Smith Brothers Media® Pty. Ltd
16/347 Bay Road, Cheltenham
VIC 3192
T 1300 721 137
ABN 21 160 467 345

SBM Terms and Conditions

Version: 2026 v4

How to read these Terms

This document sets out the legal agreement between you and Smith Brothers Media. We have tried to write it so you can easily read and understand it. You are responsible for reading it carefully and/or seeking professional advice before agreeing to our terms.

Each section opens with a short plain-language explanation in italics telling you what the section does and why it is there. The italics are a guide only and do not form part of the binding terms. Where a summary differs from a clause, the clause prevails.

These Terms apply to, and are incorporated in, any quote, proposal, or scope of work (Proposal) provided to you by Smith Brothers Media Pty Ltd (ABN 21 160 467 345) or SBM StudioSeven Pty Ltd (ABN 20 695 406 332).

Please tell us if you do not agree with any part of these Terms, as we would rather resolve it now. Any changes must be agreed in writing. If you continue to engage us after receiving these Terms, including by paying the deposit, you are agreeing to them.

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Table of Contents

How to read these Terms **1**
Table of Contents **2**
PART A. HOW THESE TERMS APPLY 3
- 1. Introduction 3
- 2. Definitions 3
- 3. Proposals and Scope 5
- 4. Changes to Scope and Additional Works 6

PART B. FEES AND PAYMENT 6
- 5. Fees, Invoicing, and Expenses 6
- 6. Overdue Payment, Interest, Set-Off, and Collection 7

PART C. DELIVERY 8
- 7. Your Responsibilities 8
- 8. Acceptance of Deliverables 9
- 9. Schedule, Delays, and Disruption 10
- 10. Cancellation, Pause, and Termination of Monthly Services 11
- 11. Account Management 12

PART D. INTELLECTUAL PROPERTY AND DATA 12
- 12. Your Content and Materials 12
- 13. Developed Intellectual Property 13
- 14. AI and Technology in Service Delivery 14
- 15. Confidentiality 15
- 16. Privacy and Data Security 16
- 17. Compliance Warranties 17

PART E. RISK, TERMINATION, AND DISPUTES 18
- 18. Liability and Indemnities 18
- 19. Termination 19
- 20. Complaints and Disputes 21

PART F. GENERAL PROVISIONS 22
- 21. Open Source Software and Third-Party Licences 22
- 22. Project Records and Backup 23
- 23. Promotion and Case Studies 23
- 24. Our Brand and Trademarks 23
- 25. Our Insurance 24
- 26. Force Majeure 24
- 27. Notices and Communications 24
- 28. Subcontracting 25
- 29. General 26

PART G. SCHEDULES 27
- Schedule 1. Development Services 27
- Schedule 2. Hosting, Support, and Maintenance Services 28
- Schedule 3. Monthly Services 29
- Schedule 4. Hourly and Time-Based Engagements 30
- Schedule 5. Third-Party Subscriptions and Managed Accounts 32

PART A. HOW THESE TERMS APPLY

1. Introduction

Your Proposal is where the real negotiation happens, and it overrides these terms if the two ever disagree. This section sets that order, which means you can rely on what we discussed in the sales process rather than worrying about fine print overriding it. We can also use the proposal to adjust these terms if needed.

1.1 Documents forming the Agreement. These Terms, together with the Proposal and any Schedules attached or referred to, form the agreement between you and us (Agreement).

1.2 Order of precedence. Where there is any inconsistency between these Terms, the Proposal, and any Schedule, the order of precedence is:

1.2.1 the Proposal;

1.2.2 any Schedule expressly applicable to the Services we are providing; and

1.2.3 these Terms.

1.3 When Schedules apply. Any Schedule applies only where the Proposal indicates the relevant services are being provided. For example, the Development Services Schedule applies where the Proposal includes development work, and the Monthly Services Schedule applies where the Proposal includes a retainer.

2. Definitions

A capitalised word here means the definition in this section, not its everyday sense, so it is worth a skim before reading on.

In these Terms:

Account Contact means the person nominated by a party under clause 11.1 as its primary point of contact for the engagement, and includes any replacement notified in writing to the other party.

Additional Works means work outside the scope described in the Proposal, as set out in clause 4.

Agreement means these Terms together with the Proposal and any Schedules.

Business Day means a day other than Saturday, Sunday, or a public holiday in Victoria.

Completion means, in respect of a Project, the earliest of: (a) the date you accept the final Deliverable under clause 8.2; (b) the date the final Deliverable is deemed accepted under clause 8.3; (c) where Schedule 1 applies, the date the final Deliverable passes or is deemed to pass Testing under clause S1.3; and (d) the date any website, application, or campaign we produce for you is made live or otherwise put into use by you. Where the Proposal includes only Monthly Services, Completion occurs when those Monthly Services cease.

Confidential Information of one party (the Disclosing Party) means any information that the other party (the Receiving Party) receives, becomes aware of, or generates in connection with this Agreement and that is not in the public domain, including the Disclosing Party's business affairs, clients, customers, suppliers, products, services, finances, or strategy; any trade secrets, know-how, technical data, or proprietary processes; any information designated by the Disclosing Party as confidential; and the existence and terms of any Proposal between the parties.

Content means any text, graphics, photos, designs, trademarks, or any other artwork, materials, or data that you provide us for inclusion in Deliverables, or in order for us to provide you with the Services.

Deliverable means any work product, output, or material that we produce or provide to you in the course of providing the Services.

Developed Intellectual Property means all current, future, and unregistered Intellectual Property Rights in everything created in the course of providing the Services under this Agreement.

Disclosing Party has the meaning given in the definition of Confidential Information.

Disputed Invoice means an invoice, or part of an invoice, in respect of which you have notified us in writing of a bona fide dispute within 14 days of the date of that invoice. Only the amount actually in dispute is treated as disputed.

Effective Date means the date that you instruct us to proceed with the works set out in the Proposal, including by paying any deposit.

Fees means the fees for the Services payable by you under the Proposal.

Force Majeure Event means any event or circumstance beyond the reasonable control of the affected party that prevents or materially delays the performance of that party's obligations under this Agreement, including: acts of God, natural disasters, fires, floods, earthquakes, severe weather, or pandemics; acts of war, terrorism, civil unrest, riots, or government action (including changes in law); failures of public or essential utilities, telecommunications networks, or the internet; cyber attacks, malware, or other malicious technological events; strikes, lockouts, or other industrial action (other than involving the affected party's own personnel); or any other event of a similar nature beyond the reasonable control of the affected party.

Hourly Rate is $225 + GST unless otherwise specified in the proposal or provided rate card.

Intellectual Property Rights means all intellectual property rights as defined by law including (without limitation) copyrights, designs, inventions, patents, trade marks, service marks, trade secrets, know-how, and the right to apply for registration of any of these.

Interest Rate means the rate fixed from time to time by the Attorney-General under section 2 of the Penalty Interest Rates Act 1983 (Vic), plus 2% per annum. As at the date of these Terms that rate is 10% per annum, giving an Interest Rate of 12% per annum.

Managed Subscription has the meaning given in clause S5.1.

Monthly Services means any services described in a Proposal as "Monthly Services" or similar.

Notice has the meaning given in clause 27.1.

Pause means a hold on Monthly Services requested in accordance with clause 10.2.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Project means the works set out in the Proposal.

Proposal means any quote, proposal, scope of work, sale agreement, or similar document provided by us to you describing services to be provided and Fees.

Receiving Party has the meaning given in the definition of Confidential Information.

Schedule means a schedule attached to or incorporated in this Agreement.

Services means the services described in the Proposal.

Term means the period from the Effective Date until the earlier of: (a) termination of this Agreement under these Terms; and (b) Completion of the Project and, where the Proposal includes Monthly Services, cessation of those Monthly Services.

Termination Fee means the fee payable under clause 19.5.

We, us, our, SBM, or **Smith Brothers Media** means the entity specified in the Proposal, being either Smith Brothers Media Pty Ltd (ABN 21 160 467 345) or SBM StudioSeven Pty Ltd (ABN 20 695 406 332), or if the Proposal does not specify, Smith Brothers Media Pty Ltd.

