

Terms of Trading incl. Social Media

1. Basis of Quotation or Estimate

The quotation is based on the current costs of production and prices will remain unchanged for a period of 30 days. If not accepted within this period it may be varied.

- I. The quotation is based on sighting manuscript and typographical specifications. In the absence of copy or complete specifications an estimate only will be given.
- II. The quotation does not include any costs which may be incurred by MindWorks for handling or storing material supplied by or on behalf of the customer.
- III. Proofs are not included for any work unless specifically noted on the quotation.
- IV. Client's alterations shall be an additional charge. If the client does not specify a style and type, the style and type shall be determined by MindWorks and changes from that style and type shall be clients' alterations at an additional charge.
- V. Revision charges - Any cost estimates provided in an quotation allow for one set of low-to-medium level copy revisions between concept and artwork development stages and accommodate changes "within reason" which means simple additions and deletions to copy or small layout changes, being as a general rule, within 15% of the original work. Changes greater than those "within reason" will attract the following additional charges:- Small changes where the revisions affect 15-30% of the original work will incur a revision charge of 30% of the estimate; Large changes where the revisions affect 30-60% of the original work, will incur a revision charge of 45% of the estimate; and Major changes where the original work is changed by over 60% will incur a revision charge of 60% of the estimate.
- VI. One signed proof must be returned to MindWorks when this is required to proceed with the order. This proof must be marked O.K. or O.K. with corrections. Variations required from poor or unsuitable supplied copy will be an extra charge.
- VII. Where known the quotation includes the costs of goods or services which MindWorks may, or is required by the client to specially acquire for the work. Where such costs are unknown at the time of quotation the uncosted goods or services may be indicated on the face of the quotation and the costs may be advised to the client prior to work commencing on the goods.

2. Acceptance

VIII. Acceptance of the quotation shall be an acceptance of these Terms and Conditions unless others are negotiated between MindWorks and the client. All quotations must be signed and a copy returned to MindWorks.

3. Delivery and Payment

- IX. Delivery will be arranged by MindWorks with its usual carriers on behalf of the client. The risk in the product shall pass to the client upon delivery by MindWorks at its premises to the client or agent, or to the carrier engaged by MindWorks for delivery to the client.
- X. Any goods not taken by the client as at the dates stated for delivery shall be paid full within 7 days from that date. Such goods will be at the clients' risk from that date.
- XI. Payment shall become due upon notification by MindWorks to the client that the goods are ready for delivery/Job Phase has been completed ie AM, CD, I, E. Normal payment terms are 14 days from delivery/phase completion unless prior agreement made in writing.
- XII. Should work be required to be delivered prior to the date specified on any quotation and should such delivery necessitate overtime being worked or other additional costs being incurred, this will be brought to the attention of the client and the charge be made to cover the enhanced cost will be quoted to the client. Expedited work will only then commence.
- XIII. Where the client has observed a proof being taken of the product and has examined the proof and found it satisfactory, the receipt of the product by the client shall be deemed to constitute an acknowledgment by the client that the product was received by the client in an undamaged condition.
- XIV. MindWorks shall be entitled to require:
 - a. 20% payment on Acceptance of Estimate. Payment Terms are 14 days from invoice date
 - b. at the end of the month from the date upon which work was commenced, a progress payment amounting to the percentage of the value of work completed to date. Payment Terms are 14 days from eom.
 - c. Late Payment penalty. Should Invoices remain outstanding beyond standard credit terms MindWorks reserves the right to charge any interest incurred until full payment complete.
- XV. Work produced in an experimental way: at the client's request including any management time spent preparing recommendations or quotations, and quotations, to the date of cancellation and finished artwork shall be considered an order.

4. Cancelled Orders

XVI. In the event of orders being cancelled the client will compensate MindWorks for all work done, materials used, ordered and specially procured, including pro rata management head hours spent preparing recommendations and quotations, to the date of cancellation at MindWorks normal charge rate.

5. Suspension of Work

XVII. The suspension by the client of any work, for any reason whatsoever, for a period of 30 days shall entitle MindWorks to payment in full for the portion of the work completed including pro rata management head hours spent preparing recommendations and quotations, at the date of suspension.

