

Hi there,

This document details my **Terms of Service**. It might seem like a lot, but these terms ensure that we are on the same page with the project, and that we know what to expect during the project's lifecycle.

If there is any inconsistency, confusion, or dispute in relation to the terms of our agreement, this full Terms of Service document will take precedence.

When you accept my quote or invoice for a project, you are also agreeing to the terms presented here. If you have any questions or would like to request a change to these terms, please do not hesitate to ask me.

## Full Terms of Service

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### 1. Eileen's Obligations

(a) I will provide you with the Services Details and Agreement, which will be available as a Project Agreement form, a quote, or an invoice.

(b) I will begin providing the specified Services on the Commencement Date and complete them by or on the Completion Date.

(c) I will:

- (i) perform the Services in a timely and professional manner;
- (ii) comply with all laws and maintain any licenses or authorisations required for providing the Services; and
- (iii) comply with my obligations under our Agreement.

### 2. Client Obligations

You must:

- (a) respond to any questions or requests from me in a timely manner;
- (b) not infringe any Third Party IP or any other contractual or proprietary rights of a third party;
- (c) comply with all applicable laws; and
- (d) comply with your obligations specified for the project and via these Terms of Service.

### 3. Checkpoints

(a) I will use my reasonable endeavours to meet the Checkpoints by the Checkpoint Dates.

(b) After each Checkpoint Date, we will discuss and confirm progress of the Services and the Deliverables.

(c) At the end of each Checkpoint, you may:

- (i) accept the progress of the Services and/or the Deliverables (including any minor errors or your requested amendments); or
- (ii) reject the progress of the Services and/or the Deliverables on the basis that they are substantially different to what was agreed.

(d) If you reasonably reject the Services and/or the Deliverables pursuant to clause (c)(ii), then you may choose to:

- (i) have the portion of the Services and/or the Deliverables which differ to what was agreed redone by me, provided that you give me sufficient feedback and details of the differences so I can rectify them accordingly. In such cases, we will set new Checkpoints and extend the deadline for the Deliverables in accordance with clause 5(c); or
- (ii) where you have rejected the same portion of the Services and/or Deliverables (i.e., the same Checkpoints) on at least two (2) occasions, then you may terminate the Agreement upon 10 days written notice. Termination will take effect in accordance with clause 13.2 and any payments due must be made in accordance with clause 5.

### 4. Delays

(a) Where:

- (i) you are unable to promptly respond to my questions and requests in clause 2(a) or the Checkpoints in clause 3(c); and
- (ii) the non-compliance results in a delay in my provision of the Services and/or Deliverables;

then you agree that I will automatically be granted an extension of time to the Checkpoint Dates and the Completion Date that is proportionate to the delay incurred.

(b) I reserve the right to charge you for any reasonable costs incurred by me as a result.

(c) Where I anticipate a delay is likely to occur from my side in providing the Services and Deliverables, I will promptly provide you with written notice which sets out:

- (i) the cause of the delay; and
- (ii) the extension of time required.

I will use reasonable endeavours to minimise any such delays caused.

### 5. Variations to Services and Deliverables

(a) After the Commencement Date, you may request (in writing) that I change the scope of the Services and/or the Deliverables (**Variation Request**).

(b) Within 10 days of receipt of a request, I will provide you with a written notice detailing any:

- (i) changes to the Fees as a result of the Variation Request;
  - (ii) changes to any Checkpoints, Checkpoint Dates and the Completion Date as a result of the Variation Request; and
  - (iii) any other relevant considerations.
- (**Variation Proposal**).

(c) Within 10 days of receiving my notice, you must either accept or reject my Variation Proposal. If you fail to respond by the due date, you will be deemed to have rejected the Variation Proposal. Where the Variation Proposal is rejected, I will continue providing

the Services and/or the Deliverables as originally contemplated for by the Agreement.

## 6. Completion and Final Acceptance

(a) Upon completing all Checkpoint Meetings, I will provide you with a final work-in-progress copy of the Deliverables for your review (**Final Draft**). You must review the Final Draft carefully and provide me with feedback, within 14 days of receiving the Final Draft, of:

- (i) any spelling, grammatical, formatting, design and other such minor and aesthetic changes; and
- (ii) any non-compliances with the agreed Deliverables.