You or **your** means the client or other party to whom we provide the Proposal.

3. Proposals and Scope

Every quote rests on assumptions about what is involved. Setting those out means you can see what we priced and why, and it makes any later conversation about cost a factual one. We commit to the quality of our work, but a commercial result depends on far more than us, so we do not promise one.

3.1 Validity of the Proposal. The estimate of Fees in the Proposal is valid for 30 days, unless otherwise extended by us.

3.2 Basis of the Proposal. The Proposal has been prepared following initial discussions with you and is based on:

3.2.1 the inclusions and exclusions listed in the Proposal;

3.2.2 the number of hours, or nature and number of Deliverables, that we have estimated in the Proposal; and

3.2.3 whether revisions to our Deliverables are permitted, and the number and nature of any such revisions. Where the Proposal does not specify a revision allowance, you are entitled to one round of consolidated revisions on each Deliverable at no additional cost. Further revisions are Additional Works under clause 4.

3.3 Warranties. We warrant that the Services will:

3.3.1 be performed with the degree of care, skill, and diligence reasonably expected of a professional, skilled, competent, and experienced provider of services of a similar nature;

3.3.2 comply with all applicable laws; and

3.3.3 be reasonably fit for the purposes expressly set out in the Proposal.

3.4 No guarantee of results. We do not warrant any particular ranking, reach, impressions, engagement, conversion rate, revenue, or other commercial outcome. Where the Proposal includes targets, forecasts, or key performance indicators, they are objectives and not warranties, unless the Proposal expressly states that they are guaranteed.

4. Changes to Scope and Additional Works

Scope creep is the most common thing that sours an otherwise good project. The aim here is simple: agree what a change costs before we do it, so nothing arrives as a surprise on an invoice.

4.1 What counts as additional work. If you change your mind, vary the scope, add extra content, require further feedback rounds, or the underlying assumptions used by us to form the Fee estimate change, these and similar events will be treated as Additional Works.

4.2 How additional works are charged. Additional Works are governed by these Terms and will be charged on the basis of the Hourly Rate.

4.3 Approval before we start. All changes to scope and Fees must be agreed in writing before we start the Additional Works.

4.4 Change requests. Either party may request a change to the scope or schedule in writing. Within 7 days we will respond with the effect of the change on Fees, timing, and any dependencies. We will not commence the change until you approve it in writing. Where we identify a change as necessary to complete the Project and you do not approve it, we are not responsible for any resulting delay, defect, or failure to meet a target date.

PART B. FEES AND PAYMENT

5. Fees, Invoicing, and Expenses

A deposit reserves your place in our schedule and the people to do the work. Beyond that, this section keeps the money side unambiguous, including that advertising spend is your budget rather than our fee.

5.1 Deposit. A deposit payment, or payment of the first Monthly Services invoice, as set out in the Proposal, is payable in order to secure the commencement of our Services.

5.2 Invoices and milestones. All Fees and the relevant milestones for payment are listed in the Proposal. All invoices must be paid by the due date set out on the invoice, and if no date is stipulated, within 14 days of the date of the invoice, unless otherwise agreed.

5.3 Monthly Services invoices. If you are on a Monthly Services arrangement, you may choose to pay under a direct debit arrangement. Invoices for Monthly Services are sent 30 days in advance and must be paid within 14 days of the date of invoice.

5.4 GST. All Fees are exclusive of GST unless otherwise stated. Where we make a taxable supply under this Agreement, you must pay GST in addition to the Fees on receipt of a valid tax invoice.

5.5 Expenses. Expenses noted in the Proposal are reimbursable by you. Any expense not noted in the Proposal must be pre-approved by you in writing before we incur it.

5.6 Reimbursement. We will provide a valid tax invoice or receipt for each reimbursable expense. Reimbursement is payable within 14 days of that invoice or receipt. The amount reimbursed is the amount of the expense less any input tax credit we are entitled to claim in respect of it, plus GST on the reimbursement.

5.7 Media and advertising spend. Media and advertising spend is separate from our Fees and is payable in advance unless the Proposal states otherwise. We are not liable for platform charges beyond the budget you have approved in writing. We may pause or stop campaigns where funds are not received in advance, or where a payment method you have provided is declined.

5.8 Paid media on termination or handover. On termination of this Agreement, or on cancellation of any Monthly Services that include management of paid media:

5.8.1 we may pause or deactivate any campaign we manage on your behalf, and will do so unless you instruct us in writing to keep it running;

5.8.2 where you instruct us to keep a campaign running, you remain responsible for all spend and platform charges incurred, and where those amounts are charged to a payment method of ours you must reimburse us within 14 days of our invoice;

5.8.3 you are responsible for assuming direct control of your advertising accounts under clause 12.5, and we are not liable for any spend, charge, or loss incurred after termination where you have not done so; and

5.8.4 we are not liable for any loss of campaign performance, ranking, historical data, learning phase, or optimisation resulting from a pause or deactivation under this clause.

6. Overdue Payment, Interest, Set-Off, and Collection

This sets out exactly what happens, and when, if an invoice goes unpaid, so there are no surprises on either side. If you genuinely dispute an invoice, none of it applies while we work that out.

6.1 Late payment escalation. Where you fail to pay an invoice by the due date, and that invoice is not a Disputed Invoice:

6.1.1 at 14 days overdue, interest accrues under clause 6.2, and we may stop providing Services and withhold all Services, files, artwork, code, and content, including by removing live online content in our control or decommissioning third-party services we arranged on your behalf;

6.1.2 at 30 days overdue, we may suspend the Project on 7 days written notice; and

6.1.3 at 60 days overdue, your failure to pay is a material breach for the purposes of clause 19.1.1, and we may terminate without further cure period.

6.2 Interest. We may charge interest on all overdue amounts that are not the subject of a Disputed Invoice, calculated daily from the due date for payment until payment in full, at the Interest Rate.

6.3 Collection costs. We may charge you for reasonable costs we incur where collection of unpaid monies is referred to a third-party collection agency or requires legal recovery.

6.4 Set-off. Either party may set off any amount due and payable to it under this Agreement against any amount due and payable by it to the other party under this Agreement, on giving written notice with reasonable details of the amounts set off. Neither party may set off an amount that is the subject of a Disputed Invoice or otherwise genuinely in dispute.

PART C. DELIVERY

7. Your Responsibilities

Our work depends on things only you can supply: content, approvals, decisions. This section is honest about that dependency, and about the areas where you are better placed than us to judge, such as compliance in your own industry.

7.1 You will provide any written approvals and instructions in a timely manner, and submit any revisions within 14 days of receiving drafts, unless otherwise agreed in writing or set out in the Proposal.

7.2 You will provide any information that we reasonably need to complete the Project, including final copy, imagery, content, and other information, in the format we ask for and in a timely manner.

7.3 You must seek your own legal advice about protecting your intellectual property rights in any branding, design, or content arising from the Project, and satisfy yourself that your use of any materials you supply will not infringe third-party intellectual property rights. This does not apply to the Developed Intellectual Property we create, which is covered by clause 13.

7.4 You are responsible for the final proof-reading of any content provided by us.

7.5 Where we reasonably request, you must include in all displays or publication of any website or app that we create for you a notice attributing the design and development of that website to us, for the Term and for 24 months after the end of the Term.

7.6 Verification and publication. We may request reasonable evidence to verify any factual claim, source, or third-party content you provide, and may decline to publish material we reasonably believe may be misleading, inaccurate, or in breach of law.

7.7 Regulatory approvals. Where your industry is subject to advertising, disclosure, or content regulation, you are responsible for obtaining any regulatory, legal, or compliance approval required before material we produce is published. We are not responsible for assessing whether material complies with a code or regulation applicable to your industry, unless the Proposal expressly includes that assessment.

8. Acceptance of Deliverables

Projects stall more often on approvals than on production. A clear review window keeps momentum, and we will always chase you before treating anything as accepted. We also fix genuine defects free for a period after handover.

8.1 Application. This clause applies where the Proposal does not specify a separate testing or acceptance process. Schedule 1 (Development Services) contains the testing and acceptance process for development services.

