

SERVICE AGREEMENT

This Service Agreement outlines the terms and conditions upon which Ross Dickson Advertising Pty Ltd ABN 35 623 417 238 trading as AdPlace (hereinafter known as "AdPlace", "us" or "we") will perform work or provide services for its clients (hereinafter known as the "Client" or "you"). This Agreement shall apply to the establishment, operation and use of the Account opened by AdPlace in the Client's name and to all transactions effected by the Client on such Account.

1. DEFINITIONS

As used herein and throughout this Agreement:

- 1.1 *Agreement* means this Service Agreement being the entire content of this document.
- 1.2 *Design* means any visual or creative works and/or concepts, stylings, processes, recommendations created by AdPlace.
- 1.3 *Design elements* are groupings of content or functional elements as defined by AdPlace exclusively.
- 1.4 *Project* means the work performed by AdPlace according to the Client's specific project brief.
- 1.5 *Specific project brief* means the Client's instruction provided to AdPlace and any reasonable interpretation of the Client's intent by AdPlace.
- 1.6 *Work or Works* means any services performed by AdPlace on behalf of the Client.
- 1.7 *Service or Services* means any work created or performed by AdPlace on behalf of the Client.
- 1.8 *Order or Orders* means any order or request for work to be performed by AdPlace on behalf of the Client.
- 1.9 *Standard inclusions* are defined as the scope of work specified for each service advertised by AdPlace, not including any supplement services or service options.
- 1.10 *Options and supplements* (herein after known as the "service options") are defined as services offered by AdPlace beyond any standard inclusions.
- 1.11 *Fixed price services* are project works where the scope and price is either a predetermined value (quotation), a variable value within a range (estimate), a budget offered by the Client, and where the project is not being undertaken as custom work.
- 1.12 *Custom work* is defined by any services performed by AdPlace for the Client on a time and materials basis.
- 1.13 *Copyright* means the intellectual, moral and property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under Australian Copyright Law.
- 1.14 *Final art* means all content developed or created by AdPlace exclusively for the Client and incorporated into and delivered as part of the final deliverables, including and by way of example, not limited to, any and all visual designs, visual elements, graphic design, illustration, photography, web development, animation, typographic treatments and text, modifications to Client content, and the selection, arrangement and coordination of such elements by AdPlace together with Client content and/or third party materials.
- 1.15 *Client content* means all materials, information, photography, writings and other creative content provided by the Client for use in the preparation of and/or incorporation in the deliverables.
- 1.16 *Deliverables* means the service or project work specified to be created by AdPlace for the Client.
- 1.17 *Final deliverables* means the final version of deliverables provided by AdPlace and accepted by the Client.
- 1.18 *Third party materials* means proprietary third party materials which are incorporated into the final deliverables, including without limitation stock photography, graphic design, iconography and/or illustration.
- 1.19 *Official prices* means the cost of work or services performed by AdPlace. Official prices may be subject to change without notification.
- 1.20 *Goods* means physical tangible product manufactured at the Client's request.

2. PROJECT MANAGEMENT

2.1 SERVICES VERIFICATION

A formal contract shall be deemed to have been entered into upon receipt by AdPlace of an order, either written or verbal, from the Client by any of the Client's representatives. Orders are accepted only upon and subject to this service agreement notwithstanding any inconsistencies which may be introduced by terms and conditions contained in the Client's order. This service agreement shall have force and effect as if incorporated into the Client's orders and no variation shall apply without the prior written agreement of AdPlace. Each project is required to be verified by AdPlace to ensure it meets our service standard inclusions including service supplements.

2.2 TIMELINESS

AdPlace endeavours to undertake all work in a timely manner. AdPlace may at its sole discretion and without notice adjust priorities and time lines of works as it deems necessary.

On request AdPlace may agree to perform and complete work within a specified time frame after the project start is confirmed by AdPlace, or where AdPlace has agreed to work with a planned schedule. These service options are limited to availability and must be requested by the Client and confirmed by AdPlace prior to starting a project. Confirmation by AdPlace will not constitute a guarantee that work will be performed or completed as scheduled and AdPlace may adjust priorities and time lines of works as it deems necessary.

