

Llama Creative Studio

General Terms & Conditions



Lisa Wallington trading as Llama Creative Studio (the **Service Provider**) is offering to enter into a Creative Design Services Agreement with you (the **Client**) comprising the following documents (described as **"this agreement"**):

- a) Welcome Kit;
- b) Project Scope (including all variations to the Project Scope approved by both of us from time to time);
- c) General Terms and Conditions; and
- d) Such other special conditions we agree in writing.

1 Services

1.1 Commencement and Term

The Service Provider will commence the Services on the Commencement Date or other agreed date and the Services end when the Project is completed, or such other date agreed in writing.

1.2 Services

The Service Provider will provide the Services to the Client under the terms of the Welcome Kit and this agreement. The decision to implement our advice, creative design concept or recommendation is at the sole discretion of the Client. The engagement is as a business consultant only.

1.3 Service levels

The Service Provider will use its best efforts to ensure that the performance and quality of the Services are reasonably equivalent to the performance and quality of similar services provided by competitors.

1.4 Reporting

- a) The Service Provider will provide the Client with reports on Deliverables and regarding any issues identified by the Service Provider during provision of the Services.
- b) The Service Provider must immediately notify the Client if it becomes aware of any issue that will prevent the Service Provider completing the Services on time and within budget (if applicable).

1.5 Service Provider co-operation

The Service Provider will co-operate with the Client's employees or representatives and any other service provider appointed by the Client to perform any services related to the Services.

If the Client is an organisation, unless otherwise agreed, the Service Provider may also act on instructions from any single director, the CEO or any other employee who is apparently authorised to give instructions without having to confirm those instructions with anyone else in the organisation.

Where the Client appoints a representative or intermediary (e.g. an officer, employee, accountant, financial advisor or consultant) to give instructions, the Client agrees:

- a) the Service Provider can act on instructions from that representative or intermediary without confirming these instructions with the Client or communicating them to the Client; and
- b) the representatives or intermediary receives, and is authorised to receive as the Client's agent, documents and other communications from the Service Provider.

2 Obligations of Service Provider

2.1 Personnel

The Service Provider will ensure that the Services are provided by qualified and competent personnel (including sub-contractors appointed in writing).

2.2 Compliance

Even if instructed otherwise, the Service Provider will comply with all laws applicable to this engagement and the performance of services to the Client, including:

- Patents Act 1990
- Patents Regulations 1991
- Trade Marks Act 1995
- Trade Marks Regulations 1995
- Designs Act 2003
- Designs Regulations 2004
- Copyright Act 1968

The Client agrees to provide, or cause others to provide, any information required by the Service Provider for those purposes in a timely manner.

2.3 Client requirements

Subject to clause 3.1, the Service Provider will comply with all reasonable requirements of the Client, including operational procedures relevant to the Services.

2.4 Tax

- a) Subject to clause 3.3, all payments made by a party under this agreement will be made free and clear of and without deduction for or on account of tax.

- b) The Service Provider has all liability in respect of any other duties, taxes or levies or imposts which may be imposed upon the Service Provider under or by virtue of this agreement or any transaction, matter or thing referred to in this agreement.

- c) Unless otherwise stated, all fees, commissions, disbursements and other charges are stated on a GST exclusive basis. The Client will be treated as the recipient of the supplies made and the Service Provider will determine the GST payable on the supply of services based on the Client's legal status and the nature of the work and will add an amount to all invoices on account of that GST. The Client agrees that, unless the amount payable is specifically stated to be inclusive of GST, the Client will pay to the Service Provider the additional amount on account of any GST that the Service Provider is liable to pay as a result of any supply made to the Client.

3 Obligations of the Client

3.1 Information & systems access

The Client will ensure the Service Provider is promptly provided with all necessary information and systems access (including copies of relevant policies and other materials) to provide the Services. The Service Provider may rely on the accuracy of the information provided by the Client.

3.2 Charges

The Client will pay the Service Provider the fees in accordance with the Welcome Kit, the Project Scope and all invoices issued by the Service Provider.

3.3 Invoices

On each of the days on which a deliverable is achieved, the Service Provider will provide the Client with an invoice for fees payable by the Client in relation to that deliverable. For a tax invoice to be valid, it must be:

- a) addressed to the Client's Representative; and
- b) accompanied by supporting documentation in respect of Services provided, (including a summary of the Services performed) in the agreed format.

