

On acceptance of these Conditions, the Privacy Policy and DIGITALON Specific Contract Terms, the Agreement between the Customer and DIGITALON Pty Ltd ABN 64 630 163 469 (DIGITALON) will be finalised and the following Conditions shall apply to the relationship between the Customer and DIGITALON:

## 1. Agreement

- 1.1 This Agreement is made between DIGITALON, and the Customer on the following Conditions.
- 1.2 The Customer warrants that it has obtained its own independent professional and technical advice, or has decided not to do so, prior to entering into these Conditions and that it shall use the Services under these Conditions freely and voluntarily without duress or pressure to do so from DIGITALON.

## 2. Definitions and Interpretation

- 2.1 In these Conditions:
  - a. **Agreement** means this agreement between DIGITALON and the Customer relating to the provision of the Services under these Conditions.
  - b. **Authorised Users** means the persons or entities who may use the Services as stated in these Conditions or as otherwise notified by DIGITALON to the Customer in writing from time to time.
  - c. **Business Day** means a day, not being a Saturday, Sunday or public holiday, on which banks are open for commercial business in the State of Queensland.
  - d. **Claim** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.
  - e. **Commencement Date** means the first day following the receipt of successful first payment is received by DIGITALON from the Customer, or any other such day agreed between the Customer and DIGITALON.
  - f. **Customer Website Services** means the website design, development and hosting services provided by DIGITALON to its Customers in accordance with the terms of any scope/quotation documentation and **Customer Website** means the product of those services.
  - g. **Confidential Information** means all Information, forms, specifications, processes, statements, trade secrets, drawings, data and Intellectual Property (and copies and extracts made of or from that information and data) concerning a party to the Agreement including without limitation:
    - i. all business records (if any are disclosed);
    - ii. information which either orally or in writing is designated or described as being the proprietary or confidential information by a party;
    - iii. proprietary or confidential Information of a third party to whom a party owes an obligation of confidentiality;
    - iv. the operations and dealings of a party in their conduct of their business;
    - v. the organisation, finances, customers, customer lists, markets, suppliers and know-how of a party.
  - h. **Content** means any text, data, images, graphics, animations or other information or material or content to be published on the Customer Website, or any other place on the internet including Google, Facebook or other platforms from time to time.
  - i. **Customer** means the customer of DIGITALON and if more than one entity is specified, means each Customer in their joint and several capacities.
  - j. **Customer Website Maintenance Services** means any other agreed services provided by DIGITALON to the Customer relating to the Customer Website including email, maintenance, management services and any ongoing service requirements in accordance with any website product quotation/scope terms.
  - k. **Data** means information or data of any kind and includes Content.
  - l. **DDoS** means a distributed denial of service attack.
  - m. **Devices** means the plant, equipment and devices used by the Customer or its Authorised Users to access and use the Services, including any and all software and source code installed thereon.

- n. **Default Interest Rate** means a default rate of 6% per annum that is payable:
  - i. in accordance with clause 12; and
  - ii. immediately upon an Event of Default taking place; or
  - iii. if the Customer after the Commencement Date fails within 7 Business Days to take all action requested of it by DIGITALON to facilitate the registration of DIGITALON's interest in any Security.
- o. **Digital Marketing Services** means marketing services provided by DIGITALON to Customers and as more specifically described in any scope, quotation or schedule document.
- p. **DIGITALON Website** means DIGITALON's website at [www.DIGITALON.com.au](http://www.DIGITALON.com.au) or such other address notified by DIGITALON to the Customer from time to time.
- q. **Event of Default** means an event described in clause 12, which gives rise to default by the Customer under these Conditions.
- r. **Force Majeure** means an act outside the control of a party including a pandemic declared by the World Health Organisation, fire, lightning, explosions, flood or other natural disaster, subsidence, act of terrorism, insurrection, civil disorder or military operations, power or gas shortage, government or quasi-government restraint, expropriation, prohibition, intervention, direction or embargo, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences or authorities, strikes, lock-outs or other industrial disputes of any kind and any other cause, whether similar or not to the foregoing.
- s. **Graphic Design** means graphic design services as more specifically described in any scope, quotation or schedule document.
- t. **Help Desk Support** means the Customer care help desk support for those Customers for whom DIGITALON agrees to provide Help Desk services by separate scope/quotation terms and only in situations where the Customer Website is a Wordpress website designed, developed and hosted by DIGITALON..
- u. **Hourly Rate Consulting Services** means professional consulting services, charged by the hour at an agreed rate for consulting work to assist the Customer in activities within their business operations.
- v. **Intellectual property** means all intellectual property of DIGITALON including copyrights, patent rights, trademark rights, design rights, get up, know-how, trade secrets, source code, software and any and all other forms of Intellectual Property, wheresoever and howsoever arising, whether registered or unregistered, anywhere in the world.
- w. **Minimum Term** means the minimum term for each service requested, that is specified alongside side the Service Fees in any scope document and itemised quotation.
- x. **Notice** means a written notice, consent, approval, direction, order or other communication.
- y. **Payment Method** means a valid company credit card or direct debit bank details along with the authority to charge the bank account.
- z. **Posted Content** means any content or information posted to the Services by Customer that is available to third parties.
- aa. **PPS Act** means the *Personal Property Securities Act 2009 (Cth)*.
- bb. **PPSR** means the Personal Property Securities Register.
- cc. **Privacy Policy** means DIGITALON's Privacy Policy published on the DIGITALON Website from time to time.
- dd. **Securities** means each and all of the securities, documents and instruments including mortgages over real property that may be required by DIGITALON to be granted by the Customer to better secure the obligations of the Customer under these Conditions.
- ee. **Services** means Digital Marketing Services, Hourly Rate Consulting Services, Graphic Design services, Customer Website Services and the Customer Website Maintenance Services provided by DIGITALON under these Conditions and includes Help Desk Support where appropriate.
- ff. **Service Fees** means the fees described in any itemised quotation relating to the Services.
- gg. **Term** means the period specified in or covered by these Conditions, including and beyond the Minimum Term expressed in any itemised scope, schedule or quotation during which the Customer is bound by this Agreement.

