

## 1. Definitions

In these *Terms and Conditions*:

**Agreement** means the agreement formed as contemplated by clause 2 below between Presentation 360 and the Client comprising these Terms and Conditions and the Estimate.

**Client** means the client set out in the Estimate.

**Client Materials** means any content or materials (if any) of any nature provided by the Client to Presentation 360 for incorporation in the materials.

**Estimate** means the proposal for the provision of services by Presentation 360 to the Client to which these Terms and Conditions are attached.

**Fee** means the fee set out in the Estimate.

**Insolvency Event** in relation to the Client means:

- (a) bankruptcy proceedings are commenced against the Client, or the Client is declared bankrupt;
- (b) any step is taken to enter into any scheme of arrangement between the Client and its creditors;
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Client's assets or business;
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, an administrator or other like person to the Client;
- (e) the Client suspends payment of its debts generally; or
- (f) the Client is or becomes unable to pay its debts when they are due or a party is or is presumed to be insolvent for the purposes of any provision of the Corporations Act 2001 (Cth).

**Intellectual Property Rights** means all industrial and intellectual property rights of whatever nature throughout the world conferred under statute, common law or equity, whether existing now or at any time in the future, and includes rights in respect of or in connection with copyright, inventions (including patents), formulae, databases, business processes and methods, trademarks, service marks, business names, trade names, domain names, designs, confidential information, trade secrets and know-how and similar industrial and intellectual property rights, whether or not registered or registrable, and includes the right to apply for or renew the registration of such rights.

**Materials** means all products and proceeds of the Services.

**Presentation 360** means Presentation 360 PTY LTD ABN: 27 618 673 939 of Box #254, 122 Lang Road, Moore Park, NSW 2021. Presentation 360 and Presentation Studio are both part of the Creatively Presented Group.

**Presentation 360 IP** means any content or materials (if any) of any nature created by or on behalf of Presentation 360 which are not specifically related to the Services and which form part of Presentation 360's developer's toolkit.

**Presentation 360 Materials** means any content or materials (if any) of any nature created by or on behalf of Presentation 360 specifically for the purpose of such content or materials forming part of the Materials but excludes Presentation 360 IP.

**Services** means the services set out in the Estimate.

**Training Services** means any training workshop or course provided by Presentation 360 or except otherwise specifically set out in the estimate.

**Third Party Materials** means any content or materials (if any) of any nature licensed by Presentation 360 from a third party and included in the Materials.

## 2. Formation of Agreement

- (a) Presentation 360 offers to provide the Services to the Client on the terms and conditions of the Agreement.
- (b) The Client may accept Presentation 360's offer during the period commencing on the date of the Estimate and expiring on the date 28 days later by either:
  - (i) signing the *Estimate* using the signing mechanism specified by Presentation 360;
  - (ii) authorising Presentation 360 in writing to proceed with the provision of the Services; or
  - (iii) making payment of the first instalment of the Fees.
- (c) To the extent of any inconsistency between these Terms and Conditions and the Estimate, the following precedence is to be given in relation to interpretation:
  - (i) first, these Terms and Conditions; and
  - (ii) second, the Estimate.

## 3. Services

- (a) Presentation 360 will provide the Services to the Client in accordance with the terms of the Estimate.
- (b) Subject to sub-clause (c) below, Presentation 360 must use reasonable efforts to provide the Services to the Client in accordance with the project plan agreed by the parties.
- (c) Presentation 360 will have no liability whatsoever to the Client if Presentation 360 fails to provide any element of the Services by the relevant due date as a direct or indirect result of the acts or omissions of the Client.
- (d) Except as otherwise, set out in the Estimate if the Estimate is for design, layout and production of the Materials and includes:
  - (i) initial design concepts;
  - (ii) all design work quoted by Presentation 360 in correlation with Presentation Studio in writing with respect to the Services (including consultation and advice on presentation, structure and language);
  - (iii) the supply of files through the provision of Services; and
  - (iv) one set of revisions requested by the Client.
- (e) Except as otherwise, set out in the Estimate, the Estimate does not include any services not specifically set out in the Estimate which may include:
  - (i) changes to structure or design of the Materials following approval of the structure and design by the Client;
  - (ii) logo or identity designs;
  - (iii) archived file retrievals;
  - (iv) illustration work, any non-native animation (being animation not included in the presentation software used to create the Materials) or font purchases;
  - (v) high resolution image scanning, photo-shop work or computer generated colour prints of the Materials;
  - (vi) professional indemnity or public liability insurance; or
  - (vii) purchase of stock imagery
  - (viii) facilitator's travel expenses (including economy class airfare for domestic travel and business-class airfare for domestic travel over 3 hours in flight time and all international travel, lodging, meals, taxi, car rentals, mileage, and parking, as applicable)
- (f) Presentation 360 reserves the right to vary the Estimate (including the Services and the Fee) following review of artwork provided by the Client or other elements provided by the Client not seen by Presentation 360 at the time of providing the Estimate.
- (g) If Presentation 360 varies the Estimate as contemplated by clause 3(f), and the Client wishes to proceed, the varied Estimate will form part of the Agreement and will bind the parties.

