

Service Agreement

Service Agreement

SCHEDULE

YOUR INFORMATION (Please Complete)				
Client/ Company Name:		Address:		
Client ACN/ ABN				
Phone Number:		City:		
Email:		State:	Postcode:	
Representative/ Contact:		Country:		
Additional information:				

SERVICES & SERVICE FEES	
Services: Vividus will provide the services as outlined in your proposal cost estimate.	
<i>Proposal/ Quote:</i>	
<i>Additional Note (if applicable):</i>	
<i>Payment Requirements:</i>	<ul style="list-style-type: none"> • Projects under \$1,500 and all Print/Production projects, 100% prior to commencement of work. • Projects \$1,500-\$3,999, 70% prior to commencement and 30% on completion. • Projects \$4,000 and over (such as websites), 60% prior to commencement, 20% 30 days after commencement or upon design approval, and 20% 90 days after commencement or prior to go-live. • Strategic marketing plans, 60% prior to commencement, 20% after workshop, and 20% upon completion. • Retainer/ongoing services, 1 month deposit plus monthly in advance. 30 day's notice and exit fees apply. • Annual registrations, contracts and hosting, yearly basis in advance. • Outlays, monthly basis or as invoiced plus 10% administration fee. • Credit card payments may incur an administration fee of 1.75% of the total amount.

ACKNOWLEDGEMENT & AUTHORISATION (Signing)	
You acknowledge having received and reviewed the attached Terms and Conditions (including any Schedules, Proposal, Special Conditions and Annexures) which form part of this agreement.	
SIGNED for and on behalf of You by Your duly authorised representative _____ Name: _____	Date: / /

SERVICE AGREEMENT TERMS AND CONDITIONS

The following are Vividus' terms and conditions (**Terms and Conditions**) for the provision of Services as set out in the Schedule (**Services**). Please read these terms and conditions carefully. It is a condition of your use of the Services that you (**You**) comply with these terms and conditions.

1. COMMENCEMENT

1.1 This agreement commences on the date of signing by You of these Terms and Conditions upon which Vividus confirms to You by email or any other written medium that the Services have commenced or the date You make the first payment of the Service Fee, whichever is the earlier (**Commencement Date**).

2. TERM

2.1 The Services shall be provided to You from the Commencement Date for the Term and if no period is specified in the Schedule:

- (a) Where the Services provided are project based, on completion of the project; or
- (b) Otherwise, twelve (12) months from the Commencement Date.

2.2 On expiry of the Term, unless either party provides notice to the other thirty (30) days prior to expiry of the Term, this agreement will automatically renew for successive twelve (12) month periods (**Additional Term**) on the same terms and conditions. Any service changes require thirty (30) days notice.

2.3 Subject to clause 22, if You cancel the Services during the Term and a monthly fee is being charged by for Services provided, You must pay an Exit Fee (calculated below) within thirty (30) days of termination. Where significant projects (such as website development) have been commenced outstanding project fees will also be payable. The Exit Fee is calculated as follows.

$$\text{Exit Fee} = \frac{\text{Service Fee} \times \text{Number of months remaining in Term}}{\text{Total Number of months in the Term}}$$

otherwise, the whole of the Service Fee is payable by You immediately upon cancellation.

3. PROPOSALS

3.1 Any Proposal provided by Vividus is an invitation to treat only and open for acceptance within the period stated within the Proposal or within twenty-one (21) days of the date of the Proposal if no period is specified.

3.2 Any Service Fee estimate provided to You will exclude any disbursements and outlays incurred by Vividus including stock imagery and GST which amounts will be payable by You in addition as per any Invoice provided.

4. SERVICES

4.1 Vividus agrees to provide the Services for the Term on these Terms and Conditions.

4.2 Vividus:

- (a) will perform all Services described under this agreement using appropriately qualified personnel; and
- (b) has the necessary skills, experience and expertise to perform the Services described under this agreement;

4.3 You acknowledge that the purpose for which the Services are being provided is as set out in the Schedule and are suitable for your requirements. Vividus makes no representation or warranties that the Services will meet Your requirements.

