

SERVICES AGREEMENT

SUPPLY OF SERVICES – DIYAPPDESIGNER (INT.) PTY. LTD.

BACKGROUND

This explanation of the Services Agreement (the 'Agreement'), referred to in this Background, is a part of the Agreement and should be read in conjunction with the whole of the Agreement.

WHEREAS, DIYAPPDESIGNER (INT.) PTY. LTD. (ACN 626 185 206), (the "+Service Provider"), is a company offering a +Clickwrap product and design service as a digital marketing tool (the "DIYAPPDESIGNER").

FURTHERMORE, the product and service offered to another in this Agreement is an intuitive process relying on design functions by the +End User.

The Agreement obligates all signatories to perform functions as explained through the Agreement in a timely manner to produce a digital marketing application.

PART A – SERVICES AGREEMENT

1. Our Understanding

1.1 This document will be referred to as the Agreement, with Terms and Conditions for the Supply of Services by DIYAPPDESIGNER™, (the +Service Provider) for the Customer (the +End User).

1.2 This Agreement is an Electronic Agreement expressly recognised by common law and the Electronic Transactions (Victoria) Act 2000 (Vic) s13, s13A and s13B.

1.3 The +End User, will, by acknowledging this Agreement, confirm that the +End User has carefully read the Agreement, and is to communicate that acceptance to the +Service Provider.

1.4 The +End User, will, further acknowledge they understand the +Supply of Services (the Services) as declared in **Part D - Obligations**.

1.5 The +End User agrees that they have read, understand and agree to the Agreement, by digitally acknowledging this Agreement, in the appropriate places clearly identified by the +Service Provider, and easily identifiable by the +End User. The digital acknowledgement is by way of '+Clickwrap', that is, by clicking on the appropriate acknowledgements tick-box

1.6 The +End User agrees that they do not want to make any changes to this Agreement before acknowledging it.

1.7 The +End User will not have to acknowledge this Agreement again, unless there is an amendment. If a change does occur, the Service Provide will notify the +End User as to any changes in an email within a reasonable time.

1.8 The +Service Provider uses a proprietary application to develop the product. By using the Application, the +End User agrees to be bound by this Agreement and the 'Scope of Work' using the DIYAPPDESIGNER™. This process is a *simple-to-use* automated designer application to guide the +End User to design the DIYAPPDESIGNER.

1.9 **THEREFORE**, for good and valuable consideration, including any rights and licenses granted in this Agreement, and with the intention of being legally bound, the Service Provider and the +End User further agree that:

1.9.1 the +Service Provider undertakes, as part of its promise and of this Agreement, to deliver application to the +End User to meet the requirements of the approved +Scope of Work;

1.9.2 the +End User accepts the offer of the +Service Provider to provide such services in relation to the +End User's needs, and the +Service Provider is willing to provide such services accordingly, on the terms of this Agreement and as identified in the Scope of Work produced by the +End User;

1.9.3 the +End User and +Service Provider agree to perform their obligations to this Agreement, in particular, those promised in **PART D – OBLIGATIONS**.

PART B – LEGALLY BINDING AGREEMENT

3. The "Agreement"

3.1 This Agreement when digitally acknowledged by the +End User is legally binding.

3.2 If and when the +Service Provider agrees to the Scope of Work produced by the +End User, the +Service Provider must acknowledge the Scope of Work within the Prescribed Period (n1) of ten (10) working days from receiving the Scope of Work from the +End User.

3.3 If the +Service Provider does not agree to acknowledge the Scope of Work within the +Prescribed Period (n1), for whatever reason, the +Service Provider will release the +End User from this Agreement. No aspect of this Agreement, whether expressed or implied, will be legally binding if the +End User does not provide a Scope of Work, or if the +End User does supply a Scope of Work, and the +Service Provider does not acknowledge the Scope of Work within the prescribed period (n1).

3.4 The +End User will be formally released from this Agreement by the +Service Provider, in writing within the Prescribed Period (n2).

3.5 This Agreement must be governed by Australian Law, either Federal or State, in the Australian Courts.

PART C – DEFINITIONS AND CLARIFICATIONS

4. Definitions

4.1 All definitions are marked and identified with an + (plus). In this Agreement, unless the context otherwise is clearly stated, the following expressions have the following meanings:

ACL means Australian Consumers Law.

