

1. DEFINITION AND INTERPRETATION

1.1 DEFINITIONS

The meanings of the terms used in this Contract are set out below.

1.2 INTERPRETATION

TERM	MEANING
Adtorque Edge Background Materials	<p>all IP Materials:</p> <ol style="list-style-type: none"> 1. created by, or on behalf of, Adtorque Edge or a third party prior to the date of execution of this Contract or independently of this Contract; and 2. used or otherwise provided by Adtorque Edge in the course of performing the Services, <p>but excluding the Contract Materials.</p>
Business Day	a day other than a Saturday or Sunday or a day this is partly or wholly observed as a public holiday in Sydney, New South Wales.
Claim	includes any claim, action, demand or proceedings by Adtorque Edge against the Client, its employees, agents, contractors and Related Body Corporates for any Loss, increase in the Project Services Fee or for payment of money, or extension of time under, arising out of, or in connection with this Contract or the Project Services.
Client Background Materials	all IP Materials owned or licensed by the Client and provided by, or on behalf of, the Client to Adtorque Edge for the purposes of this Contract.
Commencement Date	the date upon which the Client accepts this Contract by clicking "I agree".
Confidential Information	<p>information relating to Adtorque Edge's business, computer systems or affairs and includes any:</p> <ol style="list-style-type: none"> 1. trade secrets, know-how, scientific and technical information, including, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans;



	<ol style="list-style-type: none"> 2. product, customer, marketing or pricing information ; 3. information in relation to this Contract; 4. Adtorque Edge Background Materials; and 5. any other information which Adtorque Edge notifies the Client is confidential, or which the Client knows or ought to know is confidential.
Consequential Loss	<p>any:</p> <ol style="list-style-type: none"> 1. loss of business or production; 2. loss of actual or anticipated profit or revenue; 3. loss or denial of opportunity; 4. loss of access to markets or lack of market share; 5. loss of contract; 6. loss of goodwill; 7. loss of business reputation, future reputation or publicity; 8. increase in financing costs; 9. loss of income; and 10. loss of use.
Contract	this contract (including schedules, annexures and exhibits to this contract).
Contract Material	all IP Materials created or produced by, or on behalf of, Adtorque Edge for the Client as part of, or in the course of performing, the Services.
Deposit	50% of the Fee.
Dispute	means a dispute or difference arising out of or in relation to this Contract, the Services or the Project.
Dispute Notice	means the notice given under clause 12.1.
Fee	the amounts payable by the Client to Adtorque Edge under, and in accordance with, this Contract as set out in, or calculated in accordance with the quotation and accepted by the Client.
GST	the goods and services tax imposed under the GST Law.
GST Law	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Intellectual Property Rights	<p>any and all current and future intellectual and industrial property rights and interests, including any:</p> <ol style="list-style-type: none"> 1. patents, trademarks, service marks, rights in designs, trade names, copyrights, utility models, eligible layout rights and topography rights, inventions, discoveries, trade secrets, know how, software and improvements; 2. applications for, or right to apply for registration of any of them; 3. rights under licences and consents in relation to any of them; and



	<p>4. other forms of protection of a similar nature or having equivalent or similar effect to any of them,</p> <p>in Australia and the world, whether registered or unregistered, for the duration of the rights and interests.</p>
IP Materials	material in whatever form, including documents, specifications, designs, plans, reports, products, equipment, information, data, concepts, inventions, processes, formulae, know-how, graphic layouts, images, software, Podio files, template files, spreadsheets, data base files, PDF files, working diagrams, schematics, Word document files.
Law	<p>includes, from time to time, all applicable:</p> <ol style="list-style-type: none"> 1. legislation, ordinances, regulations, by-laws, local laws, orders and proclamations; 2. any approvals; 3. standards, codes and guidelines; and 4. directions or notices issued by any authority, <p>as amended from time to time, whether or not existing at the date of execution of this Contract.</p>
Liability Limitation	means an amount equal to the Fee for the Services under this Contract.
Loss	includes any loss, cost, expense, damage or liability.
Notice	has the meaning given in clause 13.1.
Project	means the project referred to in the Specification.
Related Body Corporate	has the meaning given in the <i>Corporations Act 2001</i> (Cth).
Services	all work described in the Specification as being the responsibility of Adtorque Edge .
Specification	the description of the Services set out in the quotation provided by Adtorque Edge and accepted by the Client.
Tax	any income (including payroll), land, indirect and other taxes, excise, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, but does not include GST or stamp duty.
Term	<p>the period beginning on the Commencement Date and ending on the earlier of:</p> <ol style="list-style-type: none"> 1. the date the Services completed; and 2. the date on which this Contract is terminated in accordance with this Contract.



