



in the willow

Strategic Marketing Consultant

Terms and Conditions

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Hannah Stack trading as 'In The Willow'; ABN 607 386 103

Definitions

The following words have these meanings in this Agreement unless the contrary intention appears:

- a. **“Agreement” or “Contract”** means this Marketing Service Agreement including any annexure and includes the Marketing Proposal.
- b. **“Marketing Proposal”** means the proposal between In The Willow and the Client which sets out the Services that In The Willow will provide to the Client and the Fees the Client will pay to In The Willow for those Services accepted by the Client when the Client signs this Agreement.
- c. **“Business Day”** means any day excluding Saturday, Sunday, a public holiday in Sydney, Melbourne and/or a Commonwealth public holiday.
- d. **“Client Materials”** means the materials (such as logos, branding material, existing marketing documents, marketing-related logins and credentials.) the Client provides In The Willow to enable In The Willow to provide the Services.
- e. **“Commencement Date”** means the date In The Willow accepts a signed Marketing Proposal from the Client and signs and returns a copy of the Marketing Proposal back to the Client.
- f. **“Confidential Information”** means any information that is:
 - f.1. Client Materials;
 - f.2 In The Willow's Materials;
 - f.3. Information, ideas forms, specifications, processes, statements, formulae, trade secrets, drawings and data (and copies and extracts made of or from that information and data) that is not in the public domain is considered confidential information; and
 - f.4. Confidential by nature, stipulated as confidential or any other information that would be reasonably considered to be confidential due to the value of the information.
- g. **“Fees”** means all the fees payable by the Client to In The Willow under the Marketing Proposal or under this Agreement.
- h. **“Fee Change”** means the change in the Fees that may occur on during the term of the contract
- i. **“Intellectual Property Rights”** means all present and future rights in relation to copyright, trademarks, designs, patents or other proprietary rights, or any

rights to registration of such rights, whether created, written, developed or brought into existence by In The Willow in the provision of the Services and includes In The Willow's Materials.

- j. **“Ongoing Fees”** means the fees payable by the Client to In The Willow in an amount and in the manner specified in the Marketing Proposal.
In The Willow's Materials means materials that are proprietary to In The Willow and used by In The Willow in providing the Services.
- k. **“Services”** mean the services provided by In The Willow to Client as chosen by the Client in the Marketing Proposal. This includes services chosen by the Client under the following headings in the Marketing Proposal:
 - l. **“Service Materials”** means the materials In The Willow provides to the Client which form the delivery of the Services.
- m. **“Term”** means the term of this Agreement which commences on the Commencement Date and ends on the date that this Agreement is cancelled in accordance with its terms.
- n. **“Upfront Fee”** means the one-off fee payable by the Client to In The Willow at the same time as the Client signs the Marketing Proposal. This fee is specified in the Marketing Proposal.

Interpretation

In this agreement:

- a. References to a person include an individual, firm or a body, whether incorporated or unincorporated;
- b. Clause headings are for references only and shall not form part of this Agreement nor used in the interpretation of this Agreement;
- c. If the time of doing an act or thing under this Agreement falls on a day which is not a Business Day, then the time of doing that act or thing shall be deemed to be the next Business Day;
- d. Words in the singular include the plural and vice versa in accordance with the context of which that word is used;
- e. Words importing a gender include other genders;
- f. A reference to a clause is a reference to a clause in this Agreement;
- g. A reference to any of the words 'include', 'includes' and 'including' is to be read as if followed by the words "without limitation";
- h. A reference to a statute, ordinance, code or law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of any of them;
- i. A reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns; and

- j. Each party has participated in the negotiating and drafting of this document and in the event of ambiguity or a question of interpretation arising, this Agreement is to be construed as if the Agreement was drafted jointly.

1.The Services

1.1 The Services and Term

- a. In The Willow will provide (*SEO Services and Projects | Marketing Project | Marketing Strategy, Marketing Consulting, Digital Marketing and Implementation, Marketing admin support, general admin, content writing, and design*) and not limited to the above Services:
 - i. to the best of In The Willow's ability and knowledge (subject to the content and state of the Client's Materials);
 - ii. in accordance with the Marketing Proposal;
 - iii. in compliance with applicable standards, laws and regulations.
- b. In The Willow is only obligated to deliver the Services to the Client after the Client has accepted the Marketing Proposal and paid for the Fees set out in the Marketing Proposal.
- c. In The Willow will issue a request for payment of the Fees after The Client has accepted the Marketing Proposal. No Services will be delivered and In The Willow is under no obligation to deliver any Services unless Client has paid the Fees.
- d. If Client and In The Willow agree for Client to pay the Fees by way of direct debit or other methods other than full payment (Deferred Fee), In The Willow is entitled to charge Client an administration fee on each occasion the Deferred Fee fails (e.g. where Client has insufficient funds in a bank account and payment is not made on time).
- e. In The Willow will commence the Services on the date the Client delivers the Client Materials in a form and format acceptable to In The Willow.
- f. Client must provide In The Willow with all relevant information for In The Willow to deliver the Services to Client promptly. In The Willow is not responsible for, nor is liable for any loss or delay in the provision of the Services where information requested for delivery of the Services has not been provided.
- g. The delivery of all Services involving conversations are recorded for staff training purposes and to improve the Services.
- h. During the supply of the Services, In The Willow may supply oral, draft or interim advice, reports or presentations but in such circumstances In The Willow's written advice or final written report shall take precedence. No reliance should be placed by the Client on any oral, draft or interim advice, reports or presentations.