(b) If you do not provide me with the feedback pursuant to clause 6(a) by the due date, you will be deemed to have accepted the Final Draft as acceptable and fit-for-purpose (including any errors or omissions that may exist in the Final Draft).

(c) If you provide me with feedback pursuant to clause 6(a) by the due date, I will make the necessary corrective changes and return a corrected copy of the Final Draft to you. The process in subclauses 6(a) to 6(c) will, where necessary, be repeated no more than two times before the Final Draft is deemed acceptable pursuant to clause 6(b).

(d) Once the Final Draft is confirmed or deemed acceptable, I will issue you with my final invoice (**Final Invoice**), which you must pay in accordance with clause 7. I will provide you with the exported format of the Deliverables (**Final Version**). You acknowledge and accept the Final Version as is and that delivery of the Final Version to you constitutes the completion of my obligations to provide the Services and/or Deliverables under the Agreement.

## 7. Fees and Payment Terms

### 7.1 Deposit

I may specify that a deposit is required in the Service Details.

(a) Deposits that are payable as specified in the Service Details must be paid by the due date.

(b) Failure by you to pay the deposit by the due date will constitute a delay under clause 4(a). Any further failure by you to pay the deposit after seven days from the due date shall entitle me to terminate the Agreement upon immediate written notice.

(c) Unless otherwise specified, the deposit is non-refundable which will be set off against the Final Invoice.

(d) No work shall be commenced by me until payment of the deposit is received.

### 7.2 Reschedule Time Limit and Fee for Delaying Commencement Date

I may provide a reschedule time limit in the Service Details. The reschedule time limit is a set reasonable time when you can delay the Commencement Date of a project.

(a) The reschedule time limit will range from

two days to two weeks, depending on the nature of the project.

(b) If you choose to reschedule the Commencement Date outside of the specified reschedule time limit, you may incur an administrative Fee to cover costs associated with changing the project deadlines.

### 7.3 Fees

You must pay my Fees upon receipt of an invoice in accordance with the payment terms specified in the Service Details.

### 7.4 Failure to pay

(a) If I do not receive payment of an invoice in accordance with the Agreement, I reserve the right to:

- (i) charge you interest of [5.00]% per month until payment of that invoice;
- (ii) where the invoice is not the Final Invoice, suspend my provision of the Services and/or Deliverables until such time my invoice(s) are paid; and/or
- (iii) terminate our Agreement with immediate effect.

(b) If I suspend, and subsequently resume, providing the Services and/or Deliverables pursuant to clause 7.3(a)(ii), the period of the suspension will constitute a delay under clause 4(a).

### 7.5 James Cook University and University of New England

(a) I am a James Cook University and University of New England supplier and, if you have a grant, scholarship and/or funding account with these universities, you may seek for my invoice(s) to be paid by your university.

(b) If your university is to pay my invoice(s), they must pay it in accordance with the payment terms specified in the Service Details.

(c) Nothing in this clause 7.4 relieves you of responsibility for the payment of my invoice(s), and you will remain liable for the payment of my invoice(s) where payment is not made by the university.

## 8. GST

Unless otherwise specified, the Fees are exclusive of GST. If GST is payable under or in connection with the Service Details, you must pay me GST in addition to the Fees.

## 9. Intellectual Property

### 9.1 Background IP

(a) My Background IP will remain my sole property and your Background IP will remain your sole property. Neither of us will acquire any right, title or interest in or to each other's Background IP, other than as expressly set out in the Agreement.

(b) We each must not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, commercially exploit, reverse engineer, create derivative works from, transfer, or sell any of the other's Background IP unless expressly stated otherwise in the Agreement.

(c) You hereby grant me a perpetual, worldwide, non-exclusive, irrevocable, and royalty-free licence to use, reproduce and modify your Background IP for the purposes of:

- (i) providing the Services and producing the Deliverables;
- (ii) complying with my obligations under the Agreement; and
- (iii) enjoying any rights or entitlements I have under the Agreement.

