

AS DIGITAL – TERMS OF SERVICE

These terms and conditions (**Terms**), together with any Estimate (as defined in clause 1(a)), set out the agreement (**Agreement**) under which AS Digital Pty Ltd (ABN 67 633 179 129) (the **Company**) provides Services (defined in clause 2) to you (the **Client**) or the company which you represent.

1 ESTIMATE AND ACCEPTANCE OF AGREEMENT

- (a) These Terms will apply to all the Client's dealings with the Company, including being incorporated in all agreements, quotations, estimates, retainers or orders under which the Company is to provide services to the Client (each a '**Estimate**') together with any additional terms or conditions included in such Estimate (provided such additional terms are recorded in writing).
- (b) The Client will be taken to have accepted this Agreement if the Client accepts a Estimate, or if the Client orders, accepts or pays for any services provided by the Company after receiving or becoming aware of this Agreement.
- (c) In the event of any inconsistency between these Terms and any Estimate, the clauses of these Terms will prevail to the extent of such inconsistency, except that any special conditions (being terms described as such or similar in a Estimate) will prevail over these Terms to the extent of any inconsistency.
- (d) The Company may update any part of the Terms at any time without notice to the Client. The Client continuing to order, accept or pay for any services provided by the Company following such an update will represent an agreement by the Client to be bound by the Terms as amended. The Client is encouraged to check the date at the bottom of the Terms to see when the Company last updated these Terms.
- (e) The Client is responsible for confirming that the Estimate accurately specifies (if applicable):
 - (i) the specifications of the Services required; and
 - (ii) the agreed Fees and any other rates or charges.
- (f) The Client acknowledges and agrees that the Estimate (including any fees, charges, costs, schedules and delivery dates in relation to the services, or any portion of the services, to be provided by the Company) is an estimate only. The Company will use its best efforts to meet the estimates in the Estimate, however these are subject to change if unforeseen events, complexities or issues arise, or if there are changes requested by the Client or due to the Client's actions. In these cases, the Company will use its best efforts to minimise the impact of such changes.

2 SERVICES

- (a) In consideration for the payment of the fees, rates or charges set out in the Estimate (**Fees**), the Company will provide the Client with the services set out in the Estimate (**Services**).
- (b) Unless otherwise agreed, the Company may, in its discretion:
 - (i) not commence work on any Services until the Client has paid any Fees payable in respect of such Services (including any required deposit); and
 - (ii) withhold completion and/or access of Services until the Client has paid for such Services (or any portion thereof).

3 CLIENT OBLIGATIONS

- (a) (**General**) The Client must provide the Company with all documentation, information and assistance reasonably required for the Company to perform the Services.
- (b) (**Liaison**) The Client agrees to liaise with the Company as it reasonably requests for the purpose of enabling the Company to provide the Services.
- (c) (**Feedback**) The Client agrees to provide input or feedback on Services within the timeframe requested by the Company in order to avoid delays to deadlines for the Services. The Company reserves the right to revise the Fees or any schedules or

delivery dates in relation to the Services due to any delays caused by the Client's failure to provide timely input or feedback or other information or materials reasonably requested by the Company in order to perform the Services.

- (d) **(Compliance with Laws)** The Client is responsible for complying with all applicable Laws, where 'Laws' means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the Company provides the Services.
- (e) **(Right to Terminate)** The Company reserves the right to terminate this Agreement (pursuant to clause 14.2) in any of the following circumstances:
 - (i) the Client does not contact, or respond to requests from, the Company within 10 business days;
 - (ii) the Client's reputation and values are misaligned with the Company;
 - (iii) the scope of work requested by the Client changes from the agreed scope (as set out in the Estimate or as subsequently agreed in writing) and the Client refuses to pay any additional fees incurred as a result of the change; or
 - (iv) the Client fails to provide content and any additional information requested by the Company within the Company's required timeframes.

