or proceedings which may be brought at any time relating in any way to this Agreement.

15.9 Signatures. The Client and Content Collective Co must sign the Service Agreement using Eversign e-signing system. These electronic signatures count as originals for all purposes.

15.10 Variations. No variation of this Agreement, nor consent to a departure by a Party from a provision, shall be of effect unless it is in writing, signed by all the Parties or (in the case of a waiver) by the Party giving it. Any such variation or consent shall be effective only to or for which it may be made or given.

15.11 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to its subject matter and supersedes all prior negotiations, understandings and agreements, whether oral or written.