



Mixolutionz Pty Ltd (herein "Mixolutionz" or "We", "Us", "Our" as appropriate) provides Services to the Client ("You" or "Your" as appropriate) in accordance with these General Terms and Conditions which shall apply to all Services provided by Mixolutionz unless We enter into a written agreement with You that expressly overrides them.

#### 1. STATEMENTS OF WORK

- a) Mixolutionz will provide You with a Statement of Work ("SoW") which sets out in detail the services You are purchasing (the "Services"). The SoW, including these General Terms and Conditions becomes a legally binding contract (the "Contract") effective from the date of Your written acceptance (the "Effective Date").
- b) A SoW for Services will override any prior SoW relating to the same Services.
- c) These Terms and Conditions also apply if Mixolutionz and You have agreed on Services and pricing and Mixolutionz provides Services but You have not yet signed the relevant SoW.
- d) Mixolutionz will not be bound by any terms or conditions provided by You unless the terms and conditions are expressly agreed to in writing by Us and signed by one of Our authorised representatives.

#### 2. FEES AND PAYMENT

- a) In consideration of the performance of the Services, You shall pay the fees, charges and rates specified in the SoW (the "Price")
- b) Unless otherwise specified in the SoW, all Prices quoted for Services are exclusive of all taxes, handling, delivery, installation, training fees, agents' fees and any other fees, charges, duties or imposts.
- c) Each party agrees to do all things in a timely manner, including providing invoices or other documentation in such form and detail necessary to enable or assist the other party to claim or verify any Input Tax Credit, set off, rebate or refund in relation to any GST payable under the Contract or in respect of any services supplied under the Contract.
- d) You must pay Mixolutionz in accordance with any due dates for payment or other payment terms specified in a SoW or, if not so specified, then within seven (7) days of the date of the invoice.
- e) If You do not pay Mixolutionz within the time required under paragraph (d) of this clause then, without limiting Mixolutionz' rights or remedies, You must pay Mixolutionz the amount due plus the greater of (i) interest calculated at the rate of 2% per annum above the Business Overdraft Rate of Westpac Banking Corporation from the date on which payment was due until payment is made or (ii) \$150.
- f) If payment is not made within fourteen (14) days of the due date then, without limiting Our other rights or remedies, We may grant a further extension of time for payment or, at Our option, treat the failure to pay as a breach of contract, entitling Us to terminate the Contract.
- g) If You dispute the whole or any part of the amount claimed in an invoice submitted by Mixolutionz, You will pay the undisputed portion by the due date, and You and Mixolutionz must meet and explore the possibility of an amicable settlement of the dispute prior to commencing any litigation, provided that nothing in this clause shall prevent either party from seeking injunctive relief at any time where damages are not an adequate remedy. If it is subsequently resolved that a

further amount is payable, You will pay that amount together with the greater of (i) interest from the due date of the invoice until payment at the rate of 2% per annum above the Business Overdraft Rate of Westpac Banking Corporation or (ii) \$150.

- h) Mixolutionz may review and adjust its fees and rates at any time at its absolute discretion.
- i) Notwithstanding anything to the contrary in this Contract, after expiration of twelve (12) months from the Effective Date (and each anniversary thereafter), Mixolutionz shall increase the Price specified in the SoW by three percent (3%) for the Initial Term. At any time after the expiry of the Initial Term, Mixolutionz may vary the Price upon written notice.

#### 3. TERM

The SoW will set out an "Initial Term" and a "Renewal Term" for the Services. At the expiration of the Initial Term, the Contract will renew automatically for the Renewal Term unless terminated in accordance with Clause 10 of these Terms and Conditions. If no Initial Term is set out in the SoW, the Services will be provided for a period of three (3) years. If no Renewal Term is set out in the SoW, the Services will automatically renew for the Initial Term or, if no Initial Term is set out, for a period of three (3) years.