1.2 Client obligations

- a. It is the Client's obligation to provide In The Willow with all Client Materials that the Client reasonably expects will be necessary to allow In The Willow to perform or deliver the Services within a timely manner or as requested. This includes providing accurate and complete responses to questions asked of the Client by In The Willow within a reasonable timeframe. In The Willow reserves the right to make a reasonable number of copies of the original Client Materials for In The Willow's records.
- b. Inaccurate, incomplete or late information could have a material effect on the provision of the Services and/or In The Willow's conclusions and may result in additional Fees. In The Willow will not verify the underlying accuracy or completeness of information the Client provides to In The Willow.
- c. The Client is also required to advise In The Willow on a timely basis if there are any changes to the Client's circumstances that may be relevant to the performance of the Services. Specifically, if any subsequent event results in the information you provided to In The Willow being inaccurate, incomplete or misleading, then the Client is obliged to advise In The Willow as soon as possible. In The Willow takes no responsibility to the extent that In The Willow's advice is inaccurate, incomplete or misleading because it is based on inaccurate, incomplete or misleading information being provided to In The Willow.
- d. The Client will be taken to have agreed that the performance of the Services is dependent on the performance of your obligations relating to disclosure and record keeping.
- e. The Client acknowledges and agrees In The Willow uses cloud-based solutions and document storage therefore Client Materials may be stored overseas in jurisdictions with similar privacy laws to Australia. The Client acknowledges and agrees that your marketing information may be stored in Australia and accessed from overseas.

1.3 Term

- a. This Agreement will commence on the Commencement Date and end on the date it is cancelled in accordance with its terms.
- b. In The Willow will deliver the Services in accordance with the Marketing Proposal.
- c. If In The Willow foresees being unable to deliver the Services in a manner specified in the Marketing Proposal or some other date advised by In The Willow to the Client, In The Willow will inform the Client of the delay and the reason why the delay has occurred. In The Willow is not liable for any delay in

the provision of the Services for any event that is outside the control of In The Willow.

- d. In The Willow shall deliver the Services to Client in accordance with the Marketing Proposal.

1.4 Alterations to the Services

- a. In the delivery of the Services, Client may request variations to the Services which are not covered by the Marketing Proposal inclusions or in other terms of this Agreement.
- b. If Client requires In The Willow to alter the Services, delay the Services or make any deletion or addition to any of the Services, In The Willow, must first consent to such proposed changes with the Client (including any changes to the Fees payable for the delivery of the Services).
- c. In The Willow is not obligated to vary the delivery Services in any way until it notifies the Client that it has agreed to do so and the Client has agreed to pay any variation to the Fees.
- d. Payment of the Fees associated with any variation to the Services pursuant to this clause must be made in accordance with the direction of In The Willow.
- e. Until such time as In The Willow agrees to a variation to the Services, In The Willow will continue to deliver the Services in accordance with the Marketing Proposal and the Client must continue to pay the Fees.

1.5 Warranty for the Services

- a. Because the Services are inherently complex in nature, In The Willow is unable to provide Client with a guarantee that the Services will be free from minor technical errors (the Errors).
- b. The above Services come with guarantees that cannot be excluded under the Australian Consumer Law.
- c. In the event of a failure in the Services you are entitled to have Errors with the Service rectified in a reasonable time.
- d. Any advice given to the Client by In The Willow is only an opinion based on In The Willow's knowledge of the Client's particular circumstances. The Client may not disclose in any way, including any publication on any electronic media, to any other party the outcome of any Services or advice or opinion and is not to be relied upon by any other party.

