



## Terms and Conditions

These are the Terms and Conditions on which we (social42 Pty Ltd ACN 685 432 197) will carry out work for you. They will apply each time that you ask us to do work for you, or carry out a Service. They set out our Service and what you can expect from us. Please read them carefully. It is a condition of your use of our Service that you comply with these Terms and Conditions.

These Terms and Conditions are subject to change without notice and may be superseded. We may modify these Terms and Conditions by general notice on a page of our website, by email or by any other method of communication.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

**(a) Additional Costs** means all additional costs that we are permitted to charge you under this Agreement.

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

**(c) Confidential Information** means information in any form or medium (whether oral, written, electronic, or other) that the disclosing party considers confidential or proprietary, including information consisting of or relating to the disclosing party's technology, trade secrets, know how, business operations, plans, strategies, employees, clients and pricing, and information with respect to which the disclosing party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential." Without limiting the foregoing, the financial terms of this Agreement are the Confidential Information of both Parties.

**(d) Fees** means, in respect of a Service:

- (i) the amounts payable to us for the Service as set out in a Proposal or a written verification; or
- (ii) if no Fees are specified, Fees for all work we do in the course of the Service calculated in accordance with clause 5.2.

**(e) GST** means the goods and services tax as provided for by *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time and any associated legislation.

**(f) Insolvent** in relation to a Party, means that:

- (i) the Party has ceased or taken steps to cease to conduct its business in the normal manner;
- (ii) the Party has entered into or resolved to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
- (iii) the Party is unable to pay its debts when they are due;
- (iv) a liquidator or provisional liquidator is appointed to the Party, or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the party's assets or undertakings;
- (v) an application or order is made or a resolution is passed for the winding up of the Party; or
- (vi) an event similar to one above occurs in respect of the party in any non-Australian jurisdiction.

**(g) Intellectual Property Rights** means all copyright, moral rights, patent rights, rights in designs, trademarks, service marks, trade and business names, logos, get up and trade dress and all associated goodwill, rights to sue for passing off and/or for unfair competition, rights in computer software, rights in or relating to databases, rights in information (including know-how and trade secrets) and the right to use, and protect the confidentiality of, confidential information, rights in relation to domain names, and any other intellectual property rights (registered or unregistered) throughout the world.

**(h) Professional Hourly Rate** means the rate we charge per hour for professional Services and is currently \$75 + GST (subject to change).

**(i) Proposal** means a document issued by us to you that sets out:

- (i) the scope of Service that we will provide to you;
- (ii) the Fees payable to us for the Service.

**(j) Service** means (i) the service described in the Proposal, (ii) if there is no Proposal the service described in the written verification between the Parties, and (iii) any other services provided to you during the Term of this Agreement.

**(k) Standard Business Hours** means the business hours between 8.30 am and 5pm (QLD time), Monday to Friday excluding public holidays and the Christmas / New Year closure periods.

**(l) Term** means the period as specified in the Proposal or otherwise agreed in writing with you.

**(m) Variation** means changes to the agreed Service, including but not limited to the items set out in clause 8.2.

## 1.2 Interpretations

The following rules apply unless the context requires otherwise.

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely.
- (c) A reference to a clause is a reference to a clause of this Agreement.
- (d) A reference to an agreement or document (including, without limitation, a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (e) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (f) A reference to conduct includes, without limitation, an omission, statement and undertaking, whether or not in writing.

## 2. ENGAGEMENT

2.1 You may engage us carry out a Service for you by:

- (a) signing and returning the Proposal to us; or
- (b) in the case of smaller engagements by written verification.

2.2 Unless we notify you otherwise, we will accept that engagement, subject to these Terms and Conditions. The Service will commence in line with the Service schedule or when we accept the engagement.

## 3. PRICING STRUCTURE

3.1 If we provide you with a Pricing Structure for the Service, then that Pricing Structure:

- (a) is based on the specifications of the Service, and is subject to change if the parties agree to amend the specifications;
- (b) does not include GST unless otherwise specified in the Pricing Structure; and



(c) is valid for a period of 30 days from the date we issue the Pricing Structure, unless otherwise agreed by us.

