

# Services Agreement

## 01. Definitions and interpretation

### a. Definitions

The following terms are defined in this Agreement as follows or as set out in the Schedule:

**Acceptance Test** has the meaning set out in [clause 6 b](#));

**Agreement** means this agreement and any annexures, schedules and items thereto and the Proposal;

**Client** means the Client set out in the Proposal;

**Confidential Information** means all information relating to the business or products of either party including trade secrets, financial, legal, trading or marketing information, designs, drawings, know-how, intellectual property, methods, processes, procedures, systems, information relating to a party's intellectual property, designs, techniques, manuals, instructions and other materials apart from that information already in the public domain or information disclosed by a party pursuant to any law or order of any court;

### b. Interpretation

In this Agreement, unless the context requires otherwise:

- i. headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement;
- ii. a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
- iii. a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- iv. a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- v. the words "includes" and "including" or words of similar effect are not words of limitation;
- vi. no clause of this Agreement shall be interpreted to the disadvantage of a party merely because that party drafted the clause or would otherwise benefit from it;
- vii. a reference to a party includes the party's successors, assigns and persons substituted by novation;
- viii. a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;



- ix. a reference to time and date is to local time and dates in Queensland, Australia; and
- x. unless specified otherwise, a reference to "\$" or "dollars" refers to Australian dollars.

## **02. Term**

- a. This Agreement will start on the Commencement Date and terminates on the later of:
  - i. the Expiry Date; and
  - ii. the end of any period in which a Proposal applies;
  - iii. unless terminated earlier or extended in accordance with the terms of this Agreement.

## **03. Services**

- a. Brighter Websites agrees to provide the Services to the Client, including any Deliverables, as set out in each Proposal, and the Client agrees to purchase the Services on the terms and conditions set out in this Agreement.
- b. This Agreement, in conjunction with the Proposal and any additional agreements provided by Brighter Websites to the Client, governs the provision of Services to the Client and the use or provision of any related goods or services to the Client.
- c. Brighter Websites will use reasonable endeavours to deliver the Services and Deliverables by the dates proposed in the relevant Proposal. The dates proposed are a guideline/estimate only.
- d. Brighter Websites agrees to provide the Services to the Client, including any Deliverables, as set out in each Proposal, and the Client agrees to purchase the Services on the terms and conditions set out in this Agreement.
- e. This Agreement, in conjunction with the Proposal and any additional agreements provided by Brighter Websites to the Client, governs the provision of Services to the Client and the use or provision of any related goods or services to the Client.
- f. Brighter Websites will use reasonable endeavours to deliver the Services and Deliverables by the dates proposed in the relevant Proposal. The dates proposed are a guideline/estimate only.

## **04. Proposal**

- a. Each Proposal and Website Development Strategy is incorporated as part of this Agreement by reference and does not constitute a separate agreement.
- b. A Proposal and Website Development Strategy may, from time to time, be amended by written agreement of the parties.
- c. Where there is any inconsistency between the Agreement or any additional terms and a Proposal for Website Development Strategy, this Agreement prevails to the extent of the inconsistency, except if the Proposal and/or Website Development Strategy refers to the specific clause in this Agreement that it purports to change.

- d. The Expiry Date of a Proposal will be set out in the Proposal, otherwise the Proposal will terminate at the delivery of the last Deliverable to the Client.
- e. The Client may request further Services from Brighter Websites by providing Brighter Websites with an additional Proposal. Brighter Websites may, in its sole discretion, accept or reject any such Proposal by written notice to the Client. Any such Proposal is not binding until it has been signed by both parties.

## **05. Change Requests**

- a. A Proposal and Website Development Strategy may, from time to time, be amended by written agreement of the parties (Change Request).
- b. Proposals and Website Development Strategy are based on information provided by Client. Every effort has been made by Brighter Websites to ensure that the information provided within the Proposal and Website Development Strategy is accurate. The Proposal and Website Development Strategy may change due to a decision or direction requested by the Client. Brighter Websites reserves the right to assess the impact of such changes and if it determines in its sole discretion that such changes materially affect the Services, Brighter Websites may submit a Change Request or modified Proposal or Website Development Strategy to Client for written approval.
- c. Brighter Websites reserves the right to require that the Client set out any request for services outside of the scope of a Proposal or Website Development Strategy or changes to previously agreed work in a Change Request or new Proposal or Website Development Strategy .
- d. The Client acknowledges that Brighter Websites may provide services of the same kind as the Services at any time and to any party, including the Client's competitors.
- e.

