



FITZROY IT PTY LTD
(ACN 150 069 604)

SERVICES AGREEMENT

THIS AGREEMENT is made on the date set out at **Item 1** of the **Schedule**.

BETWEEN

FITZROY IT PTY LTD ACN 150 069 604, a company duly incorporated in Australia and having its registered office situated at Level 1, 68 Silverdale Road, Eaglemont in the State of Victoria ("Fitzroy IT")

of the first part

and

THE CLIENT named and described in **Item 2** of the **Schedule** ("**Client**")

of the second part

THE GUARANTOR named and described in **Item 3** of the **Schedule** ("**Guarantor**")

of the third party

RECITALS

- A. Fitzroy IT is in the business of providing the Services.
- B. Client wants to receive certain Services from Fitzroy IT.
- C. Fitzroy IT agrees to provide, and Client agrees to receive, the Services on the terms and conditions of this Agreement.
- D. The Guarantor will guarantee the performance of Client.

THE PARTIES AGREE AS FOLLOWS

1. Definitions and interpretation

1.1. Definitions

Confidential Information means:

- (a) all papers, plans, reports, documents, files, client lists, sketches, models, prototypes, literature, computer disks and devices;
- (b) all papers, notes, advice, manuals and reports extracted or compiled from or based upon the documents and things referred to in paragraph (a);
- (c) all other information whatsoever relating to the Know-How which may at any time or from time to time be disclosed during the performance of this Agreement;
- (d) all Intellectual Property.

Fee means the amount of money that the Client must pay to Fitzroy IT for the Services which is set out in the Proposal.

Frustration Event means any act, event or cause (other than insufficient money) which is beyond the reasonable control of the party concerned, including (without limitation):

- (a) act of terrorism, war, civil commotion, martial law, natural disasters, fire, landslide, adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, pestilence, quarantine or contamination;
- (b) action, inaction, restraint, prohibition, direction or embargo by legislation, any governmental agency or any court, or any dispute with neighbouring owners or occupiers; and
- (c) breakdown of plant or equipment or shortage of labour, transportation, fuel, power or plant, equipment or material.

Creative Services means Fitzroy IT's creative services including graphic design, logo design, branding, packaging, print, publications, illustration, storyboarding, motion graphics, user interface design, social media design, business collateral & branded stationary.

Development Services means Fitzroy IT's development services including strategic consulting, frontend development, backend development, integrations, API integration & development, systems integration, business analysis, testing, scripting, version control, automation development, application development, technical support, maintenance & training.

Digital Services means Fitzroy IT's digital services including strategic consulting, scoping, requirements gathering, product management, customer journey mapping, persona building, information architecture, research, user interviews, usability testing, product design, project management, user experience design, customer experience design, administration, prototyping, planning, digital marketing, content updates/publishing, reporting, maintenance, management, testing & training.

Intellectual Property means all registered or unregistered trademarks, brand names, product names, patents or designs (whether registered or pending registration), copyright, goodwill and reputation associated with, or arising out of or related to the Services.

IT Services means Fitzroy IT's IT services including strategic consulting, cloud infrastructure set up & management, cloud migrations, product management, project management, administration, testing, training, management, installing new hardware, software, fault finding, networking, server installation, remote site access, email management, domain management, hosting, reporting & database design.

Know-How means certain proprietary know-how consisting of methods, techniques, formats, specifications, procedures, information, systems and knowledge of and experience owned by a party.

Personal Information means information relating to an identified or identifiable natural person.

Privacy Laws means:

- (a) the Privacy Act 1988 (Cth), including the Australian Privacy Principles contained therein;
 - (b) the Spam Act 2003 (Cth);
 - (c) the Do Not Call Register Act 2006 (Cth); and
- any other legislation, principles, industry codes and policies relating to privacy or personal information (including the collection, use, disclosure, storage or granting of access rights to personal information).

Proposal means the document prepared by Fitzroy IT detailing the provision of the Services and, if more than one, each of them.

Services means Fitzroy IT's Digital Services, IT Services, Creative Services and Development Services.

Term means from the date of this Agreement until the last day that the Services will be provided in accordance with the Proposal.

1.2. Interpretation

- (a) Words importing the singular include the plural and vice versa.
- (b) Any reference to a person includes a reference to a corporation, firm, authority, government or governmental agent.
- (c) A reference to law includes all legislation, regulations, orders, proclamations, notices or other requirements and any amendments, modifications or re-enactments thereto.
- (d) Clause headings in this Agreement are for reference purposes only.
- (e) This Agreement binds each party's executors, administrators, substitutes, successors and permitted assigns.
- (f) The Schedule to this Agreement and the Proposal including the terms and conditions in it form part of this Agreement.