#### 4. YOUR OBLIGATIONS

- a) You shall name a "Client Contact" who will
  - i) represent and act for You;
  - ii) make binding decisions for You;
  - iii) provide Mixolutionz with all information concerning Your operations and activities that We may reasonably require; and
  - iv) supervise Your performance of Your obligations under this Contract in a way that facilitates the effective and timely completion of the Services.Without limitation, matters within the Client Contact's knowledge are considered to be within Your knowledge.
- b) To enable Mixolutionz to perform its obligations You shall
  - i) actively cooperate and consult with Mixolutionz and ensure that Your employees, personnel, contractors or any third-party service providers actively cooperate with Us and do not hinder Us in the performance of Our obligations;
  - ii) provide Mixolutionz with any information and access to personnel and other resources reasonably required by Us to enable Us to perform the agreed services;
  - iii) comply with such other requirements as agreed between the parties; and
  - iv) comply with all other statutory requirements – particularly in regards to data protection and confidentiality.
- c) You hereby agree to act as a reference client for Mixolutionz and permit Mixolutionz to name You as such on Our Website.
- d) You acknowledge that You are entirely responsible for
  - i) the content on Your site and all dealings You have with users of Your site;
  - ii) ensuring that any content that Mixolutionz hosts, transmits or receives on Your behalf does not contain any malware or otherwise disrupt or corrupt the data or systems of any person and complies with all applicable laws and regulations;
  - iii) ensuring that any emails You send or We send on Your behalf through Mixolutionz' systems does not cause any IP address owned by Us to be blacklisted.
- e) You will indemnify Mixolutionz against all costs (including legal

costs), expenses, damages, accounts or other losses or liability, arising out of claims made against or suffered by Mixolutionz in connection with Your site, the content that Mixolutionz hosts, transmits or receives for You as part of the Service(s); and any failure by You to meet the responsibilities in paragraph (d) of this clause.

- f) You will not attempt to modify, adapt, copy, reproduce, decompile, disassemble or reverse engineer any computer programs used to deliver the Services.

## 5. INTELLECTUAL PROPERTY RIGHTS

- a) Subject to the rights of Mixolutionz, which We hereby expressly reserve, and Mixolutionz' third party licensors in respect of any documents and other materials which are supplied in conjunction with any Services delivered by Mixolutionz to You (which shall remain unaffected by these General Terms and Conditions), You shall be licensed to use the copyright and other intellectual property rights in all materials used in the supply of the Services, and the designs, software, systems, models, plans and all other outputs of the services, but only for Your internal business purposes and not for the benefit of any third party.
- b) Mixolutionz owns and reserves the right to reuse in any way it sees fit any documents and other materials including any programming tools, designs and techniques acquired or used by it in the performance of the Services, and all outputs related thereto.
- c) You may not assign or sublicense any intellectual property rights referred to in paragraph (a) of this clause, without the prior written consent of Mixolutionz.
- d) Without limiting the above, a separate End User License Agreement will be entered into between You and Mixolutionz for specific software products developed, owned and licensed by Mixolutionz which may be used in the provision of the Services and which Mixolutionz licenses on an "as-a-service" basis.

## 6. CONFIDENTIALITY AND PRIVACY

- a) Neither party may disclose any confidential information of the other party without that other party's prior written consent, unless required to do so by law.
- b) Any SoWs issued by Mixolutionz are confidential to Mixolutionz, including any pricing specified in the SoW. In addition, any technical information or technical solutions provided by or proposed by Mixolutionz constitutes confidential information of Mixolutionz, unless any such information is already in the public domain prior to being disclosed to You.
- c) If a party discloses to the other party personal information as defined in the relevant Australian Privacy legislation, that party receives that information in its capacity as the other party's agent and must:
- only use the information for the purpose of fulfilling its obligations under the Contract;
  - not otherwise use or disclose the information without the prior written consent of the other party; and
  - comply with the other party's requirements or directions in relation to the information.
- d) You hereby confirm that you have read, understood and agree to the terms of Mixolutionz' Privacy Policy published at [https://www.mixolutionz.com/what-you-need-to-know-about-using-this-website/#privacy\\_policy](https://www.mixolutionz.com/what-you-need-to-know-about-using-this-website/#privacy_policy) in the version as updated from time to time.
- e) The obligations in this clause are material and survive termination of the Contract.

