

BACKGROUND

The Client wishes to receive certain marketing, branding, design, development, hosting, and/or related services from Three Zero Nine. Three Zero Nine has agreed to provide the Client with these services on the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

1. AGREEMENT AND SERVICES

- (a) This Agreement exclusively governs the provision of Services by Three Zero Nine ("we", "us", "our") to the Client ("you", "your").
- (b) The Special Conditions incorporated into this Agreement are binding on the parties and override any other terms in the event of any inconsistency. The parties will have a genuine opportunity to negotiate the Special Conditions.
- (c) During the Term, Three Zero Nine must provide the following Services:
 - (i) per this Agreement;
 - (ii) professionally with due care and skill in a commercial, prudent and reasonable manner; and
 - (iii) to meet the Service Levels (if any).
- (d) If:
 - (i) the Client requests additional goods, services, work, concepts or revisions not covered in the Services or
 - (ii) new information comes to light that materially changes the scope of the Services,

then Three Zero Nine may provide additional services pursuant to a separate agreement between the Client and Three Zero Nine.

2. FEES AND EXPENSES

- (a) In consideration of our providing the Services, you agree to pay the Fees and Expenses per the Payment Schedule and any invoice issued according to this Agreement.
- (b) We charge the Expenses at cost.
- (c) Where:
 - (i) there is a regular, recurring or ongoing Expense relating to the provision of goods or services by a third party (**Third Party Provider**); and
 - (ii) the Third Party Provider changes the fees to which the Expense relates per their contract with us -

then:

- (iii) we will notify you of this change in writing as soon as possible and
- (iv) the change will be reflected in the Expense, and you must pay the new Expense.

However, if the change is unreasonable or unacceptable to you, we will:

- (v) cancel the contract with the Third Party Provider, and
- (vi) use reasonable endeavours to work with you to find and enter a contract with a suitable replacement provider for those goods or services -

provided that, in our opinion, this does not, or is not likely to, adversely affect us (for example, by putting us in breach of the contract with the Third Party Provider or by likely causing damage to the relationship with the Third Party Provider).

- (d) You must pay an invoice issued under this Agreement within 7 days unless you and we have agreed otherwise in writing.
- (e) When issuing an invoice, Three Zero Nine will act reasonably.
- (f) Where the Payment Schedule requires you to pay any portion of the Fees upfront, you must pay this in full before we commence providing the Services.
- (g) We reserve the right to invoice you at any stage of the Project for any unpaid work undertaken by us and Expenses incurred by us as of the date of the invoice where:
 - (i) the Project is significantly delayed because we are awaiting instructions or decisions from you or
 - (ii) any invoice previously rendered by us remains outstanding for more than 30 days.
- (h) We reserve the right to suspend work on the Services if you have not paid the Fees or Expenses on time. We also reserve the right to charge interest at a rate from time to time fixed by the Penalty Interest Rates Act 1983 (Vic) for all late payments. Interest is calculated daily, continues until the overdue money is paid, and is capitalised monthly.

- (i) You acknowledge that 'time is of the essence' when paying our Fees and Expenses under this Agreement.
- (j) You agree that we are not required to make the Project 'go live' until all due and payable Fees and Expenses have been paid in full.
- (k) All Fees and Expenses are exclusive of GST unless otherwise indicated.
- (l) You will be required to pay GST where we supply you with a valid tax invoice requesting GST.
- (m) If we have taken action to recover overdue amounts from you, any reasonable costs incurred by us in recovering the debt, including but not limited to any legal expenses and collection agency charges, will be recoverable.

3. DELIVERY DATES

- (a) We will use all reasonable endeavours to provide our Services and deliver any Deliverables by the Timeline; however, you acknowledge and agree that:
 - (i) the delivery dates set out in the Timeline are estimates only, and we are not liable for a reasonably short delay to the delivery of the Deliverables and
 - (ii) we are not liable to the extent that the Client has caused or contributed to our delay in delivering the Deliverables (including the Client's delay in complying with clause 5).