2. Services and fees

- 2.1. Fitzroy IT agrees to provide to Client and Client agrees to receive from Fitzroy IT the Services identified at **Item 4** of the **Schedule** for the Term and as set out in the Proposal.
- 2.2. In consideration for the provision of the Services in accordance with clause 2.1 above, Client agrees to pay the applicable Fee to Fitzroy IT on the terms and conditions forming part of the Proposal.
- 2.3. The parties agree that the Services will be delivered in accordance with the Proposal which, if not already signed by the parties at the date of this Agreement, is to be signed by the parties within 14 days of the Proposal's issue date failing which it is taken to be approved by the parties.
- 2.4. If the parties have signed a Proposal before entering into this Agreement, the parties confirm that the Proposal requires this Agreement to be entered into within 14 days of the Proposal being signed and the parties have entered into this Agreement accordingly.
- 2.5. Client may require the delivery of further Services after the Proposal referred to at clause 2.3 above, at which time the parties agree that the further Services will be delivered in accordance with the subsequent Proposal and that this Agreement continues for and in respect of all subsequent Proposals.

3. Intellectual property

- 3.1. Any Intellectual Property owned by either party as at the date of this Agreement remains vested in that party.
- 3.2. Any Intellectual Property created during the performance of this Agreement vests in Fitzroy IT immediately upon creation.
- 3.3. Subject to clause 3.4 below, Fitzroy IT agrees to assign, and Client agrees to receive assignment of the Intellectual Property referred to at clause 3.2 above once Client has paid all Fees for the relevant Services subject to the Intellectual Property being capable of being assigned and not subject to remaining the rights of any third party.
- 3.4. If any Intellectual Property created during the performance of this Agreement is an improvement or modification to Intellectual Property owned by Fitzroy IT as at the date of this Agreement, such Intellectual Property remains vested in Fitzroy IT.

- 3.5. Client must not and agrees not to or not to enable or allow others to access, copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Services, Intellectual Property or Confidential Information.
- 3.6. Client will give information to Fitzroy IT upon which Fitzroy IT will rely in its performance of this Agreement. Client warrants that such information does not and will not contravene any intellectual property or ownership rights of any third party.

4. **Confidential information**

- 4.1. When a party to this Agreement (the **Receiving Party**) receives Confidential Information of and from the other party to this Agreement (the **Owner**), the Receiving Party covenants with the Owner that all Confidential Information provided by the Owner shall be kept strictly confidential and shall not be used by the Receiving Party for any purpose other than necessary for the Receiving Party's performance under this Agreement unless otherwise agreed in writing by the owner.
- 4.2. If the Receiving Party is a corporation the Receiving Party shall ensure that every director, secretary, other officer or employee, contractor or consultant of the Receiving Party shall observe and comply with the terms of this clause 4.
- 4.3. All Confidential Information and copies of it shall remain the property of the Owner and shall be returned by the Receiving Party to the Owner or, at the owner's request, destroyed after such reasonable time as is required by the Owner or upon determination or termination of this Agreement.
- 4.4. This clause 4 survives the expiration or termination of this Agreement.

5. **Warranties, indemnities and legal proceedings**

- 5.1. Client indemnifies Fitzroy IT against any and all loss, liability, cost or expense that Client may suffer directly or indirectly arising from any legal proceedings or threatened legal proceedings brought by any third party in respect of the Services if such proceedings have arisen as a result of any act or omission of Client.
- 5.2. Any forecasts or projections in any communication, correspondence or document made or produced by or involving Fitzroy IT in the provision of the Services are estimates only based on Fitzroy IT's experience in the provision of the Services and cannot be relied upon by Client including as misrepresentations upon which Client seeks loss or damage from Fitzroy IT.
- 5.3. Client indemnifies and holds harmless Fitzroy IT against any and all loss, liability, cost or expense that Client may suffer directly or indirectly arising from Fitzroy IT's performance under this Agreement unless such loss, liability, cost or expense arises from Fitzroy IT's negligence, recklessness or breach of this Agreement in which case Fitzroy IT's liability is limited to \$1,000,000.00.
- 5.4. This clause 5 survives the expiration or termination of this Agreement.

6. **Frustration**

- 6.1. A party that is unable (wholly or in part) to carry out any duty or obligation under this Agreement due to a Frustration Event, must:

- (a) give the other party prompt notice of the Frustration Event with full particulars of the Frustration Event, the probable extent to which that party will be unable to perform, or be delayed in performing, that duty or obligation;
 - (b) not be required to carry out that duty or obligation so far as it is affected by the Frustration Event during the continuance of the Frustration Event; and
 - (c) use all reasonable endeavours to overcome or remove the Frustration Event as quickly as possible.
- 6.2. The requirement in clause 6.1(c) will not require the party to contest the validity or enforceability of any law or regulation by legal proceedings.

