

QUACK STUDIOS - SERVICE TERMS AND CONDITIONS

1. AGREEMENT AND READING THESE TERMS

1.1 AGREEMENT

1.2 These terms set out the terms and conditions by which Quack Studios will provide the Client with the services set out in the Proposal (**Services**).

1.3 By signing a Proposal (including by electronic signature) or otherwise indicating acceptance of the Proposal or by ordering, paying or accepting any of the Services, the Client will be entering into an agreement with Quack Studios for the Services on these terms.

1.4 MEANING OF CAPITALISED WORDS AND PHRASES

Capitalised words and phrases used in these terms have the meaning given:

- (a) to that word or phrase in the Proposal;
- (b) by the words immediately preceding any bolded and bracketed word(s) or phrase(s); or
- (c) in the definitions in clauses 21 of these terms.

1.5 ORDER OF PRECEDENCE

In the event of any inconsistency between these terms and any Proposal, the clauses of these terms will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms described as such in a Proposal) will prevail over these terms to the extent of any inconsistency.

2. TERM OF AGREEMENT

These terms commence on the Commencement Date and will continue until the deliverables have been delivered or the Services otherwise completed (**Term**).

3. SERVICES

3.1 SCOPE OF SERVICES

- (d) Quack Studios will provide the Client with the Services in accordance with the Proposal.
- (e) The scope of the Services is limited to the details provided in the Proposal or otherwise agreed in writing. Quack Studios will determine, in its discretion, when the scope of each of the Services have been completed.

3.2 STARTING WORK AND SUSPENSION OF SERVICES

Quack Studios may, in its discretion:

- (a) not commence work on any Services until the Client has paid any Fees or deposit payable in respect of such Services; and
- (b) withhold delivery of Services or suspend Services until the Client has paid the invoice in respect of such Services.

3.3 CHANGES TO SCOPE

- (a) The Client must pay a 'change in scope fee', in an amount reasonably determined by Quack Studios (**Change Fee**), for changes to Services requested by the Client which alter the scope set out in the Proposal and require Quack Studios to perform additional work or incur additional costs (**Changes**).
- (b) Unless otherwise agreed in writing, Quack Studios may at its discretion extend or modify any delivery schedule or deadlines for the Services as may be reasonably required by such Changes.

- (c) Quack Studios will only be required to perform Changes, if:
 - (i) Quack Studios agrees in writing to perform the Changes;
 - (ii) the Client confirms in writing that they wish for Quack Studios to proceed with the Changes and the relevant Change Fee; and
 - (iii) the Client pays the Change Fee, in accordance with clause 9 as if it was a Fee.

4. THE SERVICES GENERALLY

4.1 DELIVERY SCHEDULES

Any delivery schedule or deadlines for the Services are indicative only.

4.2 SECURITY

Quack Studios will use its best efforts to ensure that the Client's website, application or other information or data (**Client Data**) is stored securely. However, Quack Studios does not accept responsibility or liability for any unauthorised use, destruction, loss, damage or alteration to the Client Data, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.

4.3 DISCLAIMER

The Client acknowledges and agrees that:

- (a) all information provided as part of the Services is an opinion only, based on Quack Studios's experience and best practice;
- (b) some Services may rely on other services being provided by Quack Studios. If a Service (**Initial Service**) is reliant on another service and the Client chooses not to obtain the initial service, then Quack Studios is not responsible for any delay or any other consequence that may result from the failure by the Client to obtain the initial service;
- (c) Quack Studios is not responsible for any delay in the Services that may result from any changes made by the Client (including via accident) to any part of the Services including, for example, account settings not performed or approved by Quack Studios;
- (d) Quack Studios does not guarantee any particular outcome, or any particular decision from any third party, on any issue, if the Client relies on the Services;
- (e) the Services may be affected by circumstances outside Quack Studios's control;
- (f) the Client may be required to provide instructions, feedback and input as part of the Services; and
- (g) it is the Client's responsibility to comply with applicable regulations relevant to the Client's business, including industrial relations laws and privacy laws.