## 4. Fees and payment

- (a) Except as otherwise specified in the Estimate:
  - (i) the Client must pay to Presentation 360 100% of the Fee upon commencement of the Services to secure the booking and requested training dates;
  - (ii) if due to the Client's acts or omissions, the Services are suspended for a period of four weeks or more, the Client must pay the balance of the Fee upon receipt of invoice; and
  - (iii) all invoices are payable within 14 days of their date.
- (b) Subject to the Services being suspended under clause 4(a)(ii) above, Presentation 360 will credit the balance of the Fee against any Training Services subsequently provided by Presentation 360 within a period of three months from the date of the invoice issued by Presentation 360 with respect to the balance of the fee.
- (c) Following the expiry of the three month period referred to in clause 4(b) above:

- (i) Presentation 360 will no longer credit the balance of the Fee against the provision of subsequent Training Services; and
- (ii) if the Client requires the provision of the Training Services or additional services, Presentation 360 will only do so on terms and conditions agreed by the parties in writing.

- (d) A rescheduling fee of 25% of the total workshop fee will be assessed should the workshop date change within 21 days of the scheduled date. For workshops under a discount program, rescheduling of a workshop by Client must occur within the original 6-month timeframe. For all workshops, Client shall reimburse Presentation 360 for any expenses incurred that cannot reasonably be mitigated or avoided in rescheduling a workshop.

Rescheduling of discounted workshops are subject to a rescheduling fee equal to 25% of a single workshop fee (with the discount taken into account) should the workshop date change within 21 days of the scheduled date and must fall within the original 6-month parameter assessed initially.

- (e) All cancellation and rescheduling notices must be made in writing and delivered by email. Client shall reimburse Presentation 360 for any expenses incurred that cannot reasonably be mitigated or avoided. Services contracted under a discount program cannot be cancelled but may be rescheduled per the parameters below.
  - (i) For other workshops, unless notice of cancellation is received within 21 calendar days of engagement, the full workshop fee is due.

- (f) Presentation Studio in accordance with Presentation 360 may charge fees in addition to the Fee as follows:
  - (i) fees for the provision of on-site services in accordance with Presentation Studio's then current rate card;
  - (ii) a 30% levy on the Fee if the Client requests delivery of the Materials within 48 hours or if Client's delivery requirements require Presentation Studio to work outside of a ten-hour business day or on any day that is not a business day;
  - (iii) additional fees if the Client requests the provision of services not included in the Services;
  - (iv) additional fees if the hours taken by Presentation Studio to complete the Services exceed by 15% or more the number of hours set out in the Estimate;
  - (v) fees to undertake revisions requested by the Client in addition to the one set of revisions referred to in clause 3(d)(iv) at Presentation 360's then current hourly rate for such revisions;
  - (vi) fees relating to couriers;
  - (vii) a surcharge on credit card payments in accordance with Presentation 360's then current surcharge rate card;
  - (viii) costs such as travel, accommodation and meals which will be charged at cost plus 10% subject to prior approval by the Client of the relevant costs; and
  - (ix) fees in relation to the provision of any of the services referred to in clause 3(e).

- (g) Any payments made in accordance with the Agreement are exclusive of GST and any and all applicable taxes, charges and levies.
- (h) Presentation 360 may require the Client to make a payment earlier than the date it is due if Presentation 360 acting reasonably is concerned about the Client's credit worthiness.
- (i) The Client must make all payments under the Agreement in full without deduction, counter-claim or set-off.

## 5. Intellectual Property

- (a) Subject to Presentation 360 receiving payment of the Fee in full as contemplated by clause 4 above, Presentation 360 will assign all Intellectual Property Rights in and to the Presentation 360 Materials to the Client.
- (b) Except as expressly agreed by Presentation 360 in writing, Presentation 360 licenses the Third-Party Materials and Presentation 360 IP to the Client for the sole purpose of using the Third-Party Materials and Presentation 360 IP as incorporated in the Materials and as contemplated by the Estimate.