4. CONTRACTORS AND SUPPLIERS

- (a) We may engage subcontractors or third-party suppliers of our choice to assist us in providing the Services.
- (b) We will be fully responsible for their work and remuneration unless otherwise agreed between us and you.
- (c) We may change the subcontractors or suppliers at any time in our sole discretion. Should such a change occur, you acknowledge and agree that we have full authorisation to move, alter or delete your data as reasonably necessary.

5. CLIENT INFORMATION, ASSISTANCE AND FEEDBACK

- (a) Before we commence any Services for the Project, you must provide us with

Client-approved final versions of any content we request or you wish for us to incorporate into the Project, including high-resolution logos, copy, graphics, fonts, images, videos, SEO, meta data, names and trademarks, sound recordings, and other material in the format we reasonably require.

- (b) During the Term, you agree to provide us with complete, constructive, and timely information, instructions, materials, feedback, and approvals wherever we seek them in the format we reasonably require. You acknowledge that your failure to do so may delay our delivery of Services to you.
- (c) You must provide us with such cooperation and support as we may reasonably request to perform the Services, including by:
 - (i) responding promptly to our communications about the Services;
 - (ii) providing accurate and prompt responses to our requests for any information or documentation reasonably required by us to perform the Services; and
 - (iii) providing feedback on draft Deliverables.
- (d) If you fail to give feedback to a draft Deliverable within 7 days of delivery, your acceptance of that draft Deliverable without any revisions will be deemed given.
- (e) We will incorporate your feedback to the extent we consider it appropriate in our professional judgment.
- (f) We reserve the right to exclude any material supplied by you if we, acting reasonably, deem it illegal, inappropriate or offensive.
- (g) Except to the extent that we expressly agree to do so as part of a Service, you are exclusively responsible for conducting backups of any of your data (whether hosted on our computer systems or provided to us in connection with the performance of the Services) at such intervals as are reasonable considering the nature of the data.

6. INTELLECTUAL PROPERTY RIGHTS

- (a) Each party acknowledges that:
 - (i) all Background IP remains the sole property of its owner and
 - (ii) it acquires no right, title or interest in or to the Background IP of the other party by this Agreement or the disclosure or use of

the Background IP in the course of the performance of the Services other than as expressly set out in this Agreement.

- (b) Each party grants the other party (and its Related Entities) a non-exclusive, royalty-free, non-transferable licence during the Term to use the Background IP owned by it to the extent necessary and for the sole purpose of performing and receiving the Services.
- (c) All rights, title and interest in the Project IP, other than Excluded Project IP, vests in and is assigned to the Client as follows:
 - (i) where we have delivered a Final Deliverable to you and only upon full payment of Fees and Expenses relating to that Deliverable, all rights, title and interest in the Project IP in that Final Deliverable vests in and is assigned to you; and
 - (ii) where the Agreement is terminated before the Project is completed and, as of the date of termination, we have only provided you with a draft Deliverable, then the right, title, and interest in the Project IP relating to that draft Deliverable remain with us.
- (d) Three Zero Nine grants to the Client a non-exclusive, royalty-free, transferable, perpetual, irrevocable licence (including the right to sublicense) to use:
 - (i) its Background IP that has been incorporated into Project IP, and
 - (ii) the Excluded Project IP,

to the extent necessary to enable the Client, its sub-licensees and assignees to use the Project IP for any purpose.

- (e) You acknowledge and agree that:
 - (i) we may, with your written consent, incorporate Intellectual Property Rights owned by third parties into the Project, such as Intellectual Property Rights forming part of the platform and plugins, stock images, fonts, source code and other licensed materials (**Third Party IP**);
 - (ii) your use of the Third-Party IP as part of the Project is subject to terms imposed by the relevant third-party owner (**Third Party Licences**); and
 - (iii) you will be responsible for maintaining and paying for all applicable Third Party Licences unless otherwise agreed in writing.

- (f) You may make or authorise others to modify the Final Deliverables (**Modifications**).
- (g) You agree to release us and our representatives from all Losses and Claims suffered by you or any third party concerning the making of any Modifications.