## **06. Deliverables and Acceptance**

- a. Where the Services involve Deliverables, Brighter Websites will provide the Deliverable to the Client in accordance with the terms of this Agreement and the Proposal or Website Development Strategy.
- b.
- c. Each Proposal may determine certain criteria setting out how the Deliverables are to be tested to determine whether it meets specifications (Acceptance Tests). The Client will complete Acceptance Tests on the Deliverables within 30 days of receiving the Deliverable.
- d. The Client may accept or reject the Deliverable by written notice to Brighter Websites based on the Acceptance Tests within ten (10) Business Days of receiving the Deliverable. If the Customer does not provide such written notice within the above time frame, the Deliverable is deemed to be accepted by the Customer.

- e. If the Client has rejected a Deliverable for failing an Acceptance Test, the Client must notify Brighter Websites, including details of the Acceptance Test that the Deliverable failed and details of the failure (if applicable) and provide a written list of reasonable modification guidelines that will bring the Deliverables into compliance with the Proposal (Failure Notice).
- f. Within twenty (20) Business Days of receiving a Failure Notice, Brighter Websites may, in its sole discretion, either:
  - i. resolve the issue;
  - ii. provide a substantive plan which it will execute to bring the Deliverables into compliance with the Proposal and Acceptance Tests, including estimated timeframes for the provision of the amended Deliverable;
  - iii. notify the Client that further reasonable tests be conducted, at Client's expense (on a time and materials basis); or
  - iv. the Client must conditionally accept the Deliverable, subject to Brighter Websites agreeing to deliver a work-around or rectify any outstanding deficiency and at the Client's cost on a time and materials basis

## **07. Fees and Payment**

- a. In consideration of the provision of the Services, the Client must pay the Fees in accordance with the relevant Proposal.
- b. The Client acknowledges and agrees that the Fees are non-refundable for any circumstances including but not limited to termination [under 14.](#)
- c. The Client agrees that Brighter Websites may provide the Client's information to, or seek information from, any of its other credit providers in relation to the Client's credit worthiness, credit standing, credit history or credit capacity and any other information that credit providers are entitled to give or receive from each other under the [Privacy Act 1998 \(Cth\)](#).
- d. By nominating a credit or debit account, the Client authorises Brighter Websites (or a nominated debiting agent) to deduct from that account all Fees, interest and other charges that the Client is responsible for under this Agreement and agrees to keep account details up to date.
- e. The Client must ensure that no payment is rejected and that payment is made in cleared funds.
- f. Where Brighter Websites's charges are based on an hourly rate, any time spent which is less than an hour is charged on a pro- rated basis in 30 minute blocks.
- g. Unless otherwise specified in this Agreement; the Client agrees that it will make all payments by one of the following methods, as required by Brighter Websites:
  - i. direct bank deposit of cleared funds, to the account nominated by Brighter Websites;

- ii. by providing its credit or debit card or direct debit details to Brighter Websites (including via Brighter Websites's online portal) and authorising automatic payments; or
  - iii. by paying via a 3rd party payment gateway such as Paypal or Stripe.
- h. Brighter Websites may allow for other methods of payment at its election, which may include a surcharge. The Client agrees that it is liable to pay any relevant bank fees, processing fees, fees associated with dishonoured direct debits and other fees or charges relating to any payment transaction between the Client and Brighter Websites.
- i. If Brighter Websites allows for payment methods including third party payment gateways or providers, the Client acknowledges and agrees that such payment gateway or provider may be subject to its own terms and conditions in which Brighter Websites holds no liability for and by using such payment gateway or provider, the Client agrees to comply with such terms and conditions.
- j. If the Client does not pay any amounts due to Brighter Websites within the time frame specified by Brighter Websites, Brighter Websites may in its sole discretion:
  - i. charge an administration fee of \$100 plus any applicable GST or taxes (Administration Fee); and
  - ii. charge interest on the balance of such amounts at 12% p.a., calculated daily from the due date; and
  - iii. suspend the Services or immediately terminate this Agreement, any such amounts are payable within 30 days of written notice from Brighter Websites.
- k. The Client acknowledges and agrees that the Administration Fee is a genuine pre- estimate of the loss and damage likely to be suffered by Brighter Websites and is not a penalty.
- l. Upon providing 30 days prior written notice to the Client, Brighter Websites may increase its Fees by an amount as notified to the Client in writing (including by email). If within 14 days of receiving Brighter Websites's notice, the Client gives written notice that it is unwilling to accept the Fees, either party can give notice to terminate the relevant Proposal.

