

This document (“**the T & Cs**”) contains the agreement between:

_____ (“you”, “your”)

dms CREATIVE ABN 89 691 779 521 (“us”, “we”), in relation to the Services that we will perform for you. Please ensure that you have read the T & Cs closely.

The opinions, strategies, designs and related recommendations provided by us are based on our experience and are provided to you based on information you have provided to us. We make no warranty, express or implied, as to the results to be obtained by any person or any entity in the execution or implementation of the opinions, strategies, designs and related recommendations made. We expressly disclaim all warranties and you agree that we are not liable for any loss resulting from any action taken or reliance made by you on any opinions, strategies, designs and related recommendations made to you by us.

1. THE SERVICES WE WILL PROVIDE TO YOU

(a) By signing and returning the T & Cs or continuing to instruct us, you agree that we will provide services to you as per your instructions (“**the Services**”), including but not limited to:

- i. marketing;
- ii. creative/graphic design;
- iii. branding design;
- iv. advertising;
- v. copywriting;
- vi. website design;
- vii. SEO & digital marketing
- viii. marketing strategy;
- ix. social media strategy and content; and
- x. any other services you instruct us to undertake.

(b) We will deliver the Services to you in the timeliest manner possible, but you acknowledge that our ability to deliver the Services within a certain timeframe will be affected by:

- i. the promptness of your instructions and responses to our correspondence;
- ii. the promptness with which you deliver any required information or material to us;
- iii. any changes in the Services that you are requesting;
- iv. general workload and commercial considerations;
- v. the resolution of issues or queries in relation to the Services; and
- vi. the conduct of third parties;

and that we will not be liable for any loss or damage suffered due to any Services being delayed for the aforementioned reasons.

(c) We may, at our discretion, engage subcontractors to perform part of the Services.

2. HOW WE CHARGE FOR OUR SERVICES

(a) Our Services will be charged for at an hourly rate, which will be notified to you, unless it is otherwise agreed to charge a fixed fee or other fee arrangement.

(b) You may be required to (as a condition of entry into the T & Cs):

- i. make a deposit prior to the delivery of the Services;
- ii. pay for the Services upfront;
- iii. make progress payments in consideration of the Services; or
- iv. pay for the Services in full once they have been delivered.

(c) We will issue you with an invoice for the Services in accordance with the relevant method mentioned in clause 2(b). Invoices must be paid within 30 days of invoicing, after which a default interest rate of 10% p.a., calculated daily and compounding monthly, will apply to any unpaid balance. We reserve the right to withhold, cease or terminate the Services (and any deliverables related to the Services) until such time as payment is made in full. We reserve the right to recoup from You any costs (on an indemnity basis) incurred in collecting an outstanding debt.

3. INTELLECTUAL PROPERTY

(a) Unless otherwise agreed by you and us, all intellectual property created during the performance of the Services by us will remain our property. We grant to you an exclusive, irrevocable licence to use the intellectual property for the conduct of your business. You may not alter or create derivative works from the intellectual property, without our prior permission.

- (b) If expressly agreed between you and us in writing, upon receipt for payment of all invoices in accordance with clause 2 of the T & Cs, we will assign to you intellectual property relating to any deliverables of the Services, as per the express agreement. In the event that an invoice remains unpaid, no intellectual property will be assigned and ownership will remain with us until the invoice is paid.
- (c) Regardless of any intellectual property that is assigned to you by us, we will maintain ownership of all source files, unless otherwise agreed. You will be provided with all deliverables resulting from the Services in a format that we deem appropriate and reasonable for you to use.
- (d) If you provide us with any intellectual property or information for the purpose of delivering the Services, you will maintain ownership in that intellectual property. You warrant that:
- i. you own or are authorised (for example, under licence) to use any intellectual property or information you provide to us;
 - ii. we will not infringe any third party intellectual property rights by performing the Services in good faith;
 - iii. the intellectual property or information you provide to us does not constitute a breach of confidence or contract with a third party, and is not defamatory, misleading, deceptive or unlawful;
 - iv. you do not intend to use the Services or any deliverable arising from the Services for an unlawful, defamatory, misleading or deceptive purpose; and
 - v. in the event that the Services or any deliverable arising from the Services are required to comply with any statutory, contractual or other lawful requirement (e.g. product labelling regulations, disclaimers, etc.), you have ensured that the information provided to us will result in such compliance.

4. USE OF SERVICES AND DELIVERABLES

- (a) You may use the Services and the deliverables from the Services for you or your business, for the purpose that they are reasonably to be used for. This includes, but is not limited to:
- i. the display of graphical designs on printed paraphernalia and online;
 - ii. the continued operation of websites;
 - iii. the implementation of marketing strategies; and
 - iv. the publishing of content for the purpose it was created.
- (b) We may use any of the deliverables from the Services in our marketing portfolios, and we will take all reasonable steps to remove any sensitive or confidential information when doing so.

5. PRIVACY AND CONFIDENTIALITY

- (a) We will take all reasonable steps to ensure that your personal, private and confidential information is:
- i. kept safe and secure;
 - ii. is not disclosed to third parties without authorisation; and
 - iii. only used for the purpose of delivering the Services.
- (b) Notwithstanding clause 5(a), we may use your email address to contact you with our newsletter and other general updates. You may opt out at any time, but we may continue to contact you by email in relation to the Services.

6. TERMINATION AND VARIATION

- (a) We may terminate this agreement if:
- i. you fail to pay any invoice issued under the T & Cs;
 - ii. you breach any other clause of the T & Cs;
 - iii. in our opinion, we are no longer able to reasonably deliver the Services.
- (b) This agreement may be terminated or varied by agreement between you and us.
- (c) Upon the termination of the T & Cs (whether in accordance with this clause 6, or because the Services have been fully delivered), we will hold a digital record of any deliverables for 7 years from the date of termination. After the elapsing of 7 years, we may destroy any such records at our discretion.

Date

Name (please print)

Name (please print)