7. Dispute resolution

- 7.1. A party may by notice to the other party or parties refer a dispute about any matter relating to, concerning or arising out of this Agreement to mediation by a mediator.
- (a) The notice must contain full particulars of the dispute and the details of 3 mediators appointed by the Institute of Arbitrators & Mediators Australia.
 - (b) Within 7 days of receipt of the notice, the other party or parties must nominate 1 of the mediators to be the mediator.
 - (c) The mediator must not be a present or former officer, employee or agent of a party.
 - (d) The mediation must take place in Victoria within 28 days of the notice referred to in clause 7.1(b) above.
 - (e) The parties will share the mediator's fees and expenses equally.
- 7.2. Except where clause 7.5 applies, a party must:
- (a) participate in the mediation in good faith for a minimum of 1 business day;
 - (b) terminate the mediation by notice to the other party; and then
 - (c) give the other party at least 14 days notice of any proposed court proceedings before that party may commence court proceedings.
- 7.3. The mediation will be conducted in accordance with the mediation rules of the Institute of Arbitrators & Mediators Australia (as amended from time to time). For clarity:
- (a) the mediation will be conducted on a 'without prejudice' basis;
 - (b) the mediator may not be a witness to any subsequent court proceedings; and
 - (c) none of the parties may have access to any of the mediator's notes.
- 7.4. All parties must maintain confidentiality about all matters arising in the mediation, except to the extent that the matters are already in the public domain or as required by law.
- 7.5. Clauses 7.1 – 7.4 inclusive do not apply where a party seeks injunctive or other urgent interlocutory relief.

8. Termination

- 8.1. Fitzroy IT may terminate this Agreement before the end of the Term by providing at least 30 days notice to Client.
- 8.2. If Client terminates this Agreement before the end of the Term:
- (a) Client must do so on at least 30 days notice;
 - (b) the notice must specify the time and date on and from which the Agreement is terminated, being not before 30 days;
 - (c) Client must pay a proportional amount of all outstanding Fees owing to Fitzroy IT under any outstanding Proposal equivalent to the work that has been performed under the Proposal up to the time and date of termination referred to at clause 8.2(b) above.

- 8.3. A party will be a **Defaulting Party** if, in respect of that party, any of the following occurs (each an **Event of Default**):
- (a) any amount (in whole or part) due under this agreement is unpaid for 30 days after it was due (whether or not legally or formally demanded);
 - (b) that party neglects or fails to observe or perform any of the terms or obligations (expressed or implied) in this Agreement and that default has remained un-rectified for a period of 14 days after a default notice specifying full details of the default and requesting rectification of the default has been given;
 - (c) that party ceases to carry on its enterprise;
 - (d) that party fails to make payments to its creditors in accordance with agreed terms of trade;
 - (e) a judgment is entered against that party for \$10,000 or more and is not satisfied within 7 days or any of that party's property is attached or taken in execution or under any legal process;
 - (f) that party being a company:
 - (i) enters into liquidation or administration (voluntarily or otherwise), except for the purpose of reconstruction or amalgamation;
 - (ii) has a receiver, a receiver and manager, an administrator, controller or other insolvency administrator appointed (whether appointed by the court or otherwise); or
 - (iii) is placed under official management or has an official manager appointed.
- 8.4. If an Event of Default occurs, a party not currently in default of this Agreement may immediately terminate this Agreement without further notice despite any provision in this or any other agreement to the contrary.
- 8.5. If this Agreement is terminated pursuant to an Event of Default, the Defaulting Party must pay to the other party:
- (a) all expenses the other party has incurred in respect of the Agreement up until the date of that termination; and
 - (b) all expenses the other party has or will become liable to pay in respect of performance of the Agreement prior to that termination.
- 8.6. If this Agreement is terminated for any reason:
- (a) all amounts payable under this Agreement become immediately due;
 - (b) Fitzroy IT is under no obligation to continue to provide the Services.

9. Notices

- 9.1. Any notice given pursuant to this Agreement must be signed by an officer of the sender, addressed to the recipient at the address or email address set out at **Item 5** of the **Schedule** to this Agreement or as a party may from time to time notify in writing to the other.
- 9.2. A notice will be deemed given on the same day if hand delivered; if posted, then 3 business days after date of posting; and if by email, 1 business day after it is sent.