## **08. GST**

- a. Unless specified otherwise, the Fees payable under this Agreement do not include GST.
- b. If GST is payable on any supply made by a party under or in connection with this Agreement, the consideration provided (or to be provided) for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply (the GST Amount).
- c. The party making the supply must promptly provide a tax invoice or receipt, in an approved form for GST purposes, for any supply for which the party making the supply may recover GST.

- d. If a party has incurred a cost on which GST is payable, that party may claim the cost plus GST, unless the party is entitled to an input tax credit in respect of such GST.
- e. Any GST Amount must be paid at the same time and in the same manner as the consideration on which the GST Amount is calculated. However, the party receiving the supply is not required to pay the GST Amount until seven days after receiving a tax invoice.

## **09. Security Interest**

- a. The Client acknowledges and agrees that this Agreement constitutes a security agreement for the purposes of the PPSA and the supply of the Services under this Agreement gives rise to a Security Interest in all present and future property of the Client in favour of Brighter Websites.
- b. The parties acknowledge that the Security Interest provided under this Agreement secures all of the purchase price for the Services.
- c. Brighter Websites may register any Security Interest granted under the Agreement on the PPSR in any manner it chooses. The Client must provide Brighter Websites with any information it requires for the purposes of effecting such registration.
- d. The Client undertakes and agrees to take such steps as Brighter Websites reasonably requires to:
  - i. ensure any Security Interest is enforceable and perfected or otherwise effective under the PPSA and that it receives first ranking priority, including by obtaining consents, signing and producing documents, enabling registration of the Security Interests; and
  - ii. ensure that Brighter Websites has all the information necessary to register a financing statement or a financing change statement on the PPSR.
- e. The parties agree that sections 96, 115 and 125 of the PPSA do not apply to this Agreement.
- f. The Client hereby waives its rights:
  - i. to receive notices under sections 95, 118, 121(4), 130, 132(3) and 132(4) of the PPSA;
  - ii. as a grantor and/or a debtor under sections 142 and 143 of the PPSA;
  - iii. to receive a verification statement in accordance with section 157 of the PPSA.
- g. Subject to any express provisions to the contrary, nothing in this Agreement and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.



## **10. Client Obligations**

- a. The Client must appoint a sole representative with full authority to provide or maintain any necessary information and approvals that may be required by Brighter Websites (Representative).
- b. The Representative shall be responsible for coordination, review and approval of Client instructions and Change Requests.
- c. The Client agrees to promptly provide Brighter Websites with:
  - i. all materials, media, content and information requested by Brighter Websites (if any) by the dates specified by Brighter Websites or in a Proposal, or if no date is specified, within 5 days' of request by Brighter Websites;
  - ii. adequate access to the Client's operating environment and premises (where necessary or requested by Brighter Websites) for the purposes of performing the Services; and
  - iii. all necessary cooperation and assistance as requested by Brighter Websites to allow Brighter Websites to provide the Services in a timely manner.
- d. The Client agrees to notify Brighter Websites of any information which, in its reasonable judgement, the Client deems to be material to the provision of Services by Brighter Websites.
- e. The Client must, at its cost and in a timely manner prior to the commencement of the Proposal to which it relates, obtain any legal or governmental clearances or permits required for the performance of any Services under this Agreement.
- f. Client must supervise any third-party that it requires Brighter Websites to collaborate with and Client must ensure that any third- party meets time frames to reasonably allow Brighter Websites to perform the Services within the estimated time frames set out in the Proposal. Brighter Websites may, in its sole discretion, raise a Change Request to cover any additional work or costs that it incurs due to delays caused by the delivery of third- party services.
- g. The Client agrees that the delivery of the Services may be dependent on the Client fulfilling its obligations under this Agreement in a timely manner. Without limiting Brighter Websites other rights under this Agreement, if the Client fails to comply or delays in complying with any of its obligations under this clause, Brighter Websites may, in its sole discretion:
  - i. suspend performance of the Services for the period of the non-compliance; or
  - ii. continue to provide the Services and charge the Client for any reasonable additional costs incurred by Brighter Websites.
- h. Brighter Websites shall not be liable for any breach, delay or non- performance of Services due to any breach or delay of Client in complying with its obligations under this Agreement.