2.2 In these Conditions, except where the context otherwise requires:

- a. the singular includes the plural and vice versa;
- b. a gender includes other genders;

- c. references to any legislation includes any legislation which amends or replaces that legislation;
- d. amounts of money are expressed in Australian dollars unless otherwise expressly stated;
- e. a reference to 'writing' or 'in writing' includes electronically via email, website or other digital communication.
- f. a reference to a party is to a party to these Conditions, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes; and
- g. a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity.

### **3. Agreement**

- 3.1 The Customer agrees upon and accepts these Conditions by signing any quotation, schedule or scope.
- 3.2 Subject to clause 4.1, these Conditions prevail over any other agreements or terms and conditions to the extent of any inconsistency.
- 3.3 The Customer warrants these Conditions meet the Customer's needs at the Commencement Date and for the duration of the term of the Agreement.
- 3.4 This Agreement extends to the any itemised quotation, marketing schedule, campaign plan, scoping document, product inclusion pages and any other such document provided by DIGITALON defining the Services and the Service Fees.

### **General Conditions for the Provision of the Services**

Other than where specifically indicated, the following provisions apply to the provision of all Services.

### **4. Services**

- 4.1 DIGITALON will provide the Services to the Customer in accordance with these Conditions provided that if the Services offered to the Customer include additional terms and conditions, expressed in the any itemised quotation, schedule or scope document, then to the extent of any inconsistency between these Conditions and the itemised quotation, schedule or scope document, the itemised quotation, schedule or scope document shall prevail.
- 4.2 DIGITALON reserves the right to review these Conditions at any time. If, following any such review, there is to be any change to these Conditions, then that change will take effect from 14 days after the date on which DIGITALON notifies the Customer of such change. The Customer may not change or amend these Conditions without DIGITALON 's prior written agreement.
- 4.3 The Customer uses the Services solely at its own risk.
- 4.4 The Customer must follow all reasonable and lawful directions given by DIGITALON relating to the Services.
- 4.5 DIGITALON provides the Services as itemised in any quotation or scoping document, and any additional Services required that were not briefed to DIGITALON prior to this agreement will be quoted and agreed separately. Setup tasks not itemised in any scope are the responsibility of the Customer.
- 4.6 Should the Customer require Services in excess of what is listed in any itemised quotation, schedule or scoping document, the Customer will be required to pay additional Service Fees.
- 4.7 The Customer is entitled to the rounds of changes and edits to the Customer Website or other Services as referenced in the itemised quotation, schedule or scoping document. Changes required or requested by the Customer over and above the stated hours and rounds will be charged for as additional service fees. The additional service fees will be quoted in writing by DIGITALON prior to commencement of the additional services and must be accepted by the Customer in writing prior to the additional services being undertaken.