## 9.2 Draft IP

(a) At various stages throughout the Term (for example, at the Checkpoint Dates), I will provide you with draft forms and/or work-in-progress versions of the Deliverables and/or the Service outputs (**WIP Services and Deliverables**). These may include:

- (i) editable files;
- (ii) the Final Draft; and
- (iii) any other files or documents that are marked as "draft" or are otherwise draft documents by their nature.

(b) All Intellectual Property Rights in the WIP Services and Deliverables (except your Background IP) (**Draft IP**) are owned by me upon their creation.

(c) Subject always to you complying with your obligations under the Agreement, I grant to you a limited, worldwide, non-sublicensable, non-transferable, non-exclusive, revocable and royalty-free licence to use my Draft IP for:

- (i) providing me with feedback, recommendations, variations and requests on the WIP Services and Deliverables;
- (ii) assisting me with complying with my obligations under the Agreement; and
- (iii) complying with your obligations under the Agreement.

(d) Upon the earlier of:

- (i) termination of the Agreement;
  - (ii) expiration of the Agreement; or
  - (iii) my provision of the Final Version to you pursuant to clause 6(c);
- all licences in the Draft IP granted to you under this clause 9.2 are terminated.

## 9.3 Project IP

(a) All rights, titles and interest (including Intellectual Property Rights but excluding your Background IP) in or to the Final Version will be owned by me, (**Project IP**).

(b) Upon receiving full payment of all my invoice(s) under the Agreement, I grant to you a limited, personal, worldwide, non-exclusive, non-sublicensable, non-transferable and royalty-free licence to use the Project IP (inclusive of any of my Background IP insofar as it is contained in the Project IP) for:

- (i) your presentation of the Final Version in its entirety to academic, educational and

research institutions for educational and research purposes only; and

(ii) your personal and private use and enjoyment of the Final Version in its entirety exclusive of any commercial purposes other than the academic, educational or research purposes provided for in clause 9.3(b)(i)).

## 10. Confidential Information

In this clause 10, defined terms have the following meanings:

Discloser means the party disclosing (or which has disclosed) the relevant Confidential Information.

Recipient means the party receiving (or which has received) the Discloser's Confidential Information.

### 10.1 Protection of Confidential Information

We must both keep confidential any Confidential Information disclosed to us by the other. In particular, the Recipient of Confidential Information must:

- (a) use the Discloser's Confidential Information only for the purposes of complying with its obligations under the Agreement;
- (b) safeguard the Discloser's Confidential Information, including taking all necessary steps to protect it against theft and unauthorised access; and
- (c) not disclose the Discloser's Confidential Information to any person without the Discloser's written consent.

### 10.2 Removal of Confidential Information

At the request of the Discloser, the Recipient must deliver, erase or destroy all electronic and physical documents in its possession or control that contain the Discloser's Confidential Information.

The Recipient shall not thereafter use the Discloser's Confidential Information for any purpose.

### 10.3 Return Exceptions

If a party must retain the other party's Confidential Information for the purpose of:

- (a) complying with any law;
  - (b) litigation; or
  - (c) performing its obligations or exercising its rights under the Agreement,
- it may retain and use it solely for this purpose but must deal with the Confidential Information in accordance with clause 10.1 promptly after it is no longer required for this purpose.

## 11. Promotions and Marketing

(a) You agree that I may use the Deliverables, WIP Services and Deliverables and the Final Version in portfolios, my website and other such marketing materials to promote and showcase my services and projects.

(b) Notwithstanding clause 11(a), I will not use the Deliverables, WIP Services and Deliverables

and the Final Version for the aforementioned purposes where you have reasonable reasons for keeping the Deliverables, WIP Services and Deliverables and/or the Final Version a secret (for example, if your project has not been published or submitted, or the contents of the Deliverables, WIP Services and Deliverables and/or the Final Version are of a highly confidential and secure nature such as national defence, etc.), until such time as you notify me, or I reasonably deem, that the necessary period for such secrecy is over. Any consent I seek from you in this respect must not be unreasonably withheld or delayed.

(c) Where you have a reason for secrecy under clause 11(b), you must provide me with written notice of those reasons prior to my issuing of the Final Version to you.

## **12. Termination**

### **12.1 Termination rights**

(a) You may terminate the Agreement for cause or otherwise in accordance with its terms.