- (c) The Client grants Presentation 360 the right to use the Client Materials for the purposes of providing the Services and creating the Materials as contemplated by the Estimate.
- (d) Without limiting clause 5(c) the Client grants Presentation 360 the right to use the Client's name, branding and the Materials for the purposes of promoting both Presentation 360 and the work undertaken by Presentation 360 via any media (including, Twitter, Facebook, LinkedIn, Pinterest or similar platforms) throughout the world.
- (e) The Client represents and warrants to Presentation 360 that it has the right to grant the rights granted under sub-paragraphs (c) and (d) above and that Presentation 360's use of the Client Materials will not infringe any third party's Intellectual Property Rights or other rights.
- (f) The Client indemnifies Presentation 360 against all losses, liabilities, damages and claims, and all related costs and expenses (including any and all reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) arising from a breach of the warranty given by the Client under sub-clause (e) above.
- (g) Training services and materials provided in connection with those services, are provided by a Presentation 360 facilitator and intended for Client's internal professional development purposes. Duarte Training Content are protected by copyright pursuant to U.S. and international copyright laws, and owned, licensed to, or controlled by Duarte, unless specifically credited. Client may not modify, publish, transmit, participate in the transfer or sale of, reproduce, create new or derivative works from, distribute, perform, display, or in any way exploit, any of the Training in whole or in part and will take all reasonable steps to ensure that none of the attendees take such actions.
  - (i) Under no circumstances will Client confidential or proprietary information be integrated into Duarte Training Content. Should any enhancements of Client confidential or proprietary information occur during a workshop, such results shall be wholly owned by Client

## 6. Liability

- (a) To the maximum extent permitted by law:
  - (i) except as expressly set out in the Estimate:
    - (A) Presentation 360 makes no representations or warranties to the Client;
    - (B) Presentation 360 hereby excludes all representations, warranties, terms and conditions whether express or implied (and including without limitation, those implied by statute, custom, law or otherwise);
  - (ii) Presentation 360's cumulative liability to the Client for all claims made by the Client under or in relation to the Agreement will not exceed in aggregate the amount actually paid by the Client to Presentation 360 in respect of the Estimate; and
  - (iii) Presentation 360 will not be liable to the Client in respect of any claim for any loss of profit, data, goodwill or business, for interruption to business, for any failure to realise anticipated savings or for any consequential, indirect, special punitive or incidental damages.
- (b) Certain legislation may imply warranties or conditions, impose obligations or give statutory guarantees (together, "Statutory Provisions") that cannot be excluded, restricted or modified except to a limited extent. The Agreement must be read subject to the Statutory Provisions. If the Statutory Provisions apply, notwithstanding any other provision of the Agreement, to the extent to which Presentation 360 is entitled to do so, Presentation 360 limits its liability in respect of any claim to:
  - (i) in the case of goods, at Presentation 360's option:
    - (A) the replacement of the goods or the supply of equivalent goods;
    - (B) the repair of the goods;
    - (C) the payment of the cost of replacing the goods or acquiring equivalent goods; or
    - (D) the payment of having the goods repaired; and
  - (ii) in the case of services, at Presentation 360's option:
    - (A) the supply of the Services again; or
    - (B) the payment of the cost of having the Services supplied again.

## **7. Confidentiality**

The terms of the Agreement are confidential and must not be disclosed by the Client to any third party other than the Client's professional advisers, or as required by law, without the prior written consent of Presentation 360.

## **8. General**

- (a) The Client acknowledges that Presentation 360 may subcontract the provision of the Services.
- (b) Subject to this sub-clause, a party may only assign the Agreement or a right under the Agreement with the prior written consent of the other party. Notwithstanding any other provision of the Agreement, Presentation 360 may assign the benefit of the Agreement to any of its related bodies corporate (as that term is defined in section 50 of the Corporations Act 2001 (Cth)) without the Client's prior consent.
- (c) The Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
- (d) If the whole or any part of a provision of the Agreement is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable. If however, the whole or any part of a provision of the Agreement is not capable of being read down, it is severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of the Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.
- (e) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- (f) Except where the Agreement expressly states otherwise, the Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- (g) The Agreement will be governed by and construed in accordance with the law for the time being in force in New South Wales and the parties, by entering into the Agreement, are deemed to have submitted to the non-exclusive jurisdiction of the courts of that State.

## **9. Public training workshops**

- (a) A rescheduling fee of 25% of the total workshop fee will be taken into consideration should the workshop date change within 21 days of the scheduled date.
  - (b) A cancellation fee of 25% of the total workshop fee will be taken into consideration if the client notifies Presentation Studio that they wish to cancel their reservation within 21 days of the scheduled date.
  - (c) For workshops under a discount program, rescheduling of a workshop by the Client must occur within the original 6-month timeframe.
  - (d) For all workshops, the Client shall reimburse Presentation 360 for any expenses incurred that cannot reasonably be mitigated or avoided in rescheduling a workshop.
  - (e) Rescheduling of discounted workshops are subject to a rescheduling fee equal to 25% of a single workshop fee (with the discount considered) should the workshop date change within 21 days of the scheduled date and must fall within the original 6-month parameter assessed initially.
  - (f) All cancellation and rescheduling notices must be made in writing and delivered by email. The Client shall reimburse Presentation 360 for any expenses incurred that cannot reasonably be mitigated or avoided.
  - (g) Services contracted under a discount program cannot be cancelled but may be rescheduled per the parameters below.
  - (h) For other workshops, unless notice of cancellation is received within 21 calendar days of engagement, the full workshop fee is due.
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