4.4 You agree to cooperate with, act reasonably and follow the reasonable directions of Vividus in connection with this agreement including implementing any reasonable recommendations of Vividus.

4.5 You agree to promptly provide Vividus with the following (as may be reasonably requested by Vividus) to enable Vividus to perform the Services:

- (a) details of those persons authorised to provide instructions to Vividus;
- (b) any Client Materials;
- (c) access to and authorisation to use all and any data, information, material and content as reasonably required by Vividus to perform the Services;
- (d) authority to communicate with Your third party provider;
- (e) such other information, authorisation and items as may be reasonably requested by Vividus.

You acknowledge that failure to promptly provide the above may restrict Vividus' ability to provide the Services to You and any estimated completion date will be extended accordingly.

4.6 Where You fail to promptly:

- (a) provide the Client Materials; or
- (b) deliver any information or documentation or any thing reasonably requested by Vividus; or
- (c) deliver correct information or documentation or any thing reasonably requested by Vividus; or
- (d) provide access; or
- (e) provide decisions or approvals or any part of the Services required by Vividus;
- (f) do any thing reasonable required by Vividus,

which is (in Vividus sole opinion) necessary for Vividus to provide the Services, Vividus may suspend provision of the Services until such time that the request has been met by You.

4.7 Any reasonable additional costs incurred by Vividus to reinstate the Services will be advised by Vividus prior to reinstatement and must be paid by You prior to the reinstatement of the Services.

4.8 You acknowledge and agree that Vividus may have re-allocated resources to other projects as a result of any delay of You and/or suspension of the Services and any reinstatement of the Services will be undertaken by Vividus as soon as reasonably practicable having regard to the workload of Vividus at the relevant time.

4.9 Any delay and/or interruption in provision of the Services caused by an act or omission of You (for whatever reason) will not negate Your liability to pay the Service Fee in accordance with the terms of this agreement.

4.10 Any delay caused by You may change any estimated date for completion of the Services provided by Vividus and Vividus will not be liable to You for any change.

5. YOUR OBLIGATIONS

5.1 You will not provide, access, store, distribute or transmit any viruses, or any material during the course of Your use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
- (f) causes damage or injury to any person or property,

and Vividus reserves the right, without liability to You, to cease providing the Services or otherwise disable Your access to the Services, with or without notice, should such occur.

- 5.2 Unless otherwise agreed in writing with Vividus, You are responsible for obtaining and maintaining, at your expense, all infrastructure required to utilise the Services. Vividus may provide advice when requested in relation to the minimum required specifications of infrastructure to enable the optimum utilisation of the Services.
- 5.3 You will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation. In the event of any such unauthorised access or use You will promptly notify Vividus in writing.
- 5.4 Subject to the Services provided and except as permitted by Vividus, by law or under this agreement, You will not (nor grant any other person or entity the right to):
- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Documentation (as applicable) in any form or media or by any means; or
 - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or
 - (c) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - (d) use the Services and/or Documentation to provide services to third parties; or
 - (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit or otherwise make the Services and/or Documentation available to any third party, or
 - (f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this agreement.

6. VIVIDUS' OBLIGATIONS

- 6.1 Vividus is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and You acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.2 Vividus is not liable for any functionality or user interface issue where You are using any unsupported software or hardware as advised by Vividus from time to time.
- 6.3 Vividus is not liable where You elect to implement any aspect of the Services and fail to do so or fail to implement in accordance with any of the Services provided by Vividus.
- 6.4 This agreement shall not prevent Vividus from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 6.5 Vividus warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

7. THIRD PARTY PROVIDERS

- 7.1 Vividus may engage, at its sole discretion, third party providers in respect to the provision of any aspect of the Services. Vividus

will not be responsible in any respect for the acts or omissions of its third party providers.