Australian Consumers Law is the national law for fair-trading and consumer protection. The ACL is administered and enforced jointly by the Australian Competition and Consumer Commission (ACCC) and the State and Territory consumer protection agencies.

+Clickwrap is the +End User assenting to (or acknowledging) the terms and conditions displayed on the screen in the Services Agreement, by clicking on a virtual button and acknowledging the Agreement.

+Collateral Contracts is a contract the consideration for which is the making of another contract by the +End User not including the +Service Provider.

Confidential Information means all information of a confidential, proprietary, or secret nature, which is or may be applicable to or related in any way to:

(i) the present or future business of either Party giving information to the other ("the Disclosing Party");

SERVICES AGREEMENT

SUPPLY OF SERVICES – DIYAPPDESIGNER (INT.) PTY. LTD.

- (ii) the research and development efforts of the Disclosing Party;
- (iii) the registration of patents, trademarks, or inventions of the Disclosing Party;
- (iv) the business plans of the Disclosing Party; or
- (iv) the skills and compensation of any employees of the Disclosing Party (other than information about Employee that Employee chooses to disclose).

Confidential Information includes, for example and without limitation, trade secrets (as defined in the Trade Secrets Act), processes, methodologies, formulas, data, research, insights, ideas, concepts, inventions, technical and financial know-how, improvements, techniques, marketing plans and strategies, and confidential information concerning employees, vendors, Customers, and carriers; AND

Confidential Information does not include information which:

- (A) is or becomes generally available to the public (other than because of the disclosure) on a non-confidential basis, including from a third party, provided that such third party is not in breach of an obligation of confidentiality with respect to such information; or
- (B) is obtained by the receiving party from a third party, provided that such third party is not in breach of an obligation of confidentiality with respect to such information.

Customer to the +Service Provider means the +End User.

1. **DIYAPPDESIGNER™** is a proprietary application developed by the +Service Provider to enable the +End User the ability to create and design specific mobile applications. The design process is simple and easy to use, allowing you to build and to start viewing your own APP live within minutes. The **DIYAPPDESIGNER™** is a published mobile application on Google Play® or Apple iTunes®, designed and developed within the **DIYAPPDESIGNER™** platform. **DIYAPPDESIGNER™** is the term used for the commercial application and means to "Do It Yourself Application Designer".

Electronic Commerce means the Model Law on Electronic Commerce as determined by the UNCITRAL in 1996.

Electronic Signature means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the acknowledgement in relation to the data message and to indicate the signatory's approval of the information contained in the data message. In regard to this Agreement, it can be associated with the click (or tick) in a box as long as the time and date of the acknowledgement to the Agreement is saved and is available for retrieval for up to seven (7) years.

+End User means the entity acknowledging this Agreement using the Electronic acknowledgement, and can also be referred to as the Customer or Client.

Intellectual Property Rights means

- (a) all rights in any patents, trademarks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trademarks and service marks copyrights, database rights, know-how, rights in designs and inventions;
- (b) This includes the unregistered trademark of **DIYAPPDESIGNER** wholly owned by **DIAPPDESIGNER (INT.) PTY. LTD.**, that is, the +Service Provider
- (c) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);
- (d) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist.

MLEC is the Model Law on Commerce as determined by the UNCITRAL.

MLES is the Model Law on Electronic Signatures as determined by Article 7 and adopted by the General Assembly in 2001.

Mobile APP means the development application in a format created by the +Service Provider and downloaded by the +End User.

National Privacy Principles is (the NPPs) contained in schedule 3 of the Privacy Act 1988, and regulates how large businesses, all health +Service Providers and some small businesses and non-government organisations handle personal information.

The +Service Provider identifies with the NPPs at <https://www.oaic.gov.au/privacy-law/privacy-archive/privacy-resources-archive/privacy-fact-sheet-2-national-privacy-principles>.

NPPs means +National Privacy Principles.

+Service Provider is the Australian Registered Company **DIYAPPDESIGNER (INT.) PTY. LTD.** with ACN 626 185 206.

Supply of Services means the supply of the services as determined by this Agreement and the Scope of Work submitted by the +End User.

UNCITRAL is the United Nations Commission on International Trade Law.

