

## TERMS AND CONDITIONS

These Terms are entered into between **SAMRUDDHI PTY LTD (ACN 614 414 667)** (we, us or our) and you, the person or entity stated in the Proposal (**your or yours**), together the **Parties** and each a **Party**. Together, these Terms and Conditions and the Proposal form the entire agreement under which we will provide the Services to you (**Terms**).

### Disclosures

Please read these Terms carefully prior to accepting these Terms. By accepting these Terms, you agree that:

- we will handle your personal information in accordance with our privacy policy, available on our website;
- subject to your Consumer Law Rights, our Liability for the supply of the Services will be limited to, at our discretion the resupply of the Services or the repayment of the Price paid by you to us;
- these Terms may automatically renew as set out in the Proposal unless you provide us with prior notice that you wish to terminate these Terms; and
- a minimum period may apply to these Terms if set out in the Proposal, during which, you will not be able to terminate these Terms for convenience.

These Terms do not intend to limit your rights and remedies at law, including any of your Consumer Law Rights.

### 1. Acceptance

1.1 You accept these Terms by the earlier of:

- (a) confirming that you accept these Terms via the platforms or applications through which we provide these Terms to you or signing and returning the Proposal to us;
- (b) making part or full payment of the Price.

### 2. Services

2.1 In consideration of your payment of the Price, we will provide the Services in accordance with these Terms, whether ourselves or through our Personnel.

2.2 If these Terms express a time within which the Services are to be supplied, we will use reasonable endeavours to provide the Services by such time, but you agree that such time is an estimate only.

2.3 We will provide the Services described in the Proposal which may include Initial Setup and Launch Services (including access to the Platform) and Monthly Management Services.

2.4 In relation to any Services involving search engine optimization or cost-per-click advertising services, you acknowledge and agree that we make no promise or guarantee regarding the effectiveness

of the Services, but instead by using our professional skills, aim to deliver an incremental improvement to your website traffic and results.

2.5 **Term:** The term of these Terms is made up of:

- (a) the Initial Setup and Launch Services Term, being from the date you pay the Deposit until the Initial Setup and Launch Services have been completed as reasonably determined by us; and
- (b) the Monthly Management Term, if Monthly Management Services are included in the Proposal, which is for the period set out in the Proposal.

### 3. Variations

3.1 All variations to the Services must be agreed in writing between the Parties and will be priced in accordance with our then current hourly rates, or otherwise as reasonably agreed between the Parties. If we consider that any instruction or direction from you constitutes a variation to the scope of our obligations under these Terms, then we will not be obliged to comply with such instruction or direction unless agreed in accordance with this clause.

3.2 We may notify you of an increase to the Monthly Management Fee or a change to the Monthly Management Services included. If you do not agree to the proposed change, you may terminate these Terms by giving us 30 days' notice in writing, in which case, clause 12.4 will apply.

### 4. Payment

4.1 In consideration for us providing the Services, you agree to pay us:

- (a) the Deposit;
- (b) the balance of the Price; and
- (c) all Expenses (if any),

in accordance with this clause 4.

4.2 When applicable, GST is payable on the Price and will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges.

4.3 Unless otherwise agreed between the Parties:

- (a) any Deposit in the Proposal is payable within 5 days of the Commencement Date but you will not be entitled to any part of the Services until the Deposit has been paid in full;
- (b) the remainder of the Initial Setup and Launch Services Fee must be paid on completion of the Services (as reasonably determined by us), and in any case, within 7 days of the date of the invoice; and
- (c) if the Proposal includes Monthly Management Services, you agree that we may direct debit your card or account through our payment processor every month or at the times set out in the Proposal for the Monthly Management Fee.

4.4 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under these Terms or at law):

- (a) after a period of 5 Business Days from the relevant due date, cease providing the Services, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs); and/or
- (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms.

## 5. Third Party Services

5.1 You acknowledge and agree that the Platform may be reliant on, or interface with third party systems that are not provided by us or our licensor – for example food ordering services and booking systems (**Third Party Services**) and review system and third party ad services, hosting services etc. To the maximum extent permitted by law, we shall have no Liability for any Third Party Services, or any unavailability of the Platform due to a failure of the Third Party Services.

