

Bespoken Agency Pty Ltd

Standard Terms and Conditions

1. Engagement

1.1 This Agreement sets out the terms and conditions on which Bespoken may provide Services to the Client and the Client may acquire Services from Bespoken.

2. Definitions and Interpretation

2.1 In this Agreement, unless the text otherwise requires or the contrary intention appears:

- “this Agreement” means the Statement of Work between the Client and Bespoken and these standard terms and conditions, including all schedules, documents annexed, or incorporated by reference and includes any variations made by agreement between the parties;
- “Client” means the entity or entities that engage Bespoken to provide Services;
- “Confidential Information” means any information in whatever form (including in writing, oral, visual or electronic form or on any magnetic or optical disk or memory wherever located) relating to the business, clients, customers, products, affairs or finances of a party to this Agreement, or any related body corporate of a party, and any trade secrets, including technical data and know-how relating to the business of a party to this Agreement, or any related body corporate of a party, or any of their suppliers, clients, customers, agents, distributors, shareholders or management, whether or not such information is marked confidential;
- “Contract Materials”: all things, materials and information, created, conceived, developed or generated by Bespoken or the Bespoken’s personnel (whether alone or with the Client, its employees, agents or contractors) in supplying the Services under this Agreement (including all reports, proposals, marketing materials, records, files, designs, drawings, plans and artwork);

- “Fees” means the fees specified in the Statement of Work or as otherwise advised by Bespoken to the Client from time to time;
- “Intellectual Property Rights” means any and all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks, designs, circuit layouts and performance protection (whether or not now existing and whether or not registered or registrable) and includes any affairs; right to apply for the registration of such right and all renewals and extensions;
- “Pre-existing IP Rights” means Intellectual Property Rights in all materials owned by the Client or Bespoken independent of this agreement;
- “Services” means the services specified in the Statement of Work or that Bespoken otherwise agrees to provide to the Client from time to time;
- “Statement of Work” means the statement of work given by Bespoken to the Client;
- “Term” means the period of time commencing on the date the Client engages Bespoken to provide Services and ending on either the date Bespoken delivers the Services or the date this Agreement is terminated;
- “Bespoken” means Bespoken Agency Pty Ltd.

2.2 In this Agreement, headings, subheadings and explanatory notes are for guidance only and shall not form part of the text of this Agreement.

2.3 Unless the context otherwise requires:

- a) words importing the singular shall include the plural and vice versa;
- b) words importing a gender shall include other genders; and
- c) reference to a person shall be construed as a reference to an individual, firm, body corporate and other entity, whether incorporated or not.

2.4 If there is any inconsistency between these Standard Terms and Conditions and the Statement of Work, the Statement of Work prevails to the extent of any inconsistency.

2.5 Where the Client consists of more than one entity, they are bound by this Agreement jointly and severally.

3. Client Commitment

3.1 The Client may, but is not required to, request Bespoken to provide Services.

3.2 Bespoken may, but is not required to, accept a request to provide Services.

3.3 Bespoken will carry out the Services in good faith and with professional skill and diligence during the Term.

3.4 Bespoken will carry out the Services during the hours and over the period determined by Bespoken unless otherwise agreed with the Client. The Client will provide Bespoken with reasonable notice for their requirement of the Services. Bespoken will keep the Client informed about the progress of the delivery of the Services.

3.5 Should circumstances arise that will impact on Bespoken's ability to deliver the Services within the agreed timeframe or price, Bespoken will advise the Client in a timely way.

3.6 All documents, records and equipment provided to Bespoken by the Client in relation to the Services remain the sole property of the Client.

3.7 Bespoken may determine the manner or means by which it performs the Services for the Client, including but not limited to the time and place for performance of the Services, and may sub-contract some or all of the Services.

3.8 The Client must promptly provide Bespoken with all information that may reasonably be required for the proper provision of the Services, including access to appropriate members of your staff, records, information, technology, systems and premises. Bespoken will be entitled to rely upon the accuracy of all information provided by on or behalf of the Client, without independently verifying it.