8.2 Review period. When we submit a Deliverable to you for review, you must, within 14 days of receiving it:

8.2.1 approve the Deliverable in writing; or

8.2.2 notify us in writing of any required revisions, within the scope of any agreed revision allowance in the Proposal.

8.3 Deemed acceptance. If you do not respond within 14 days, we will send you a written reminder. If you do not respond within a further 7 days after the reminder, the Deliverable is deemed accepted.

8.4 Effect of acceptance. Acceptance, whether actual or deemed, triggers any associated milestone payment under the Proposal.

8.5 Revisions beyond the allowance. Revisions requested beyond any revision allowance in the Proposal are Additional Works under clause 4, and do not defer acceptance of the Deliverable or any associated milestone payment.

8.6 Completion. On Completion we will provide you with the final Deliverables and any access credentials, source files, or account transfers specified in the Proposal, and the defect period under clause 8.7 begins.

8.7 Defect period. For 30 days after Completion we will rectify, at no additional cost, any defect in a Deliverable that you notify to us in writing and that is inconsistent with the Proposal. After that period, corrections and changes are Additional Works under clause 4. Where Schedule 1 applies, clause S1.3.3 applies in place of this clause. This clause does not apply to any defect caused by your acts or omissions, by a third party, by changes not made or authorised by us, or by a change in any third-party platform or service.

8.8 After Completion. Unless the Proposal includes support, maintenance, or hosting, from Completion you are responsible for the operation, maintenance, updating, and security of the Deliverables, including applying software, plugin, and security updates. We are not liable for any issue arising from a failure to do so.

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9. Schedule, Delays, and Disruption

A delay raised early is usually cheap to fix, so the first step is always a conversation and a plan rather than a penalty. This section also acknowledges that we build on platforms nobody controls, and that hold-ups have a real cost.

9.1 Schedule and cooperation. We will carry out the Project in accordance with any agreed schedule, and you will give us all materials, information, approvals, and access we reasonably need. Both parties must act promptly and in good faith to avoid delay.

9.2 Delay notice and catch-up plan. If either party fails to meet any date in the Project schedule, the other party may issue a written notice identifying the missing item and proposing a revised date (a Delay Notice). Within 7 days after the Delay Notice, the parties will use best endeavours to agree and implement a catch-up plan.

9.3 Suspension. If the cause of delay is not remedied within 30 days after the original due date, the party affected by the delay may suspend the Project by written notice (a Suspension).

9.4 Termination for our delay. Where the Project is delayed by more than 30 days by our acts or omissions, other than due to a Force Majeure Event or your failure to meet your obligations under clause 9.1, you may suspend the Project under clause 9.3 and, if we have not remedied the delay within a further 14 days, terminate the Project immediately by written notice. On termination under this clause we will refund any portion of the fixed Fee that relates to work not yet performed, excluding third-party or platform costs already incurred that cannot be cancelled or recovered and which are reasonably substantiated. The Termination Fee does not apply.

9.5 Termination for prolonged suspension. Except where clause 9.4 applies, if a Suspension endures for 60 days, in one period or in aggregate, either party may terminate the Project on 7 days written notice. On termination you must pay:

9.5.1 all Fees for work performed up to the termination date at the Proposal or agreed rates;

9.5.2 any third-party or platform costs we cannot cancel or recover and which are reasonably substantiated; and

9.5.3 where the Suspension was caused by you, any reasonable, evidenced costs of standing down or reassigning personnel.

9.6 Recommencement. Once a delay is remedied and outstanding amounts paid, we will issue a revised schedule and recommence work as soon as reasonably practicable. Where a Project resumes after 90 days or more, we may apply a one-off rescheduling charge equal to 5% of the remaining unpaid portion of the fixed Fee, or re-scope the remaining work and issue a new Proposal.

9.7 Third-party costs. During a Project we may incur third-party costs (such as hosting, software subscriptions, integration, photography, venue hire, talent fees, and similar items). If you reschedule, delay, amend, or cancel any part of the Services, you are solely responsible for any agreed third-party costs we have committed on your behalf which cannot be cancelled or recovered and which are reasonably substantiated. An invoice for these costs is payable within 14 days.

9.8 Delays outside our control. Delays caused by a Force Majeure Event are governed by clause 26.

9.9 Third-party platforms and services. The Services and Deliverables may depend on third-party platforms, networks, APIs, plugins, libraries, and services that we do not control. A change, update, deprecation, outage, policy change, price change, or discontinuation by any of them is not a breach of this Agreement by us. Where work is required to respond to any such event, that work is Additional Works under clause 4.

9.10 Cost of your delay. Where your delay in providing materials, information, approvals, or access causes us to incur additional cost, including re-work, idle time, or the cost of re-mobilising personnel, we may charge that cost at the Hourly Rate. Where practicable we will notify you before incurring material additional cost.

10. Cancellation, Pause, and Termination of Monthly Services

An ongoing arrangement means we hold capacity for you and cannot instantly redeploy it, which is why winding one down takes notice. If something genuine gets in your way, pausing is usually better for both of us than cancelling.

10.1 Cancellation. If our Proposal specifies that you receive Monthly Services, you must provide at least 60 days written notice to cancel those services. In the event of cancellation, you will be charged for any work we have performed up to and including the date of termination and, if relevant, any third-party costs that we have incurred prior to termination that cannot be cancelled or recovered and which are reasonably substantiated.

10.2 Pause of Monthly Services.

10.2.1 You may request that Monthly Services be put on hold (a Pause) for any of the following bona fide reasons: (a) a Force Majeure Event that materially affects your ability to trade; (b) a regulatory requirement, industry code, or platform policy that compels a temporary halt; (c) a reputational risk identified by either party's compliance team; or (d) halt in trading due to significant holiday, security incident, budget constraint, or health reason.

10.2.2 You must give at least 7 days written notice, specifying the cause and providing reasonable evidence if requested. You must ensure all invoices are paid and up to date. Ongoing service or platform charges may still apply during the Pause period.

10.2.3 A Pause may last for up to 90 consecutive days and no more than 120 days in any rolling twelve-month period.

10.2.4 All Project milestones and performance targets will be reasonably impacted and adjusted by the duration of the Pause.

10.2.5 We will reactivate the Monthly Services within 7 days after you give written notice that the cause of the Pause has ceased, or on an agreed date.

10.2.6 If a Pause continues beyond the limit, or if you fail to pay invoices when due, we may treat the Monthly Services as terminated by you.

10.2.7 Where Monthly Services in Pause are terminated, clause 10.1 applies as if you had cancelled the Monthly Services on the date the Pause commenced.

11. Account Management

Most problems on a project turn out to be communication problems. A named contact on each side, regular reporting, and clear authority to approve things prevent most of them.

11.1 Account Contacts. Each party will nominate an Account Contact and notify the other party at the commencement of the Term. If no other person is nominated the person who agreed to the Proposal is that party's Account Contact.

11.2 Reporting. For Monthly Services arrangements, we will provide performance and activity reporting at the frequency set out in the Proposal, or monthly by default.

11.3 Reviews. Either party may request a structured review of the engagement at reasonable intervals.

11.4 Authority of the Account Contact. An approval, acceptance, instruction, or request given by your Account Contact binds you, and we may rely on it without further enquiry. You must notify us in writing if your Account Contact changes, or if their authority is limited or withdrawn.

11.5 Other representatives. We may also rely on an approval, acceptance, or instruction given by any other person who your Account Contact has notified to us as authorised, or who gives it from an email address associated with your organisation, unless you have told us in writing that the person is not authorised.

PART D. INTELLECTUAL PROPERTY AND DATA

12. Your Content and Materials

What you bring to the project stays yours. We only need enough permission to use it for the work. We treat it carefully, but we are not your backup service, and your domains and accounts belong in your name.

12.1 Your warranties about Content. You warrant that all Content and other materials you provide to us:

12.1.1 are owned by you, or you have all rights and consents necessary to provide them to us and for us to use them as contemplated by this Agreement, including any consents required for use of Personal Information;

12.1.2 are materially true, accurate, complete, and not misleading;

12.1.3 do not infringe the rights of any third party;

12.1.4 comply with all applicable laws; and

12.1.5 comply with any industry code, licence, or regulatory requirement applicable to your business or to the Content, including any advertising, disclosure, or labelling requirement.