5.2 You acknowledge and agree that data loss is an unavoidable risk when using any software. To the extent you input any data into the Platform, you agree to maintain a backup copy of any data you input into the Platform.

5.3 To the maximum extent permitted by law, we shall have no Liability to you for any loss or corruption of data, or any scheduled or emergency maintenance that causes the Platform to be unavailable.

## 6. Warranties and Representations

6.1 You represent, warrant and agree:

- (a) to comply with these Terms and all applicable Laws;
- (b) to comply with our reasonable requests or requirements; that you (and to the extent applicable, your Personnel) will provide us with all documentation, information, instructions, cooperation and access reasonably necessary to enable us to provide the Services;
- (c) that all information and documentation that you provide to us in connection with these Terms is true, correct and complete;
- (d) that the Services are provided to you solely for your benefit and you will not (or you will not attempt to) disclose, or provide access to, the Services to third parties without our prior written consent;
- (e) that any information, advice, material, work and services (including the Services) provided by us under these Terms do not constitute legal, financial, merger, due diligence or risk management advice; and
- (f) that you must not use, and you must ensure that no person uses, any part of the Services:
  - (1) to break any Law or infringe any person's rights (including Intellectual Property Rights);
  - (2) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
  - (3) in any way that damages, interferes with or interrupts the supply of the Services.

## 7. Intellectual Property

7.1 As between the Parties:

- (a) we own all Intellectual Property Rights in Our Materials;
- (b) you own all Intellectual Property Rights in Your Materials; and
- (c) nothing in these Terms constitute a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.

7.2 As between the Parties, ownership of all Intellectual Property Rights in any New Materials will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials does not automatically vest in us, you hereby assign all such Intellectual Property Rights to us and agree to do all other things necessary to assure our title in such rights.

- 7.3 We grant you a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Our Materials that we provide to you and the New Materials, for the Term and solely for your use and enjoyment of the Services for internal business purposes, as contemplated by these Terms. Any limit on the number of authorised users will be set out in the Proposal.
- 7.4 You grant us a non-exclusive, irrevocable, worldwide, non-sublicensable (other than to our related bodies corporate, as that term is defined in the Corporations Act 2001 (Cth)) and non-transferable right and licence, for the duration of the Term, to use Your Materials that you provide to us solely for the purpose of performing of our obligations or exercising our rights under these Terms.
- 7.5 If you (if you are an individual) or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with these Terms, you agree to (and will procure that your Personnel) consent to our use or infringement of those Moral Rights.
- 7.6 When using the Platform, you and your Authorised Users must not do or attempt to do anything that is unlawful or inappropriate, including:
- (a) anything that would constitute a breach of an individual's privacy (including uploading private or personal information without an individual's consent) or any other legal rights;
  - (b) using the Platform to defame, harass, threaten, menace or offend any person, including using the Platform to send unsolicited electronic messages;
  - (c) tampering with or modifying the Platform (including by transmitting viruses and using trojan horses);
  - (d) using data mining, robots, screen scraping or similar data gathering and extraction tools on the Platform; or
  - (e) facilitating or assisting a third party to do any of the above acts.
- 7.7 You will ensure that each Authorised User complies with these Terms. You are responsible and liable for the acts or omissions of your Authorised Users.
- 7.8 This clause 7 will survive termination or expiry of these Terms.
- 8. Your Data**
- 8.1 You own all data, information or content you and your Authorised Users upload into the Platform or which you provide to us in order for us to perform the Services (**Your Data**).
- 8.2 You grant us a limited licence to copy, transmit, store, backup and/or otherwise access or use Your Data to:
- (a) communicate with you (including to send you information we believe may be of interest to you);
  - (b) supply the Platform to you and otherwise perform our obligations under these Terms;
  - (c) diagnose problems with the Platform;
  - (d) enhance and otherwise modify the Platform;
  - (e) perform Analytics;
  - (f) develop other services, provided we de-identify Your Data; and
  - (g) as reasonably required, perform our obligations under these Terms.
- 8.3 You agree that you are solely responsible for all of Your Data that you and your Authorised Users make available on or through the Platform. You represent and warrant that:
- (a) you are either the sole and exclusive owner of Your Data or you have all rights, licences, consents and releases that are necessary to grant to us the rights in Your Data (as contemplated by these Terms); and
  - (b) neither Your Data nor the posting, uploading, publication, submission or transmission of Your Data or our use of Your Data on, through or by means of our Platform will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- 8.4 You acknowledge and agree that we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Platform, in an aggregated and anonymised format (**Analytics**). You acknowledge and agree that we own all rights in the Analytics, and that we may use the Analytics for our own internal business purposes, provided that the Analytics do not contain any identifying information.
- 8.5 We do not endorse or approve, and are not responsible for, any of Your Data.
- 8.6 You acknowledge and agree that the performance of the Platform is reliant on the accuracy and completeness of Your Data, and the provision by you of Your Data that is inaccurate or incomplete may affect the use, output and operation of the Platform.
- 8.7 You acknowledge that we use storage servers that may be located outside Australia.