- 4.8 The following specific provisions apply should the Customer elect to request **Digital Marketing Services and Graphic Design Services** as part of the Services:
- a. DIGITALON will, unless otherwise agreed with the Customer, create all the marketing and branding content (including creative elements and text) and refer the completed marketing concept documentation to the Customer for approval.
  - b. DIGITALON reserves the right at all times, after providing written advice to the Customer, to alter the functionality and/or appearance of the Digital Marketing Services and Graphic Design Services.
  - c. The Customer must not release to the public any news release, advertising material, promotional material or any other form of publicity relating to DIGITALON without DIGITALON's prior written approval.
  - d. Any marketing material acquired by the Customer from DIGITALON from use of the Digital Marketing Services and Graphic Design Services must not be on-sold or supplied by the Customer to third parties unless approved in writing by DIGITALON.
  - e. DIGITALON requires the artwork and/or content and/or associated links within 2 weeks of the completed scope, quotation or proposed execution schedule publication date. If DIGITALON has not received such materials within the 2-week timeframe DIGITALON cannot guarantee availability of the marketing material and will charge the associated fee regardless. For clarity, if the Customer cannot or does not supply the required materials to execute the campaign, DIGITALON will still charge the associated fees as the position has been held for the Customer on the basis of the completed scope or quotation.
  - f. DIGITALON may provide the Customer with complimentary services and features from time to time, and may vary, withdraw or cancel the Customer's access to such services and features at DIGITALON's sole discretion.
- 4.9 The following specific provisions apply to Customers who elect **Hourly Rate Consulting Services** as part of the Services:
- a. DIGITALON will provide the Customer with a quotation, scope or schedule detailing the project scope ("the Project"), deliverables and cost, which shall be agreed between the parties prior to commencement of the Project. DIGITALON reserves the right to request an adjustment to the estimate in the event that the scope or nature of the Project changes, or if third party suppliers make reasonable changes to their charges, provided that such adjustment will not take effect until approved in writing by the Customer. If the Customer does not agree, then DIGITALON reserves the right to suspend the provision of Hourly Rate Consulting Services.
  - b. The Customer acknowledges that any Intellectual Property rights in the processes, tools or development techniques used by DIGITALON in providing the Services shall remain the property of DIGITALON. DIGITALON grants to the Customer an irrevocable, perpetual, royalty free licence to use such Intellectual Property Rights to the extent required for the Customer to utilise the Services as contemplated by any scope, quotation or schedule provided the Customer pays all fees and charges associated with the creation thereof.
  - c. DIGITALON may licence products from third parties, on the Customer's behalf, in the delivery of the Services from time to time. The Customer agrees that it will remain bound by the terms of such licences. DIGITALON will keep the Customer informed of such licences.
- 4.10 The following specific provisions apply to Customers who elect **Customer Website Services** as part of the Services:
- a. A schedule of service inclusions in the Customer Website project will be provided as part of the Customer's signed electronic quotation, scope or schedule, clearly specifying the services DIGITALON will provide the Customer, and the limitations of those services.
  - b. Changes requested by the Customer that fall outside of the scope provided to the Customer will be notified in writing to the Customer prior to the work being conducted, along with an estimate of additional Service Fees.
  - c. DIGITALON may interrupt the Customer Website Services with 5 days' notice to the Customer.

- d. The Customer is responsible for its own compliance with privacy laws. DIGITALON does not promise that any use of the Services by the Customer complies with any privacy law.
- e. The Customer agrees that it uses any specimen legal terms provided by DIGITALON in association with the Services at its own risk. The Customer agrees and acknowledges that it is the responsibility of the Customer to procure its own legal advice in relation to the services.

## 5. Data and Content

- 5.1 The Customer is solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of all Data and Content uploaded, collected or otherwise hosted and/or processed on the Customer Website for the Services.
- 5.2 The Customer authorises DIGITALON, and warrants that DIGITALON is authorised (including by any relevant third parties) to access and manipulate Data of the Customer or supplied by the Customer if in DIGITALON 's sole opinion that is reasonably necessary to provide the Services.
- 5.3 The Customer agrees that:
  - a. it is responsible for the legal consequences arising from Posted Content;
  - b. Any Data and Content provided to DIGITALON or Posted will not compromise the security or operation of the DIGITALON computer systems in any way;
  - c. DIGITALON is in no way responsible for legal consequences arising from Posted Content.
- 5.4 Ownership of the Data and Posted Content:
  - a. published on the Customer Website remains with Customer; and
  - b. published anywhere else on the internet, such as Google, Bing or Facebook, is owned and used in accordance with the respective platform's content and data policies and is therefore outside of the control of DIGITALON.
- 5.5 The Customer provides an irrevocable licence over the Data and Posted Content owned by the Customer to DIGITALON in order to provide the Services and for any other purpose whatsoever.
- 5.6 DIGITALON reserves the right to disclose Data:
  - a. to sub-contractors that work with DIGITALON to provide the Services;
  - b. to its related entities or subsidiaries (as those terms are defined in the *Corporations Act 2001*), third party affiliates or investors, joint venture partners, suppliers or marketing contractors;
  - c. in accordance with its Privacy Policy;
  - d. to its advisers like lawyers, accountants and other similar parties;
  - e. to its insurers;
  - f. to its debt collectors (if a debt under these Conditions is due); and
  - g. any governmental authority upon a lawful request.

