

**Notafication Pty Limited**  
**Web Development Projects**  
**Master Service Agreement**

Version 2.1.1

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## **SECTION A: GENERAL TERMS**

### **1. SERVICES AND STATEMENTS OF WORK**

1.1. Notafication Pty Limited with Australian Business Number 39 642 635 327 hereafter referred to as “Notafication” agrees to supply Services and the Client agrees to acquire Services on the terms and conditions of this Agreement.

1.2. If expressly stated in a Proposal, the Client acknowledges and agrees that Notafication will be the exclusive provider of the Services. The Client may have a third party perform the whole or any part of the Services where Notafication does not agree to provide such Services requested by the Client on reasonable terms.

1.3. If and when the Client wishes to order services, the parties will prepare a Brief or Statement of Work containing the details.

1.4. When a Brief or Statement of Work has been agreed by the parties, it will be incorporated into this Agreement and will be governed by these terms.

1.5. If either party wishes to change the Services or request a change to a Brief or Statement of Work, then both parties agree to follow the variation process referred to in Clause 6.

### **2. TERM**

2.1. This Agreement commences on the Commencement Date and continues for the Term. At the expiry of the Term, this Agreement will automatically renew for successive periods of 12 months unless either party provides the other at least 2 months prior notice in writing that it wishes to terminate this Agreement and provided that there are no Statements of Work currently on foot.

2.2. Each Brief or Statement of Work commences on the Brief or Statement of Work Commencement Date and continues until the works contemplated therein are handed over to the Client, unless terminated earlier in accordance with these General Terms.

### **3. STRUCTURE OF THE AGREEMENT**

3.1. This Agreement consists of the following documents:

- (a) these Master Service Agreement;
- (b) each Brief or Statement of Work;
- (c) any Proposal provided by Notafication.

3.2. If there is any inconsistency between a provision of the documents set out in this clause, then the provision in the document listed higher in the list prevails to the extent of the inconsistency.

#### 4. NOTAFICATION'S GENERAL OBLIGATIONS AND RESPONSIBILITIES

4.1. Notafication will provide the Services as requested by the Client and specified in a Brief or Statement of Work from time to time during the Term, in a professional manner and in accordance with the relevant Brief or Statement of Work.

4.2. In respect of all Client Items supplied by the Client, in accordance with clause 5, Notafication must:

- (a) use Client Items only for the purposes of this Agreement;
- (b) take reasonable care of Client Items; and
- (c) return to the Client all Client Items which have been in its custody when no longer required for the purposes of this Agreement.

4.3. The Client acknowledges that Notafication will retain administrator rights for all Services irrespective of where or with whom the Services are hosted.

#### 5. CLIENT'S GENERAL OBLIGATIONS AND RESPONSIBILITIES

5.1 The Client will request Notafication to provide Services in accordance with the terms of this Agreement and must:

- (a) provide to Notafication those Client Items in a form suitable for use by Notafication to provide the Services in the manner set out in the relevant Brief or Statement of Work;
- (b) pay the agreed Fees for Services;
- (c) provide any assistance required to allow Notafication to perform the Services as set out in the Proposal or relevant Brief or Statement of Work.

#### 6. DELAY AND VARIATIONS

6.1. Notafication agrees to use its best endeavours to ensure the performance of the Services at the times and in the manner set out in the relevant Brief or Statement of Work. Other than as expressly set out in this Agreement, the Client will have no remedy against Notafication in relation to delayed completion of the Services.

6.2. Within 5 Business Days of Notafication becoming aware that it will be delayed in completing any Services in accordance with the relevant Brief or Statement of Work, it will notify the Client of the cause and nature of the delay and provide an estimated

date of completion of the Services. Notafication may extend any date set out in the Brief or Statement of Work provided that Notafication:

- (a) notifies the Client as accordance with this clause;
- (b) does not postpone the completion of the relevant Services for a period greater than the duration of the period of delay;
- (c) takes all reasonable steps in its control to minimise the period of the delay; and
- (d) complies with all reasonable directions of the Client in respect of the delay.

6.3. If any delay in Notafication performing the Services in the manner and at the times set out in the Brief or Statement of Work occurs due to any act or omission of the Client (including the Client failing to provide Client Items), Notafication may extend any dates specified in the Brief or Statement of Work by the period of the delay and shall be entitled to recover from the Client any reasonable costs and expenses incurred by it as a result of the delay, such costs or expenses to be based on the appropriate Fees.

6.4. If any amendment is requested by the Client to a Brief or Statement of Work after Notafication has commenced providing the Services (Variation) which in Notafication's reasonable opinion requires additional time, material or resources to be provided by Notafication (Additional Services) such Variation will occur on the following basis:

- (a) the Client will notify Notafication of the Variation required by it (Notice of Variation);
- (b) on receipt of the Notice of Variation Notafication will provide the Client with a written statement (Statement of Variation) setting out:
  - (i) the Variation required to the Brief or Statement of Work;
  - (ii) the Additional Services required due to such Variation; and
  - (iii) the Additional Fees required to undertake the Additional Services;
- (c) If the Client agrees in writing to:
  - (i) the Variation;
  - (ii) the Additional Services; and
  - (iii) the Additional Fees;the relevant Brief or Statement of Work will be taken to have been varied to include such changes as set out in the Statement of Variation.
- (d) Notafication is under no obligation to commence any Additional Services until the parties have reached agreement under subclause (c).

