



# UNICORN FACTORY

## MASTER SERVICES AGREEMENT

### 1. Overview

- 1.1. This Agreement is made between Finlayconn Ventures Limited (NZ company 5969335) (“**The Contractor**”, “**We**”, “**our**” or “**Us**”) and (“**The Company**”, “**You**”, “**your**” in the **Services Schedule**). You or We may also be referred to as “**Party**” or together as the “**Parties**” as outlined in the **Services Schedule**.
- 1.2. You engage Us, and We agree to provide the services and deliverables outlined in our **Services Schedule**. (“**Services and Deliverables**” or the “**project**”) on the terms of this Agreement. By signing our Services Schedule you are bound by the terms of this Agreement.

### 2. Scope

- 2.1. You may notify Us that you would like to change the scope of the Services and Deliverables by filling out a form called a “**Change Order**”. The Change Order will explain what You want Us to do differently. If the new Services are going to require a bit more work for Us, then both Parties will have to agree in writing to an updated cost for the Services, agreement not to be unreasonably withheld.

### 3. Working Relationship

- 3.1. We are an independent contractor of You. No other relationship (e.g. employment, joint venture, agency, trust or partnership) exists under the Agreement.
- 3.2. We are not required to complete the work from Your premises but may at Our discretion work from Your offices to facilitate a more detailed level of engagement. You agree that We can bring up to three (3) persons from the Contractor at any time into Your offices for such matters during core business hours.
- 3.3. We are not responsible for any costs of hosting your digital products.
- 3.4. We are not responsible for the costs of any third party tools that you may wish us to use to deliver the project. These will be agreed in writing with you prior to being engaged. If the third party requires payment you will be required to pay that directly and in a timely fashion.
- 3.5. We will provide our own computer equipment to deliver the project but should the project require equipment to operate that digital content ongoing that will be your responsibility. E.g. a projector, or LCD display screen.
- 3.6. We will program, debug, and update HTML, CSS and JavaScript and other coding elements. Any errors that are identified after the project has been



signed off by the designated authority at the Company will be considered additional work and billable at our agreed rates.

- 3.7. Both Parties will perform browser testing on all platforms. Any errors that are identified after the project has been signed off by the designated authority at the Company will be considered additional work and billable at our agreed rates.
- 3.8. Both Parties will provide different (responsive) device browsers testing (desktop vs tablet vs mobile). Any errors that are identified after the project has been signed off by the designated authority at the Company will be considered additional work and billable at our agreed rates.
- 3.9. Both Parties are responsible for changes and revisions review but the final review remains the responsibility of the Company. Any errors that are identified after the project has been signed off by the designated authority at the Company will be considered additional work and billable at our agreed rates.

#### **4. Ownership and licenses**

- 4.1. Subject to clause 4.4, the Company owns all intellectual property rights in the Deliverables, i.e. completed websites, photos, audiences, ad sets that we provide to you. The ownership of the Deliverables transfers to the Company once the Fees are paid in full.
- 4.2. In the event that We want to use the Deliverables (i.e. on our website or for public relations), we need to get permission from The Company and such permission will not be unreasonably withheld.
- 4.3. If you require copies of Deliverables after the expiry of this Agreement, We will provide them within reason (i.e. if it's getting a copy of files etc.). If what you request requires significant time investment it then you will be charged accordingly based on our hourly rates.
- 4.4. We will turn over the Deliverables upon payment in full being received, including any necessary files, and You will be responsible for their safekeeping. We are not required to keep copies. You warrant that You have the legal right to provide to us and for us to use for the purposes of the project all elements of text, photographs, and anything else that You provide to Us and that You will not hold Us responsible for any third-party claims.
- 4.5. Despite clause 4.1, We will own any and all intellectual property rights in the following Intellectual Property (including any modification, enhancement or derivative work of that Intellectual Property), regardless of its use in the Services or Deliverables:
  - 4.5.1. Our Intellectual Property that existed prior to the date of this Agreement; and



- 4.5.2. Intellectual Property that was developed independently of this Agreement.
- 4.6. If new Intellectual Property described in clause 4.1 incorporates our Intellectual Property or any third party material, we grant or must obtain for you an irrevocable, perpetual, non-transferable and fully paid licence to use that Intellectual Property or third-party material within New Zealand for your internal business purposes. We guarantee that We have the legal right to all elements related to the Services We are providing and will not hold You responsible for any third-party claims.
- 4.7. In this Agreement “**intellectual property rights**” includes copyright and all worldwide rights conferred under the statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from the intellectual activity. “**Intellectual Property**” has a corresponding meaning.

## 5. Competitive Engagement

- 5.1. We try our best to not do work for competitor clients however we only offer exclusivity on such if this Agreement commits you to Services of 30 hours or greater per week.
- 5.2. You grant Us the right to share general industry insights with other customers that work in the same sector as You.