## 6. Intellectual Property

- 6.1 DIGITALON owns or is licensed to use all intellectual property in the Services and the Customer Website. DIGITALON may, at its sole discretion, and on payment of an agreed consideration, transfer and assign the intellectual property rights in the Services (or any part of the Services) provided to a Customer pursuant to these Conditions.
- 6.2 The Customer licences, and warrants that DIGITALON is authorised, to use, copy, modify, configure and integrate the Data and Content supplied by the Customer for the purposes of these Conditions.

- 6.3 The Customer shall not copy, hack, alter or disseminate the Services or the Customer Website in any way, nor allow any third party to do, or use data mining, robots, reverse engineer, screen scraping, or similar data gathering and extraction tools for establishing, maintaining, advancing or reproducing information contained in the Services onto another website or in any other publication, without DIGITALON's prior written approval.
- 6.4 The Customer agrees DIGITALON may suspend or terminate the Services if any infringement of DIGITALON's or a third party's Intellectual Property occurs or is alleged in connection with the Services or the Customer Website.
- 6.5 During the Term, the Customer hereby grants to DIGITALON:
- a. a licence to use the intellectual property of the Customer including the Customer's name and any trade name, trademark, service mark and its logos, designs, brochures and marketing materials that the Customer provides to it for marketing purposes including in its marketing materials, sales presentations and any online directories that DIGITALON may, from time to time, publish on DIGITALON 's customer list; and
  - b. a non-exclusive, royalty-free, worldwide licence to use, copy, modify (as may be permitted by the Customer), publicly perform, display, broadcast and transmit during the Term any text, images, logos, trademarks, service marks, promotional materials, product or service information, comments, reviews, photos, audio and video clips and other information provided by the Customer in connection with and to the extent necessary for DIGITALON to perform the Services and other uses such as for marketing of DIGITALON's services. All intellectual property rights of any Customer's Content on the Customer Website shall remain with the Customer or the Customer's third-party licensors.
- 6.6 The Customer acknowledges and agrees that:
- a. the Customer will provide certain information to DIGITALON, which DIGITALON may input into its central administration and management systems. Accordingly, the Customer permits DIGITALON to input contact information, credit card details or direct debit information, and campaign information into its business systems. DIGITALON will only use such information in connection with the fulfilment of the provision of the Services. In addition, the Customer agrees that DIGITALON may, from time to time, use Data to send emails and SMS updates regarding services updates, campaign updates, payment reminders, advertising reports and marketing opportunities relating to DIGITALON and its commercial partners.
  - b. If a Default Event occurs, then all Data, Content and Intellectual Property generated as part of the Services provided up to the date of the Default Event, remain the property of DIGITALON.

## 7. DDoS

- 7.1 If the Services or the Customer Website are the target of a DDoS or any other electronic attack or threat, DIGITALON may, at any time and without giving prior notice to any person, take such protection and/or mitigation measures as it in its sole discretion considers reasonably necessary, including:
- a. suspending the Services and the Customer Website;
  - b. moving the Services and the Customer Website and/or any Content or Data to a quarantine server;
  - c. implementing access control lists; and/or
  - d. applying IP address filtering and/or blocking software or algorithms.
- 7.2 If DIGITALON takes any such measures, it may continue them until such time as the attack or threat is considered by DIGITALON (in its absolute discretion) to be eliminated, avoided or otherwise dealt with.

## **8. Support**

- 8.1 DIGITALON may provide the Customer with Help Desk Support for the Customer Website if there is a technical problem or hosting down-time.
- 8.2 A Customer for whom clause 2.1(t) applies may access Help Desk Support via a written request to DIGITALON 's Helpdesk facility which will be notified to the relevant Customer by DIGITALON from time to time.
- 8.3 DIGITALON shall use its best endeavours to respond to any Help Desk Support enquiries or reports in a timely manner but is otherwise not bound to respond or to rectify any defects, errors, threats or other issues arising within any particular timeframe.
- 8.4 The Customer acknowledges that interruptions because of third-party suppliers to DIGITALON are beyond the control of DIGITALON and the Services may occasionally be interrupted due to technical difficulties.
- 8.5 DIGITALON will use reasonable efforts to remedy interruptions to the Services as soon as reasonably practicable.