- 7.2 Vividus may recommend consultants, contractors or suppliers to provide particular services or products by You. Vividus makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any third-party website, or any transactions completed, and any contract entered into by You, with any third party.
- 7.3 Any contract entered into and any transaction completed via any third-party is between You and the relevant third party, and not Vividus.
- 7.4 Vividus does not endorse or approve any third-party or third party website nor the content of any of the third-party website made available via the Services.

8. SEARCH ENGINE OPTIMISATION (SEO) SERVICES

Where Vividus provides You with SEO services as part of the Services the following additional provisions apply:

- 8.1 Where Vividus provides You with SEO services, You acknowledge and agree that the purpose of the SEO services is to:
- (a) provide You with increased search engine exposure; and
 - (b) drive targeted traffic to Your Web Site.
- 8.2 You agree to promptly provide Vividus with the following (as maybe requested by Vividus) to enable Vividus to perform the Services:
- (a) Access to and authorisation to use all and any data, information, material and content (including graphics, photos, designs, trademarks) on the Web Site (**Web Site Content**) as required by Vividus including administrative backend access to the Web Site for analysis of Web Site Content and structure;
 - (b) Authority to make changes to the Web Site;
 - (c) Authority to communicate with Your third party suppliers;
 - (d) An email address as specified by Vividus;
 - (e) Additional text content for the Web Site in electronic format as requested by Vividus;
 - (f) Such other information, authorisation and items as may be reasonably requested by Vividus.
- 8.3 You acknowledge that failure to promptly provide the above may restrict Vividus' ability to provide SEO Services to You.
- 8.4 You acknowledge and agree that an alteration to any element of the textual content, content structure, graphical content, external links and/or source code of the Web Site at any time during the Term may adversely impact the performance of the Services by Vividus and Vividus will not be liable for the performance of the Services in respect of any alteration made without its prior approval. Prior to making any alterations to the Web Site and the Web Site Content you may wish to consult with Vividus on the alteration and its impact on the Services.
- 8.5 Vividus will not be liable in the event that You or any third party overwrites any work undertaken by Vividus to the Web Site or Web Site Content as part of performing the Services. Vividus may charge you an additional fee for reconstructing the content on an hourly basis at Vividus' current advertised hourly rate (as varied from time to time).

