

IBC Digital STANDARD TERMS AND CONDITIONS FOR PROJECTS & SERVICES ENGAGEMENTS (v1.0)

1 DEFINITIONS

Statement of Work (SOW) refers to the proposal documentation or order form. In the absence of a proposal or order form (for example, Service Work), it refers to the request provided by you. Your request may be in writing, by email, by phone or by some other verbal communication. If your request cannot be fulfilled in part or in full, you will be notified by us.

Materials means expressions of literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that are developed by us, or by both of us, under this Statement of Work (SOW), delivered by us to you as part of the Services, and are not available under vendor software license agreements (including license agreements for IBC Digital Products). Materials do not include the underlying literary works or other works of authorship upon which such Materials are based.

Service is performance of a task or project, provision of advice and counsel, assistance, or use of a resource (such as access to an information data base) we make available to you.

2 YOUR ORDER OR STATEMENT OF WORK

2.1 Order Placement and Acceptance

You place your order for the Statement of Work to be undertaken by 1) signing the Statement of Work or its Change Authorisation or 2) requesting that we provide the Service. Your request may be in writing, by email, by phone or by some other verbal communication. We accept your order by 1) signing the Statement of Work or its Change Authorisation, signed by you or 2) providing the Service. When we accept your order, we agree to provide the Services described in the Statement of Work. The Statement of Work may include, for example:

1. Our respective responsibilities;
2. The specific conditions (called the "completion criteria"), if any, that we are required to meet to fulfil our obligations;
3. A contract period for continuing services or an estimated schedule for other services that we provide for planning purposes; and
4. Applicable charges (not including taxes), cost of living adjustment (if applicable), and any other terms.

2.2 Schedule of Work

If a Statement of Work contains an estimated schedule, each of us agrees to make reasonable efforts to carry out our respective responsibilities according to that schedule.

2.3 Standard Completion Criteria

The standard default Completion Criteria for projects we undertake is for us to complete the work to a stage when it is ready to be deployed to the chosen hosting server or production server environment. For avoidance of doubt, this state of readiness for deployment may be reached prior to a system being considered by you to be ready to be made live and available for its intended users as the system at that time may need additional inputs from you, such as the entering of content in the site or the provision of content to IBC Digital.

We will inform you when we meet the Completion Criteria. You then have 10 days to inform us if you believe that we have not met those criteria. The project is complete when we meet the Completion Criteria. The date we meet the Completion Criteria is the Date of Completion.

For avoidance of doubt, unless otherwise specified, our standard 3 Month Warranty on systems and application development work commences on the Date of Completion as defined above. Warranties do not apply to time and material charged projects, or work undertaken on service blocks or service plans; in such cases, rectifying issues with the system is chargeable.

If we are hosting your system, site or application, unless otherwise specified our hosting fees commence on the Date of Completion.

2.4 Additional or Specific Completion Criteria

If a Statement of Work contains other additional or specific Completion Criteria, we will inform you when we meet each of them. You then have 10 days to inform us if you believe that we have not met those criteria. The project is complete when we meet the Completion Criteria.

3 CHANGES TO THE STATEMENT OF WORK

When both of us agree to change a Statement of Work, we will prepare a written description of the change (called a "Change Authorisation"), which both of us must sign. The terms of a Change Authorisation prevail over those of the Statement of Work and any of its previous Change Authorisations. Any change in a Statement of Work may affect the charges, estimated schedule, or other terms. Depending on the scope of the requested change, we may charge you for our effort to analyse it and we will give you a written estimate of the charges for the analysis. We will perform the analysis only on your written authorisation.

4 PRODUCTION SERVICES

4.1 Supply Of Content

Unless otherwise specified in writing by us, the costs are based upon all content, copy and images being supplied by you to us in suitable electronic format. Population of database tables is your responsibility, excepting test data inserted by us. Sites may be completed and delivered for User Acceptance Testing (UAT) without final content if the delivery of content by you is delayed by you for reasons outside of our control.

4.2 Graphic Design

The estimated costs for Graphics are based on typical allowances for the development of the site graphic style which typically includes one initial design meeting; the production of a single design mock up of the Home Page and one internal page; feedback on the design; and One set of revisions to the design. Unless otherwise specified, time spent on the site graphic design in excess of that stated above will be charged at our standard hourly rates unless otherwise specified.

IBC Digital reserves the right to display a credit in the form of a small hyperlinked IBC Digital logo and/or text link within the footer of the public view of the website / application.