4. Interpretations

- 4.1 "Acknowledgment" of this Agreement is when the +End User digitally expresses acknowledgement by placing a tick (by clicking) in the box on this Agreement.
- 4.2 Unless explicitly stated otherwise, all monetary figures communicated in this Agreement or in other subsequent notices and communications about this Agreement, will be treated as being in American Dollars ("USD")/Australian Dollars ("AUD")
- 4.3 Unless the context otherwise requires, each reference in this Agreement to:
 - 4.3.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 4.3.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 4.3.3 a clause or paragraph is a reference to a clause of this Agreement; and
 - 4.3.4 a "Party" or "Parties" refer to the parties to this Agreement.
- 4.4 The headings used in this Agreement are for convenience only and will have no effect upon the interpretation of this Agreement.
- 4.5 References to either gender will include the other gender.
- 4.6 Words imparting the singular number will include the plural and vice versa.
- 4.7 Every reference to +Clickwrap is a contract formation (the "Agreement") relying on the common law and the laws of Australia and other codes of practice.

SERVICES AGREEMENT

SUPPLY OF SERVICES – DIYAPPDESIGNER (INT.) PTY. LTD.

4.8 Every reference to the +Scope of Work is a reference to the automated process of DIYAPPDESIGNER™ as defined in the Part C - Definitions of this Agreement.

4.9 The +Service Provider understands and operates within the legislation of the *Competition and Consumers Act 2010* (Cth) Schedule 2 – the Australian Consumers Law, Available at http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/sch2.html

PART D - OBLIGATIONS

5. The Supplier of services and Obligations

5.1 The +Service Provider must perform all the services required of it in a professional, competent and timely manner and with due care, skill and diligence and at the level of an experienced and competent professional providing services of a similar nature to those that the +Service Provider is required to provide.

5.2 The +Service Provider represents that it has all the necessary capacity and qualifications to supply the service.

5.3 The +Service Provider warrants that no act or omission by it does or will infringe the intellectual property rights of any third party or is or will be illegal, offensive, defamatory or prejudicial to the good name and reputation of the +End User.

5.4 Conceptual and comprehensive instructions about the DIYAPPDESIGNER™ is available for viewing at <https://diyappdesigner.com>.

5.5 Apart from the provisions identified in this Agreement, further details of the +Service Providers privacy policies are available at <https://diyappdesigner.com/mobile-privacy-policy>.

5.6 The +Service Provider will provide all online, video tutorials, email support and chat support and in its best endeavours to guide the +End User.

5.7 The +Service Provider will respond within forty-eight (48) hours to any major technical issue, from the reception of a technical issue email from the +End User.

5.8 Live activation and management of the +End Users' DIYAPPDESIGNER™ will be available on the Suppliers Google Play® and Apple iTunes® Store in the DIYAPPDESIGNER™ account.

5.9 When the +End User and +Service Provider have completed the DIYAPPDESIGNER™ design, and the design has been approved by the +Service Provider, the +End User will receive a Starter Kit from the +Service Provider with the +End Users' content, links and access to the +End Users' Content Management System.

5.10 The performance for services by the +Service Provider to the +End User will be rendered up to twenty-one (21) working days. These days commence from the final approval date determined by the +Service Provider, based on the performance of the +End User providing and approving relevant application data, and the +Service Provider acknowledging the Scope of Work.

5.11 The +Service Provider may at any time without notifying the +End User make any changes to the +Supply of Service, which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the +Supply of Service. However, the +Service Provider agrees to send an email to the +End User notifying the +End User as to the changes.

6. The +End User Obligations

6.1 The +End User hereby engages the +Service Provider to provide the services to the +End User in accordance with this Agreement and with the Scope of Work, and the +End User accepts these terms and conditions.

6.2 The +End User will formally communicate with the +Service Provider using the email addressed to support@diyappdesigner.com. This supports either party with a formalised case management schedule for reference.

6.3 The +End User warrants that no act or omission by it does or will infringe the intellectual property rights of any third party, or is or will be illegal, offensive or defamatory or prejudicial to the good name and reputation of the +Service Provider or a third party.

6.4 The +Service Provider has the right to suspend or deactivate any +End User because of offensive material. The +Service Provider must deactivate the application and immediately advise the +End User in writing of the time and date, and the reasons for suspending or deactivating the site.

