



**DIGITAL
MARKETING
ADELAIDE**

SERVICE AGREEMENT

Updated 10/07/2021



1. Definitions

- 1.1 "DMA" means Williamson Management Consultancy PTY LTD T/A Digital Marketing Adelaide (ABN 41 626 646 384), its successors and assigns or any person acting on behalf of and with the authority of DMA.
- 1.2 "Client" means the person/s buying the Service or Services as specified in any invoice, document or order, and if there is more than one, Client is a reference to each Client jointly and severally.
- 1.3 "Service" means all Services or combination of Services and Works, supplied by DMA to the Client at the Client's request from time to time (where the context so permits the terms Goods, Services, Materials and Works shall be interchangeable with each other), and as specified by and agreed between the parties.
- 1.4 "Price" means the Price payable for the Service as agreed between DMA and the Client.
- 1.5 Words importing the singular shall include the plural and vice versa.
- 1.6 Words importing any gender include all genders.
- 1.7 Any reference to any person includes that person's executors, administrators, agents, assigns or, being a company, its successors or permitted assigns.
- 1.8 Words describing individuals include companies and bodies corporate and vice versa.

2. Acceptance

- 2.1 The Client is taken to have expressly accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client accepts the Proposal provided contemporaneously with these Terms by making a payment to DMA.
- 2.2 These terms and conditions may only be amended with DMA's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and DMA.
- 2.3 In the event that:
- (a) the Client requests a variation (requiring written details from the Client);
 - (b) an unforeseeable problem occurs or is discovered, requiring a variation; or
 - (c) a variation is made;
- DMA will give the Client a written variation document detailing the Service, the Price, the estimated time to undertake the variation, and the likely delay, if any and require written acceptance of the variation before commencing work on the variation.

3. Price and Payment

- 3.1 Unless otherwise agreed by the Parties in writing, the Client accepts to subscribe to the Services for a period of 6 months. These amounts will be billed to the Client in advance on a monthly basis, unless otherwise agreed.
- 3.2 All one-off services, such as training, will be billed in advance and require payment within 7 days of the date of the invoice, unless otherwise agreed. Once payment is received, work will begin.
- 3.2.1 If payment is not received at least 24 hours before the intended training date and time, DMA will not provide the Training Services.
- 3.2.2 Any work performed by DMA for the Client outside the scope of the Agreement and Proposal incurs a charge of \$150.00 for a minimum of one (1) hour.
- 3.2.3. The client agrees to pay and acknowledges that any work outside the scope of the Agreement and Proposal in excess of one (1) hour is charged on an hourly basis at a rate of \$150.00 per hour.
- 3.2.3. The client agrees to pay for fees occurring outside the scope of the Agreement and Proposal within 7 days of the date of the invoice, unless otherwise agreed.
- 3.3 Hosting services will be billed on an annual basis in advance, unless otherwise agreed.
- 3.4 At DMA's sole discretion the Price shall be either:
- (a) as indicated by the Proposal provided by DMA, valid for the period stated in the Proposal or otherwise for a period of thirty (30) days; or
 - (b) on any invoice provided by DMA to the Client, payable within 7 days.
- 3.5 DMA reserves the right to change the Price if a variation to DMA's Proposal is requested. Any variation from the plan of scheduled Services or specifications of the Service will be charged for on the basis of DMA's Proposal and will be shown as variations on the invoice.
- 3.6 Time for payment for the Service being of the essence, the Price will be payable by the Client in advance, in full, upon completion of the Service or issuance of an invoice, as agreed. At DMA's sole discretion, time for payment may alternatively be:
- (a) 7 days from the date of any invoice provided;
 - (b) by way of instalments/progress payments as agreed in writing between the Parties to this agreement; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by DMA.

3.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price) or by any other method as agreed to between the Client and DMA.

3.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to DMA an amount equal to any GST DMA must pay for any supply by DMA under this or any other agreement for the sale of the Service. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

3.9 DMA and the Client agree that the terms of this Agreement will not be finalised until:

- (a) the Client has paid DMA all amounts owing to DMA; and
- (b) the Client has met all of its other obligations to DMA.

3.10 Receipt by DMA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then DMA's rights and ownership in relation to the Service, and this agreement, shall continue.