3. PRICING AND PAYMENT

3.1 COST

In the absence of any instruction to the contrary AdPlace will commence work upon receiving the Client's order and the project will be charged on a custom work basis. Alternatively the Client is encouraged to submit a project budget or to seek an estimate or quote for approval prior to commencement of work. Once accepted by the Client, our estimate or quote shall be deemed to interpret correctly the Client's specific project brief in its entirety whether written or verbal.

Although prices are determined to be accurate AdPlace is not liable to honour any prices shown that do not reflect our official prices which may be caused by but not limited to typos, incorrect rendering or system errors. Taxes, duties and similar types of fees and charges are additional to estimates or quotes and are the responsibility of the Client.

3.2 EXPERIMENTAL ORDERS & PRELIMINARY WORK

Preliminary work and/or work produced in an experimental way at a Client's request will be considered an order and charged to the Client's account.

3.3 DELIVERY

AdPlace will endeavour to deliver the correct quantity of goods ordered by the Client however all orders are conditional upon a margin of 5% being allowed for overs or shortages. Such overs shall be charged for and shortages deducted.

Unless otherwise noted the cost of delivery of goods is included within the cost of the goods when the delivery address is within 30 road kilometres of AdPlace's registered business office, otherwise delivery is additional at the Client's expense.

Where AdPlace accepts responsibilities for delivery the Client will be responsible for immediate examination of the goods supplied after arrival at their destination, and in the event of any of the goods arriving in a damaged condition, the Client must notify AdPlace in writing within 7 days of delivery and all claims regarding goods supplied, invoicing or shortages must be advised within 14 days of delivery. In the event of AdPlace delivering the goods to the Client's nominated carrier, the Client shall be responsible for the expense of the carrier any goods damaged in transit.

3.4 PAYMENT

Payment for all project, custom or additional work and costs is required upon issue of an invoice by AdPlace, usually upon project completion. Alternatively, a project may be invoiced in multiple phases. In this case, each phase may be required to be paid in full before work continues. Up front payment of 100% is required by Clients who do not have a current Trading Account with AdPlace.

All Trading Account invoices are payable within Thirty (30) Days or less from the Date of Invoice. Non Trading Account invoices require immediate payment. If an invoice fails to be paid on time by the Client, AdPlace may:

- Charge a late payment fee of five percent (5%) on all amounts paid after the due date;
- Charge interest on debts at twenty percent (20%) per annum;
- Recover all collection costs and expenses incurred in collecting overdue accounts on an indemnity basis;
- Withhold all Work performed or services provided by AdPlace; and
- Take legal action to recover the money owing on the work or services provided.

AdPlace reserves the right to withhold delivery and/or ownership of any work and/or goods if accounts are not current or overdue invoices are not paid in full. All grants of any ownership under this agreement are conditioned upon receipt of payment in full which shall be inclusive of any and all outstanding additional costs, taxes, expenses, fees, charges, and the costs of changes.

4. DESIGN

4.1 SCOPE

Services performed by AdPlace do not include the cost of licensed materials such as fonts, imagery, icon sets, graphic designs or any other third party materials that may be used. Any such materials may require licenses to be purchased by the Client for their intended use from the material owner or distributor. Complex graphic design (i.e. multiple / heavily layered graphic elements) work is not included in any of our standard inclusions or project quotes if not specifically required and identified to be provided.

4.2 REVISIONS

In the event that revisions are requested by the Client, AdPlace requires accurate, clear and complete (i.e. flag all issues for modification at once) feedback. Example references may be required if the feedback is deemed not clear by us. Revisions must be based on feedback with specific instructions only. Any feedback without specific tasks will be treated as a change of brief.

If a revision requested by the Client is made and the Client wishes to receive a design version that is not the latest version as the final art final deliverables, all works designed subsequently to the final art selected design as the final deliverables may be treated as additional custom work.

4.3 CONTENT

If no content is provided with the brief at the beginning of a project, placeholder 'e.g. Lorem Ipsum' copy will be used. Any revisions requested to change the content beyond this point may be treated as additional custom work.

