

TERMS AND CONDITIONS

Interpretation

Definitions

"Additional charge" means a charge in accordance with the Consultant's standard rates in effect from time to time payable by the Client;

"Business Day" means a week day when banks are open for business in New South Wales;

"Commencement Date" means the date of commencement of this agreement specified in the schedule;

"Confidential Information" means all secrets, plans, drawings, know-how, technical information, designs, specifications, commercial information, business and marketing plans, projections, profit and loss analyses, management reports, market research, business plans, details of agreements or arrangements with third parties, information which is designated to be confidential which is not in the public domain and includes any such information in the party's power, possession or control concerning or belonging to any third party;

"Consultant's Premises" means the address of the Consultant specified in the schedule;

"Consultancy Services" means the services to be performed by the Consultant under this agreement specified in the schedule;

"Client's Site" means the address of the Client as specified in the schedule;

"Force Majeure" means any act of God;

outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority; industrial dispute; governmental restraint; or other event which is not within the reasonable control of the parties.

"Insolvency Event" means, in relation to a party:

a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Law) or similar official is appointed over any of the assets or undertaking of the party; the party suspends payment of its debts generally;

the party is or becomes unable to pay its debts as and when they fall due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Law;

the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors, or any class of them;

the party ceases to carry on business or threatens to cease to carry on business;

a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or

an application or order is made for the winding up or dissolution of the party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the other party.

Interpretation

Unless expressed to the contrary, in this document:

- (a) words importing the singular include the plural and vice versa;
- (b) words denoting a gender include the other gender;
- (c) if a word or phrase is defined, cognate words and phrases have corresponding meanings;
- (d) a reference to a person includes not only a natural person but any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency and that person's successors and permitted assigns;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
- (f) a reference to any document (including this document) shall include a reference to that document as amended, supplemented, novated or replaced from time to time;
- (g) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed and replaced or has its powers or functions removed ("defunct body") means the agency or body which performs most closely the functions of the defunct body;

- (h) where a party comprises two or more persons an agreement or obligation to be performed or observed by that party binds those persons jointly and each of them severally, and a reference to that party shall be deemed to include a reference to any one or more of those persons;
- (i) a reference to an appendix or schedule is a reference to an appendix or schedule to this document;
- (j) "writing" encompasses all means of reproducing words in a tangible and permanently visible form and includes facsimile transmissions;
- (k) wherever the word "include" or any form of that word is used it must be construed as if it were followed by "(without limitation)";
- (l) "Business Day" means a day on which banks are open for business in NSW, excluding a Saturday, a Sunday or a public holiday.
- (m) terms defined in the Corporations Law as at the date of this document bear the same meaning when used in this document;
- (n) a reference to "dollars" "A\$" and "\$" means the lawful currency of the Commonwealth of Australia;
- (o) headings are included for convenience only and shall not affect the interpretation of this document;

Expenses

The Client shall reimburse the Consultant the amount of all expenses reasonably and properly incurred by it in the performance of its duties under this Agreement, including travel expenses between the Consultant's Premises and the Client's Site, accommodation and subsistence expenses, and all other expenses incurred or required to be incurred by the Consultant to promptly and efficiently provide the Consultancy Services.

Title

- (a) The parties agree that any works, items, materials or information of whatever nature produced or developed by the Consultant or under the Consultant's direction pursuant to or in the course of providing the Consultancy Services shall be the sole and complete property of the Client, whether such property is tangible or is in the nature of industrial and intellectual property rights (including copyright and rights of confidential information).
- (b) The Consultant hereby irrevocably assigns to the Client all of its rights in relation to the materials described in sub-clause (a) hereof and covenants to sign such documents and do all such things necessary at law and in equity to perfect said assignment.

Liability of Consultant

- (a) Except as expressly provided to the contrary in this Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Consultancy Services or to this Agreement are excluded. Without limiting the generality of the preceding sentence, the Consultant shall not be under any liability to the Client in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the failure or omission on the part of the Consultant to comply with its obligations under this Agreement.
- (b) Where any Act of Parliament implies in this Agreement any term, condition or warranty that the Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of, or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included in this Agreement. However, the liability of the Consultant for any breach of such term, condition or warranty shall be limited, at the option of the Consultant, to any one or more of the following:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- (c) The Client warrants that it has not relied on any term, condition, warranty, undertaking, inducement or representation made by or on behalf of the Consultant which has not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications

contained in any document including any catalogues or publicity material produced by the Consultant.

Indemnity

In the event that the relationship between the Client and the Consultant be found by any court tribunal or other body of competent jurisdiction to be that of employer and employee, the Consultant indemnifies and holds the Client harmless from any claim, demand, liability or penalty (including but not limited to withholding tax and payroll tax) arising in any way out of this Agreement. This clause will not merge on completion.

No relationship of employment

- (a) The Consultant acknowledges that it will provide the services to the Client for the purposes as an independent contractor. No relationship of employer and employee will be created between the Consultant and the Client or as a result of this Agreement.
- (b) The Consultant agrees that it is responsible for the compliance by it and any of its employees with all occupational health and safety and anti-discrimination policies and practices during the provision of the services, regardless of whether the provision of the services takes place at the Client's Site or the Consultant's Premises, and further covenants and agrees that it and any of its employees will comply with all occupational health and safety and anti-discrimination policies and practices effected by the Client at the Client's Site.

