

## IMAGRI TERMS & CONDITIONS - Interactive

### GENERAL

**1. Correspondence.** Client agrees to have opted in to receive reasonable emails or other correspondence from Imagri. Client may opt out by notifying Imagri in writing or using any provided unsubscribe procedure.

**2. Restraint of Trade.** Client agrees not to hire, solicit, employ or contract any of the employees or contractors of Imagri (or people who have been employees or Imagri within a 2 year period) nor make any attempt to do so for a period of five (5) Years from the date of any services being provided by Imagri to the Client. Such limitation will prevail within Australia.

### 3. Payment.

(a) **"Client"** means the entity contracting with Imagri on this Proposal, and includes the Client and its employees, agents and all parties acting with its authority to obtain goods and services.

(b) **"Fees"** are all consideration payable by the Client to Imagri under the Proposal. Imagri will provide invoices for the Fees, which the Client may elect to receive either by e-mail or hard copy. Invoices are due upon receipt or within a maximum of 14 days from invoice date. Accounts that remain unpaid 30 days after the date of the invoice will be in default and attract interest (at Imagri's discretion) up to the current bank overdraft rate plus 2 percent and a \$15 per month default fee.

(c) **"Web Site"** means any web sites and associated code or any mobile phone software developed by Imagri for the Client as detailed in the Proposal (and including any sites maps and overall designs).

(d) **"Upfront"** means all Fees not included in either a payment plan or ongoing fees.

(e) **"Payment Plan"** means equal monthly payments as outlined in the Proposal for either a 12 or 24 month period.

(f) **"Ongoing"** Fees mean all fees noted in the Proposal which are of a recurring periodic nature. Ongoing Fees are for an initial 12 months term and then go month to month. After the initial 12 month term the Ongoing Fees may be terminated with 30 days written notice by either party. Items such as design, text content and images that fall under Upfront Fees are the property of the Client if paid in full. The Client can have this information transferred to another party which Imagri will provide in an electronic format. Items falling under the category of Ongoing Fees are provided as a service product and remain the property of Imagri. Imagri reserves the right to change the Ongoing Fees or any part thereof at any time by giving the Client 21 days prior notice of the change or a replacement of the costing proposal.

(g) Unless the Proposal states otherwise the "upfront" Fees are due upon signing of the Proposal ("Sign Date").

(h) The "ongoing" Fees and/or "payment plan" Fees are payable by direct debit commencing from the earlier of, final approval but prior to the web site going live or if the client is in breach of "Client Obligations" which results in delay of the web site meeting the "timeline" then the proposed launch date outlined in the "timeline".

(i) Web sites with contracts of 12 and 24 month payment plans remain the property of Imagri until paid in full at the expiration of the plan. Failure to meet these payments will result in the subject website being switched off until payment is made and a \$90.00 administration Fee is paid for reinstatement.

(ii) The first payment of "ongoing" fees will be pro-rata to bring the account 30 days prepaid on the direct debit date of either the 5<sup>th</sup> or 15<sup>th</sup> of the month as agreed with between Imagri and the Client.

(i) A direct debit administration fee of \$0.55 will be added to each payment.

(j) Where a Client pays by credit card and that credit card provider charges Imagri a fee, Imagri shall be entitled to pass on that fee as a Fee payable under this Proposal. Credit card payments are non refundable.

(k) The Client may not use any fault or alleged fault in the Web Site to delay any payments of Fees.

(l) The suspension by the customer of any work, for any reason, for a period exceeding thirty (30) days shall entitle Imagri to payment for work already carried out, materials specially ordered for that work and other additional costs, including storage.

(m) In the event that Imagri is required to engage the services of any mercantile agency to effect collection of any amounts due to Imagri then all collection expenses and associated charges shall be borne by the customer.

(n) Imagri shall, in respect of all unpaid debts due from the client, have a general lien on all goods and property in their hands shall be entitled on the expiration of fourteen (14) days notice to the client to dispose of such goods or property as they think fit and to apply the proceeds towards such debt

**4. Default.** If the Client fails to make any payment due and owing to Imagri in accordance with the Proposal and/or any modifications, Imagri may, entirely at its discretion and without notice, cease, suspend or withhold:

(a) access to the web site and/or

(b) all or some support

Any upgrades provided to the Client as support shall be considered part of the web site and subject to the terms and conditions of this agreement.

