

# Pond Splash Pty Ltd

## Professional Services Agreement

Version: 2-WEB0523 | Pond Splash Pty Ltd

### Key Assumptions

Pricing and scope of work is based on the following key assumptions:

1. Content for all collaterals, website, digital media etc. will be provided by the Company;
2. All website support and non-technical support will be transitioned to the Company once project is signed-off;
3. Turn around for approvals and feedback < 72 hours;
4. Delayed feedback or approvals will trigger an invoice to be issued for immediate payment;
5. The Company's key project participants will complete tasks on timelines as requested and will make themselves consistently available throughout the duration of the project;
6. Technical, enhancement and administrative support for the website will be provided at an additional cost agreed to by both parties;
7. Hosting and other server-related services are to be managed and paid for by the Company and access details are to be provided to the Contractor;
8. 3rd party costs if incurred will be paid directly by the Company using a nominated credit card. No costs will be incurred without prior approval by the Company;
9. Revisions will be provided until the Company is "reasonably" satisfied with the work. Changes are limited to graphics, font/text changes, icon changes and colour scheme changes only;

### Compensation Terms

The Parties have both agreed that the payments listed above are fair and just for the services contained within this agreement.

The following compensation terms apply to this project (as applicable):

1. Third-party one-time and/or recurring fees are payable upfront, and any renewal fees are the responsibility and to be paid by the Company using a nominated credit card;
2. Retainer service fees invoices are issued each week and are due on receipt;
3. Maintenance fees are to be paid either at the start of each calendar month or on an annual rolling basis;
4. On-demand fixed quote services are to be and scoped and priced according to the agreed Statement of Work provided to the company and all invoices issued are due on receipt;
5. Monthly contract service fees invoices are issued one month in advance and are due each month until services are no longer required and/or the agreement has been terminated;
6. Annual contract monthly discounted service fees invoices are issued one month in advance and are due each month for a minimum period of 12 months until services are no longer required and/or the agreement has been terminated;
7. Invoices are due on receipt;
8. Tax is exclusive of all quoted prices;

9. Any merchant transaction fees incurred will be on-charged to the company;
10. Invoices will be issued and sent via email to the company via Xero;
11. Late payment or non-payment of issued invoices will be subject to a debt recovery and collections process and all debt recovery fees will be the responsibility of The Company;
12. The Company agrees to maintain a backlink on the footer of the website "Website design by PondSplash" with or without a logo (logo optional) and direct web URL access as part of this agreement and compensation terms offered by the Contractor for a period no less than 24 months after the work is complete;

### Professional Services Terms and Conditions

#### 1. Recitals

- 1.1. The Company has requested professional services to be performed which meet the standards contained within this agreement.
- 1.2. The Contractor is engaged in the provision of such professional services and holds all the necessary skills, resources, and tools to obtain the required outcomes expected of this agreement.
- 1.3. The Company wishes to engage the Contractor for services as an independent contractor for the sole purpose of providing the services contained within this professional services agreement.
- 1.4. The Contractor is, for the sake of this professional services agreement, an independent contractor and under no condition shall be considered an employee of the Company.

#### 2. Termination Responsibilities

- 2.1. This professional services agreement may be terminated by either party for the following reasons:
  - 2.1.1. In the instance of a material breach of any terms and conditions contained within this agreement;
  - 2.1.2. In the instance either party files for bankruptcy during the agreement terms;
  - 2.1.3. In the instance that the company does not make payments when they fall due;
  - 2.1.4. Upon termination of this agreement, the Contractor will submit an invoice to the Company either for all services completed to date or to the equivalent value of 50% of the total project fees, whichever amount is lesser. The Contractor will also upon termination of this agreement turn all licenses, documentation, and completed work over to the Company within 5 business days of the termination date;
  - 2.1.5. Management and maintenance services can be terminated but only in the circumstances that the company provides at least (1) "one" calendar month notice to the contractor and that any outstanding invoices to date are paid in full prior to termination of the agreement.

#### 3. Contractor Responsibilities

- 3.1. The Contractor shall provide the professional services inclusive of all details included in this professional services agreement;
- 3.2. The Contractor shall test and ensure the software functions appropriately and reliably prior to final delivery to the Company;
- 3.3. The Contractor will enable the development of this professional services solution with the necessary time, energy, and staffing needed to produce quality results;
- 3.4. Upon completion of the project, the Contractor shall assist the Company in installation as well as assist the Company in hosting, submitting the software to any app stores or pushing the code into specified repositories;
- 3.5. Upon completion of all services, the Contractor shall turn all code and databases related to the project over to the Company immediately.

#### 4. Company Responsibilities

- 4.1. The Company shall engage with the Contractor on the agreed dates to conduct check in reports;
- 4.2. The Company shall provide all needed support and assistance as needed by the Contractor for the completion of this professional services agreement;
- 4.3. The Company agrees to provide all the necessary information, facilitate communication, and provide provisioning of services needed by the Contractor to fulfil obligations under this agreement.

