

Impress!ve.

Affiliate
Agreement

The date of this Agreement is the date set out in item 1 of the Schedule.

PARTIES

The person or entity described in item 2 of Schedule 1
(Affiliate)

and

Impressive Digital Agency Pty Ltd (ACN 610 306 815)
Level 6, 534 Church Street, Richmond VIC 3121 Australia.
as described in item 3 of Schedule 1
(Impressive)

Introduction:

- A. Impressive is a digital agency that provides the Digital Services.
- B. The Affiliate is able to refer Potential Clients to Impressive who wish to receive the Digital Services.
- C. Impressive wishes to appoint the Affiliate as an affiliate during the Term to refer Potential Clients to Impressive.
- D. The parties have agreed to enter into this Agreement to set out the terms pursuant to which the Affiliate will refer Potential Clients to Impressive.

The Parties agree:

1. Definitions

In this Agreement (including the recitals in the Introduction) the following terms have these meanings unless a contrary intention appears:

Affiliate Fee means the fee payable to the Affiliate as set out in item 6 of Schedule 1.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

Client Agreement means an agreement entered into between a Potential Client and Impressive for the provision of Digital Services.

Client Sales means the fees which have been paid and received by Impressive by a Potential Client arising from a Client Agreement after deducting from those proceeds the amounts of any GST referable to such services but without any deductions.

Commencement Date means the date of this Agreement.

Confidential Information means any and all technical and non-technical information that is confidential to a Party, not in the public domain and includes, without limitation, all data, details, plans, designs, concepts and specifications, inventions, computer software and course documents, figures, financials, costings, developments, results, technical advice, trade secrets, samples, specifications, statements, forms, processes, formulae, know-how, ideas, drawings, sketches, models, concepts, technology, business information, procurement, purchasing or manufacturing processes or requirements, Intellectual Property Rights, contracts, Potential Client lists, forecasts, sales and merchandising information, marketing plans, documents, agreements, techniques, commercial knowledge and other proprietary information in whatever form and however stored and regardless of whether the information is designated conspicuously or otherwise as **confidential**.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Digital Services means the digital services set out in item 4 of Schedule 1 and such other services which Impressive agrees to provide from time to time.

GST means Goods and Services Tax payable pursuant to the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).

Insolvency Event means the happening of one of the following events:

- (a) an application for winding up of a party or the appointment of a provisional liquidator to a party is made and not dismissed, stayed, enjoined or withdrawn within 21 days or any order is made or resolution passed for the winding up or dissolution of a party;
- (b) the appointment of an administrator, receiver or manager, or an inspector or investigator or any other corporate controller appointed under the Corporations Act 2001 (Cth) other than as a result of a reorganisation;
- (c) a party enters into a scheme of arrangement;
- (d) execution is levied against the assets of a party; or

- (e) a party is unable to pay its debts as they fall due or states that it is unable to pay its debts as they fall due.

Intellectual Property Rights means statutory and other proprietary rights in respect of trade marks, designs, patents, circuit layouts, copyrights, confidential information, know-how, moral rights and all other rights with respect to intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

Loss means all third party claim, action, dispute, proceeding, loss, damage, cost, expense or liability (including any legal costs on a full indemnity basis) and **Losses** has a corresponding meaning.

Party means a party to this Agreement.

Potential Client means a person or business referred to Impressive by the Affiliate who is not:

- (a) a current or former client of Impressive; or
- (b) an entity which Impressive has provided a current proposal to.

Term means the term of this Agreement as set out in item 5 of Schedule 1.