If the Client in default maintains any information or files on Imagri Web space, Imagri will, at its discretion, remove all such material from its Web space. Removal of such material does not relieve the Client of the obligation to pay any outstanding charges on the Client's account. Cheques returned for insufficient funds will be assessed a return charge of \$15 and the Client's account will immediately be considered to be in default until full payment is received and Imagri may suspend its obligations under the Proposal during this period.

**5. General.** This agreement cancels all previous general terms in relation to web sites between the parties, but previous specific obligations on previous projects remain binding upon Imagri. This agreement governs all previous and future obligations between the parties, but this agreement may be replaced by a subsequent signed document expressed as being general terms and conditions. **"Specific Agreements"** are all signed agreements between the parties including Modification Notes. **"Modifications"** are changes (which must be supported by consideration) contained within a Modification Note. **"Modification Note"** is any document including an email sourced from Imagri which declares itself as one. No amendments or oral agreements are to be binding on the parties unless recorded in writing and signed by both parties, aside from Modification Notes. Headings and genders used in this agreement are for illustrative purposes only and shall not affect the interpretation whatsoever of this agreement. The Proposals are transferable with Imagri's written permission to a business successor of the Client who is not a competitor of Imagri. In the event of any inconsistency between these Conditions and the Specific Agreements, these Conditions will prevail, unless specifically stated otherwise. **"Proposal"** means all written agreements between the parties. **"Services"** means any services provided by Imagri to the Client under the Specific Agreements. **"Deliverables"** means any software developed for or licensed to the Client under the Specific Agreements (and includes the Web Site). Decisions made by the Client on the Deliverables and effected by Imagri may not be rescinded by a future liaison person. Where, in relation to any Specific Agreement, the person hours spent developing the Web Site exceeds the total Fees (excluding the Continuing Fees) divided by fifty, Imagri may, after first notifying the Client, then recover from the Client person hours spent above this at \$40 per hour. Where the Client is a corporate entity then any person signing any of the Proposals on the Clients behalf shall be jointly and severally liable for the performance of the Clients obligations under all of the Proposals. Where this agreement is amended by the client, it must be signed by Imagri for such amendment to be enforceable.

**6. Excluded Features.** Specifically the Web Sites do not include any feature which isn't specifically stated in the Website Proposal or Modifications, and without limitation do not include training manuals or other applications. Unless otherwise stated, only one login is to be provided for CMS. Once functionality in a broad area has been established on a test site the client shall not at a later stage request different functionality for that area.

**7. Variation.** Imagri may agree to extend its obligations under the Proposal only by either an agreement in writing between the parties or a Modification. Notices to Imagri must be sent via fax, email or mail. Notices to the Client are to be sent to any of the main email contacts of the Client or the registered address. Imagri may transfer the Website Proposal to another entity, or subcontract part of its obligations. If any provision of this Proposal is agreed or held to be unenforceable, that will not affect the validity of the other provisions of this Proposal. Failure of a party to enforce any provision of this Proposal shall not constitute or be construed as a waiver of that provision or of the right to enforce it. No modification or alteration of this Proposal shall be valid or binding upon a party unless made in writing and duly executed or signed on behalf of that party.

### 8. Copyright

(a) Imagri accepts no responsibility or liability for the use of copyright material used in any work carried out by Imagri where such material is supplied by the customer or any third party.

(b) The copyright ownership of any original artwork, whether electronic or otherwise, created for a customer, is deemed to belong with the creator of the work and is licensed for the specific and sole use for which it was created which will be deemed to be the job detailed in the customer's purchase order for which the work is being carried out.

(c) If additional usage rights are sought by the customer, additional fees will need to be agreed upon in writing.

(d) All websites built with a Content Management System (CMS) include license(s) for the CMS and its modules, if any. Once the website has been completed and paid for and/or the ongoing fees or paid up to date, the client has purchased the license(s) to use the CMS and any module(s) to update and maintain their website. However the client does not "own" the CMS and any module(s) and has no right or title to the CMS or the Intellectual Property Rights.

(e) If a CMS website created by Imagri, the client or a third party undertakes and warrants not to do or attempt any of the following:

i. copy, replicated, distribute, loan or modify the CMS or any part of it

ii. disassemble, decompile or "unlock", decode or otherwise reverse translate or engineer or attempt in any manner to reconstruct or discover any source code or underlying algorithms of the CMS or any part of it; or

iii. remove or use, outside the CMS or a nominated website, any of the CMS's components

Imagri may terminate the license(s) of a client's website without notice if the client fails to comply with any of the terms and conditions above.