4 CHANGES

- (a) Where the Company, at the request of the Client, provides Services in addition to those specified in the Estimate, the Company's fees for such additional services shall be the number of hours (or part thereof) spent by the Company in providing those Services multiplied by the Company's additional work rate(s) or charge(s) as identified in the Estimate or as otherwise notified to the Client (**Additional Work Rate**).
- (b) Unless otherwise agreed in writing, the Company may at its discretion extend or modify any delivery schedule or deadlines for the Services as may be reasonably required by changes to the Services requested by the Client.

5 PAYMENT

5.1 FEES

The Client must pay to the Company the Fees in the amounts, at the times and using the fee payment method set out in the Estimate or as otherwise agreed by the parties in writing.

5.2 INVOICES

Unless otherwise agreed in the Estimate:

- (a) if the Company issues an invoice to the Client, payment must be made by the time(s) specified in such invoice; and
- (b) in all other circumstances, the Client must pay for all Services within 14 days of receiving an invoice for amounts payable.

5.3 EXPENSES

Unless otherwise agreed in writing any third party costs incurred by the Company in the course of performing the Services may be billed to the Client, unless specifically otherwise provided for in the Estimate.

5.4 GST

Unless otherwise indicated, amounts stated in a Estimate do not include GST. In relation to any GST payable for a taxable supply by the Company, the Client must pay the GST subject to the Company providing a tax invoice.

5.5 CARD SURCHARGES

The Company reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express), or third-party services such as Stripe, PayPal or GoCardless (direct debit).

5.6 UPDATES

The Company will endeavour to notify the Client when the Fees reach an amount close to the fees, rates or charges specified in the Estimate.

5.7 LATE PAYMENT AND DEBT RECOVERY

If the Client does not pay an amount due under this Agreement on or before the date that it is due:

- (a) the Client must pay the Company interest at the rate of 10% per annum on the amount due, compounded and calculated daily;
- (b) the Company may seek to recover the amount due by referring the matter to debt collectors;
- (c) the Client must reimburse the Company for any costs it incurs, including any legal costs, in recovering the amount due or enforcing any of its rights under these Terms; and
- (d) the Company may suspend all Services provided to the Client until the amount is paid (for the avoidance of doubt this includes the suspension of website hosting for non-payment of web design, online marketing and other services).

6 THIRD PARTY GOODS AND SERVICES

- (a) Any Services that require the Company to acquire goods or services supplied by a third party on behalf of the Client may be subject to the terms & conditions of that third party (**Third Party Terms**), including 'no refund' policies.
- (b) The Client agrees to familiarise themselves with any Third Party Terms applicable to any such goods and services supplied and, by instructing the Company to acquire the goods or services on the Client's behalf, the Client will be taken to have agreed to such Third Party Terms.

7 HOSTING SERVICES

- (a) Where the Services provided by the Company include website hosting services, the provisions of this clause 7 will apply.
- (b) The Company will use reasonable endeavours to maintain hosting services without interruption and to protect the security of all Client content provided to the Company related to the Client's website. However, the Client acknowledges that, due to the inherent risks of the internet and computer based networks or systems, website hosting services provided by the Company may not be uninterrupted or error free or that Client's content will always protected from loss or corruption.
- (c) The Client will have a grace period of 2 months once the Client's website is on the staging site and thereafter hosting fees will be charged to the Client unless otherwise agreed by the Company in writing.
- (d) In order to keep its servers up to date, the Company may perform scheduled or unscheduled maintenance to its systems and servers from time to time. The Company will attempt to perform all scheduled maintenance at off-peak times and provide notice to the Client if scheduled maintenance is expected to last for more than 30 minutes.
- (e) The Client and its users may be allowed to upload content to its website in the manner and form and as otherwise directed by the Company from time to time. The Client must ensure such content complies with all applicable standards, laws and regulations and does not infringe the intellectual property rights of any person. The Company may remove any Client content it considers unsuitable.
- (f) It is the Client's responsibility to maintain local copies of its website information. The Company will perform regular snapshots or backups, however it is strongly recommended that the Client keeps their own recent copies for any unforeseen events.
- (g) The Fees include the provision of normal website hosting and server maintenance services. Upon request by the Client, the Company may carry out additional services, including but not limited to services required to attend to security breaches caused by the Client or technical support for application specific issues. The Client must pay for additional services at the Additional Work Rate and otherwise pay for any fees and charges incurred by the Company in providing these services.