6. Liability

XVIII. MindWorks shall not be liable in respect of any failure to comply with any time limit for delivery of any work, however such failure arises whether by negligence on behalf of MindWorks or otherwise, unless MindWorks specifically agrees to comply with those deadlines in the quotation. Except where otherwise agreed, all claims must be in writing to MindWorks within 7 days of receipt of goods beyond which no claims, except those which are imposed by statute and cannot be excluded, restricted or modified, can be entertained.

7. Suitability

XIX. Where goods are provided or work is done in accordance with the clients order no warranty, except those provided by statute and which cannot be excluded is given or shall be given that the goods or work are suitable in size, shape, capacity, quality, or otherwise for the purpose for which the goods are bought or the work is done and MindWorks shall not be liable for any damage resulting from the unsuitability of such goods or work for any purpose for which the same may be used.

XX. b) Where MindWorks makes available or offers to make available to the client for approval or correction a proof of typesetting, artwork, film or other material which MindWorks is to deliver to a newspaper, publisher, printer or other destination prior to the delivery of the material and the client fails to give such approval, make corrections or accept the offer made prior to the time stipulated for delivery, MindWorks shall not be liable for any direct or consequential loss sustained by the client due to error, misinterpretation or other than acts of negligence on the part of MindWorks which inspection of such proof of material should be revealed.

8. Breach of Contract

XXI. MindWorks or the client shall be entitled to terminate work in the event of any breach by the other party of any term contained or otherwise form in part of this contract or the other party being unable to pay their debts: or, in the event of the other party committing an act of bankruptcy, entering into liquidation or entering into a scheme of arrangement with its

creditors or, if being a company, being placed under official Management or a Receiver being appointed by the other party under the provisions of the Companies Act or Ordinance in force in the State or Territory

9. Force Majeure

XXII. Contracts and deliveries may be suspended in the event of any tempest, riot, civil disturbances, war, strike, fire, accident, theft, crime, or cause which could not have been prevented MindWorks and which reasonably prevents or retards delivery of work and no responsibility shall be attached to MindWorks for any delay, default, loss or damage due to any of the above causes.

10. Responsibility

XXIII. MindWorks shall not be liable for any loss or damage in respect of loss of register owing to causes beyond their control. Except to the extent that the client has the benefit of any non-excludable statutory rights whether as a consumer or otherwise, the liability of MindWorks for any loss or damage including loss of press time or spoilage materials, shall be limited to any one or more of the following at the option of MindWorks:

- i) The replacement of goods or the supply of equivalent goods,
- ii) repair of the goods;
- iii) The payment of the cost of replacing the goods or of acquiring equivalent goods;
- iv) The payment of the cost of having the goods repaired.

XXIV. Should work be required to be delivered prior to the date or delivery on the face of the quotation every effort will be made to secure freedom from defects but reasonable allowance must be made by the client in such cases if quality is affected.

XXV. Because of the difference in equipment and conditions between the proofing and pressroom operations, a reasonable variation between proofs and the completed job shall constitute an acceptable delivery.

XXVI. MindWorks shall take all reasonable steps to ensure that materials supplied to a client, newspaper, publisher or printer is within accepted trade standards and specifications but can accept no liability for the failure or inability of the newspaper, publisher or printer to reproduce the material to the expectations of the client.

XXVII. Contracts and deliveries will be suspended and MindWorks is not responsible for any loss or damage arising as a result of delay in or interruptions to the completion of the work caused by malfunction or breakdown of machinery or vehicles belonging to MindWorks, its servants, agents or independent contractors or any other unforeseen occurrence outside the direct control of MindWorks or its servants or agents.

11. Artwork and Materials Supplied by or Produced for Client.

XXVIII. MindWorks shall be responsible for the risk and cost of all spoilage of materials supplied by the client where such spoilage is caused during processing by negligence or wilful act or omission on the part of MindWorks or its servants or agents.