4.4 IMAGERY

All design services do not include imagery costs. It is the responsibility of the Client to purchase or approve the purchase of the appropriate license for usage of the imagery.

4.5 CHANGE OF BRIEF

Any changes or additions to a project brief received after starting a project is treated as additional custom work. A change of brief may surpass the planned scope of work. In such event the Client will be billed for the additional work. Payment for the additional work costs may be required in full before continuing or starting any of the Clients projects.

4.6 ADDITIONAL WORK

Additional Work or custom work is defined by any work that surpasses the planned scope of work. All additional work is billed separately and based on the applicable service hourly rate.

5. GUARANTEE POLICY

At AdPlace's discretion we may reduce or refund fees to Clients on fixed price services for designs delivered that do not meet the reasonable expectations of a project brief received by us from the Client. In the event of the guarantee policy being activated, a refund will be made to the Client's nominated bank account within an estimated Ten (10) business days.

AdPlace will retain ownership of all work performed on a project that has been refunded. This guarantee policy is void if the original project brief is changed or modified in anyway or is identified as a change of brief. If design feedback is not received within fourteen (14) days from the last design sent to Client, the guarantee policy will lapse. Unlimited rounds of revisions are not offered to changes to the user interface layout or imagery selection on web design projects; such changes may be treated as additional work.

Wireframing and web development projects are offered a technical guarantee rather than a reasonable expectation guarantee due to the technical nature of these services. We do not offer a money back guarantee on custom work projects.

Each design is confirmed completed with reasonable expectation by the client when verbal or written communication is received with a positive message regarding the design, or if there are no revision requests on reply from the client. When a design is confirmed completed with reasonable expectation, the guarantee policy lapses for that project.

6. ACCREDITATION

6.1 STANDARD

AdPlace shall be entitled to claim recognition for works and artwork wholly or substantially produced by us. The Client agrees to give credit where appropriate on all published materials. The Client may not, without our approval, use our name in connection with concepts or artwork that have been altered from our design. Ownership of design work is retained by AdPlace without Client co-operation of these terms when project applicable.

6.2 SILENT PARTNER

For projects specified and paid as a silent partner, AdPlace will not include the work in public self-promotion and will not require credit or acknowledgement as the creator.

7. PROPERTY & COPYRIGHT

7.1 CLIENT CONTENT

Client content, including all pre-existing trademarks, shall remain the sole property of the Client or its respective suppliers, and the Client or its suppliers shall be the sole owner of all rights in connection therewith. The Client hereby grants to AdPlace a nonexclusive, nontransferable license to use, reproduce, modify, display and publish the client content solely in connection with AdPlace's performance of the project.

7.2 THIRD PARTY MATERIALS

All third party materials are the exclusive property of their respective owners. In the event the Client fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of third party materials, the Client hereby indemnifies, saves and holds harmless AdPlace from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of the Client's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the final art.

7.3 OWNERSHIP

All work including but not limited to concept visualisations, constructs and final art shall remain the property of AdPlace. It shall not be used for any purpose other than that nominated by AdPlace and no idea therefrom may be used without the consent of AdPlace. All work not included within the final deliverables remains the property of AdPlace. AdPlace shall be entitled to compensation from the Client for any unauthorised use of such material.

The electronic copy of all work and/or final art created for the Client remains the property of AdPlace unless agreed in writing that the price quoted is to include the provision of said material.

7.4 COPYRIGHT

The Client recognises and accepts AdPlace's rights under Australian Copyright Law. At our discretion we may transfer interests, rights and/or ownership to the Client however such transfer may not be absolute and may be subject to limitations. Transfer will not take effect until the total project work has been paid in full. Where licensed intellectual property is used in any part of a project including design or development work, copyright remains with the original owner and usage is strictly under the terms of the license.

8. TERMINATION

AdPlace or the Client may terminate a project by written notice to the other party if a conflict resolution is unreachable in the opinion of either party. Our guarantee policy will be activated for projects covered by our guarantee policy including money back in the event of termination. For services not covered by our guarantee policy, any project money paid is non-refundable upon termination and the work at the present time of termination will be the final art and delivered as is.

