



Project Design and Development
Services Agreement



Project Design and Development Service Agreement

This Product Design and Development Services Agreement is incorporated by reference to the Agency Stack Terms and Conditions (collective the "Agreement"). All definitions and other terms defined and described in the Agency Stack Terms and Conditions apply to the Project Design and Development Services Agreement.

1. ENGAGEMENT

- a. We agree to provide the Services in relation to the Project in accordance with the following terms and conditions and the Scope of Work attached (the Agreement).
- b. This Agreement will commence and become binding when you sign this Agreement or give us instructions to begin work (whatever comes earlier) and will continue until the parties have completed their obligations under the Agreement.

2. OUR SERVICES

- a. Our Services do not extend to providing maintenance and support services for your Project.
- b. If you want to engage us to provide maintenance and support for your Project, you may elect to engage us to do so in accordance with our separate maintenance and support agreement.
- c. Please also note that unless expressly stated in the Scope of Work, our Services do not include copyright, SEO research and optimisation or video production. If you require assistance with any of these services, please contact us and we can provide an additional scope of work and quote.

3. CONTRACTORS

We reserve the right to engage sub-contractors of our choice to assist us in providing the Services. We will be fully responsible for their work and remuneration unless otherwise agreed between us and you.

4. DELIVERY DATES

We will use all commercially reasonable efforts to provide our Services and deliver any relevant Deliverables in accordance with the Timeline, however, you acknowledge and agree that the delivery dates in the Timeline may change due to events that are outside our control or that are not foreseeable at the time of entering into this Agreement.

5. CLIENT MATERIAL

- a. You agree to provide us with complete, constructive and timely information, instructions, materials (including Your Content defined below in clause 6(b), feedback and approvals wherever sought by us, including in our initial briefing questionnaire. You acknowledge that your failure to do so may result in a delay in our delivery of Services to you.
- b. Before we commence any Services for the Project, you must provide us with 'final and approved versions' of any content we request or you wish for us to incorporate into the Project including:
 - i. high resolution logo;
 - ii. project copy;
 - iii. images;
 - iv. videos;
 - v. SEO;
 - vi. meta data; and
 - vii. sound recordings,
 - viii. (Your Content).
- c. You grant us the right to use Your Content in relation to the Services.

6. REVISIONS

- a. We may require your feedback on certain draft Deliverables.
- b. Where we request your feedback on a draft Deliverable, you will have the opportunity to request a maximum of two sets of revisions to that Deliverable.
- c. We will incorporate your feedback, to the extent we consider appropriate in our professional judgment.
- d. We reserve the right to charge for further sets of revisions or where you require revisions that are outside the Services set out in the Scope of Work.
- e. If you fail to give feedback about a draft Deliverable within 7 days of delivery, your acceptance of that draft Deliverable without any revisions will be deemed given.



7. USER ACCEPTANCE TESTING

- a. If our Services include developing the Project, the following terms apply:
- b. If listed as part of the Services, we will carry out user acceptance testing of the Project to determine whether the Project has been completed in accordance with any relevant Specifications (Acceptance Testing).
- c. You must provide us with notice of acceptance or rejection of the Project 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.
- d. You agree that you will not unreasonably withhold consent when the Project meets any relevant Specifications.
- e. Since internet browsers and mobile devices have different capabilities, you acknowledge and agree that projects or mobile applications we build under this Agreement may appear differently on various browsers and mobile devices.

8. FEES AND OUT OF SCOPE WORK

- a. In consideration of us providing the Services, you agree to pay the Fees.
- b. You acknowledge that where we charge based on an estimate and hourly rate, the Fees are an 'estimate only' and subject to change.
- c. You agree that we may charge up to 10% more than the Fees set out in the Scope of Work, without notice to you and without your approval. Otherwise, we will seek your approval before increasing the Fees.
- d. If you require us to supply additional goods and/or services not listed as Services in the Scope of Work (leading to an increase in work required by us) (Out of Scope Work), you agree that we will charge additional fees to cover the Out of Scope Work (Out of Scope Charges).
- e. We will seek prior approval from you for all Out of Scope Charges and document them in a change order ("Change Order").
- f. Out of Scope Charges are included in the definition of Fees for the purpose of this Agreement.