XXIX. Where the client supplies materials, adequate quantities shall be supplied to cover spoilage.

XXX. Unless otherwise agreed in writing all artwork or materials supplied by the client or manufactured or purchased by MindWorks to complete the clients' order ("materials in progress") shall be the property of the client. MindWorks agrees to retain all materials in progress for a period of 3 months from the date of completion of the work ("the retention period"). If by the end of the retention period the client has given no specific instructions in writing in relation to the materials in progress MindWorks shall be free to dispose of them in any manner whatsoever provided such disposal is in accordance with any State Act or territory Ordinance relating to the disposal of unclaimed goods.

XXXI. Where materials or equipment supplied by the client are in the opinion of MindWorks unsuitable for the work they shall so inform the client who shall then decide whether or not to proceed with the work. If the client decides to proceed or if MindWorks has been unable to form an opinion that the materials or equipment are unsuitable then MindWorks accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

12. Lien

XXXII. MindWorks shall in respect of all unpaid debts due from the client have a lien on all goods and property in his possession to the extent allowed by law. MindWorks shall have the right of disposal of goods subjects to the provision of any State Act or Territory Ordinance provided they have complied with that Act or Ordinance.

13. Copyright

XXXIII. Where the client orders the reproduction of any drawing, photograph or other work which may properly form the matter of copyright protection the client warrants that he has acquired all legal rights in the works which he requires to be reproduced and undertakes to indemnify MindWorks Communications in respect of any liability for copyright infringement consequent upon such reproductions. This also includes hiring of photography where the client chooses not to pay complete royalty fees based on actual reproduction quantities and image usage.

14. Ownership of Drawings, Concepts and Intellectual Property

XXXIV. MindWorks original designs remain their exclusive property and may only be reproduced with the consent of MindWorks, until purchased and fully paid for by the client. These designs are only sold for the original purpose as intended by the specific project specifications.

XXXV. Creative concepts, designs and dummies submitted by MindWorks on a speculative basis (regardless of pitch fee) shall remain the property of MindWorks, until purchased and paid for by the client at the total quoted price or as negotiated in writing.

15. Sub-Contractors

XXXVI. MindWorks reserves the right to engage sub-contractors to part or all of the work and the subject of this contract.

16. Saving

XXXVII. Notwithstanding that MindWorks or the client might agree in respect of any particular transaction either by implication to waive any one or more of the above terms and conditions such agreement shall in no way release the client or MindWorks from any other obligation or requirement set out herein unless such other obligation or requirement is consistent with the waiving of the term or terms.

17. Arbitration

XXXVIII. All difference and disputes between MindWorks and the client arising in connection with this contract shall be to arbitration.

18. Definitions

XXXIX. Wheresoever the words MindWorks (being MindWorks Communications and MindWorks Studio) are used in this quotation or those terms and conditions they shall be deemed to mean the person, firm or company making the offer and the client shall mean the person, firm or company to whom such, offer is made.

XL. Size is understood to mean linear scale, not area. An order for half size, for example, shall mean reducing the perimeter of the original by one-half photographic reductions being controlled by the proportion of original. Size must be clearly indicated on copy.

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Provision of Social Media Services

