

Heart Harmony Communications Pty Ltd

Website Maintenance Agreement

PARTIES

Designer (we, us): Heart Harmony
Communications Pty Ltd
ABN 38 991 466 898
Marigold Avenue, Altona North VIC 3025
+61 (3) 8597 7980
info@heartcomms.com.au

Customer (You): [Your Name]
[Your ABN]
[Your Address]
[Your Phone]
[Your Email]

CONTRACT DETAILS

Start date: Upon Signing

SERVICES

Services: WordPress Website Maintenance for [Name]

Scope of services: WordPress Website Maintenance: see Appendix A

FEES

Monthly Fees (incl. GST) [As Per Proposal]

Out-of-Scope Fees (incl. GST): [As Per Proposal]

By clicking the Approve button to this proposal and digitally signing your name, you engage us, and we agree, to provide the Services specified in the Proposal subject to these Standard Terms and Conditions.

By signing you acknowledge that you are authorised to sign this agreement on behalf of the relevant party and bind the party to this agreement.

**HEART HARMONY COMMUNICATIONS PTY LTD
WORDPRESS WEBSITE MAINTENANCE AGREEMENT
STANDARD TERMS AND CONDITIONS**

1. TERM

This **agreement** begins upon the latest of:

- (a) the date on which the last party acknowledges and agrees to the terms; or
- (b) the **start date** (if any),

and continues unless terminated under the provisions of this **agreement**.

2. DESIGNER'S OBLIGATIONS

This section says we have the experience and ability to do everything we've agreed with you, and will do it in a professional manner within any deadlines set. We may hire subcontractors to help us deliver your services, and we'll make sure they perform at the same high standard as we do, and have the same obligations as us.

2.1 Performance

We agree to provide the **services** in accordance with this **agreement** and the schedule:

- (a) to the standards specified in the **scope of services**;
- (b) in a timely manner; and
- (c) in accordance with industry best practice.

2.2 Performance ethic

In performance of the **services**, we will at all times:

- (a) comply with relevant occupational health and safety policies;
- (b) comply with relevant laws including State and Federal laws and local government laws and regulations; and
- (c) observe your reasonable directions in relation to security or use of any facilities or equipment.

2.3 Right to Sub-contract

We may appoint employees, contractors or agents to provide all or part of the **services**; and such entities are bound by the same obligations as us under this **agreement**. It is our responsibility to ensure such entities comply with this **agreement**.

3. PROVISION OF OUT-OF-SCOPE WORK

The price and scope of this agreement is based on the length of time we estimate we'll need to accomplish everything you've told us you want to achieve, but we're happy to be flexible. If you want to change your mind, or add anything new, we can provide a separate estimate, but we may also refuse the work.

If we accept the work, we will charge you at an hourly rate. If you need things done urgently, we may charge you an additional fee if the work impacts on our other clients. We will do any additional work in the same professional manner as the original work agreed on.

- (a) Upon your request, we may at our discretion provide **out-of-scope work**.
- (b) The same standards, warranties, inspection rights and indemnities apply to **out-of-scope work** as apply to the **services**.
- (c) We will charge the **out-of-scope fee** for any **out-of-scope work** we provide.
- (d) **Surcharges** specified in the **schedule** will apply to any **out-of-scope work** delivered on an urgent basis, meaning any work that requires us to reschedule work for other clients. We will notify you in advance if your instructions would result in **surcharges**, and confirm you wish to proceed before incurring the higher rates.

4. CLIENT'S OBLIGATIONS

This section says that you have the authority to enter into this contract on behalf of yourself, your company or your organisation. You'll give us everything we need to complete the services as and when we need it, and in the format we need it. You guarantee that all elements of text, images or other artwork that you provide are either owned by you, or that you have permission to use them. You'll review our work, provide feedback and approval in a timely manner, and you understand that we don't make any promises that the services will achieve any particular result for you.