4. Social Media and/or Email Marketing & Management

4.1 For services related to Social Media Marketing, Email Marketing and Management, DMA agrees to promote and/or handle the Client's social media pages, including Facebook, Instagram, LinkedIn, Pinterest, Google My Business and Twitter, or provide marketing services and advertising by Email, according to the terms of the Proposal.

4.2 The Client acknowledges and accepts that each Social Media platform and company has individual terms and conditions and each reserve the right to refuse or take down an advertisement at any time in accordance with those terms and conditions. DMA will take all reasonable steps to advise the Client regarding these terms and how to structure advertisements accordingly, however DMA makes no warranty or guarantee as to whether the advertisement will be accepted or not. In such circumstances where an advertisement is refused or removed, this does not negate DMA's fees.

4.3 DMA makes no guarantees that Social Media Marketing or Management will lead to an increase in sales or business and the Client will not hold DMA liable for any damage or loss regarding this.

4.4 The Client acknowledges that DMA reserves the sole right of refusal regarding content sent via email and may utilise its absolute discretion as to any content that may be viewed as inappropriate, illegal or otherwise in breach of this Agreement.

4.5 Social Media Management terms are fixed at 6 months, unless otherwise agreed, continuing thereafter on a monthly basis. DMA schedules Social media posts in advance using third party software and requires 30 days written notice in order to terminate Social Media Management services. If services are terminated within the initial 6-month period, the remainder of the period will become due and payable upon termination.

4.6 Each Social Media platform may have individual invoices produced for the services they provide, separate from or as a result of DMA's Services. The Client accepts that they are solely liable for these invoices and DMA accepts no responsibility towards the same. If these invoices remain unpaid, the services will likely cease. In such a circumstance, DMA's fees will remain due and payable.

5. Digital Advertising

5.1 For services relating to Digital Advertising, DMA agrees to provide management services of Google Ads, Facebook and/or other related pages including, but not limited to, LinkedIn, Instagram, Bing Ads for the purposes of Advertising the business.

5.2 The Client authorises DMA to create and/or have access to all relevant accounts for the purpose of undertaking these Services. DMA warrant that reasonable care and precautions will be undertaken with regards to conduct and privacy.

5.3 When creating Google Ads, Google Analytics, Google Search Console, Google My Business, Bing Webmaster Tools or Bing Ads accounts, DMA will remain the owner of all data associated until the Client has paid DMA all amounts owing to DMA. DMA will provide administrative access and ownership rights to all accounts once the Client has met all its other obligations to DMA, including but not limited to, payment of all accounts. Until such time, only DMA will have direct access and ownership to such accounts and data.

5.4 The Client accepts that each company through which advertising is undertaken applies their own Terms and Conditions and the Client agrees to be bound by the same. DMA provide no warranty or guarantee as to the content request by the Client being accepted by the hosting Company and DMA makes no warranty or guarantee that these services will definitively generate or increase business and/or earnings.

5.5 Digital Advertising minimum terms are fixed at 6 months, unless otherwise agreed, continuing thereafter on a monthly basis. DMA requires 30 days written notice in order to terminate any Google Ads and Bing Ads services. DMA will build the Client's digital advertising campaigns in advance and off-line. If services are terminated within the initial 6-month period, the remainder of the period will become due and payable upon termination.

5.5.1 The Client agrees to provide DMA with at least 96 hours' notice for ad campaigns to be created.

5.5.2 The Client agrees to pay DMA \$150.00 if the Client desires the creation of ad campaigns before 96 hours of notice is given to DMA.

5.6 The Client agrees and acknowledges that Digital Advertising networks and providers including, but not limited to, Google, Microsoft, Facebook, Instagram, LinkedIn and Snapchat (collectively referred to as Providers) may from time to time exceed the Client's agreed monthly budget or daily budget, and that the client, is solely responsible for payment of Digital Advertising fees charged by provider(s).

5.7 DMA makes no warranty that Digital Advertising will generate any increase in sales, business activity, profits or any other form of improvement for your business or any other purpose.

6. Website Design & Hosting

6.1 For services relating to Website Design & Hosting, DMA agrees to design and develop a website or landing page for the Client, in accordance with the Proposal, and/or to host the same for the Client. Where the Client's website is hosted with another hosting company, DMA will at the Client's request, transfer the Client's website hosting to DMA's servers for \$180.00 + GST.

6.2 Such Services require a one-off payment by the Client in relation to the design, and/or an annual Hosting fee. The hosting fee and any related transfer fees are non-refundable. DMA will provide 7 days' notice at the end of the period for the next annual payment to be applied.