- (h) The Company reserves the right to suspend or terminate website hosting services with immediate effect and without notice if, in the Company's reasonable opinion, the Client or its users use of the Services is in breach of any laws or regulations, compromises or is likely to compromise or have an adverse effect on the Company's systems or networks or if this Agreement is terminated for any reason.

8 CONFIDENTIALITY

- (a) Except as contemplated by this Agreement, each party must not, and must not permit any of its officers, employees, agents, contractors or related companies to, use or disclose to any person any confidential information disclosed to it by the other party without its prior written consent.
- (b) This clause 8 does not apply to:
 - (i) information which is generally available to the public (other than as a result of a breach of this Agreement or another obligation of confidence);
 - (ii) information required to be disclosed by any law; or
 - (iii) information disclosed by the Company to its subcontractors, employees or agents for the purposes of performing the Services or its obligations under this Agreement.

9 INTELLECTUAL PROPERTY

9.1 CLIENT CONTENT

- (a) The Client grants to the Company (and its subcontractors, employees and agents) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use the Client Content to the extent reasonably required to perform any part of the Services.
- (b) The Client:
 - (i) warrants that the Company's use of Client Content as contemplated by this Agreement will not infringe any third-party Intellectual Property Rights; and
 - (ii) will indemnify the Company from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement or a claim of such an infringement.

9.2 DEVELOPED IP

All Developed IP will be solely and exclusively owned by the Company.

9.3 COMPANY IP

- (a) The Company grants to the Client a non-exclusive, royalty free, non-transferable and revocable licence to use Company IP and any Developed IP to the extent required for the Client to use, enjoy the benefit of or exploit the Services and/or the deliverables from such Services.
- (b) Unless otherwise agreed in writing by the Company or in this clause 9.3, the Client will not acquire Intellectual Property Rights in any Company IP under this Agreement or as part of receiving the Services.

9.4 DEFINITIONS

For the purposes of this clause 9:

- (a) "**Client Content**" means any Material supplied by the Client to the Company under or in connection with this Agreement, including any Intellectual Property Rights attaching to that Material.
- (b) "**Developed IP**" means any Material produced by the Company in the course of providing the Services, either alone or in conjunction with the Client or others, and any Intellectual Property Rights attaching to that Material.
- (c) "**Intellectual Property Rights**" means any and all present and future intellectual and industrial property rights throughout the world (whether registered or unregistered), including copyright, trade marks, designs, patents, moral rights, semiconductor and circuit

layout rights, trade, business, company and domain names, and other proprietary rights, trade secrets, know-how, technical data, confidential information and the right to have information kept confidential, or any rights to registration of such rights (including renewal), whether created before or after the date of this Agreement.

- (d) “**Company IP**” means all Material owned or licensed by the Company that is not Developed IP and any Intellectual Property Rights attaching to that Material.
- (e) “**Material**” means tangible and intangible information, documents, reports, drawings, designs, software (including source and object code), inventions, concepts, data and other materials in any media whatsoever.

10 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with any goods or services provided.

11 LIABILITY

- (a) (**Limitation of liability**) To the maximum extent permitted by applicable law, the maximum aggregate liability of the Company to the Client in respect of loss or damage sustained by the Client under or in connection with this Agreement is limited to the total Fees paid to the Company by the Client in the 6 months preceding the date of the first event giving rise to the relevant liability.
- (b) (**Indemnity**) The Client agrees at all times to indemnify and hold harmless the Company and its officers, employees, agents and contractors (“those indemnified”) from and against any loss (including reasonable legal costs) or liability incurred or suffered by any of those indemnified where such loss or liability was caused or contributed to by the Client or the Client’s officers’, employees’, agents’ or contractors’:
 - (i) breach of any term of this Agreement; or
 - (ii) negligent, fraudulent or criminal act or omission.
- (c) (**Consequential loss**) The Company will not be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this Agreement or Services provided by the Company, except to the extent this liability cannot be excluded under the Competition and Consumer Act 2010 (Cth) or any other applicable law.