4.3 Project Reports

Regular project progress reports commensurate to the project and agreed level of project governance will be provided to advise you of project status and performance.

4.4 Hours Of Operation

Estimates, quotes and rates exclude GST and are based on work activities being conducted during weekday normal hours (8.30am – 5.30pm). Weekdays after hours, weekends and public holidays attract a loading of 35% on quoted hourly rates unless otherwise specified.

4.5 Approvals

Whilst all due care is taken, you agree to take full responsibility for checking and approving all work undertaken by us on your behalf. Once sign-off has been provided at each stage any rework is at your expense.

4.6 Scope and Specification Documents

If we are preparing a scope document, functional specification or technical specification for the design, development and/or supply of materials and services to be provided under this Statement of Work, it is critical that you comprehensively check such documents and specifications prior to approving them to authorise us to proceed with the specified work. Items that are not explicitly specified in writing in the scope or specification documentation are not included in the scope or specification of this deliverable, notwithstanding that they may have been previously mentioned in discussions or sales proposals. Where the level of detail is not explicitly or adequately described in the scope or specification documentation, the agreed design and functionality to be delivered will be interpreted by us at our discretion.

4.7 Variations to Scope

This scope describes the items that are included in this development project. Items that are not explicitly included in this scope document are outside the scope of this project and if required will be implemented as Variations to the project through IBC Digital's standard Change Management procedures. In the event of the introduction of Variations the project timelines and costs will be impacted

4.8 Variation of Technical Estimate

Technical estimates have been given on the basis of the information provided. Variations to the information provided may impact the estimates given by IBC Digital.

4.9 Variation of Project Timeframe or Duration

The Project management fee is typically included in the estimates provided by IBC Digital. IBC Digital reserves the right to charge an additional Project Continuity Fee for projects which are in progress but have been paused or delayed by the client and therefore cannot be completed in a timely manner according to the agreed timeframes. The standard fee is the equivalent of 2 hours project management at our standard rates, which covers project management activities including briefings and updates to the development team, client liaison and reporting, any or all of which may be necessary to ensure continuity of the project. The Project Continuity Fee is charged on a monthly basis and is in addition to any project management fees that are included in the project itself. The standard Project Continuity Fee may be varied by agreement, depending on the size and nature of the project. Unless otherwise agreed, the standard fee will apply from the date of project pause or delay and will continue until the project is completed.

5 PERSONNEL

For each Statement of Work, each of us will authorise a person to represent us. Each will 1) address all notices to the others representative and 2) promptly notify the other in writing if this person is replaced. Each of us is responsible for supervising and controlling only our own personnel. We will try to honour your requests regarding the assignment of our personnel, however we reserve the right to determine the assignment of our personnel.

6 FEES AND CHARGES

The amount payable for a Service may be based on an estimated price, a time-and-materials price, a variance price, a fixed price, a provisional cost, recurring charges, or a combination of these. We will generally specify in the Statement of Work the amount and basis for the particular Service. Estimated prices are the basis for all fees unless otherwise specified.

6.1 Estimated Pricing

The costs provided may be specified as estimated prices for producing the deliverables defined in this document. As the scope of work and the actual Services and Materials required to be completed are refined and agreed, we may refine our estimated prices. Invoices may be raised to you by us for pre-agreed amounts according to pre-defined milestones or stages. Additional fees that may be applicable for work done will be charged at our casual rates on a monthly basis unless otherwise specified. You have the right to terminate at any time work being performed by us that is being charged to you on an estimated price basis. Upon termination, we will stop our work in an orderly manner as soon as practical. You agree to pay us for all Services incurred and any Materials we deliver through termination, as well as any charges we incur in terminating subcontracts and applicable termination charges that we specify in the Statement of Work.

6.2 Time And Materials Pricing

Time and materials basis means that time worked as part of Services under this Statement of Work is charged to you at the rates and frequency specified herein. Unless otherwise specified and agreed, our standard casual rates apply and will be charged on a monthly basis at the end of each month. All charges for Materials supplied will be charged at the specified prices for such Materials.

6.3 Variance-based Pricing

The costs provided may be specified as variance-based pricing for producing the deliverables defined. This basis allows for a pre-defined variance factor to be agreed in the time taken and/or price charged for the work to be done. As long as the work scope and definition does not alter, the maximum and minimum price will be sum of money specified plus or minus the pre-defined variance factor. Adjustments will be credited or charged to your account. Unless otherwise specified and agreed, the pre-defined variance factor is 10%.