#### **4. SERVICE**

4.1 The Service that we provide to you, and any specific terms, may include part or all of the services as specified in Schedule A of this Agreement.

4.2 We will perform the Service for the Term unless this Agreement is early terminated in accordance with its terms.

4.3 You acknowledge that electronic Service are subject to interruption and breakdown and all non-electronic Service are subject to disruption, and therefore:

(a) the Service will not be error-free or uninterrupted; and your access to the Service and the operation of the Service will not be error-free or uninterrupted.

(b) we reserve the right to continue to provide the Service and/or invoice you for the Service in the event of any disruption, other than a disruption caused by our negligence, willful acts or omissions.

4.4 All Service will be carried out during our Standard Business Hours. However, we have the right, but not the obligation, to carry out the Services outside the Standard Business Hours.

4.5 We will officially take over the social media accounts 14 days after your questionnaire has been completed. This means we will not be posting, resharing, replying to comments or DMs or liking content. Whilst we will be logged in during this time, this is primarily for strategy development, account auditing and reporting purposes.

#### **5. FEES**

5.1 You agree to pay the Fees as specified in the Proposal or the written verification (as the case may be).

5.2 If the Fees are not specified (in a Proposal or otherwise) at the commencement of the Service, then we will charge you at the Professional Hourly Rates for all work that we carry out for you in the course of the Service.

5.3 The Professional Hourly Rates may change from time to time.

5.4 Travel time is not included in our quotations as our office is our preferred location as it is appropriately set up for meetings and presentations. If you would prefer meetings at your office or any other location additional fees may apply.

5.5 We reserve the right to charge Additional Costs caused by the Clients instructions, lack of instructions, interruptions, mistakes, work for which we are not responsible and changes to the requirements, expectations or hardware and software environment, and extra work required caused by faults or defects in any service provided by a third party.

## **6. PAYMENT**

6.1 If you agree to a monthly retainer for Service, you agree to subscribe to the Services for a minimum period of 3 months, unless otherwise agreed by both parties in writing.

6.2 Subject to clause 8.6, all Service will be billed in advance. These amounts will be billed to you:

- (a) on a monthly basis if it is a monthly retainer;
- (b) upon your acceptance of the Proposal if it is a case-by-case retainer;

and are due within 7 days of the date on the invoice, unless otherwise agreed.

6.3 Where an invoice has remained unpaid for 5 Business Days after the payment due date, we reserve the right to suspend the supply of Service without being liable to you and a reminder may be sent to you in writing. You agree that we may charge late payment interest for any outstanding Fees at the rate of 10% per annum after the payment due date.

6.4 If the invoice remains unpaid for another 5 Business Days after the reminder has been provided, solicitors or collection agents may be engaged to recoup any and all outstanding costs. You agree to indemnify us for any and all reasonable collection costs.

6.5 If you pay an invoice late on three or more occasions, without prejudice to any other remedies we may have, we may terminate this Agreement immediately by written notice without being liable to you for any loss or damage you may suffer.

6.6 You agree to indemnify us from and against all costs and disbursements incurred by us in recovering any debt from you, including but not limited to collection fees, legal costs on a solicitor and own client basis, court or any other institution filing fees and bank dishonour fees.

## **7. CONTENT AND MATERIALS**

7.1 You must supply to us all required materials you want us to use in the Service, and all other content and materials we reasonably request (“**Client Content**”) in a timely manner.

7.2 You must supply all Client Content in the following digital format/s:

- (a) text/copy: Microsoft Word or Rich Text (clearly labelled and in correct order);
- (b) tables: Microsoft Excel (clearly labelled and in correct order);
- (c) images: high resolution where possible (JPEG, PNG files);
- (d) logos: vector format (Illustrator EPS/AI), JPEG or PNG files;
- (e) diagrams/maps: vector format (AI) or (JPEG files);
- (f) if required, access to your current website and database via SSH, FTP and/or CMS/hosting control panel login;
- (g) brand style guidelines (if applicable).