12.2 Licence to us. You remain the owner or licensee of your Content. You grant us, for the Term, a non-exclusive, fee-free, limited licence to use the Content for the purposes of providing the Services under this Agreement, including the right to sublicense to our subcontractors and service providers to the extent necessary for that purpose. After the end of the Term, this licence continues only to the extent necessary for us to comply with clause 22 (Project Records and Backup) and any applicable record-keeping law.

12.3 Our Content. Nothing in these Terms affects the ownership of any Content that is owned by us, or which we have permission to use. We remain the owner or authorised user of our Content.

12.4 Security and storage of Content. We will take reasonable steps to protect Content that you provide to us from misuse, loss, and unauthorised access, use, modification, or disclosure. You remain responsible for retaining your own copies of the Content you provide to us. Except where we are expressly engaged to provide backup or hosting services, we do not warrant that we hold a complete or current copy of your Content.

12.5 Accounts, domains, and platform subscriptions. Unless the Proposal states otherwise, you are the owner and account holder of all domain names, hosting accounts, advertising accounts, analytics accounts, and platform subscriptions used for your Project. Where we hold, administer, or pay for any of them on your behalf, we do so as your agent and will transfer them to you, or to a provider you nominate, on your written request, provided all amounts due and payable under this Agreement are paid.

13. Developed Intellectual Property

You should be able to use what you have paid for as the project goes, not wait until the final invoice clears. So ownership transfers on full payment, and in the meantime you get a licence to use each deliverable as soon as we hand it over.

13.1 Ownership before assignment. All Developed Intellectual Property is owned by, or will on creation be owned by, us. We will procure from our personnel and any subcontractor we engage an assignment of all Intellectual Property Rights in the Developed Intellectual Property sufficient to enable us to perform clause 13.2.

13.2 Assignment. Subject to clause 13.4, on payment in full of all amounts due, payable, and not the subject of a Disputed Invoice under this Agreement, we assign to you all Intellectual Property Rights in the Developed Intellectual Property.

13.3 Interim licence. Pending assignment, from the date we deliver a Deliverable to you, and provided you have paid all amounts then due and payable that are not the subject of a Disputed Invoice, we grant you a non-exclusive, non-transferable, royalty-free licence to use, reproduce, publish, and display that Deliverable for your business, marketing, promotional, and fundraising purposes, including publication of any website to the public. This licence:

13.3.1 is suspended for so long as an amount remains unpaid more than 14 days after its due date, where that amount is not the subject of a Disputed Invoice;

13.3.2 terminates if we terminate this Agreement under clause 19.1.1 or 19.1.2 for your material breach; and

13.3.3 otherwise ends on assignment of the Developed Intellectual Property under clause 13.2.

13.4 Limits on what we can assign. You acknowledge that we can only assign the content and materials that we have created. There may be limitations on the use of the Developed Intellectual Property imposed by third parties or open-source licences (see clause 21).

13.5 Moral rights and non-infringement. We have obtained, or will obtain, from each author of the Developed Intellectual Property, including our employees and any subcontractor we engage, a written consent under the Copyright Act 1968 (Cth), in favour of us and our assignees, to acts or omissions that would otherwise infringe that author's moral rights. We warrant that your use of the Developed Intellectual Property, as supplied by us and used in accordance with this Agreement, will not infringe the Intellectual Property Rights of any third party. This warranty does not apply to the extent a claim arises from materials, instructions, or specifications you supplied, third-party or open-source components licensed under clause 21, or modifications not made or authorised by us.

13.6 Deployment. The Fees in the Proposal are calculated on the basis of a single production deployment of any website or application we build for you. Deployment of additional production instances is Additional Works under clause 4. This clause does not restrict your ownership of the Developed Intellectual Property, and does not apply to development, staging, testing, or backup instances.

14. AI and Technology in Service Delivery

AI is genuinely part of creative and technical work now. Rather than leave that unsaid, this section sets out how we use it, what we will not put into it, and confirms you own the output the same way you own everything else we make.

14.1 Use of AI by us. You acknowledge that, in providing the Services, we may use artificial intelligence and related technologies (including large language models, generative AI tools, and automation systems) as part of our work. We will:

14.1.1 use only AI tools that we have assessed as appropriate for the work, the type of information involved, and any applicable client requirements;

14.1.2 maintain reasonable controls over the AI tools we use, consistent with clause 15.3;

14.1.3 review and verify AI-generated outputs before incorporating them into Deliverables; and

14.1.4 comply with our internal AI use policies and any client-facing or regulated-work restrictions notified by you.

14.2 Intellectual property in AI-assisted work. For the avoidance of doubt:

14.2.1 any Deliverable created using AI tools, automated systems, or generative technologies forms part of the Developed Intellectual Property and is assigned to you in accordance with clause 13, on the same terms as any other Developed Intellectual Property;

14.2.2 where ownership of AI-generated material is uncertain or unavailable under applicable law (because purely AI-generated material may not attract copyright protection), we assign to you all rights, title, and interest that we have or may have in such material, and we obtain corresponding assignments from our personnel involved in creating it; and

14.2.3 you acknowledge that purely AI-generated material may have limited copyright protection at law, irrespective of the assignment.

14.3 Your AI-generated content. Where you provide us with content, prompts, or materials that you have generated using AI tools:

14.3.1 you warrant that no third-party AI tool's terms of use applying to inputs or outputs restrict our use of that material. Clause 12.1 also applies to that material; and

14.3.2 you authorise us to use that material for the purposes of providing the Services.

14.4 Transparency to your customers. Where you require us to disclose materially AI-generated content as such (whether for regulatory compliance, your own disclosure policy, or otherwise), that requirement must be set out in the Proposal. By default, we will not separately identify AI-generated content within Deliverables.

15. Confidentiality

Working together means each of us sees things the other would not publish. This runs both ways and continues after the work ends.

15.1 Obligations. The Receiving Party must:

15.1.1 keep all Confidential Information of the Disclosing Party secret and confidential;

15.1.2 take reasonable precautions to prevent unauthorised use or disclosure of the Confidential Information;

15.1.3 not use any Confidential Information except for the purposes of performing this Agreement; and

15.1.4 not disclose any Confidential Information to any third party, except as expressly permitted by this clause.

15.2 Exceptions. Clause 15.1 does not apply to Confidential Information that:

15.2.1 is or becomes publicly available other than through a breach of this Agreement;

15.2.2 was lawfully known to the Receiving Party before the Disclosing Party disclosed it;

15.2.3 is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information; or

15.2.4 the Receiving Party is required to disclose by law, court order, or regulator, provided that the Receiving Party notifies the Disclosing Party as soon as practicable and cooperates with any reasonable steps to limit the disclosure.

15.3 Use of AI tools with Confidential Information. Without limiting clause 15.1, neither party may input the other party's Confidential Information into any third-party artificial intelligence tool, large language model, generative AI service, or other third-party system that the Receiving Party has not assessed as appropriate for that purpose.

15.4 Return or destruction. On termination of this Agreement, or earlier on the Disclosing Party's reasonable request, the Receiving Party must, within 30 days, return or destroy (at the Disclosing Party's election) all Confidential Information of the Disclosing Party in the Receiving Party's possession or control, and provide written confirmation of having done so. The Receiving Party may retain copies required by law or for legitimate record-keeping purposes, provided those copies remain subject to this clause. This clause does not require a party to destroy materials it is required or permitted to retain under clause 22 or by law.

15.5 Survival. The obligations in this clause survive termination of this Agreement for a period of 5 years, except that obligations relating to trade secrets continue for so long as the relevant information remains a trade secret.

16. Privacy and Data Security

If personal information is involved, your compliance obligations depend on ours being met. That is why this section commits to real security measures and fast notification rather than general reassurance.

16.1 Compliance with privacy laws. We will comply with the Privacy Act 1988 (Cth), the Australian Privacy Principles, and our privacy policy (available at smithbrothersmedia.com.au/privacypolicy) in respect of any Personal Information we collect, use, or hold in connection with providing the Services to you.