- i. Brighter Websites will not be responsible for the consequences of any omitted or erroneous data or information provided by the Client and its impact on the Services. Any additional costs resulting from the provision of additional Services, or the variation of a provision for Services necessary to remedy the consequences of any omitted or erroneous data or information will be payable by Client on demand by Brighter Websites.

## **11. Third party licences and contracts**

- a. Where the performance of the Services requires use of third party software, the Client agrees that Brighter Websites has authority to enter into any relevant licences and terms of use required by that third party, on its behalf, prior to any use of such third-party software and without requesting any further consent.
- b. If Brighter Websites is required to enter into any contract with a third party in order to perform the Services, such as a website hosting contract, domain name purchase, plugin purchase, etc., the Client agrees that upon termination or expiry of this Agreement or any relevant Proposal, that it will be automatically assigned the relevant third party contract and assume all costs, expenses and obligations under such contract and do all things necessary to effect the assignment.

## **12. Warranties**

- a. Brighter Websites warrants and represents to the Client that the Services will be provided in a professional manner with due care and diligence. To the maximum extent permitted by law, all other express or implied warranties of any kind are excluded
- b. The Client warrants and represents to Brighter Websites that:
  - i. it has not relied on any representation or warranty from the Client in entering into this Agreement;
  - ii. prior to entering into this Agreement, the Client was given a reasonable opportunity to obtain any advice (legal or otherwise) about this Agreement and the obligations and restraints contained in it;
  - iii. the Client have had sufficient time to consider the terms of this Agreement, its implications and the advice given to them in respect of it;
  - iv. the Client understands this Agreement and agree that its terms are fair and reasonable in the circumstances;
  - v. the Client has entered into this Agreement voluntarily of their own freewill without duress, coercion, undue influence or pressure from either Brighter Websites or any other person;
  - vi. it is capable of, and will perform, its obligations as set out in this Agreement;
  - vii. it has full capacity and authority to enter into this Agreement; and



- viii. it shall be responsible for all costs, fees, expenses and charges for training necessary or required for Brighter Websites's employees and agents to perform the Services.
- c. The parties acknowledge and agree that no representations or warranties have been made other than those expressly recorded in this Agreement and that, in respect of this Agreement or any part of it including the transactions contemplated pursuant to this Agreement, no party has relied or will rely upon any representations or information, whether oral or written, previously provided to or discovered by it.
- d. The Client acknowledges that Brighter Websites is relying upon the warranties given in this clause in executing this Agreement.