4.4 REVISIONS

- (a) The Services include two (2) rounds of revisions, unless otherwise specified in the Proposal.
- (b) Any Revisions requested by the Client beyond the included rounds, or any content-heavy requests, will be quoted individually by Quack Studios and charged separately from the original Fees.
- (c) The Client must pay for any additional revisions or content-heavy requests before Quack Studios commences work on such revisions or requests.
- (d) Quack Studios reserves the right to refuse any revision requests that it deems, in its sole discretion, to be outside the scope of the original Proposal or these Terms and Conditions.

5. SPECIFIC SERVICES

5.1 SEO SERVICES

- (a) SEO services are exclusively offered for websites built by Quack Studios.

- (b) If a Proposal states that the Services include search engine optimisation services (**SEO Services**):
 - (c) the Client must provide Quack Studios access to its website and Google Ad accounts, allowing Quack Studios to sign in or be added as a user;
 - (d) Quack Studios makes no promise or guarantee regarding the effectiveness of any SEO Services. Quack Studios only endeavours to use its professional skills to deliver an incremental improvement to the Client's website traffic; and
 - (e) the Client acknowledges and agrees that the effectiveness of the SEO Services may be affected by circumstances outside Quack Studios' control, including:
 - (i) changes in the policies and/or ranking algorithms of search engines;
 - (ii) changes to the Client's account occasioned by a party other than Quack Studios; and
 - (iii) the platform that is used by Quack Studios to perform the SEO Services changing its functionality,
 and Quack Studios will not be liable for any loss or damage suffered by the Client arising from any such circumstances.
- (f) SEO work must not be outsourced or collaborated with third parties without prior written consent from Quack Studios. This includes:
 - (i) Any form of link building or backlinking activities;
 - (ii) Content creation or modification for SEO purposes;
 - (iii) Technical changes to the website structure or code;
 - (iv) Engagement with external SEO tools or platforms;
 - (v) Sharing of SEO strategy or proprietary techniques developed by Quack Studios.
- (g) The Client acknowledges that SEO results are subject to various external factors, including search engine algorithm updates, competitor activities, and industry trends. Quack Studios does not guarantee specific rankings or traffic increases but commits to employing industry best practices to improve the website's search engine visibility¹
- (h) The Client agrees to provide Quack Studios with timely access to necessary accounts, analytics, and resources required for effective SEO implementation. Failure to do so may impact the efficacy of the SEO services provided¹

5.2 WEBSITE DESIGN SERVICES

- (a) If a Proposal states that the Services include web development services, including building or customising websites (**Website Design**) the following conditions will apply unless otherwise agreed between the parties in a Proposal:
 - (i) Quack Studios reserves the right to determine the choice of programming language(s) used in the Website Design;
 - (ii) Quack Studios may add content to the Website Design. However, Quack Studios will not be responsible for inputting text, images or other content, or creating all pages in the content management system of Website Design;
 - (iii) if Quack Studios is required to purchase the website domain on the Client's behalf, Quack Studios will not hand over access to that domain until the Client has made final payment for the domain to Quack Studios;
 - (iv) Quack Studios will not provide any graphics for the Website Design, and if Quack Studios requires the Client to provide graphics, the Client must provide Quack Studios with graphic files in an editable, high resolution, vector digital format;
 - (v) Quack Studios only tests websites in desktop resolution in the following web browsers: Apple Safari, Google Chrome, Microsoft Edge and Mozilla Firefox;

- (vi) Quack Studios only tests websites mobile responsiveness on iOS Safari and Google Chrome on Android phones; and
- (vii) the Client must at all times cooperate with Quack Studios, including by providing prompt and clear instructions in relation to the Website Design.

5.3 GRAPHIC DESIGN

If the Client requires Quack Studios to use content, graphics or other material belonging to a third party as part of a graphic design, the Client must acquire a licence to use such designs, whether for a fee or otherwise, and indemnifies Quack Studios in relation to any loss or damage that may arise in connection with a breach of this clause.