16.2 Personal Information you provide. Where you provide Personal Information to us for the purposes of the Services, you warrant that:

16.2.1 you have collected and disclosed the Personal Information lawfully; and

16.2.2 our use of the Personal Information for those purposes will not breach any applicable privacy law.

16.3 Data security. We will take reasonable steps to protect Personal Information and other Confidential Information from misuse, interference, loss, unauthorised access, modification, or disclosure. Reasonable steps include (without limitation) industry-standard encryption in transit and at rest where applicable, access controls based on need-to-know, and supplier security assessments for any third-party processors we engage.

16.4 Data breach notification. If we become aware of any actual, suspected, or threatened data breach, or unauthorised access, use, or disclosure of Personal Information or Confidential Information relating to you, we will:

16.4.1 notify you in writing as soon as practicable, and in any event within 48 hours of becoming aware;

16.4.2 cooperate with you in assessing the breach and any notification obligations either party may have under the Notifiable Data Breaches scheme (Part IIIC of the Privacy Act 1988 (Cth)) or other applicable law; and

16.4.3 take reasonable steps to mitigate the impact of the breach.

16.5 Cross-border arrangements. Where Personal Information may be transferred, accessed, or processed outside Australia in the course of providing the Services (including by contractors or service providers we engage), we will comply with the requirements of Australian Privacy Principle 8 in relation to cross-border disclosure.

16.6 Data location. Unless otherwise agreed in the Proposal, we may store and process your data in Australia or in such other jurisdictions as we reasonably consider appropriate (including jurisdictions where our third-party service providers operate), subject to our cross-border obligations under clause 16.5. If you require data to be stored or processed exclusively in Australia or in a specific jurisdiction, that requirement must be set out in the Proposal.

16.7 Reciprocal cooperation. You will cooperate with us in respect of any data breach affecting Personal Information you have provided to us, including by providing relevant information to enable us to comply with our notification obligations.

17. Compliance Warranties

Procurement teams and boards increasingly need to see these commitments in writing. Both of us give them, and both of us help the other meet its own reporting obligations.

17.1 Warranties. Each party warrants that:

17.1.1 it will comply with all laws applicable to its business and to its performance of this Agreement, including (without limitation) laws relating to modern slavery, anti-bribery and anti-corruption, sanctions, anti-discrimination, work health and safety, privacy, and consumer protection;

17.1.2 it does not engage in, and will not engage in or knowingly support, any form of modern slavery (including forced labour, child labour, debt bondage, or human trafficking) in its own operations;

17.1.3 it has not, and will not, offer, give, request, or accept any bribe, kickback, or other improper benefit in connection with this Agreement; and

17.1.4 it is not subject to, and is not owned or controlled by any person or entity subject to, applicable government or international sanctions.

17.2 Notification and information. Each party must notify the other in writing as soon as practicable if it becomes aware of any matter that constitutes, or is likely to constitute, a breach of clause 17.1. Each party must, on reasonable request, provide the other with reasonable information to enable the other to comply with its own legal or client-imposed obligations in respect of the matters in clause 17.1.

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PART E. RISK, TERMINATION, AND DISPUTES

18. Liability and Indemnities

Risk works best sitting with whoever can actually manage and insure it. This section places it that way, keeps your consumer law rights untouched, and puts a knowable ceiling on our exposure so the work can be priced honestly.

18.1 Non-Excludable Rights. Nothing in this Agreement excludes, restricts, or modifies any right or remedy you have under the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law) or any other legislation that cannot lawfully be excluded (Non-Excludable Rights). If there is any inconsistency between this clause 18 and a Non-Excludable Right, the Non-Excludable Right prevails.

18.2 Our liability for breach. Subject to clause 18.1, and to the extent permitted by law, where we breach this Agreement, breach a legal requirement, or act negligently in performing the Services, you may recover the loss you suffer as a result, subject always to clauses 18.4 and 18.9.

18.3 Remedy in the first instance. Where a breach by us is capable of being remedied by resupply, we may elect to re-perform the Services, or to pay the reasonable cost of having them re-performed, provided we do so within a reasonable period. Where we do so, that is your remedy for the breach to the extent the breach is remedied. Nothing in this clause limits your Non-Excludable Rights.

18.4 Exclusion of indirect loss. To the maximum extent permitted by law, neither party is liable for any:

18.4.1 loss of profit, revenue, business, data, or reputation; or

18.4.2 indirect, special, or consequential loss,

in each case arising out of or in connection with this Agreement, whether the loss was foreseeable or not. This clause does not limit recovery under the indemnity in clause 18.5 or your liability under clause 18.11.

18.5 IP infringement indemnity. We indemnify you against any amount awarded by a court, or agreed in settlement with our written consent (not to be unreasonably withheld), plus your reasonable legal costs of defending the claim, arising from a third-party claim that would constitute a breach of our warranty in clause 13.5.

18.6 Our remedy options on IP claim. If a claim is made under clause 18.5, we may at our cost:

18.6.1 procure for you the right to continue using the item;

18.6.2 replace or modify it in a commercially reasonable manner so the infringement ceases; or

18.6.3 require its return and refund the price you paid for the infringing item, pro-rated where only part of a Deliverable is affected.

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18.7 Indemnity for our serious misconduct. We indemnify you for your direct (but not indirect or consequential) loss caused or contributed to by our fraud, wilful misconduct, or gross negligence in performing the Services.

18.8 Conditions for indemnities. Our obligations under the indemnities in this clause are conditional on you:

18.8.1 giving us written notice of the claim as soon as reasonably practicable and in any event within 14 days of becoming aware of it, except to the extent our position is not materially prejudiced by any delay;

18.8.2 not admitting liability, compromising, or settling the claim without our consent; and

18.8.3 allowing us to conduct and control the defence and any settlement.

18.9 Aggregate liability cap. Subject always to clause 18.1, our total aggregate liability to you, including under the indemnities in this clause, is limited to the greater of:

18.9.1 the amount of our insured liability cover available in respect of the claim; or

18.9.2 100% of the Fees actually paid and payable under this Agreement.

18.10 Cap exclusions. The cap in clause 18.9 does not apply to liability for death, personal injury, fraud, or acts or omissions that cannot lawfully be limited.

18.11 Your liability. You are liable to us for loss we suffer, including our reasonable legal costs, arising from:

18.11.1 a breach of your warranties under clause 12.1;

18.11.2 the instructions or specifications you give us; or

18.11.3 your breach of this Agreement or of any law in connection with your engagement of us.

Your liability under this clause is subject to clause 18.4.

18.12 Limitation period. To the maximum extent permitted by law, and subject to clause 18.1 (Non-Excludable Rights), any claim you make against us arising out of or in connection with this Agreement must be commenced within 24 months after the date on which the cause of action accrued, failing which the claim is barred.

19. Termination

Neither of us should feel trapped, so either party can end things for a serious problem, and you can walk away for any reason at all. Ending early does have a cost, because a team has been held and scheduled, and this sets out what that is.

19.1 Grounds for termination. In addition to any other termination rights set out in these Terms (including under clauses 9, 10, and 19.7), a party may terminate this Agreement by notice in writing to the other party if:

19.1.1 the other party commits a material breach of these Terms that is capable of remedy (including failure to pay any amount due under this Agreement) and fails to remedy that breach within 21 days after receiving notice from the other party to do so;

19.1.2 the other party commits a material breach of these Terms that is not capable of remedy;

19.1.3 the other party becomes insolvent, bankrupt, or enters into liquidation; or

19.1.4 the parties agree in writing to terminate.

19.2 Payment on termination. Upon termination of this Agreement, and after receipt of an appropriate invoice from us, you will pay us:

19.2.1 all Fees for work performed up to and including the date of termination, calculated from the Proposal or agreed rates; and

19.2.2 all third-party costs that we have incurred, or will incur, that cannot be cancelled or recovered and which are reasonably substantiated.

19.3 Return of materials. Each party must return to the other all equipment, records, documents, and materials provided by the other party for the purposes of this Agreement.

