



Wolfe Systems Web Terms and Conditions January 2020

1. Definitions

“Client” means the Client described in the Proposal or any person acting on behalf of or with the authority of the Client;

“Client Materials” means all text, images, settings and other materials provided or introduced by the Client for use in connection with the Services; “Confidential Information” means all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form, including, without limitation, information that:

(a) is by its nature confidential;

(b) is designated by a Party as confidential;

(c) the recipient knows or ought to know is confidential;

(d) is “personal information”, that is, information or an opinion, whether true or not and whether recorded in a material form, about a natural person whose identity is apparent or can be readily ascertained from the information or opinion.

“Fees” means the consulting fees, design fees and any other charges payable by the Client for the provision of the Services;

“Intellectual Property Rights” means copyright, trademark, design and patents whether registered or not and including any rights to register such intellectual property;

“Package” means the services quantified in the Proposal;

“Proposal” means the document prepared by Wolfe Systems outlining the Services to be provided to the Client and Fees payable by the Client and attached to these terms and conditions;

“Services” means the website design, development, promotion, maintenance and any other services to be provided to the Client by Wolfe Systems in accordance with the Proposal;

“this Agreement” means these terms and conditions together with the Proposal;

“Party” means either Wolfe Systems or the Client and “Parties” has the corresponding meaning;

2. Acceptance and Entire Agreement

2.1. These terms and conditions are to be read in conjunction with the attached Proposal, and together these documents form the entire agreement between Wolfe Systems and the Client.

2.2. This Agreement commences on the date the Client signs an acceptance of the Proposal.

2.3. The Proposal remains valid for 30 days from the date of issue, and if not accepted by the Client within that time frame, a new Proposal will be issued which may include revised Fees.

2.4. This Agreement contains the entire agreement between Wolfe Systems and the Client and supersedes all earlier conduct and prior agreements and understandings between the Parties.

2.5. No variation of this Agreement will be effective unless in writing and signed by Wolfe Systems and the Client.

3. Payment of Fees

3.1. The Client will pay the Fees within 7 days of a tax invoice issued by Wolfe Systems.

3.2. Unless specified otherwise in the Proposal, Wolfe Systems may withhold the Client’s access to the Services until all Fees are paid.

3.3. The Client is liable to pay any GST payable on a taxable supply made by Wolfe Systems and the Client shall pay the GST at the same time as it pays the Fees.

4. Client Materials

4.1. The Client will deliver or make available to Wolfe Systems the Client Materials in a timely manner to ensure that Wolfe Systems has the necessary time to meet any agreed time schedules.

4.2. The Client will comply with all reasonable directions by Wolfe Systems in relation to the format requirements of the Client Materials.

4.3. The Client grants Wolfe Systems a royalty free licence to use and reproduce the Customer Materials for the purpose of providing the Services contemplated by this Agreement.

4.4. The Client warrants that the use of the Client Materials by Wolfe Systems in accordance with this Agreement will not infringe the intellectual property rights of any third party.

4.5. The Client indemnifies Wolfe Systems against any damage, loss, cost, and expense



(including legal costs and expenses) of whatsoever nature or description arising from the infringement of intellectual property rights of any third party contained in the Client Materials.

4.6. Wolfe Systems reserves the right not to use any Client Materials which Wolfe Systems (acting reasonably) deems to be inappropriate or offensive or otherwise in breach of any laws or regulations.

4.7. Wolfe Systems is not obliged to retain backup copies of the Client Materials and to the extent permitted by law Wolfe Systems will not be liable (whether in contract, tort, negligence, statute or otherwise) for any unauthorised access, misuse, corruption or loss of any of the Client Materials.

5. Additional Services and changes to the Proposal

5.1. If the Client requests a change to the Proposal which requires additional services to be performed by Wolfe Systems, then:

- (a) the additional Services will incur additional Fees calculated by reference to Wolfe Systems hourly charge for the time being; and
- (b) if Wolfe Systems is of the opinion (acting reasonably) that the changes amount to a significant and material alteration of the Proposal, such changes (including the additional Services and Fees) are to be documented in writing and signed by both Parties; and
- (c) at its sole discretion, Wolfe Systems may issue an invoice for the additional Fees at any time, including on a monthly basis, whether or not the changes are agreed to in writing or not pursuant to clause 5.1(b).

6. Service Packages

6.1. This clause shall only have effect if the Client has agreed to any Packages in the Proposal.

6.2. The Package is for a minimum number of months as indicated which is not subject to termination by the Client during the term. The term will be automatically renewed at the end of each month term unless the Client provides written notice at least 14 days before the expiry of the term that the Client does not wish to renew the Package.

6.3. The Client will be invoiced monthly for Fees pursuant to a Package.

6.4. Certain Services provided under a Package may be limited to a specific amount of time per month and in such case:

- (a) Wolfe Systems shall not be required to provide Services which exceed that time in a single month, except in accordance with clause 5.1; and
- (b) if the Client does not utilise the full amount of the specified time in a single month, the unused portion does not accrue and is not transferable or usable in another month.

7. Intellectual Property

7.1. All Intellectual Property Rights in anything produced by Wolfe Systems in carrying out the Services ('Wolfe Systems IP') will be retained by Wolfe Systems until all Fees have been paid by the Client in full.