5.4 COPYWRITING SERVICES

If a Proposal states that the Services include copywriting services, the following conditions will apply unless otherwise agreed between the parties in a Proposal:

- (a) the Client must provide Quack Studios with clear briefs and guidelines for the desired content;
- (b) the Client agrees to review and provide feedback on content drafts within 5 business days of receipt;
- (c) the Client is entitled to two rounds of revisions per piece of content, unless otherwise specified in the Proposal, as per clause 4.4.
- (d) Quack Studios reserves the right to refuse any content requests that it deems, in its sole discretion, to be illegal, unethical, or potentially damaging to its reputation;
- (e) the Client acknowledges that Quack Studios retains copyright in all content created as part of the copywriting services until final payment is received, at which point copyright will transfer to the Client; and
- (f) Any revisions or additional pages requested beyond the agreed scope will be quoted individually and subject to separate approval, as per clause 4.4.

5.5 HOSTING

If a Proposal states that the Services include website hosting services, the following conditions will apply unless otherwise agreed between the parties in a Proposal:

- (a) Quack Studios will perform monthly backups of the Client's website data;
- (b) Basic security measures, including SSL certificates and malware scanning, will be implemented as part of the hosting services;
- (c) The Client remains responsible for maintaining and updating their website content;
- (d) Quack Studios reserves the right to charge additional fees for excessive bandwidth usage or storage requirements, as determined by Quack Studios in its reasonable discretion.
- (e) Hosting services must be provided by Quack Studios unless otherwise agreed upon in writing. Should the Client opt for external hosting arrangements:
 - (i) such arrangements must be explicitly agreed upon in writing by both parties;
 - (ii) Quack Studios shall not be held liable for any security breaches, hacks, performance issues, or data loss arising from external hosting;
 - (iii) the Client assumes full responsibility for ensuring the external host meets necessary security and performance standards;
 - (iv) Quack Studios reserves the right to charge additional fees for any extra work required due to external hosting complications; and
 - (v) the Client agrees to provide Quack Studios with necessary access and permissions to the external hosting environment for the purpose of delivering agreed-upon Services.
- (i) Quack Studios strongly recommends against external hosting to ensure optimal performance, security, and seamless integration of our Services.

5.6 MAINTENANCE PACKAGE

If a Proposal states that the Services include a maintenance package, the following conditions will apply unless otherwise agreed between the parties in a Proposal:

- (a) Maintenance packages are optional and include:
 - (i) Essentials Plan at \$149 per month
 - (ii) QuackCare (Premium Package) at \$329 per month

The Client may select their preferred maintenance package based on their specific business needs and budget requirements.
- (b) For the selected maintenance package, Quack Studios will:
 - (i) perform monthly website updates and security patches;
 - (ii) conduct regular performance optimization;
 - (iii) provide up to 2 hours of content updates or minor design changes per month (for Essentials and QuackCare plans);
 - (iv) offer 24/7 monitoring for website uptime;
 - (v) deliver monthly analytics reports to the Client.
- (c) Unused hours do not roll over to subsequent months.
- (d) Any work required beyond the scope of the selected maintenance package will be charged at Quack Studios' standard hourly rate.
- (e) Payment for maintenance packages shall be facilitated via direct debit (preferred) or invoicing, as mutually agreed upon by both parties.
- (f) Quack Studios reserves the right to suspend maintenance services if payment is not received by the due date.
- (g) The Client acknowledges that declining maintenance services may result in:
 - (i) increased vulnerability to security threats;
 - (ii) decreased website performance and functionality; or
 - (iii) potential compatibility issues with third-party plugins or services.
- (h) Quack Studios shall not be liable for any issues, damages, or losses arising from:
 - (i) the Client's decision to decline maintenance services; or
 - (ii) unauthorised modifications made to the website by the Client or third parties.
- (i) Quack Studios may, at its discretion, offer promotional rates or bundled packages for maintenance services, subject to separate terms and conditions.
- (j) The Client may upgrade or downgrade their maintenance package with 30 days' written notice, subject to pro-rata adjustments in billing.