## **9. Service Fees**

- 9.1 Subject to 9.4, the Customer undertakes to pay the Service Fees to DIGITALON as set out in any itemised quotation and/or scoping document in advance of service, starting on the Commencement Date for the Term.
- 9.2 Upon cancelling the Services and terminating this Agreement, in accordance with clause 13.1, all amounts owing by the Customer to DIGITALON will need to be paid in full and any outstanding amounts will be due within 7 business days of termination.
- 9.3 The Customer acknowledges and agrees that DIGITALON may increase the price of the Services by notice in writing, with the new price taking effect 14 days after written notice is provided to the Customer.
- 9.4 All amounts payable by the Customer under this Agreement must be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding on account of tax or any other amount, whether by way of set-off, counter-claim or otherwise.
- 9.5 DIGITALON may block and/or suspend the provision of or access to the Services if any Service Fees are unpaid or become overdue (whether in whole or in part. If Services are blocked or suspended because Service Fees are unpaid or overdue, monthly charges will continue to accrue as though they were active and may attract the Default Interest Rate.
- 9.6 DIGITALON may at its sole discretion recommence or restore the provision of or access to the Services if any overdue invoice for Service Fees is paid.
- 9.7 The Customer is not entitled to any refunds of any Service fees paid to DIGITALON for the provision of any Services.
- 9.8 The Customer acknowledges and agrees that it may take up to 48 business hours for any Service to be recommenced or restored.
- 9.9 DIGITALON only accepts payments via Credit/Debit Card or Direct Debit (Valid Payment Methods), unless otherwise agreed in writing between the Customer and DIGITALON. DIGITALON may pass on and charge the Customer, or the Customer may be charged directly by payment system providers, any transaction costs, fees, levies or charges it incurs on payments made by a Customer and including any fees, levies or charges it incurs as a result of any credit card, direct debit, cheque or similar payment transaction failing or being

declined.

- 9.10 Valid Payment Method details must be supplied at the time of entry into this Agreement. The supply of Services will not be commenced or continued until the Valid Payment Method details are supplied and payment is processed.
- 9.11 The Customer agrees to notify DIGITALON of any changes to their nominated payment method details.
- 9.12 If payment cannot be processed via a Valid Payment Method, the Customer agrees to supply an alternate Valid Payment Method supplied or on file, Direct Debit or invoicing for payment. This may attract an administration fee.

## **10. Errors and omissions**

- 10.1 DIGITALON will not be liable to rectify any errors or omissions caused or partly caused directly or indirectly by or arising from:
  - a. any misinformation provided by the Customer;
  - b. any direction given by the Customer;
  - c. any conduct of the Customer or any third party; or
  - d. any undue duress, pressure or influence exerted by the Customer upon DIGITALON or its officers, employees, agents or subcontractors.

## **11. Limitation of liability and Indemnity**

- 11.1 To the extent permitted by law, and without limiting the foregoing subject always to the Competition and Consumer Act, the Australian Consumer Law, and the Fair Trading Acts of each State and Territory in Australia, DIGITALON does not warrant either the quality, standard, performance or outcomes of the Services provided hereunder, or the design, performance, use, utility, fitness for purposes or merchantable or acceptable quality of any software, service, product or thing for any particular purpose or at all, other than to the extent expressly represented in these Conditions or in any documentation prepared and supplied by DIGITALON to the Customer.
- 11.2 The Customer agrees to indemnify and hold harmless DIGITALON from and against any liability, loss, damage, cost (including legal costs), expenses or other liability DIGITALON may suffer or incur arising out of or in connection with any claim or demand against DIGITALON by the Customer or any third party, which arises out of connection with the Services and without limiting the generality of the foregoing, the Customer shall indemnify and keep indemnified DIGITALON from and against any and all losses, loss of profits, claims, damages, actions, suits, demand, costs (including reasonable legal costs and disbursements on a full indemnity basis), interest, charges and expenses of any kind whatsoever, which DIGITALON shall or may suffer or incur or be called upon to suffer or incur by virtue of:
  - a. any default or breach hereunder by the Customer;
  - b. any unlawful, negligent, fraudulent or indictable act or omission of the Customer or any of its officers, employees or agents;
  - c. the use or misuse of any Services by the Customer; or
  - d. any Content or Data uploaded, processed or posted by the Customer using the Services or otherwise on the Customer Website or any other website of the Customer, except to the extent of any contributory negligence by DIGITALON.
- 11.3 DIGITALON may, at its option, choose to satisfy any claim for rectification of any defect or omission in the Services by either:
  - a. resupplying the Services at DIGITALON 's cost; or