6.5 The +End User must perform its obligations as undertaken by this Agreement.

6.6 The +End User should read the general instructions about the DIYAPPDESIGNER™ available for viewing at <https://diyappdesigner.com>. If the +End User does not understand any of these instructions, it is essential the +End User send an email immediately to support@diyappdesigner.com seeking clarification from the +Service Provider.

6.7 The +End User may order additional services or ask for amendments or alterations to the services already agreed to with the +Service Provider in the Scope of Work. In such case, the amended, altered, reduced or extended Supply of Services must be expressly specified in an additional or amended Scope of Work, and the impact of the +End User orders and instructions on the fees, costs and expenses must be expressly agreed to by and between the +Service Provider and the +End User before the services are performed.

6.8 The +End User shall view the online, video tutorials and use email support and chat support to understand the DIYAPPDESIGNER™ procedure. If the +End User does not understand any of these instructions, an email must be sent immediately to the +Service Provider at support@diyappdesigner.com seeking clarification.

6.9 It is essential the +End User endeavours to familiarise themselves with the Live activation and management of the +End User DIYAPPDESIGNER™ on the +Service Providers Google Play® and Apple iTunes® store developers account. The +End User promises to read the support notes available at https://play.google.com/about/developer-content-policy/#!modal_active=none (for Google Play®) and <https://developer.apple.com/app-store/review/guidelines> (for Apple iTunes®).

6.10 It is essential the +End User provides the +Service Provider with all relevant information required to perform, and any further information as requested by the +Service Provider.

6.11 The +End User must complete all the fields in the +Starter Kit at <https://diyappdesigner.com> or as requested by the +Service Provider.

6.12 It is essential the +End User pay a one-off Membership Fee (+GST) and a Monthly Subscription Fee, which is clearly provided at Schedule A (Pricing).

6.13 The +End User must provide minimum image dimensions as required by the +Service Provider.

SERVICES AGREEMENT

SUPPLY OF SERVICES – DIYAPDESIGNER (INT.) PTY. LTD.

PART E – INVESTMENT AND RETURNS

7. Payment of fees

7.1 The +End User agrees that time is of the essence and must pay the Fees in the manner specified by the +Service Provider in Schedule A (Pricing). Unless, otherwise agreed to in advance, and in writing, the Fee is the consideration payable for the Supply of Services.

7.2 The +End User agrees that time is of the essence and must pay the fees and expenses agreed to with the +Service Provider, including any additional sums which are agreed to between the +Service Provider and the +End User for the provision of the service or which, in the +Service Providers sole discretion, are required due to the +End Users additional or amended instructions or lack of instructions, or the inaccuracy or inappropriateness of any material provided by the +End User or any other cause attributed by the +End User.

7.3 The +Service Provider will be entitled to invoice the +End User before the first (1st) day of each and every month in which the services are provided, or at other times agreed to by the +End User.

7.4 The +Service Providers standard charges, and any additional sums payable, must be paid by the +End User (together with any applicable taxes) on the first day of each and every month.

8. Late payment and interest

8.1 If payment is not made by the fifteenth day of every month (the “extended due date”), the +Service Provider will be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the legal rate as determined by legislation.

PART F - WARRANTIES

9. Warranties and liability

9.1 The +Service Provider warrants to the +End User that the Supply of Service will be provided by the +Service Provider in accordance with the application design submitted by the +End User and agreed to in the Scope of Work.

9.2 The +Service Provider will have no liability to the +End User for any loss, damage, costs, expenses or other claims for compensation arising from any material or instructions supplied by the +End User which are incomplete, incorrect, inaccurate, illegible, or illegal, or out of sequence or in the wrong form, or arising from the late arrival or non-arrival, or any other fault of the +End User, provided the +Service Provider has duly notified the +End User within ten (10) working days of receipt (or non-receipt) of such material or instructions.

9.3 Apart from any warranties implied and or expressed by the Australian Consumers Law or other Australian legislation, all other warranties expressed or implied, and whether arising by statute or otherwise, are hereby excluded.