12 INDEPENDENT CONTRACTOR

- (a) The Company is an independent contractor and not an employee or agent of the Client. Neither the Company, nor any employee, contractor, representative or agent of the Company will by virtue of this Agreement be deemed to be an employee of the Client.
- (b) The manner and performance of the Services will be at all times within the judgement and discretion of the Company.
- (c) The parties to this Agreement will not be or be deemed to be in any partnership, collaboration or joint venture and neither party will hold itself out as being in any way a partner or joint venturer of the other party and neither party will pledge the credit or warrant the authority of the other party.

13 SUBCONTRACTING

The Company may subcontract any aspect of providing the Services and the Client hereby consents to such subcontracting.

14 TERMINATION

14.1 TERMINATION FOR CONVENIENCE

The Company may terminate this agreement for convenience at any time by providing 1 months' written notice to the Client.

14.2 TERMINATION FOR CAUSE

Either party (**Non-Defaulting Party**) may terminate this agreement immediately by written notice to the other party (**Defaulting Party**) if the Defaulting Party is in breach of this agreement and either:

- (a) fails to remedy such breach within 7 days of receiving notice from the Non-Defaulting Party requiring it to remedy such breach; or
- (b) that breach is not capable of remedy.

14.3 EFFECT OF TERMINATION

Upon termination of this agreement:

- (a) the Company will refund any amounts paid by the Client for Services not provided as at the date of termination (in the sole reasonable opinion of the Company and subject to deduction of any third party costs or expenses procured for the Services that cannot be cancelled or refunded);
- (b) the Client must pay all amounts owed for Services already provided as at the date of termination;
- (c) each party must return all property of other parties to those respective parties;
- (d) each party must immediately return to each other party, or (if requested by that party) destroy, any documents in its possession or control containing Confidential Information of the other party; and
- (e) no rights, liabilities or remedies of any party will be invalidated by the termination.

14.4 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this Agreement will survive and be enforceable after such termination or expiry.

15 DISPUTE RESOLUTION

- (a) The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this Agreement prior to commencing any proceedings.
- (b) If a party requires resolution of a dispute, it must immediately submit full details of the dispute to the chief executive officer of the other party or, if the party is an individual, that individual.
- (c) The parties acknowledge that compliance with this clause 15 is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except:
 - (i) in the case of applications for urgent interlocutory relief; or
 - (ii) a breach by another party of this clause 15.

16 FORCE MAJEURE

- (a) If a party becomes unable, wholly or in part, to carry out an obligation under this agreement (other than an obligation to pay money) due to an event beyond its reasonable control (Force Majeure), that party must give to the other party prompt written notice of:
 - (i) reasonable details of the Force Majeure; and
 - (ii) so far as is known, the probable extent to which that party will be unable to perform or be delayed in performing its obligation.
- (b) Subject to compliance with clause 16(a), the relevant obligation will be suspended during the Force Majeure to the extent that it is affected by the Force Majeure.

- (c) The affected party must use its best endeavours to overcome or remove the Force Majeure as quickly as possible.

17 NOTICES

A notice or other communication to a party under this agreement must be:

- (a) in writing and in English; and
- (b) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond for the purposes of the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (c) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent; or
 - (ii) when replied to by the other party,whichever is earlier.

18 GENERAL

18.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in New South Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

18.2 BUSINESS DAYS

If the day on which any act is to be done under this agreement is a day other than a business day, that act must be done on or by the immediately following business day except where this agreement expressly specifies otherwise.

18.3 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

18.4 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

18.5 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

18.6 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

18.7 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

18.8 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

18.9 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

18.10 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

18.11 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word “includes” and similar words in any form is not a word of limitation;
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or “dollar”, is to Australian currency, unless otherwise agreed in writing.

19 LAST UPDATE

These Terms were last updated on 10 August 2022.