3.4 Payment of invoices

The Client will pay the amount of any correctly rendered and valid invoice within 7 days after the date of receipt by the Client of that invoice.

3.5 Right to charge interest

Should the Client fail to pay the Service Provider's invoice within 7 days of the date of issue then the Service Provider reserves the right to charge interest on the unpaid amount at the rate set down by the Uniform Civil Procedure Rules 1999 as the total applicable rate which can be applied by a Judge of the Supreme Court of Queensland as at the date of the invoice plus 2 percentage points until the date of repayment in full.

The Service Provider may withhold the provision of the Services until paid in full.

3.6 Engaging other service providers

The Client agrees the Service Provider can engage other service providers as an agent as part of this engagement, as detailed in the Project Scope or as otherwise agreed to in writing by the parties. The Client will be responsible for payment of fees and charges of such service providers and must repay any amount paid by the Service Provider on the Client's behalf.

To the extent permissible by law, the Service Provider may be liable to the Client for any mistakes made in the instructions to service providers, but the Service Provider will not be liable for the other service providers' work or how they carry out their instructions. Further, the Service Provider does not accept responsibility for the selection of any service provider and gives no warranty as to the ability of the service provider to appropriately carry out the task for which they are engaged or as to the quality of the work that such service provider will perform.

3.7 Engaging Specialist Advisors and Third-Party Suppliers

The Service Provider will discuss with the Client any recommendation to engage a specialist advisor or third-party supplier outside of the Project Scope.

Unless otherwise agreed in writing, any invoice provided by a specialist advisor or third-party supplier will be paid by the Client prior to the provision of the product or service by the third-party supplier.

4 Term and Termination

4.1 Term

This agreement commences under clause 1.1 and will continue until terminated under clauses 4.3 or 4.4 or as agreed.

4.2 Suspension of work

The Service Provider may, at any time, suspend work on the Client's matter, or withhold the release of work performed under this agreement or retain Intellectual Property Rights to the work performed until the Client pays all invoices for all matters in respect of which the Client has engaged the Service Provider that have been outstanding for 7 days or more. The Service Provider accepts no liability where the Client has failed to pay invoices by the due date and urgent services are required.

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4.3 Termination without cause

Neither party may terminate this agreement by giving the other party advance notice without cause.

4.4 Termination with cause

This Agreement may only be terminated by either party immediately should:

- the other party breach the terms of this agreement and fail to rectify the breach within 14 days of receipt of notice; or
- the other party become insolvent.

4.5 Obligations on Termination

Upon termination of this agreement, provided the Client has paid all outstanding invoices, the Service Provider will promptly deliver to the Client all:

- Client Confidential Information; and
- other property of the Client or the Client's customers relating to the Services,

in the possession, power or control of the Service Provider or any of its representatives. The Service Provider is permitted to retain copies of Client Confidential Information to meet professional standards or requirements, subject to the Service provider maintaining confidentiality of Client Confidential Information in clause 8.

4.6 Termination rights

In the event of the termination of this agreement then the Client will immediately pay all outstanding invoices payable under this agreement. This amount of the outstanding invoices will be a liquidated amount.

5 Right to develop & engage

5.1 Authority

In agreeing to provide the Services described in this agreement the Service Provider relies on the Client either having the full authority to engage it to provide the Services as a result of the Client being either the owner of the business or being engaged as authorised representative of the business described in the Project Scope.

6 Records

6.1 Record keeping

The Service Provider will keep accurate records and documentation relating to Services provided under this agreement;

6.2 Information

From time to time during and after the term of this agreement:

- the Client; or
- a court, government body, agency or authority,

may require information or documents in the possession or control of the Service Provider relating to the performance of Services and the Client authorises the production of such material by the Service Provider where it is legally obliged to provide same.

6.3 Archiving & Destruction of records

The Service Provider will retain copies of records obtained while working with the Client. The records will be retained by the Service Provider in a physical and/or electronic format. The Service Provider will backup copies of electronic files and retain these copies in a safe location which may include a cloud based data storage system. Reasonable steps will be taken to maintain data security of the Client's records. At the end of this matter the Service Provider can return to the Client copies of all records.

7 Intellectual Property

7.1 Use of all necessary rights

- The Service Provider will ensure that it has all necessary Intellectual Property Rights and licenses to intellectual property subsisting in any matter, thing or process (including, hardware and software) developed by the Service Provider when providing Services to the Client under this agreement.
- The Client warrants that it holds all necessary licenses to use Intellectual Property Rights subsisting in any matter, thing or process (including hardware and software) used or to be used by the Client when engaging the Service Provider.