### **13. Intellectual Property**

- a. This Agreement does not give Brighter Websites any ownership of data provided by the Client for or during the performance of the Services.
- b. The Client acknowledges that Brighter Websites retains the Intellectual Property rights relating to the Brighter Websites Materials.
- c. Unless expressly specified in a Proposal, all Intellectual Property rights arising as a result of the performance of the Services by Brighter Websites shall vest in and belong to Brighter Websites.
- d. Brighter Websites grants to the Client a revocable, non-exclusive, royalty-free licence to use the Intellectual Property rights for the Client's internal business purposes, subject to Brighter Websites receiving full payment under this Agreement and payment of any relevant Fees. The Client agrees that it will not challenge Brighter Websites ownership of the Intellectual Property rights.
- e. The Client grants to Brighter Websites, a royalty free, perpetual, non- exclusive licence with the right to grant sub-licences reproduce, use the Client's brand, name, trade marks, logos, product or service names and information and similar information or any other information or Intellectual Property provided by the Client to Brighter Websites, for the provision of the Services.
- f. The Client grants to Brighter Websites, a royalty free, perpetual, non- exclusive licence with the right to grant sub-licences reproduce, use the Client's brand, name, trade marks, logos, and images of the Services provided by Brighter Websites to the Client as part of the Services for its marketing materials, advertising content and other activities conducted to promote Brighter Websites, including case studies on its website.
- g. This [clause 13](#) will survive the termination or expiry of this Agreement.

### **14. Termination**

#### **Termination for convenience**

- a. Brighter Websites may terminate this Agreement or any Proposal for any reason at any time by giving at least 30 days' written notice to the Client.

- b. If Brighter Websites terminate the agreement under [clause 14.a](#)
  - i. the Client must pay for all work completed up to the date of termination; and
  - ii. Brighter Websites must provide a prorated refund of Fees, which were pre-paid for Work not completed prior to the date of termination.
- c. The Client may terminate this Agreement or any Proposal, for any reason at any time by giving at least 60 days' written notice to Brighter Websites.
- d. If the Agreement is terminated by the Client under [clause 14.c](#), the Client acknowledges and agrees that it will not be entitled to any refund of the Fees. The Client must also pay for all work completed but not yet invoiced up to the date of termination in accordance with any invoice provided by Brighter Websites.

#### **Termination for breach**

- e. Either party may immediately terminate this Agreement or any Proposal by written notice to the other, if the other party:
  - i. is guilty of, or reasonably suspected to have engaged in, any dishonesty, serious misconduct or serious neglect of duty in, or in connection with, the provision or receipt of the Services;
  - ii. commits a material breach of any provision of this Agreement which is incapable of being remedied to the Client's reasonable satisfaction (a breach of confidentiality, conflict or restraint is a serious breach);
  - iii. fails to remedy, to the party's reasonable satisfaction, a breach of any provision of this Agreement within 14 days of receiving a notice from the party requiring the breach to be remedied;
  - iv. becomes, or in the reasonable opinion of the party, is in jeopardy of becoming subject to any form of insolvency; or
  - v. ceases carrying on its business.
- f. If the Agreement is terminated by either party under [clause 14.e](#), the Client acknowledges and agrees that it will not be entitled to any refund of the Fees. The Client must also pay for all work completed but not yet invoiced up to the date of termination in accordance with any invoice provided by Brighter Websites.

### **15. Confidentiality**

- a. Both parties agree to keep the Confidential Information of the other party confidential and to use such information only for the purposes of performance of their respective obligations under this Agreement.
- b. A party must:
  - i. not disclose any Confidential Information of the other party to anyone else except as permitted under this Agreement;
  - ii. take such steps as are reasonable to protect the Confidential Information from the misuse, interference and loss and unauthorised use or disclosure;

- iii. only use the Confidential Information for the purposes of this Agreement;
  - iv. immediately notify the other party of any breach of confidentiality; and
  - v. limit the disclosure of the Confidential Information within its own organisation only to those of its officers, contractors, sub-contractors and employees to whom such disclosure is strictly necessary for the purposes of this Agreement and who have been made aware of its confidential nature and have agreed to keep the information confidential in accordance with the terms of this clause.
- c. The obligations of confidentiality in [clause 15 b\)](#) will not apply to information which:
- i. is generally available in the public domain except where such availability is as a result of a breach of this Agreement;
  - ii. is required to be disclosed to an accountant, legal advisor, investor or potential purchaser of the business or shares of The Client;
  - iii. was known prior to the disclosure of the information by the other party; or
  - iv. is required to be disclosed by an applicable law or court order.