6. DOMAIN MANAGEMENT

6.1 DOMAIN REGISTRATION AND OWNERSHIP

- (a) Quack Studios may register domain names on behalf of the Client, subject to additional fees as specified in the Proposal.
- (b) The Client shall be the legal registrant and owner of any domain names registered on their behalf, unless otherwise agreed in writing.

6.2 DOMAIN TRANSFERS

- (a) Domains can be transferred to Quack Studios for management purposes.
- (b) Once transferred, domains shall not be transferred to external parties without prior written agreement from Quack Studios.
- (c) Quack Studios reserves the right to charge a fee for domain transfers, as specified in the Proposal or communicated to the Client in writing.

6.3 DOMAIN MANAGEMENT

While hosted with Quack Studios, Quack Studios retains administrative control over the domain until final payment for all associated services is received.

6.4 DOMAIN RENEWAL

- (a) Quack Studios will use reasonable efforts to renew domains on behalf of the Client, provided the Client's account is in good standing.
- (b) The Client is responsible for all renewal fees, which will be invoiced separately from other services.

6.5 TERMINATION OF DOMAIN SERVICES

- (a) Upon termination of the Services and receipt of final payment, Quack Studios will transfer administrative control of the domain to the Client or their designated representative.
- (b) The Client is responsible for providing accurate and up-to-date contact information for domain transfers.

6.6 LIABILITY

- (a) Quack Studios shall not be liable for any loss or damage resulting from the expiration, suspension, or loss of a domain name due to circumstances beyond its reasonable control.
- (b) The Client is responsible for ensuring compliance with all applicable domain registration policies and regulations.

7. DEADLINES AND SUPPORT

- (a) Estimated project completion is contingent on the Client providing all required information within 5 business days of request. The Client acknowledges that delays in client response may impact deadlines. While Quack Studios provides estimated timeframes, it does not guarantee specific completion dates due to potential variables outside its control.
- (b) For the avoidance of doubt, no guaranteed deadlines shall apply unless explicitly agreed upon in writing by both parties prior to commencement of the Services.
- (c) The Client may request expedited completion for an additional fee of 50% of the original project cost. For guaranteed timeframes, a separate clause will be drafted into the Proposal and agreed upon by both parties.
- (d) Quack Studios will provide 14 days of aftercare support following completion of the Services. This support covers minor adjustments and clarifications related to the delivered work.
- (e) Quack Studios will respond to Client communications within 24–48 business hours. If the Client delays providing necessary information or feedback for more than 10 business days, Quack Studios reserves the right to increase costs by 10% or apply scope change fees in accordance with clause 3.3, to be determined on a case-by-case basis.
- (f) If Quack Studios receives no communication from the Client for 21 consecutive calendar days, the project will be frozen. A reactivation fee of \$450 + GST will be charged to resume work on the project.

8. CLIENT OBLIGATIONS

8.1 PROVIDE INFORMATION

- (g) The Client must provide Quack Studios with all documentation, information and assistance, reasonably required by Quack Studios to perform the Services.
- (h) If required, the Client must promptly provide any instructions, feedback and input, and action any requests made by Quack Studios (for example to verify a telephone number) that are reasonably required as part of the Services. In some cases Quack Studios cannot provide the Services unless it has instructions, feedback and input from the Client or if the Client does not action any requests made by Quack Studios. Quack Studios will

not be liable for any delay in the Services that result from a delay in the Client providing instructions, feedback or input or actioning of any requests.

- (i) The Client warrants that all information, documentation and other Material (defined in clause 13) it provides to Quack Studios for the Services, including company information, marketing information, financial records and commercial information, is complete, accurate, compliant with any applicable laws and industry regulations, and up-to-date.

8.2 ACCESS

The Client agrees to provide Quack Studios with access to the Client's:

- (a) premises;
- (b) Personnel;
- (c) website; and
- (d) any accounts used by the Client (including login details and passwords),

as reasonably required by Quack Studios to perform the Services.