Force majeure

- (a) The Consultant shall not be liable for any delay or failure to perform its obligations if such failure is due to *force majeure*.
- (b) The Consultant shall notify the Client as soon as practicable of any anticipated delay due to *force majeure*. That performance of the Consultant's obligations under this agreement shall be suspended for the period of the delay due to *force majeure*.
- (c) If a delay due to *force majeure* exceeds 60 days, the Client may terminate this agreement immediately on providing notice to the Consultant. If the Client gives such notice to the Consultant –
 - (i) the Consultant shall refund moneys previously paid by the Client under this agreement for which no services have been provided; and
 - (ii) the Client shall pay the Consultant a reasonable sum in relation to services rendered or costs and expenses incurred prior to termination for which no payment has been made by the Client.

Termination

- (a) Once work has commenced, there are strictly NO refunds and as is the nature of advertising on third party platforms and websites, there are NO guarantees. Once you enter the agreement with GMS, any spend is at your own risk.
- (b) Without limiting the generality of any other clause in this agreement, the Consultant may terminate this agreement immediately by notice of writing if –
 - (i) any payment due from the Client to the Consultant pursuant to this agreement remains unpaid for a period of 14 days; or
 - (ii) the Client breaches any clause of this Agreement and such breach is not remedied within fourteen days after the provision of written notice by the Consultant to the Client requiring rectification of the said breach.
- (c) Notwithstanding the preceding clause the Consultant may terminate this agreement immediately on notice in writing to the Client if –
 - (i) the Client suffers an insolvency event;
 - (ii) the Client ceases or threatens to cease conducting its business in the normal manner.
- (d) If notice is given to the Client pursuant to the preceding clauses, the Consultant may, in addition to terminating the Agreement –
 - (i) retain any moneys paid;
 - (ii) charge a reasonable sum for work performed in respect of work which no sum has been previously charged;
 - (iii) retake possession of all property of the Consultant in the possession of the Client;

- (iv) be regarded as discharged from any further obligations under this agreement; and
- (v) pursue and additional or alternative remedies provided by law.

- (e) The Client may terminate this Agreement if the Consultant breaches any term of this Agreement and such breach is not remedied within twenty-eight days after the provision of written notice by the Client to the Consultant requiring rectification of the said breach.
- (f) The Client must provide 30 days written notice in order to terminate the subscription

Notices

Form of notice

A notice, approval, consent or other communication ("Notice") in connection with this document must be:

- in writing;
- signed by a director or secretary of the sender; either personally served or left at the address of the addressee, or sent by facsimile transmission addressed as follows.

The address, facsimile number and attention details of each party is:

name of client

Address: Suite 28, 87/103 Epsom Rd,
Rosebery, NSW, 2018
Email:
admin@growthmarketingsystems.com
Attention: GMS Directors

Effective time

A Notice takes effect from the time it is received unless a later time is specified in it.

Receipt

A Notice is taken to be received:

- (a) (in the of case delivery in person) when delivered, received or left at the address of the recipient shown in this document or to any other address which it may have notified the sender; and
- (b) (in the case of facsimile) on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient,

but if delivery or receipt is on a day which is not a Business Day, or is later than 5 pm (local time), it will be taken to have been duly given or made at the commencement of business on the next day which is a Business Day.

Change of address

Any party may change its address or facsimile for receipt of Notices at any time by giving written notice of such change to each party.

Goods and Services Tax

Definitions

In this clause:

"GST" means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST law.

"GST law" means:

A New Tax System (Goods and Services Tax) Act 1999 (Cth); or an Act imposing, or relating to the imposition or administration of such a tax.

"Invoice" means a tax invoice under the GST law.

"Supply" means the same as in the GST law.

Application

This clause applies if a party to this Agreement becomes liable to pay GST ("the Supplier") in relation to a Supply made under this Agreement ("a taxable supply") to another party to this Agreement ("the Recipient").

Payment of GST

In addition to any amounts payable by the Recipient to the Supplier under this Agreement, the Recipient must pay to the Supplier the amount of GST payable on a taxable supply. The GST is payable at the same time as paying the amount on which the GST is calculated.

Invoice

Immediately upon receipt by the Supplier of the payment referred to in sub-clause (c) hereof, or not later than such other time as the GST law may require, the Supplier must issue an Invoice or invoices to the Recipient for the amount of GST referable to the taxable supply containing such particulars as are required by the GST law.

Miscellaneous

Assignment

- (a) The Consultant may not assign its rights under this document without the prior written consent of the Client.
- (b) Exercise of rights
- (c) A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

Severability

- (a) If any provision of this agreement is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation the validity and enforceability of the remaining provisions shall not be thereby affected.

Waiver and variation

- (a) A provision of or a right created under this document may not be:
- (b) waived except in writing signed by the party granting the waiver; or
- (c) varied except in writing signed by the parties.

Approvals and consent

A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this document expressly provides otherwise.

Further assurances

Each party agrees, at its own expense, on the request of any other party, to do everything reasonably necessary for the purposes of or to give effect to this document and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

Counterparts

This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

Computation of time

Where time is to be reckoned by reference to a day or event, that day or the day of that event is excluded.

Joint and several liability

An obligation of two or more persons binds them jointly and severally.

Effect of execution

This document is not binding on any party unless it or a counterpart has been duly executed by, or on behalf of, each person named as a party to the document.

Governing law and jurisdiction

- (a) This document and the transactions contemplated by this document are governed by and construed in accordance with the law in force in the State of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the jurisdiction of the courts of the State of New South Wales and courts of appeal from them for determining any dispute concerning this document or the transactions contemplated by this document. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.