7.3 We may charge Additional Costs if the Client Content is not provided in the appropriate format or if material is not supplied when requested.

7.4 You warrant that the materials or content you provide to us, or that are provided to us on your behalf, will not:

- (a) breach any rights (including Intellectual Property Rights or Moral Rights) of any third party; or
- (b) compromise the security or operation of our computer systems, through a virus or otherwise.

7.5 Our content calendar service will include posting date, copy, creative asset and hashtags. These are recommendations, which are subject to your review and approval before anything is made live on your social media channels. The review and approval due dates will be provided to you via email which will also include the content calendar link.

7.6 If you require changes or additions to the content calendar after you have approved it, a \$35.00 administration fee will apply for each piece of content that requires changing, editing, updating, deleting or rescheduling. This fee does not apply if we determine in our sole discretion that the changes or additions are caused by or as a result of COVID-19 Government restrictions or other events out of your control.

7.7 You accept all responsibility for content approved or supplied by you. We will not be held responsible for any claims, liabilities or losses arising from or in connection with the incorrect or misleading information contained in the content approved or supplied by you.

## **8. VARIATIONS AND ADDITIONAL COSTS**

8.1 Subject to clause 8.8, where a Variation occurs, we reserve the right to halt work and review the Service costings. We will discuss the Variation with you and where required will issue a Variation Notice which is to include the modifications and any associated costs. We are not required to proceed with the Service until we receive your written approval to the Variation Notice.

8.2 Variations may include, but not be limited to:

- (a) changes in the specifications of the Service;
- (b) introduction of additional requirements not discussed during the onboarding process (i.e. branding deliverables, introduction of video imagery, ad text and ad design);
- (c) costs for commercial fonts, photography, audio and video;
- (d) additional Service management time;
- (e) unplanned delays in obtaining approval, Client Content or feedback resulting in having to reschedule Service, staff or facilitate continuance;
- (f) overtime required to meet deadlines due to delays by the Client providing approval, Client Content or feedback.

8.3 It is our process to include Service management time in all quotes, but from time to time we may be required to not only manage our team but also manage your team. This is generally not known at the time of quoting and may be treated as a Variation.

8.4 If during the course of our engagement there are small changes in the Service, we will contact you and provide an estimate of the Additional Costs for these small changes.

8.5 Where possible, we will attempt to obtain approval from you prior to undertaking the additional work. However, in some cases due to deadline and availability constraints, this may not be possible and we may proceed with the work without obtaining approval.

8.6 Additional Costs will be invoiced separately to the Client on an ad hoc basis, charged at current Professional Hourly Rates.

8.7 Additional Costs may include, but not limited to:

- (a) content not in the appropriate format;
- (b) extra workshop(s) requiring additional hours;
- (c) requested additional design concepts/alternations;
- (d) requested changes to the design after final approval has been requested or provided;
- (e) uploading and styling/layout of additional Client Content;
- (f) additional meetings and travel time.

8.8 Despite any other provisions of this Agreement, you may add or deduct Service from your monthly deliverables by requesting changes in writing. Any changes made before the first Friday of the month will be actioned in the current month, and the next monthly invoice will reflect the changes. Any changes requested after the first Friday of the month will not be actioned until the next month and will be reflected in the next monthly invoice.

## **9. PURCHASE OF THIRD-PARTY MATERIALS**

9.1 Unless specified in the Proposal, the Fees do not include branding or logo design or any searches or purchase of stock images, commercial fonts, photography, audio or video.

9.2 You can provide stock images, commercial fonts, audio or video, or we can purchase them on your behalf. When any stock images or commercial fonts are purchased on your behalf, we will be the license holder and the image or font can only be used under the terms of the license/s.

9.3 You indemnify, and agree to keep us, our directors, officers and employees indemnified, against all Loss arising out of the breach of these licenses, except to the extent of our negligence, willful act or omission.

9.4 We usually opt for free stock images. However, where purchase of stock images is necessary for performing the Service, we will seek your approval. Upon receiving your written approval, we will purchase the stock images at your cost.