8.3 COMPLIANCE WITH LAWS

The Client agrees that it will not by receiving or requesting the Services:

- (a) breach any applicable laws, rules and regulations (including any applicable privacy laws); or
- (b) infringe the intellectual property rights or other rights of any third party or breach any duty of confidentiality.

8.4 INSURANCE

The Client must ensure that it effects and maintains adequate insurance to cover the Client's risks and liabilities under these terms and any activities undertaken by the Client in connection with these terms including as applicable business insurance, professional indemnity insurance, errors and omissions insurance and public liability insurance.

9. THIRD PARTY TERMS & CONDITIONS

- (a) If the Services involve Quack Studios acquiring goods and services supplied by a third party on the Client's behalf, the Client acknowledges that third party terms & conditions (**Third Party Terms**) may apply.
- (b) The Client agrees to any Third Party Terms applicable to any third party goods and services that are used in performing the Services and Quack Studios will not be liable for any loss or damage suffered by the Client in connection with such Third Party Terms.

9.1 HOSTED SERVICES

- (c) If a Proposal states that the Services include services to host the Client's website, application or other information or data (**Hosted Services**), the following terms apply unless otherwise specifically agreed in writing:
 - (i) (**hosting location**) The Client acknowledges that Quack Studios uses storage servers that may be located outside Australia;
 - (ii) (**service quality**) While Quack Studios will use its best efforts to select an appropriate hosting provider, it does not guarantee that:
 - A. the Hosting Services will be free from errors or defects; or
 - B. the Hosting Services will be accessible or available at all times;
 - (iii) (**backups & disaster recovery**) Quack Studios will use its best efforts to create scheduled daily backups of Client Data stored by Quack Studios. In the event that Client Data is lost due to a system failure (e.g. a database or webserver crash), Quack Studios will attempt to restore the Client Data from the latest available backup, but cannot guarantee that this backup will be free from errors or defects.

- (iv) **(troubleshooting)** Quack Studios's Hosted Services does not include troubleshooting or fixing application or data-based failures and additional fees may apply for these sorts of services.

10. PAYMENT

10.1 FEES

- (a) The Client must pay the Fees in the amounts, and on or before the Due Date, set out in the Proposal. Unless otherwise specified in the Proposal, the following payment milestones will apply:
 - (i) 50% of the total Fees are due upon the Client signing the Proposal;
 - (ii) 30% of the total Fees are due upon design approval, which is deemed to have occurred when the Client signs off on the design; and
 - (iii) the remaining 20% of the total Fees are due upon project completion, as determined by Quack Studios in its sole discretion.
- (b) Any additional changes requested by the Client after project completion will be subject to additional costs, to be determined by Quack Studios and agreed upon by the Client in writing before such changes are implemented.
- (c) Client agrees to pay all Fees in accordance with the payment schedule outlined in the Proposal. A late payment fee of 10% per month may be applied for payments not received within 15 days of the due date.
- (d) To the maximum extent permitted under the *Competition and Consumer Act 2010* (Cth), any Fees paid in accordance with these terms are non-refundable.
- (e) If there is no Due Date set out in the Proposal in relation to a Fee, that Fee must be paid at the time set out in the relevant invoice issued by Quack Studios.
- (f) If an invoice issued by Quack Studios does not set out a Due Date, then payment will be due within 14 days from the date of that invoice.

10.2 DEPOSIT

Quack Studios may charge a deposit, which will represent 50% of the quoted amount in the Proposal (**Deposit**). If a Proposal stipulates that a Deposit is payable, the Client must make payment of the Deposit prior to Quack Studios commencing the Services.

10.3 DIGITAL ADVERTISING SPEND

- (a) The Fees do not include digital advertising spend (**Ad Spend**) and the Client will be responsible for paying these amounts directly to the relevant platform.
- (b) If requested by Quack Studios, the Client must provide Quack Studios with its credit card, direct debit or bank details for the purposes of making Ad Spend on the Client's behalf.
- (c) The Client consents to Quack Studios using of the Client's credit card, direct debit or bank details on its behalf to make payments for Ad Spend.