#### 5. Support Period

- 5.1. The Contractor agrees to provide the Company with a continuance of support for the project for a period of 7 days from the delivery and sign-off of such services;

- 5.2. The support provided shall be inclusive of any repairs needed for bugs, glitches, and issues related to the delivered product(s);
- 5.3. This support shall be included in the overall price and may not be billed separately;
- 5.4. There will be a grace period of 5 working days to ensure smooth delivery of the project.

**6. Service Level Agreement**

- 6.1. The Contractor and Company agree to be bound by the Service Level Agreement (SLA) provided to the company (if applicable) for all on-going maintenance and management services contained in the agreement;
- 6.2. If any modifications are requested, then both parties must have a mutual written agreement prior to enforcement of the new agreement.

**7. Managed Sub-Contractor Services**

- 7.1. The Contractor shall engage third-party sub-contractors for work placement requested at the Company's direction;
- 7.2. The Contractor is responsible for managing all communication and activities related to the project(s) scope of work;
- 7.3. The Company shall make a request to the Contractor for work to be carried out with a minimum notice period of 5 business days before commencement of any work;
- 7.4. Quoted pricing is subject to change dependent on modification and amendments to the scope of work that has been agreed to by both parties with prior written consent and will be scoped and priced accordingly.

**8. Confidentiality**

- 8.1. Neither the Company nor the Contractor shall disclose to any third party or use for any purpose (other than for the purpose for which the Services are to be performed) any information including, but not limited to, business, financial, commercial, and technical information provided by the other unless:
  - 8.1.1. required by law;
  - 8.1.2. the information is or becomes generally known to the public other than because of a breach of this Agreement;
  - 8.1.3. the disclosure is made to a party's financial, legal or insurance advisers or to its insurers; or
  - 8.1.4. the other consents to the disclosure, such consent not to be unreasonably withheld.
  - 8.1.5. This is inclusive but not limited to any technical data, trade secrets, expertise, software, designs, drawings, engineering, formulas, or commercialization blueprints.

**9. Warranties**

- 9.1. Each party shall have full authority to perform all deliverables contained in this professional services agreement.
- 9.2. This agreement is legally binding and enforceable as such.
- 9.3. The Contractor retains the right to dictate all methods and manners by which the services included in this agreement are performed.
- 9.4. The services performed shall be done in a legally acceptable manner and shall not violate any local or federal laws and regulations.
- 9.5. All services included in this agreement shall be performed by the Contractor and the Company shall not be responsible for any hiring, supervising, or payment of any individuals assisting the Contractor in this agreement.
- 9.6. The Contractor shall remain responsible for any employees, contractors and expenses incurred during the term of this agreement.

**10. Indemnification**

- 10.1. The Contractor shall indemnify and hold the Company and its affiliates harmless for all damages, losses, expenses, claims, liabilities, and judgments that may arise from the result of the Contractor's own misconduct or negligence.
- 10.2. The Company shall indemnify and hold the Contractor as well as any associates of the Contractor harmless from all claims, losses, expenses, liabilities, or fees that may occur from the Company's negligence or breach of this agreement.

**11. Limitations of Liability**

- 11.1. Subject to this clause 11 and to the maximum extent permitted by Law, Pond Splash Pty Ltd is not liable to the Customer or to any other person for:
  - 11.1.1. any loss or damage of any kind caused by or resulting from any act or omission of the Customer or any of its employees, agents, or contractors; or
  - 11.1.2. any loss of profits or anticipated profits, economic loss, loss of business opportunity, loss or damage resulting from wasted management time or any special, incidental, indirect, or other consequential loss or damage, even if notified of the possibility

of that potential loss or damage and irrespective of whether it is due to negligence, breach of contract or any other cause.

- 11.1.3. The maximum aggregate liability of Pond Splash Pty Ltd for all proven losses, damages and claims arising under this Agreement, including liability for breach, in negligence, or in tort or for any other common law or statutory action, is limited, for an aggregate of all claims, to the sum of the amounts paid by the Customer to Pond Splash Pty Ltd in the 14-day period immediately preceding the claim.