## **16. Data Security and Privacy**

- a. Brighter Websites acknowledges and agrees that in supplying the Services to the Client, it may have access to sensitive data and personal information (Client Data). Brighter Websites will comply with the Privacy Act in relation to its provision of the Services and use of Client Data.
- b. The Client warrants and represents to Brighter Websites that it has the authority to upload, publish or otherwise input information and data into the Services and that it will not breach any privacy laws or third-party Intellectual Property rights in its use of or input into the Services.
- c. The Client acknowledges that no method of electronic transmission or storage is 100% secure and Brighter Websites cannot guarantee the absolute security of Client Data. The Client acknowledges that all Client Data disclosed to Brighter Websites is at the Client's own risk and that Brighter Websites is not liable for any unauthorised access to Client Data.
- d. In providing any data to Brighter Websites, the Client warrants and represents to Brighter Websites that it has the right to provide and disclose the data and that it will not be in breach of any privacy laws or confidentiality obligations in doing so. It is the Client's sole responsibility to ensure that it complies with any privacy or data laws in sharing or giving access to, the Client Data, to Brighter Websites.

## **17. Non-solicitation**

- a. 18.A party must not, for any reason, during the term of this Agreement or within six (6) months (or such other period as agreed between the parties) after its termination, induce, solicit, engage or employ (or procure the inducement, solicitation, engagement or employment of) any officer, employee or contractor of the other party without that other party's prior written consent. This restraint will not



apply in the case of an employee who has ceased employment with a party for a period for six(6) months prior to their engagement by the other party, or to an employee who is engaged as a consequence of responding to a bona fide publicly advertised position with the other party.

## **18. Limitation of liability**

- a. To the maximum extent permitted by law, Brighter Websites liability to the Client under this Agreement is limited to the value of the Fees paid by the Client in the twelve (12) months prior to the event that caused the liability, regardless of the form of the action whether in contract, tort (including negligence) or under statute.
- b. To the maximum extent permitted by law, Brighter Websites shall not be liable to the Client or any other person for any special, incidental, indirect (such as damages for loss of profits or revenues, business interruption or loss of data), punitive or consequential damages arising out of this Agreement, regardless of whether they were within the contemplation of the parties at the time of contracting or not.
- c. To the maximum extent permitted by law, Brighter Websites shall not be liable for loss, damage, injury, delay in the delivery of Services, non-performance of the Services under this Agreement, loss of functionality of any Services or loss of business or data in relation to such loss of functionality, due to factors beyond its control, including any act, omission, negligence or breach by the Client, a third party, Internet Service Provider, third party server host or a Force Majeure Event.
- d. To the maximum extent permitted by law, Brighter Websites shall have no liability for any loss, damage, injury or claim arising out of or in connection with alterations or modifications of the Services performed by anyone other than Brighter Websites, or the combination, operation, or use of any Services provided under this Agreement with programs or data or hardware not furnished or authorised in writing by Brighter Websites.
- e. In the event that any Services provided by Brighter Websites to Client is held to infringe any third party intellectual property right, Brighter Websites may, in its sole discretion and expense:
  - i. modify the Services or Deliverable to be non- infringing;
  - ii. obtain a licence to continue providing the Services or Deliverable to the Client;
  - iii. replace or substitute the Services with other substantially similar Services reasonably suitable to Client; or
  - iv. if none of the foregoing remedies are commercially feasible, Brighter Websites shall terminate Client's access to the infringing Services and refund to Client's the Fees previously paid for such Services.
- f. The following clause applies to the extent that the Australian Consumer Law (ACL) applies to the Services supplied under this Agreement: Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are

entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Nothing in this [clause 18](#) operates or purports to limit or exclude any rights that the Client may be entitled to under the ACL