10.4 OUT OF SCOPE FEE

- (d) For any work that falls outside the agreed scope of the project as defined in the Proposal, Quack Studios will charge an hourly fee of \$160.
- (e) For out-of-scope work requiring guaranteed timing, Quack Studios reserves the right to charge double the standard hourly rate, being \$320 per hour.
- (f) Quack Studios will clearly communicate any out-of-scope work to the Client before commencement. Written approval from the Client will be required before proceeding with such work.
- (g) Out-of-scope work will be invoiced separately.

10.5 EXPENSES

The Client will bear:

- (h) any expenses agreed in the Proposal; and
- (i) any third-party costs incurred by Quack Studios in the course of performing the Services unless otherwise provided for in the Proposal.

10.6 GST

Unless otherwise indicated, amounts stated in the Proposal do not include GST. In relation to any GST payable for a taxable supply by Quack Studios, the Client must pay the GST subject to Quack Studios providing a tax invoice.

11. ACCREDITATIONS

Unless otherwise agreed:

- (a) all deliverables provided to the Client as part of the Services (**Deliverables**) must, if requested by Quack Studios, bear an accreditation and/or a copyright notice including Quack Studios's name in the form, size and location as directed by Quack Studios; and
- (b) Quack Studios retains the right to describe, in detail, the Services (including data related to the Services and the results of any Services) and reproduce, publish and display the Deliverables, in Quack Studios' portfolios, website and other marketing and promotional material and to be credited with authorship of the Services and Deliverables.

12. CONFIDENTIALITY

- (a) Except as contemplated by these terms or the Proposal, a party must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose to any person any Confidential Information disclosed to it by the other party without its prior written consent.
- (b) The Client acknowledges and agrees that all proposals, quotes, and pricing information provided by Quack Studios is Confidential Information. The Client shall not disclose, share, or distribute these documents to any third parties without the prior written consent of Quack Studios.
- (c) The obligations in this clause survive the termination of this Agreement.
- (d) This clause does not apply to:
 - (i) information which is generally available to the public (other than as a result of a breach of these terms or another obligation of confidence);
 - (ii) information required to be disclosed by any law; or
 - (iii) information disclosed by Quack Studios to its subcontractors, outsourced workers, employees, cloud storage providers or agents for the purposes of performing the Services or its obligations under these terms.
- (e) If a party is required by law to disclose Confidential Information, it must promptly notify the other party in writing.
- (f) Upon termination of this Agreement or upon request, each party must return or destroy all Confidential Information of the other party.
- (g) The parties acknowledge that damages may not be a sufficient remedy for breach of this clause and agree that either party is entitled to seek injunctive relief for such a breach.

13. INTELLECTUAL PROPERTY AND COPYRIGHT

13.1 DEFINITIONS

In this clause 13, the following terms have the following meanings in relation to Intellectual Property Rights:

- (a) **Existing Material** means Material of either party, other than New Material;

- (b) **Material** means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever; and
- (c) **New Material** means Material that is created, written, developed or otherwise brought into existence as part of the Services.

13.2 EXISTING MATERIAL

- (a) Except to the extent otherwise set out in the Proposal or in this clause 13:
 - (i) each party retains ownership of the Intellectual Property Rights in its Existing Material; and
 - (ii) nothing in these terms transfers ownership of, or assigns any Intellectual Property Rights in, either party's Existing Material to the other party.
- (b) The Client grants to Quack Studios (and its Personnel) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use its Existing Material to the extent reasonably required to perform any Services.
- (c) The Client warrants that Quack Studios' use of the Client's Existing Material will not infringe the Intellectual Property Rights of any third party and will indemnify Quack Studios from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement.
- (d) Quack Studios grants to the Client a non-exclusive, royalty free, non-transferable and revocable licence to use its Existing Material, to the extent:
 - (iii) such Existing Material is incorporated into the New Material; and
 - (iv) such use is reasonably required for the Client to enjoy the benefit of the Services.