This section also says that you will pay a monthly fee in advance for as long as we're providing monthly services to you. We may need to review the services and fees applicable to them, but we will give you two months' notice if we do. You can request to vary your services, and we'll renegotiate your fees if necessary.

You agree to pay our invoices within 7 days of receiving them, or we will charge additional late fees. If you think the invoice is incorrect, you must tell us before the invoice is due.

4.1 Client Acknowledgements

You acknowledge that:

- (a) you remain fully responsible for ensuring your own branding, marketing and content complies with all applicable laws; and
- (b) you understand that we will take all reasonable measures to ensure your website is designed as securely as possible. However, you acknowledge that it is impossible for us to guarantee protection against hackers or unauthorised parties. In the event that your website security is compromised, you agree not to hold us liable for any damages or for the repair of the damaged site. This includes, but is not limited to: file corruption or deletion, modification of website, or access to sensitive data by unauthorised party; and
- (c) unless otherwise agreed in writing, we make no representations and do not warrant that you will achieve any particular result from the Services in terms of increased activity, search engine ranking or revenue.

4.2 Instructions, Equipment and Materials

- (a) You must nominate one contact person to centralise contact and revisions.
- (b) You must supply clear instructions regarding the scope and specifications of the **services**, and respond to any questions about the scope and specifications promptly and clearly.
- (c) You must provide all necessary images, data, software licences, information or other material necessary for us to provide the **services**, as specified in the **scope of services** or as agreed between the parties from time to time (the '**client materials**').
- (d) You grant to us (and our employees, contractors and agents, as applicable) a licence to use, copy, modify or adapt any **intellectual property** in the **client materials** as reasonably necessary for us to provide the **services**.
- (e) After we complete the **services**, we will notify you and you will have the opportunity to review the work. You must, within 7 business days, notify us of any failure to comply with the specification of the **services**, or of any other objections, corrections or changes required. If you do not notify us within 7 days, the **services** are considered approved and accepted. Once approved, this **agreement** will be complete, and the remaining fees under clauses 4.4 and 9.5 will become payable. This **agreement** will remain in effect until all obligations have been completed in terms of this clause.

4.3 Client Warranties

You warrant that:

- (a) you and your representative(s) have all necessary licences and legal right(s) to provide the instructions and **client materials**, and to authorise us to provide the **services**;
- (b) following your directions will not cause us to contravene any applicable laws, including Australian consumer law; and
- (c) you own or are authorised to grant the licence in clause 4.2(d), and that following your directions will not cause us to infringe upon any third party **intellectual property** rights.
- (d) You must provide adequate assurances of these warranties upon request, including providing copies of any relevant licences.

4.4 Payments

- (a) The **monthly fee** is payable in advance on or before the twenty second day of each calendar month, by electronic transfer from your nominated bank account.
- (b) We will issue a separate invoice:
 - (i) if you have requested services that attract a **surcharge**; or
 - (ii) if you have requested any **out-of-scope work**; or
 - (iii) if we have incurred expenses on your behalf in the course of performing the **services**. Expenses are on-charged at cost plus the **expenses surcharge** specified with the **fees** in the **schedule**.
- (c) All prices listed in the **schedule** are **inclusive** of GST.

4.5 Variations

You may request to vary the scope of the **services** at any time. We will adjust the **monthly fee** and the **services** to account for the requested changes. These changes will take effect from the next billing month, or as mutually agreed. This **agreement** will then continue to apply to the **services** as amended.

4.6 Invoices

- (a) Unless otherwise stated, each tax invoice:
 - (i) is payable 7 days from the date of the tax invoice; and
 - (ii) may be sent by post or email.
- (b) If a cheque or credit card payment is not honoured by the bank, you must reimburse us for any dishonour fee or other bank fees incurred as a result.

4.7 Fee disputes

- (a) If you reasonably believe that an invoice contains an error, and wish to dispute an invoice, you must:
 - (i) notify us before the due date of the invoice;
 - (ii) pay all undisputed fees on the invoice; and
 - (iii) provide detailed information about any disputed fees.
- (b) We will not suspend or terminate the **services** for non-payment of the disputed fees while the dispute is being investigated.
- (c) Our records are prima facie evidence of fees owing and paid.