9. EXPENSES

- a. In addition to the Fees, you agree to pay the Expenses.
- b. You acknowledge that we may need to incur additional expenses not listed in the Scope of Work when providing the Services.
- c. Where practicable, we will seek your approval before incurring any additional expenses including, without limitation, the purchase of stock, photos, printing, courier costs and graphic art supplies (Additional Expenses). However, you acknowledge that this may not always be possible and certain expenses may be required to be incurred urgently.
- d. You agree to pay for all Additional Expenses reasonably incurred or otherwise approved by you.
- e. Where we are required to manage the services of any third party provider as part of the Services (a Third Party Provider), you agree that we are entitled to charge administration fees relating to the management of the Third Party Provider.
- f. Additional Expenses and any administration fees charged under clause 10.e are included in the definition of Expenses for the purpose of this Agreement



10. PAYMENT SCHEDULE & DEPOSIT

- a. We will invoice you for the Services in accordance with the Payment Schedule or at other suitable intervals determined by us.
- b. Where a deposit is listed in the Payment Schedule (the Deposit), you must pay this in full before we will commence work. We do not provide refunds for 'change of mind'.
- c. You agree to pay all of our invoices within 7 days of receipt, by bank transfer or via our payment processing system according to the details described on the invoice.
- d. We reserve our right to suspend work on the Services if you have not paid an invoice on time and we also reserve the right to charge interest at a rate of 5% per annum for all late payments. Interest is to be calculated daily, continues until the overdue money is paid and is capitalized monthly.
- e. You acknowledge that 'time is of the essence' when paying our invoices under this Agreement.
- f. You agree that we are not required to make the Project 'go live' until all applicable Fees and Expenses have been paid in full.
- g. All Fees and Expenses are exclusive of applicable taxes unless otherwise indicated.
- h. You agree any invoice not paid within 30 days of receipt (unless a prior payment arrangement has been entered into) may be referred to a debt collection agency and any costs associated with recovering such debts will be passed onto you.

11. INTELLECTUAL PROPERTY

- a. You acknowledge and agree that:
 - i. We may incorporate intellectual property owned by third parties into the Project such as intellectual property 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 notified by us.
- b. Provided you have paid us in full for all monies owing under this Agreement, you are free to make or authorize others to make modifications to the Final Deliverables (Modifications).
- c. You agree to release us and our representatives from all losses and claims suffered by you or any third party in relation to the making of any Modifications.
- d. Subject to the terms set forth in this Section 12 or as otherwise set forth in this Agreement, You will own all right, title and interest in and to all final Deliverables, as specifically defined or described in each SOW, that are (i) created or prepared by Our personnel in the performance of Services under any SOW hereunder, (ii) specific to You and Your business operations, and (iii) delivered to and paid for by You pursuant to the applicable SOW (collectively, "Final Deliverables"); provided that, nothing herein will be construed to grant You any interest in (i) Our know-how, methodologies, innovations or innovation processes, formats, or general expertise used and/or developed by Us in the course of providing Services hereunder, including (a) any ideas, designs, or other Deliverables created by Us in the course of its Services but not incorporated into or constituting Final Deliverables and (b) reports, analyses and other materials that We have developed or is developing separately for itself and for third parties (collectively, "Our Expertise"); (ii) Our intellectual property in existence as of the Effective Date and all inventions, methodologies, and improvements relating thereto, whenever developed or implemented by or on behalf of Us (collectively, "Our IP"), and (iii) for the avoidance of any doubt, as and when applicable, all third party materials, components, and intellectual property incorporated into any Our prototypes. We will not incorporate any of Our IP into any Deliverable without Your prior written consent.
- e. Conditioned on Your payment in full for Our Services hereunder, We hereby assign to You the entire right, title and interest in and to the Final Deliverables and will assist You in any reasonable manner to obtain and enforce for Your copyrights and other property rights in any countries and We will execute when requested, copyright or similar applications and assignments to You and any other lawful documents deemed necessary by You to carry out the purpose of this Agreement.
- f. Our Expertise and Our IP are referred to collectively hereafter as "Our Know-How." You acknowledge and agree that Our Know-How will remain the sole and separate property of Us and that You will acquire no rights therein or thereto, whether by implication, estoppel, or otherwise, except as set forth herein. However, to the extent that the Final Deliverables under any SOW may be developed from or incorporate Our Know-How, We grant You a perpetual and irrevocable, non-exclusive, worldwide, and royalty-free and fully-paid license to use You Know-How solely and exclusively to the extent that such



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Know-How is fully incorporated in the Final Deliverables as an integral component thereof. You have no right to use, market, and/or exploit any of Our Know-How on a standalone basis in any way.

- g. We will not conduct or arrange for the conduct of a trademark, copyright, or patent search and/or formally render a binding opinion as to the protectability or non-infringement of any Deliverable or any product(s) or service(s) incorporating or embodying such Deliverable that You elect to bring to market. As between Us, You will undertake and be responsible for: (i) any intellectual property clearances and/or registrations and (ii) product liability investigations to the fullest extent necessary for the commercial use, marketing, distribution and/or sale of any of Your products and services.

12. 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 on the Project.
- b. Unless you otherwise notify us in writing, 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).
- c. By entering into this Agreement, you also provide us with a licence to use your name and trade mark as part of any client list we may publish, including on our project.