19.4 Accrued rights. All rights and obligations accrued up to the date of termination are not affected by termination.

19.5 Termination Fee.

19.5.1 Where you terminate this Agreement, or any Project, otherwise than:

(a) under clause 19.1.1 or 19.1.2 for our material breach;
(b) under clause 19.1.3 for our insolvency;
(c) under clause 19.1.4 by agreement;
(d) under clause 9.4 or 9.5; or
(e) under clause 26.3 for prolonged Force Majeure,

you must pay, in addition to the amounts payable under clause 19.2, a termination fee equal to ten per cent (10%) of the unbilled portion of the Fees set out in the Proposal (the Termination Fee).

19.5.2 The unbilled portion of the Fees means the Fees set out in the Proposal that we have not invoiced as at the date of termination.

19.5.3 The Termination Fee compensates us for the cost of standing down or reassigning personnel, lost utilisation, and the administrative cost of winding down the engagement. It is a genuine pre-estimate of the loss we will suffer in those circumstances and is not a penalty.

19.5.4 The Termination Fee is payable within 14 days of the date of our invoice.

19.5.5 Where we terminate this Agreement under clause 19.1.1 or 19.1.2 because of your material breach, the Termination Fee does not apply. Our right to recover damages at law for that breach is not affected.

19.6 No double recovery. The Termination Fee does not apply where a separate fee or amount is payable under clause 9 (Schedule, Delays, and Disruption) or clause 10 (Cancellation, Pause, and Termination of Monthly Services) in respect of the same termination event.

19.7 Termination for convenience.

19.7.1 You may terminate this Agreement, or any Project, for convenience by giving us 30 days written notice.

19.7.2 Where the Proposal includes Monthly Services, clause 10.1 applies to cancellation of those Monthly Services in place of this clause.

19.7.3 We will continue to perform the Services during the notice period unless you direct us in writing to stop, in which case work ceases on the date of that direction and the notice period continues to run.

19.7.4 On termination under this clause you must pay, within 14 days of the date of our invoice:

(a) all Fees for work performed up to the termination date, calculated from the Proposal or agreed rates;
(b) any third-party or platform costs we have committed on your behalf that cannot be cancelled or recovered and which are reasonably substantiated; and
(c) the Termination Fee under clause 19.5.

19.7.5 On payment in full of the amounts in clause 19.7.4, clause 13 applies as if Completion had occurred, and we will assign the Developed Intellectual Property created up to the termination date.

19.7.6 Completion of a milestone in progress. Where, at the date we receive your notice under clause 19.7.1, a milestone in the Proposal is more than 50% complete, we may elect by written notice within 7 days to complete that milestone, provided it can be completed within the notice period. Where we so elect:

(a) we will deliver the completed Deliverables for that milestone to you;
(b) the Fee for that milestone is payable in full under clause 19.7.4(a), in place of any pro-rata amount for that milestone; and
(c) clause 19.7.3 does not apply to that milestone.

19.8 Survival. The following clauses, together with any other clause expressly stated or by its nature intended to survive termination, will survive termination of this Agreement: clause 8.7 (Defect period), clause 12 (Your Content and Materials, to the extent of ownership and licences), clause 13 (Developed Intellectual Property), clause 14 (AI and Technology, to the extent of IP and confidentiality), clause 15 (Confidentiality), clause 16 (Privacy and Data Security), clause 17 (Compliance Warranties, to the extent of accrued matters), clause 18 (Liability and Indemnities), clause 19 (Termination), clause 20 (Complaints and Disputes), clause 21 (Open Source Software and Third-Party Licences), clause 22 (Project Records and Backup), and Schedules 3, 4, and 5 to the extent of any Fees accrued before termination.

20. Complaints and Disputes

Almost every disagreement is cheaper to fix by talking early. This builds in the escalation steps to do that, and keeps the project moving on everything that is not actually in dispute.

20.1 Raising a Dispute. If our work does not meet your expectations, you must tell us in writing (a Dispute) within 14 days of becoming aware of the issue. Address your Dispute to a member of our executive team and our Account Contact. We will acknowledge your Dispute and work with you in good faith to resolve it promptly. Failure to notify us within that period does not bar your claim, but you may not recover any loss that could reasonably have been avoided had you notified us promptly.

20.2 Senior representatives' meeting. Each party will nominate a senior representative who has authority to settle the matter and who will meet, in person or by video, within 7 days after we receive your Dispute. Both parties will use their best endeavours to resolve the Dispute at that meeting.

20.3 Mediation. If we cannot agree on a resolution within 14 days after your initial notice, we will refer the Dispute to mediation. The mediation will:

20.3.1 be conducted in Melbourne, or online if both parties agree;

20.3.2 be administered under the rules of the Victorian Small Business Commission or other mutually agreed body;

20.3.3 use an independent mediator we jointly appoint, or, if we cannot agree a mediator, one you select from a list of three qualified mediators we propose;

20.3.4 be attended by both parties in good faith and with authority to settle the dispute; and

20.3.5 be conducted on the basis that each party bears its own costs and shares the mediator's fees equally.

20.4 Litigation. If the Dispute is not resolved within 60 days after the mediation begins, or any longer period the parties agree in writing, either party may commence litigation.

20.5 Continuing performance. While a Dispute is being resolved under this clause, both parties will continue to perform their obligations under this Agreement to the extent they are not the subject of the Dispute, unless that performance is impossible.

20.6 Urgent interlocutory relief. Nothing in this clause prevents a party from seeking urgent interlocutory relief from a court of competent jurisdiction in Victoria where that relief is reasonably necessary to protect that party's rights.

PART F. GENERAL PROVISIONS

21. Open Source Software and Third-Party Licences

The components in a modern build outlive our involvement. Holding those licences yourself means nothing switches off when our engagement ends.

21.1 Third-party licences. Throughout the course of the Project, we may be required to obtain licences for software (including website components, plugins, or extensions) or other assets (including stock imagery, commercial fonts, audio, or video) which will incur a licence fee, either perpetual or recurring. You will be liable for the full cost of any such licences. It is your responsibility to enter into and maintain these licences.

21.2 Open source software. Open source software not owned by us is subject to separate licence terms. A copy of those terms is available from us on request. The applicable open source software licences will not materially or adversely affect your ability to exercise your rights in the applicable Developed Intellectual Property.

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21.3 Your warranty and liability for third-party licences. You warrant that you will comply with the terms of any licence referred to in clauses 21.1 or 21.2. You are liable to us for loss we suffer as a result of a breach of this warranty, including reasonable legal costs, subject to clause 18.4.

22. Project Records and Backup

We keep a copy of the finished work as a safety net for a period after the project. It is not a substitute for your own archive, and you can ask us for a copy any time it is still there.

22.1 Retention period. We will back up and retain an archive of all finished files created by us during the Project for the Term and for 12 months after the end of the Term, subject to the Privacy Act 1988 (Cth) and any applicable record-keeping law.

22.2 Deletion. You may request a copy of any archived materials at any time during the retention period, at no charge. At the expiry of the retention period you authorise us to permanently delete the materials without further notice to you.

22.3 What is not covered. The backup of files does not extend to any ICT systems or website backup, unless we are providing those services and they are expressly included in the Proposal.

23. Promotion and Case Studies

Our portfolio is how we win the next piece of work, so we would love to talk about yours. We ask first, and you can say no.

23.1 Promotional use. We may reproduce or refer to the completed works for our promotional purposes with your prior written consent, not to be unreasonably withheld. This may include (without limitation) our social media accounts, our website, portfolio, case studies, public relations and media announcements, and industry competitions.

24. Our Brand and Trademarks

Our name is our reputation. Saying factually that we work for you is welcome, using our brand for anything else needs a conversation.

24.1 Use of our brand. Our name, logos, and registered trademarks (including Smith Brothers Media®, The Smarter Way®, and SBM®) and all associated goodwill are owned by us. You must not use any of our trademarks or brand assets except:

24.1.1 as expressly permitted by us in writing;

24.1.2 as required by clause 7.5 (attribution); or

24.1.3 in the ordinary course of describing your engagement of us in factual terms.

25. Our Insurance

Our liability cap is tied to what we are insured for, so you should be able to check what that is. These are the policies we hold and the levels we hold them at.