4.8 Default in Payment

If you fail to pay any invoice by the due date, then without prejudice to our other rights or remedies, and until payment is made in full (including for any accrued interest), we reserve the following rights:

- (a) To charge for interest on all overdue amounts less than 30 days at a rate of 5% of the total fees, accruing daily from the due date of the relevant invoice

- (b) To charge for interested on all overdue amounts equal to or greater than 30 days at a rate of 10% of the total fees, accruing daily from the due date of the relevant invoice
- (c) To immediately suspend work of any or all services and provide you with a **notice of default**
- (d) To retain a lien over all equipment, materials, data and work in progress, including those owned by you in our possession and control
- (e) You are liable by way of liquidated damages for all amounts payable under this clause 4.8, plus all costs of debt collection and enforcement, including legal fees on a solicitor and own client basis.

5. INTELLECTUAL PROPERTY

This section says that you (or a third party) retain ownership in all elements of text and images or other artwork that you provide to us. We have copyright in the work we do during the term of the agreement, but that we will assign the copyright in the work to you after you have paid for the services in full. Until you have paid in full, you are not licensed to use the material created. We also reserve the right to display and link to your project as part of our portfolio, and, if we're providing you with web design services, to require you to maintain a link in the footer of your website crediting us as the creator.

5.1 Client Materials

- (a) You (or where applicable, any third party owner) retain ownership of all relevant **intellectual property** rights in the **client materials** and such rights are not assigned or transferred to us.
- (b) You retain ownership of your domain names and all existing content on any related sites. These domains are not assigned or transferred to us.
- (c) You grant us (and our employees, contractors and agents, as applicable) an irrevocable, royalty-free, perpetual licence to use, copy, modify and adapt any **intellectual property** in the **client materials** as reasonably necessary to provide the **services**.

5.2 Third Party Materials

We may incorporate third party materials such as templates, stock photos and fonts. Use of third party materials may be subject to creative commons or open source licensing terms, or such third party licensing terms as notified by us to you.

5.3 Intellectual Property

All **intellectual property** rights in any material developed specifically for you by us under this **agreement** are owned by us, and are assigned to you upon payment of all fees in full.

5.4 Publicity Rights

- (a) We reserve the right to display or link to the completed project as part of our portfolio.
- (b) For any web design services we provide, you acknowledge our moral rights in any website we have designed or created. We reserve the right to include and require you to retain a discreet link in the footer of the **website** crediting us as the website creator.

6. CONFIDENTIALITY

This section says that we will maintain the confidentiality of everything you give us (unless we are required by law to disclose it), and that if you receive any confidential information from us, you will maintain the same level of confidentiality.

- (a) Each party acknowledges that in the course of performing its obligations under this **agreement** it may receive **confidential information** which is proprietary and confidential to the other party.

- (b) Each party agrees not to use or disclose the **confidential information** of the other **party** except to its officers, employees or contractors, and then only to the extent necessary to carry out its obligations under this **agreement**.
- (c) Despite clause 6(a) and 6(b) above, either party may use or disclose **confidential information** only to the extent necessary to:
 - (i) comply with any law, binding directive of a regulator or a court order;
 - (ii) comply with the listing rules of any stock exchange on which its securities are listed; or
 - (iii) obtain professional advice in relation to matters arising under or in connection with this document where the advisors agree to be bound by the same obligation of confidentiality.

7. INDEMNITY & LIMITATION OF LIABILITY

This section says that we will only be liable to rectify defects in the services at no cost to you, or to refund any fees you have already paid.

7.1 Responsibility for own actions

Each party shall indemnify, defend and hold harmless the other party and its **indemnified officers**, against any **claim** or **liability** arising from its own negligence or malpractice, or reckless or intentional misconduct, or failure to perform its obligations and responsibilities under this **agreement**.