9.5 Costing for any font, photography, audio or video required will be provided for approval separately via a Variation Notice.

## **10. SCHEDULING, PRODUCTION AND SERVICE MANAGEMENT**



10.1 If we consider it to be necessary, we will develop a production schedule for the Service. We will use reasonable commercial endeavours to carry out the Service in accordance with that schedule.

10.2 If you delay in providing the approval, implementation, Client Content or feedback we require ("**Delay**"), then this may result in a change in the delivery deadline set out in the production schedule. If you Delay on 3 or more occasions, it will be deemed as a breach not capable of remedy and we may terminate the Service immediately in accordance with clause 20.4(b).

10.3 Where the Service are billed in advance and the deadline is missed due to your delay in approving our completed work, you are not entitled to re-provision of the subject Service or any refund. For example, if you fail to approve in time any of the Instagram stories proposed by us for a particular week, that Instagram story will forfeiture and you are not entitled to any partial refund or reproduction of that Instagram story.

## **11. ACCOUNT ACCESS**

11.1 Where the Service includes Social Media Management, you agree to provide us with access to the relevant social media accounts to enable us to provide the agreed Service.

11.2 Account access may include but is not limited to:

**(a) Sharing login information including email, username, passwords and security codes;**

**(b) granting Facebook page access, Facebook Business Manager and Facebook ads access to our Director Jaimee Wilson to act as an Admin for the duration of the Agreement (if applicable).**

11.3 Usually, we will not change the password of any accounts we have been provided access to. Should there be a situation where the password requires updating, we will change the password and inform you of the change immediately.

11.4 Should you be required to change the password for a security reason, you must provide us with the updated login details as soon as reasonably practicable. It is your responsibility to update the password as required from time to time to keep your accounts secure. We will not be held liable for any loss relating to security breaches or delay in Service as a result. If your account is hacked, we will not be held liable for any damage or loss caused by or arising from the hacking or your losing control of the account.

11.5 Whilst remaining our client, you must inform us of any account log in updates to ensure we can continue to provide the Service.

11.6 In the case that we are setting up your social media accounts, we will create an appropriate username and password and inform the client of the log in details within 24 hours of creating the account.

11.7 You agree not to upload into the Instagram feed (including single posts, carousels or reels) without consulting with us first during the Term of this Agreement. You may upload to the Instagram story provided that the post format uses the same text that we use for your Instagram stories to ensure consistency.

11.8 If you post to your social media feed (including single posts, carousels or reels) without consulting with us first via phone call, text message or email, we may issue a warning to you in writing. If you receive 2 or more warnings, it will be deemed as a breach not capable of remedy and we may terminate the Service immediately in accordance with clause 20.4(b).

## **12. ARCHIVING / RETRIEVA**

12.1 We will endeavour to store or archive all electronic files used in the production of your Service. However, we provide no guarantee that any stored or archived files can be retrieved in the future.

12.2 Once your Service is launched, archiving of the files and database and copies of these files becomes your responsibility. At your request, we can provide this service for an Additional Cost.

## **13. DISBURSEMENTS**

13.1 Disbursement charges are not included in the Fees. If we incur any disbursements or expenses during the course of the Service, we will charge these to you as Additional Costs.

13.2 These may include but are not limited to additional content creation hours, the payment of additional photographers/videographers, fees for stock image purchase, venues, models or prop hire.

## **14. WARRANTY DISCLAIMER**

14.1 Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by legislation which cannot be lawfully excluded or limited. Such legislation includes the Australian Consumer Law which contains guarantees that protect the purchasers of goods and Service in certain circumstances, each a non-excludable provision.

14.2 Subject to our obligations under the non-excludable provisions, and to the fullest extent permissible by law, we expressly disclaim all warranties and representations of any kind with respect to the Service whether express, implied, statutory, or arising out of the course of performance, course of dealing or usage of trade including any warranties or merchantability, fitness for a particular purpose, satisfactory quality, accuracy, title or non-infringement.

