

## Our Commitment to you

- i) We commit to provide our Clients transparent and high quality service, with up to the minute technologies and products.
- ii) We use open source solutions wherever possible. This means no vendor lock-in and software fees are charged at 'fair and reasonable rates' or in most cases, fees are not applicable (Item 11).
- iii) If the Client is not happy with our service, the Client is free to move their domain name, website and data in its entirety to another service provider (Item 14).

## Introduction

This document defines the terms and conditions of our working relationship. Unless otherwise agreed to in writing by both the parties, the terms of this Agreement will commence on the date specified in this agreement or at commencement of work if no date is specified in written form.

All services that Holiday Brands may be contracted to produce or provide for Clients Actual Name (referred to as Client) will be subject to the following:

## Definitions

As used herein and throughout this Agreement:

Client" in this instance refers to you.

"Agreement" means the entire content of this Basic Terms and Conditions document, any Proposal document(s), Schedule(s), together with any other Supplements designated below, together with any exhibits, schedules or attachments hereto.

"Content" means all materials, information, photography, writings and other creative content.

"Copyrights" means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under Australian and International Copyright Law.

"Deliverables" means the services and work product specified in the Proposal to be delivered by Holiday Brands to the Client, in the form and media specified in the Proposal.

"Services" means all services and the work product to be provided to Client by Holiday Brands as described and otherwise further defined in any proposal documents or correspondence.

"Trademarks" means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables.

"Open Source Software" means computer software that is available in source code form for which the source code and certain other rights normally reserved for copyright holders are provided under a software license that permits users to study, change, and improve the software.

"Ongoing Management" means the ongoing work to keep the website functioning and secure. This includes, but is not limited to: changes, alterations, upgrades, data management, backups, maintenance, content management, and plugin updates.

## General Terms

### 1. Authorisation

The Client authorises Holiday Brands to perform the services outlined in this agreement or accepted quote on the Clients' behalf, which may include, but is not limited to, accessing their hosting account and disk space, creating databases and applications, and submitting the project to search engines.

### 2. Agreement Scope and Period

Services supplied, costs and rates are limited to what is specifically set forth in this agreement or in any scope of works document provided before commencement of work. Any additional services will require an additional agreement. We reserve the right to adjust our service and rates after this period.

### 3. Costs and Fees

Changes and additions outside of the scope of this document or project proposals, will be quoted and invoiced to the Client. The Client will be advised of all costs, changes and additions before commencement of the additional work. Features or site functions that require additional work in order to achieve desired site outcome will be made at time of development without notice. Fees for professional services do not include outside purchases such as, but not limited to, software licensing, paid plugins, paid content or templates, copyright licensing, or photography. Expenses are itemized on invoices. Expenses are subject to GST and on-charged accordingly.

### 4. Production Schedules

Production schedules will be established if necessary and adhered to by both the Client and Holiday Brands. Where production schedules are not adhered to by the Client or material not supplied in time to make schedule, final delivery date or dates will be adjusted accordingly. Additional costs may be charged for delays, if the delays result in an increase in time to manage or deliver the services.

### 5. Payment

5.1 The Client agrees to pay Holiday Brands in accordance with the terms specified in any proposal/estimate or hourly rate agreement and in accordance with general terms of sale listed on each invoice. All subsequent balances due are payable upon completion of key stages of the project, or on invoice, subject to invoicing due dates and general sales terms.

5.2 If the Client fails to pay any invoice, Holiday Brands reserves the right to withdraw the website and associated materials or refuse completion and/or delivery of work until past due balances are paid. All materials or property belonging to the Client, as well as work performed, may be retained as security until all just claims against the Client are satisfied. Holiday Brands may charge late payment fees on overdue accounts. The Client is responsible for any debt collection fees which may come due.

5.3 In the event of cancellation of the project prior to completion, the Client must pay Holiday Brands for work completed, based on the contract price, or appropriate hourly rate and the expenses already incurred.

### 6. Subcontractors

Holiday Brands reserves the right to assign subcontractors or external suppliers. Any subcontractors or external suppliers will be bound to the terms of this agreement.

### 7. Project Management

In the event that the Client or Holiday Brands commissions the work of an outside developer or service provider to complete work critical to the delivery of the website or project at request of the Client, Holiday Brands will bill the Client for time taken to oversee or project manage work at an hourly rate.

### 8. Promotion

Holiday Brands is confident that the Client's expectations will be met and exceeded and as such is notifying the Client that Holiday Brands reserves the right to use the Client's website, associated graphics and any unused ideas and development in the promotion of Holiday Brands services or in portfolio pieces. The Client agrees to allow Holiday Brands to retain a credit and link from the footer of the website.