- b. paying a third party approved by DIGITALON to resupply the Services or to supply replacement Services hereunder, upon which DIGITALON shall be fully and effectually released and discharged from any further obligations in relation to such claim.
- 11.4 In no case shall the value of a claim by the Customer for rectification of any defect or omission (as assessed and determined by DIGITALON, acting reasonably) exceed the total value of the Services Fees paid by the Customer under these Conditions up to the date the claim is made, and all damage or expense over and above such amount shall be the responsibility of the Customer.
- 11.5 DIGITALON shall not be liable to the Customer for any delay or delays in the provision of the Services.
- 11.6 DIGITALON shall not be liable to compensate the Customer for any delay in either replacing or remedying an actual or alleged defect or omission or in properly assessing or responding to a claim.
- 11.7 DIGITALON shall be under no liability whatsoever to the Customer for any indirect, special or consequential loss and/or damage (including loss of profit, loss of revenue or other economic loss) suffered by the Customer arising out of or in connection with any Services or any defect or omission arising under these Conditions.
- 11.8 DIGITALON may decline any Claim which does not comply with these Conditions, or which is not covered by these Conditions, or which is made for Services that are found not to be defective by DIGITALON, in which case DIGITALON may give notice to the Customer that the claim is declined and the Customer shall be responsible for DIGITALON's reasonable costs of receiving, processing, assessing and declining the Customer's claim. DIGITALON may invoice the Customer any such costs incurred by it and the Customer shall promptly pay the invoice within seven (7) days of the date of the invoice.

## **12. Default Event Consequences of Default**

- 12.1 Without prejudice to DIGITALON's other remedies at law or in equity, DIGITALON shall be entitled to immediately suspend or terminate the supply of the Services, in the event that:
- a. (unpaid debt) any Service Fees are not paid when due; or
  - b. (breach) either party breaches any provisions of these Conditions and that breach is not remedied within 5 days after a breach notification is received by the defaulting party; or
  - c. (insolvency) other than as specified in the amendments to the Corporations Act 2001 (Cth) enacted by Part 2 of the Treasury Law Amendment (2017 Enterprise Incentives No. 2) Act 2017 (Cth), if a receiver, controller, liquidator, provisional liquidator, trustee for creditors or in bankruptcy, administrator or an analogous person is appointed over the assets of the Customer or attempts to take possession of any such assets; or
  - d. (insolvency) if the Customer is or states that it is unable to pay debts as they fall due and/or suspends payments of its debts; or
  - e. (incapacity) where the Customer is a natural person, that person dies or becomes mentally ill or suffers any other demise or incapacity (other than bankruptcy); or
  - f. (judgments) if a judgment equal to more than \$10,000 is awarded against the Customer and remains unsatisfied for 14 days, or any execution or other process of Court or Government Authority or any distress is issued against or levied upon any property of the Customer or any person obtains a garnishee order in respect of a debt due by the Customer; or
  - g. (misrepresentation) if a statement, representation, or warranty made or reaffirmed by the Customer in or in connection with these Conditions proves to have been incorrect or misleading in any material respect; or
  - h. (disrepute) if a party engages in any conduct which may bring the good name of the other party into disrepute.
- 12.2 DIGITALON will not be liable for any loss or damage the Customer suffers because DIGITALON has exercised its rights under this clause.

- 12.3 If DIGITALON terminates these Conditions under clause 12.1, DIGITALON may pursue the Customer for damages for breach or specific performance or both.
- 12.4 DIGITALON 's rights and entitlements hereunder are in addition to the rights which DIGITALON may have at law or in equity.
- 12.5 If the Customer defaults in payment of any Service Fees, the Customer shall indemnify DIGITALON from and against all costs and disbursements incurred by DIGITALON in pursuing the Service Fees including legal costs on a solicitor and own Customer basis and DIGITALON 's collection agency costs.
- 12.6 The Default Interest Rate shall apply from the date of the Event of Default until the Service Fees due to DIGITALON, the Default Interest and all legal fees expended or incurred by DIGITALON in attempting to collect the Service Fees have been paid in full.
- 12.8 The Service Fees (or the balance of the Service Fees unpaid as at the date of the Event of Default) shall, at the option of DIGITALON, immediately become due and payable upon DIGITALON making written demand upon the Customer.