## 15. LIMITATION OF LIABILITY AND WARRANTY

15.1 To the fullest extent permissible by law, we are not liable (whether in contract or tort) for:

- (a) faults or defects in any Service or goods provided by third parties in connection with this Agreement; or
- (b) any indirect, special or consequential loss (including loss or corruption of data, loss of profits, revenue, goodwill, anticipated savings and business interruption) however arising, whether or not we knew of the possibility of such loss and whether or not such loss was foreseeable.

15.2 To the fullest extent permissible by law, in no event will our liability in contract, tort (including negligence and breach of statutory duty) or otherwise arising out of, or in connection with, this Agreement exceed the amounts actually paid by you for the Service.

15.3 We make no warranties regarding:

- (a) the likelihood of success of marketing or promotional activity undertaken pursuant to the Agreement; or
- (b) any increase in sales, business activity, profit or any other form of improvement for your business.

15.4 To the fullest extent permitted by law, our liability for a breach of a non-excludable warranty is limited to:

- (a) the supplying of the Service again; or
- (b) payment of the cost of having the Service supplied again.

15.5 Each Party's liability for any claim relating to this Agreement will be reduced to the extent to which the other Party contributed to the damage arising from the claim.

15.6 We exclude all liability of negative comments and reviews on your social media platforms.

15.7 You acknowledge that we may provide Services to you and other clients within the same industry ("**Competing Clients**"). We in no way guarantee exclusivity of Services to you. We bear no liability for any ramifications of providing Services to a Competing Client.

## 16. INDEMNITY

16.1 You agree to indemnify, defend and hold us harmless in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal fees on a full indemnity basis), in connection with any of the following:

- (a) any breach of this Agreement;
- (b) your negligent acts or omissions;
- (c) your use of the Service, including any third party claims made in connection with or arising out of your use of the Service, other than use in accordance with this Agreement;
- (d) breach of third-party Intellectual Property.

16.2 You agree to indemnify and keep us, our directors, officers and employees indemnified, against all Loss arising from actions taken in performing the Service.

## 17. INTELLECTUAL PROPERTY

17.1 All Intellectual Property Rights arising from our provision of the Service or created in the course of the Service ("**Service IP**"), including but not limited to Service IP in any documentation, data, processes, designs, artwork, software, information and materials owned, acquired or developed by us ("**Service Materials**"), shall vest in, or will upon their creation vest in us.

17.2 Subject to fulfillment of your payment obligations hereunder, we hereby grant you a worldwide, perpetual, royalty-free, non-transferable and non-exclusive license to:

- (a) publish one copy of the work product delivered by us for the Service ("Work Product") unless otherwise stated by us; and
- (b) use and reproduce the Service Materials incorporated into the Work Product for or in connection with the use, management and maintenance of the Work Product.

17.3 You must not, without our prior written consent:

- (a) adapt, create derivative works from or merge the template of the Service IP and/or Service Materials;

(b) use the Service IP and/or Service Materials for any purpose other than the specific purpose for which we have provided it;

(c) reverse engineer, disassemble or decompile the Service IP and/or Service Materials;

(d) distribute, lend, resell, transfer, assign or sublicense the Service IP and/or Service Materials; or

(e) remove or attempt to remove any proprietary or copyright notices or any labels on the Service Materials and/or the Service IP.

17.4 The supply of raw/editable files is at our discretion and we reserve the right to charge Additional Costs for such supply.

17.5 Stock images and commercial fonts purchased (if any) from a third party licensor remain the property of the licensor.

17.6 All ad text, ad targeting and ad creative remain our property.

17.7 Upon your request, we may (at our sole discretion) offer you the opportunity to purchase our template for certain Service Materials at the price determined by us.

17.8 We do not warrant that your use of the designs, materials or content produced by us for you in the course of the Service will not infringe any third party's Intellectual Property Rights or any person's Moral Rights, but we will advise you if we become aware of any infringement.

17.9 As part of the Service, we may place your company logo and case study on our corporate website or promotional collateral for promotional purposes and you irrevocably authorise us to do so.