(e) Notwithstanding subclause (d) if Notafication prepares any Additional Services at the request and with the approval of the Client, the Client will pay for such work as Additional Fees based on the Fees.

## 7. FEES

7.1. The Client must pay the Fees, including any Additional Fees for the Services and, except where the Fees are fixed, all reasonable and incidental expenses incurred by Notafication in providing the Services (provided such expenses have been agreed with the Client prior to those expenses being incurred).

7.2. Unless otherwise expressly stated, all monetary amounts specified in this Agreement are exclusive of GST.

7.3. If GST is imposed on a Taxable Supply made by one party (the Supplier) to another party (the Recipient) under or in connection with this Agreement:

(a) the price of the Taxable Supply shall be equal to the GST exclusive consideration that the Recipient must pay to the Supplier for the Taxable Supply under this Agreement increased by an amount (the GST Amount) equal to the amount of GST payable by the Supplier on that Taxable Supply; and

(b) the GST Amount is, subject to the Supplier issuing a Tax Invoice to the Recipient, payable at the same time and in the same manner as the consideration to which it relates.

7.4. The parties agree to assist each other as appropriate to implement the GST Act if applicable.

7.5. Each party must provide to the other all information required to enable Tax Invoices to be issued in accordance with this Agreement.

## 8. INVOICING AND PAYMENT

8.1. Notafication will invoice the Client monthly or otherwise in accordance with the Brief or Statement of Work or Proposal.

8.2. Unless agreed otherwise in writing, the Client must pay each correctly rendered invoice within 30 days of the date of the invoice.

8.3. Payment options will be stipulate within the Brief or Statement of Work or Proposal and may include:

- a) upfront payment
- (b) staged payments; or
- (c) third party finance.

8.4. If Notafication does not receive payment of any correctly rendered invoice in full on the date for payment, Notafication may:

- (a) charge interest on the amount outstanding for so long as it remains outstanding at a rate equal to 3% above the interest rate for overdrafts of \$100,000 or more published from time to time by National Australia Bank;
- (b) suspend the provision of Services;
- (c) temporarily revoke a the Client's Licence; or
- (d) terminate the Agreement in accordance with clause 15.

8.5. In the event Notafication has commenced providing Services to the Client and the Client's third party finance is cancelled before its settlement, the Client will be liable to pay the full value of the Brief or Statement of Works to Notafication.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1. The parties agree that other than as provided in this clause 9, nothing in this Agreement transfers ownership in, or, otherwise grants any rights in any Intellectual Property Rights of a party.

9.2. If any party provides any material to the other party that contains any Intellectual Property Rights which were developed independently of this Agreement by the first party (Pre Existing Material), then the first party grants to the other party a non transferable, non exclusive, royalty free licence to use the Pre Existing Material, for the Term, solely for the purpose of:

- (a) in the case of Notafication, meeting its obligations to the Client under this Agreement; and
- (b) in the case of the Client, using the Deliverables and Services solely for the purpose of obtaining the benefit of the Services provided.

9.3. If the Client provides any Client Items to Notafication, then the Client grants to Notafication a non transferable, non exclusive, royaltyfree licence for the Term to use Client Items solely for the purpose of Notafication meeting its obligations to provide the Services under this Agreement.

9.4. Unless otherwise expressly stated to the contrary in a Brief or Statement of Work or Proposal and subject to Clauses 9.7 and 9.8, any Intellectual Property Rights in Deliverables created by Notafication for the Client pursuant to a Brief or Statement of Work will be assigned to the Client:

- (a) subject to payment of all relevant Fees, Notafication assigns to the Client all rights, title and interest (including all Intellectual Property Rights) in that Deliverables (Assigned Material). This assignment operates as an assignment

of future Intellectual Property Rights to the extent that the Assigned Material is not in existence at the date of this Agreement; and

(b) Notafication warrants that the use or exploitation of the Assigned Material in any manner does not, and will not infringe any person's rights in the Assigned Material.

9.5. If a Brief or Statement of Work vests any Intellectual Property Rights in Deliverables to Notafication, then Notafication grants to the Client a perpetual, non exclusive, royalty free licence to:

(a) use, reproduce, modify and adapt the Deliverables for any purpose connected with the Client's business;

(b) permit any person to assist the Client to do any of those things referred to in sub-paragraph (a); and

(c) sub licence any of the rights described in sub-paragraphs (a) or (b) to any person.

9.6. The Client grants to Notafication a non-transferable, non-exclusive, royalty free licence for the Term to use the Deliverables assigned to the Client under clause 9.4 solely for the purpose of meeting its obligations to provide the Services under this Agreement.

9.7. Where Notafication is to assign Intellectual Property Rights in Deliverables pursuant to clause 9.4, the Client acknowledges and agrees that the operation of the Deliverables may rely on Intellectual Property Rights owned by third parties which Notafication cannot assign to the Client and that the Client may need to licence or acquire those Intellectual Property Rights from those third parties at its cost.

9.8. The Client acknowledges and agrees that where Notafication is to assign Intellectual Property Rights in Deliverables pursuant to clause 9.4, Notafication will not assign any Intellectual Property Rights in any generic software, documentation, templates or data material (but excluding textual, graphical, audio and other material) developed where such an assignment would preclude Notafication from making further use of the techniques or know how used in the provision of the Services and in such circumstances, Notafication will grant to the Client a non-exclusive licence in similar terms to clause 9.5.