6.4 Fixed Pricing

The costs provided in this document may be specified as fixed price items for producing the deliverables defined in this document. A fixed price can only be provided where the precise nature, operation and development requirements of all fixed price deliverables are clearly defined.

6.5 Provisional Cost

Items specified as provisional costs are indicative price guides only. Items may be specified with provisional costs if they are not yet clearly defined, or if IBC Digital considers there is potential for extra time to be taken on the delivery of each item and limiting such extra time is outside of IBC Digital's direct control. Amounts defined in this proposal as provisional costs will be included in the same project billing stages as above, however adjustments will be made to reflect actual time. Charges in excess of the specified amount will be invoiced at actual prices. Where the actual pricing is less than that amount specified in the provisional cost estimate, the lower amount shall be charged and any excess pre-payment will be credited back to your account or refunded.

6.6 Additional Items or Tasks

Examples of additional work not included in the estimates or pricing defined in Clause 6.1 to 6.6 above include scope or project variations, client variations and author's corrections. This work will be charged at our standard rates unless otherwise specified.

6.7 Additional Charges

Additional charges will generally apply if, for example, you require us to provide Services at times other than a normal day shift or require us to travel outside our normal service area.

6.8 Rate Increases

We may increase hourly services rates and minimums by giving you one month's written notice. An increase applies on the first day of the applicable invoice period on or after the effective date we specify in the notice.

7 GST

Where we specify an amount in a Statement of Work, that amount will be expressed exclusive of any applicable goods and services tax ("GST"). If any authority imposes a duty, tax or fee upon any transaction under this Agreement, then you agree to pay that amount as specified in the invoice or supply appropriate exemption documentation.

8 PAYMENT TERMS

Amounts are due upon receipt by you of our invoice and are payable within 7 days of the date of such invoice (Payable Date). You agree to pay each invoice by cheque, electronic funds transfer or other electronic means acceptable to IBC Digital by the Payable Date. If you dispute an invoice, then you must notify IBC Digital of the dispute within 7 days of receipt of the invoice. You must pay that part of the disputed invoice for which no dispute exists by the due date for that invoice. You agree that you will seek to resolve the dispute with IBC Digital, and once resolved, you will pay the amount agreed or otherwise determined to be payable within fifteen days of such agreement or determination. If you do not pay an undisputed invoice by the Payable Date, you will also pay interest on any unpaid amounts calculated on a daily basis from the Payable Date until payment is made at the rate per annum equal to 3% above the buying rate for 90 day bank bills offered by the Westpac Banking Corporation (or any successor of this rate) on the Payable Date.

9 WARRANTY FOR IBC Digital SERVICES

For each IBC Digital Service, we warrant that we perform it in a workmanlike manner, and according to its current description (including any Completion Criteria) contained in the Statement of Work. These warranties replace all other warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose. We do not warrant uninterrupted or error-free operation of any deliverable or Service. Unless we specify otherwise in the Statement of Work, we provide Materials on an "AS IS" basis. In the event that the supply of goods or services pursuant to this Statement of Work is the supply of goods or services to a consumer as defined in the Trade

Practices Act 1974, as amended, ("the Act") nothing contained in this Statement of Work excludes, restricts or modifies any condition, warranty, right or remedy which pursuant to the Act applies to this Statement of Work or is conferred upon you provided that to the extent the Act permits us to limit our liability for a breach of a condition or warranty implied by the Act then our liability for such breach shall be limited to 1) In the case of goods supplied pursuant to this Agreement, the payment of the cost of replacing the goods or of acquiring equivalent goods; and 2) In the case of services supplied pursuant to this Agreement, the payment of the cost of having the services supplied again.

10 LIMITATION OF LIABILITY

Circumstances may arise where, because of a default on our part or other liability, you are entitled to recover damages from us. Regardless of the basis on which you are entitled to claim damages from us, we are liable only for the amount of any actual direct damages or loss up to the amount of the actual payments you have made for the Service that is the subject of the claim. This limit also applies to any of our subcontractors. It is the maximum for which we are collectively responsible. In no event will we or our subcontractors be liable for any damages if and to the extent caused by your failure to perform your responsibilities. Under no circumstances are we or our subcontractors liable for third-party claims against you for losses or damages; loss of, or damage to your records or data; or economic consequential damages (including lost profits or savings and loss of funds) or incidental damages, even if we are informed of their possibility. We have no obligation regarding any claim based on work product you provide which is incorporated into the Materials; your modification of the Materials; or the combination, operation, or use of the Materials with any product, data, or apparatus that we did not provide.