7. CLIENT WARRANTY AND INDEMNITY

- (a) You warrant that:
 - (i) the Project Materials are accurate and comply with applicable law;
 - (ii) you have obtained all necessary Intellectual Property Rights, permissions, clearances, consents and authorisations to allow us to use the Project Materials concerning the Services and
 - (iii) you have the right to use, reproduce, publish and communicate the Project Materials according to this Agreement.
- (b) We take no responsibility for:
 - (i) any content created that contains statements, facts or opinions that may be considered incorrect, misguided, inaccurate, deceitful or false as the result of using the Project Materials; and
 - (ii) any copyright infringements caused by the Project Materials.
- (c) You indemnify us for any Loss suffered by us:
 - (i) should a third party make a Claim against us concerning our use of Project Materials as permitted by this Agreement and
 - (ii) in connection with our compliance with your directions or instructions concerning the provision of the Services.
- (d) The Client acknowledges that Three Zero Nine has relied and will rely on the warranty in clause 7(a) to fulfil its obligations under this Agreement.
- (e) Three Zero Nine is not deemed to have warranted or otherwise accepted responsibility for the correctness and accuracy of the Project Materials.
- (f) You must immediately notify us if you become aware of an infringement of any Intellectual Property Rights relating to the Project IP or Materials.

8. USER ACCEPTANCE TESTING

- (a) If listed as part of the Services, we will carry out user acceptance testing of the Project (or a

Deliverable) to determine whether the Project (or Deliverable) has been completed per any relevant Specifications (**Acceptance Testing**).

- (b) You must notify us of acceptance or rejection of the Project (or the relevant Deliverable) within 7 Business Days of our completion of the Acceptance Testing. If you fail to give notice within this period, your acceptance will be deemed given.
- (c) You agree that you will not unreasonably withhold consent when the Project (or the relevant Deliverable) substantially meets any relevant Specifications.
- (d) Since internet browsers and mobile devices have different capabilities, you acknowledge that projects or mobile applications we build under this Agreement may appear slightly differently on various browsers and mobile devices. We are not liable for such differences in appearance.

9. PRINT SPECIFIC INFORMATION

- (a) You are responsible for ensuring that all information and layout are correct before any Deliverables go to print. A proof will be provided for final approval. We are not liable for uncorrected errors found after printing, and you are still liable for payment of the Fees and Expenses.
- (b) You acknowledge that print colour may vary slightly from print run to print run, job to job, or front to back. We are not liable for such minor variations.
- (c) You acknowledge that colours will vary slightly from screen to print. Unless a specific colour code is provided, we will endeavour to match the colour from screen to print to the best of our ability. We are not liable for such minor variations.

10. WEBSITES

- (a) If the Services include website coding, we will test our code in current versions of all major browsers.
- (b) For desktop environments, we will test designs using the latest stable versions of:
 - (i) Google Chrome;
 - (ii) Apple Safari;
 - (iii) Mozilla Firefox and
 - (iv) Microsoft Edge.

- (c) For mobile devices, we will test your design using the latest versions of:
 - (i) iOS Safari on iPhone and iPad; and
 - (ii) Android Google Chrome.
- (d) We will not test code in old, unsupported or abandoned browsers.
- (e) While we take all reasonable steps to ensure the security of your website during development, we are not responsible for security breaches, including hacking, once the website is live.
- (f) Content to be loaded by us is to be provided in the correct form and should be proofed and correct at the time of submission.
- (g) Changes to provide content that has been loaded may be made at our discretion, acting reasonably.
- (h) We reserve the right to add branding identification or other labels identifying us as the creators of your website.

11. SEARCH ENGINE OPTIMISATION

- (a) Whether or not SEO services are provided as part of the Services, we offer no ranking guarantee for your website on search engines.
- (b) Your website will be built in a way that allows for changes to be made that impact SEO improvements.

12. DOMAIN NAME REGISTRATION

- (a) All domain names we register and manage on your behalf will remain your property.
- (b) You must have valid credentials and access to your Domain Name System if you have a domain name.
- (c) If we register a domain name on your behalf, it is your sole responsibility to ensure its availability and accuracy, including any additional service requirements such as social media names/handles.