## 10. CONFIDENTIAL INFORMATION AND PRIVACY

10.1. Subject to clause 10.2, each party will keep confidential, treat as privileged, only use for the purposes connected with this Agreement for which it has been provided, and not directly or indirectly make any disclosure, or allow any announcement to be made of the Confidential Information of the other party.

10.2. A party may make any disclosure in relation to this Agreement:



- (a) to any professional adviser where that person is obliged to keep the information confidential;
- (b) to comply with any applicable law, or any requirement of any regulatory body (including any relevant stock exchange);
- (c) to any of its employees to whom it is necessary to disclose the information;
- (d) to enforce its rights or to defend any claim or action under this Agreement;
- (e) to a Related Body Corporate that agrees to comply with the terms of this clause 10;
- (f) where the information has come into the public domain through no fault of that party.

10.3. Each party must ensure that its officers, employees, contractors and agents comply with this clause.

10.4. Upon termination, each party will deliver to the other party Confidential Information in its possession and will destroy any Confidential Information if directed to do so by the other party in writing. This clause will survive the termination of the Agreement for any reason.

10.5. Each party shall comply with the Australian Privacy Principles and the Privacy Act 1988 (Cth), and on receipt of a Brief or Statement of Work the following will be considered and recorded where relevant:

- (a) all personal data touchpoints will be mapped;
- (b) the nature of the entity holding the personal information (the Client, Notafication or a Third Party) and that appropriate information handling practices are in place;
- (c) the amount and sensitivity of the personal information held;
- (d) the possible adverse consequences for an individual;
- (e) the practicability of implementing the security measure, including the time and cost involved;
- (f) whether a security measure is itself privacy invasive; and
- (g) whether additional overseas legislation is applicable, such as The General Data Protection Regulation (GDPR) a legal framework that sets guidelines for the collection and processing of personal information from individuals who live in the European Union (EU)

10.6. The Client acknowledges and agrees that Notafication may share Confidential Information with its Related Body Corporate and third party service providers, whether based in Australia or overseas, for the purpose of providing the Deliverables.

10.7. The Client and Notafication acknowledge they jointly will take the following reasonable steps, where relevant to each party, in consideration of each Brief or Statement of Work to protect privacy:

- (a) performing or conducting Privacy Impact Assessments (PIA);
- (b) implementing Privacy by design principles;
- (c) performing information security risk assessments;
- (d) creating and maintaining a Privacy Policy;
- (e) having a comprehensive and up to date set of information security policies;
- (f) restricting physical and logical access to personal information on a "need-to-know" basis;
- (g) keeping software up to date and current;
- (h) employing multi factor authentication;
- (i) configuring systems for security;
- (j) employing end point security software;
- (k) security monitoring tools to detect breaches;
- (l) having a data breach response process;
- (m) penetration testing exercises;
- (n) vulnerability assessments; and
- (o) using network security tools

10.8. Notafication will keep abreast of; industry reports and security updates, Australian Cyber Security Centre (ACSC) reports, and monitor security and privacy news from member associations;

- (a) the Australian Web Industry Association (AWIA); and

(b) the administrator and self-regulatory policy body for the .au domain space the .au Domain Administration Ltd (.auDA).

## 11. ACCEPTANCE

11.1. The Client acknowledges that a Deliverable may not be error free and that the Deliverable may contain minor bugs and defects. Such minor bugs or defects shall not constitute a breach by Notafication of its obligations under this Agreement and must not form the basis of refusing the Deliverable.

11.2. The Client shall be deemed to have accepted a Deliverable when a period of 10 Business Days has elapsed since delivery of the Deliverable to the Client and the Client has failed to notify Notafication in writing of any failure of the Deliverable to conform to specifications.

11.3. If it is found that a Deliverable contains a Defect which prevents proper performance in accordance with the relevant specifications in the Brief or Statement of Work, the Client must notify Notafication in writing. Notafication will, at its own cost, remedy such nonconformities as soon as practicable after receiving the Client's written notification.

## 12. INDEMNITY

Each party indemnifies the other party from and against any costs, loss or liability reasonably incurred or sustained arising out of a claim brought by a third party against the indemnified party alleging that the use by the indemnified party of any Intellectual Property Rights licensed or assigned to that party by the other party pursuant to this Agreement is an infringement of that third party's Intellectual Property Rights.

## 13. WARRANTIES

13.1. Notafication warrants that:

(a) it will provide the Services in a proper and competent manner using professional skill and knowledge and in conformity with all applicable laws, regulations and industry standards;

(b) the Deliverables will perform substantially in accordance with the specifications contained in the relevant Brief or Statement of Work or Proposal, and that it will correct any defects or errors in any Deliverable which prevents the Deliverable from substantially performing to specification at its cost within 90 days of the date on which the Deliverable is put into operation by the Client.

13.2. The warranties contained in clause 13.1 and in this Agreement, are the only warranties made by Notafication. All other warranties, or conditions, whether express or implied, are excluded to the extent permitted by law. If any law implies or imposes

a condition or warranty, the liability for which can be limited, then where permitted, Notafication limits its liability to:

- (a) in the case of goods, supplying equivalent goods or paying for the cost of doing so; or
- (b) in the case of services, supplying the services again or paying for the cost of doing so

#### 14. LIMITATION OF LIABILITY

14.1. In no event shall Notafication be liable to the Client for loss of profits, wasted expenditure, anticipated savings, loss of goodwill, loss of data or for any indirect, consequential or special loss or damage whether or not the loss or damage was foreseeable or contemplated by Notafication or if Notafication was advised of the possibility of such loss or damage.