6.3 Once engaged, DMA will provide the final drafts to the Client and will undertake any required changes on up to two (2) occasions. Any further revisions may incur additional fees at DMA's sole discretion.

6.4 Once approved by the Client, any further changes or variations requested will be considered outside of the original Proposal and further fees will be applied.

6.5 Where approval deadlines apply, the Client agrees to adhere to these deadlines. DMA accepts no liability for loss or damage caused by the Client's delay.

6.6 Hosting fees must be paid prior to the commencement of the Services and, upon renewal, within 7 days of the relevant invoice being received. If the Client fails to comply with this clause, DMA reserves the right to suspend or cancel all hosting services.

6.7 Hosting services may be cancelled by the Client at any time, however, cancellation will not negate liability to any Fees that become due prior to or in the course of cancellation.

6.8 Where maintenance including backups, rollbacks, updates or server replacements are required, the Client accepts that this may cause scheduled or unscheduled downtime for the website. For any scheduled maintenance, DMA will provide no less than 24 hours' notice to the Client of the maintenance, and the cause for it. In circumstances where unexpected maintenance is required, DMA will take all reasonable steps to notify the Client as soon as possible, and to complete the work in a timely manner. DMA accepts no liability for losses or damages arising from any periods of suspension of hosting due to maintenance or required updates.

6.9. The Client acknowledges and agrees that website hosting and any Content uploaded, stored, published and displayed on the website(s) are in compliance with this agreement and all applicable laws, including laws of the jurisdiction where the Service or Content is uploaded, hosted, stored, accessed or used. The Client shall implement any restrictions necessary in order to prohibit use of the Services by any third party or in any jurisdiction, as required to comply with such laws.

6.10 DMA accepts no responsibility for any website hosting downtime including malware, denial of service (DOS), distributed denial of service (DDOS, or misuse of website hosting resources by the Client or their respective end user(s).

6.11 The Client agrees and acknowledges that website hosting may at DMA's discretion be provided by a trusted third party and the Client agrees to be bound by their respective terms and conditions which are available on request.

7. Search Engine Optimisation (SEO)

7.1 For services relating to SEO, DMA agrees to optimise the Client's website according to the Proposal. The exact optimisation details and timelines will be outlined within the Proposal. DMA will use best practices to achieve the ranks and optimisations as proposed.

7.2 You expressly agree that entering or using DMA is at your own risk. No warranty, representation, condition, undertaking or term – express or implied, statutory or otherwise – including but not limited to the condition, quality, durability, performance, accuracy, reliability, non-infringement, merchantability, or fitness for a particular purpose or use of DMA is given or assumed by all such warranties, representations, conditions, undertakings and terms are hereby excluded.

7.3 DMA makes no warranty that DMA will meet your requirements, or that DMA will be uninterrupted, timely, secure, or error free; DMA makes no representations as to the suitability of the information available on or through DMA, including but not limited to user amended sites, for any purpose nor about its legitimacy, legality, validity, accuracy, correctness, reliability, quality, stability, completeness or currency.

7.4 DMA makes no warranty that a Search Engine Optimisation campaign will generate any increase in sales, business activity, profits or any other form of improvement for your business or any other purpose.

7.5 DMA makes no warranty that a Search Engine Optimisation campaign will lead to any clicks to your business or other information.

7.6 DMA makes no warranty that a Search Engine Optimisation campaign will lead to consistent exposure of your business or your keywords during your subscription period (including but not limited to, the position your advertisement is placed on a search result page or the frequency and time of day that your advertisement is displayed). All such information on the user-amended sites is provided by the users.

7.7 The information available on or through DMA user amended sites is not reviewed, controlled or examined by DMA in any way before it appears on DMA.

7.8 DMA does not endorse, verify or otherwise certify the contents of any such information. Users are solely responsible for the contents of their websites and may be held legally liable or accountable for the contents of their websites (including without limitation in connection with infringement of intellectual property rights of any other party).

7.9 DMA does not warrant or guarantee: that any information available on or through DMA will be free of infection by viruses, worms, Trojan horses or anything else manifesting contaminative or destructive properties; that the information available on or through DMA will not contain adult-oriented material, or material which some individuals may deem .

objectionable; or that the functions or services performed by or through DMA will be uninterrupted or error-free, or that defects in DMA will be corrected. It is the sole responsibility of the user to isolate software and information, execute anti-contamination software and otherwise take steps to ensure that software or information, if contaminated or infected, will not damage user's information or system.