**9. Warranty and Limitation of Liability** Imagri warrants only that during the period of this Proposal the web site will perform substantially in accordance with the specified functionality at the time of sale.

(a) Imagri does not make any warranty:

i. that the use of the web site will be uninterrupted or error free at all times and in all circumstances; or

ii. that program errors will be corrected; or

iii. concerning technical support by email or telephone

(b) The warranty referred to in clause 9 shall not apply to any error or failure resulting from:

- i. machine error
  - ii. Clients' failure to follow operating instructions
  - iii. Clients' negligence or accident; or
  - iv. Modifications to the web site by any person or entity other than Imagri
- (c) If Imagri receives written notice of breach of warranty within thirty days of the occurrence of the breach, the Client is entitled at Imagri's option to:
- i. repair or all or any portion of the web site or
  - ii. replacement of all or any portion of the web site
- (d) Subject only to clause 9(c), to the maximum extent permitted by applicable law, in no event shall Imagri or its suppliers be liable for damages, costs or remedies arising out of the use of or inability to use the web site or the provision of or failure to provide support, even if Imagri has been advised of the possibility of such damages;
- i. whether based in contract, tort or otherwise; and
  - ii. including, without limitation, special, incidental, indirect, or consequential damages (including without limitation, damages for loss of goodwill, business profits, business interruption, loss of business information, or any other pecuniary loss),

and, in any case, Imagri's entire liability under any provision of this Proposal shall not exceed in aggregate the sums of money paid to Imagri by the Client.

**10. Indemnity.** Imagri indemnifies the Client against proved direct loss and damage caused by the Deliverables to a maximum of the aggregate sum Fees paid by the Client to Imagri. This amount shall be the total and sole remedy for any liability under the Proposal and, in relation to any sums paid, will cover all incidents of liability occurring to the date of such payment. Imagri does not accept liability for the non renewals of domains.

To the maximum extent permitted by law and except as provided in clause 10(a), neither party shall be liable to the other in relation to this Proposal for any form of indirect or consequential loss or damage including loss of profit.

(a) Client agrees to:

- (i) compensate Imagri for any loss of profit, damages (including without limitation, loss of reputation of goodwill) or costs, including indemnity legal costs and
- (ii) indemnify, hold harmless and defend Imagri from and against any and all claims or lawsuits including indemnity legal costs

arising or resulting from a breach by Client of Clause 8(e)

In the event of any of the exclusions in this clause being held invalid by any aspect of the Governing Law, then Imagri's liability shall be limited to either at Imagri's discretion (a) replacement of the Deliverables (b) refund of the Fees.

**11. "Client Obligations"** are the requirements expected of the Client being all the information reasonably required of the Client for Imagri to develop the Web Site, and include any other obligations agreed in the Proposal.

**12. Timetable.** Before commencement of the project a timeline and stages will be set down in writing and duly executed or signed by both parties.

Any timelines or deadlines in the Proposal ("Timelines") are only binding on Imagri if they have been (a) specifically noted by the Client in a notice to Imagri that Timeline has been triggered and applicable on or before their commencement and (b) the Client has followed all Client Obligations (c) the Client is not in default on any fees in the Proposal (d) the Client has not increased the scope of the project with alterations to the website which are not set in the Proposal or by not following the process in the Proposal. If these conditions are not met, then the Client and Imagri may further agree in writing on a revised timetable, which is then treated as a Timeline.

Should Imagri not meet a Timeline as above then the Client shall notify Imagri in a written notice that they have failed to meet it, and Imagri shall have two (2) weeks to meet such Timeline.

Where Imagri notifies that a Stage has been met, or any area of the site built, the Client has 7 days or whatever other period is set down to reject that Stage in writing based on the Proposal otherwise that Stage is deemed approved.

Once this passes or final stage is signed off, the Client will have no right to complain that Web Site does not comply with the Proposal. Imagri may cease development until a sign off is received.

Where more than a year has elapsed from a request from Imagri to a Client to give specific content or feedback and this has not been given in the form required, then all obligations upon Imagri to complete a site shall be at an end.

All duration and completion estimates given in time and materials specific agreements are indicative only and do not create any obligation on Imagri. Imagri is under no obligation to provide a breakdown of hours spent on any project.