Termination Date	has the meaning given in clause 7.3(a).
Variation	an increase, decrease or omission to or from any part of the Services.

- (a) In this Contract, unless expressly stated otherwise:
- (1) the singular includes the plural and the plural includes the singular;
 - (2) words of any gender include all genders;
 - (3) other parts of speech and grammatical forms of a word or phrase defined in this Contract have a corresponding meaning;
 - (4) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority as well as an individual;
 - (5) a reference to anything (including any right) includes any part of that thing, but nothing in this clause 1.2(a)(5) implies that performance of part of an obligation constitutes performance of the entire obligation;
 - (6) a reference to a part, clause, party, annexure, attachment, exhibit or schedule is a reference to a part and clause of, and a party, annexure, attachment, exhibit and schedule to, this Contract;
 - (7) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
 - (8) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
 - (9) a reference to a party to a document includes that party's successors and permitted assignees and that party's employees, agents, consultants and contractors;
 - (10) a reference to an agreement other than this Contract includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding whether or not in writing;
 - (11) a reference to an asset includes property of any nature, including a business, right, revenue and benefit;
 - (12) a reference to a time is to the time in Melbourne;
 - (13) headings are for convenience only and do not affect the interpretation of this Contract; and
 - (14) no provision of this Contract will be construed adversely to a party because that party was responsible for the preparation of this Contract or that provision.
- (b) Specifying anything in this Contract after the words 'includes', 'including' or 'for example' or similar expressions does not limit what else is included.
- (c) Where the Day on or by which any thing is to be done is not a Business Day, that thing must



be done on or by the next Business Day.

2. GENERAL OBLIGATIONS

2.1 SERVICES AND FEES

- (a) Adtorque Edge must carry out and complete the Services for the Term in accordance with the Contract.
- (b) The Client shall pay Adtorque Edge the Fee as may be adjusted by additions or deductions made pursuant to the Contract.

2.2 CLIENT OBLIGATIONS

- (a) The Client must:
 - (1) attend all workshops and meetings; and
 - (2) provide the minimum number of attendance hours and specified key personnel to attend such workshops and meetings, as requested by Adtorque Edge.
- (b) The Client must not cancel or reschedule any workshop or meeting unless it provides Adtorque Edge at least 2 Business Days' written notice.
- (c) If the Client fails to re-book a cancelled or rescheduled workshop or meeting within 5 Business Days of the original date of such workshop or meeting, Adtorque Edge will consider the Project abandoned, and may terminate this Contract by notice in writing with immediate effect.
- (d) The Client is solely responsible for the completeness and accuracy of all information and data provided by it to Adtorque Edge.
- (e) Adtorque Edge accepts no liability for Losses, delay, or increases in the Fee caused by the Client providing incomplete or inaccurate data.
- (f) The Client must provide to Adtorque Edge system requirements as set out in the Specification.
- (g) The Client must provide its instructions and response to any request by Adtorque Edge of such within 48 hours of request.

2.3 VARIATIONS



- (a) The Client may request Adtorque Edge to provide an estimate for the performance of a Variation.
- (b) Adtorque Edge may, if it wishes to perform the Variation the subject of a request pursuant to clause 2.3(a), provide an estimate.
- (c) Upon acceptance by the Client of Adtorque Edges estimate in respect of any requested Variation:
 - (1) the work or services the subject of the Variation shall be incorporated in and form part of the Services;
 - (2) the amount contained in the estimate shall be incorporated into the Fee;
 - (3) the Term shall be extended by a reassemble time in order to permit the work or services subject of the Variation to be performed.
- (d) The Client acknowledges and agrees that nothing in this Contract shall entitle it to reduce or omit any part of the Services.

3. NON-SOLICITATION

3.1 NON-SOLICITATION

The Client acknowledges and agrees that:

- (a) this clause is reasonable and necessary to protect the genuine business interests of Adtorque Edge;
- (b) the obligations of this clause survive and continue after termination of this Contract.

4. PAYMENT

4.1 PAYMENT

- (a) The Client acknowledges and agrees that the basis of payment of the Fee is set out in the Specification, and that it must pay the Fee at the times or upon the milestones set out in the Specification.
- (b) The Client must pay Adtorque Edge's invoices within 15 Business Days' of receipt on invoice.