13. HOSTING SERVICES

- (a) If our Services include providing hosting services (**Hosting Services**), you are entirely responsible for:

- (i) the content on your Website (including all content that we host on your behalf as part of the Hosting Services);
 - (ii) ensuring that the content that we host on your behalf does not contain any virus or otherwise disrupt or corrupt the data or systems of any person and
 - (iii) all dealings you have with users of your Website.
- (b) You will indemnify Three Zero Nine against all Losses or Claims made against or suffered by Three Zero Nine in connection with:
- (i) your Website (other than our Hosting Services);
 - (ii) the content that we host for you as part of the Hosting Services and
 - (iii) any failure by you to meet the responsibilities described in clause 13(a).
- including any Claims made against Three Zero Nine:
- (A) by users of your Website; and
 - (B) by any third party alleging that the content on your Website, or any content hosted by us on your behalf, infringes any Intellectual Property Rights or any person or otherwise breaches any law.
- (c) In respect to Hosting Services, we are not responsible for any technical or digital elements beyond those created and managed by us. A list of items we do not service or maintain include but is not limited to:
- (i) third-party software;
 - (ii) email;
 - (iii) internet connections;
 - (iv) computer and other hardware functionality;
 - (v) social media platforms, and
 - (vi) any other digital platforms, such as CRMs and marketing platforms.
- (d) To avoid doubt, we do not offer cPanel emails or storage of your emails as part of hosting services.
- (e) Time and costs incurred in investigating and resolving any Website breach will be billed at our hourly rate (as set out in the Payment Schedule). This will include costs of site recovery if this action is deemed necessary.
- (f) You acknowledge that a third party, WP Engine, supplies our hosting service. We will liaise with the server hosting company as part of the hosting management and during any potential problems or incidents; however, there may be incidents and planned outages caused by WP Engine that we cannot control. We will always abide by the third-party provider's conditions to ensure uninterrupted service. These terms may be read here: <https://wpengine.com/legal/>
- (g) We maintain a development site used to make changes within structure, function, and theme. Once you approve these changes, they are pushed to the live site using GIT, allowing for tracking of changes and easy reversal if required. This ensures that maintenance, updates, and changes to the site are implemented in a controlled environment that will not impact the live Website.
- (h) If the hosting provider requires a scheduled outage for maintenance and upgrades, they will inform us of the expected time of the outage. We will inform you at least 12 hours before the planned outage and will advocate to have the outage scheduled outside of your business hours.
- (i) If you choose to host your Website on a third-party server, you are responsible for ensuring that the hosting server is suitable for the coding requirements and size of the Website we are creating for you.
- (j) If a Website Project has:
- (i) completed development of the agreed design and functional specification to the extent possible with the information provided by you and
 - (ii) not gone live due to:
 - (A) pending final content;
 - (B) not receiving approval to go live from you;
 - (C) final payment not having been received;
 - (D) any other inaction on your part;
 - (iii) been hosted and available on our staging servers for more than three months after the development was completed,
- then a hosting fee proportional to the size of your Website and the hosting duration will be charged.
- (k) If you choose to have your Website tested for exploitable vulnerabilities via a third-party penetration (pen) test, we will charge a standard hourly rate (as set out in the Payment Schedule) to review and respond to any issues found.
- (l) Our availability specific to the Services covered in this Agreement is via email in the first instance,