- 8.6 Vividus agrees to use all reasonable efforts to provide the Services. You acknowledge and agree that nothing in this agreement shall constitute by Vividus an express or implied warranty or guarantee:
- that the provision of the Services will result in an improvement to the ranking of the Web Site;
 - that the provision of the Services will result in an increased amount of traffic or users to the Web Site.
- 9. WEB DESIGN AND DEVELOPMENT SERVICES (Web Site Development Services)**
- Where Vividus provides You with Web Site Development Services the following additional provisions apply:
- 9.1 You agree to promptly provide Vividus with the following (as maybe requested by Vividus) to enable Vividus to perform the Web Site Development Services:
- Access to and authorisation to use all and any data, information, material and content (including graphics, photos, designs, trademarks) on the Web Site (**Web Site Content**) as required by Vividus;
 - Authority to communicate with Your third party suppliers;
 - An email address as specified by Vividus;
 - Text content for the Web Site in electronic format as requested by Vividus;
 - Any other information required by Vividus to provide the Web Site Development Services.
- 9.2 Where a development plan for the provision of the Web Site Development Services has been provided by Vividus:
- Vividus will report at intervals agreed with You on the progress and/or content of the Web Site;
 - You will be responsible for providing written acceptance, refusal to accept or conditional acceptance of the Web Site or any material included in the Web Site (including detailed reasons for any refusal or conditional acceptance);
 - The provisions of the development plan will govern the manner in which the Web Site Development Services will be provided.
- 9.3 Any changes to the Web Site required after the final concept for the Web Site has been approved by You may involve an increase in the Service Fee (and clause 10 will apply).
- 9.4 Any material change or alteration to the Web Site, Specifications, development plan and any other material aspect of the Web Site Development Services may involve an increase in the Service Fee (and clause 10 will apply).
- 9.5 Vividus is not liable in any respect where You adapt, edit, alter or modify the Web Site in anyway.
- 10. ADDITIONAL SERVICES**
- 10.1 The parties acknowledge and agree that consequential to the provision of the Services, You may require Vividus to perform additional services that are not as set out in any Proposal, any specifications or this agreement (**Additional Services**).
- 10.2 Any Additional Services will be provided by Vividus:
- as agreed between the parties in writing;
 - at Vividus' current charge rates for the provision of such Additional Services; and
 - on the same terms and conditions as set out in this agreement.
- 10.3 Anything not anticipated or included in the initial description / scope of Services or any material change will be deemed an Additional Service and Vividus will be entitled to charge for such Additional Service.
- 11. PAYMENT**
- 11.1 You must pay the Service Fees set out in the Schedule to Vividus within seven (7) days of the date of Vividus' invoice.
- 11.2 In addition to the Service Fees You must pay to Vividus:
- any carrier usage charges incurred by Vividus in the provision of the Services to You;
 - any other third party fees, image/logo correction on supplied files, courier fees, stock imagery, reasonable travel, accommodation expenses and disbursements incurred by Vividus in the provision of the Services to You.
- Vividus will be entitled to charge such expenses at the cost rate plus a ten percent (10%) administration fee.
- 11.3 Vividus may elect to send invoices by electronic mail to the email address set out in the Schedule or such other email address as is advised by You in writing to Vividus.
- 11.4 If Vividus has not received payment within seven (7) days after any due date, and in addition to any other rights and remedies of Vividus:
- Vividus may, without liability to You, disable Your access to all or part of the Services and Vividus will be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - interest shall accrue on such due amounts at the rate of one and a half percent (1.5%) per calendar month from the date the unpaid amount became due until the unpaid amount is paid to Vividus in full (whether before or after judgment).
- 11.5 All amounts and fees stated or referred to in this agreement:
- are exclusive of GST;
 - will be in Australian dollars;
 - are (subject to the terms of this agreement) non-cancellable and non-refundable.
- 11.6 You agree that in the event of any action being taken by Vividus to recover any overdue amount due and owing under this agreement any costs incurred by Vividus in recovering the debt (including without limitation any legal expenses on a solicitor/client basis, collection agency charges (if permissible by law) or any other reasonable associated costs) are payable by You to Vividus and shall be recoverable by Vividus as a separate debt.
- 12. GST**
- 12.1 For the purpose of this clause the following definitions apply:
- GST** means any form of goods and services tax payable under the GST Law;
 - GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 12.2 Words used in this clause that are defined in the GST Law have the meaning given in that legislation.
- 12.3 Unless otherwise specified, all amounts payable under this agreement are exclusive of GST and must be calculated without regard to GST.
- 12.4 If a supply made under this agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to

any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.

- 12.5 The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- 12.6 If there is an adjustment to a taxable supply made under this agreement then the Supplier must provide an adjustment note to the Recipient.
- 12.7 The amount of a party's entitlement under this agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

13. WARRANTIES AND DISCLAIMERS

- 13.1 You warrant that:
- (a) You are at least eighteen (18) years of age;
 - (b) You have not entered into this agreement or obtained the Services on the basis of or in reliance upon any statement or representation (whether made orally or in writing) made by Vividus concerning this agreement or any of the Services other than any statement or representation contained in this agreement;
 - (c) You have the right or authority to provide the Client Materials, data, information and other the requirements set out in this agreement;
 - (d) The provision of any information or material by You (including the Client Materials) and Your use of the Services will not as and from the Commencement Date and for the duration of this agreement infringe the intellectual property or any other rights of any third party;
 - (g) Your use of the Services will comply at all times with all relevant policies of third party service providers.
- 13.2 To the extent permitted by law, if Vividus does make any warranties of any kind, either express or implied, statutory or otherwise, relating in any way to the subject matter of this agreement, including, but not limited to, warranties of merchantability or fitness for purpose and all such warranties are hereby excluded.
- 13.3 Vividus agrees to use all reasonable efforts to provide the Services. You acknowledge and agree that nothing in this agreement shall constitute by Vividus an express or implied warranty or guarantee:
- (a) that the Services or any software used to provide the Services will be uninterrupted, error free or not subject to delays (technical or otherwise);
 - (b) that the Services will be free from external intruders, virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or systems of Vividus;
 - (c) as to the outcomes that may be obtained from use of the Services;
 - (d) as to any increase in revenue, profit or goodwill that may be obtained as a consequence of the Services;
 - (e) as to the accuracy, reliability or content of any information provided through the Services.