(b) I may terminate the Agreement at any time and for any reason upon giving you at least 10 days' written notice.

### **12.2 Effect of Termination**

(a) On the effective date of the termination (where the Agreement is terminated for reasons other than the completion of the Deliverables and delivery of the Final Version):

- (i) I will cease to provide the Services and all work on any Deliverables;
- (ii) I will issue you an invoice for work completed up to the effective date of termination which has not been paid for by you, the payment of which must be made pursuant to clause 7;
- (iii) if you have made payments in advance and those payments are more than the value of this invoice (less the non-refundable deposit), I will refund you the difference within 30 days of issue of the invoice. Where only the deposit has been paid, no refunds will be made; and
- (iv) any and all licences granted to you shall terminate in accordance with the Agreement.

## **13. Warranties and Disclaimers**

### **13.1 Client Warranties**

You warrant that:

(a) you have, and will continue to have, all consents, licenses, approvals and permissions necessary to allow me to provide, and for you to use, the Services and produce the Deliverables in accordance with the Agreement;

(b) your Background IP and any other documents, information, data or materials that you give to me under the Agreement do not and will not infringe upon any Third Party IP or any other rights of third parties; and

(c) you are lawfully entitled and able to grant the licenses in the Agreement.

### **13.2 Provider Disclaimers**

You acknowledge and agree that:

(a) I do not warrant or guarantee that the Services and the Deliverables will be error free (i.e., spelling mistakes, grammar mistakes, formatting errors, etc.);

(b) Verifying the scientific, academic, correctness and otherwise accuracy of the content and information contained within the Deliverables do not form part of the Services and that I do not make any guarantees or warranties over the same; and

(c) I do not warrant or guarantee that the Deliverables will be fit for any particular academic, educational or other such purposes (for example, that the Deliverables will be accepted as a university assignment or submission or that will achieve a certain result).

## **14. Indemnity and Infringement Claim**

### **14.1 Mutual Indemnities**

(a) Subject to the limitation of liability under clause 15.1, each of us (**Indemnifying Party**) indemnifies the other (**Indemnified Party**) against all and any reasonable claims directly arising out of:

- (i) any fraudulent or unlawful act or omission of the Indemnifying Party; and
- (ii) any third-party claim relating to infringement of Third Party IP.

## **15. Liability**

### **15.1 Limitations on Liability**

To the fullest extent permitted by law, the total liability of either us to the other under or in connection with the Agreement in respect of all claims will not exceed the total Fees for the Services under the Agreement.

### **15.2 Implied Terms**

(a) Nothing in the Agreement is intended to limit or exclude your consumer guarantees under the Australian Consumer Law.

(b) If the Australian Consumer Law applies, my liability for a breach of a consumer guarantee conferred by the Australian Consumer Law is limited to:

- (i) to re-supplying the Services or Deliverables at no further cost to you; or
- (ii) refunding you the Fees actually paid.

### **15.3 Exclusion of Consequential Loss**

Neither of us will be liable to the other for any kind of Consequential Loss arising out of or in connection with the Agreement.

## **16. General**

### **16.1 Notice**

(a) A notice, consent, approval, waiver or other communication provided in connection with the Agreement must be in writing.

(b) A notice may be given by hand delivery, post or by email and is effective upon receipt.

### 16.2 Entire Agreement

The Agreement represents the entire agreement between us and supersedes all prior discussions, documents, negotiations, understandings and agreements in relation to the subject matter of the Agreement.

### 16.3 Counterparts

The Agreement may be signed in any number of counterparts. All signed counterparts taken together constitute one agreement.

### 16.4 Severability

If any provision is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid, without affecting the validity or enforceability of the remaining provisions of the Agreement.

### 16.5 Survival

Termination or expiration in whole or in part of the Agreement does not affect those provisions and your and my obligations which by their very nature survive termination.

### 16.6 Governing Law and Jurisdiction

(a) The Agreement is governed by the laws in force in Queensland, Australia.

(b) We submit to the exclusive jurisdiction of the courts of Queensland, Australia.