## **19. Release and Indemnity**

- a. The Client releases Brighter Websites from any loss, damage, cost or expense that it may suffer as a result of performing its obligations under this Agreement or, from the Client exercising any of its rights under this Agreement.
- b. The Client agrees that it will, at all times, indemnify and keep indemnified and hold harmless, Brighter Websites and its associates and related bodies corporate from any and all loss (including economic and loss of profit), liability, costs (including solicitor costs), penalties, fines, fees, charges or expenses suffered, incurred, paid or sustained by the Client or its associates and related bodies corporate arising out of or in connection with (directly or indirectly):
  - i. any breach of this Agreement by the Client or its employees, contractors, agents or personnel;
  - ii. the Client's breach of any third party contract or agreement;
  - iii. any misrepresentation or breach of warranty by the Client;
  - iv. the breach of any privacy or confidentiality obligations;
  - v. any security breach, including unauthorised access, hacking, virus, etc. of the Website or Deliverables;
  - vi. any DDOS attack or other event causing the crash or shutdown of the Website or Deliverables;
  - vii. any infringement of third party rights, including Intellectual Property rights;
  - viii. any misrepresentation or breach of warranty by the Client;
  - ix. the act, omission, fraud, misconduct or negligence of the Client, Representative or its employees, contractors, agents or personnel.
- c. The obligations under this [clause 19](#) will survive termination of this Agreement.

## **20. Dispute Resolution**

- a. If a dispute arises out of or relates to this Agreement, a party must not commence any court or other proceedings relating to the dispute unless it has first complied with the following procedure:
  - i. the party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute;
  - ii. on receipt of that notice by that other party, the parties must endeavour in good faith to resolve the dispute using informal dispute resolution

techniques such as mediation, expert evaluation, arbitration or similar methods agreed by them;

- iii. if the parties do not agree within 10 days of receipt of the notice (or such further period as the parties agree in writing) as to:
  - a. the dispute resolution method and procedures to be adopted;
  - b. (ii) the timetable for all steps in those procedures; and
  - c. (iii) the selection and compensation of the independent person required for such method, the parties must mediate the dispute in accordance with the Mediation Rules of the Law Institute of Queensland.

## 21. General

- a. **Assignment:** The Client cannot assign, whether in whole or part, or otherwise transfer the benefit of this Agreement, or any rights or obligations hereunder, without the prior written consent of Brighter Websites. Brighter Websites may assign, transfer, novate, and otherwise deal in any manner with, all or any part of the benefit of this Agreement and any of its rights, remedies, powers, duties and obligations under this Agreement to any person, without the consent of the Client.
- b. **Counterparts:** This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart. This Agreement may be executed and delivered by email and the parties agree that such scanned execution and email delivery shall have the same force and effect as delivery of an original document with original signatures, and that each party may use such scanned signatures as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.
- c. **Entire agreement:** This Agreement contains the whole agreement between the parties in respect of the subject matter of this Agreement and supersedes and replaces any prior written or oral agreements, representations or understandings between the Parties relating to such subject matter. In the event of any inconsistency between those documents, the terms of this Agreement shall prevail.
- d. **Delay:** No failure or delay by Brighter Websites in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- e. **Force majeure:** If by reason of any fact, circumstance, matter or thing beyond the reasonable control of either party and which results in the party being unable to observe or perform on time an obligation under this Agreement, including but not limited to acts of God, earthquakes, lightning strikes, floods, droughts, storms,

tempests, mud/land slides, explosions, fires, pandemic, any natural disaster, acts of war, terrorism, civil commotion, malicious damage, riots and revolution then:

- i. that party is relieved of that obligation under this Agreement to the extent and for the period that it is unable to perform such obligation; and
  - ii. that party will not be liable to the other party to this Agreement for failure to perform such obligation to the extent and for the period of non-performance contemplated by this clause.
- f. Rights and remedies: The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- g. Relationship: This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
- h. Further assurance: Each party to this Agreement shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.
- i. Time of essence: Time is of the essence with regards to the Customer's obligations under this Agreement.
- j. Variation: A provision of this Agreement or a right created under it may not be varied except in writing with the consent of each of the parties to this Agreement.
- k. Waiver: In no event shall any delay, neglect or forbearance on the part of any party in enforcing any provision of this Agreement be, or deemed to be, a waiver thereof or a waiver of any other provision or shall in any way prejudice any right of that party under this Agreement.
- l. Severability: If any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, prohibited by law or judged by a court to be unlawful, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.
- m. Governing law and jurisdiction: This Agreement is governed by and construed and interpreted in accordance with the laws applicable in Queensland, Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of Queensland, Australia.