### 9. Copyright

10.1 The Client is responsible for all trademark, servicemark, copyright and patent infringement clearances. The Client is also responsible for arranging, prior to publication, any necessary legal clearance of materials Holiday Brands uses for this project. The Client indemnifies Holiday Brands against any loss or damage arising directly or indirectly from any unauthorised use of photographs, text, or other Intellectual Property not under copyright ownership of the Client.

### 10. Project Copyright

10.1 After acceptance of the website and payment of all sums due by the Client, Holiday Brands agrees to assign perpetual and unrestricted right to use any materials produced by Holiday Brands as outlined in this agreement to the Client including exclusive usage rights to any brand specific unique graphics.

10.2 Holiday Brands reserves rights over working and source files that Holiday Brands produces or creates in the process of delivering the project. The Client does not have the right to resell, reuse or re-purpose any design or content supplied as part of this agreement unless specified or agreed.

### 11. Open Source Software

11.1 Holiday Brands makes extensive use of open source and free to use software, plugins and components, where available to supply websites and services to the Client. Holiday Brands will not charge additional licencing fees on open source software.

11.2 The Client indemnifies Holiday Brands against any loss or damage arising directly or indirectly from any failure of software or plugin provided or written by any 3rd party, that is used in the development of the Client's site.

11.3 All software and components not developed by Holiday

Brands retain the original licence and terms associated with them. Holiday Brands cannot assign any rights to the Client and the Client agrees to be bound by the original Author's terms.

11.4 The Client accepts that updates of plugins to 3rd party software are not the ongoing responsibility of Holiday Brands and accepts plugins will be up to date at time of launch. If the Client would like or requires future assistance with maintaining 3rd party software or plugins, limited support can be provided by Holiday Brands at an hourly rate (see Ongoing Management).

### 12. Force Majeure

Holiday Brands shall not be deemed in breach of this Agreement if Holiday Brands is unable to complete the Services or any portion thereof by reason of fire, earthquake, lockdowns, act of God, death, illness or incapacity of Holiday Brands or any local, state, federal, national or international law, governmental order or regulation or any other event beyond Holiday Brands's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, Holiday Brands shall give notice to the Client of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

### 13. Limitation of Liability

The services and the work product of Holiday Brands are sold "as is." In all circumstances, the maximum liability of its Designers, Directors, Officers, Employees, Design Agents and Affiliates ("Holiday Brands parties"), to the Client for damages for any and all causes whatsoever, and the Client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the net cost of this project as specified in this Agreement, or at net cost of total project invoices at time of launch.

In no event shall Holiday Brands be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by Holiday Brands even if Holiday Brands has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.

### 14. Termination

Either party may terminate this Agreement by giving 30 days written notice to the other of such termination prior to launch date

of site. In the event that work is postponed or terminated at the request of the Client, Holiday Brands shall have the right to bill pro rata for work completed through to the date of that request, while reserving all rights under this Agreement.

If additional payment is due, this shall be payable within fourteen days of the Client's written notification to stop work. In the event of termination, the Client shall also pay any expenses incurred by Holiday Brands and Holiday Brands shall own all rights to the work. The Client shall assume responsibility for collection of all legal fees necessitated by default in payment.

### 15. Domain Names & Website Hosting Setup

15.1 All domain names are registered to the Client if Holiday Brands registers domain on Client's behalf if the Client does not already own their domain. All domain name registrations are subject to availability and registration rules. The Client manages their domain(s) with the domain registrar and payment of fees, unless the Client requests in writing that Holiday Brands manage the domain name(s) and hosting on behalf of the Client.

15.2 Holiday Brands uses Crazy Domains or Site Ground (referred to as REGISTRAR) to manage their domain names and/or hosting, if hosting or domain registration is not already provided by the Client. The Client is bound by the REGISTRAR's "Domain name or hosting registration terms" which are found on their website: [www.crazydomains.com.au](http://www.crazydomains.com.au) or [www.siteground.com](http://www.siteground.com)

15.3 The Client indemnifies Holiday Brands against any loss or damage arising directly or indirectly from any failure of services provided by the REGISTRAR, or for failure of the Client to secure such services at appropriate deadlines and renewal dates.

### 16. Hosting

16.1 The Client is responsible for contacting the chosen host for support relating to hosting matters. Holiday Brands will charge for costs incurred while liaising with the hosting company and supporting the Client with hosting related issues if requested to do so by the Client.

