



DigiMedia Worx Pty Ltd –Terms & Conditions

These terms and conditions apply to each agreement for the provision of Services between DigiMedia Worx Pty Ltd (**DMW**) and the Client.

1.1 Definitions

In this agreement unless the context indicates otherwise, the following words have the following meanings:

- (a) **Claims** means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).
- (b) **Commencement Date** means the date on which this agreement will commence, as set out in the Schedule.
- (c) **Completion Date** means the date on which this agreement will end, as set out in the Schedule. If no date is identified in the Schedule, the agreement will continue on a month to month basis.
- (d) **Confidential Information** includes any information marked as confidential and any information developed by DMW during the term of this agreement, which is not publicly available including those which relates to processes, equipment and techniques used by DMW. This includes all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and business plans.
- (e) **Content** means all content which is used in or posted to the Website including any copy and all other material which is provided to DMW or on behalf of the Client for use in relation to this agreement, including any content which is unused or edited out of the Website or Services.
- (f) **Copy** means all Client material which is provided to DMW for provision of the Services.
- (g) **Domain** means a domain name or internet address at which a Website is hosted.
- (h) **Fees** means the fees for the Services, identified in the Schedule.
- (i) **GST Law** means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (j) **Hosting Period** means the period of time during which DMW will register and host a Domain or Website (whether by DMW or 3rd party) in accordance with clause 2.1(f) and as set out in the Schedule.
- (k) **Intellectual Property** includes trademarks, patents, copyrights, processes, know-how, logos, graphic design, registered designs or other like rights or any right to apply for registration of any of the former.
- (l) **Losses** means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.
- (m) **Parties** means the parties to this agreement, and **Party** means one of them.
- (n) **Services** means the services to be provided by DMW under this agreement, including such Content as is identified in the Schedule.
- (o) **Term** means the period from the Commencement Date up to and including the Completion Date and shall include any renewal or extension.

- (p) **Termination Date** means the date on which the agreement expires (without renewal) or is terminated by either party.
- (q) **Website** means an internet address or domain nominated by the Client or to be selected by DMW for the purpose of hosting.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in any schedule to this agreement;
- (e) reference in any schedule to this agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (g) the headings to the clauses and schedules of this agreement are not to affect the interpretation;
- (h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- (i) the word "including" (and related forms including "includes") means "including without limitation".

2 Services

2.1 Provision of services

- (a) DMW will provide the Services to the Client in consideration for the Client paying the Fees to DMW.
- (b) DMW will use reasonable endeavours to complete the Services promptly, with due diligence and within any time frame indicated.
- (c) The Client acknowledges that timeframes for the completion of Services provided by DMW are estimates only and may vary or be affected due to the nature and scope of work involved.
- (d) The Services will be performed by such employees, sub-contractors or agents that DMW may determine to be most appropriate to carry out the Services.
- (e) A description of the Services to be performed and the Fees relating to same are set out in the Schedule.
- (f) Where the Services include the hosting of a Website, DMW will, throughout the Hosting Period, make all necessary arrangements so that DMW will maintain and host the Website or provide third party hosting, so that the Website will be hosted on a server connected to the internet.
- (g) The Client will pay for all costs, charges and expenses for hosting the Website, which will be identified in the Schedule, where possible.
- (h) The parties acknowledge that DMW retains the ability to suspend the provision of the Services to Clients, at their discretion, in the event that the Client fails to comply with any of the terms of this agreement.

2.2 **Proof Reading:**

- (a) Every care will be taken by DMW to carry out the instructions of the Client.
- (b) The Client is responsible to undertake a final proof reading of all Content and Advertising prior to publishing.
- (c) DMW will not be liable for any errors not corrected by the Client in the final proof reading.
- (d) Should the Client alter the Content or Advertising and require DMW to undertake additional proofs, this may be invoiced as an extra in accordance with clause 3.