- XLII. The Services to be provided to you are set out in the Schedule, Estimate, Quote and/or Proposal, and will be provided subject to these terms and conditions and any Special Conditions, which together with the Proposal set out the entire understanding and agreement between you and us.
- XLIII. If you instruct us to commence work on any Project or otherwise provide you with Services, that will be taken as your acceptance of this agreement and any related Proposal.
19. Fee and Costs
- XLIII. In consideration of us providing the Services to you, you must pay the Fee.
- XLIV. If you require any services during the term of this agreement that are not contained in the Schedule, Estimate, Quote and/or Proposal, or if there are elements of the Services which we reasonably determine require additional time, material or resources to be provided by us, then we will advise you of the Additional Services required and the Additional Fees required to undertake the Additional Services before providing you with the Additional Services
- XLV. We may also apply Additional Fees in other circumstances including but not limited to:
- an urgency fee for work that you require us to complete urgently or at short notice.
 - fees relating to fixing problems caused by you or other third party's additions or alterations to deliverables provided by us
 - our reasonable costs in cases where there is a change in the Services, scope, timing or order of the Services
 - changes requested after approval of a Milestone or a deliverable, and
 - third party expenses, such as (but not limited to) media costs, hosting, plugins, software, licences, data manipulation, design, copywriting, editing, videos and images.
- XLVI. We may require that some third party expenses be paid directly to the third party service provider. We will advise you if this is the case.
- XLVII. We will issue an invoice for the Services either monthly, fortnightly, annually, or in accordance with the Milestones as notified by us. The first payment will be due prior to commencement of the provision of the Services.
- XLVIII. If any money payable by you is not paid when due, it may at our discretion bear interest from the due date at 10% per annum, calculated daily, plus any costs or expenses (including full legal expenses) that we incur in relation to seeking payment from you.
- XLIX. You must not make any deductions to any amounts due to us, regardless of whether or not such deduction is a claim to offset monies, counter claim, or other deduction.
- You must not withhold payment of our Fees because of delay in a deliverable or Project.
 - All amounts payable under this agreement are expressed exclusive of GST. In respect of any taxable supply, you must pay us an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Fees, subject to the receipt by you of a valid tax invoice.
 - We may at our discretion refuse to deliver a deliverable to you or upload or transmit any files until we have received full payment of all Fees.
 - If we have advised you that we require a deposit for the Services then we will require full payment of this deposit before we commence providing the Services.
 - If you request in writing either that the Services be postponed or that Services should not be completed, or if this agreement terminates for any reason other than for breach of this agreement by us, you must pay us for all the Services provided (incl Media Spend and Ongoing Campaign Management Fee), and all additional expenses incurred or committed to by us up to the date that we receive such written notification from you.
 - Ongoing fee special conditions
 - Fees for Ongoing Services will be increased by 5% on 1 January each year.
 - The component of Ongoing Fee relating to ongoing website maintenance and development will be reviewed every 3 months from the date of this agreement. We will notify you if the Ongoing Fee increases as a result of this review.
 - In addition to (a) and (b) above, we may review the pricing of Ongoing Fee any time by providing 30 days notice to you in writing.
 - If we apply any increase in pricing to the Ongoing Fee other than the annual increase set out in (a) above, and you do not agree to the new pricing, you may terminate this agreement after providing us with 30 days written notice.
20. Timing and approvals
- LVI. We will use reasonable commercial endeavours to deliver the Services in accordance with any time stated to the extent that it is within our control to do so (or if no time is specified, within a reasonable time), but unless otherwise agreed in writing, we do not guarantee any timing estimates provided in a Proposal or otherwise and will not be in breach of our obligations if we fail to meet any such timelines.
- LVII. Where the Services are provided on the basis of Milestones, we may at our discretion require you to approve each Milestone upon completion. Where you have approved a Milestone such approval will be considered by us as irrevocable acceptance by you of the completion of that Milestone. After acceptance, if you require any further work to be undertaken on a completed Milestone or require any changes to be undertaken to work provided in accordance with that Milestone, such work will be treated as an Additional Service and charged in accordance with this agreement. We may at any time commence work on any Milestone and in any order.
- LVIII. After we provide you with a deliverable you must advise us within 7 days of delivery whether you accept or reject the deliverable. If you notify us that you accept the deliverable, or do not notify us that you reject the deliverable within that time period, or if you request us to print, publish or otherwise finalise the deliverable, you will be taken to have accepted the deliverable and agreed that the Services in respect of the deliverable have been completed. If you require any further Services to be performed after acceptance of the deliverable, such Services will be considered to be Additional Services and charged accordingly..
21. Intellectual Property
- LIX. Each party retains ownership of its Background IPR and grants to the other party a non-exclusive, royalty-free licence as follows:
- for us, to use, reproduce, modify and communicate your Background IPR to the extent necessary to enable us to provide the Services and otherwise carry out our obligations under this agreement, and
 - for you, to use, reproduce and communicate our Background IPR only for the purpose and scope of use set out in the Proposal or otherwise agreed by both parties in writing, or where there is no agreement in writing, then only for the purpose of the use of the deliverables in the way reasonably anticipated by the parties at the Date of Agreement.
- LX. You acknowledge and agree that all Intellectual Property Rights in the Proposal and all creation files, working files, reports, specifications, artwork, material and Content created by us for you or on your behalf or otherwise comprised in the Services, vests in us on its creation. For the avoidance of doubt, this does not include your Confidential Information or your Background IPR.