The Client is responsible for maintaining active hosting services and all renewals. Holiday Brands is not responsible for any loss of site caused by failure to renew hosting services.

### 17. Colours

Website visitors use different monitors with different settings. Colours and image quality of the website including graphics and photography will shift between computers and monitors.

### 18. Testing and Acceptance of the Website

Once the project or relevant key development stages have, in the opinion of Holiday Brands been completed, Holiday Brands will notify the Client either verbally or in writing, and provide the Client with an opportunity to test and review the website. If the Client determines that the website does not comply with the Project Components agreed to in this document or in scope outline, Holiday Brands agrees to carry out any necessary and reasonable modifications to satisfy original scope within 7 days of launch date.

The Client may be provided opportunity for testing and feedback at project milestones. At these points it is the responsibility of the Client to test and provide feedback prior to continuation of work. If no feedback is received in writing, Holiday Brands will assume no changes are required and that both Holiday Brands and the Client agree the work provided up to this stage is complete and satisfies scope.

Both the Client and Holiday Brands agree that the launch date for such site, is seen to be the time of completion and fulfillment of work required, and that the site is deemed complete without errors at COB on launch day (go public day).

If unforeseen problems arise on launch inside of Holiday Brands's control or original scope, and these problems require additional work (which may be billed accordingly) the project will be deemed incomplete until these problems are addressed, by resolution or agreement. Any problems with the live site must be addressed and accepted by both parties prior to COB on launch day. Failure by the Client to note site issues by COB on launch day will be classed as 'late' submission of work - and deemed to be a request for additional work outside of original site scope.

In the event that site issues are caused by a 3rd party software or by factors outside of Holiday Brands's scope of works, Holiday Brands will at the request of the Client, manage any work or corrections under a Project Management arrangement, with the 3rd party, charged at hourly rate for such support, and the site will still remain deemed complete at launch date in such circumstances.

### 19. Website, Data and Security

19.1 At completion of website, The Client is free to transfer their website to another service provider. Holiday Brands will take all reasonable actions to transfer the Client's domain name to any new registrar, provided support time does not exceed 1hr.

19.2 Ongoing Management is not included in this agreement and will require an additional agreement. Ongoing Management after launch can be provided at usual web management hourly rate as charged by Holiday Brands, at request of the Client.

19.3 If The Client does not proceed with an Ongoing Management agreement, The Client is responsible for Ongoing Management of the website and indemnifies Holiday Brands against any loss or damage arising directly or indirectly from website downtime, errors, failures or security breaches.

19.3 The Client accepts that the security, storage of the Clients website, and hosting services are provided by an external registrar and that any site issues, losses, down time or issues caused by this hosting provider are not the responsibility of Holiday Brands.

### 20. Client Responsibilities

If the Client or an agent of The Client other than Holiday Brands attempts to update, edit or alter the site's pages, site files, infrastructure, source files or hosting settings, in a way that causes damage to individual pages or the site's architecture- time to repair web pages will be assessed at our hourly rate, and is an additional cost above the costs outlined in this agreement. Holiday Brands does not take any responsibility for and may not take on the responsibility of fixing Client caused damages if Holiday Brands can not provide services or skill set required for fixing such damages. The Client also accepts responsibility for maintaining integrity of website data and regular backups.

### 21. Errors and Omissions

It is Holiday Brands's responsibility to check carefully for accuracy in all respects, ranging from spelling to technical illustrations. However Holiday Brands is not liable for errors or omissions. The Client indemnifies Holiday Brands against any loss or damage arising directly or indirectly from any errors and omissions.

### 22. Copy & Images & Branding

All text, copy or content must be supplied in digital format (TXT, RTF, MS Word, Open Office, InDesign) by the Client. Graphics and photographs are to be supplied in digital format to Holiday Brands. Larger files (over 5mb) may incur an extra cost due to increased time in processing. All logos and branding must be provided in a industry standard vector or working format (preferences are: Indesign, EPS, PDF, Illustrator).

### Schedule 1

Costs and Fees (ex GST) - base rate & ongoing maintenance if required.

Project Management or Testing: Hrly .....\$100

Installation, development or maintenance: Hrly.....\$120

Or, refer to quote proposal for overall cost estimate if provided.

### Schedule 2

Time Frames

Draft website for testing due once content & brief received....  
1-3 weeks

Project revisions due by Client ..... +1 week

Website completion for final testing ..... +1-2 weeks

(based on having received all content required for upload)

Website goes live ..... TBC

\_\_\_\_\_/\_\_\_\_/2019  
Client Signature Date

\_\_\_\_\_/\_\_\_\_/2019  
Holiday Brands Signature Date