- (c) In addition to the Fee, in the event that any external costs are incurred by Adtorque Edge in relation to the provision of the Services, such external cost will be passed on and invoiced to the Client.
- (d) In the event that any external costs remain unpaid by the Client to Adtorque Edge, such third parties may recover such unpaid external costs directly from the Client, and Adtorque Edge shall not be responsible for any debt owed by the Client to any third party.
- (e) The Client acknowledges and agrees that it must pay Adtorque Edge interest at the rate of 9.15% per annum in relation to all invoices that are not paid in accordance with this clause 4.1.
- (f) In the event that:
 - (1) the Specification contains a requirement for a Deposit, the Deposit must be paid by the Client prior to the commencement by Adtorque Edge of the Services, which Deposit shall be non-refundable;
 - (2) Adtorque Edge commences the Services prior to the payment of any applicable Deposit, and the Client does not thereafter pay the Deposit in accordance with the terms of the Contract Adtorque Edge shall be entitled to terminate this Contract by written notice and with immediate effect, and claim damages which shall include Adtorque Edge's costs of work undertaken up to the date of termination together with its loss of anticipated profit on the Services under the Contract; and
- (g) The Client indemnifies Adtorque Edge for all costs incurred in recovering any debt from the Client which shall include but not be limited to internal administration costs, legal costs on an indemnity basis, collection agency costs and bank dishonour fees.

4.2 SET-OFF

The Client may not deduct or set-off from payments to Adtorque Edge any due and payable amounts whatsoever under this Contract or in relation to the Services, or in relation to any other contract Adtorque Edge may have with the Client.

5. TAXES

5.1 GOODS AND SERVICES TAX

- (a) Words used in this clause that are defined in the GST Law have the meaning given in that legislation.
- (b) Unless otherwise specified, all amounts payable under this Contract are exclusive of GST



and must be calculated without regard to GST.

- (c) If a supply made under this Contract is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (d) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (e) If there is an adjustment to a taxable supply made under this Contract then the Supplier must provide an adjustment note to the Recipient.
- (f) The amount of a party's entitlement under this Contract to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses of liabilities.

6. SUSPENSION

6.1 SUSPENSION

If Adtorque Edge considers that the suspension of the whole or part of the Services is necessary, or if any invoice issued under clause 4.1 remains unpaid, it may suspend the performance of the whole or relevant part of the Services until payment is made.

7. TERMINATION

7.1 TERMINATION FOR CLIENT DEFAULT

Adtorque Edge may terminate this Contract immediately:

- (a) if the Client becomes insolvent as that term is defined in the *Corporations Act 2001* (Cth) or if an administrator or liquidator is appointed in relation to the Client; and
- (b) if the Client fails to pay an amount of money due to Adtorque Edge under this Contract within 20 Business Days within such date that payment became due and payable.

7.2 TERMINATION FOR CONVENIENCE



Adtorque Edge may terminate this Contract in its sole and absolute discretion at any time without cause and for any reason by giving 30 Business Days written notice to the other party.

7.3 PROCEDURES AND PAYMENTS FOLLOWING TERMINATION

- (a) If Adtorque Edge elects to terminate this Contract, the Adtorque Edge shall be entitled to the payment of all Services performed up to and including the date of termination.
- (b) The Client must upon termination or the completion of the Services under this Contract, whichever occurs earlier return to Adtorque Edge all documents provided to the Client for the purposes of the Contract.

8. CLIENT ACKNOWLEDGMENTS AND WARRANTIES

8.1 CLIENT ACKNOWLEDGMENTS

The Client acknowledges and agrees that:

- (a) Adtorque Edge is relying on the representations and warranties made to it by or on behalf of the Client in connection with this Contract (including the warranties set out in this clause 8);
- (b) the obligations and liabilities of the Client under this Contract will remain unaffected despite:
 - (1) any information, data, representation, statement or document made, or provided to the Client, by Adtorque Edge or any other person whether or not on behalf of Adtorque Edge, in relation to the Services including any information, data, representation, statement or document with respect to the Project;
 - (2) any error, omission, inadequacy or deficiency in the Specification or any information referred to in clause 8.1(b)(1); or
 - (3) any Variations.
 - (4) The Client acknowledges and agrees that it is solely responsible for:
 - (A) providing the system requirements as set out in the Specification in a timely manner and as required by Adtorque Edge; and
 - (B) the completeness and accuracy of data provided to Adtorque Edge including any costs or Loss incurred by Adtorque Edge as a consequence of the provision of incomplete or inaccurate data by the Client.