7.10 SEO guarantees will not apply to new a domain, without an existing domain redirecting to the new domain.

7.11 The Client accepts that optimisation does not guarantee an increase in business or sales and DMA accepts no liability for any loss or damage incurred as a result of the optimisation. SEO guarantees extend only to ensuring search results and key phrases and the Client accepts that, outside of the optimisation, there are many factors outside of DMA's control, that may affect the SEO performance, including website content, website management systems, toxic links to the website, penalties imposed directly by Google or poor server status.

7.12 The Client also acknowledges that Google frequently updates the search algorithm, which may have varying affects on DMA's SEO and the Client's website rankings. For the duration of the agreement, DMA will do all reasonable things to rectify or amend the SEO to align with Google's new or updated requirements, however, makes no guarantees during times of change. In all such circumstances, DMA will continue to inform and update the Client regarding the changes.

7.13 If the Client's website receives a penalty from Google, either automatically or manually, it may be necessary for the Client to change domains in order to release this penalty. If DMA provides this advice and the Client chooses not to accept it, the Client accepts responsibility for any loss in website traffic including clicks, impressions, click through rate and search engine rank positions.

7.14 SEO minimum terms are fixed at 12 months, unless otherwise agreed, continuing thereafter on a monthly basis. DMA requires 30 days written notice in order to terminate SEO services. If services are terminated within the initial 12-month period, the remainder of the period will become due and payable upon termination.

8. Social Media Training

8.1 For services relating to Social Media Training, DMA agrees to provide 1 on 1 training sessions.

8.2 Client acknowledges and agrees that payment for a training session entitles the Client to up to four hours of training. Additional training will require further training, to be charged at an hourly rate or as otherwise agreed by the parties.

8.3 Client acknowledges and agrees that Social Media training sessions will not commence until the Client has made satisfactory payment to DMA in accordance with clause 3.2.

8.4 Client acknowledge and agrees that any information, articles, tutorials, guidelines or technical support advice may be provided by DMA only for the Client's convenience and do not constitute official statements.

8.5 DMA makes no warranty that a Social Media Training will generate any increase in sales, business activity, profits or any other form of improvement for your business or any other purpose.

8.6 Any advice, recommendation, information, assistance or service provided by DMA in relation to Social Media Training is given in good faith, is based on DMA's own knowledge and experience and shall be accepted without liability on the part of DMA and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Service.

8.7 Where DMA gives advice or recommendations to the Client, or their agent, regarding the suitability of Social Media Training, and such advice or recommendations are not acted upon by the Client, DMA shall not be liable in any way whatsoever for any damages or losses that occur.

9. Compliance with Laws and Limitation Liability

9.1 The Client and DMA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including any work health and safety (WHS) laws relating to the relevant industry and any other relevant safety standards or legislation.

9.2 Other than expressly required by law, DMA excludes all representations, warranties or terms, either express or implied, other than those expressly provided for within this Agreement, the Proposal or any Invoice. DMA excludes all liability with regards to loss of data, interruption of business or any consequential or incidental damage or loss.

10. Intellectual Property

10.1 Where DMA has developed code software, or proprietary script, designed, drawn, written plans or a schedule or developed a Service for the Client, or created any products for the Client, then the copyright in any designs, drawings, plans, schedules, products and documents shall remain vested in DMA, and shall only be used by the Client at DMA's discretion, until all relevant invoices have been paid by the Client.

10.2 Upon payment of invoices, any designs, websites, all intellectual property and copyright or anything else as referred to in Clause 10.1 will transfer wholly to the Client.

10.3 Where such designs or other content have been provided by the Client to DMA, the Client warrants that they own the intellectual property and have the right to distribute the same, that the content does not infringe any other parties' intellectual property rights, that the content is not unlawful, fraudulent or in any other way violates applicable laws and regulations, including those of defamation, and that it does not contain any malicious software or other programs that may cause harm to software or hardware of others.

10.4 The Client warrants that all designs, specifications or instructions given to DMA will not cause DMA to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify DMA against any action taken by a third party against DMA in respect of any such infringement.

10.5 The Client agrees that DMA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Service which DMA has created for the Client.

10.6 DMA reserves its sole and absolute right to decline content that it views as inappropriate or in anyway in breach of this agreement.