2.3 **Copy:**

- (a) The Client acknowledges that all Copy supplied to DMW is subject to the approval of DMW.
- (b) The Client warrants that all Copy supplied to DMW to be used for the provision of the Services shall:
 - (i) be true and correct;
 - (ii) does not contain prohibited content;
 - (iii) does not contain anything that is defamatory of any person or is indecent or obscene; and
 - (iv) complies with all laws, regulations, codes of practice, guidelines and any standards applicable to the advertising industry; and
 - (v) does not infringe copyright, trademark or any other legal rights of another person and/or entity.
- (c) The Client indemnifies DMW at all times against all actions, proceedings, claims, demands, liabilities and all costs, losses, losses of profit, damages and expenses whatsoever that may result from the Client being in breach of clause 2.2.

3 **Fees**

- 3.1 The Price for the Services is set out in the Schedule.
- 3.2 If not identified in the Schedule, any quoted price provided by DMW to the Client (including on DMW's website) will be valid for three (3) months.
- 3.3 Where the Services involve preparation of a Website, a non-refundable deposit of fifty percent (50%) of the Fees is required before DMW will start work.
- 3.4 Where the Services involve Marketing, payment for marketing setup, as set out in the Schedule, is required before DMW will start work.
- 3.5 There may be a number of dates on which the Price or part thereof will be payable to DMW, which could include:
 - (a) on provision of the Services;
 - (b) by way of instalments/progress payments in accordance with an agreed payment schedule;
 - (c) payment for some Clients may be due seven (7) days following the date of any invoice.
 - (d) another date specified on any invoice;
 - (e) in accordance with clauses 3.3 or 3.4; or
 - (f) in the absence of other agreement, within seven (7) days following the date of any invoice given to the Client by DMW or immediately prior to a Website going live.
- 3.6 Advertising management payments, will be invoiced on the first (1st) day of each month, in advance for that month.
- 3.7 Subject to change of scope and variations made in accordance with this agreement, the Client will be informed of stages of work and dates for payment on or before entry into the agreement.

- 3.8 Facebook, Google AdWords and any other online search advertising costs, once agreed in writing, will be directly deducted from the clients' credit card unless alternate arrangements are made with DMW.

4 Variations and Additional Costs:

- 4.1 DMW reserves the right to change the Fees where there is any variation to the Services (Scope), or instructions/specifications. Changes will be charged, based on DMW's hourly rates, and will be shown as variations on the invoice.

- 4.2 Variations include:

- (a) any extra work or cost caused by the Client altering their original instructions or by the Client's requirements being different from those originally submitted or described;
- (b) alterations to Content or the Services, including where style, type or layout was left to DMW's judgement.

4.3 Payment of Fees

The Client acknowledges that the Fees are exclusive of any GST and that DMW will be entitled to add GST.

4.4 Invoicing

DMW will provide the Client with a tax invoice in accordance with the GST Law in relation to all monies payable under this agreement, including clause 3.

4.5 Costs and disbursements

Unless otherwise agreed, DMW will not charge for expenses incurred in performing the Services (such as travelling, photocopying, courier services, postage), unless identified in the Schedule.

4.6 Failure to pay

If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in the agreement, DMW is entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the rate of 2% per year above the Corporate overdraft reference rate of the Commonwealth Bank, accruing daily;
- (b) require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
- (c) not perform any further Services (or any part of the Services). DMW may elect to reinstate the Services in the event that payment is made, on notice and at a time convenient to DMW.

5 Client's obligations

- (a) During performance of the Services the Client will:
 - (i) ensure that the Client's staff and agents co-operate with DMW as DMW reasonably requires; and
 - (ii) provide agreed Copy, information and documentation that DMW reasonably requires.
- (b) The Client represents and warrants to DMW that the Client:
 - (i) has the authority to accept the terms set out in this agreement;
 - (ii) will only provide information that is true, current and complete; and
 - (iii) consents to DMW using information provided to it in accordance with this agreement, subject to the terms of its privacy policy located at www.digimediaworx.com.au/privacy-policy/.
- (c) The Client consents to:
 - (i) DMW creating (and managing) Content;
 - (ii) DMW displaying the Content.

- (d) The Client acknowledges that:
 - (i) they have read and understood DMW's standard terms and conditions which are available at www.digimediaworx.com.au/terms-and-conditions/;
 - (ii) those terms and conditions form part of this agreement as though set out in full herein;
 - (iii) to the extent of any inconsistency, the terms of this agreement shall prevail.