## 7. CHANGES

- a) Either party may request a change to the Services. Mixolutionz

must not change the Services except as directed in writing by You.

- b) Before implementing a change to the Services requested by You, Mixolutionz must investigate whether or not the change can be effected and notify You if, in Our opinion, the change can be effected.
- c) Mixolutionz may, at its discretion, charge for actual time taken to carry out the investigation in (b) above.
- d) If the change can be effected, then Mixolutionz must notify You of the additional work involved, the price of carrying out the change, any impact on the deployment of personnel and other resources engaged in performing Our obligations under this Contract and any impact on the Payment Terms, including any adjustment under this Clause.
- e) The charge for a change to the Services and/or the investigation of the change will be added to the Price.

## 8. ACCEPTANCE

- a) Where Services require acceptance by You, Mixolutionz and You will together establish objective acceptance criteria and an acceptance test plan which will be mutually agreed upon in writing as soon as practicable after completion of the design of the Services and which will form a part of the Contract.
- b) If nothing to the contrary is set out in the SoW, You are deemed to have accepted the Services within three (3) business days from delivery of the Services by Mixolutionz or if You use the Services in any way beyond what is necessary for inspection and testing and in a way a reasonable person would consider consistent with You having accepted ownership of the Services from Mixolutionz.
- c) If You reject the Services, Mixolutionz will have three (3) opportunities to promptly cure each failure in the Services and re-deliver the Services to You to re-inspect and test.

## 9. BACKUP AND RECOVERY

- d) Mixolutionz employs regular backup procedures for Your Data. Backed up Data is maintained for a period of 90 days, after which time it is permanently destroyed.
- e) Restoration of Data is charged on an hourly basis at Our then current hourly rate for provision of such services.

## 10. TERMINATION

- a) Either Party may terminate a Contract immediately by written notice to the other party if
- the other party
    - commits any breach of the Contract that is incapable of remedy;
    - fails to remedy any breach of the Contract that is capable of remedy within thirty (30) days of notice of that breach having been given by the non-defaulting party to the other party; or
  - an Insolvency Event occurs in relation to the other party; or
  - it becomes unlawful for the party to perform or comply with its obligations under the Contract.
- b) For the purposes of paragraph (a) of this clause, an Insolvency Event means an event by which a party
- is insolvent, insolvent under administration, or unable to pay its debts as and when they fall due;
  - is placed in or under any form of external administration including if a party or its property is subject to the appointment of an administrator, a controller, receiver or receiver and manager, a liquidator or an official manager;
  - is made subject to any compromise or arrangement with any of its creditors or members or scheme for its reconstruction or amalgamation, other than as a result of a voluntary corporate reconstruction;
  - is wound up or dissolved, or an order or resolution is made

- to wind up or dissolve the party; or
- v) has anything similar to any of the events in paragraphs (i) to (iv) happen to it under the law of any applicable jurisdiction.
- c) Mixolutionz can terminate the Contract on 14 days' notice if any amount owed under these General Terms and Conditions remains unpaid for 14 days or more.
- d) On termination:
  - i) Mixolutionz may cease providing Services under the Contract;
  - ii) Any licences granted under the Contract will immediately terminate;
  - iii) You must pay Mixolutionz for all unpaid work performed up to and including the termination date and for all costs and expenses, including legal fees, relating to goods or services obtained or ordered in connection with the provision of Services hereunder and any transition fees to have the Services supplied by another provider;
  - iv) if You fail to comply with sub-paragraph (d)(iii) of this clause, Mixolutionz may exercise a lien over any of Your property and related data, documentation and records that We hold in our possession or control pending Your fulfilment of Your obligations under said sub-paragraph (d)(iii);
  - v) each party may pursue any additional or alternative remedies the law provides.