7.2 Release and indemnity

- (a) You agree to release and indemnify us and our **indemnified officers** against any **claim** or **liability** relating to:
 - (i) any loss or damage to persons or property (including data), caused by the **client material**;
 - (ii) any downtime, interruption, lost revenue, or consequential loss of any kind whether directly or indirectly arising in connection with the **services**;
 - (iii) any hardware or software failure, loss of data or any other loss or damage of any kind whether directly or indirectly arising in connection with the **services**;
 - (iv) indirect, special, economic or consequential loss or damage or loss of data or loss of revenue, profits, goodwill, bargain or opportunities you suffer in any way, even if we knew or should have known about the possibility of such loss; and
 - (v) any breach of your warranties under this **agreement**.

7.3 Limitation of liability

To the fullest extent allowable at law:

- (a) indirect, special, economic or consequential loss (whether arising under contract or tort) are expressly excluded under this **agreement**;
- (b) our liability and that of our **indemnified officers** for any defect in the services contemplated by this **agreement** is limited to (at our election):
 - (i) provision of further services at no charge to rectify any defect;
 - (ii) payment of the cost of rectifying any defect; or
 - (iii) refund of an amount paid to us under this **agreement**.
- (c) all warranties that may otherwise be implied by law or statute are excluded; and
- (d) you agree that under no circumstances will our total liability to you exceed an amount equal to three times the monthly fee.

8. SUSPENSION AND TERMINATION

This section says that if you are not meeting your obligations under this agreement, you will be in default, and we may suspend our services, and send you a notice asking you to fix any issues. If we do, you still have to pay any invoices due. The suspension will end once you've fixed any issues.

If you don't fix any issues after we have notified you of them, we can terminate this contract. Likewise, if we don't meet all of our obligations, we will be in default, and you can send us a notice asking us to meet our obligations. If we don't, you can terminate this contract.

There are also certain circumstances where either you or we can terminate the contract without notice, such as when one of us is guilty of dishonesty or serious misconduct.

If the contract is terminated, you must still pay any outstanding invoices within 7 days of receiving them.

8.1 Suspension

- (a) We may suspend the **services** at any time and give you a **notice of default** if:
- (i) you fail to make any payment when due, or any payment is dishonoured or subject to chargeback, subject to clause 4.6;
 - (ii) you fail to provide clear and timely instructions;
 - (iii) you fail to provide necessary **client materials**;
 - (iv) we have reason to suspect illegal or unethical activity in relation to your data; or
 - (v) in our reasonable opinion your data, network, software or equipment may be causing damage to any person or property.
- (b) Suspension of **services** under this clause:
- (i) does not affect your liability to make payment; and
 - (ii) will immediately end when the issue giving rise to the suspension is remedied.

8.2 Designer's Default

You may give us a **notice of default** if we:

- (a) fail to provide the **services** in a reasonably timely and competent manner; or
- (b) fail to meet the standards specified in the **scope of services**.

8.3 Termination for default

- (a) Either party may end this **agreement** at any time and without prior notice if the other party is guilty of dishonesty, serious misconduct or serious neglect of duty.
- (b) Either party may end this **agreement** immediately by written notice if:
 - (i) The other party fails to comply with a **notice of default** within 60 days; or
 - (ii) the other party is subject to an **insolvency event**.

8.4 Termination for convenience

- (a) You may terminate this **agreement** at any time by giving us one weeks' notice in writing.
- (b) We may terminate this **agreement** at any time by giving you one weeks' notice, and will refund any **monthly fees** paid in advance on a pro rata basis, net of any amounts payable under clause 9.5(a).