14.2. Notafication's total liability to the Client for breach of contract, tort (including negligence), or for any other common law or statutory cause of action arising out of the operation of this Agreement shall be limited to the amount paid by the Client to Notafication in respect of the Brief or Statement of Work from which the liability arose or, if not in respect of a Brief or Statement of Work, the amount paid by the Client to Notafication under this Agreement in the year prior to the occurrence giving rise to that liability.

#### 15. TERMINATION

15.1. Either party may terminate this Agreement or a Brief or Statement of Work with immediate effect at any time by giving notice to the other party (the defaulting party) where the defaulting party:

- (a) breaches a term of this Agreement or the relevant Brief or Statement of Work and that breach is not remedied within thirty (30) Business Days of the defaulting party receiving a notice which requests the breach be remedied; or
- (b) the defaulting party becomes subject to any form of insolvency administration or is unable to pay its debts as they fall due.

15.2. In addition to any other termination rights set out in this clause, Notafication may terminate this Agreement or a Brief or Statement of Work with immediate effect by giving notice to the Client if the Client fails to pay any correctly rendered invoice pursuant to clause 7.

15.3. In the event that the Client fails to make payment to either Notafication or any third party finance company and is in breach under this Agreement or any third party finance agreement, the Client agrees and acknowledges that Notafication may withdraw the Client's right to use any of the Services and Notafication may hold onto

any items associated with the Services (and within its possession) until such time as full payment is made.

15.4. Termination of a Brief or Statement of Work pursuant to this clause will only terminate that Brief or Statement of Work and will not affect this Agreement or any other Brief or Statement of Work.

15.5. Termination of this Agreement pursuant to this clause will terminate all Statements of Work under this Agreement.

## 16. CREDITS

16.1. Notafication shall be entitled to request verbally or in writing to include on any Website or Application developed by Notafication a statement to the effect that the Website or Application was developed by Notafication, and refer to the Website or application for marketing purposes, client case studies, and publicity.

## 17. NO SOLICITATION

The Client or its Related Bodies Corporate must not during the Term and for a period of 12 months after the expiry of this Agreement, solicit, approach, employ or engage, offer to employ or engage any person who was at any time during the Term an employee or contractor of Notafication or any of its Related Bodies Corporate.

## 18. SUB-CONTRACTING

Notafication may engage third parties on a sub contract or consultancy basis to assist in the provision of the Deliverables under this Agreement.

## 19. NO REPRESENTATIONS

The Client acknowledges and confirms that it has not relied on any representation made by Notafication or on any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Notafication that has not been stated expressly in this Agreement.

## 20. ENTIRE AGREEMENT

This Agreement, the Brief or Statement of Works, and the Proposal (if any) represents the entire agreement of the parties in respect of its subject matter. All previous correspondence and negotiations in respect of it are superseded.

## 21. RESOLUTION OF DISPUTES

Before resorting to external dispute resolution mechanisms the parties must attempt to settle any dispute in relation to this Agreement by:

- (a) notifying the other party of its reasons for wishing to seek external dispute resolution (including any claims it may have against the other party); and
- (b) referring the dispute to senior management of each party who may be able to resolve the dispute

## 22. ASSIGNMENT AND NOVATION

22.1. Neither party may assign or novate or attempt to assign or novate this Agreement, any right or obligation under this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed.

## 23. RELATIONSHIP

Each party acknowledges that: (a) nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties; (b) it has no right to bind the other party in contract or otherwise at law.

## 24. SEVERABILITY

Part or all of any clause of this Agreement that is illegal or unenforceable and does not go to the essence of the Agreement will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

## 25. WAIVER

25.1. Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.

25.2. Any waiver or consent given by any party under this Agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.

## 26. FORCE MAJEURE

The obligations of a party (other than obligations relating to the payment of money) may be suspended if anything occurs which is outside that party's control and which prevents or delays that party from performing its obligations under this Agreement. In that case, the completion date and any other dates in any development schedule, shall be extended by the delay arising as a result of the occurrence of that thing.

## 27. NOTICES

Notices under this Agreement may be delivered by hand, by mail or by email to the addresses specified by each party from time to time and will be deemed to have been delivered:

- (a) if hand delivered, on the date of delivery;
- (b) if mailed, five (5) business days after the date of posting; and
- (c) if sent by email, on the day of sending

## 28. GOVERNING LAW AND JURISDICTION

This Agreement is governed by and will be construed according to the laws of New South Wales, Australia.

(a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Agreement.

(b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought to an convenient forum, where that venue falls within paragraph (a) of this clause.

## **SECTION B: WEBSITE DEVELOPMENT**

### 1. ENGAGEMENT

If the Client engages Notafication to provide Website Development the provisions of Section B of this Agreement will apply.

### 2. WEBSITE DEVELOPMENT SERVICES

2.1 If required by the Client, Notafication will create Website content for the Hosted Websites and post that material on a Hosted Website.

2.2 Notafication will not publicly publish any of the content which it creates for the Client on any Hosted Website until it has received notice in writing from a Client representative that the content has been approved by the Client. Content may be published behind a password protected page for review purposes.

2.3 Notafication will retain copies of all of the notices which it receives pursuant to clause 1.2 together with a copy of the content to which the notice relates and will provide copies of those records to the Client upon request.