### **13. Term and Termination**

- 13.1 Subject to the provisions of clause 12, 13.2 and clause 15 at the end of the Term of each Service provided on a monthly or regular basis, this Agreement will continue, and the Services will be rolled-over to avoid any disruption or inconvenience to the Customer, and thereafter may be terminated by:
- a. DIGITALON giving the Customer 14 days prior written notice to that effect; or
  - b. the Customer notifying DIGITALON of their intent to cancel the Services at the end of the Term of each Service, with 14 days prior written notice for all Services.
- 13.2 For the sake of clarity, the Customer will not be entitled to cancel the Services, as a whole or in part, during the initial contracted Minimum Term as specified in any itemised quotation, schedule or scoping document, pursuant to clause 13.3.
- 13.3 If the Customer terminates this Agreement after the Minimum Term and in accordance with 13.1, and has requested a Customer Website as part of the Services, access to the Customer Website CMS is also terminated.
- 13.4 Template designs and styles form part of DIGITALON's Product IP and ownership remains with DIGITALON provided that DIGITALON may, at its sole discretion, and on payment of an agreed consideration, transfer and assign the intellectual property rights in the Services (or any part of the Services) provided to a Customer pursuant to these Conditions.

### **14. Representations**

- 14.1 The Customer represents and warrants that at the date of acceptance of these Conditions by the Customer and at all times until these Conditions are fully performed and completed:
- a. the Customer is not bankrupt and is not insolvent or in receivership or under administration, official management or liquidation and has not entered into an arrangement with its creditors;
  - b. the Customer is able to carry on its business and perform its obligations under these Conditions;
  - c. the Customer is adequately insured with a reputable insurer against all risks which a prudent person carrying on its business would insure against;
  - d. there are no legal proceedings, actions, prosecutions or investigations threatened, pending or commenced against the Customer or the directors or shareholders of the Customer;

- e. all corporate authorisations and approvals necessary to enable it to enter into these Conditions have been obtained and remain in full force and effect;
- f. all governmental requirements, authorisations, approvals and licenses which are necessary for the Customer to legally carry on its business are in full force and effect; and
- g. it has not withheld from DIGITALON any document, information or other fact material to the decision of DIGITALON to enter into these Conditions or to supply the Services or provide credit to the Customer.

14.2 The Customer must immediately notify DIGITALON if any of the aforementioned representations, warranties and covenants cease to be true and correct.

14.3 DIGITALON and the Customer must not at any time disparage or bring into disrepute the other party or its business.

## **15. Force Majeure**

15.1 If the performance of these Conditions or any obligation under these Conditions is prevented, restricted, or interfered with by reason of a Force Majeure, the affected party, upon giving prompt notice to the other party, is excused from such performance to the extent of such prevention, restriction, or interference.

15.2 The affected party must use its best efforts to avoid or remove the Force Majeure or to limit the impact of the event on its performance and must continue performance with the utmost dispatch when the Force Majeure is removed.

15.3 If an event of Force Majeure has the effect of substantially preventing performance of these Conditions by a party for a period of more than ninety (90) days, the unaffected party may by notice to the other party terminate these Conditions and the provisions of clause 13.1 will apply.

## **16. Security and Charge**

16.1 Despite anything to the contrary contained herein or any other rights which DIGITALON may have howsoever:

- a. where the Customer is now or in the future the owner of land, realty or any other asset capable of being charged, both the Customer agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to DIGITALON or it's nominee to secure all amounts and other monetary obligations payable under these Conditions. The Customer acknowledges and agree that DIGITALON shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- b. should DIGITALON elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify DIGITALON from and against all the DIGITALON 's costs and disbursements including legal costs on a solicitor and own Customer basis.
- c. the Customer agrees to irrevocably nominate constitute and appoint DIGITALON as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

## **17. Confidentiality**

17.1 Each party undertakes to the other to keep strictly confidential these Conditions and all Confidential Information which either party discloses to the other. Each party further undertakes and promises to the other that it will only use such Confidential Information in good faith and for the proper and lawful performance of its obligations under this Agreement.

17.2 If any particular Confidential Information is deemed to be confidential by the Customer – the responsibility is on the Customer to clearly disclose, in writing, that the particular information

is confidential – in contrast to the other Data and Content provided for the purposes of digital marketing, promotion and advertising activities undertaken as part of the Services.