## **18. CONFIDENTIALITY**

18.1 Each Party agrees to keep confidential, and not to use or disclose except as permitted by this Agreement, any Confidential Information of the other party or any details of a Proposal. This obligation of confidence extends to Confidential Information obtained by a Party before entering into this Agreement.

18.2 The obligation of confidence as set out above does not apply to information:

(a) information that is used or disclosed with the other Party's prior written consent;

- (b) information that is required by law to be disclosed, provided that clause 18.3 is complied with;
- (c) information that is in the public domain, other than through a breach of this Agreement; or
- (d) information that is disclosed to a Party's officers, employees, contractors, solicitors, auditors, financier or financial consultant, who agree to keep the Confidential Information confidential.

18.3 The Party required by law to disclose the other Party's Confidential Information must provide a reasonable amount of notice to the other Party of the proposed disclosure, unless the law prohibits such notice to the other Party.

18.4 Each party must take all steps and do all such things as may be necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other Party.

18.5 You hereby authorise us to:

- (a) inform third parties that you are our client;
- (b) list your logo and/or name on our website as one of our clients;
- (c) direct third parties to any website, page or app which forms part of your online or social media presence;
- (d) give copies of any content from your page that is created as part of the Service to prospective clients, industry bodies or any organisations which are considering the content or our work for the purposes of a competition or grinding an award; and
- (e) do any other acts or give any other information that is in the public realm to any person or organisation for the purpose of showcasing the work which we have performed on your behalf.

18.6 Each Party shall refrain from making negative comments about the other Party, whether online or in person.

## **19. GST**

19.1 Unless we expressly state otherwise, the Fees and Additional Costs do not include GST.

19.2 If at any time we decide that GST is payable on supplies made by us, or if the Australian Taxation Office assesses GST on any such supplies, then the necessary amount will be added to, and form part of, the Fees or Additional Charges (as the case may be) at the GST rate prevailing at the relevant time.

19.3 We reserve the right to recover from you at any time such an amount on account of GST on supplies made by us to you under this Agreement.

## **20. SUSPENSION AND TERMINATION**

20.1 You may suspend the Service for a maximum of 2 months. Any suspension request for longer than 2 months will be considered as a termination, which should be made in accordance with the provisions of clause 20.5.

20.2 If you wish to suspend the Service for a period up to 2 months, you must provide the request in writing to us, specifying the proposed suspension period. We will approve your request provided that:

- (a) the proposed suspension period should commence after the completion of the current billing month;
- (b) your request is made at least 15 days prior to the proposed suspension period; and
- (c) if the first day of suspension falls in the middle of a billing month, you agree to pay us Fees for the days prior to the suspension on a pro rata basis for that billing month.

20.3 We may terminate this Agreement at any time before the Service is provided or delivered by giving at least 3 days' written notice to you if:

- (a) you do not provide any information or materials requested within a reasonable time after being asked to do so; or
- (b) we consider that mutual confidence and trust no longer exist.

20.4 A Party may terminate this Agreement by notice in writing to the other Party if:

- (a) the other Party commits a material breach of this Agreement that is capable of remedy (including failure to pay any amount due under this Agreement) and fails to remedy that breach within 14 days after receiving notice from the other Party to do so;
- (b) the other party commits a material breach of this Agreement that is not capable of remedy; or

- (c) the other Party becomes Insolvent.

20.5 You may terminate this Agreement by providing 30 days' written notice to us. Service that involves a monthly retainer will be for a minimum term of 3 months (unless specified otherwise on the Proposal provided to you). The 3 months' term ("**Initial Period**") has been put in place to allow a reasonable amount of time for us to implement and action the strategy and alter the strategy if necessary. If termination occurs during the Initial Period, the Fees relating to the remainder of the Initial Period is still payable by you and will become due immediately upon termination.