2.4 The following applies to the Provision of Website Tools:

(a) Upon your request, we may provide to you Website Tools as part of the Website.

(b) You acknowledge that some of the Website Tools are provided by third parties and therefore:

- I. we have limited control over the functionality or operation of the Website Tools;
- II. if the third parties provide data or other information for use with the Website Tools, we have no control over the accuracy or completeness of that information;
- III. you accept and must comply with the terms and conditions of those third parties relating to the Website Tools; and
- IV. those third parties may invoice you directly for ongoing costs relating to your use of the Website Tools.

(c) The third parties who provide the Website Tools, and the terms and conditions for use of the Website Tools will be made available to you via the administration interface of your website or if impractical via email on request.

(d) you acknowledge that the Content Management System and many of its 3rd party extensions are provided by third parties, and therefore:

- I. we have limited control over the functionality or operation of the Content Management System and any third party extensions;
- II. Notafication is not affiliated with WordPress; and
- III. you accept and must comply with the terms and conditions of those third parties relating to the Content Management System. The relevant terms and conditions can be found at the following websites:
- IV. These may include but are not limited to Terms and Conditions found on these websites and URL's:
  - i. <http://www.gnu.org/licenses/gpl-2.0.html> (GPLv2 or later)
  - ii. <http://www.gnu.org/licenses/gpl-3.0.html>
  - iii. <https://wordpress.org/about/license>



- V. Each extension usually has its license or Terms and Conditions as a link or text inside the control for that plugin or extension in each client's website administration interface.

(d) the fees for updates and upgrades for the Website Tools may change from time to time. The new fees will apply from our notification date to you.

(e) if you have prepaid or committed to a payment term for the Provision of Website Tools that involved a third party these are non-refundable by Notafication or the provider of Website Tools for any condition or reason.

2.5 All of Notafication's Content Management System products such as; Template, Modules, Components, Plugins and Extensions, are released under subscription. However the PHP code portions of these products are released under GNU/GPLv2 license. All images, cascading style sheets (CSS) and included javascript (JS) files are NOT GPL (unless specified), and are released under Notafication's Proprietary License, unless specifically authorised by Notafication. Elements (images, CSS, JS etc) of the products released under the Notafication proprietary license can not be redistributed or repackaged for use other than those allowed by the subscription.

2.6 Notafication Proprietary Use License controls non-PHP code elements, such as images, cascading style sheets and JavaScript elements in the released Notafication Products (Templates, modules, components, plugins etc.). These elements are not compiled together but are sent independently of GPL code and combined in a client's browser, so, do not have to be GPL themselves. These files are not released under the GPL, and are supplied to each paying user for non-exclusive usage per number of registered domains. You may not modify, duplicate, redistribute, on sell or include the elements set without prior written consent of Notafication.

### 3. AGREEMENT ON HOSTED WEBSITE PLAN

3.1 The Client must provide Notafication with clear and detailed instructions and content in relation to requests or the need for Hosted Website development which are required for the particular circumstances of the Client and its users and Notafication must record all such requests.

3.2 Within 30 days from initial instructions, the Client and Notafication must agree on the plan for development for the Hosted Website (Hosted Website Plan), including:

- (a) the request for development works that Notafication will provide; and
- (b) the completion date on which the development works are to be completed by Notafication.

3.3 Notafication must, in accordance with the Hosted Website Plan:

- (a) develop the Hosted Website;
- (b) supply the Hosted Website to the Client.

#### 4. REPORTING

4.1 Notafication will consult with the Client at regular agreed intervals about:

- (a) changes or additions to the Hosted Websites required by any instruction given by the Client;
- (b) major developments, such as the introduction of new services for Hosted Websites (the implementation of which are the subject of separate Brief or Statement of Work); and
- (c) the progress of any Website maintenance services that have been requested by the Client or carried out by Notafication.

#### 5. PAYMENT CARD INDUSTRY DATA SECURITY STANDARD (PCI DSS) COMPLIANCE

5.1 Where, as part of provision of Website Development that involves credit card transactions or the acceptance of credit card payments the Client will be informed of how the following will be actioned and a plan for the security of Cardholder Data will be outlined to:

- (a) comply with all applicable PCI DSS obligations, requirements and standards;
- (b) complete any documentation required to comply with PCI DSS if required;
- (c) maintain and be responsible for proper security of Cardholder Data that is processed, stored, or transmitted;
- (d) acknowledge touchpoints of Credit Card data and any external payment processing providers involved and their role in PCI DSS compliance.

### **SECTION C: WEBSITE HOSTING AND DOMAIN NAMES**

#### 1. ENGAGEMENT

If the Client engages Notafication to provide Web Hosting and Domain Name Services the provisions of Section C of this Agreement will apply.

## 2. OPERATIONAL MANAGEMENT

2.1 If required by the Client, Notafication will provide operational management of each Hosted Website's equipment and software components by pro-active management and monitoring each Hosted Website including:

- (a) performing a regular backup of each Hosted Website;
- (b) identifying and reporting any capacity issues or unauthorised access (server and database) as soon as Notafication becomes aware of such issues;
- (c) monitoring, managing and reviewing security;
- (d) ensuring configuration of the Hosted Websites;
- (e) managing and controlling system access; and
- (f) investigate report and/or respond to the Client on any problems identified by the Client or Notafication in the operation of the Hosted Websites.