- phone or face-to-face within business hours 9.00am-5.30pm Monday to Friday and excludes public holidays and the two-week compulsory Christmas break for non-essential services.
- (m) If our hosting services are disrupted, we will regularly inform you of how we can attempt to resolve the problem.
 - (n) The priority in any service disruption is to return the Website to normal usage. This may include rolling a site back to a previous backup if the cause is catastrophic or cannot be readily ascertained. Discovering the cause of the issue and taking measures to ensure the disruption does not reoccur are secondary to resuming the Website's function.
 - (o) We will respond regarding a service disruption per Table 1 of Schedule 2.
 - (p) The following issues will accrue the following fee type:
 - (i) No Fees:
 - (A) Errors and outages on the hosting platform cause disruptions.
 - (B) Disruptions are caused by our staff working within the CMS and/or hosting platforms.
 - (ii) Standard hourly rate (as set out in the Payment Schedule) plus GST billed in 15-minute increments:
 - (A) Disruptions of any priority level caused by your staff within our business hours.
 - (B) Disruptions of any priority level caused by non-Three Zero Nine and non-WP Engine parties within our business hours.
 - (C) Disruptions caused by detected or suspected hacking where security maintenance of the site has been performed correctly by us within our business hours.
 - (D) Disruptions caused by adding, removing, or updating any software within the site by anyone other than our staff during our business hours.
 - (iii) Standard hourly rate (as set out in the Payment Schedule) plus 30% per hour plus GST billed in 15-minute increments:
 - (A) Disruptions of any priority level caused by your staff outside our business hours.
 - (B) Disruptions of any priority level caused by non-Three Zero Nine and non-WP Engine parties outside our business hours.
 - (C) Disruptions are caused by detected or suspected hacking where Three Zero Nine has correctly performed site security maintenance outside business hours.
 - (D) Disruptions are caused by adding, removing, or updating software within the site by anyone other than our staff outside of our business hours.
- ## 14. CREDITS AND PROMOTION
- (a) Unless otherwise agreed by us in writing, where we have designed and built the Project as part of our Services, you agree to provide us with a credit stating that the Project "was designed and built by Three Zero Nine."
 - (b) Unless otherwise agreed with you in writing:
 - (i) we reserve the right to reproduce, publish and communicate parts of the final Deliverables for our self-promotional purposes, including online and in print (for example, on our social media sites, on our project and in show-reels) and
 - (ii) you provide us with a licence to use your name and trademark as part of any client list we may publish.
- ## 15. CONFIDENTIALITY
- (a) Each party must use reasonable endeavours to ensure that it and its personnel, at all times:
 - (i) keep confidential and secure the Confidential Information of the other party;
 - (ii) not use the Confidential Information of the other party except as strictly necessary to perform its obligations under this Agreement; and
 - (iii) not deal with the Confidential Information of any other party in any way that might prejudice its confidentiality.
 - (b) Each party acknowledges that damages may be an inadequate remedy for a breach of confidentiality and that a party may obtain injunctive relief against any other party for such breach.
 - (c) Either party may disclose any Confidential Information it is required to disclose by law, a rule

or requirement of a relevant stock exchange, or under any legally binding order or direction of any court, tribunal, or other constitutional or governmental body or authority acting within its powers, but only to the extent so required.

- (d) A party may disclose or discuss Confidential Information with any director of that party, an adviser engaged by that party in connection with this agreement or any employee of that party or a related company of that party. A party may disclose the Confidential Information to any of the foregoing ("receiving third party") and to any contractor on a "need to know basis" to comply with this Agreement and only if such receiving third party and the contractor agrees to be bound by the obligations of confidentiality set out in this Agreement.
- (e) If requested by the disclosing party, the receiving party must promptly deliver to the disclosing party all Confidential Information in its (or any of its personnel's) custody, possession or control, or delete (at the disclosing party's option), all Confidential Information in its (or any of its personnel's) custody, possession or control.

16. PREJUDICIAL INFORMATION

- (a) The parties covenant that they will not at any time make any disparaging comments, disclose any information, publish any statement, or do any other thing which may tend materially to harm or prejudice the other party's reputation or good name (**prejudicial information**), this includes both parties not making disparaging comments or disclosing prejudicial information about the other through the use of social media, web discussion groups, websites or other like forums.
- (b) The parties agree to remove any prejudicial information posted online immediately upon written request of the other party.
- (c) The parties agree and acknowledge that this clause is a material term of this Agreement, and Three Zero Nine would not have entered into this Agreement without including this provision.
- (d) The parties acknowledge and agree that a breach of this clause or disclosure of prejudicial information about the other party as described above will be a material breach of this Agreement and may cause material damage to the other party and that damages may be inadequate compensation for such a breach of this provision and, subject to the court's discretion, the

non-breaching party may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this provision.

17. PERSONAL INFORMATION

Each party must comply with any obligations under all relevant Data Protection Laws.