14. INDEMNITY

You indemnify and hold Vividus harmless from any and all claims, demands, liabilities, losses damages, judgements or settlements, including all reasonable legal costs and expenses

which may arise directly or indirectly as a result of any promise, representation, warranty, act, omission or obligation of Vividus in respect of the:

- (a) the provision of the Services to You;
- (b) the use of the Services by You; and/or
- (c) any breach of this agreement by You.

15. LIMITATION OF LIABILITY

- 15.1 To the extent permitted by law and regardless of any other provision in this agreement Vividus will not be liable for:
- (a) any negligent or wrongful act or omission (including but not limited to breach of copyright or defamation);
 - (b) any costs or expenses arising out of injury to or death of any person or persons or damage to property; or
 - (c) any consequential or indirect loss or damage, economic loss, loss of contract, loss of profit or revenue, loss of production or production stoppage or loss of data.
- 15.2 The exclusion of liability contained in this clause 15.1 applies whether the liability claim is based on breach of contract, tort (including negligence), under an indemnity, under statute, in equity or otherwise.
- 15.3 Where liability cannot be excluded and to the extent permitted by law, Vividus limits its liability in respect of any claim regarding the Services provided under this agreement to, at its option:
- (a) in the case of goods:
 - a. the replacement of the goods or the supply of equivalent goods;
 - b. the repair of the goods;
 - c. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - d. the payment of having the goods repaired, and
 - (b) in the case of services:
 - a. the supply of the services again; or
 - b. the payment of the cost of having the services supplied again
- 15.4 To the extent permitted by law and regardless of any other provision in this agreement, Vividus' liability for any breach of warranty under this agreement or otherwise will not exceed the Services Fees payable for the Term.

16. SECURITY

- 16.1 The parties expressly recognise that it is impossible to maintain flawless security.
- 16.2 Each party shall use best endeavours to ensure that each party's data and Confidential Information is protected at all times during this agreement from unauthorised access or use by third parties and from physical misuse, damage or destruction by any person.
- 16.3 You shall be solely responsible for the use, supervision, management and control of the Client Materials, Web Site, Your Data and anything resulting from the Services. If your website becomes insecure and poses any security threat to Vividus servers, Vividus reserves the right to take down your site until the threat is resolved.
- 16.4 You are responsible for protecting its passwords and files and shall be responsible for any damage caused by unauthorised access to the Web Site.
- 16.5 If either party becomes aware of unauthorised access or use by third parties, physical misuse, damage or destruction of the

Web Site by any person then that party will immediately notify the other Party and will take all reasonable measures to ensure such unauthorised access immediately ceases.

17. YOUR DATA

17.1 You own all rights, title and interest in and to all of Your Data and shall have sole responsibility for the accuracy, legality, reliability, integrity and quality of Your Data.

17.2 Vividus will not be responsible for any loss, destruction, alteration or disclosure of any Your Data caused by any third party.

18. CLIENT MATERIALS

18.1 You grant a revocable, non-transferable, personal, royalty free license to Vividus to use and reproduce the Client Materials for the sole purpose of providing the Services.

18.2 You also warrant that the use and reproduction of the Client Materials by Vividus will not infringe the intellectual property rights of any third party and indemnify Vividus in respect of same.

19. INTELLECTUAL PROPERTY

19.1 For the purpose of this clause **Intellectual Property** means:

- (a) the business names and trade marks owned or used at any time by Vividus;
- (b) the Confidential Information owned or used at any time by Vividus;
- (c) anything produced by Vividus in carrying out the Services including all documents, works, designs, code, specifications, proposals and reports (including the Vividus Documents);
- (d) any software (and associated documentation and specifications) owned or licensed by Vividus and used in providing the Services;
- (e) the patents, patent applications, registered designs, unregistered designs, copyright and all other industrial and intellectual property rights owned or used at any time by Vividus,

whether in printed, electronic or other form.

