

RECITALS

A. Visualiser Pty Ltd is in the business of website and mobile app design and development, consulting and project management.

B. The Client is involved in the business as set out in the Schedule ("Client's Business").

C. The Client has agreed to use the services of Visualiser Pty Ltd as set out in the Schedule ("Services") and Visualiser Pty Ltd has agreed to provide the Services on the terms and conditions set out in this Agreement.

OPERATIVE PART

1. Governing Law

1.1 This Agreement is governed by the law of the state or territory set out in Item 6 of the Schedule and the parties submit to the non-exclusive jurisdiction of the courts of that state or territory.

2. Services

2.1 The engagement of Visualiser Pty Ltd commences on the Commencement Date as set out in the Schedule and continues until terminated in accordance with this Agreement.

2.2 The Client and Visualiser Pty Ltd enter into the arrangements on the terms as set out herein for the provision by Visualiser Pty Ltd of Services to the Client as described in the Schedule.

2.3 Visualiser Pty Ltd will comply with all reasonable time limits imposed by the Client for the performance of the Services.

3. Scope of the Services

3.1 Visualiser Pty Ltd is responsible for completion of the Services described in the Schedule, which may be varied as agreed by the parties in writing as circumstances dictate from time to time.

3.2 Visualiser Pty Ltd must comply with the policies and procedures adopted by the Client in the conduct of its business.

3.3 Visualiser Pty Ltd will act with good faith in all of Visualiser Pty Ltd's dealings with the Client and, whilst performing the Services, Visualiser Pty Ltd will not intentionally do anything which is harmful to the Client.

4. Brief Artefacts

4.1 The Client will provide Visualiser Pty Ltd with a detailed brief and all brief related artefacts required for providing all Services under this Agreement as agreed by the Client in writing.

5. Service Fee

5.1 At the end of each period of invoicing as set out in the Schedule ("Invoicing Period"), Visualiser Pty Ltd will submit a commercial invoice which may include the time worked and at the amount agreed, or calculated at the rate agreed as set out in the Schedule ("Service Fee").

5.2 Upon receiving the invoice from Visualiser Pty Ltd, the Client will pay Visualiser Pty Ltd the Service Fee within the payment period as set out in the Schedule ("Payment Period").

6. Confidential Information

6.1 Visualiser Pty Ltd shall not at any time or for any reason during the term of this Agreement disclose any confidential information of the Client to any third party.

7. Intellectual Property

7.1 The Client represents to Visualiser Pty Ltd and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to Visualiser Pty Ltd for inclusion in the Client's website(s) are owned by the Client, or that the Client has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend Visualiser Pty Ltd and its subcontractors from any claim or suit arising from the use of such elements furnished by the Client.

7.2 Visualiser Pty Ltd acknowledges that all intellectual property in all works of Visualiser Pty Ltd and/or its servants and/or agents created from the Commencement Date forward in the course of the fulfilment of Visualiser Pty Ltd's obligations in performing the Services for the Client are the absolute property of Visualiser Pty Ltd unless otherwise stated under the Services as outlined in the Schedule to this Agreement.

7.3 The Client acknowledges that all intellectual property in all works of Visualiser Pty Ltd and/or its servants and/or agents before the Commencement Date are the absolute property of Visualiser Pty Ltd.

8. Termination by Notice

8.1 Either party may terminate this Agreement by written notice to the other within the period of termination by notice as set out in the Schedule ("Termination by Notice Period").

8.2 Visualiser Pty Ltd reserves the right to retain all deposits received. In the event that this amount is not sufficient to cover Visualiser Pty Ltd for reasonable time and expenses already incurred in the performance of the Services, then additional payment shall be billed to the Client based on the Service Fee as outlined in the Schedule.

9. Termination without Notice

9.1 Either party may immediately terminate this Agreement if the other party:

(a) Commits any serious or persistent breach of this Agreement which in the reasonable opinion of the terminating party is incapable of rectification;

(b) Fails to remedy, to the terminating party's reasonable satisfaction, a breach of any provision of this Agreement within four (4) weeks of receiving a notice from the terminating party identifying the breach and requiring the breach to be remedied;

(c) Becomes bankrupt or goes into liquidation, or makes any assignment, arrangement or composition with creditors of the other party on the happening of the event; or

(d) Is subject to a finding of guilt for a criminal or civil offence, other than an offence which, in the reasonable opinion only of the terminating party, does not affect the other party's ability to perform their duties; or

(e) Ceases to carry on business.

9.2 The termination of this Agreement will not prejudice any rights or remedies already accrued to any party under, or in respect of any breach of, this Agreement.

10. Limitation of Liability

10.1 The Client agrees that any material submitted for publication will not contain anything leading to an abusive or unethical use of the Web Hosting Service, the Host Server or Visualiser Pty Ltd. Abusive and unethical materials and uses include, but are not limited to, pornography, obscenity, nudity, violations of privacy, computer viruses, harassment, any illegal activity, spamming, advocacy of an illegal activity, and any infringement of privacy.

10.2 The Client hereby agrees to indemnify and hold harmless Visualiser Pty Ltd from any claim resulting from the Client's publication of material or use of those materials.

10.3 It is also understood that Visualiser Pty Ltd will not publish information over the Internet which may be used by another party to harm another. Visualiser Pty Ltd will also not develop any unlawful mobile application for the Client. Visualiser Pty Ltd reserves the right to determine what is and is not unlawful.