2. PAYMENT FOR SERVICES

2.1 Fees

- a. Client agrees to pay In The Willow the Fees set out in the Marketing Proposal and in the time and manner set out in the Marketing Proposal or as otherwise notified by In The Willow to Client. In The Willow reserves the right to review monthly package after 3 months of completing work to ensure Client's name is on the appropriate package.
- b. In The Willow may cancel this Agreement or suspend the provision of the Services or charge interest on any outstanding Fees, if Client fails to pay for the Services in accordance with the Marketing Proposal.
- c. Where enough of the Client Materials are not provided to In The Willow:
 - i. within 14 business days of a statutory due date, In The Willow may impose an additional surcharge of 30% in addition to the Ongoing Fees, to complete Services by the due date to ensure the Client's compliance obligations are met; or
- d. If In The Willow is required (pursuant to any order, subpoena, directive or other legal or regulatory process) to produce documents and/or information, answer enquiries, attend court or meetings or deal with any similar requests in relation to the Services for, or by, any judicial, regulatory, administrative or similar body or entity (including without limitation, any foreign regulator or similar), the Client shall reimburse us at standard billing rates for In The Willow's professional time and expenses, including reasonable legal fees, incurred in dealing with those matters.

2.2 Goods and Services Tax

- a. Unless otherwise stated, all amounts, including out-of-pocket expenses, expressed and described on or in connection with this Agreement and/or its Marketing Proposal, are listed in Australian Dollars (AUD) and are GST inclusive, being goods and services tax as defined in A New Tax System (Goods and Services Tax) Act 1999, inclusive amounts. Where the services are provided outside Australia, GST is inapplicable.

2.3 Refunds

- a. In The Willow does not provide a refund of any or all of the Fees because Client has changed their mind or if Client does not believe the Services are being delivered in accordance with this Agreement or if Client does not believe it is getting the value it expects from the Marketing Proposal.

3. INTELLECTUAL PROPERTY

3.1 Intellectual Property Rights

- a. Client recognises that all Intellectual Property is the property of In The Willow.

- b. In The Willow warrants that In The Willow owns the Intellectual Property Rights in the Intellectual Property delivered to Client in the provision of the Services.
- c. The Client will own the documents the subject of providing the Services but In The Willow owns all other documents produced by In The Willow in the delivery of the Services.
- d. Title to and all Intellectual Property Rights in, the Client Materials remains at all times with the Client.
- e. Client must maintain copies of all Client Materials provided to In The Willow. In The Willow does not make any guarantees that there will be no loss of Client Materials and In The Willow expressly excludes liability for any loss of Client Materials no matter how caused.

3.2 Use of trademarks, names and brands

Client grants a perpetual, royalty-free and worldwide licence to In The Willow to use its trademark or unregistered mark (that reflect its brand) and/or name for on In The Willow's website or other marketing material.

3.3 Licence of Intellectual Property to Client

In The Willow grants to Client a perpetual, royalty-free licence to use the Intellectual Property embodied in the Materials delivered to Client as part of the Services. The licence is limited specifically to the use of the Materials in the business of the Client as at the date of this Agreement.

4. CANCELLATION

4.1 For In The Willow

- a. In The Willow may cancel this Agreement by providing thirty days' written notice to Client of In The Willow's intent to cancel this Agreement.

4.2 For both parties

- a. Either party may cancel this Agreement for a breach by the other (Defaulting Party) of this Agreement by providing seven days' written notice of the breach to the Defaulting Party. During the fourteen-day notice period, the Defaulting Party must remedy the breach.
- b. If Client provides notice of intent to terminate this Agreement, Client may be liable to pay a Cancellation Fee. The cancellation Fee is for the purpose of covering all Services which have been provided at the time the Agreement is terminated, that are above and beyond payments made, up to the provision of the notice to terminate, and for the purpose of covering all Services completed between the provision of the notice to terminate and the cessation of this Agreement.

- c. Cancellation under this clause shall be without prejudice to any rights that may have accrued for either party before cancellation and all sums due to In The Willow shall become payable in full when cancellation takes effect.

5. LIABILITY AND WAIVERS

5.1 Liability

- a. In The Willow expressly excludes and will have no liability for any statements, representations, guarantees, conditions or warranties, including any which may be implied by statute, common law or custom or which arise from oral or written communications with the Client, which are not expressly contained in this Agreement.
- b. In The Willow's liability may be limited by a scheme approved under Professional Standards Legislation.
- c. The inherent nature of delivering services via the internet is that it cannot be controlled. Information delivered between In The Willow and Client could be intercepted or made inaccurate. As In The Willow has no control over these matters, In The Willow is not liable to Client for any loss Client suffers because of these sorts of events.
- d. The total liability of In The Willow and its personnel to Client for damage, loss or reliance shall be limited to the Fees paid (if any) for Services paid by Client.
- e. Client expressly understands and agrees that In The Willow and its personnel shall not be liable to Client for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by Client, however caused and under any theory of liability; including, but not limited to: consequential loss, any loss of profit (incurred directly or indirectly), any loss of goodwill or business reputation, death or personal injury and any other intangible loss.

5.2 Waivers

- a. A waiver of any right, power or remedy under this Agreement must be in writing signed by In The Willow. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- b. The fact that In The Willow fails to do or delays in doing, something In The Willow is entitled to do under this agreement does not amount to a waiver.