**13. Dependencies.** Imagri shall not be liable for any breach of its obligations under the Proposal where such breach has been caused by;

- (a) The lack of cooperation or access by the Client
- (b) The lack of cooperation or provision of access by any third party whom (1) the Client has required to liaise with or use the services or products of or (2) which is responsible for either hosting or developing any part of a web site on which Imagri is performing services ("Third Party").
- (c) Any defective software of that Third Party which Imagri needs to interact with and any defects or restrictions in any third party software that Imagri uses to develop the website.

**14. Support Cap and Jurisdiction.** "Support Hours" are those specified in the Support Packages. Imagri will provide up to the Support Hours per month as per the support package option taken up by the Client. Any other services provided will be billed at \$110 per hour ex GST. All services are deemed to be a minimum of 15 minutes. Imagri's obligations to support consist of responding to any issue arising from the Proposal within 3 business days with a resolution of such issue within a reasonable time.

## WEB DEVELOPMENT

**15. Post-Placement Alterations.** Imagri cannot accept responsibility for any alterations caused by the Client or a third party occurring to the Client's site and pages once installed. Imagri will not in any way be obligated to provide the Client with any access by FTP or other service to the Web Site. If the login details to make direct updates are provided to the Client then Imagri takes no further liability for the Web Site. Further, if Imagri is required to fix up problems caused by such alterations then the minimum charge is one hours labour at \$110 ex GST per hour. Such alterations include, but are not limited to additions, modifications, or deletions.

**16. Platform and Domain.** The Client specifically acknowledges that it is sufficient that the Web Site is functional on a client computer running the dominant version (at the time Imagri starts developing the Web Site) of Internet Explorer, Firefox and the Microsoft operating system.

**17. Ownership.** At the conclusion of this agreement, not before, the Client will own the design, text content, images and where the Client is not under an agreement of Ongoing fees, the code of the website, save for the core programming of the Client's site (such as Content Management Systems, Database structure, PHP elements, Complex Menus and Forms etc "Core Programming Elements - CPE"). Clients under an agreement of Ongoing fees do not own the code of the web site or the CPE. Any transfer of the code Imagri may appropriately encrypt/protect pages or files which feature any CPE. The Client warrants that any material supplied by them for the website is free of any legal claim and indemnifies Imagri against same.

**18. Standard Media Delivery.** Unless otherwise specified in the Specific Agreements, all text will be provided by the Client in electronic format (ASCII text files delivered on disk or via e-mail or FTP) and that all photographs and other graphics will be provided in standard .gif, .jpeg or .tiff format. Additional expenses may be incurred and will be invoiced accordingly for corrective work, conversion of media or outside facility charges. Imagri will reasonably attempt to return materials provided, such return cannot be guaranteed.

**19. Pages.** Where the Proposal refers to a certain number of pages in a Web Site then the Client agrees not to provide unusually long pages to circumvent this restriction. Web pages are specifically not made to be formatted for printing from screen. Web Sites are specifically built to be best viewed at 1024x768 pixels resolution.

**20. Design Credit.** A link to Imagri will appear as both a small type one line link or links and small graphic at the bottom of each page of the Web Site. The Client agrees that their completed site or any part of it including statistics or other site metrics or logo may be used in Imagri portfolio or any other marketing form or document at Imagri's discretion and authorizes Imagri to make a factual statement that it has delivered services to the Client.

**21. Flash.** If flash has been provided in the Proposal then the Client acknowledges that Flash is a form of movie or artwork and a strict limit must be imposed on the number of hours Imagri will spend on such. The agreed time Imagri will spend on any Flash components will be set out in writing. Imagri will make best endeavours to ensure the Client is satisfied with any such Flash or movement but invoice the Client at \$110 ex GST per hour accordingly if extra work is required to meet Client expectations.

**22. Right to Pull, Spamming.** The Client agrees to give Imagri "on demand" access to the Client's installed Web Site, and further agrees that Imagri shall have the right to remove that site from public posting for failure to adhere to the terms of this Agreement or any breach of any applicable laws or court orders, or the commission of any act reasonably deemed to be such. If the Web Site is hosted with a third party then Client agrees to immediately remove such site upon demand. The Client warrants that it will not use any of Imagri e-mail or web servers for spamming or mass emailing nor use them as a contact point for any spamming or mass email. Spam is defined as any unsolicited email sent to multiple recipients where the Client cannot prove by its records that the receiver has specifically requested such emails. Imagri may seek to recover damages from any Client that engages in such practices.