## 3. ESCALATION PATH AND CONTACT DETAILS

Notafication will provide a service desk for issue escalation and service concerns to be logged. Notafication will provide an incident report of any escalation issues and service concerns.

## 4. INTERNET AUDIT SERVICE

The Client may have any Hosted Website and infrastructure associated with any Hosted Website audited by an external organisation. The audit may cover the Hosted Website and security penetration testing and a review of the preventative maintenance and recovery procedures. Notafication will allow the Client reasonable access to its site and any infrastructure associated with the Hosted Websites for the purposes of such audit. Notafication requests that prior to any audit that Notafication be advised in advance of (5) business days as some audit types such as load testing may impact server response times.

## 5. CONTENT MANAGEMENT

Notafication will provide Content Management System login credentials and File Transfer Protocol (FTP) user access to the Client and authorised contractor / vendors to update content if requested and where practicable.

## 6. HOSTING SERVICES

6.1 Notafication will ensure the Hosted Websites are housed on servers within secured facilities. The geographic regions of Hosted Websites will be determined by the Client's geographic region unless otherwise requested.

6.2 Notafication will ensure that the Hosted Websites are visible to the DNS and accessible via TCP/IP where appropriate.

6.3 Notafication may manage the process of registering domain names on behalf of the Client as directed by the Client. All domain names will be registered in the name of the Client or such other name as the Client directs.

6.4 All the Client website/s will be firewall protected, with intrusion detection.

6.5 Notafication will, promptly following a request from the Client, provide to the Client such information about the Hosted Website as the Client may request, and provided that Notafication has access to such information, in such format as the Client may require.

6.7 If you have prepaid or committed to a payment term for the provision of Hosting Services, such as annual hosting or related services, these are non-refundable by Notafication or the provider for any condition or reason.

## SECTION D: SOCIAL MEDIA

### 1. ENGAGEMENT

1.1 If the Client engages Notafication to provide Social Media Services the provisions of Section D of this Agreement will apply.

1.2 Notafication may be engaged by the Client to promote the Client and its brand, services and/or products by creating and making available the Client Content on Social Media.

1.3 If you engage Notafication for the creation and use of the Client Content, then you will be required to enter into a Brief or Statement of Works identifying:

- (a) The relevant social media;
- (b) Any specific requirements or conditions in respect of the Client Content and how often you will provide it; and

(c) The duration of your engagement for the provision of the Client Content.

1.4 The Client will not within the Client Content or otherwise create or publish any content or do anything that is unlawful, derogatory or detrimental.

1.5 The Client will ensure that the Client Content complies with the applicable requirements of the Brief or Statement of Works.

## 2. INTELLECTUAL PROPERTY & PRIVACY

2.1 By providing the Client Content to Notafication, the Client grants Notafication an irrevocable, perpetual, exclusive and royalty-free licence to use, reproduce, reformat and publish the Client Content or any part of it on any Social Media, with a right to sub-licence the Client or its Agency to use, reproduce, reformat and publish the Client Content or any part of it on any Social Media.

2.2 The Client acknowledges and agrees that it will have no claim or recourse against Notafication for or in connection with any infringement of its Intellectual Property Rights in respect of the Client Content by a third party.

2.3 The Client agrees that if the Client Content contains information of any person other than the Clients, the Client will provide Notafication with their written consent in respect upon request.

2.4 The Client acknowledges and agrees that the Client Content will comply with the Privacy Act 1988 (Cth) in relation to any such personal information, as defined in that Act.

2.5 In the event of any inconsistency between this clause 2 and any other provision of this Agreement, this clause 2 will prevail.

## 3. INDEMNITIES

3.1 The Client Indemnifies Notafication from and against any loss or damage arising from or in connection with: (a) any claim that the Client Content infringes third party's Intellectual Property Rights; and (b) any claim that the Client Content breaches privacy or similar rights of a person whether in tort, at law or under statute.

## SECTION E: SEARCH ENGINE OPTIMISATION

### 1. ENGAGEMENT

If the Client engages Notafication to provide Search Engine Optimisation Services (SEO Services) the provisions of Section E of this Agreement will apply.

## 2. SEO SERVICES

2.1 Notafication will provide the Client with SEO Services with the frequency and reporting method specified in the Brief or Statement of Works.

2.2 Notafication' SEO Services are aimed at increasing visibility and boosting ranking on Google unless specifically stated in the Brief or Statement of Works.

2.3 Notafication cannot guarantee the Client's website ranking as search engines change their ranking algorithms on a regular basis and new sites and competitor sites may be being optimised and submitted continually.

2.4 In some cases it may not be possible to improve rankings on certain keyword phrases and in such cases Notafication will select the closest relevant keyword phrases to optimise.

2.5 Results will be based on listings of Google only unless otherwise agreed in the Brief or Statement of Works.

## 3. ACCESS

3.1 The Client agrees to give Notafication the following information, access and authorities and that should such not be granted, Notafication will not be held responsible for meeting any agreed upon targets:

(a) authority to Notafication to submit the Website pages being promoted to search engines and directories.

(b) Notafication will have the ability to optimise the structure and content of clients' web pages. Such changes generally have a minimal visual impact. Notafication will work directly with the Client in order to maintain the original look and feel of the Website.

(c) the Client must provide Notafication with log-on information (username and password) to gain FTP access to the Website. Notafication will maintain confidentiality of log-in information according to the Australian Privacy Principles.

(d) the Client must inform webmasters or anyone else who has access to the Website that Notafication is performing SEO services on the site.