6 No partnership or employment relationship

- (a) Nothing in this agreement constitutes the relationship of employer and employee, partner or agent between the Client and DMW.
- (b) It is the express intention of the Parties that any such relationships are denied and that DMW will act as an independent contractor.

7 Use of subcontractors

- (a) DMW is permitted to use other persons to provide some or all of the Services.
- (b) DMW is responsible for the work of any of DMW subcontractors.
- (c) Subject to clause 7(b), any work undertaken by any of DMW subcontractors will be undertaken to the same standard as stated in this agreement.

8 Disclosure and ownership of intellectual property

8.1 Intellectual property

- (a) The Client acknowledges that DMW owns all Intellectual Property created by DMW in connection with the Services, that now exists or that later comes into existence.
- (b) The Client acknowledges and agrees that all intellectual property rights in the Services and Content will, unless otherwise agreed in writing, remain vested in DMW. To the extent that ownership of such intellectual property rights does not automatically vest in DMW, the Client agrees to do all acts necessary to ensure that DMW acquires such rights.
- (c) The Client grants to DMW a non-exclusive, irrevocable, royalty-free, Australia-wide, licence to use all Copy provided to DMW for the purposes of this agreement.
- (d) The Client also grants to DMW a non-exclusive, world-wide, royalty-free licence to use its marketing materials for the sole purpose of performing the obligations provided under this agreement.
- (e) If the Client has any moral rights in any Content or material provided, used or prepared in connection with the Services, the Client agrees to procure all necessary consents to DMW use of those moral rights.
- (f) The Client must not commit any intellectual property breach or attempt to or create a derivative work or product based on DMW's Intellectual Property.
- (g) The Client agrees not to copy, reproduce in any material form, modify, create a derivative work, reverse engineer, reverse assemble, attempt to discover source code or algorithms, sell, assign, sub-licence or grant a security interest in any Intellectual Property rights in the Services, whether in whole or in part.

8.2 Assignment of rights

Where specifically identified in the Schedule, DMW and the Client may agree that the ownership of any Intellectual Property rights set out in clause 8.1 are to be assigned to the Client when:

- (a) the Client has paid DMW the Fees and all other amounts owing to DMW for the Services; and
- (b) all other obligations due by the Client to DMW under this agreement have been met.

8.3 Data

- (a) The Client acknowledges that in the course of provision of the Services and in undertaking matters incidental thereto, DMW may be provided with or collect data. The majority of such data will be desensitised and will be handled in accordance with DMW's privacy policy.
- (b) The Client agrees to and accepts the collection and use of such data by DMW in accordance with its privacy policy and acknowledges that DMW shall own and be entitled to use and commercialise such data, in de-sensitised form, for such purposes as DMW shall deem fit.
- (c) The parties acknowledge that visitors to any Website may provide additional data (including personal information) to DMW and/or to request that they receive additional information from DMW or 3rd parties, in which event DMW may provide such information, or provide that party's details to a 3rd party in accordance with the terms of DMW's privacy policy.
- (d) The Client agrees to indemnify DMW fully against all liabilities, costs and expenses which DMW may incur as a result of any breach of this clause 8 by the Client.

8.4 Branding

- (a) If the Client wishes for DMW branding to be included on or incorporated into the Services the Client shall apply the trademarks identified in the Schedule (Trademarks) or such of them as DMW shall require.
- (b) DMW grants a non-exclusive and non-transferable licence to the Client to use their Trademarks for the purpose of and in delivery of the Services.
- (c) The Client acknowledges and agrees that DMW shall be entitled to use the Client's Branding for promotional purposes, to inform third parties that it has performed the Services identified in this Agreement and to provide examples of its work.
- (d) The Client grants DMW a non-exclusive, irrevocable, royalty-free licence to use any of its branding and trade marks for the purposes of this agreement, including clause 8.4(c).