7.2 Ownership of Intellectual Property

Unless otherwise agreed by the parties in writing, the Service Provider will retain ownership of all intellectual property in any modification, adaptation or development of any matter, thing or process (including hardware and software) carried out by the Service Provider at the request and at the cost of the Client or otherwise in connection with the provision of the Services under this agreement.

7.3 Transfer of Intellectual Property Created by Service Provider

Upon payment of the invoice issued at the final deliverable, subject to clause 7.4, ownership of all Intellectual Property in the works created by the Service Provider during the Project will be assigned to the Client. This act of assignment of Intellectual Property Rights of the works will be confirmed when the

receipt is issued to the Client, and at that time, the Client assumes full copyright and reproduction rights. However, the Service Provider retains personal rights to use completed projects and concept artwork for the purpose of marketing of the Service Provider, including, but not limited to displaying images on the Service Provider's website, Instagram or Facebook page, and in its portfolio of works to be supplied to clients and prospective clients.

7.4 Intellectual Property not included in Transfer.

The following items are not included in the Intellectual Property assigned to the Client under clause 7.3:

- Editable source files for the artwork and design created by the Service Provider during the Project;
- The right for the Client or any other person to create derivative artwork or design from the source files created by the Service Provider during the Project.

8 Confidentiality

8.1 Disclosure of Confidential Information

A party:

- will not disclose Confidential Information of the other party to any person except as permitted by this agreement;
- will not make, assist or permit any person (including its representatives) to make any unauthorised use, disclosure or reproduction of the Confidential Information of the other party;
- will take:
 - reasonable efforts to ensure that any person who has access to the Confidential Information of the other party does not make any unauthorised use, reproduction or disclosure of that information; and
 - reasonable steps to enforce the confidentiality obligations imposed or required to be imposed by this agreement including, diligently prosecuting at its cost, any breach or threatened breach of such confidentiality obligations by a person to whom it has disclosed the Confidential Information and, where appropriate, make applications for interim or interlocutory relief; and
- will co-operate with the other party in any action which the other party may take to protect the confidentiality of its Confidential Information.

8.2 Permitted disclosures

- The Service Provider may not disclose Client Confidential Information to a representative, unless disclosure is necessary for the purposes contemplated by this agreement and subject to:
 - obtaining the prior written consent of the Client to such disclosure; and
 - the execution by the representative of an undertaking in a form approved by the Client, before the disclosure of any Client Confidential Information to the representative.
- The Service Provider may disclose Client Confidential Information to an officer or employee of the Service Provider requiring the information for purposes contemplated by this agreement but only to the extent necessary for the relevant purpose.
- The Client may disclose Service Provider Confidential Information to a representative, employee or officer of the Client requiring the information for the purposes contemplated by this agreement but only to the extent necessary for the relevant purpose.
- A party may disclose Confidential Information of the other party to its legal advisers in order to advise the first-mentioned party in relation to its rights under this agreement, but only to the extent necessary for that purpose.

8.3 Disclosures required by law

A party may disclose Confidential Information of the other party:

- to the extent required by law or by a lawful requirement of any government body, agency or authority; or
- if required in connection with legal proceedings relating to this agreement,

but in each case, subject to the first mentioned party giving the other party sufficient notice of any proposed disclosure to enable that other party to seek a protective remedy to prevent the disclosure.

9 Privacy

The Service Provider agrees with respect to all Client Confidential Information provided under this agreement which comprises personal information about the Client's Customers:

- to comply with those provisions of the *Privacy Act 1988* (Cth) as amended from time to time;
- to take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
- immediately notify the Client when the Service Provider becomes aware of a breach of this clause 9;



- d) to indemnify the Client in respect of any loss, liability or expense suffered or incurred by the Client arising out of or in connection with a breach of the obligations of the Service Provider under this clause 9.

10 Liability limit

- a) The aggregate liability of the Service Provider to the Client (whether for a breach of this agreement, in negligence or otherwise) under or in relation to this agreement is limited to the fee stated in the Project Scope.
- b) Under no circumstances will one party be liable to the other for consequential or economic loss or damage suffered as a result of a breach of the agreement.

11 Review

The parties agree to undertake a regular review of the Services and to use reasonable efforts in good faith to resolve any issue or matter which may lead to a dispute in connection with this agreement.