18. TERMINATION

- (a) You may terminate the Agreement for convenience with 30 days written notice to us.
- (b) If the Agreement is on a Fixed Retainer Term and you indicate to us that we have lost your confidence, if we are unable to obtain proper instructions from you, if we are not provided with the material we reasonably require to undertake or complete the Project within a reasonable time after we request it, we may terminate this Agreement by giving you 30 days written notice.
- (c) If the Agreement is on an Ongoing Retailer Term, we may terminate this Agreement by giving you 30 days written notice.
- (d) Either party may terminate this Agreement immediately by notice in writing to the other party if:
 - (i) the other party commits a material breach, which cannot be remedied, of its obligations under the Agreement;
 - (ii) the other party commits a remediable material breach of its obligations under the Agreement but fails to remedy that breach within 14 days of being required to do so in writing by the first party or
 - (iii) an Insolvency Event occurs concerning the other party.

A "material breach" is defined as a breach of an obligation central to the Agreement's performance which substantially and materially deprives the innocent party of the benefits it would have received under that Agreement.

- (e) Where this Agreement is terminated, we will, as applicable:
 - (i) issue you with a final invoice for Fees relating to work completed and Expenses incurred up to the date of termination, taking into account any payments already made by you, and you agree to pay this invoice within 7 days, or

- (ii) if you have prepaid an amount of Fees and Expenses, refund it within 7 days of the termination date, and any portion of those Fees or Expenses related to Services is not to be performed.

- (f) Where the Agreement is terminated by us and the Project is not completed and, as at the date of termination, we have only provided you with a draft Deliverable, then no Fees or Expenses are payable for that Deliverable.

19. AUSTRALIAN CONSUMER LAW

- (a) For 'consumers' as defined by the Australian Consumer Law, our Services come with non-excludable guarantees under the Australian Consumer Law that they will be provided with due care and skill and be reasonably fit for their purpose. For major failures with the service, you are entitled to:
 - (i) to cancel the Agreement; and
 - (ii) to a refund for the unused portion or compensation for its reduced value.
- (b) Even if you are not a 'consumer' as defined by the Australian Consumer Law, we will ensure that our Services are provided with due care and skill and are reasonably fit for their purpose. We will rectify any breach of this clause at our cost.
- (c) Under section 64A of the Australian Consumer Law:
 - (i) this paragraph applies in respect of any of the goods or services supplied under the Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this paragraph will not apply if you establish that reliance on it would not be fair and reasonable; and
 - (ii) our liability for breach of a guarantee conferred by the Australian Consumer Law other than those conferred by sections 51-53 of that law is limited to any one of the following as determined by us:
 - (A) the supplying of the services again, or
 - (B) the payment of the cost of having the services supplied again.

20. DISCLAIMERS

- (a) Nothing in this clause overrides any rights you may have under the Australian Consumer Law or otherwise at law.

- (b) Three Zero Nine provides no warranty that any success, result, or objective can or will be achieved or attained by providing the Client with the Services.
- (c) The Services may require us to use, interface with or input information into a third party's systems (including third parties such as Google and Meta). You agree that we have no liability to the extent that the third party cannot provide its services to you.
- (d) We do not warrant that you (or other users) will have functional, uninterrupted, bug-free or continuous access to the Final Deliverables, nor that the Final Deliverables will be free of technical faults or viruses or other risks to security (collectively **Interruptions**), to the extent that:
 - (i) this is dependent on the steps that you take to maintain the Final Deliverables;
 - (ii) we build projects on different platforms and use plugins, all of which we do not make or control, and
 - (iii) Many factors may cause Interruptions outside our control, such as cyber security events and low-quality internet.
- (e) We are not responsible for any direct or indirect loss or claim you may suffer due to interruptions we have not caused.

21. LIMITATION OF LIABILITY

- (a) Except in the case of death or personal injury caused by that party's negligence, each party's aggregate liability for any loss or damage in connection with the provision of the Services, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, is limited to the Fees paid in respect of the Services for the preceding 12 months to any such claim. This does not apply to clauses 7(c) and 13(b).
- (b) Neither party is liable for:
 - (i) any Consequential Loss arising out of or in connection with the Agreement (whether or not the loss or damage may reasonably be supposed to have been in the contemplation of the parties as at the date the Agreement was formed as a probable result of any act or omission) other than under clause 15 or 16; or
 - (ii) any Loss to the extent such is caused or contributed to by the other party's negligence, breach of contract or other wrongful acts or omissions.