9 Confidentiality

- (a) Each Party must keep the other party's Confidential Information confidential and not deal with it in any way that might prejudice its confidentiality.
- (b) Each Party's obligations in relation to the Confidential Information will continue for as long as the Confidential Information is maintained on a confidential basis.
- (c) At the Termination Date, or when earlier directed by the disclosing party:
 - (i) all Confidential Information must be returned to the disclosing party, including all copies of the Confidential Information or any extracts or summaries based on the Confidential Information; and
 - (ii) The receiving party must erase and destroy any copies of any Confidential Information in their possession or control.
- (d) The Confidential Information does not include information which:
 - (i) is generally available in the public domain otherwise than as a result of a breach of clause 9(a); or
 - (ii) was known by the receiving party prior to disclosure of the information.
- (e) The Client agrees to indemnify DMW fully against all liabilities, costs and expenses which DMW may incur as a result of any breach of this clause 9 by the Client and acknowledges that damages may be an inadequate remedy for breach of this clause 9 and that DMW may also seek to obtain injunctive relief.

10 Privacy

- (a) The Parties will:
 - (i) comply with all Privacy Laws in relation to Personal Information, whether or not bound by the *Privacy Act*;

- (ii) choose to be treated as an organisation bound by the Privacy Act under section 6EA of the *Privacy Act* during the Term of this agreement;
 - (iii) collect, store, use, disclose or otherwise deal with Personal Information as required by the *Privacy Act*;
 - (iv) use or disclose Personal Information only for the purposes of providing the Services or as expressly permitted under this agreement;
 - (v) assist each other party to comply with their obligations under any Privacy Law as they relate to Personal Information;
 - (vi) immediately notify each other party if they become aware of any breach or alleged breach of its obligations under this clause;
 - (vii) ensure that any person to whom Personal Information is disclosed under this agreement, does not do or omit to do anything which, if done or omitted to be done, would constitute a breach of this clause;
 - (viii) not do anything or omit to do anything with the Personal Information that will cause a party to breach its obligations under a Privacy Law;
 - (ix) take all reasonable steps to ensure that Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure, including without limitation undertaking any staff training as may be required;
 - (x) not transfer any Personal Information outside Australia without prior written consent; and
 - (xi) take such steps as may be required in relation to a notifiable data breach.
- (b) The parties hereby release, indemnify and agree to keep each other indemnified against any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs (including solicitor and client costs), charges and expenses arising out of a breach of privacy by that party, including in the handling of any private or sensitive information.
 - (c) The Client is taken to have read and agreed to DMW's Privacy Policy.
 - (d) The Client authorises DMW (or their agent) to access information about the Client for assessing the Client's creditworthiness

11 Warranties, liability and indemnities

11.1 Warranties

- (a) DMW warrants that it will use reasonable care and skill in performing the Services to the standard generally accepted within the industry.
- (b) If DMW performs the Services (or any part of the Services) negligently or materially in breach of this agreement, then, if requested by the Client, DMW will re-perform the relevant part of the Services, subject to paragraphs 11.3(a) and 11.3(b) below.

11.2 No warranties in relation to completion

DMW provides no warranty that any result or objective can or will be achieved or attained at all or by any date, whether stated in this agreement, or elsewhere.

11.3 Limitation on liability

- (a) Except in the case of death or personal injury caused by DMW's negligence, the liability of DMW under or in connection with this agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the Fees paid by the Client to DMW under this agreement.
- (b) To the extent permitted by law, DMW shall not be liable to the Client or any other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect

or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.

11.4 Consumer rights

- (a) Where the Client is a consumer (as defined in the *Australian Consumer Law*), DMW's goods and services come with guarantees that cannot be excluded under the *Australian Consumer Law*. For major failures with the service, the Client is entitled:
 - (i) to cancel a service contract with DMW; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- (b) The Client is also entitled to be compensated for any other reasonably foreseeable loss or damage
- (c) The Client is entitled to have problems with the service rectified in a reasonable time and if this is not done to cancel the contract and obtain a refund for the unused portion of the contract.