- 17.3 Neither party may permit or give access to any Confidential Information to any third party without the express prior written consent of the party disclosing such Confidential Information. Such prohibition does not apply to Confidential Information supplied by one party to the other pursuant to the licences, authorisations to use and Data ownership provisions of these Conditions.
- 17.4 Each party acknowledges that damages alone would not be a sufficient remedy for a breach of this clause or a threatened breach of this clause, and that any breach or threatened breach entitles the party whose Confidential Information is disclosed or threatened to be disclosed in breach of this clause to seek injunctions, damages and such other orders as maybe necessary to protect its Confidential Information.
- 17.5 A breach of this clause is a breach of an essential term entitling the party not in breach to terminate this Agreement.

## **18. Personal Property Securities Act 2009**

- 18.1 In this Clause “security agreement” means the security agreement under the PPS Act created by this Agreement.
- 18.2 Upon signing this Agreement the Customer acknowledges and agrees that these Conditions:
- a. constitute a security agreement for the purposes of the PPS Act; and
  - b. create a security interest in all current and future assets of the Customer.
- 18.3 The Customer undertakes to:
- a. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which DIGITALON may reasonably require to:
    - i. register a financing statement or a financing change statement in relation to a security interest on the PPSR and otherwise do all things necessary and required by DIGITALON to ensure this security interest is a perfected security interest under the PPS Act;
    - ii. register any other document required to be registered by the PPS Act; and/or
    - iii. correct a defect in a statement referred to in clause 18.3(a)(i) or 18.3(a)(ii);
  - b. indemnify and upon demand reimburse DIGITALON for all expenses incurred in registering a financing statement or financing change statement on the PPSR;
  - c. not register a financing change statement in respect of a security interest without the prior written consent of DIGITALON; and
- 18.4 Unless otherwise agreed and to the extent permitted by the PPS Act, DIGITALON and the Customer agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Customer waives any rights that it may have or but for this clause may have had under section 275(7) (c) of the PPS Act to authorise the disclosure of the above information.
- 18.5 Unless otherwise agreed to in writing by DIGITALON, the Customer waives its rights to receive a verification statement in accordance with section 157 of the PPS.

## **19. General**

- 19.1 The parties contract hereunder independently and at arm’s length. Nothing herein constitutes either party a partner, joint venturer, agent or employee of the other party.

- 19.2 If any provision of these Conditions shall be invalid, illegal or unenforceable, that provision shall be severed from these Conditions and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired in any way.
- 19.3 All notices required to be given by one party to the other under these Conditions must be given in writing (whether electronically or in hard copy), addressed to the other party at its registered office (or other address published on the party's Website), in the English language, signed (whether digitally or in hard copy) by the party (or its duly authorised attorney or representative), and dated the date on which it was signed unless otherwise specified in this Agreement.
- 19.4 DIGITALON may licence or sub-contract all or any part of its rights and obligations without the Customer's consent. DIGITALON may also at its sole discretion transfer or assign all or any part of its rights and obligations under this Agreement to any third party without the Customer's consent.
- 19.5 The Customer shall not transfer or assign all or any part of its rights and obligations hereunder without first obtaining the prior written consent of DIGITALON.
- 19.6 The Customer shall give DIGITALON not less than fourteen (14) days prior written notice of any proposed change of ownership or control of the Customer, or any change in the Customer's name, or any other change in the Customer's details (including but not limited to, changes in the Customer's address, phone number, or business practice).
- 19.7 DIGITALON shall not be required to notify the Customer of, or obtain the Customer's consent to, any change or proposed change of ownership or control in DIGITALON.
- 19.8 Personal information about the Customer may be used and retained by DIGITALON for the provision of products or services, the marketing of products or services, credit checking, maintenance of the Customer's account/s with DIGITALON, processing any payment instructions or direct debit or credit facility, and debt collection, as well as for any other purposes as may be agreed between the parties or required by law from time to time. The Customer acknowledges that they have read, understood and accept the terms of the DIGITALON privacy policy available at <https://digitalon.com.au/privacy-policy>.
- 19.9 The failure by DIGITALON to enforce any provision of these Conditions shall not be treated as a waiver of that provision, nor shall it affect DIGITALON's right to subsequently enforce that provision.
- 19.10 These Conditions and any contract to which they apply shall be governed by the laws applicable in Queensland and are subject to the jurisdiction of the courts of Queensland. All legal proceedings in relation to these Conditions shall be instituted and held in Brisbane in the State of Queensland, Australia.