7.2. Upon full payment of the Fees by the Client, Wolfe Systems will grant a perpetual, royalty free, non-exclusive and non-transferable licence to the Client to use the Wolfe Systems IP for the Client's internal purposes.

7.3. The Client grants Wolfe Systems a perpetual, royalty free, non-exclusive and non-transferable licence to use Client's trademark, business name and other mark or logo for marketing and promotional activities to indicate the Client as a current or past client of Wolfe Systems.

8. Default and Termination

8.1. The Client is in default if:

- (a) the Client fails to comply with its obligations under this Agreement within 7 days (or such further time as Wolfe Systems may specify) after Wolfe Systems has given the Client a notice specifying the default and requiring it to be remedied; or
- (b) the Client shall go into liquidation or become bankrupt or enter into any composition, arrangement with or assignment for, the benefit of the Client's creditors.

8.2. Wolfe Systems may terminate this Agreement immediately by notice in writing upon default by the Client.

8.3. Upon termination of this Agreement for whatever reason:

- (a) all Fees for Services performed by Wolfe Systems up to and including the date of termination shall, whether or not due for payment, immediately become payable by the Client; and
- (b) each Party must return to the other Party all Confidential Information owned by the other Party.

8.4. If the Client is in default, the Client must pay to or reimburse Wolfe Systems on demand, the amount of all costs and expenses (including legal costs and expenses) arising as a result of enforcing any right under this Agreement.

8.5. Without prejudice to the rights, powers and remedies of Wolfe Systems otherwise under this Agreement, the Client will on demand pay to Wolfe Systems interest at the rate of twelve percent (12%) per annum on all Fees and other moneys payable by the Client to Wolfe Systems under this Agreement but unpaid for more than 7 days from the due date, computed on a daily basis on the amount remaining owing from and including the due date until the date of payment.



9. Confidentiality

9.3. Subject to clause 9.2, a Party must not disclose, or use for a purpose other than contemplated by this Agreement, any Confidential Information.

9.4. A Party may disclose any Confidential Information: (i) to the other Parties to this Agreement; (ii) in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement; (iii) if required under any law or under a procedure for discovery in any proceedings; (iv) to a Party's financiers, consultants or legal advisers, provided that the financiers, consultants or legal advisers (as the case may be) have given undertakings to maintain the confidentiality of the confidential information; or (v) with the prior written consent of the other Parties.

9.3. This clause survives the termination of this Agreement.

10. Limitation of Liability

10.2. The Client acknowledges and warrants that it:

(a) is satisfied as to the suitability and fitness for purpose of the Services and accepts, and assumes any risk associated with its use of the Services; and

(b) accepts liability for and assumes the risk of all costs, fees, losses, expenses and damages it may suffer or incur arising out of or in connection with its use of the Services.

10.2. To the extent permitted by law, all conditions or warranties which would otherwise be implied in this Agreement, are hereby excluded.

10.3. Wolfe Systems's liability to the Client under this Agreement, to the extent such liability is not capable of being lawfully excluded pursuant to this Agreement, is limited to:

(a) where the liability arises from defective goods or services provided by Wolfe Systems, or a failure to supply goods or services in accordance with this Agreement, the rectification or re-supply of those goods or services; and

(b) in all other cases, the Fees paid by the Client under this Agreement.

10.4. Wolfe Systems is not liable to the Client for any indirect, consequential, special or economic loss or damage (including without limitation loss of data, loss of time, loss of profits, loss of revenue, loss of contracts, loss of goodwill, third party claim or punitive damages) whether in contract, tort (including negligence), statute or otherwise arising in any way from the use of the Services provided by Wolfe Systems under this Agreement or otherwise resulting from any act or omission of Wolfe Systems.

11. Notices

11.1. Any notice, report or other communication which must be given, served or made under or in connection with this Agreement:

(a) must be in writing in order to be valid;

(b) is sufficient if executed by the Party giving, serving or making the notice or on its behalf by any attorney, director or secretary, or solicitor of such Party;

(c) will be deemed to have been duly served, given or made in relation to a person if it is hand delivered or posted by prepaid post to the address, or sent by facsimile to the facsimile number, of that person; and

(d) will be deemed to be served, given or made:

(i) in the case of prepaid post on the third day after the date of posting;

(ii) in the case of facsimile on receipt of a transmission report confirming successful transmission; and

(iii) (in the case of delivery by hand) on delivery.

11.2. The details of each Party for the purposes of giving notice are as set out in the Proposal.

12. General

12.1.1 If the whole or any part of a provision of this Agreement is void, unenforceable or illegal it is severed and the remainder of this agreement has full force and effect.

12.2. This Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

12.3. Each Party shall do all things and execute all further documents as are necessary to give full effect to this Agreement.

12.4. No failure to exercise nor any delay in exercising any right, power or remedy by Wolfe Systems operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right power or remedy by Wolfe Systems. A waiver is not valid or binding on Wolfe Systems unless made in writing.

12.5. This Agreement is governed by the Laws of the State of Western Australia and the Parties submit to the jurisdiction of that State.