3.9 If the Services are delayed or paused due solely to the Client's delay or instructing Bespoken to cease or pause work and not due to Bespoken's inability to complete agreed work, the Client's requirements to pay the Fees is not paused or delayed.

3.10 If the Statement of Work requires the Client to provide a deposit, BESPOKEN is not required to commence the Services until and unless the deposit is paid as directed to the Client by Bespoken. The Client agrees and acknowledges, that to the extent permitted by law, deposits are not refundable.

4. Software Warranty

4.1 Bespoken warrants that any software forming part of the Contract Materials (**Software**) will conform in all material respects to the specifications for that software which are listed in the Statement of Work for a period of sixty (60) days after that software has been provided to the Client.

4.2 Other than as expressly set out in clause 4.1, Bespoken excludes all rights, representations, guarantees, undertakings, remedies, or other terms in relation to the Software to the extent permitted by law.

4.3 To the extent that the Software does not comply with the warranty contained in clause 4.1 Bespoken will repair, or if necessary replace the Software at its expense within thirty (30) days of receiving notice of non-compliance.

4.4 Bespoken is not liable for any failure of the Software to comply with the warranty set out in Clause 4.1 in any of the following events:

- a) the defect arises because the Client failed to follow Bespoken's oral or written instructions for the installation or use of the Software, or best industry practice;
- b) the Client or someone acting with authority of the Client alters or amends the Software without the written consent of Bespoken;
- c) the Client used the Software outside the terms of this licence or for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by Bespoken;
- d) the Client has loaded the Software on equipment other than Bespoken's specified or suitably configured equipment; or
- e) the defect arises as a result of the Client's wilful damage, negligence or abnormal working condition.

4.5 Bespoken does not warrant that use of the Software will be error free or uninterrupted.

4.6 If Bespoken elects to repair or replace Software, other than as required to do so under clause 4.3, it does so at its standard hourly rates to be notified notified to the Client.

5. Insurance

5.1 Bespoken will maintain the following insurances during the Term:

- a) Public liability - \$20,000,000;
- b) Professional indemnity - \$2,000,000.

6. Our Fees and billing

6.1 Bespoken shall provide the Services for the Fees.

6.2 The Fees are inclusive only of labour, telephone calls within Australia, travel up to 30 kilometres from the Brisbane CBD, and a reasonable, low volume of black and white printing.

6.3 The Fees do not include, for example: graphic design, travel more than 30 kilometres from the Brisbane CBD (including airfares, taxi, hire care, accommodation, meals and incidentals), printing other than a reasonable, low volume of black and white printing, marketing expenses (including for example entertainment, catering and advertising).

6.4 The Fees and all other amounts payable by the Client do not include GST unless they expressly provided otherwise. In addition to paying the Fees and all other amounts payable by the Client, the Client must pay GST to Bespoken at the same time as the Fees.

6.5 In the event the Client instructs Bespoken to provide services that are outside of the scope of the services for which Fees have been agreed between Bespoken and the Client, Bespoken may charge for the provision of such services on the basis of its usual fees and charges that apply from time to time and as agreed to by the Client and Bespoken .

7. Billing

7.1 Unless otherwise agreed by both parties in writing Bespoken's invoice must be paid the earlier of fourteen (14) days from the date of the Invoice or the date specified in the Statement of Work. Bespoken may charge interest (at the RBA cash target rate) on any overdue amounts, calculated from the date of invoice. Interest is payable on demand.

7.2 In all other circumstances Bespoken will invoice the client monthly. This means Fees may be billed as work-in progress rather than on completion of the Services. Invoices are payable within fourteen (14) days of the date of issue. Bespoken may charge interest (at the RBA cash target rate) on any overdue amounts, calculated from the date of invoice. Interest is payable on demand.