11 MUTUAL RESPONSIBILITIES

Each of us agrees that under this Statement of Work:

1. All information exchanged is non-confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement;
2. Each will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations;
3. Neither of us will bring a legal action more than two years after the cause of action arose; and
4. Neither of us is responsible for failure to fulfil any obligations due to causes beyond its control.

12 YOUR OTHER RESPONSIBILITIES

You agree that under this Statement of Work:

1. You will fulfil your responsibilities and deliverables specified in the Statement of Work;
2. You are responsible for the results obtained from the Services; and
3. You will provide us with sufficient, free, and safe access to your facilities for us to fulfil our obligations.

13 TERMINATION

You may terminate this Statement of Work on written notice to us following the expiration or termination of all your obligations. Either of us may terminate this Statement of Work if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply. Any terms of this Statement of Work, which by their nature extend beyond its termination, remain in effect until fulfilled and apply to respective successors and assignees. You may terminate Services on written notice to us only as permitted by the Statement of Work. We may terminate a Service if you do not meet your obligations concerning it. Upon termination, we will stop our work in an orderly manner as soon as practical. You agree to pay us for all Services we provide and any Materials we deliver through termination, as well as any charges we incur in terminating subcontracts and applicable termination charges that we specify in the Statement of Work.

14 OWNERSHIP AND LICENSE

Unless otherwise specified, all materials developed by IBC Digital or our contractors (including but not limited to programming code, artworks, graphics, Flash, multimedia audio and video, database design and development, data collection and web based

administration) are licensed to the client for use on a single system, website or application. These materials cannot be copied, reused or resold without the express written permission of IBC Digital. Original graphics created cannot be re-used in any other website or promotional media including brochures, press or other advertisements without express written permission and/or additional fees from IBC Digital. Unless otherwise specified, IBC Digital will not release or make available source code or original development files including but not limited to .psd and .fla.

Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this Agreement.

15 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform its obligations pursuant to this agreement if such delay is due to fire, flood, meteorological event, strike, industrial action, war, civil disturbance, act of God or any other event outside the reasonable control of a party which causes the delay or failure by the party in the performance of its obligations under this agreement.

16 SUB-CONTRACTING

IBC Digital may at its discretion sub-contract for the performance of this agreement or any part of this agreement.

17 ASSIGNMENT

This agreement shall not be dealt with in any way by you (whether by assignment, sub-licensing or otherwise) without IBC Digital's prior written consent. IBC Digital reserves the right to assign its rights and obligations to a third party at its discretion.

18 WAIVER

If IBC Digital fails or neglects to enforce at any time the provisions of this agreement, this shall not be construed, nor shall it be deemed to be, a waiver of IBC Digital's right; or in any way affect the validity of the whole or any part of this agreement or prejudice IBC Digital's right to take subsequent action.

19 SEVERABILITY

In the event that any part of these terms, conditions or provisions shall be deemed invalid, unlawful or unenforceable to any extent, such terms, conditions or provisions shall be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

20 NON-SOLICITATION

20.1 Non-Solicitation of Services

You agree not to solicit directly or indirectly any IBC Digital employee or contractor to IBC Digital to perform work for you which is work that IBC Digital could perform for you. If you solicit any IBC Digital employee or contractor, then you agree that you will be liable to pay damages to IBC Digital in a sum calculated as the higher of the amount paid by you to the employee or contractor for the work, or an estimate (arrived at by IBC Digital on a reasonable basis with due care) of the cost of such work if it had been performed by IBC Digital at the time it was performed by the employee or contractor.

20.2 Non-solicitation of Personnel.

You acknowledge and agrees that the employees and contractors of IBC Digital are a valuable asset to IBC Digital and difficult to replace. Accordingly, you agree that, during the term of this Agreement and for a period of twelve (12) months after the expiration and non-renewal or termination of this Agreement, you will not solicit or attempt to solicit any employee or contractor of IBC Digital. Unless otherwise specified, you agree to pay IBC Digital damages for a breach of this clause of \$20,000 ex GST.

21 GOVERNING LAW

This Statement of Work will be construed in accordance with and governed by the laws of Western Australia and the parties agree to submit to the jurisdiction of the Courts of Western Australia to resolve any dispute in relation to the same