### 17. Dispute Resolution

If a dispute arises between us relating to the Agreement, then the following process must be followed before going to court:

(a) we must, within 5 days of notice of the dispute, engage in good faith negotiations to resolve the dispute;

(b) if the dispute is not resolved within a further 5 days, then the dispute will be referred to mediation;

(c) any dispute which is referred to mediation must be referred to the Australian Mediation Association; and

(d) if the dispute is not resolved within 30 days of referral to mediation, either of us is free to initiate proceedings in a court in respect of the dispute.

### 17.2 Definitions

In the Agreement, the following definitions apply:

**Agreement** means this Services Agreement and any schedules and annexures. Depending on the nature of the project, the Agreement may be a signed Project Agreement document, an accepted quote, or an invoice describing the details of the project.

**Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Background IP** means Intellectual Property Rights in assets developed, owned by or licensed to you or me as at the Commencement Date, or acquired or developed by you or me during the Term, other than for the sole purpose of the Agreement,

which we separately have the right to license to third parties and which are necessary or desirable for the performance of the Services.

**Checkpoint** means the checkpoint details as specified in the Service Details.

**Checkpoint Date/s** means the date for completion of a Checkpoint as specified in the Service Details.

**Commencement Date** means the date of commencement of the Services as specified in the Service Details.

**Confidential Information** of each of us means all confidential, non-public or proprietary information exchanged between us before, on or after the Commencement Date relating to the business, technology or other affairs of each other including but not limited to products, features, know-how, data, process, technique, program, software and source code, design, drawing, formulae, test, work in progress, engineering, patents, patent applications, research and development plans, manufacturing, marketing, financial or personnel matter, sales, investor or business information, business methods or operations, business models or plans, other business information or intellectual property matters, or which comes into either of our possession pursuant to, or as a result of, any negotiations or discussions in connection with the Agreement including the existence, nature and terms of the Agreement, whether disclosed verbally, in writing, graphic, in electronic form or by any other means;

**Consequential Loss** means the following points. This loss relates to their occurrence or if it is reasonably contemplated by us at the Commencement Date as a likely result of a breach of the Agreement:

(a) indirect, incidental, special, remote or unforeseeable loss or damage;

(b) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or

(c) loss or damage of the nature set out above in clauses (a) and (b) that is incurred or suffered by or to a third party.

but does not include:

(d) losses arising under an indemnity given under the Agreement; or

(e) damage to persons or property.

**Completion Date** means the date of completion of the Services as specified in the Service Details.

**Deliverable/s** means an item, deliverable, output or other good or service that I supply, or am required to supply, to you under the Agreement.

**Fee** means the fees for the Services, as specified in the Service Details.

**Final Draft** has the meaning given in clause 6(a).

**Final Invoice** has the meaning given in clause 6(d).

**Final Version** has the meaning given in clause 6(d).

**GST** means the goods and services tax imposed by A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Infringement Claim** is any actual, threatened or potential claim, demand, proceeding, suit, objection or other challenge:

- (a) affecting each of our ownership of, or rights in, our own Background IP; or
- (b) claiming that the supply or other use of the material or Background IP, infringes or may infringe the Intellectual Property Rights of a third party.

**Intellectual Property Rights** means all rights conferred under statute, common law or equity, wherever in the world subsisting, in relation to trade marks, copyright, patents, patentable inventions and designs, whether existing now or in the future and whether or not registered or registrable, and includes any rights subsisting in or relating to Confidential Information, trade secrets, know-how, inventions, discoveries, geographical indications of origin, code, source code, microcode, methods, techniques, formulae, algorithms, modules, libraries and databases and further includes the right to apply for the registration or grant of any such intellectual property.

**Services** means those services as specified in the Service Details.

**Special Purposes** means the special purposes for which you may use the licence to my Background IP and any Intellectual Property Rights in or to the Deliverables for, as specified in the Service Details.

**Third Party IP** means any Intellectual Property Rights in material of any form owned by a third party.

### 17.3 Interpretation

In these Terms of Service:

- (a) words such as including and for example do not limit the meaning of the words preceding them;
- (b) no provision of the Agreement will be construed to the disadvantage of either of us merely because you or I were responsible for preparing the Agreement or including the provision in the Agreement;
- (c) all monetary amounts are expressed in Australian Dollars (\$AUD); and
- (d) dates and times are in reference to Queensland, Australia.