- 8.8 We will use its best efforts to ensure that Your Data is stored securely, however we do not accept responsibility or liability for any unauthorised use, destruction, loss, damage or alteration to Your Data, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.
- 8.9 This clause 8 will survive the termination or expiry of these Terms.
- 9. Confidential Information**
- 9.1 Subject to clause 9.2, each Party must (and must ensure that its Personnel do) keep confidential, and not use or permit any unauthorised use of, confidential information provided by the other party.
- 9.2 Clause 9.1 does not apply where the disclosure is required by law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with these Terms and provided that the disclosing party ensures the adviser complies with the terms of clause 9.1.
- 9.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 9. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 9.
- 9.4 This clause 8 will survive the termination of these Terms.
- 10. Australian Consumer Law**
- 10.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the supply of the Services by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at law, nothing in these Terms excludes those Consumer Law Rights.
- 10.2 Subject to your Consumer Law Rights, we exclude all warranties, and all material, work and services (including the Services) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis, except where expressly set out in these Terms.
- 10.3 This clause 10 will survive the termination or expiry of these Terms.
- 11. Limitations on liability**
- 11.1 Despite anything to the contrary but subject to your Consumer Law Rights, to the maximum extent permitted by law:
- (a) neither Party will be liable for Consequential Loss;
- (b) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
  - (c) (in respect of any failure by us to comply with relevant Consumer Law Rights) our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again.
  - (d) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to the Price paid by you to us in respect of the supply of the relevant Services to which the Liability relates.
- 11.2 This clause 11 will survive the termination or expiry of these Terms.
- 12. Termination**
- 12.1 If the Proposal includes a minimum term for the Monthly Management Services, you may not terminate until the minimum term has expired. After the minimum term has expired, you may terminate with 30 days' written notice to us.
- 12.2 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party.
- 12.3 Should we suspect that you are in breach of these Terms, we may suspend your access to the Platform while we investigate the suspected breach.
- 12.4 Upon expiry or termination of these Terms:
- (a) we will immediately cease providing the Services;
  - (b) without limiting and subject to your Consumer Law Rights, you agree that any payments made by you to us are not refundable to you;
  - (c) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms. If the Proposal includes a minimum term, you must also pay the Price until the end of the minimum term;
  - (d) by us pursuant to clause 12.2, you also agree to pay us our additional costs, reasonably incurred, and which arise