5.3 Indemnity

- a. It is possible that a person may make a claim against In The Willow in connection with the Services because of a breach of this Agreement by the Client. If this happens, In The Willow may suffer or incur liabilities, claims, costs, losses, fees and expenses, including legal costs (Losses). Client agrees to indemnify In The Willow against any such Losses, except to the extent a Loss is solely the result of In The Willow's own negligence or a breach of this Agreement by In The Willow.
- b. Examples of where the indemnity will apply is where the Losses are a consequence of any specific instruction or request Client makes, inaccurate information you provide to In The Willow, or any breach by Client of the terms of this Agreement.

6. GENERAL MATTERS

6.1 Communication between Parties

- a. The parties agree on the forms of communication set out in the Marketing Proposal.
- b. If the Client asks In The Willow to transmit any document to the Client electronically, the Client agrees to release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document after transmission, for any delay or non-delivery of any document and for any damage caused to the Client's system or any files by the transmission (including by any computer virus).

6.2 Privacy

- a. In The Willow may collect Personal Information about the Client or the Client's representatives and others when the Services are provided to the Client. If In The Willow does, you agree to work with In The Willow to ensure that both In The Willow and the Client meet the obligations that each party may have under the Privacy Act 1988 (Cth) (as amended) (Privacy Act). The obligations may include notifying the relevant person to whom the personal information relates who In The Willow is and how In The Willow proposes to use their personal information. Where the Client has collected personal information, the Client confirms that it has collected the personal information in accordance with the Privacy Act, that the Client is entitled to provide this personal information to In The Willow and that In The Willow may use and disclose the personal information for the purpose/s In The Willow provides the Services to the Client. In The Willow will handle personal information in accordance with the Privacy Act.

6.3 Disclosure and Use of Confidential Information

- a. All obligations of confidence set out in this Agreement continue in full force and effect after the cancellation of this Agreement for all Confidential Information, including the customer and/or its agents, employees or servants, without the prior consent of the other Party.
- b. Each party must keep confidential the terms of this Agreement.
- c. This Agreement prohibits the disclosure of Confidential Information by either party with exception to the following circumstances:
 - i. the disclosure is to a professional adviser for it to provide advice in relation to matters arising under or in connection with this Agreement;
 - ii. the disclosure is required by applicable law or regulation;
 - iii. a party is required to disclose it to fulfill an obligation under this Agreement; or
 - iv. if the confidential information is already in the public domain at no fault of In The Willow.

6.4 No partnership or agency

- a. Nothing contained or implied in this Agreement will create or constitute, or be deemed to create or constitute, a partnership between the parties. A party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other parties to any obligation.

6.5 Governing Law & Jurisdiction

- a. This Agreement is governed by the laws of Australia.
- b. In the event of any dispute arising out of or in relation to the Services, Client agrees that the exclusive venue for resolving any dispute shall be in the courts of Australia, situated in Victoria, Australia.

6.6 Dispute Resolution

- a. If there is a dispute relating to the Services or the Contract, the parties will submit to mediation before having recourse to any other dispute resolution process. Written notice of the dispute must be given to the other party for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree on the identity or terms of engagement of a mediator, then as selected by the Australian Commercial Disputes Centre ("ACDC"). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ACDC Mediation Guidelines to the extent that they do not conflict with the provision

of this clause. If the dispute is not resolved within 60 days after notice of the dispute or such further period agreed between In The Willow and the Client, then the mediation will terminate.

6.7 Severance

- a. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

6.8 Force majeure

- a. If the performance of this Agreement by a party, is prevented or restricted by reason of fire, storm, flood, earthquake, war, labour dispute, transportation embargo, law, order, or directive of any government in matters relating to this Agreement, or any other act or condition beyond the reasonable control of that party, then the party is excused from such performance to the extent of the same, but will use their best efforts to avoid or remove the causes of non-performance and to cure and complete performance with the utmost dispatch.

6.9 Assignment and outsourcing

- a. Client agrees for In The Willow to delegate, assign, novate and/or subcontract any obligations pursuant to this Agreement to any person without Client's consent.
- b. Some of In The Willow's functionality and operations may occur interstate or overseas. Where the outsourced service requires the disclosure of the Client's personal information or Client's Materials, we will take all reasonable steps to ensure that such information is secure and is treated in accordance with the Australian Privacy Principles.

6.10 Entire Agreement and Modifications

- a. Both Client and In The Willow confirm and acknowledge that:
 - i. this Agreement shall constitute the entire agreement between In The Willow and Client and shall supersede and override all previous communications, either oral or written, between the parties;
 - ii. no agreement or understanding varying or extending this Agreement shall be binding upon any party unless arising out of the specific provisions of



this Agreement; and

iii. if for whatever reason there is inconsistency between this Agreement and any other agreement, this Agreement shall prevail.