- LXI. You acknowledge that we are free to reproduce, use, disclose, display, exhibit, transmit, perform, create derivative works and distribute any item relating to or arising from performance of the Services unless specifically agreed. You will not in any way do, carry out or perform any act that compromises or infringes our Intellectual Property Rights or those of any party from whom we license such rights.
- LXII. You must not print, publish or distribute any draft files or documentation that we provide to you, unless we otherwise authorise in writing. And unless we have specifically assigned the Intellectual Property Rights in a deliverable to you, you may not reproduce, publish or distribute the deliverables (or any other work that we have provided for you) to anyone in any place or in any manner other than that which we produced the work for you.
- LXIII. If the Proposal provides for the Project IPR or other Intellectual Property Rights to pass to you, then such property will pass only upon completion of the Project or relevant deliverable and the payment of all fees and costs owed to us by you. In such case we have a perpetual, irrevocable licence to the use of the relevant Intellectual Property Rights unless agreed otherwise in writing. For the avoidance of doubt, Project IPR or other Intellectual Property Rights that we have agreed to transfer to you does not include any licences (such as image licences) or other Intellectual Property Rights that we are not able to assign.
- LXIV. If during the course of providing the Services we develop, discover, or first reduce to practice a concept, product or process which is capable of being patented, then such concept, product or process will remain our property and you must not use or otherwise appropriate such property without first obtaining our written consent.
- We accept no liability for undertaking any legal searches that may be required in relation to the Services. For example, where the Services include our development of logos, brand names or other marks that may be used as trademarks, we accept no liability for undertaking availability searches, and we make no warranties that the work we provide will be able to be registered as a trade mark or otherwise protected. We highly recommend that you seek independent legal advice in relation to any content that will be used in a deliverable. For Services that may be used as a trademark, we highly recommend that you seek independent legal assistance to conduct trade mark availability and registration searches and other relevant legal checks to ensure that the deliverables do not infringe any third party rights, and (where relevant) are of a kind that are registrable.
22. Website/Landing Page Development
- LXV. Where the Services include website development, the following clauses apply.
- LXVI. We may develop websites and other digital properties using an open source software platform, or using a licensed software platform. In either case you will be bound by the terms of that licence. You may be required to pay a one off or ongoing licence fee, which we may invoice you as an Additional Fee.
- LXVII. We must provide us with all material required by us for development of the website (**Your Material**) within the timeframes that we specify. If you fail to provide Your Material within any timeframe we have requested, the timing of our provision of the Services may be delayed, and in some cases may require payment of Additional Fees. Your Material must be provided in a form suitable for incorporation into the website without the need for any modification by us.
23. Content Development
- LXVIII. Where the Services include content development, the following clauses apply.
- LXIX. We grant to you a non-exclusive, world-wide, non-transferable licence to make the Content available to the public through the Approved Medium during any term specified us, in accordance with the following terms:
- you must use the Content in the form provided without alteration and not use the Content in any way that could damage our reputation or the goodwill or other rights associated with the Content
 - you may permit end users of the Approved Medium to view the Content via the Approved Medium, and copy the Content for personal, non-commercial purposes as part of the normal process of using the Approved Medium
 - you must not use the Content for any purpose or in any manner other than as set out in this clause, permit any third party to use the Content other than as set out in this clause or permit any person to link to any page containing any of the Content (including via a hyperlink or RSS feed) without our written consent.
- LXX. The Services do not include responding to comments posted by third parties or monitoring social media accounts, even if the Services include us creating content for social media unless both parties agree otherwise.
24. Use of images
- LXXI. We may purchase rights to images that we use in providing the Services to you. Such images may be subject to a licence agreement between us and a third party, that may restrict your use of those images. Please ask us if you would like to be given a copy of the terms of any such licence. Unless otherwise agreed in writing, we may at our discretion use images that have been used in providing the Services to you, with other clients or on other works. If you require specific images, you may be required to pay Additional Fee(s) for that use. Even if we agree to provide an image to you exclusively, we cannot guarantee that the image will not be used by other third parties who may have obtained these images from another party.
- LXXII. Unless you pay an exclusivity fee to us at a rate that we determine or unless we otherwise agree in writing, the right to the use of the images that we provide to you is limited to the Services that we provide for you, and you do not have the right to use those images on any other works, or with any other service providers.
25. Confidentiality
- LXXIII. During the term of this agreement, and at all times following the termination of this agreement, each party must not and must ensure that their employees, agents and contractors do not:
- disclose the Confidential Information of the other party to any third party
 - use the Confidential Information of the other party for its own benefit or for the benefit of anyone else, or
 - otherwise appropriate or copy the Confidential Information of the other party.
26. Term, Termination and Suspension
- LXXIV. Subject to the other conditions set out below:
- for Ongoing Services, you agree, to continue with our services for the Initial Term commencing on the Date of Agreement, unless terminated earlier in accordance with this agreement. At the end of the Initial Term, this agreement will automatically renew for one additional period equivalent to the Initial Term unless either party gives the other written notice of its intention not to renew at least 30 days prior to the end of that current term,
 - if you wish to terminate the agreement during any subsequent term, subject to clause 9.1(c), you must provide 30 days notice in writing prior to termination.
 - if we are providing the Services in relation to a Project, you agree that you will not terminate the agreement until completion of the Project or completion of the Term set out in the relevant Proposal and full payment by you of the amounts owing to us.