8.2 CLIENT GENERAL WARRANTIES

The Client represents and warrants to Adtorque Edge that:

- (a) it is a company duly incorporated and validly existing under the Laws of its place of incorporation;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Contract, in accordance with its terms;
- (c) it has power to enter into and perform its obligations under this Contract and to carry out the transactions contemplated by this Contract;
- (d) its obligations under this Contract are valid and binding and are enforceable against it in accordance with its respective terms subject to any necessary stamping and registration, the availability of equitable remedies and Laws relating to the enforcement of creditor's rights;
- (e) it has the corporate power to own its own assets and to carry on its business as it is now being conducted;
- (f) it is not the responsible entity of any trust nor does it hold any property subject to or impressed by any trust; and
- (g) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced, is pending or, to its knowledge, threatened in writing against it which is likely to have an adverse effect upon it or its ability to perform its financial or other obligations under this Contract.

8.3 CLIENT IDEMNITIES

The Client indemnifies Adtorque Edge in respect of:

- (a) any Loss arising out of or in connection with any breach by the Client of the Contract;
- (b) any Claim in relation to or liability for death or injury or damage to property from or arising out of any breach of this Contract or any negligent wilful or wrongful act or omission of the Client in connection with this Contract or the Services which shall be reduced proportionately to the extent that an act or omission of Adtorque Edge contributed to the breach; and
- (c) any Claim by any third party against Adtorque Edge arising out of or in connection with any negligent act or omission of the Client.



9. CONFIDENTIAL INFORMATION

9.1 NON-DISCLOSURE

Subject to clause 9.2, the Client must not disclose Confidential Information of Adtorque Edge without the prior written consent of Adtorque Edge.

9.2 PERMITTED DISCLOSURE

The Client may disclose Confidential Information of Adtorque Edge which:

- (a) at the time of disclosure is in the public domain;
- (b) is required to be disclosed to its professional advisers, bankers or financial advisers; or
- (c) is required to be disclosed by Law, court order or any applicable stock exchange listing rules.

9.3 RETURN OF CONFIDENTIAL INFORMATION

The Client must return to Adtorque Edge any Confidential Information of Adtorque Edge on demand.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 RIGHTS GRANTED TO ADTORQUE EDGE

The Client acknowledges and agrees that:

- (a) upon creation, all Contract Materials shall vest in and be the property of Adtorque Edge and Adtorque Edge hereby grants to the Client a non-exclusive, royalty free, perpetual, irrevocable, worldwide licence (including the right to sub-licence) to (itself or using third party contractors) use, reproduce, adapt and further develop all Contract Materials only for the purpose of the Contract; and
- (b) it must do everything necessary to perfect the vesting contemplated by clause 10.1(a).



10.2 BACKGROUND MATERIALS

- (a) The Client grants to Adtorque Edge a non-exclusive, royalty free licence during the Term to use, reproduce, modify, adapt and further develop all Intellectual Property Rights in those portions of the Client Background Materials which are required to enable Adtorque Edge to perform the Services.
- (b) Adtorque Edge grants to the Client a non-exclusive, royalty free licence to use, reproduce, modify, adapt and further develop all Intellectual Property Rights in those portions of Adtorque Edge Background Materials which are required to enable the Client to exercise any rights and perform any obligations under this Contract and enjoy the full benefit of this Contract and the Project.

10.3 INDEMNITY BY THE CLIENT

The Client indemnifies and holds harmless Adtorque Edge against any Loss or claim arising from:

- (a) any infringement or alleged infringement of Intellectual Property Rights owned by a third party in respect of any IP Materials provided as part of the Services; and
- (b) the conduct of any infringement claim set out in clause 10.3(a).

11. LIMITATION OF LIABILITY

11.1 LIMITATION OF LIABILITY

The aggregate liability of Adtorque Edge to the Client arising out of or in connection with this Contract will in no event exceed the Liability Limitation.

11.2 CONSEQUENTIAL LOSS

- (a) Except as provided in clause 11.2(b) neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party arising out of or in connection with this Contract.
- (b) The Client will be liable to Adtorque Edge for Consequential Loss suffered or incurred by Adtorque Edge arising out of or in connection with this Contract without limit or exclusion to the extent that:



- (1) a statutory fine resulting from a breach of any Law by the Client (including where the Client causes Adtorque Edge to breach any Law), may be construed or are intended to cover such Consequential Loss;
- (2) the Client wholly or substantially abandons this Contract; or
- (3) such Consequential Loss is caused by the wilful misconduct, the wilful default, wilful neglect or fraud of the Client.