20.6 Upon termination of this Agreement:

- (a) our obligation to carry out the Service ceases;
- (b) each Party's rights and obligations accrued prior to termination are not affected;
- (c) the licence granted ceases;
- (d) any unpaid invoice owed to us must be paid, including for any minimum term (failure to do so may result in our registering this default with a credit reporting agency);
- (e) each party must immediately return to the other Party (or destroy or delete as the other party directs) all Confidential Information of the other Party in its possession or control, except to the extent that the party needs to keep such information to comply with its record-keeping obligations;
- (f) we will log out of any relevant accounts and you will change passwords of any social media accounts that we were managing and remove our access on any social media accounts that we were managing; and
- (g) Clauses 14-18 and clauses 21 and 23 shall survive the termination of this Agreement

## 21. DISPUTE RESOLUTION

21.1 Except to the extent that any litigation that may be commenced is for the recovery of an amount due under this Agreement or for injunctive or declaratory relief in relation to any matter arising out of, or in connection with, the Agreement, the requirements of this clause are a condition precedent to either Party commencing (or, if wrongly commenced, continuing) litigation.



21.2 If a dispute or difference arises out of, or in connection with, the Agreement, either Party may give the other Party a written notice of dispute setting out the details of the dispute including any amount in dispute ("**Notice of Dispute**").

21.3 The Parties shall arrange, and participate in, a without prejudice conference ("**Without Prejudice Conference**") between them, or their authorised representatives, in an attempt to resolve the dispute or difference set out in the Notice of Dispute within 10 Business Days after the giving of the Notice of Dispute ("**Consultation Period**").

21.4 If the Parties fail to resolve all of the dispute or difference set out in the Notice of Dispute during the Consultation Period, or if the Party given the Notice of Dispute fails to participate in a Without Prejudice Conference within the Consultation Period, then either Party may give the other Party a written notice referring all or any part of the dispute or difference to Resolution Institute for facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.

21.5 The Parties must co-operate with Resolution Institute as facilitator.\

21.6 If within 10 Business Days after referral of the dispute to Resolution Institute the Parties have not agreed upon the mediator or other relevant particular the mediator and any other relevant particular will be determined in accordance with Resolution Institute's Mediation Rules.

21.7 The Parties will pay the costs of the mediation (including the costs of the mediator) in equal shares unless otherwise agreed by the Parties or decided by the mediator.

21.8 If the Parties fail to:

(a) refer any part of the dispute or difference set out in the Notice of Dispute to mediation within 10 Business Days after the Consultation Period; or

(b) resolve all of the dispute or difference set out in the Notice of Dispute during any mediation,

then either Party may commence litigation in relation to any part of the dispute or difference set out in the Notice of Dispute that is not referred to mediation or not resolved during any mediation.

## 22. **FORCE MAJEURE**

22.1 No delay or failure of performance by either Party of its obligation hereunder (except the obligation to pay money) shall be deemed to be a breach of this Agreement nor give rise to any claim by the other Party if the delay or failure of performance is a result

of any Acts of God; strikes, lockouts, or other labour disputes; wars, civil disturbances, acts of public enemies; riots, pandemics or epidemics; earthquake, fires, explosions, storms, floods, landslides, washouts; acts of public enemies; the order or direction of any court or other authorities having jurisdiction; and any other cause or circumstances whether of the kind herein enumerated or otherwise which is not within the reasonable control of the Party invoking this clause.

22.2 If the Force Majeure affects the performance of this Agreement, the Party that is affected by the Force Majeure shall promptly notify the other Party and provide a sufficient and valid proof of Force Majeure.

22.3 The Party affected by Force Majeure shall make reasonable efforts to reduce the consequences of the Force Majeure and resume the performance of all relevant obligations as soon as possible after the end of Force Majeure.

22.4 If the Force Majeure event lasts for over 6 months, then either Party has the right to terminate this Agreement by giving 7 days' written notice.

## **23. NOTICE**

23.1 Unless otherwise specifically provided for in this Agreement, either Party may give any written notice required to be given under this Agreement to the other Party by delivering same to the other Party personally, by post or by email to the address as specified in the Proposal.