12 General

12.1 Assignment or novation as corporate restructure

The Service Provider may assign or novate any of its rights under this agreement without the prior written consent of the Client, where it is a corporate restructure event.

12.2 Assignment by the parties

Subject to clause 12.1, the parties may not assign this agreement at any time, without the prior written consent of the other party.

12.3 No agency or partnership

Except as expressly provided in this agreement, nothing in this agreement shall be deemed to constitute either party as the agent, partner or joint venturer of the other.

12.4 Waiver and variation

A provision of or a right created under this agreement may not be:

- a) waived, except in writing signed by the party granting the waiver; or
- b) varied, except in writing signed by the parties.

12.5 Survival

The provisions of clauses 5, 7, 8, 9, 10 and 12.5 survive the termination or expiration of this agreement.

12.6 Governing law

This agreement will be governed by and construed in accordance with the laws in force in the State of Queensland, Australia.

Where the Services are or will be wholly or primary provided in another jurisdiction, or where the Services have a substantial connection with another jurisdiction, the Client has the right to:

- a) enter into a costs agreement with the Service Provider on the basis that a corresponding law of that other jurisdiction applies to their matter; or
- b) notify the Service Provider in writing, within any time limits imposed by the corresponding law, that they require the law of another jurisdiction to apply to this costs agreement.

12.7 Email and electronic communication

The Service Provider may (unless instructed by the Client to the contrary) use email and other forms of electronic or digital communication with the client and third parties for provision of information, advice, opinions and copies of documents.

Email and other forms of electronic or digital communication may be interfered with, contain computer viruses or other defects, or may not be successfully replicated on other systems. To the extent permitted by law, the Service Provider will not be liable for any copying, recording, reading or interference, for any delay or non-delivery of any communication or for any damage caused in connection with the transmission. The Client will advise immediately if they have any doubts about the authenticity of any communications or material that appears to have been sent by the Service Provider.

12.8 Contribution to loss

If the Client makes a claim against the Service Provider for loss or damage arising from acts or omissions (including for negligence), then the Service Provider's liability will be reduced proportionally to the extent that the loss was caused or contributed by:

- a) the Client's acts or omissions or by the acts or omissions of any person for whom the Client is responsible; or
- b) the acts or omissions of any other person or persons for whose conduct the Service Provider is not responsible.

Where any law relating to proportionate liability applies to a claim made, this clause does not seek to exclude the operation of that law but will continue to operate to the extent that its operation is consistent with that law.

12.9 Variation

The Service Provider may issue the Client with an amended Project Scope. The Client is deemed to have accepted this variation to the Agreement by continuing to provide instructions to the Service Provider after the notice of variation has been issued.

13 Definitions and Interpretation

13.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears:

“**Agreement**” means the Welcome Kit, Project Scope, these General Terms and Conditions and any other annexures or schedules attached to it.

“**Business Day**” means a day on which the Client is open for business in Brisbane, Australia.

“**Client Confidential Information**” means:

- a) any information contained in a database established by or for the Client which contains information relating to the business of the Client or its Customers;
- b) any information concerning the Customers;
- c) any software in which the Client owns intellectual property rights; and
- d) any other information relating to the business, systems or affairs of the Client or its Customers, including, financial details, marketing strategies, policies, products, services, processes, operating practices and procedures, business plans, reports, plans and documents.

“**Commencement Date**” means the date identified in the Project Scope or the date agreed by the parties.

“**Deliverables**” means the event described in the Project Scope.

“**Intellectual Property Rights**” means all industrial and intellectual property rights of whatever nature throughout the world conferred under statute, common law or equity, including all present and future rights in relation to or in connection with copyright (including moral rights), trade marks, domain names, circuit layouts, designs, patents and inventions, formulae, databases, business processes and methods, trade secrets and know-how, business or company names, whether registered or not, together with any right to registration of such rights, whether created before or after the date of this Agreement.

“**Services**” means the services described in the Project Scope.

“**Service Provider Confidential Information**” means information relating to the business or affairs of the Service Provider (but not information relating to the sources of hardware, software or other products or services of a third party).

“**Project**” means the project described in the Welcome Kit.

“**Representative**” means the person specified in the Welcome Kit as representing a party, as changed from time to time.

13.2 Inconsistency

If there is an inconsistency in these terms, the Welcome Kit takes priority.