12. DISPUTE RESOLUTION

12.1 DISPUTE

- (a) If a Dispute arises between Adtorque Edge and the Client, the Dispute must be dealt with in accordance with this clause 12.
- (b) Where a Dispute arises, either party may give a Dispute Notice to the other party specifying and providing details of the Dispute.
- (c) Unless a party has complied with the procedure to resolve the Dispute by negotiation of the Dispute under clause 12.2, that party may not commence the dispute resolution proceedings under clause 12.3.
- (d) The Client must, if it has any issue or dispute with Adtorque Edge, communicate such to Adtorque Edge immediately so as to provide Adtorque Edge with an opportunity to address such issue or dispute, including but not limited to agreement between the parties as to a revision of the Services or supply of alternative personnel by Adtorque Edge.

12.2 NEGOTIATION

If a Dispute Notice is issued under clause 12.1(b), the Dispute will be referred to the respective managing directors of the parties who must within 10 Business Days of receipt of the Dispute Notice under clause 12.1(b) meet and undertake genuine and good faith negotiations with a view to resolving the Dispute within 20 Business Days of receipt of the Dispute Notice under clause 12.1(b) and, if they cannot so resolve the Dispute, the Dispute must be referred to mediation in accordance with clause 12.3.

12.3 MEDIATION

- (a) In the event that the parties are unable to resolve the Dispute under the process



contemplated by clause 12.2, either party may by Notice to the other party refer a Dispute to resolution by mediation in accordance with the procedures set out in this clause 12.3.

- (b) The mediation is to be conducted in accordance with the Resolution Institute's then current mediation rules and guidelines for resolution within 10 Business Days (or such other period agreed between the parties).
- (c) If a dispute is referred to mediation in accordance with this clause 12.3:
 - (1) any meetings organised will be held in Sydney or such other place as may be agreed by the parties;
 - (2) the parties agree to appoint either Campbell Bridge SC or John West QC as mediator;
 - (3) the parties agree to pay costs as directed by the mediator; and
 - (4) both parties may be represented by a duly qualified legal practitioner.

12.4 CONTINUITY

Despite the existence of a Dispute, the parties must continue to perform their obligations under this Contract.

12.5 INJUNCTIVE OR URGENT RELIEF

Nothing in this clause 12 prejudices either party's right to institute proceedings to seek injunctive or urgent declaratory relief in respect of a Dispute under this clause 12 or any other matter arising under this Contract.

13. NOTICES

13.1 FORM OF NOTICE

A notice or other communication to a party under this Contract (**Notice**):

- (a) must be in writing, in English and signed by an authorised signatory; and
- (b) addressed to Adtorque Edge and the Client.

13.2 HOW NOTICE MUST BE GIVEN AND WHEN NOTICE IS RECEIVED



- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.
- (c) However, if this means the Notice would be regarded as given and received outside the period between 9.00 am and 5.00 pm (addressee's time) on a Business Day, then the Notice will instead be regarded as given and received at 9.00 am (addressee's time) on the following Business Day.

METHOD OF GIVING NOTICE	WHEN NOTICE IS REGARDED AS GIVEN AND RECEIVED
By hand to the nominated address	When delivered to the nominated address
By pre-paid post to the nominated address within Australia	At 9.00am (addressee's time) on the second Business Day after the date of posting.
By email to the nominated email address	When the email (including any attachment) is received at the recipients inbox.

14. GENERAL

14.1 COSTS AND EXPENSES

Each party must pay its own legal costs and expenses in preparing, negotiating and completing this Contract.

14.2 GOVERNING LAW AND JURISDICTION

- (a) This Contract is governed by the laws of the State of New South Wales, Australia.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of the State of New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Contract.

14.3 SEVERABILITY AND ENFORCEABILITY

Any provision of this Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of this Contract nor affect the validity or enforceability of that provision in any other jurisdiction.



14.4 WAIVERS

No party to this Contract may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

14.5 ENTIRE AGREEMENT

This Contract supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties in respect of its subject matter.

14.6 RELATIONSHIP OF THE PARTIES

- (a) Nothing in this Contract gives a party authority to bind any other party in any way.
- (b) Nothing in this Contract imposes any fiduciary duties on a party in relation to any other party.

14.7 AMENDMENT TO THIS CONTRACT

An amendment of any term of this Contract must be in writing and signed by the parties.

14.8 COUNTERPARTS

This Contract may be executed in any number of counterparts.

14.9 SURVIVAL OF OBLIGATIONS

- (a) If this Contract is terminated then, except where this Contract provides otherwise the parties are released from their obligations to continue to perform this Contract except the obligations which are expressed to or by their nature, survive termination, and each party retains the rights and claims it has against the other party for any past breach of this Contract
- (b) Any warranties provided by the Client including pursuant to clause 8, and also clauses 1, 3, 5, 7, 8.3, 9, 10, 12, 13 and 14 survive termination of this Contract.



14.10 FURTHER ASSURANCES

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Contract and the transactions contemplated by it.