25.1 Insurances we hold. We maintain, at our own cost:

25.1.1 Professional Indemnity insurance of not less than $10,000,000;

25.1.2 Public Liability insurance of not less than $10,000,000;

25.1.3 Cyber Liability insurance of not less than $5,000,000; and

25.1.4 Workers Compensation insurance as required by law.

25.2 Evidence. We will provide a certificate of currency in respect of each policy on your reasonable request.

26. Force Majeure

Some things are genuinely nobody's fault. Neither of us should be in breach because of a disaster, an outage, or a government decision, provided we keep each other informed and try to get back on track.

26.1 Effect. Neither party will be liable for any delay or failure to perform its obligations under this Agreement to the extent caused by a Force Majeure Event, provided that the affected party:

26.1.1 notifies the other party in writing as soon as practicable, including reasonable details of the nature, expected duration, and impact;

26.1.2 takes all reasonable steps to mitigate the impact and to resume performance as soon as practicable; and

26.1.3 keeps the other party informed of material developments.

26.2 Payment obligations. A Force Majeure Event does not relieve either party from any payment obligation in respect of obligations performed before the Force Majeure Event commenced.

26.3 Termination for prolonged Force Majeure. If a Force Majeure Event prevents or materially delays the performance of a party's obligations for a continuous period exceeding 30 days, either party may terminate this Agreement by giving 7 days written notice to the other party, without further liability except in respect of obligations already accrued.

27. Notices and Communications

A few things carry real legal weight, like ending the agreement. Those need a formal notice so there is never an argument about whether it was given. Everything else can stay as informal as it usually is.

27.1 What is a Notice. A Notice is any notice given under clause 6.1.2 (suspension for non-payment), clause 9.3 (suspension), clause 9.4 or 9.5 (termination for delay), clause 10.1 (cancellation of Monthly Services), clause 10.2.6 (deemed termination of Monthly Services), clause 19 (Termination), clause 20 (Complaints and Disputes), clause 26 (Force Majeure), clause 29.3 (update to these Terms), clause 29.4 (Assignment), clause S3.5 (fee review), or clause S5.6 (change in third-party pricing).

27.2 Requirements. A Notice must be:

27.2.1 in writing, in English, and signed by a person duly authorised by the sender; and

27.2.2 delivered by hand, registered mail, or email to the recipient's address specified in the Proposal, or any updated address that party has notified to the other.

27.3 Signing. An email Notice is taken to be signed for the purposes of clause 27.2.1 if sent from the business email address of a person duly authorised by the sender.

27.4 Deemed receipt. A Notice is taken to be received:

27.4.1 if delivered by hand, on delivery;

27.4.2 if sent by registered mail, on the third Business Day after posting; or

27.4.3 if sent by email, at the time of sending, unless the sender receives an automated delivery failure notification.

27.5 Out-of-hours receipt. A Notice taken to be received after 5.00pm, or on a day that is not a Business Day, is taken to be received on the next Business Day.

27.6 Other communications. Any other notice, reminder, approval, acceptance, instruction, or communication under this Agreement may be given by any written means, including email, chat, or project management tools. This includes the reminder under clause 8.3, the reactivation notice under clause 10.2.5, and any approval or instruction given by an Account Contact.

28. Subcontracting

Specialists make the work better, but anyone who sees your information needs to be bound the same way we are. We also ask that you talk to us before recruiting the people who worked on your project.

28.1 Consent to subcontract. We will not subcontract any element of the Services that involves access to your Confidential Information or Developed Intellectual Property without your prior written consent, not to be unreasonably withheld.

28.2 Subcontractor obligations. We will ensure that all subcontractors are bound by obligations of confidentiality and data security materially equivalent to those in this Agreement.

28.3 Our personnel. For 12 months after the end of the Term, you must not solicit for employment or engagement, or employ or engage, any of our personnel who performed the Services, without our prior written consent. If you do, you must pay us a fee equal to 25% of that person's total annual remuneration in their first year with you, as a genuine pre-estimate of our cost of recruiting and training a replacement. This clause does not apply where the person responds to a public advertisement not specifically directed at our personnel.

29. General

Housekeeping: the relationship between us, the whole agreement, and Victorian law. It also covers how we update these Terms for ongoing clients, and confirms we work with other clients while keeping your information to ourselves.

29.1 Independent contractor relationship. These Terms are intended as a contract for the provision of services. Nothing in these Terms creates a partnership, joint venture, relationship of employment, agency, or similar relationship between the parties.

29.2 Entire agreement.

29.2.1 To the extent allowed by law, these Terms and the Proposal form the entire agreement between the parties and supersede any other agreements, whether or not in writing. The Proposal prevails to the extent of any inconsistency between these Terms and the Proposal, per clause 1.2.

29.2.2 Each party acknowledges that it has not relied on any representation, statement, warranty, or promise not set out in this Agreement. This clause does not limit liability for fraud, or any liability that cannot lawfully be excluded.

29.3 Variation.

29.3.1 These Terms cannot be varied except where both parties agree in writing.

29.3.2 Despite clause 29.3.1, where the Proposal includes Monthly Services, we may update these Terms by giving you at least 30 days written notice of the updated version. The updated Terms apply to Monthly Services performed after the end of that notice period.

29.3.3 If you do not accept the updated Terms, you may cancel the Monthly Services by written notice given before the end of the notice period. Cancellation takes effect at the end of the notice period, clause 10.1 does not apply, and no Termination Fee is payable.

29.3.4 An update under clause 29.3.2 does not apply to a Project already underway at the date of the notice, or to any Fees already agreed in a Proposal.

29.4 Assignment. Neither party may assign this Agreement without the other's prior written consent, not to be unreasonably withheld, except that we may assign or novate this Agreement to a related body corporate or to a purchaser of our business, on written notice to you, provided the assignee assumes our obligations under this Agreement.

29.5 Governing law and jurisdiction. This Agreement is governed by the laws of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts entitled to hear appeals from those courts.

29.6 Severability. If any provision of this Agreement is or becomes invalid or unenforceable in any jurisdiction, that invalidity or unenforceability does not affect the validity or enforceability of any other provision of this Agreement or the same provision in any other jurisdiction.

29.7 Counterparts and electronic execution. This Agreement may be executed in any number of counterparts, each of which when executed is an original, but together they constitute one and the same instrument. Electronic execution is acceptable and has the same effect as physical execution.

29.8 No exclusivity. We may provide services to other clients, including clients who compete with you. Nothing in this Agreement prevents us from doing so, subject to clause 15 (Confidentiality).

29.9 Our knowledge and experience. Nothing in this Agreement prevents us from using the general skills, knowledge, techniques, methods, and experience we acquire in performing the Services, provided we do not use or disclose your Confidential Information or infringe the Developed Intellectual Property assigned to you.

PART G. SCHEDULES

Schedule 1. Development Services

Software needs testing, and testing needs a shared understanding of who checks what and by when. This covers that, plus how long we fix bugs for free afterwards.

S1.1 Application. This Schedule applies, and is incorporated in this Agreement, where the Proposal includes development services.

S1.2 Responsibilities. Each party will perform its responsibilities as set out in the Proposal, including in respect of the timely provision by you of Content to be used as part of the development services or hosted by us, and in any developer testing and user acceptance testing (Testing).

S1.3 Testing. Unless otherwise stated in a Proposal:

S1.3.1 if the Services or Deliverables fail to pass Testing, we may undertake work to rectify the failure and resubmit for further testing within a reasonable period of time;

S1.3.2 Testing (for any user acceptance tests) will be deemed successful if you do not notify us of any failures within 14 days of us submitting the Services or Deliverables to you for testing. Where you do not respond in that period, we will send you a written reminder, and Testing is deemed successful if you do not respond within a further 7 days.

S1.3.3 we will use our reasonable endeavours to rectify any defects or bugs in the Services or Deliverables that you notify to us within 30 days after Testing is completed or deemed successful, or such other period as may be set out in the Proposal, at no additional cost; and

S1.3.4 subject to clause S1.3.3, support and maintenance is priced as set out in a Proposal or otherwise at our then-standard rates for professional services on a time and materials basis.