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LXXV. We reserve the right to suspend Services immediately at any time and without liability if you fail to perform your obligations under this agreement, including failing to make payments to us by a due date. Such service suspension may where relevant include us taking down your website until such time as payment of all outstanding amounts is received by us.

LXXVI. We may at any time at our discretion terminate this agreement in relation to any Services (including Ongoing Services) by providing you with 30 days notice in writing if you fail to make payments to us by a due date, if you fail to provide us with adequate instructions, if we do not agree on any Fees, if you indicate that we have lost your confidence, or (in relation to Ongoing Services) if we are unable to continue providing the Ongoing Services. In such case we will retain the Intellectual Property Rights in the Services even if we had previously agreed to assign it to you. Such termination will not in any way prejudice any of our rights including our right to receive payment for Services rendered.

LXXVII. Either party may terminate this agreement by written notice to the other if an insolvency event occurs to the other party.

27. Warranties and indemnities

LXXVIII. You warrant that all work and materials provided by you (including your Background IPR) will be free and clear of all liens and encumbrances and may be lawfully used by us without infringing upon the rights of others including, and without limiting the generality of the foregoing, any copyright, trade secret, patent or trade mark rights of any third party.

LXXIX. You acknowledge that you have not relied on any advice, representation or warranty given or made by us in connection with the Services and which is not expressly stated in this agreement.

LXXX. To the extent permitted by law, all warranties, conditions and representations by us are excluded, and neither we nor any of our officers, employees, agents or related bodies corporate will be responsible or liable in any way (including for negligence) for any loss, damage, liability or costs incurred, suffered or sustained by you or claims made against you, and you agree not to make any claim against us, due to or arising out of our provision of the Services. If a term is implied by law into this agreement and the law prohibits provisions in a contract excluding or modifying liability under that term, then such term will be included in this agreement. However to the extent permitted by law, our liability for breach of such term will be limited, at our option, to one or more of the following:

- the supply of the Services again;
- the payment of the cost of having the Services supplied again

LXXXI. We do not guarantee that our Services will provide any specific results. In particular, and without limiting the

LXXXII. foregoing, we make no guarantees, warranties or representations as to the search engine results that will be achieved, the Google ranking that will be achieved, or that you will receive any new or increased numbers in customers or revenue as a result of our Services.

LXXXIII. Without limitation, we will under no circumstances be liable for any indirect or Consequential Loss you suffer.

LXXXIV. You indemnify and hold us harmless in respect of any and all claims, loss or damage of any kind whatsoever

LXXXV. (including legal costs and disbursements on a full indemnity basis), arising directly or indirectly out of any:

- act or thing done by us in good faith and purportedly pursuant to a right granted to us under the provisions of this agreement
- infringement of third-party trade mark rights
- breach by you of any of the terms of this agreement
- material or Content that we post on your behalf, and
- comments that are posted by third parties in response to material or Content that we post on your behalf.