19.2 All right, title and interest in the Intellectual Property remains with Vividus and You agree that you shall have no right, title, claim or interest in or to the Intellectual Property.

19.3 You may not copy, modify or translate any of the Intellectual Property or related documentation, or decompile, disassemble or reverse engineer any of the Intellectual Property to use it other than in connection with the Services or grant any other person or entity the right to do so.

19.4 Vividus grants to You a limited licence to use the Vividus Documents prepared for You as part of the Services for the Purpose. You must not use the Vividus documents without the prior written approval of Vividus for:

- (a) any purpose other than the Purpose;
- (b) the purpose of any modification to such documents;
- (c) additional works outside the scope of the original Purpose.

This licence is non-transferrable unless agreed by Vividus in writing.

19.5 You agree that:

- (d) Vividus may use any material created by Vividus for You as part of the Services for the advertising or promotional purposes of Vividus;

- (e) You must accredit Vividus as the designer in any publication of material produced by Vividus for you as part of the Services except where such publication is through You own brochures, documents or Web Site.

20. CONFIDENTIAL INFORMATION

20.1 **Confidential Information** means the terms of this agreement and all confidential information, material (including reports and recommendations) and technology disclosed or provided in any form by any party to any other party in connection with the subject matter of this agreement.

20.2 Subject to this clause 20, each party must maintain in confidence all Confidential Information and ensure that the Confidential Information is kept confidential.

20.3 A party (**Recipient**) may only reveal Confidential Information of another party (**Provider**):

- (a) if required by law or by any stock exchange to disclose, in which case the Recipient must immediately notify the Provider of the requirement and must take lawful steps and permit the Provider to oppose or restrict the disclosure to preserve, as far as possible, the confidentiality of the Confidential Information;
- (b) if the Confidential Information is in or enters the public domain for reasons other than a breach of this agreement;
- (c) if the Confidential Information is disclosed to the Recipient by a third party legally entitled to disclose that information and who is not under an obligation of confidentiality to the Provider; or
- (d) to its professional advisers to obtain professional advice.

20.4 On termination of this agreement each party agrees to deliver up and/or delete as required the other party's Confidential Information and in the event such Confidential Information cannot be delivered up or deleted each party warrants not to use such Confidential Information.

20.5 This clause will survive the termination of this agreement.

21. VARIATION OF AGREEMENT

21.1 Vividus may change these terms and conditions either by obtaining Your consent or by giving You notice. The period of notice given by Vividus depends on the nature of the change. If:

- (a) The change will benefit You: The change can be made immediately. Prior notification is not required.
- (b) The change is required by law, a regulatory body or for a technical reason: Three (3) days prior notice.
- (c) The change will have significant and detrimental impact on You: Thirty (30) days prior notice.
- (d) All other changes: Thirty (30) days prior notice.

Notice of a change may be given by email to You.

21.2 Use of the Services after seven (7) days receipt of notice of any change in accordance with clause 21.1 will constitute acceptance of the varied terms.

22. TERMINATION

22.1 In addition to any other rights under this agreement, Vividus may suspend or terminate this agreement and cease providing the Services to You:

- (a) Where in the reasonable opinion of Vividus an insurmountable dispute or difference of opinion has arisen;

