

THIS AGREEMENT IS dated [insert date]

AND IS BETWEEN:

Agencia Change Pty Ltd t/as Agencia Change [ABN 20669308196] ("Agencia Change" "us"/ "we")

And:

The Client as further described in the Proposal ("the Client/you/your")

1. WHY DO WE HAVE THIS AGREEMENT?

- 1.1. We have this agreement to formalise the change management and communications, consultancy services ("Consulting Services"/"Services") we will be providing.
- 1.2. This Agreement starts on the Commencement Date and terminates on the last day of the Consulting Period, or in accordance with the termination clause, whichever is earlier.

2. THE CONSULTING SERVICES WE WILL PROVIDE

- 2.1. We will perform the Consulting Services
 - 2.1.1. with due care, skill and diligence; and
 - 2.1.2. in accordance with all relevant legislation, regulations, and requirements of authorities at the time.
- 2.2. The Consulting Services will be performed personally by Kerrie Marie Smit or by her Representatives where prior agreed.
- 2.3. We will seek your prior written consent before continuing the Consulting Services after the Consulting Period, after which this Agreement will continue in full force and effect for the following agreed Consulting Period.
- 2.4. We agree to:
 - 2.4.1. keep you informed of the progress of the Consulting Services;
 - 2.4.2. keep all your documents secure and return or archive and periodically delete all documents at the termination of this Agreement;
 - 2.4.3. comply with our privacy policy, details of which you can find on our website.

3. VARIATIONS AND ADDITIONAL SERVICES

- 3.1. After the Commencement Date, if you require any changes to the Services, or to add additional services, you must notify us as soon as possible, and we may provide you with an amended Schedule, or terminate this Agreement at our discretion.
- 3.2. Additional charges will apply for any additional services not included in our Services as set out in the Proposal.
- 3.3. We will notify you as soon as possible if we need to vary the Services or this Agreement in any way.

4. YOUR OBLIGATIONS

- 4.1. You must provide all information we request in order for us to perform the Consulting Services.
- 4.2. You represent and warrant that:
 - 4.2.1. all information you provide is true, correct, current, and to the best of your knowledge, and all relevant information is disclosed;

- 4.2.2. you will respond promptly to any of our requests for further information;
- 4.2.3. you will be honest in all communications in relation to our recommended approach, or where approaches need to be altered to account for various factors;
- 4.2.4. you will attend all meetings as agreed; and
- 4.2.5. the Client Representative has full authority to make all your decisions related to the Services.
- 4.3. You acknowledge and agree that:
 - 4.3.1. you will allow us reasonable access to the Site, staff and information to perform the Services; and
 - 4.3.2. you will provide or find sponsorship for the change you are wanting managed.
- 4.4. We may become aware during the performance of the Services that you may need additional services, and you agree to co-operate with us in this regard.
- 4.5. We will make recommendations of consultants and suppliers and may brief and co-ordinate consultants and suppliers on your behalf, however, at all times, any engagement of a consultant or supplier is a contract between you and that third party, and you are responsible for all payments to that third party, and we are not to be involved.

5. THE FEES YOU NEED TO PAY

- 5.1. You agree that you will pay us the Consulting Fee for the Consulting Services, and any Additional Fees.
- 5.2. Being a predominantly online service, we will invoice you for the Consulting Fee and any Additional Fees at the start of the Services, or when otherwise agreed.
- 5.3. All Fees must be paid at the time of booking, and all invoices are due within 1 day of the invoice.
- 5.4. Interest will be charged on any unpaid invoices at the rate of 10% per annum calculated monthly. Any legal collection fees that are incurred will be charged to you.

6. CONFIDENTIAL INFORMATION

- 6.1. Both parties agree to keep confidential and secure all Confidential Information. Either party must not disclose or permit any person or third-party to access any Confidential Information unless it is required to perform the Services, in which case, the relevant party must ensure they are under the same duty of confidentiality under this Agreement.
- 6.2. Each party must notify the other party immediately upon becoming aware of any unauthorised use, disclosure, copying, or loss of any or all of the Confidential Information.
- 6.3. Each party acknowledges and agrees that they are fully responsible for any breach of the obligation of confidentiality, including any indirect and consequential loss which may result from that breach.

7. CANCELLATIONS, RESCHEDULING AND REFUNDS

- 7.1. In the case of a failed payment, an email will be sent to you requiring payment within 1 day, after which time any access to the Consulting Services will be cancelled until payment is received.
- 7.2. Where we have to cancel a session, we will refund you as required by law.
- 7.3. Where we need to cancel the Services, we will provide you with a refund for the unused portion of the Services.
- 7.4. To the extent permitted by law, any other refunds for any cancellations of the Consulting Services are at our absolute discretion.
- 7.5. We do not provide refunds for your change of mind, where you failed to provide us with adequate information or clearly explain your needs, or where you have failed to act on our advice, or where you did not attend an agreed meeting.

8. THE AUSTRALIAN CONSUMER LAW

- 8.1. Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled to cancel your service contract with us, and to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to be compensated for any other reasonably foreseeable loss or damage.
- 8.2. If the failure does not amount to a major failure, you are entitled to have problems with the Service rectified in a reasonable time, and if this is not done, to cancel your Agreement and obtain a refund for the unused portion.