## 6. Term and Termination

- 6.1. Term: Unless terminated under this clause 6, the Agreement starts on the date you sign our proposal to which these terms are attached and terminates when both Parties have performed all of their obligations under the Agreement and all Fees have been paid.
- 6.2. Should You wish to terminate this Agreement:
- 6.2.1. If the term of this Agreement as selected by you in our Proposal exceeds one month, then You will pay the outstanding Fees remaining for the month in which you terminate this Agreement, and ½ of the following month; or
- 6.2.2. If this Agreement is for weekly services then you are required to give 7 days’ notice of your intention to terminate the Agreement.
- 6.3. Either party may, by notice to the other party, immediately terminate the Agreement if the other party breaches any material provision of the Agreement and the breach is not:
- 6.3.1. remedied within 10 days of the receipt of the notice from the first party requiring it to remedy the breach; or



- 6.3.2. capable of being remedied.
- 6.4. Clauses which, by their nature, are intended to survive termination or expiry of the Agreement continues in force.

## 7. Limitation of liability

- 7.1. Maximum liability: The maximum aggregate liability of either Party under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed an amount equal to the Fees paid by the Company under the Agreement for Services properly provided in accordance with the Agreement.
- 7.2. Unrecoverable loss: Except for the Company's liability to pay the Fees, neither Party is liable to the other under or in connection with the Agreement for any:
  - 7.2.1. loss of profit, revenue, savings, business and/or goodwill; or
  - 7.2.2. consequential, indirect, incidental or special damage or loss of any kind.
- 7.3. Company's Unlimited liability: Clauses 7.1 and 7.2 do not apply to limit either party's liability for:
  - 7.3.1. breach of clause 10 (confidentiality);
  - 7.3.2. personal injury or death; or
  - 7.3.3. fraud or willful misconduct.

## 8. Assignment of work

- 8.1. The Parties may not assign the responsibilities that they have under this Agreement to anyone else unless both Parties agree to the assignment in writing, such agreement not to be unreasonably withheld.

## 9. Fees

- 9.1. The Company must pay the fees detailed in our proposal ("**Fees**") for the Services and Deliverables we will provide You. The fees exclude GST, which the Company must pay on taxable supplies under the Agreement.
- 9.2. We will invoice The Company weekly unless otherwise agreed.
- 9.3. The Company must pay the Fees within 14 Business Days following the invoice date unless otherwise agreed ("**Due Date**"). A "**Business Day**" means Monday to Friday excluding public holidays in New Zealand. If the Due Date is not a Business Day the Company must pay the Fees on the first Business Day that occurs prior to the Due Date.
- 9.4. Late payment of the Fees will incur a 5% per month late payment fee without exception.
- 9.5. Any remittance costs are the responsibility of the Company to cover.



- 9.6. In the event that payment not received within 5 Business Days of the invoice due date the Contractor may, without prejudice to its other rights and remedies, halt all works until full payment of outstanding Fees is made.

## 10. Confidentiality

- 10.1. “**Confidential Information**”: is information that is not in the public domain and that is developed, created, or acquired by a party in the provision of the Services or otherwise in connection with this Agreement, including the terms of the Agreement and business and technical information about the Company and/or its customers.
- 10.2. Each party will keep confidential at all times the Confidential Information of the other party and will not directly or indirectly use, disclose or distribute the Confidential Information except to the extent required to properly perform the party’s obligations under the Agreement.
- 10.3. We will disclose your Confidential Information to the members of our personnel on a “need to know” basis only and must ensure that the member is aware of, and complies with, the provisions of clause 10.1

## 11. Dispute Resolution

- 11.1. Negotiation: We want to work this out. In the event of a dispute, the Parties agree to work towards a resolution through good faith negotiation.
- 11.2. Obligations continue: Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.
- 11.3. Right to seek relief: Clauses 12 and 13 do not affect either Party’s right to seek urgent interlocutory and/or injunctive relief.

## 12. Mediation/Arbitration:

- 12.1. If good faith negotiations fail to resolve the dispute within a reasonable time, either Party may initiate mediation or binding arbitration in a forum mutually agreed to by the Parties.
- 12.2. Litigation: If litigation is necessary, this Agreement will be interpreted based on the laws of New Zealand, regardless of any conflict of law issues that may arise. The Parties agree that the dispute will be resolved at a court of competent jurisdiction in New Zealand.
- 12.3. Attorney’s Fees: The prevailing Party, or “winner” as non-lawyers call it, will be able to recover its attorney’s fees and other reasonable costs for a dispute resolved by binding arbitration or litigation.



**13. Notices:**

- 13.1. A notice given by a Party under the Agreement must be delivered via email to an email address notified by the other Party for this purpose.

**14. Severability**

- 14.1. If any section of this Agreement is found to be invalid, illegal, or unenforceable, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity .

**15. Complete Contract**

- 15.1. This Agreement (being these terms of service and our proposal) sets out everything agreed by the Parties relating to the Services to be performed. This Agreement supersedes and cancels any other written or verbal communications between the Parties prior to the date that the Agreement starts.
- 15.2. Any subsequent changes to this Agreement must be made in writing and signed by both Parties.
- 15.3. The Parties have not relied on any representation, warranty or agreement relating to the subject matter of the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the date that the Agreement starts.

**16. Law:**

- 16.1. This Agreement is governed by and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement

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