23.2 A notice given in accordance with clause 23.1 will be deemed received as follows:

- (a) if hand delivered, on the date of delivery;
- (b) if sent by pre-paid post, 3 Business Days after the date of posting;  
and
- (c) if sent by email, on the day and time the transmission is sent.

## **24. GENERAL**

24.1 This Agreement does not create a relationship of employment, agency or partnership between the Parties.

24.2 We may engage a third party subcontractor to perform all or part of the Services under this Agreement. We may assign all or part of our rights or obligations under this Agreement to a third party by providing written notice to you.

24.3 The failure by a Party to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect that Party's right to subsequently enforce that provision. If any provision of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

24.4 We may change these Terms and Conditions from time to time. The new terms will apply to any Service that commences after the date that we publish the changed Terms and Conditions. Your engagement of our Services after that date will be deemed as your acceptance of the amended Agreement.

24.5 This Agreement constitutes the entire agreement of the Parties as to the subject matter and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it. Any statement made in negotiations for this Agreement which is not set out in this Agreement does not form part of the agreement between the Parties.

24.6 If there are inconsistencies between the Proposal and these Terms and Conditions, the provisions of the Proposal shall prevail to the extent of inconsistency.

24.7 This Agreement shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts in that State.

24.8 The Parties consent to the sending and receiving of this Agreement and the signatures thereto and any documents attached thereto by electronic means in accordance with Sections 11, 12 and 14 of the *Electronic Transactions (Queensland) Act 2001*.

## **SCHEDULE A**

### **1. SOCIAL MEDIA STRATEGY**

1.1 Our Social Media Strategy Service may include:

- (a) Account Audit
- (b) Profile optimisation
- (c) Custom Hashtags
- (d) Instagram Feed Mockup
- (e) Content Pillars
- (f) Call to Action
- (g) Key Performance Indicators
- (h) Feed post & Story mockups.

1.2 Our Social Media Strategy Service exclude:

- (a) Content Calendars
- (b) Scheduling
- (c) Content Creation
- (d) Copy
- (e) Account management
- (f) Monthly report
- (g) Community management
- (h) Graphic design.

**2. SOCIAL MEDIA MANAGEMENT (SMM)**

2.1 Our Social Media Management Service may include:

- (a) Strategy (account audit, bio development, grid mockup, content pillars, custom hashtag, branded grid and story templates)
- (b) Content Calendars
- (c) Scheduling
- (d) Copy

- (e) Hashtags
- (f) Account maintenance
- (g) Community management
- (h) Monthly report.

2.2 Our Social Media Management Service exclude:

- (a) Content creation (unless otherwise specified in the Proposal).

### **3. EMAIL MARKETING CAMPAIGNS**

3.1 Our Email Marketing Campaigns Service may include:

- (a) 3 x revisions
- (b) Design of email
- (c) Copy
- (d) Links
- (e) Send out

3.2 Our Email Marketing Campaigns Service exclude:

- (a) Responding to replies and inquiries.

### **4. PAID ADS MANAGEMENT**

4.1 Our Paid Ads Management Service may include:

- (a) Copy
- (b) Creative
- (c) Set up
- (d) Targeting
- (e) Optimisation

4.2 Our Paid Ads Management Service exclude:

- (a) Payment of ads.

## **5. CONTENT CREATION**

5.1 Our Content Creation Service may include:

- (a) Moodboard + inspo and research
- (b) Shot list
- (c) social42 Pty Ltd shoot coordination
- (d) On the day attendance and shooting of reels + images using iphone
- (e) Backdrops + lighting.

5.2 Our Content Creation Service exclude:

- (a) Models
- (b) Venue hire
- (c) Prop hire
- (d) Additional videographers / photographers.

## **6. USER GENERATED CONTENT COORDINATION**

6.1 Our User Generated Content Coordination Service may include:

- (a) Creator selection
- (b) Outreach
- (c) Coordination and negotiation
- (d) Photo and video release forms (where applicable)

6.2 Our User Generated Content Coordination Service exclude:

- (a) Costs of products, packaging or postage
- (b) Costs required for paid creators.