PART G - INDEMNIFICATION

10. Indemnity

10.1 The +End User and its directors, officers, employees, agents and shareholders will fully indemnify, hold harmless and defend (collectively ‘indemnify’ and ‘indemnification’) the +Service Provider and its directors, officers, employees, agents and shareholders (collectively, the ‘Indemnified Parties’) from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable lawyer’s fees and costs), involving a third party claim, which arises out of or relates to (1) any breach of any representation or warranty by the +End User (2) any breach or violation of any covenant or other obligation or duty of the +End User in each case whether or not it is caused by the negligence of the +End User or the +Service Provider, or any other Indemnified Party, or any +Collateral Contracts agreed by the +End User (and not the +Service Provider), and whether or not the relevant Claim has merit.

PART H - TERMINATION

11. Term, termination and consequences of termination

11.1 This Agreement will take effect on the date of its acknowledgement by the +End User.

11.2 The +Service Provider may forthwith terminate this Agreement by giving written notice to the +End User, if the +End User fails to pay any sum payable by it under this Agreement within fourteen (14) working days of the due date for payment, that is, the fifteenth day of each month (8.1).

11.3 Either party may (without limiting any other remedy) at any time terminate the contract by giving written notice to the other if the other commits any breach of this contract and (if capable of remedy) fails to remedy the breach within ten (10) working days after being required by written notice to do so, or if the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed. For the purposes of the present sub-clause, a breach of any provision of this Agreement shall be considered capable of remedy if the party in breach can comply with the provision in question to all respects other than as to the time of performance.

11.4 The termination of this Agreement for any reason shall not affect:

11.4.1 either party’s accrued rights, remedies or liabilities including payments due at the effective date of termination; or

11.4.2 the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after termination.

PART I – ALTERNATIVE DISPUTE RESOLUTIONS

10. e-ADR Procedures

10.1 Any dispute or controversy arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, will be finally settled under the rules of e-ADR by the <http://onlinedisputeresolution.com>. The place of arbitration will be online using Skype. The language of the e-ADR shall be in English.

SERVICES AGREEMENT

SUPPLY OF SERVICES – DIYAPDESIGNER (INT.) PTY. LTD.

PART J – ELECTONIC COMMERCE AND SIGNATURES

11. Model Law on Electronic Commerce

11.1 Sphere of Application

This Agreement applies to any kind of information in the form of a data message used in the context of commercial activities for the Supply of Services.

11.2 Legal recognition of data messages

The information will not be denied legal effect, validity or enforcement solely on the grounds that it is in the form of a data message.

11.3 Writing

Where the information is in writing and is accessible so as to be used for subsequent reference.

11.4 Signature

The signature of a person is met in relation to information by the method used to identify that person and to indicate that person's approval of the information contained in the Agreement.

11.5 Formation and validity of contracts

In the context of this Agreement, the Offer and Acceptance is expressed by s7 Model Law on Electronic Commerce.

12. Model Law on Electronic Signatures

12.1 Compliance with a requirement for a signature

The requirements of a persons' signature, by law, is met if an electronic acknowledgement is used and is appropriate for the purposes of this Agreement.

PART K - MISCELLANEOUS

13. Force majeure – excuse for non-performance

13.1 "Force majeure" means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract or to have avoided or overcome it or its consequences.

13.2 A party affected by force majeure shall not be deemed to be in breach of this contract, or otherwise be liable to the other, because of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any force majeure of which it has notified the other party.

13.3 If any force majeure occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.

14. No partnership or agency

14.1 Nothing in this Agreement will (i) be deemed to constitute a partnership in law between the Parties, (ii) constitute either party the agent of the other for any purpose or (iii) entitle either party to commit or bind the other (or any member of its respective group) in any manner.

15. Assignment and subcontracting

15.1 This Agreement is personal to the Parties and neither party will without the prior written approval of the other:

15.1.1 assign, mortgage, charge or otherwise transfer or deal in, or create any trust over, any of its rights; or

15.1.2 subcontract or otherwise delegate the whole or any part of its rights or obligations under this Agreement to another person.

15.1.3 this Agreement contains the whole agreement between the parties and any representations or warranty made by either party prior to entering this agreement will have no force or effect.

16. Notices

16.1 Any notice under this Agreement must be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party in a manner that ensures receipt of the notice can be proved.

17. Entire agreement

17.1 This Agreement sets out the entire agreement between the +Service Provider and +End User. Neither party has entered this Agreement in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this Agreement. This will not exclude any liability for fraudulent, negligent or innocent misrepresentation.

18. Applicable laws

18.1 Australian laws will be applied to the Agreement.