2. Interpretation

- (a) In this Agreement, unless the context otherwise requires:
 - (i) a word denoting the singular includes the plural and vice versa;
 - (ii) a word denoting an individual or person includes a corporation, firm, authority, government body and vice versa;
 - (iii) a word denoting one gender includes all genders;
 - (iv) a reference to a clause is to a clause of this Agreement;
 - (v) a reference to an agreement or document is to that agreement or document and, where applicable, any of its provisions as varied, novated, supplemented or replaced from time to time;
 - (vi) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;

- (vii) a reference to a thing is a reference to the whole or any part of it, and a reference to a group of things is a reference to any one or more of them; and
- (viii) headings are for convenience of reference only and do not affect interpretation.
- (b) All headings in this Agreement have been inserted for the purpose of ease of reference only. They do not affect the meaning or interpretation of it.
- (c) Any schedule attached to this Agreement forms part of it.

3. Affiliate Relationship

- (a) As and from the Commencement Date and for the Term Impressive hereby appoints the Affiliate as an affiliate of Impressive to refer Potential Clients to Impressive.
- (b) The Affiliate accepts the appointment under clause 3(a) to become an affiliate.
- (c) The Parties acknowledge and agree that the Affiliate's appointment as an affiliate is not exclusive and Impressive may appoint other persons or entities as affiliates of Impressive.
- (d) The Parties are independent contracting parties, and nothing in this Agreement shall make any Party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other.
- (e) The Affiliate is not permitted to use any of Impressive's Intellectual Property Rights without the express written permission of Impressive. For example, the Affiliate is not permitted to use any Impressive logo or branding on any of the Affiliate's marketing or advertising materials or publicly acknowledge that it is an affiliate of Impressive without Impressive's express written consent.
- (f) The Affiliate indemnifies Impressive and any employee, contractor or agent of Impressive (**Impressive and Associates**) and holds Impressive and its Associates harmless from and against any and Losses which may be asserted against or suffered or incurred by Impressive and its Associates as a result of a breach of this Agreement by the Affiliate.

4. Affiliate Fee

The Affiliate will be paid the Affiliate Fee for a period of twelve months for Client Sales for each Potential Client. For the avoidance of doubt, after twelve months the Affiliate will not be entitled to any fee for Digital Services (or any other services) provided by Impressive to the Potential Client.

5. Non-Solicitation

- (a) The Affiliate must not, during the term of this Agreement and for a period of 12 months after this Agreement ends directly or indirectly, on its own account or on behalf of any party and whether in the capacity of a trustee, consultant, director, employee, agent or any other capacity solicit, canvass, induce or encourage (or attempt to do any of these things) any employee, contractor or agent of Impressive to terminate his or her contract of employment or agreement with Impressive.
- (b) The Affiliate acknowledges that:
 - (i) Impressive's rights under clause 5(a) are in addition to, and do not derogate from or affect Impressive's common law or equitable rights;
 - (ii) these restrictions are reasonable and Impressive may seek injunctive relief to enforce these restrictions; and
 - (iii) the rights and obligations of Impressive and the Affiliate under this clause survive after this Agreement has ended.

6. Dispute Resolution

- (a) If there is any dispute between the Parties concerning this Agreement then the Parties must attempt to resolve any such dispute by the dispute resolution procedure set out herein before resorting to alternative avenues, including litigation provided that nothing herein shall preclude a Party from seeking urgent interlocutory relief from a court.
- (b) The dispute resolution procedure is as follows:
 - (i) if a Party believes that a dispute has arisen, it must serve a dispute notice on the other Party;

- (ii) the dispute notice must state that a dispute has arisen and identify in sufficient detail what the dispute is;
 - (iii) the dispute notice must be provided to the other Party's chief executive officer (or his/her nominee) following receipt of which the respective chief executive officers (or nominees) of the Parties shall meet to seek to resolve the dispute;
 - (iv) if the dispute is not resolved by the Parties within 14 days of service of the dispute notice, the Parties may jointly request the appointment of a mediator and failing agreement, either Party may apply to the President of the Law Institute of Victoria to appoint a mediator;
 - (v) once the mediator has accepted the appointment, the Parties must comply with the mediator's instructions; and
 - (vi) if the dispute is not resolved within thirty (30) days of the appointment of the mediator, or any other period agreed by the Parties in writing, the mediation ceases and the dispute may be actioned as each Party independently determines.
 - (vii) The mediator may fix the charges for the mediation which must be paid equally by the Parties.
- (c) If the dispute is settled, all Parties must sign the terms of agreement and those terms are binding on the Parties.
 - (d) The mediation is confidential and statements made by the mediator or the Parties as well as discussions between the participants to the mediation before, after or during the mediation cannot be used in any legal proceedings.
 - (e) The Parties agree that the mediator will act as an aid to assisting them to resolve the dispute and not as a determiner or decider of any matter