11.5 Risk and Limitation of Liability for Client Data

- (a) Save for any gross negligence or unless required by law, the Client acknowledges and agrees that DMW, its directors, agents or employees will not be held responsible or liable in any way for any form of loss or damage of any nature whatsoever suffered, directly or indirectly, by the Client, due to loss of data, content or Copy.
- (b) It's the Client's sole responsibility to back-up any data which they believe to be important, valuable, or irreplaceable before submitting Copy, or material for the provision of the Services. DMW will not be held liable for any loss, corruption, or deletion of files, media or data resulting from the Services provided by DMW.
- (c) The Client acknowledges that any advice or recommendations by DMW are provided based on DMW industry knowledge and experience only.
- (d) Although DMW shall use their knowledge and experience to gain the best results possible, DMW cannot guarantee any outcome, including as to the quality of visitor or the position/page rank or volume of website visits.

11.6 Indemnity

The Client must indemnify and hold DMW harmless from and against all Claims and Losses arising from loss, damage, liability, injury to DMW, its employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to the Client by DMW, its employees or Contractors, or supplied to DMW by the Client within or without the scope of this agreement.

11.7 Consequential Loss

- (a) Unless otherwise required by law, DMW will not be liable to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by DMW of these terms and conditions.
- (b) The Client shall not be entitled to set off against, or deduct from the Fees, any sums owed or claimed to be owed to the Client by DMW nor to withhold payment of any invoice because part of that invoice is in dispute.

11.8 No reliance

Each of the Parties acknowledges that, in entering into this agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this agreement. Any conditions, warranties or other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law.

12 Termination

12.1 Either party may terminate this agreement by notice in writing to the other if the party notified:

- (a) fails to observe any term of this agreement; and

- (b) fails to rectify this breach, to the satisfaction of the notifying party, following the expiration of 7 days' notice of the breach being given in writing by the notifying party to the other party.
- 12.2 DMW may terminate this agreement upon the happening of any of the following events:
- (a) the giving of at least 1 months' written notice to the Client of their intention to terminate this agreement;
 - (b) if the Client enters into a deed of arrangement or an order is made for it to be wound up;
 - (c) if an administrator, receiver or receiver/manager or a liquidator is appointed to the Client pursuant to the *Corporations Act 2001* (Cth); or
 - (d) if the Client would be presumed to be insolvent by a court in any of the circumstances referred to in the *Corporations Act 2001* (Cth).
- 12.3 DMW may terminate this agreement and will not be obliged to perform the Services by giving written notice, at any time before the Services are delivered. Any deposit paid will be refunded, however DMW will not be liable for any loss or damage whatever to the client arising from such termination.
- 12.4 Where the Client cancels delivery of the Services, if a deposit has been paid, it will be refunded, less any costs incurred by DMW up to the time of cancellation. If the deposit is insufficient to cover the work undertaken, the Client will pay DMW the balance outstanding within 7 days.
- 12.5 The Client may cancel delivery of Marketing Services by providing a minimum of 4 weeks' written notice to DMW.
- 12.6 If the Client owes DMW any monies pursuant to this agreement, which remains overdue for in excess of 14 days, the Client shall indemnify DMW from and against all costs and disbursements incurred by DMW in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, DMW's collection agency costs, and bank dishonour fees).

13 General

13.1 Force majeure

- (a) Neither Party has any liability under or may be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from circumstances beyond the reasonable control of that Party.
- (b) The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 3 months, either Party may terminate this agreement by written notice to the other Party.

13.2 Amendment

This agreement may only be amended in writing signed by duly authorised representatives of the Parties.

13.3 Assignment

- (a) Subject to paragraph 13.3(b), neither party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written agreement of the other Party.
- (b) A Party may assign and transfer all its rights and obligations under this agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under this agreement.

13.4 Entire agreement

- (a) This agreement contains the whole agreement between the Parties in respect of the subject matter of the agreement.

- (b) The Client confirms that they have not entered into this agreement on the basis of any representation that is not expressly set out in this agreement.

13.5 Waiver

- (a) No failure or delay by DMW in exercising any right, power or privilege under this agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

13.6 Further assurance

Each Party to this agreement must at the request and expense of the other do all things reasonably necessary to carry out the provisions of this agreement or to make it easier to enforce.

13.7 Severance

If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this agreement.

13.8 Law and jurisdiction

This agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Queensland, Australia. The Parties submit to the exclusive jurisdiction of the courts of Queensland.