11. Additional Expenses

11.1 The Client agrees to indemnify and reimburse Visualiser Pty Ltd for any critical Client requested costs and expenses necessary for the completion of the project. Examples would be:

- (a) Purchase of specific fonts at the Client's request"
- (b) Purchase of specific photography at the Client's request;
- (c) Purchase of specific software at the Client's request; and
- (d) Design of additional pages outside project scope at the Client's request.

12. Client Changes

12.1 Visualiser Pty Ltd prides itself in providing excellent customer service. This is the spirit of our agreement and the spirit of Visualiser Pty Ltd's business. To that end, we encourage input from the Client during the design process.

12.2 The Client agrees to provide two (2) bulk lots of changes to the completed designs and understands that one (1) bulk change consists of a group of two (2) or more changes sent at once via email or by post.

12.3 Visualiser Pty Ltd understands, however, that the Client may request significant design changes to pages that have already been designed to the Client's specification. To that end, please note that our Agreement does not include a provision for 'significant page modification' or creation of additional pages in excess of that outlined in the approved wireframes or the itemised quote. If significant page modification is requested after a pages wireframes have been approved, it will incur an additional charge.

12.4 Some examples of significant page modification at the request of the Client include:

- (a) Altering a page layout which substantially differ to the approved wireframes.

- (b) Designing a new layout to accommodate a substantial redesign at the Client's request;
- (c) Replacing more than 75% of the text to any given page at the Client's request;
- (d) Creating a new navigation structure or changing the link graphics at the Client's request;
- (e) Significantly reconfiguring any database structures and/or background services;

12.3 We strive to accommodate the needs of each Client and we maintain a liberal redesign policy. We cannot, however, provide major redesign services in excess of the tasks outlined in the itemised quote as contemplated by this agreement.

13. Search Engine Registration

13.1 Visualiser Pty Ltd does not offer search engine optimization and site promotion services.

14. Training

14.1 Visualiser Pty Ltd does not require to offer any training for this project.

15. Maintenance

15.1 Visualiser Pty Ltd does not require to offer any maintenance for this project.

16. Indemnification

16.1 The Client agrees that it shall defend, indemnify, save and hold Visualiser Pty Ltd harmless from any and all demands, liabilities, losses, costs and claims, including reasonable legal fees associated with Visualiser Pty Ltd's design of the Client's mobile application. This includes liabilities asserted against Visualiser Pty Ltd, its subcontractors, its agents, its clients, servants, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by the Client, its agents, employee or assigns.

16.2 The Client also agrees to defend, indemnify and hold harmless Visualiser Pty Ltd against liabilities arising out of any injury to person or property caused by any products or services sold or otherwise distributed over the Client's mobile application. This includes infringing on the proprietary rights of a third party, copyright infringement, and delivering any defective product or misinformation which is detrimental to another person, organization, or business.

17. Ownership to Wireframes & Visual Design Components

17.1 Upon final payment of the project, the Client is assigned rights to use as an application, the design, graphic and text contained in the approved wireframes.

17.2 Rights to fonts, photos, graphics, and text purchased on behalf of the Client for completion of this project and at additional cost to this agreement are specifically transferred to the client.

17.3 Rights to fonts, photos, graphics, and text not purchased at additional cost are not specifically transferred to the client, and remain the property of their respective owners.

17.4 Visualiser Pty Ltd and its subcontractors retain the right to display graphics and other mobile application elements as examples of their work in their respective portfolios.

18. Design Credit

18.1 The Client agrees that the mobile application wireframes and visuals created for the Client may be included in Visualiser Pty Ltd's portfolio once the project is public or has officially launched.

19. Payment Terms

19.1 The parties agree to the payment terms, including minimum deposit and balance where applicable, as outlined in the Schedule ("Payment Terms").

19.2 Upon completion of the wireframes and/or visual designs, a letter or email will be sent with a final invoice to the Client advising that the work has been completed.

19.3 Any invoices not settled within seven (7) days specified will be subject to an administration fee of \$250.00 AUD per day that the invoice is overdue, which the Client agrees is reasonable consideration, unless both Visualiser Pty Ltd and the Client have agreed on an alternate arrangement. Such alternate arrangements are to be documented and signed by both parties.

19.4 The Client understands that, unless alternate arrangements have been agreed upon, unpaid balances are subject to collection. In the event of collection, the Client will be liable for all costs of collection including attorney's fees, court costs, and collection agency fees.

19.5 All charges mentioned throughout this agreement are exclusive of Goods and Services Tax (G.S.T). The Client shall pay all or any G.S.T. on the charges and cost to Visualiser Pty Ltd.

20. Dispute resolution

20.1 If there is any dispute arising under this agreement, the parties undertake to use all reasonable efforts in good faith to attempt to resolve the dispute which arises between them. A party may give the other party a notice of dispute in connection with this agreement. Both the parties must first attempt to resolve the dispute amicably on mutually reasonable terms before commencing any mediation.

20.2 Any disputes in excess of \$7,500 (or the maximum limit for Disputes Tribunal) arising out of this Agreement shall be submitted to binding arbitration in accordance with the Commercial Arbitration Act 1990.

20.3 The Arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. the Client shall pay all arbitration and court costs, reasonable legal fees and legal interest on any award or judgment in favour of Visualiser Pty Ltd or as directed by the award.

21. Authorised Representative

21.1 Each party warrants that their representative whose signature appears below is the duly authorised representative of the Client and the authorised representative of the Client certifies that he or she is legally capable of entering into this agreement on behalf of the Client.

Last updated, Friday 9th September 2022