(e) the Client is responsible for ensuring that the Website is always active and accessible.

## 4. GUARANTEES

4.1 Notafication cannot be held responsible for reaching any agreed targets if the Client has:

- (a) employed the services of another SEO Company or any other related company to work on the website during the same period,
- (b) employed the services of a search engine submission company during the same period,
- (c) created any duplicate sites, duplicate content or pages, redirects or doorway pages,
- (d) requested or exchanged links with link farms or undertaken any spamming techniques which may harm the website's ranking with Google;
- (e) attempted to use any other techniques, whether allowed by Google or not, to attempt to increase the SEO ranking of the site, or
- (f) undertaken any other additional SEO or SEO related activity.

4.2 Notafication may make void any campaign and render all of the outstanding balance payable should it be discovered that the Client has engaged in spamming, including but not limited to, hidden links, links to link-farms, redirect or cloaking techniques or used automated website submission software or automated reciprocal link programs.

4.3 The Client agrees that the Website is not hosted on free web space using domain forwarding (either framed or otherwise).

4.4 Notafication cannot guarantee SEO Services if there are errors made by third parties, or failure by the Client to maintain a current website.

## 5. INTELLECTUAL PROPERTY

5.1 This Agreement does not grant the Client Intellectual Property Rights in the SEO service.

5.2 The Client agrees that the SEO service and procedure, the names and logos of Notafication, and WDP, Web Development Projects, and all related product and service names, are the sole and exclusive property of Notafication.

## 6. RESTRICTIONS

6.1 The Client will not grant a license to any SEO software used by Notafication under this Agreement.

6.2 The Client will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the SEO

Services; or modify, translate, or create derivative works based on the SEO Services or any software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the SEO Services or any SEO software used by Notafication.

6.3 Unless you are expressly authorised by Notafication, the Client may not display, copy, reproduce, or distribute the SEO software, any component thereof, any documentation provided in connection with the Services or the software. Violation of these restrictions may result in the termination of this Agreement.

6.4 The SEO services may only be used for lawful purposes. Transmission or solicitation of any material that violates Australian federal, state or other laws that may apply in this jurisdiction or your local area is prohibited.

## **SECTION F: CUSTOMISED WEB APPLICATIONS**

### **1. ENGAGEMENT**

If the Client engages Notafication to provide Customised Web Applications the provisions of Section F of this Agreement will apply.

### **2. WEBSITE APPLICATION**

2.1 If required by the Client, Notafication will develop customised Applications for the Hosted Websites.

2.2 the Client must provide Notafication with clear and detailed instructions in relation to the Applications and Notafication must record all such requests.

2.3 Within 30 days from initial instructions, the Client and Notafication must agree on the plan for development of the Application (Application Plan), including:

- (a) the request for development works that Notafication will provide; and
- (b) the completion date on which the development works are to be completed by Notafication.

2.4 Notafication must, in accordance with the Hosted Website Plan:

- (a) develop the Application; and
- (b) Incorporate the Application with the Hosted Website.

## **SECTION G: SUPPORT SERVICE LEVELS**

### **1.1 ENGAGEMENT**



If the Client engages Notafication to provide Support Services the provisions of Section G of this Agreement will apply.

## 2.1 NOTAFICATION SERVICE DESK RESPONSIBILITIES AND SLAs

Notafication will ensure the following email support services are provided to the client:

- (a) logging and tracking of all client requests for service through the Notafication Service Desk System;
- (b) communicate in writing (email) with the Client regarding issues involving downtime or maintenance;
- (c) the Help/Support Service will operate daily from 0900 hrs to 1700 hrs for the time zone of Sydney, Australia, except on public holidays where alternative arrangements will be made and publicised. Outside of these hours the Client must agree in writing to an Extended Hours Support Fee unless located predominantly in a geographic region that Notafication has a physical presence in which local business hours will apply;
  - i. the Client's geographic location and support hours will be confirmed by Notafication if there are any doubts
- (d) table 2.1.2 shows the priority assigned to incidents according to the perceived importance of the reported situation. An incident refers to a fault, error, bug or request. Incidents are given a priority rating between 1 and 7 with Priority 1 as the highest priority. The Incident priority is determined by the Service Desk staff member assessing impact and urgency:

**TABLE 2.1.2: SERVICE DESK PRIORITY ASSIGNMENT**

<b>Priority</b>	<b>Impact</b>	Critical	High	Medium	Low
<b>Urgency</b>					
Critical		P1	P2	P3	P4
High		P2	P3	P4	P5
Medium		P3	P4	P5	P6
Low		P4	P5	P6	P7

- (e) The priority of the assignment refers to the initial response to the Client.
- (f) The following factors are considered when assessing the priority of the request:
  - a. number of users/clients/pages/systems affected by the incident;
  - b. single page or whole site;
  - c. business impact of the incident:
    - i. low minimal impact or medium;
    - ii. minor impact or urgent;
    - iii. high impact or critical; or
    - iv. extremely high impact.

(g) Average response times in table 2.1.4 are indicative and not guaranteed.