- directly from such termination (including recovery fees); and
- (e) if requested by the Disclosing Party, the Receiving Party must destroy or return to the Disclosing Party all of its Confidential Information, except that the Receiving Party may keep a copy of such Confidential Information to the extent required by law or pursuant to its information technology back-up procedures, provided always that the Receiving Party retains such Confidential Information in accordance with clause 9.
- 12.5 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.
- 12.6 This clause 12 will survive the termination or expiry of these Terms.
- 13. General**
- 13.1 **Publicity:** Despite clause 8, with your prior written consent, you agree that we may advertise or publicise the broad nature of our supply of the Services to you, including on our website or in our promotional material.
- 13.2 **Amendment:** Subject to clause 3, this Agreement may only be amended by written instrument executed by the Parties.
- 13.3 **Assignment:** Subject to clause 13.4, a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 13.4 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.
- 13.5 **Electronic Execution:** These Terms may be executed using an Electronic Signature. The Parties acknowledge and agree that if a Party executes these Terms using an Electronic Signature, then the Party is taken to have entered into these Terms in electronic form and the Electronic Signature is deemed to be an original execution of the Agreement by the Party. "Electronic Signature" means an electronic method of signing that identifies the person and indicates their intention to sign these Terms which may include software programs such as DocuSign.
- 13.6 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first complying with this clause 13.6. A Party claiming that a Dispute has arisen must give written notice to the other Party specifying the nature of the Dispute (**Dispute Notice**). The Parties must meet (whether in person, by telephone or video conference) within 10 Business Days of service of the Dispute Notice to seek (in good faith) to resolve the Dispute. If the Parties do not resolve the Dispute within 20 Business Days of the date the Dispute Notice was served (or such further period as agreed in writing by the Parties), either Party may refer the matter to mediation, administered by the Australian Disputes Centre in accordance with Australian Disputes Centre Guidelines for Commercial Mediation. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 13.7 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:
- (a) as soon as reasonably practical, notifies the other party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and
- (b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.
- Where the Force Majeure Event prevents a Party from performing a material obligation under these Terms for a period in excess of 60 days, then the other Party may by notice terminate these Terms, which will be effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under these Terms.
- 13.8 **Governing law:** These Terms are governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 13.9 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 14. Definitions**
- In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Schedule, and:
- ACL or Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

**Authorised User** means, if applicable a user permitted to access and use the Platform under your account.

**Business Day** means a day on which banks are open for general banking business in **Queensland**, excluding Saturdays, Sundays and public holidays.

**Commencement Date** means the date these Terms are accepted in accordance with clause 1.

**Confidential Information** means information which:

- (a) is disclosed to the Receiving Party in connection with these Terms at any time;
- (b) relates to the Disclosing Party's business, assets or affairs; or
- (c) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

**Consequential Loss** means, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise:

- (a) any loss or damage that cannot be considered to arise according to the usual course of things from the relevant breach, act or omission, whether or not such loss or damage may reasonably be supposed to have been in the contemplation of the Parties at the time they entered into these Terms as the probable results of the relevant breach, act or omission; and/or
- (b) without limiting subclause (a), any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data.

However, the Parties agree that your obligation to pay us the Price under these Terms will not constitute "Consequential Loss".

**Consumer Law Rights** has the meaning given in clause 10.1.

**Deposit** means the deposit as set out in the Proposal, if applicable.

**Disclosing Party** means the Party disclosing Confidential Information to the Receiving Party.

**Dispute** has the meaning given in clause 13.6.

**Force Majeure Event** means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake,

landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

**Initial Setup and Launch Services Fee** means the fee for the Initial Setup and Launch Services as set out in the Proposal.

**Intellectual Property Rights** or **Intellectual Property** means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

**Laws** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with these Terms or the supply of the Services.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise.

**Monthly Management Fee** means the fee for the Monthly Management Services as set out in the Proposal.

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth) and includes any similar rights in any jurisdiction in the world.

**New Materials** means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with these Terms or the supply of the Services, whether before or after the date of these Terms and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and Your Materials.

**Our Materials** means all Intellectual Property which is owned by or licensed to us and any improvements, modifications or enhancements of such Intellectual Property and includes the Platform.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

**Platform** means any mobile or other application or software we give you access to you under these Terms.

**Price** means the price set out in the Proposal (made up of the Initial Set up and Launch Services Fee and the Monthly Management Fee), as adjusted in accordance with these Terms, and includes the Deposit (if any).

**Proposal** means the proposal to which these terms and conditions are attached or incorporated by reference.

**Receiving Party** means the Party receiving Confidential Information from or on behalf of the Disclosing Party.

**Services** means the services set out in the Proposal (either or both of the Initial Setup and Launch Services and the Monthly Management Services), as adjusted in accordance with these Terms.

**Term** has the meaning given to it in clause 2.4.

**Your Materials** means all Intellectual Property owned or licensed by you or your Personnel before the Commencement Date (which is not connected to these Terms) and/or developed by or on behalf of you or your Personnel independently of these Terms and any improvements, modifications or enhancements of such Intellectual Property.