Schedule 2. Hosting, Support, and Maintenance Services

The detail for these services lives in our separate Service Level Agreement, which goes much deeper than a schedule could. This explains how the two documents work together.

S2.1 Application. This Schedule applies where the Proposal includes hosting, support, or maintenance services.

S2.2 Service Level Agreement. Those services are provided under our Digital Infrastructure and Support Service Level Agreement (SLA) as issued to you or referred to in the Proposal. The SLA is a Schedule for the purposes of clause 1.2.

S2.3 Relationship to these Terms. The SLA governs service scope, service levels, response and resolution targets, monitoring, backups, patching, access governance, and incident response. These Terms govern everything else, including Fees and payment, intellectual property, liability, termination, and disputes. Where the SLA and these Terms are inconsistent, the SLA prevails only in respect of the matters in the first sentence of this clause.

S2.4 Cancellation. Where hosting, support, or maintenance is provided as Monthly Services, clause 10 governs cancellation and Pause.

S2.5 Uptime remedy. Where the SLA provides a service credit for failure to meet an uptime commitment, that credit is your sole remedy for that failure, subject to clause 18.1.

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Schedule 3. Monthly Services

Retainers work best when everyone knows how the allocation behaves. This covers whether your hours are monthly or annual, what happens to time you do not use, and how fees are reviewed.

S3.1 Application. This Schedule applies, and is incorporated in this Agreement, where the Proposal includes Monthly Services.

S3.2 Allocation. The Proposal states whether your allocation of hours or Deliverables is monthly or annual.

S3.2.1 Where the allocation is monthly, unused allocation does not accumulate or carry forward into a later month and is not refundable, unless the Proposal states otherwise.

S3.2.2 Where the allocation is annual, the full allocation is available from the start of the annual period even though Fees are payable monthly. Unused allocation carries forward for up to 6 months after the end of the annual period, after which it lapses and is not refundable.

S3.2.3 An annual allocation is available on the basis that Fees continue to be paid for the full annual period. Where you cancel or we terminate before the end of that period and the allocation you have used exceeds the proportion of the annual allocation corresponding to the Fees you have paid, we may invoice the excess hours at the Hourly Rate.

S3.3 Over-servicing. Where we perform work beyond the allocation we may do so at our discretion. Doing so in any month does not oblige us to do so again, does not vary the Proposal, and does not create an entitlement to a larger allocation.

S3.4 Additional work. Work requested beyond the allocation is Additional Works under clause 4 and is charged at the Hourly Rate.

S3.5 Annual fee review. We may increase the Fees for Monthly Services once in each 12-month period by giving you at least 30 days written notice. If you do not accept the increase you may cancel the Monthly Services by written notice given before the increase takes effect, and clause 10.1 does not apply.

S3.6 Reporting. We report on activity and performance in accordance with clause 11.2.

S3.7 Service levels. Where the Monthly Services include hosting, support, or maintenance, Schedule 2 and the SLA also apply.

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Schedule 4. Hourly and Time-Based Engagements

Working by the hour gives you flexibility, and that flexibility depends on trust in how time is tracked and estimated. This sets out both, and what happens to hours you have bought but not used.

S4.1 Application. This Schedule applies where the Proposal provides for work to be charged on an hourly or time-based basis, whether as a prepaid block, a retainer, or on a time and materials basis.

S4.2 Rates. The applicable hourly rates are those set out in the Proposal. Rates may differ by engagement model, by the role performing the work, and by the volume of hours committed. If no rates are specified the Hourly Rate applies.

S4.3 Estimates. We may provide an estimate for a distinct component of work on request. An estimate is not a fixed price, a cap, or a quotation, and is not guaranteed. Where we form the view that work will exceed an estimate, we will tell you before continuing and discuss the options with you.

S4.4 Time recording. We record time to the minute against your engagement in our project management software. There is no minimum duration for a request. We will provide a time report on your request, and in any event when a prepaid block is fully consumed.

S4.5 Prepaid blocks. Where the Proposal provides for a prepaid block of hours:

S4.5.1 the block is payable in full on issue of our invoice, and work does not commence until payment is received;

S4.5.2 the rate applying to the block is the rate at the date of purchase, and is not affected by any subsequent rate change;

S4.5.3 hours are drawn down as work is performed and are available for 12 months from the date of purchase;

S4.5.4 we will notify you at least 30 days before hours are due to expire, and will extend the period by agreement where you have a reasonable need for more time; and

S4.5.5 unused hours are not refundable but may, at our discretion, be applied to another engagement with us.

S4.6 Time and materials. Where the Proposal provides for work on a time and materials basis:

S4.6.1 work is charged at the rates for the roles actually engaged;

S4.6.2 we invoice at the end of each calendar month, and additionally whenever recorded time on the engagement exceeds 50 hours since the last invoice; and

S4.6.3 we may require a signed Proposal or engagement letter setting out the rates and scope before commencing work.

S4.7 Retainers. Where hours are provided as Monthly Services, Schedule 3 also applies and governs allocation, carry-forward, cancellation, and fee review.

S4.8 Discounts. Any discount stated in the Proposal, including a not-for-profit discount, applies only to our billable rates. It does not apply to third-party or partner costs, including hosting, licences, subscriptions, or media spend. A discount applies to the rate in force from time to time and does not prevent a rate increase.

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Schedule 5. Third-Party Subscriptions and Managed Accounts

When we manage someone else's platform for you, it helps to be clear about where our responsibility ends and theirs begins. This covers that, along with account ownership and what happens when a provider changes its pricing.

S5.1 Application. This Schedule applies where the Proposal provides for us to procure, configure, or administer a third-party subscription, licence, or service on your behalf (a Managed Subscription).

S5.2 What we do. We will procure the Managed Subscription in your name or on your behalf, configure it, administer users and licences, and provide the support hours stated in the Proposal. The underlying service is provided by the third-party provider, not by us.

S5.3 Ownership. You are the owner and account holder of each Managed Subscription and of all data within it. Clause 12.5 applies. Where we hold administrative access, we do so as your agent and will transfer full control to you, or to a provider you nominate, on your written request, provided all amounts due and payable are paid.

S5.4 Third-party terms. Your use of a Managed Subscription is subject to the third-party provider's own terms of service, acceptable use policy, and privacy terms. You are bound by those terms, and you authorise us to accept them on your behalf where necessary to establish or maintain the subscription. We will provide a copy or link to those terms on request.

S5.5 Fees. Unless the Proposal states otherwise, Managed Subscription fees comprise a per user or per licence charge plus our administration and support charge, and are payable quarterly in advance. Our administration and support charge applies for each period in which the subscription is active, whether or not any support is used.

S5.6 Changes in third-party pricing. Third-party pricing, inclusions, and plan structures are set by the provider and may change. Where a provider changes its pricing or inclusions, we may pass that change through to you from the start of the next billing period by giving you written notice. If you do not accept the change you may cancel the Managed Subscription under clause S5.9 before it takes effect.

S5.7 Changes to users and licences. Requests to add or remove users or licences must be made in writing to the address stated in the Proposal. We will action them in the next billing period unless we agree otherwise. Reductions take effect from the next billing period and do not reduce the fees for the current period.

S5.8 Included support. Any migration or support hours stated in the Proposal are included in the Managed Subscription fee, do not accumulate or carry forward between periods, and are not refundable if unused. Support beyond those hours is charged under Schedule 4.

S5.9 Cancellation. You may cancel a Managed Subscription by giving us written notice. Cancellation takes effect at the end of the billing period in which we receive the notice. Fees for that period are not refundable in whole or in part. On cancellation we will, on your request, transfer the subscription to you or to a provider you nominate, or assist you to export your data, and any work required beyond the included support hours is charged under Schedule 4.

S5.10 Our responsibility. We are responsible for procuring, configuring, and administering each Managed Subscription with reasonable care and skill, and for the support hours stated in the Proposal. We are not responsible for the availability, performance, security, functionality, pricing, or discontinuation of the underlying third-party service, and clause 9.9 applies. Where a provider fails to deliver, we will use reasonable endeavours to assist you to raise and escalate the issue with that provider.