9. INTELLECTUAL PROPERTY AND PUBLICITY

- 9.1. We own or have a license to use all Intellectual Property Rights in any Materials we may provide you throughout the performance of the Consulting Services.
- 9.2. All Intellectual Property Rights in the Materials are retained by us, and we grant you a non-exclusive, revocable, royalty-free license for the period of this Agreement to use those Materials inside your organisation.
- 9.3. During the Consulting Services there may be Work developed.
- 9.4. All Intellectual Property Rights in the Work assigned to you. / Retained by us and you must seek our prior written consent to use it/ etc.
- 9.5. You grant us an exclusive, irrevocable, royalty-free, worldwide, perpetual license to use the Work developed during the Consultancy Services for the purposes of [insert purpose you want to use them - if in addition to clause 9.6 below].
- 9.6. You permit us to use any photos, videos and testimonials you provide to us for marketing and information purposes, or publications, exhibitions and professional awards. Where we take photos or videos of you, we will seek your consent to use them. We will retain all Intellectual Property Rights in them, and we may use them for training, marketing or information purposes. We may reference your company as being a client and publish examples of Work subject to it being redacted as needed. We may also use the Work for training.
- 9.7. You must also seek our prior written consent before any publication of information about our Consulting Services. Where permitted, we will require observation of our Moral Rights.

10. LIMITED LIABILITY AND INDEMNITY

- 10.1. To the extent permitted by law, our liability is limited, at our option to:
 - 10.1.1. the replacement of the services or the supply of equivalent services;
or
 - 10.1.2. the payment of the cost of replacing the services or of acquiring equivalent services.
- 10.2. You agree and acknowledge that we are not liable for any Loss or damage which may result from the Consulting Services.
- 10.3. In any case, our liability to you will not exceed the amount actually paid by you to us for the most recent invoice we have sent you that has been paid.
- 10.4. You acknowledge, agree and undertake to indemnify us and keep us at all times fully indemnified from and against any Claims whatsoever arising directly or indirectly as a result of any breach by you of this Agreement, any conduct by you in using our Consulting Services, and any third-party claims.

11. TERMINATION

- 11.1. We may either suspend the Consulting Services or terminate this Agreement where we become aware that there is, or maybe a conflict of interest.
- 11.2. We may also, at our option and without prejudice to any of our rights, immediately terminate this Agreement where you default on any of our invoices, breach this Agreement, including but not limited to where there is any consistent failure to attend or inappropriate behaviour or conduct, or commit an act of bankruptcy.
- 11.3. Upon termination, you must pay to us all accrued Consulting Fees and Additional Fees owing up to the date of termination.
- 11.4. Clause 6, 8 - 14 survive termination of this Agreement.

12. IF THERE IS A DISPUTE

- 12.1. If at any time any aspect of the Services is not reasonably acceptable to you or we disagree on the quality or substance of the Services you will immediately notify us of any such reason, the specifics and will give a reasonable opportunity for us to respond and address any concerns.
- 12.2. If a dispute arises, you acknowledge and agree that confidentiality is paramount to our reputation. At no time will any communications or discussions be made public, including but not limited to any social media websites. Any public discussion or comments considered defamatory, negative or otherwise damaging will be the subject of compensation in any mediation or litigation claim.
- 12.3. In the event of any dispute that cannot be resolved, both parties agree to obtain an independent professional arbitrator/dispute resolution specialist to make a determination on the dispute.

13. RELATIONSHIP

- 13.1. The relationship of the parties under this Agreement is that of a principal and independent contractor. This Agreement does not create a relationship of partner,

joint ventures, employee, or agent. No act or omission of either party will bind the other party except as expressly set out in this Agreement.

14. THE GOVERNING LAW AND OTHER MATTERS

- 14.1. This agreement completely states the agreement of the parties as to its subject matter. It supersedes, and its terms govern all previous communications, representations, inducements, undertakings, agreements and arrangements between the parties in respect of its subject matter.
- 14.2. This Agreement may not be modified or amended except in writing.
- 14.3. If any Services have been provided by us before the date of signing of this Agreement, the parties agree that this Agreement applies retrospectively.
- 14.4. The failure by us to exercise any right or enforce any provision in these Terms does not waive the future operation of that right or provision.
- 14.5. In the event that a provision in this Agreement is not enforceable, such provision shall be severed from this agreement to the extent permitted by law, and the remaining provisions will remain in full force and effect.
- 14.6. This Agreement must not be transferred or assigned without the prior written consent of the other party.
- 14.7. This Agreement may be signed electronically in counterparts.
- 14.8. This Agreement is governed by the laws from time to time in force in the state of NSW Australia. Both parties agree to unconditionally submit to the non-exclusive jurisdiction of the courts of NSW for determining any dispute concerning this Agreement.

DEFINITIONS:

"Agreement" means these terms and conditions, and the Proposal.

"Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010*.

"Claim" means any claim under statute, tort, contract, or negligence, any demand, awards or costs.

"Confidential Information" means any information in any form that is about business structure, methods, procedures, financial information, sales, marketing or promotional information, any personal information as defined under the *Privacy Act 1988* (Cth) and any information that one party tells the other is confidential, or is marked as confidential; it does not include information already in the public domain, or that is required to be disclosed by law.

"Information" is defined in the Proposal and includes any information you provide to us during the Consulting Services.

"Intellectual Property Rights" means all trademark, copyright, design rights, patents, trade secrets, confidential information and all other intellectual property rights whether registered or unregistered.

"Loss and Damage" means any direct, indirect, consequential or incidental loss or damage. It includes, but is not limited to any loss, personal injury, death, negligence, loss of profits, revenue, salary, property damage, loss of enjoyment, virus or damage to your systems, or reliance on our Consulting Services.

"Materials" means any of our platform, approaches, methods & templates, and any documents and materials provided to you.

"Moral Rights" means the moral rights pursuant to the *Copyright Act 1968 (Cth)*.

"Representatives" means any of our directors, officers, employees, independent contractors, agents, consultants, advisors, and other representatives.

"Site" means the site you require the Consulting Services to be performed from time to time, as notified by you to us.

All other capitalised terms are defined in the Proposal.