- (b) You suspend, abandon or not actively pursue the Services for twenty-one (21) days or more;
 - (c) You fail to give necessary instruction, consents or approvals as required;
 - (d) if You breach any term of this agreement and (if capable of remedy) fail to remedy that breach within seven (7) days of receipt of a notice from Vividus requiring You to remedy that breach;
 - (e) You become insolvent or are otherwise unable to pay Your debts as and when they fall due;
 - (f) You or any third party institutes any insolvency, receivership or bankruptcy proceedings with respect to You; or
 - (g) You cease to conduct business.
- 22.2 In addition to any other obligation under this agreement if Vividus terminates this agreement pursuant to clause 22.1 you must pay all outstanding Services Fees to Vividus immediately.
- 23. PRIVACY POLICY**
- 23.1 You agree to comply with Vividus' Privacy Policy located at www.vividus.com.au (as varied from time to time).
- 24. FORCE MAJEURE**
- 24.1 Neither party shall be liable for any delay or failure to perform its obligations pursuant to this agreement if such delay is due to force majeure.
- 24.2 If a delay or failure of a party to perform its obligations is caused or anticipated due to force majeure the performance of that party's obligations will be suspended for the period of the force majeure.
- 25. DISPUTES**
- 25.1 In the event of any dispute arising between the parties in relation to this Agreement (**Dispute**), no party may commence any proceedings relating to the Dispute (except where the party seeks urgent interlocutory relief) unless the parties have first made genuine efforts to resolve the Dispute in accordance with this clause.
- 25.2 A party will give the other a notice of Dispute in connection with this Agreement. A representative from each party, with unfettered authority to resolve the Dispute, must use all reasonable endeavours to resolve the Dispute within ten (10) days of a notice of Dispute being received.
- 25.3 If the representatives are unable to resolve the Dispute within ten (10) days, the Dispute will be referred for mediation in Brisbane, Queensland with a mediator approved by the Australian Commercial Disputes Centre, or its successor. The mediation will be governed by the rules and guidelines agreed by the parties, or failing Agreement, the rules and guidelines set by the mediator (whether or not in conjunction with both parties).
- 26. GENERAL**
- 26.1 Any reference in this agreement to:
- (a) **agreement** means these Terms and Conditions together with the Schedule and any Special Conditions and Annexures;
 - (b) **Business Day** means any day which is not a Saturday, Sunday or public holiday in Queensland;
 - (c) **Client Materials** means artwork, graphics, logos, symbols, information, documents, audio, video, client list, marketing plans, drawings and any other materials:
 - (i) provided directly by You; and
 - (ii) for use in connection with the Services; and
 - (iii) or otherwise used, or incorporated by Vividus into anything produced by Vividus, in providing the Services; and
- includes Your Confidential Information.
- Client Materials does not include any information, designs, software, workflows, processes, documents or ideas introduced by Vividus for use in the provision of the Services or any Confidential Information or Intellectual Property of Vividus;
- (d) **Documentation** means any documentation provided by Vividus in the provision of the Services;
 - (e) **Service Fees** means the service fee set out in the Schedule;
 - (f) **Term** means the term of this agreement commencing on the Commencement Date and expiring as set out in this agreement;
 - (g) **third party provider** is a reference to any third party service provider of either Vividus or You;
 - (h) **virus** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;
 - (i) **Vividus Documents** means the Documentation and all other documentation prepared by Vividus as part of the Services for use by You (under licence) in the performance of this agreement;
 - (j) **You and Your** means the client specified in the Schedule;
 - (k) **Your Data** means any data inputted or provided by You, or on Your behalf for the purpose of using the Services or facilitating Your use of the Services.
- 26.2 Where a term is defined in these Terms and Conditions and referred to in this agreement, the definition will, unless otherwise specified, apply to the whole of this agreement.
- 26.3 Where there is a conflict between these Terms and Conditions and the terms and conditions in any Proposal or other document forming part of the agreement, these Terms and Condition will prevail to the extent of any inconsistency.
- 26.4 This agreement and its attachments constitute the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.
- 26.5 This agreement must not be varied except in accordance with the terms of this agreement.
- 26.6 A right created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

- 26.7 This agreement may be assigned or transferred in any manner by Vividus at its sole discretion.
- 26.8 Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this agreement.
- 26.9 The laws applicable in Queensland govern this agreement and the parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts competent to hear appeals from those courts.
- 26.10 If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.
- 26.11 You must not register a security interest over Vividus or this agreement without the prior written consent of Vividus.