8.5 Rights upon termination

- (a) If this **agreement** is terminated for any reason:
 - (i) we may issue an invoice for work not previously billed;
 - (ii) you must pay all of our outstanding invoices whether or not due;

- (iii) no licence is created under clause 5.3 until all outstanding invoices are paid (including any invoice issued under sub-clause 9.5(a)(i)); and
 - (iv) a party not in default may pursue any other rights or remedies available at law against a defaulting party subject to clause 7.
- (b) If we end the **agreement** under clause 9.1, in addition to any other rights or remedies, we have a lien over and may retain all materials and works in progress until all outstanding invoices are paid (including any invoice issued under clause 9.5(a)(i)).

9. GENERAL

9.1 Costs

You are responsible for all duties, charges and legal fees (on a solicitor own client basis) incurred in enforcing this **agreement**.

9.2 Currency and Taxation

Unless otherwise stated, all monetary amounts are expressed in Australian dollars inclusive of GST.

9.3 Enduring Clauses

The parties' obligations under clauses 2, 4, 6, 7, 8 and 9 will survive the termination of this **agreement** for whatever reason.

9.4 Entire Agreement

This **agreement** contains the entire agreement between the parties and supersedes all previous negotiations or agreements in relation to the services under this **agreement**.

9.5 Force majeure

Neither party is liable for any delay or failure to perform its obligations under this **agreement** to the extent that such failure is caused by a **force majeure event**. Nothing in this clause excuses payment of money due.

9.6 Jurisdiction

The laws of the State of Queensland, Australia apply to this **agreement** and the parties submit exclusively to the courts of that jurisdiction.

9.7 Relationship between the parties

Nothing in this **agreement** constitutes a partnership or contract of employment. It is the express intention of the parties to deny any such relationship.

9.8 Representatives, Successors and Assigns

We may assign or novate this agreement by reasonable written notice to you at any time. You may only assign or novate this agreement with our prior consent, which is not to be unreasonably withheld. Upon assignment or novation, the parties' obligations and benefits under this agreement are binding on and shall benefit their respective representatives, successors and assigns.

9.9 Severability

If any provision of this **agreement** is ruled by a court to be illegal, invalid, unenforceable or in conflict with any law, it will not affect the validity and enforceability of the remaining provisions.

9.10 Varying the Agreement

Any variation or amendment to this **agreement** must be agreed to by all the parties.

9.11 Waiver

Any delay or failure to enforce any rights in relation to a breach by the other party will not be construed as a waiver of those rights.

10. DEFINITIONS

10.1 Definitions

- (a) **appendix** means the document(s) attached as an appendix to the end of these terms and conditions.
- (b) **claim** means a claim notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence) or statute and whether involving a party to this agreement or third party.
- (c) **client materials** means any materials, website content or other information that you must provide to us in order for us to provide the **services**, and includes any such materials we request from you from time to time.
- (d) **confidential information** means all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation:
 - (i) any kind of technical, financial or business information;
 - (ii) details of employees, suppliers, or customers;
 - (iii) material developed by us under this **agreement**;
 - (iv) **intellectual property**, concepts, know-how and trade secrets;but excludes information in the public domain (other than by default under this **agreement**) or information independently known to the other party.
- (a) **expenses surcharge** means an administrative fee, calculated as a percentage of the actual cost of any third party product or service purchased by us on your behalf in the course of performing the **services** (for example graphic design fees).
- (b) **force majeure event** means any of the following:
 - (i) an act of God;
 - (ii) war, terrorism, riot, insurrection, vandalism or sabotage;
 - (iii) strike, lockout, ban, limitation of work or other industrial disturbance; or
 - (iv) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application,which is
 - (i) unforeseen by the affected party;
 - (ii) is beyond the control of the affected party; and
 - (iii) occurs without the fault or negligence of the affected party.
- (b) **indemnified officers** means, in relation to a party, its directors, employees, contractors, agents and representatives.
- (c) **insolvency event** in relation to a party means any of the following:
 - (i) an application is made to a court for an order that the party be wound up and the order is not disposed of within 30 business days or an order is made that the party be wound up;
 - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator or a liquidator or provisional liquidator is appointed in respect of either party and that order or appointment is not disposed of within 30 business days;
 - (iii) the party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any classes of its creditors, or it proposes a reorganisation, moratorium or other administration;