7.3 If the Client does not pay an invoice by the due date, Bespoken may suspend the provision of Services until all overdue invoices have been paid. Fees will continue to accrue during any period of suspension.

7.4 The Client must pay all costs and expenses, including legal costs on the indemnity basis, arising out of the late payment or non-payment of any tax invoice.

8. Benefit of advice

8.1 Unless otherwise specifically stated in an engagement letter or proposal, any advice or opinion relating to Bespoken's engagement is provided solely for the Client's benefit and may not be disclosed in any way, including publication on any electronic media, to any party and is not to be relied upon by any other party. Bespoken shall not be under any obligation in any circumstance to update any advice or report, oral or written for events occurring after the advice or report has been issued in final form. Bespoken does not accept liability for any reliance by a third party on any advice provided by Bespoken unless provided for in the engagement letter or proposal.

8.2 Bespoken's support does not include advice on, or assurance around, supplier selection or decisions made on the data analysis we provide. Responsibility for this rests with the Client.

8.3 In some instances, Bespoken or its related entities may receive commissions, benefits, incentives or some other financial reward from our partners, suppliers or business referees. Where required by law, the details of a benefit or reward will be disclosed by Bespoken. If the Client requires further information they should ask Bespoken.

9. Termination

9.1 Bespoken may terminate this Agreement by notice in writing to the Client if:

- a) the Client does not pay an invoice by the due date;
- b) the Client fails to provide reasonable instructions or assistance to facilitate the provision of the Services.

9.2 The Client hereby grants to Bespoken a lien over all property of the Client in Bespoken's possession or control from time to time, as security for payment of all amounts owing to Bespoken from time to time.

10. Intellectual Property

10.1 Each party acknowledges that all Pre-existing IP Rights remain the sole property of the owner. Ownership of Pre-existing IP Rights remains unchanged by this Agreement, other than as expressly set out in this Agreement.

10.2 The Client grants Bespoken a worldwide, non-exclusive, royalty-free licence to use the Pre-existing IP Rights owned by the Client for the sole purpose of providing the Services:

10.3 Subject to clause 10.4, the parties agree that as between the parties, Bespoken will own the Contract Materials, including all Intellectual Property Rights in the Contract Materials. Such ownership and Intellectual Property Rights vest in Bespoken on their creation. Bespoken grants the Client a worldwide, non-exclusive, royalty-free, perpetual licence to use such Contract Materials for the purpose(s) for which they were created.

10.4 Bespoken transfers to the Client all ownership and Intellectual Property Rights in all copywriting that form part of the Contract Materials to the extent that the Contract Materials are not software, computer programming, or programming code (copyright of which shall always vest in Bespoken), upon payment for all Contract Materials having been made by the Client.

11. Confidentiality & Privacy

11.1 Each party (**Recipient**) must keep secret and confidential and not disclose any Confidential Information relating to another party or its business (which is or has been disclosed to the Recipient by the other party, its representatives or advisers) or the terms of this Agreement, except:

- a) where the information is in the public domain as at the date of this Agreement (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Recipient);
- b) if the Recipient is required to disclose the information under any applicable law or the rules of any recognised securities exchange, provided that the Recipient has, to the extent practicable having regard to those obligations and the required timing of the disclosure, consulted with the provider of the information as to the form and content of the disclosure;
- c) where the disclosure is expressly permitted under this Agreement;
- d) if disclosure is made to its officers, employees and professional advisers to the extent necessary to enable the Recipient to properly perform its obligations under this agreement or to conduct their business generally, in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
- e) where the disclosure is required for use in legal proceedings regarding this Agreement;
- f) if the party to whom the information relates has consented in writing before the disclosure;
- g) for the purpose of providing the Services including to any contractors or employees of Bespoken.