22. DISPUTE RESOLUTION

- (a) The parties agree that if any dispute should arise under this Agreement, attempts will be made in good faith by both parties to resolve the matter fairly before resorting to court procedures. In doing so, each party agrees to use its best endeavours to:
 - (i) communicate in writing the background facts leading to or causing the dispute;
 - (ii) set out clearly what action is required to settle the dispute;
 - (iii) select a way of resolving the dispute and explain why that way of resolving the dispute can be said to be a fair resolution and
 - (iv) discuss specific means of avoiding such disputes in the future.

23. GENERAL

- (a) Clauses 6, 7, 13(b) 14, 15, 16, 17, 21 and 23 survive the termination or expiry of this Agreement.
- (b) This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.
- (c) This Agreement will be governed by and interpreted per the law of New South Wales. The parties agree to the non-exclusive jurisdiction of the courts of New South Wales to determine any dispute arising out of this Agreement.
- (d) We accept emails as a legally binding form of communication. All project requests, approvals, and final sign-offs should be made via email, even if verbal confirmation is given.
- (e) The Agreement constitutes the parties' entire agreement regarding the subject matter of the Agreement and supersedes all prior discussions, undertakings and agreements.
- (f) If any provision of the Agreement is void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction, the provision must be read down to the extent it can be to save it, but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of the Agreement nor affect the validity or enforceability of that

provision in any other jurisdiction where it is not invalid.

- (g) Neither party may assign its rights or obligations under this Agreement without the written consent of the other party, which consent will not be unreasonably withheld; provided, however, that without your consent, we may novate this Agreement to any of our related bodies corporate or assign this Agreement to a successor in connection with any corporate reorganisation, merger, acquisition, or sale of our business or assets to which this Agreement relates.
- (h) Our failure to act regarding a breach by you does not waive our right to act regarding subsequent or similar breaches.

24. INTERPRETATION

In this Agreement, unless expressly stated:

- (a) a word importing the singular includes the plural and vice versa;
- (b) a word importing a gender includes other genders;
- (c) a law is a reference to that law as amended, consolidated or replaced;
- (d) this Agreement includes all schedules and attachments to it;
- (e) a party to this Agreement includes its agents, personal representatives, successors and permitted assigns;
- (f) a person, includes a natural person, partnership, joint venture, corporation, trust, governmental agency, association or other corporate body;
- (g) a time is a reference to the time in the State or Territory of the jurisdiction that governs this Agreement;
- (h) \$ is a reference to Australian dollars unless otherwise expressly stated;
- (i) the words 'such as' or 'including' are not used as words of limitation.
- (j) a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;

Terms of Engagement

- (k) a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this agreement;
- (l) a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form and
- (m) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this agreement.

25. DEFINITIONS

Capitalised words may be defined in the Scope of Work, this Definitions section or the body of this Agreement.

In this Agreement, the following definitions apply:

"Three Zero Nine" means Three Zero Nine Marketing Pty Ltd. (ACN 665 264 719) of Level 49/8 Parramatta Sq, Parramatta NSW 2152.

"Agreement" means these terms, and Schedule 1 – Scope of Work is attached to these terms.

"Agreement Date" means the date the last party executes this Agreement.

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

"Background IP" means Intellectual Property Rights owned by or licensed to a party as at the Agreement Date or acquired or developed by a party during the term of this Agreement independently of the activities carried out under this Agreement, which that party has the right to license to third parties and which are necessary or desirable for the performance of the Services.

"Business Day" means a day which is not a Saturday, Sunday, bank holiday or public holiday:

- (a) to send or receive a notice, in the city where the notice is received; and
- (b) for all other purposes, in Sydney, Australia.

"Confidential Information" of a discloser means all information, data and know-how, regardless of material form, which is confidential or proprietary, or is designated as such by the discloser (including any Intellectual Property Rights, personal information and this Agreement) but excludes information that:

- (a) is or becomes available in the public domain through no breach of confidence;

- (b) is known to the recipient from a source other than the discloser provided that the person who provided the information was not also under a confidentiality obligation concerning that information or

- (c) was independently created by the recipient.

"Consequential Loss" means special, incidental, indirect or consequential damages, loss of revenue, anticipated savings, profits, goodwill, reputation, interest or business.