#### 11. UNFORSEEN EVENTS

- a) Neither party will be liable for its failure to perform its obligations under these General Terms and Conditions to the extent that the failure is due to circumstances beyond its reasonable control or contemplation ("*force majeure*"). This clause does not excuse payment of moneys due.
- b) *Force majeure* means, in relation to a party, any circumstance beyond the reasonable control or contemplation of the party which results in the party being unable to observe or perform on time an obligation under the Contract, including but not limited to:
  - iv) acts of God, including lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, washaways, explosions, fires and any natural disaster;
  - v) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
  - vi) congestion, down-time, or non-operation of any telecommunication network;
  - vii) data loss; or
  - viii) failure of any hardware, software, or services delivered to You by any third party.
- c) If either party is delayed by a *force majeure* event:
  - i) it must notify the other party in a timely manner of the circumstances of the *force majeure* event and the likely impact on the performance of its obligations pursuant to the Contract; and
  - ii) the performance of the party's obligations will be suspended to the extent that it is delayed or unable to perform its obligations.
- d) If a delay or failure by one party to perform its obligations due to a *force majeure* event exceeds 60 days either party may immediately terminate the relevant Contract by providing written notice to the other party.
- e) If a Contract is terminated under this clause, Mixolutionz must refund moneys previously paid by You for Services not provided by Us to You under the relevant Contract, which shall, to the extent possible by law, constitute the entirety of Our liability in respect of such termination.

#### 12. WARRANTIES

- a) Mixolutionz warrants that it will perform its obligations under this Contract in a proper, workmanlike and professional manner and with due care and skill.
- b) You represent and warrants that You will not use the services for any illegal, unlawful or disruptive purposes and agree that in this event, Mixolutionz may suspend or terminate the Services.

#### 13. INDEMNITY

You indemnify Mixolutionz against all claims, damage, costs and/or loss arising from Your breach of any of the terms of the Contract or any obligation You may have to Mixolutionz including (but not limited to) any costs incurred in relation to the recovery of any Fees that are due but have not been paid by You.

#### 14. LIABILITY

- a) To the maximum extent permissible by law, Mixolutionz will have no liability or responsibility to You resulting from any matter outside of its reasonable control or for any loss, damage or injury whether arising in contract, tort (including negligence), equity or otherwise which does not flow directly or naturally (i.e. in the ordinary course of things) from a breach of this Contract. Without limiting the foregoing, We shall not (where permissible by law) have any liability for indirect or consequential loss, loss of business or profits, loss of anticipated savings, loss of business opportunity, loss of sales, loss of revenue, reduction in share price, loss of any software, hardware or data, loss or waste of management or staff time, security violations or loss of goodwill incurred by You.
- b) The exclusions and limitations of liability in paragraph (a) of this clause and elsewhere in this Contract shall apply to the fullest extent permissible at law, but Mixolutionz does not exclude liability which may not be excluded by law. Without limiting the foregoing provisions, Mixolutionz does not exclude liability arising under the Australian Consumer Law which is prohibited from being excluded.
- c) To the full extent permitted by law, Mixolutionz excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in these General Terms and Conditions.
- d) Mixolutionz' total aggregate liability for all claims relating to services provided under this Contract is limited to the Price of the Services set out in the relevant SoW in relation to which the liability arises.
- e) Either party's liability for any claim relating to Services performed under these General Terms and Conditions will be reduced to the extent to which the other party contributed to the damage arising from the claim.
- f) These General Terms and Conditions are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, Mixolutionz limits its liability in respect of any claim to, at Mixolutionz' option:
  - i) in the case of goods:
    - 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 of acquiring equivalent goods; or
    - D. the payment of having the goods repaired, and
  - ii) in the case of services:
    - A. the supply of the services again; or
    - B. the payment of the cost of having the services supplied again.

## 15. SECURITY – VIRUS PROTECTION

- a) You acknowledge that the Internet is an inherently insecure environment and, while Mixolutionz will take reasonable steps to safeguard against any malicious traffic infiltrating its infrastructure, equipment or the Service, You must provide malware protection for Your infrastructure or equipment.
- b) Neither You nor any of your users may circumvent or otherwise interfere with any user authentication or security of the Service.
- c) You shall immediately notify Mixolutionz of any breach, or attempted breach, of security of which You become aware and will comply with Our instructions to mitigate the effects of those.