9. LIABILITY

Neither AdPlace nor any of its employees or sub-contractors are liable under any circumstances (including but not limited to contract, tort, negligence, strict liability etc.) for any loss or damage, whether direct, incidental or consequential, which is in any way attributable to any work or services that are performed by AdPlace.

10. SOLICITATION

In no circumstance without AdPlace's prior written consent may any of the AdPlace team including but not limited to designers, developers, producers and suppliers for AdPlace work with any Clients of AdPlace outside of the operations of AdPlace for at least Twenty Four (24) Months from the last date of contact from the Client with AdPlace. 'Our Team' is defined as any employee, contractor, freelancer, supplier or organisation working under contract for AdPlace.

11. GENERAL

11.1 RIGHTS TO SERVICE

At our discretion we reserve the right to refuse service prior to beginning any project.

11.2 NOTICES

All notices to be given hereunder shall be transmitted in writing either by electronic mail or by mail.

11.3 NO ASSIGNMENT

Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise, without the prior written consent of the other party.

11.4 FORCE MAJEURE

AdPlace shall not be deemed in breach of this agreement if we are unable to complete the work or any portion thereof by reason of fire, earthquake, labour dispute, act of God or public enemy, death, illness or incapacity of AdPlace or any local, state, federal, national or international law, governmental order or regulation or any other event beyond AdPlace's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, we shall give notice to the you of our inability to perform or of delay in completing the work and shall propose revisions to any schedule for completion of the work.

11.5 SEVERABILITY

Whenever possible, each provision of this agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this agreement is held invalid or unenforceable, the remainder of this agreement shall nevertheless remain in full force and effect, and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.

11.6 GOVERNING LAW AND DISPUTE RESOLUTION

The formation, construction, performance and enforcement of this agreement shall be in accordance with the laws of Australia and the state of Victoria without regard to its conflict of law provisions or the conflict of law provisions of any other jurisdiction. In the event of a dispute arising out of this agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. If they are unable to resolve the dispute, AdPlace may commence mediation and/or binding arbitration through a third party and forum set by AdPlace. The Client is responsible for any and all costs related to such dispute resolution including mediation and arbitration. AdPlace in any dispute resolved by binding arbitration or litigation shall be entitled to recover its attorney fees and any other associated costs from the Client. In all other circumstances, the parties specifically consent to the local, state and federal courts located in the state of Victoria. The parties hereby waive any jurisdictional or venue defences available to them and further consent to service of process by mail. The Client acknowledges that AdPlace will have no adequate remedy at law in the event the Client uses the deliverables in any way not permitted hereunder, and hereby agrees that AdPlace shall be entitled to equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as any arbitrator or court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein.

11.7 HEADINGS

The numbering and captions of the various sections are solely for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of the provisions of this agreement nor shall such headings otherwise be given any legal effect.

11.8 TIME AND BUSINESS HOURS

AdPlace operates in the Australian state of Victoria. The regular time zone for business hours is AEST / GMT +10, except during Australian Daylight Savings when the time zone is AEDST / GMT +11. We are open for business and operate during regular business days of Monday to Friday and hours 9am to 5pm excluding public holidays.

11.9 MAILING LIST

The Client agrees to subscribe to our mailing list upon project order. Removal from our mailing list can be performed by clicking on the unsubscribe link on any of our mailing list emails.

12. MODIFICATIONS

AdPlace may change the terms of this service agreement from time to time on a going-forward basis. We will notify you of any such material changes by posting notice of the changes on our website disclaimer page, and/or, in our sole discretion, by email. Any such modifications become effective upon the earlier to occur of (i) your acknowledgement of such modifications; or (ii) your continued access to and/or use of our website or contact with AdPlace after we post notice of such modifications. It is your sole responsibility to check the our website from time to time to view any such changes to the terms in this service agreement. If you do not agree to any changes, if and when such changes may be made to the service agreement, you must cease access to our website and terminate services with us.

13. CONTACT

If you have questions relating to this agreement please contact AdPlace.

14. ENTIRE AGREEMENT

This document represents the entire agreement in respect of its subject matter and supersedes all prior agreements and representations between the parties. This agreement may only be amended in writing signed by both parties.