"Claim" means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature, whether present or future, fixed or unascertained, actual or contingent, at law, in equity, under statute or otherwise.

"Data Protection Laws" means any law (including but not limited to laws relating to the protection of the privacy of natural persons) that applies to the collection, storage, processing or use of data, including, but not limited to, personal data.

"Final Deliverable" means a Deliverable that we have provided or delivered to you and which we have notified you to be and deem, acting reasonably, to be the final version of the Deliverable.

"Fixed Retainer Term" means the term of this agreement if indicated as the "Term" in the Scope of Work, which begins on the Agreement Date and continues until all the Final Deliverables for the Project have been delivered. All the Fees and Expenses have been paid or terminated earlier per this Agreement.

"GST" has the meaning given by section 195-1 of the GST Act.

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Insolvency Event" means, concerning a person:

- (a) the person is dissolved, wound up or placed into bankruptcy, or a court makes an order, or an application is made to a court for an order, or a resolution is passed, or the person gives notice of its intention that the person be dissolved, wound up or placed into bankruptcy;
- (b) a liquidator, provisional liquidator or trustee in bankruptcy is appointed in respect of the person or any property of the person or an application is made to a court for an order that a liquidator, provisional liquidator or trustee in bankruptcy be

- appointed in respect of the person or any property of the person;
- (c) a controller or administrator is appointed in respect of the person or any property of the person or takes possession or gains control of any property of the person;
 - (d) except to reconstruct or amalgamate while solvent, the person enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
 - (e) the person is (or states that it is) insolvent or an insolvent under administration (each as defined in the Corporations Act 2001 (Cth));
 - (f) as a result of the operation of section 459F(1) of the Corporations Act 2001 (Cth), the person is taken to have failed to comply with a statutory demand;
 - (g) execution or other process issued on a judgment, decree or order of a court (whether an Australian Court or not) in favour of a creditor against the person or another person authorised to be sued as the nominal defendant on behalf of the person, is returned wholly or partly unsatisfied, or the person makes a statement from which it may be reasonably deduced that such an event has occurred;
 - (h) the person takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or
 - (i) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

“Intellectual Property Rights” means all present and future rights conferred by statute, common law or equity in or concerning any trademarks, patents, copyrights, processes, know-how, registered designs, business and domain names, technology, data and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

“Loss” means loss, damage, liability, charge, expense, outgoing, payment or cost of any nature or kind, including all legal and other professional costs.

“Ongoing Retainer Term” means the term of this agreement if indicated as the “Term” in the Scope of Work, which begins on the Agreement Date and continues until terminated in accordance with this Agreement.

“Project IP” means all Intellectual Property Rights created, conceived, developed or reduced to practice in the course of the performance of the Services, creating the Project and delivering the Deliverables, including without all Intellectual Property Rights in the Project Materials.

“Project Materials” means all information, content, data, text, video, images, audio or other material provided by the Client to Three Zero Nine according to this Agreement (including according to clause 5).

“Related Entity” has the meaning given to that phrase in section 9 of the Corporations Act 2001 (Cth).

“SEO” means search engine optimisation.

“Scope of Work” means the Scope of Work relating to the Project in Schedule 1.

“Special Conditions” means the special conditions listed in the Scope of Work under “Special Conditions”.

“Website” means your website is the subject of the hosting services provided under this Agreement.

SCHEDULE 2 – HOSTING SERVICES

Table 1 – Response Times

Priority	Definition	9.00am – 5.30pm Monday to Friday*	Out of standard working hours
High Priority	The website is no longer displayed, and there is a hosting outage. Detected or suspected incidents of hacking.	0-2 hours for issues classified as High Priority.	<ol style="list-style-type: none"> 1. Site Down: 0-3 Hours 2. Site Damage: 0-4 hours
Medium Priority	Disruption to the website's functioning, including form failures and sitewide display disruptions.	Within 24 hours of issues classified as medium priority.	Within 2 days for issues classified as Medium priority.
Low Priority	Any other site issues that do not disrupt an external user's experience.	Within 3 working days for issues classified as Low Priority.	No support.

* excludes public holidays and the two-week compulsory Christmas break for non-essential services