- 11.2 The Recipient must notify the other party as soon as practicable if it becomes subject to an obligation to disclose Confidential Information.
- 11.3 The Recipient must provide the other party any assistance reasonably required by the other party in relation to any proceedings commenced against a third party for the unauthorised use, copying or disclosure of Confidential Information.
- 11.4 Each Recipient must ensure that its directors, officers, employees, agents, representatives and related bodies corporate comply in all respects with the Recipient's obligations under this clause 11.
- 11.5 The Client warrants to Bespoken that Bespoken may use any personal information provided to Bespoken, or any personal information that the Client provides Bespoken with access to, for the purpose for which that information is provided to Bespoken, or the purpose for which Bespoken is provided with access to that information.
- 11.6 Without derogating from or limiting clause 11.5, Bespoken agrees to comply with the *Privacy Act 1988* (Cth).

12. Indemnity

- 12.1 Except to the extent caused or contributed to by the negligent act or omission, wilful misconduct or breach of this agreement by Bespoken or Bespoken's personnel, the Client indemnifies Bespoken against any losses, liabilities, costs, charges or expenses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by Bespoken arising out of or in connection with:
- a) any claim made against Bespoken by a third party for actual or alleged infringement of a third party's Intellectual Property Rights or moral rights arising out of or in connection with the use by Bespoken of material provided by the Client to Bespoken;
 - b) any breach of this Agreement by the Client; or
 - c) any negligent act, omission or wilful misconduct of the Client or the Client's Personnel.

13. Non-solicitation

- 13.1 Each party agrees that they will not, during the Term and for a period of twelve (12) months thereafter, make any solicitation to employ or engage any person who is, or was during the Term, an employee of or contractor to the other party.
- 13.2 A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, will not be construed as a solicitation or inducement, and

the hiring of any such employee or contractor who freely responds thereto will not be a breach of clause 13.1.

13.3 Each element of clause 13.1 takes effect as a separate restraint which results from each combination of a capacity and each category of conduct. Each of these separate provisions operates concurrently and independently. If any separate provision is unenforceable, illegal or void that provision is severed and the other separate provisions remain in force.

14. Publicity

14.1 Bespoken will seek prior approval from Client to publicise and promote:

- a) the fact it provided Services to the client; and
- b) the Services it provided to the Client.

The Client will not reasonably withhold consent and approve in a timely manner.

15. Credit reporting

15.1 The Client agrees that Bespoken may obtain a consumer credit report containing information about the Client from a credit reporting agency for the purpose of assessing the Client's application for commercial credit. The Client agrees that if the Client does not pay the Fees by their due date, Bespoken may report this to a credit reporting agency.

16. Exclusion and limitation of liability

16.1 Subject to the other terms of this clause 16, Bespoken excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in this Agreement to the maximum extent permitted by law.

16.2 Subject to the other terms of this clause 16, Bespoken's maximum aggregate liability to the Client in any 12-month period for any loss or damage or injury arising out of or in connection with the supply of goods or services under this Agreement, including any breach by Bespoken of this Agreement however arising, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual amounts paid by the Client under this Agreement in the 12-month period preceding the matter or event giving rise to the claim.

16.3 Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law, or the exercise of a right conferred by such a provision, or any liability of Bespoken in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law to a supply of goods or services.

16.4 If Bespoken is liable to the Client in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law that cannot be excluded, Bespoken's total liability to the Client for that failure is limited to, at the option of Bespoken:

- a) in the case of services, the resupply of the services or the payment of the cost of resupply; and
- b) in the case of goods, the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.

17. Variation of this Agreement

17.1 These Standard Terms and Conditions may be varied from time to time by Bespoken. If the Client does not agree to the updated terms and conditions, they may issue a notice to Bespoken (**Request to Roll Back**) requesting that the Agreement continue using the standard terms and conditions previously in force. If Bespoken refuses the Request to Roll Back or does not provide their acceptance within 15 Business Days, the Client may terminate this Agreement.

17.2 Only representatives of Bespoken with the title "Partner" or "Director" are authorised to act on behalf of Bespoken and make any representation, statement, condition agreement.