**12. Final Acceptance**

- 12.1. When The Company makes final payment to The Contractor or accepts Transfer of Ownership from The Contractor to The Company, The Company agrees and accepts the work as full, complete, and final.
- 12.2. Any further changes or requests or updates or discoveries made by The Company thereafter is deemed additional work and will be billed in accordance with the hourly or project fee rate as set and updated by The Contractor.
- 12.3. It is the responsibility of The Company to review, check and identify any issues, errors, or non-functional elements prior to;
  - 12.3.1. Accepting the Site Ownership Transfer from The Contractor;
  - 12.3.2. Making Final Payment to The Contractor
- 12.4. If The Company makes any changes to the Website or Work provided by The Contractor, the work is then deemed accepted by The Company as complete and final. The Company is liable for any errors, glitches, mis formatted elements or otherwise errors contained within the work after The Company has accessed and made changes to work provided by The Contractor, including but not limited to;
  - 12.4.1. Accessing the Website Editor or Work Files provided;
  - 12.4.2. Publishing Changes to the Website or Work;
  - 12.4.3. Altering any Settings, text, graphics, colour themes, elements or anything contained with the Work;
  - 12.4.4. Or otherwise, any change or updated carried out by The Company

**13. Return of Property**

- 13.1. Within 5 business days of the completion or termination of this professional services agreement the Contractor agrees to return all samples, products, software, models, and documents pertaining to this agreement to the Company.
- 13.2. Any property given to the Contractor for purposes of supporting this agreement by the Company shall remain the sole property of the Company and shall be returned as such.

**14. Intellectual Property**

- 14.1. The Contractor warrants that the use of the professional services being developed will not infringe on any trademarks, copyrights, patents, or any other third-party rights.
- 14.2. In the instance the Contractor becomes aware of any of the above taking place, the Contractor will be responsible for notifying the Company as well as seeking the needed permissions.
- 14.3. The Company acknowledges all text, photos, trademarks, designs, technology, or other artwork given to the Contractor is Company's rightful property and they have the appropriate permissions to use products as such.
- 14.4. Ownership of Work Product: The parties hereby acknowledge that the Work Product, and all documentation, information, systems, technology, and other results developed in connection with the Work Product, will, to the extent permitted by Law within the definition of the Copyright Act 1968 (Cth) and will remain the company's exclusive property;
- 14.5. Assignment of Work Product: If and to the extent that any Work Product is not deemed to be within the definitions of the Copyright Act 1968 (Cth), at the completion and acceptance of the work, the contractor shall promptly assign to the company all its right, title, and interest in and to the Work Product, including any Intellectual Property rights;
- 14.6. Co-operation: During and after the Term, on the company's reasonable request, the contractor shall provide all assistance necessary and desirable for the company to establish, preserve, and enforce its rights, title, and interest in and to the Work Product;
- 14.7. Moral Rights: At the completion and acceptance of the work and to the extent permitted by Law, the contractor shall waive all moral rights relating to the Work Product (including any rights (a) of identification of authorship, (b) of approval, restriction, or limitation on use, and (c) to subsequent modifications).

**15. Amendments**

- 15.1. No Amendments or modifications of this agreement shall be permitted without prior written consent between the parties.

**16. Assignment**

- 16.1. The Company reserves the right to assign this agreement, as they deem necessary.
- 16.2. The Contractor may not assign, subcontract, or delegate any portion of this professional services agreement without prior written consent from the Company.
- 17. Force Majeure**
- 17.1. Neither party shall be considered in default or breach of contract in the instance of any delay pertaining to an act of God such as fire, explosion, flood, or acts out of the control of such party such as riot, war, or terrorism. In the event of such acts occurring the party is expected to notify the remaining party of such actions as well as a resolution date.
- 18. Notice**
- 18.1. All notifications regarding this professional services agreement shall be delivered via email, person, or certified letter by the respective parties to their nominated addresses.
- 19. Governing Law**
- 19.1. This professional services agreement shall be governed by the laws of NSW;
- 19.2. All Litigations pertaining to this agreement shall be under the jurisdiction as so;
- 19.3. Furthermore, the prevailing party shall retain the right for the reimbursement of any expenses resulting from such litigation.
- 20. Severability**
- 20.1. In the instance any terms or conditions contained within this professional services agreement are found to be ineffective or unenforceable by the court of law the parties shall have an opportunity to replace that term with a likewise enforceable term;
- 20.2. The replaced term shall in no way affect the remaining terms, all remaining terms and conditions shall remain in full effect.
- 21. Entire Agreement**
- 21.1. This professional services agreement constitutes the complete and final agreement between the Parties.
- 21.2. This agreement shall supersede all previous entered agreements whether written or oral between the Parties.
- 22. Privacy**
- 22.1. For privacy policy please visit:
- 22.1.1. <https://www.pondsplash.com/privacy-policy>
- 23. Costs of Recovery**
- 23.1. The debtor/s shall pay for all costs actually incurred by Pond Splash Pty Ltd in the recovery of any monies owed under this Agreement;
- 23.2. You agree to be liable for and indemnify Pond Splash Pty Ltd;
- 23.3. These costs include recovery agent costs, repossession costs, location search costs, process server costs and solicitor costs on a solicitor/client basis, debt collection commission and legal fees on an indemnity basis.
- 24. Acceptance and authorization**
- 24.1. This professional services agreement shall become effective as of the agreement date and will continue until all services are considered completed and approved by the Company or termination is requested by either party;
- 24.2. The terms and conditions of the Professional Services Agreement apply in full to the managed services to be provided under this Statement of Work.