11. Confidential Information

11.1 The Parties hereby irrevocably covenant to:

(a) Not use any confidential information for any purpose unless expressly permitted by this agreement or required by law;

(b) Not disclose any Confidential Information to any person or party not a party to this Agreement, other than as strictly necessary by law or with express written permission of the other party; and

11.2 A party may disclose Confidential Information to employees, advisors or subcontractors engaged specifically for the purpose of this Agreement, to the extent necessary for them to know the purpose of the Agreement. Any such parties must also agree to be bound by the terms of confidentiality of this Agreement.

12. Default and Consequences of Default

12.1 Where an invoice has remained unpaid for 14 business days, a reminder will be sent to the Client, in writing, and an administration fee of \$250.00 (inclusive of GST) will be charged to the Client; If the invoice remains unpaid after the reminder has been provided, solicitors or collection agents will be engaged, and the Client agrees to indemnify DMA for any and all reasonable collection costs (in accordance with clause 12.3).

12.2 Interest on overdue invoices shall accrue daily from the date that payment was due, until the date of payment, at a rate of five percent (5%) per annum pro rata, after as well as before any judgment.

12.3 If the Client owes DMA any money the Client shall indemnify DMA from and against all costs and disbursements incurred by DMA in recovering the debt (including but not limited to collection fees, legal costs on a solicitor and own client basis, DMA's contract default fee, Court or any other institution filing fees and bank dishonour fees).

12.4 Without prejudice to any other remedies DMA may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions DMA may suspend or terminate the supply of Service to the Client. DMA will not be liable to the Client for any loss or damage the Client suffers because DMA has exercised its rights under this clause.

12.5 Without prejudice to DMA's other remedies at law DMA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to DMA shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to DMA becomes overdue, or in DMA's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- (d) the Client suffers a lack of capacity through mental illness such that they are unable to fulfil their obligations pursuant to this agreement.
- (e) the Client engages another consultant, individual, or business that provides similar services to the Client without DMA's express permission.

12.6 This Clause shall continue in force and effect and be enforceable against the Client, and their successor(s), assignee(s), legal personal representatives notwithstanding their death, insolvency, termination of this Agreement or any other event.

13. Termination

13.1 DMA may terminate any contract to which these terms and conditions apply or cancel the Service at any time before the Service is provided or delivered by giving notice to the Client. On giving such notice DMA shall invoice the Client for any work completed up to that point and any materials purchased. DMA shall not be liable for any loss or damage whatsoever arising from such termination.

13.2 The Client may terminate any agreement or Service by providing 30 days written notice to DMA. However, each subscription Service has an initial period of at least 6 months unless otherwise agreed in a proposal or in writing, converting to a monthly basis thereafter. If termination occurs during this initial period, the remainder of the period is still payable and will become due immediately after termination.

14. General

14.1 The failure by DMA to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect DMA's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

14.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which DMA has its principal place of business and are subject to the jurisdiction of the courts in that state.

14.3 Except as otherwise provided for in these terms and conditions, DMA shall be under no liability whatsoever to the Client for any indirect and/ or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by DMA of these terms and conditions (alternatively DMA liability shall be limited to damages which under no circumstances shall exceed the Price).

14.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by DMA nor to withhold payment of any invoice because part of that invoice is in dispute.

14.5 DMA may license or sub-contract all or any part of its rights and obligations without the Client's consent. DMA will endeavour to notify the Client of such license or sub-contracting; however, it is not obliged to do so.

14.6 DMA will not be liable for any loss or damage to any person or property caused by a third party who has been licensed or sub-contracted by them, unless such person is wholly a part of DMA's business.

14.7 DMA makes no assertion to, nor will they be liable for any claims regarding the quality of work provided by any licensed or sub-contracted party, unless such person is wholly a part of DMA's business.

14.8 The Client agrees that DMA may amend these terms and conditions at any time. If DMA makes a change to these terms and conditions, then that change will take effect from the date on which DMA notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for DMA to provide Services to the Client.

14.9 Neither party shall be liable for any delay or default due to any act of God, war, terrorism, strike, lock-out, pandemics industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

14.10 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.

14.11 Severance

14.11.1 If any provision of these Conditions are not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

14.11.2 If any part of these Conditions is invalid or unenforceable, that part is deleted, and the remainder of the Conditions remains effective.



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