## 16. DISPUTE RESOLUTION

- a) Before commencing litigation in respect of any dispute relating to the Contract, the parties must attempt to resolve the dispute under the process in this clause.
- b) The process for settling disputes will be:
  - i) a party claiming that a dispute has arisen, must give written notice to the other parties to the dispute specifying the nature of the dispute;
  - ii) following receipt of the notice under paragraph (i) the parties to the dispute must seek to resolve the dispute by consultation between the managing directors of each party;
  - iii) if the dispute is not resolved under paragraph (ii) within seven days or any further or any other period agreed to in writing by the parties, the parties must refer the matter to the Australian Commercial Disputes Centre (ACDC) for mediation;
  - iv) the mediation must be conducted under the ACDC Guidelines for Commercial Mediation operating at the time the dispute is referred to ACDC which set out the procedures to be adopted, the process of selection of the mediator and the costs involved, and are deemed to be incorporated into these General Terms and Conditions;
  - v) if the dispute has not settled within thirty (30) days after appointment of the mediator, or any other period agreed to in writing by the parties, either party may commence legal proceedings.
- c) The provisions of this clause will survive the termination of the Contract.
- d) Nothing in this clause will prevent a party from seeking injunctive relief.

## 17. NOTICES

- a) Your address for service of notices is the address to which the SoW is addressed.
- b) Mixolutionz' address for service of notices is P.O. Box 1825, Neutral Bay Junction, NSW 2089.
- c) A party must promptly notify the other of any change to its address for service of notices.
- d) A notice by a party:
  - i) is taken to be given if it is made in writing and issued by the sender, and delivered by hand, post or email;
  - ii) subject to sub-paragraph (iii) is taken as being received:
    - A. if it is delivered by hand or courier - when actually delivered;
    - B. if it is posted:
      - a. in Australia to an address in Australia, on the 3rd Business Day after posting;
      - b. in Australia to an address outside Australia, on the 7th Business Day after posting; or
      - c. outside Australia to an address in or outside Australia, on the 7th Business Day after posting.

- C. if it is sent by email, upon receipt by the sender of a read receipt or delivery receipt from the recipient's email system, or upon receipt of a reply to the sender's email from the recipient copying in the original email sent by the sender.
- iii) that is received or taken to be received under sub-paragraph (ii) on a day that is not a business day in Sydney or after 5.00pm on a business day in Sydney, is taken to be received on the next business day in Sydney.

## 18. GENERAL

- a) You must not assign, licence, novate or otherwise transfer of any of Your rights or obligations under the Contract without the prior written consent of Mixolutionz, which Mixolutionz may withhold at its absolute discretion.
- b) No term of these General Terms and Conditions is intended to confer a benefit on, or to be enforceable by, any person who is not a party to the Contract.
- c) To the extent possible by law, these General Terms and Conditions together with the relevant SoW constitute the complete and exclusive statement of the agreement between You and Mixolutionz, superseding prior agreements, oral or written, and all other communications between the parties relating to the subject matter of the Contract.
- d) Provisions of these General Terms and Conditions which can, and are intended to, operate after termination, continue to have full force and effect.
- e) A waiver by either party of any of their rights under the Contract or existing at law does not constitute a release of the other party's obligation to observe and perform all of its obligations in the future.
- f) These General Terms and Conditions may not be varied, discharged or waived unless the parties sign a document to that effect.
- g) If any provision of these General Terms and Conditions or their application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of these General Terms and Conditions and their application shall not be affected and shall remain enforceable to the greatest extent permitted by law.
- h) These General Terms and Conditions are governed by the law in force in New South Wales and the parties submit to the exclusive jurisdiction of the courts of or exercising jurisdiction in New South Wales.
  - i) Each person who signs this document on behalf of a party declares that that person has no notice of the revocation or suspension of the power under the authority by which the person signs this document.
  - j) Each party must do everything reasonably necessary to give effect to these General Terms and Conditions and the transactions contemplated by it, including the execution of documents.
  - k) In the event of conflict between the terms of a SoW and these General Terms and Conditions, the former shall prevail.
  - l) This Contract may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Contract. Without limiting the foregoing, if the signatures on behalf of one party are on different counterparts, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Contract.
- m) These General Terms and Conditions are not to be construed against a party because that party was responsible for the drafting of them.