11. Data and reporting

- 11.1 Any Personal Information gathered by either party pursuant to this Agreement (the **Gathering Party**) shall be collected, used and disclosed by the Gathering Party in accordance with all applicable laws and the Gathering Party shall comply with all applicable Privacy Laws.
- 11.2 Without limiting clause 11.1 the Gathering Party IT must:

- (a) take all reasonable steps to ensure that such Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure;
- (b) not use or disclose such Personal Information except to the extent necessary to perform its obligations under this Agreement or as expressly permitted by the other party or as required by law;
- (c) only permit its personnel to access such Personal Information on a "need to know" basis and require all such personnel to comply with this clause 11;
- (d) notify the other party as soon as reasonably possible upon becoming aware that:
 - (i) use or disclosure of such Personal Information is required or authorised by law;
 - (ii) the Gathering Party has or may have breached its obligations under this clause 11; or
 - (iii) a complaint has been made by a third party in relation to the Gathering Party's handling of such Personal Information;
- (e) comply with any reasonable directions of the other party in relation to the handling of Personal Information obtained from or on behalf of the other party;
- (f) not disclose any Personal Information to any overseas recipients without the other party's written consent and if the other party provides such consent, the Gathering Party must comply with all applicable legal and regulatory requirements for disclosing such Personal Information to overseas recipients, including taking all reasonable steps to ensure that such overseas recipients do not breach any privacy and data protection law and regulatory requirements applicable to such Personal Information; and
- (g) if the Gathering Party becomes aware or reasonably suspects that there has been any unauthorised access to, or disclosure or loss of, any Personal Information collected from or on behalf of, directly or indirectly, the other party, or handled in connection with this Agreement ("**Data Breach**"), the Gathering Party must:
 - (i) immediately notify the other party of such Data Breach; and
 - (ii) promptly cooperate with the other party in any investigations or enquiries of the Data Breach by the other party or by a regulator or law enforcement agency.

11.3 If the parties agree that the Gathering Party is to provide Personal Information to the other party, the Gathering Party warrants and represents that it has provided all notice and obtained any consent from the subjects of that information that is necessary for the other party to process such information as contemplated by this Agreement in accordance with applicable Privacy Laws.

12. Guarantee

12.1 The Guarantor jointly and severally unconditionally and irrevocably guarantees to Fitzroy IT, the Client's compliance with its obligations in connection with this Agreement, including each obligation to pay money.

12.2 The Guarantor agrees to pay or reimburse Fitzroy IT on demand for:

- (a) Fitzroy IT's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee including legal costs, charges and expenses on a full indemnity basis; and
- (b) all duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment or receipt or other transaction contemplated by it.

13. General provisions

13.1 (**Instructions and directions**) Client may authorise Fitzroy IT to take instructions and directions from a third party in the course of the performance of this Agreement but Client

agrees that Client remains responsible for the acts or omissions of the third party as if the third party is the Client under this Agreement.

- 13.2 **(Law and Jurisdiction)** This Agreement shall be governed by and is to be construed and enforced in accordance with the laws of Victoria and any claim made by one party against the other in any way arising out of this Agreement will be heard in Victoria and the parties submit to the jurisdiction of those courts.
- 13.3 **(Relationship)** Nothing in this Agreement will constitute or be deemed to constitute a partnership, joint venture or agency between the parties. No party is permitted to claim or hold itself out, engage in any conduct or make any representation the effect of which would suggest that it is the agent of the other.
- 13.4 **(Entire Agreement)** The terms of this Agreement constitute the entire terms of this Agreement and all understandings, prior representations, arrangements or commitments that are not contained in this Agreement have no effect whatsoever and do not bind the parties.
- 13.5 **(Invalidity)** If any provision of this Agreement is invalid under any law the provision will be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary, the invalid provision will be deleted from the Agreement and the remaining provisions will remain in full force and effect.
- 13.6 **(Waiver)** No waiver of any right or remedy will be effective unless in writing and shall not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.
- 13.7 **(Counterparts)** This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one instrument and Agreement provided that those counterparts have been exchanged.

EXECUTED AS AN AGREEMENT

EXECUTED by **FITZROY IT PTY LTD ACN 150 069 604** pursuant to Section 127 of the *Corporations Act 2001* in the presence of:

.....
Sole Director/Director

.....
Director

If Client is a company:

EXECUTED by **CLIENT** pursuant to Section 127 of the *Corporations Act 2001* in the presence of:

.....
Print name

.....
Signature

.....
Print name

.....
Signature

NOTE: if Client is a company and the company has more than one officeholder, two officeholders must sign for the company.

If Client is an individual:

Signed sealed and delivered by:

.....
Print name of Client

.....
Signature of Client

In the presence of:

.....
Print name of witness

.....
Signature of witness

.....
Address of witness

Guarantor:

Signed sealed and delivered by:

.....
Print name of Guarantor

.....
Signature of Guarantor

In the presence of:

.....
Print name of witness

.....
Signature of witness

.....
Address of witness

Schedule

Item 1 Date of this Agreement			
Item 2 Client	Name		
	ACN (if applicable)		
	ABN (if applicable)		
	Address		
	Phone number		
	Email address		
Item 3 Guarantor	Name		
	Address		
	Phone number		
Item 4 Services	Creative Services		
	Development Services		
	Digital Services		
	IT Services		
Item 5 Notice details	Fitzroy IT	Address	
		Email address	
	Client	Address	
		Email address	
	Guarantor	Address	
		Email address	