**TABLE 2.1.3: GENERAL GUIDE TO SERVICE DESK PRIORITY ASSIGNMENT**

<b>Priority</b>	<b>Area of Effect</b>
P1	Site-wide critical systems fault
P2	Single critical system fault
P3	Team or business unit fault or request (business impact), no workaround
P4	Team or business unit fault or request (business impact), with workaround
P5	Individual user fault or request (no business impact), no workaround
P6	Individual user fault or request (no business impact), with workaround
P7	Incident with minimal impact (no business impact) or minimal request

**TABLE 2.1.4: PRIORITY LEVEL RESOLUTION TIMES**

<b>Priority</b>	<b>Average Time to Resolve</b>
P1	Less than 1 hour
P2	Less than 2 hours
P3	Less than 4 hours
P4	Less than 6 hours
P5	Less than 6 hours
P6	Less than 24 hours
P7	Less than 2 days

## **SECTION H: DEFINITIONS AND INTERPRETATION**

### **1.1. DEFINITIONS**

In this Agreement, unless otherwise indicated by the context:

**Acceptance** means the acceptance by the Client of the Deliverables in the manner set out in Clause 11 of Section A;

**Additional Fees** means any additional fees and charges calculated in accordance with the Fees variation provisions;

**Agreement** means this Master Service Agreement including the Schedules, Proposals, Attachments and any Briefs or Statements of Work agreed by the parties;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia;

**Claim** means any claim, demand, action or suit against the Client brought by a third party that the use of the Software infringes the Intellectual Property Rights of that third party;

**Client Content** means any content, including copy and imagery, which is created by the Client referring to, showcasing or promoting a the Client or a the Client's brand, products or services;

**Confidential Information** means in relation to each party, information that:

- (a) is by its nature confidential;
- (b) is designated by a party as confidential; or
- (c) the other party knows or ought to know is confidential; and, without limitation of the generality of the preceding subparagraphs, includes:
- (d) information comprised in or relating to the Intellectual Property Rights of a party;
- (e) information relating to the financial status of a party;
- (f) information relating to the policies, personnel or strategies of a party;
- (g) information that has actual or potential commercial value to a party, including information relating to a party's clients or suppliers, and the like information; and
- (h) Personal Information, as that term is defined by the Australian Privacy Principles.

**Client Items** means those items which must be delivered by the Client to Notafication to allow it to perform the Services which include but are not limited to:

- (a) specific logos, designs and graphics and related materials to be incorporated into the Deliverables;
- (b) all data, content and other material to be incorporated into the Deliverables;
- (c) any other information, ideas or suggestion which are to be expressly considered by Notafication in creating the Deliverables;
- (d) any other information reasonably required by Notafication from time to time to enable it to provide the Services and deliver the Deliverables;

**Defect** means an error or nonconformity which prevents a Deliverable operating in accordance with the specifications set out in the Brief or Statement of Work;

**Deliverables** means the specific items specified in a Brief or Statement of Work or Proposal which must be delivered by Notafication to the Client;

**Development Services** means the development services set out in Section B of this Agreement; Fees means the fees and charges set out in the Proposal or as specified in the relevant Brief or Statement of Work;

**Hosting Services** means the hosting services set out in Section C;

**Hosted Website** means those Websites to be hosted by Notafication as specified in any Proposal or Brief or Statement of Works;

**Intellectual Property Rights or IP Rights** means all present and future right, title and interest conferred by statute, common law or equity in or in relation to: copyright; trade marks, service marks, designs, inventions (including patents), circuit layouts, business and domain names, trade secrets, know how or Confidential Information, whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of such rights and includes all renewals and extensions;

**Master Service Agreement** means the terms set out in this document;

**Proposal** means a written work proposal issued by Notafication containing the scope of proposal works, technical requirements, projected costs and proposed solution;

**Representatives** means all persons acting on behalf of a party or for whom a party is responsible, including personnel, consultants, and permitted sub-contractors and agents; Related Body Corporate has the same meaning as in the Corporations Act 2001 (Cth); Services means the following (whichever is applicable):

- (a) the Website Development Services;
- (b) the Hosting Services;
- (c) Social Media and SEO Services; and
- (d) Customised Web Applications, and any other services provided by Notafication to the Client under this Agreement;

**SEO** means Search Engine Optimisation and involving the process of improving the volume of traffic to a web site from search engines.

**Social Media** means, each online social medium on which Notafication is required to create the Client Content as listed by the Client or advised by Notafication;

**Brief or Statement of Work or Statements of Work** means the Services to be performed by Notafication as agreed by the parties in accordance with this Agreement;

**Brief or Statement of Work Term** means any period of time agreed or set out in the Brief or Statement of Work;

**Term** means the period of 12 months commencing on the date of this Agreement or such other term expressly agreed between the parties in the Proposal or other document;

**Website** means the website located on the Internet at the domain name/s specified by the Client;

**Website Tools** means the tools, applications or packages set out in clause 2.4 of Section B.

## 1.2. INTERPRETATION

In this Agreement, unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the expression 'person' includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (d) references to clauses, schedules and attachments are references to clauses, schedules and attachments to this Agreement, and a reference to this Agreement includes any schedule or attachment to this Agreement;
- (e) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (f) the word 'includes' in any form is not a word of limitation;
- (g) a reference to '\$' or 'dollar' is to Australian currency (unless otherwise stated);
- (h) if any day appointed or specified by this Agreement for the payment of any money or doing of any thing falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next Business Day;
- (i) a party includes its successors and permitted assigns;
- (j) a document includes all amendments or supplements to that document;
- (k) an agreement on the part of two or more persons binds them jointly and severally;
- (l) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;

(m) any reference to a clause, is a reference to the clause contained within the Section in which it was referred.