18. Early termination

18.1 If the Client terminates the Agreement during the Term, except as permitted by this agreement or at law, the Client agrees to pay Bespoken 30% of the Fees that would be payable during the Term if the Agreement had not been terminated (**Early Termination Fee**).

18.2 The Early Termination Fee is payable on demand.

18.3 The Client acknowledges and agrees that:

- a) the amount of the Early Termination Fee has been agreed by the parties in good faith; and
- b) is a genuine pre-estimate of the loss and damage which Bespoken is likely to suffer if the Client terminates the Agreement prior to the end of the Term;

18.4 each party wishes to avoid the difficulties of proof of damages in connection with any early termination of this Agreement by the Client; and

18.5 the Early Termination Fee is reasonable and is not intended as a penalty.

18.6 This clause 18 is in addition to any other rights or remedies Bespoken may have under this Agreement or the law otherwise.

19. Waiver

19.1 No rights under this Agreement shall be deemed to be waived except where the waiver is in writing and is signed by each party. A waiver by either party shall not prejudice its rights in respect of any subsequent breach of this Agreement by the other party. Any failure by either party to enforce any clause of this Agreement or any forbearance delay or indulgence granted by either party to the other party will not be construed as a waiver of the rights under this Agreement.

20. Governing Law

20.1 This Agreement shall be governed by and construed in accordance with the laws of Queensland, Australia.

20.2 Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Queensland, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement.

21. Notice

21.1 Notices under this Agreement may be delivered by pre-paid postage or certified mail, hand, facsimile or other electronic means of transmission to the parties at the addresses included in the Statement of Work or such other address as either party may specify by notice in writing to the other from time to time. Notices shall be deemed to be given:

- a) 4 days after deposit in the mail with postage pre-paid;
- b) when delivered by hand; or
- c) if sent by facsimile or other electronic means of transmission, upon successful transmission.

22. Relationship of the parties

22.1 Bespoken is engaged by the Client as an independent contractor and nothing in this Agreement creates or constitutes a relationship of employer and employee, principal and agent, trustee and beneficiary, of partnership, or joint venture between the parties.

22.2 Bespoken provides the Services to the Client on a non-exclusive basis, and is free to provide its services to third parties during the Term.

22.3 If the Client enters into this Agreement as trustee of a trust, the Client agrees that it is liable both in its own right and in its capacity as trustee of that trust and warrants to Bespoken that:

- a) it has the power and authority pursuant to the trust to enter into this Agreement;
- b) it is entering into this Agreement for a proper purpose of the trust;
- c) it has the right to be indemnified from the trust property for each and every liability that the Client may incur under this Agreement.

23. Force Majeure

23.1 Neither party is in breach of this Agreement or is liable to the other party for any loss incurred by that other party as a direct result of a party (**Affected Party**) failing or being prevented, hindered or delayed in the performance of its obligations under this Agreement where such prevention, hindrance or delay results from events, circumstances or causes beyond the Affected Party's control (**Force Majeure Event**).

23.2 If a Force Majeure Event occurs, the Affected Party must notify the other party (**Non-affected Party**) in writing as soon as practicable of the particulars of the Force Majeure Event and the anticipated delay.

23.3 On providing the notice in clause 23.2, the Affected Party will have the time for performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented, however, the Affected Party must continue to use all reasonable endeavours to perform those obligations.

23.4 The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

23.5 If the delay due to the Force Majeure Event continues for three (3) months, the Non-affected Party may terminate this agreement immediately on providing notice to the Affected Party.

24. Assignment

24.1 A party may only assign, novate or transfer any or all of its rights or obligations under this Agreement with the prior written consent of the other party, which must not be unreasonably withheld.

25. Severability

25.1 If the whole or any part of a provision of this Agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

26. Other terms

26.1 This Agreement applies to the exclusion of any terms or conditions that the Client seeks to impose (including for example by way of the Client's standard terms and conditions referred to in any purchase order), whether prior to or after the provision of this Agreement to the Client, unless expressly agreed to by Bespoken.