13.3 NEW MATERIAL

- (a) Unless otherwise set out in the Proposal, Intellectual Property Rights in New Material are assigned to and vest in the Client upon Quack Studios receiving payment of the relevant Fees for the New Material.
- (b) The Client grants to Quack Studios a perpetual, irrevocable, transferable, worldwide and royalty-free licence (including the right to sublicense) to use, copy, modify and adapt the New Material.

13.4. COPYRIGHT

All original works created by Quack Studios as part of the Services are protected by copyright upon creation. Upon full payment for these Services, Quack Studios grants the Client a non-exclusive license to use these works for their intended business purposes. Quack Studios retains all copyright ownership of these works but allows the Client to use them as specified herein.

14. WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in these terms are excluded.
- (b) Nothing in these terms is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (ACL). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

15. LIMITATION OF LIABILITY

- (a) **(Limitation of liability)** To the maximum extent permitted by applicable law, the maximum aggregate liability of either party in respect of loss or damage sustained by the other party under or in connection with these terms is limited to the total Fees paid to Quack Studios by the Client in the 6 months preceding the first event giving rise to the relevant liability.

- (b) **(No liability exception)** The Client releases Quack Studios from all liability in relation to any loss or damage arising out of or in connection with the Services, to the extent such loss or damage is caused or contributed to by information, documentation or any other Material provided by the Client being incomplete, inaccurate or out-of-date.
- (c) **(Indemnity)** The parties agree at all times to indemnify and hold harmless each other and their officers, employees and agents ("**those indemnified**") from and against any loss (including reasonable legal costs) or liability incurred or suffered by any of those indemnified where such loss or liability was caused or contributed to by Quack Studio or the Clients (or their officers', employees' or agents'):
 - (i) breach of any term of these terms;
 - (ii) breach of any third party intellectual property rights; or
 - (iii) negligent, fraudulent or criminal act or omission.
- (d) **(Consequential loss)** The parties will not be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with these terms or any goods or services provided by Quack Studios, except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth) or any other applicable law.

16. TERMINATION

16.1 BY QUACK STUDIOS

- (a) Quack Studios may terminate this agreement immediately by written notice to the Client if:
 - (i) the Client fails to pay any amount due under this agreement within 14 days after the due date;
 - (ii) the Client fails to respond to Quack Studios' communications for a period exceeding 21 days;
 - (iii) the Client breaches any material provision of this agreement and fails to remedy such breach within 14 days after receiving written notice from Quack Studios requiring the breach to be remedied; or
 - (iv) the Client becomes insolvent, enters into administration, or any step is taken towards its dissolution.
- (b) Upon termination by Quack Studios under this clause:
 - (i) all unpaid Fees for Services rendered up to the date of termination shall become immediately due and payable;
 - (ii) no refunds shall be provided, except where required under applicable Australian Consumer Law;
 - (iii) Quack Studios may retain any Deliverables not yet provided to the Client.

16.2 BY CLIENT

- (a) The Client may terminate this agreement by providing Quack Studios with 30 days' written notice.
- (b) Upon termination by the Client under this clause:
 - (i) the Client remains liable for all Fees for Services rendered up to the date of termination;
 - (ii) the Client must pay for any non-cancellable expenses incurred by Quack Studios in anticipation of performing the Services;
 - (iii) Quack Studios shall deliver any completed Deliverables upon receipt of full payment for all outstanding Fees.

16.3 ACCRUED RIGHTS AND LIABILITIES

The expiration or termination of these terms will not prejudice any accrued rights or liabilities of either party, nor excuse either party from a breach of these terms occurring prior to expiration or termination of these terms.