- (iv) the party resolves to wind itself up, or otherwise dissolve itself, or gives notice of the intention to do so, or is otherwise wound up or dissolved;
 - (v) any step is taken to appoint an administrator, a receiver, and/or manager or other like person over the whole or any part of the party's assets or business;
 - (vi) judgment is entered against the party for more than \$20,000.00, which remains unsatisfied or unappealed for more than 21 days; or
 - (vii) if the party is placed under official management, commits an act of bankruptcy or is charged with a criminal offence.
- (d) **intellectual property** means all intellectual property rights including copyright, trade mark, design, patent, semi-conductor and current layout rights.
 - (e) **liability** means all liabilities (whether actual or prospective), loss, damages, costs and expenses of any description, including legal fees on a solicitor and own client basis.
 - (f) **notice of default** means a notice in writing that:
 - (i) states that it is a notice of default under this **agreement**;
 - (ii) specifies the default with sufficient detail and particulars;
 - (iii) gives a reasonable deadline by which the default must be remedied, of not less than 7 days.
 - (g) **out-of-scope fees** means the fees for **out-of-scope work** as specified in the **schedule**.
 - (h) **out-of-scope work** means all services outside the **scope of services**.
 - (i) **schedule** means the schedule attached to the front of these terms and conditions.
 - (j) **scope of services** means the scope of services specified in the **schedule**.
 - (k) **services** means the services specified in the **schedule**.
 - (l) **start date** means the date specified in the **schedule**.
 - (m) **surcharge** means additional fees applied to specified services as set out in the **schedule**.

1.2 Interpretation

- (a) Where applicable, all terms used in this document have the same meaning as defined in the schedule to this agreement.
- (b) "Includes", "including" and like terms are not words of limitation.
- (c) Headings and clause summary notes are for convenience only and do not form part of this **agreement** or affect its interpretation.

Appendix A: Scope of Work: WordPress Website Maintenance

1. Included Items

- (a) Provide WordPress Website Maintenance
 - (i) Check and update weekly WordPress, theme, and plugins
 - (ii) Apply security patches within 48 hours
 - (iii) Weekly backups run and stored off-site
 - (iv) Removal of spam comments and excess post revisions
 - (v) Security monitoring, malware scans & blocking of potential hackers
 - (vi) Up-site monitoring to ensure your site is visible on the internet
 - (vii) 6-monthly check that in-use plugins are actively supported
 - (viii) 3-monthly check testing that your contact forms are still fully operational
 - (ix) Monthly reporting on tasks completed on your site, security incidents, and core analytic data.
 - (x) Up to 15 minutes of website edits each month (non-cumulative). You can use this to swap over a photo, add a new team member etc.
 - (xi) 6-monthly check that the site is running on the latest stable PHP version and taking the site to the latest version and debugging any issues.

2. Excluded Items

(a) Hack remediation and restoration

While our best efforts will be pursued to keep your website hack free, no website or hosting is inviolate. If hackers breach our security, then an additional charge will be required for restoring the website from backups and/or code remediation.

(b) Maintenance and Technical support

- (i) Support for technical problems with the underlying third-party website templates or plugins is not included. An additional charge at our hourly rate will be required to assist debug any problems relating to themes or plugins.
- (ii) Support for domain name registration, website hosting, email or other services relating to hosting is not included. An additional charge at our hourly rate will be required to assist set up, transfer, or debug any services relating to hosting.
- (iii) If you or someone you authorise attempts to edit or update the website and damages the design or impairs the ability for the web pages to display or function properly, an additional charge at our hourly rate will be required to fix, debug or rebuild pages or functionality.

(c) Any additional services

Website maintenance does not include enhancements or other services outside the scope of the agreement including changes of theme, adding additional website pages, editing existing website pages, writing content or sourcing images, advice on additional functionality, or changes to website functionality.