28. Non-Solicitation

LXXXVI. You must not during the term of this agreement, or for a period of 12 months following completion of any Services that we undertake for you:

- employ, contract or hire the services of any of our employees, contractors, agents or other personnel, or
- induce or attempt to induce any of our employees, contractors, agents or other personnel to terminate their agreements or contracts with us.

29. General

LXXXVII. All notices and consents required or permitted to be given under this agreement must be in writing and given by personal service, pre-paid postage or a facsimile transmission at the addresses of the parties set out in this agreement or to such other address as either party may designate to the other by written notice.

LXXXVIII. You must not assign or otherwise transfer any rights or obligations of this agreement without our prior written permission.

LXXXIX. If we do not act in relation to a breach by you of this agreement, this does not waive our right to act with respect to that or subsequent or similar breaches.

XC. Nothing stated in this agreement constitutes you and us as partners, or creates the relationship of employer and employee, master and servant or principal and agent between the parties. Neither party has authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as expressly provided in this agreement or authorised in writing.

XCI. We may appoint sub-contractors to perform Services under this agreement without your prior written consent.

XCII. If any provision of this agreement is held to be invalid in any way or unenforceable, the remaining provisions will not in any way be effected or impaired. This agreement must be construed so as to most nearly give effect to the intent of the parties as it was originally executed.

XCIII. This agreement is governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that State.

30. Definitions and Interpretation

XCIV. 13.1 Definitions

- Date of Agreement, Other Services, Ongoing Services, Milestones, Payment Terms, Initial Term, and Special Conditions means the items set out in the Schedule under each respective heading
- Additional Fees means fees for Additional Services
- Additional Services means any additional Services as set out in this agreement
- Approved Medium means the medium/s that have been approved in writing by us, for example a selected social media account, a website and/or a blog
- Background IPR means IPR in any material, in which a party or a third party holds Intellectual Property Rights and which is made available by a party for the purpose of this agreement before, on or following the commencement of this agreement, and includes material specified in the Proposal, or derivatives of that material where such derivative work cannot be used without infringing the IPR in the underlying material
- Confidential Information means all information that is not generally known by the public and includes, but is not limited to, inventions, discoveries, trade secrets, and know how, computer software code, designs, routines, algorithms, and structures, product information, research and development information, financial data and information, passwords, business plans and processes, any search engine optimization methods and

techniques and any other information belonging to either party and which either party learns of by virtue of this agreement

- Consequential Loss includes, but is not limited to, loss of use, lost production, lost income or profits, loss of opportunity, lost savings, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, wasted or increased financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against you by others, losses or costs or expenses associated with identification, investigation, assessment, repair, replacement or servicing and any other economic loss or damage and any other special, indirect or consequential loss or damage
- Content means any and all data, text, software, images, audio or video material and other content, in any medium, delivered to you by us according to this agreement
- Fee has the meaning in the Schedule and includes the Ongoing Fee
- GST has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth), or any other similar tax
- Intellectual Property Rights or IPR means all intellectual property rights, including but not limited to the following rights: (a) patents, copyright, rights in circuit layouts, plant breeders rights, registered designs, trade marks and any right to have confidential information kept confidential; and (b) any application or right to apply for registration of any of the rights referred to in paragraph (a)
- Project means the project referred to in the Proposal in respect of which we are to provide the Services
- Project IPR means IPR that arises during and as a result of carrying out the Services, however does not include our Confidential Information or our Background IPR
- Proposal means a proposal for the provision of Services to you as attached to this agreement, or as otherwise provided by us to you from time to time
- Services means the Services that we provide to you including but not limited to the Ongoing Services, Other Services and Additional Services
- You means any person or entity to whom or on whose behalf we provide Services as set out in the Schedule under the heading Client Details
- Your Material has the meaning set out in this agreement

31. Interpretation

XCV. Unless the context requires otherwise:

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

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