16.4 CONSEQUENCES OF EXPIRATION OR TERMINATION

Upon expiration or termination of these terms and in addition to any consequences of termination set out in clauses 16.1 or 16.2:

- (c) Quack Studios will refund any amounts paid by the Client for Services not provided as at the date of termination;
- (d) Quack Studios will retain any New Material (defined in clause 13) to the extent that the Client has not paid the Fee for the New Material;
- (e) the Client must pay all amounts owed for Services already provided as at the date of termination;
- (f) each party must return all property of the other party to that other party; and
- (g) each party must immediately return to each other party, or (if requested by that party) destroy, any documents in its possession or control containing Confidential Information of the other party.

16.5 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of these terms will survive and be enforceable after such termination or expiry.

17. DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (a) A party that requires resolution of a dispute which arises under or in connection with this agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (b) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

18. NOTICES

- (a) A notice or other communication to a party under these terms must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in these terms, or if no email address is specified in these terms, then the email address most regularly used by the parties to correspond regarding the subject matter of these terms as at the date of these terms (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (iii) 24 hours after the email was sent; or
 - (iv) when replied to by the other party,whichever is earlier.

19. FORCE MAJEURE

- (a) If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under these terms (other than an obligation to pay money) due to a Force Majeure Event, the Affected Party must give to the other party prompt written notice of:
 - (i) reasonable details of the Force Majeure Event; and
 - (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.
- (b) Subject to compliance with clause 19(a), the relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (c) The Affected Party must use its best endeavours to overcome or remove the Force Majeure Event as quickly as possible.
- (d) For the purposes of these terms, a '**Force Majeure Event**' means any:
 - (iii) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (iv) strikes or other industrial action outside of the control of the Affected Party;
 - (v) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
 - (vi) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of the Affected Party, to the extent it affects the Affected Party's ability to perform its obligations.

20. GENERAL

20.1 GOVERNING LAW

These terms is governed by the law applying in Queensland, Australia.

20.2 JURISDICTION

Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts of appeal from them in respect of any proceedings arising out of or in connection with these terms. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

20.3 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under these terms without the prior consent of each other party (such consent not to be unreasonably withheld).

20.4 AMENDMENTS

These terms may only be amended by a document signed by each party.

20.5 WAIVER

No party to these terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

20.6 FURTHER ACTS AND DOCUMENTS

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to these terms.

20.7 ENTIRE AGREEMENT

These terms embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of these terms.

20.8 INTERPRETATION

- (a) (**singular and plural**) words in the singular includes the plural (and vice versa);
- (b) (**defined terms**) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (c) (**person**) a reference to "person" or "you" includes an individual, the estate of an

individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;

- (d) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) **(these terms)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of these terms, and a reference to these terms includes all schedules, exhibits, attachments and annexures to it;
- (f) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (g) **(includes)** the word "includes" and similar words in any form is not a word of limitation; and
- (h) **(adverse interpretation)** no provision of these terms will be interpreted adversely to a party because that party was responsible for the preparation of these terms or that provision.

21. DEFINITIONS

In these terms, the following words and phrases have the following meaning:

Term	Meaning
Commencement Date	Means the date at which the Client signs or otherwise accepts the Proposal.
Confidential Information	Information of, or provided by, a party that is by its nature confidential information, is designated as confidential, or that the recipient of the information knows or ought to know is confidential (including all commercial information exchanged between the parties), but does not include information which is, or becomes, without a breach of confidentiality, public knowledge.
Client	Means the Client set out in the Proposal.
Due Date	Means the dates by which the Fees must be paid as set out in the Proposal, or as required by any invoice that Quack Studios issues to the Client for the Services.
Proposal	Means the proposal provided to the Client by Quack Studios that sets out specific services to be provided.
Fees	Means the amount payable for the Services and set out in the Proposal.
Initial Term	Means the initial contract period as set out in the Proposal.
Intellectual Property Rights	All copyright, trade mark, design, patent, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of these terms both in Australia and throughout the world.
Personnel	Employees, secondees, agents and subcontractors (who are individuals), including employees and contractors (who are individuals) of subcontractors.
Quack Studios	means Jonjic Schwantes Holdings Pty Ltd ABN 64 666 965 000 trading as Quack Studios
Services	means the services that Quack Studios will provide to the Client as set out in the Proposal.