7. Confidential Information

- (a) Each Party must keep the terms of this Agreement confidential and may only make disclosures in relation to this Agreement to its professional advisers under similar obligations of confidentiality or if compelled by law.
- (b) Any Confidential Information obtained by either Party in connection with the other Party must be kept confidential.

- (c) Except as required by law or the rules of any stock exchange, all press releases and other public announcements relating in any way to this Agreement must be in terms agreed by the Parties.

8. Termination

- (a) Either Party may terminate this Agreement by providing the other Party thirty (30) days notice in writing of its intention to terminate this Agreement.
- (b) Either Party may terminate this Agreement with immediate effect by giving notice in writing to the other Party, if the other Party:
 - (i) is in material breach such that the breach cannot be remedied
 - (ii) is in breach of this Agreement and fails to remedy the breach within fourteen (14) days of receiving written notice of the breach; or
 - (iii) if an Insolvency Event happens to the other Party.
- (c) Expiration or termination of this Agreement does not affect:
 - (i) any rights of the Parties which may have accrued before the date of termination including the obligation for Impressive to pay the Affiliate Fee; or
 - (ii) the rights and obligations of the Parties which survive termination or expiry of this Agreement.
- (d) Upon termination or expiry of this Agreement for any reason:
 - (i) each Party must return to the other Party all Confidential Information and any Intellectual Property of the other Party, or if not capable of return, destroy it and certify its destruction to the other Party; and
 - (ii) the Affiliate must return any marketing materials or Impressive's Intellectual Property Rights which the Affiliate has retained.

9. GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Agreement, the recipient must pay to the

supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.

- (b) If a Party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause is subject to any other specific agreement regarding the payment of GST on supplies.

10. Notices

10.1 Service of notices

A notice, demand, consent, approval, invoice or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or email to the recipient's address for notices specified in the Schedule 1, as varied by any Notice given by the recipient to the sender.

10.2 Effective on receipt

A Notice given in accordance with clause 10.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, four (4) Business Days after the date of posting (or seven Business Days after the date of posting if posted to or from a place outside Australia); and
- (c) if sent by email, when sent by the sender unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

11. General

11.1 Variation and Assignment

- (a) This Agreement can only be varied, supplemented, replaced or novated by another document signed by the Parties.
- (b) Neither Party can assign, charge, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the other Party, which consent may be withheld in its absolute discretion.

11.2 Governing law

- (a) This Agreement is governed by the law in force in Victoria.
- (b) Each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

11.3 Legal Advice

Each Party has had the opportunity to obtain, and have obtained, independent legal advice before entering into this Agreement.

11.4 Giving effect to this Agreement

Each Party must do everything (including execute any document) and must ensure that its employees and agents do everything (including execute any document) that the other Party may reasonably require to give full effect to this Agreement.

11.5 Entire Agreement

- (a) This Agreement contains the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is enforceable or partly enforceable is, where possible, to be severed to the extent necessary

to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

1.2 Waiver

A right or a provision under this Agreement may only be waived, varied or replaced by writing signed by or on behalf of the Parties to be bound by it and no act, omission or delay by any Party will constitute a waiver of a right.

1.3 Counterparts

This Agreement may be executed in any number of counterparts (including by electronic means) and all of those counterparts taken together constitute one and the same instrument.