

TERMS AND CONDITIONS - attached to Proposal**1. ACCEPTANCE**

- 1.1 These Terms and Conditions (**Terms**) are between Stunique Pty Ltd trading as Clip Media Motion (**Clip Media Motion**), its successors and assignees (referred to as “**we**”, “**us**” or “**our**”) and you, the person, organisation or entity described in the Proposal (referred to as “**you**” or “**your**”), and collectively the Parties. These Terms apply to all Services provided by us to you.
- 1.2 You have requested the Services set out in the attached Proposal. You accept the Proposal and these Terms by either:
- (a) signing and returning the Proposal; or
 - (b) confirming by email that you accept the Proposal; or
 - (c) instructing us to proceed with the Services; or
 - (d) paying any Deposit set out in the Proposal, or making part or full payment for the Services, set out in the Proposal or our tax invoice to you (**Invoice**).
- 1.3 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details in the Proposal. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order or use the Services if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you must not use or purchase our Services from us.
- 1.4 If we charge a Deposit, we will not commence performing the Services until you have paid the Deposit or first instalment of our Fees.
- 2. SERVICES**
- 2.1 We agree to perform the Services with due care and skill.
- 2.2 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.
- 2.3 We may refuse to perform the Services where we reasonably believe that:
- (a) the videographer or any of our contractors, employees or agents will be placed in a position where there is a risk of injury; or
 - (b) there is a risk that equipment we use may be damaged.
- 2.4 If we can no longer perform the Services in these circumstances in our sole discretion, any Deposit you have paid is not refundable.

- 2.5 The Estimated Period and/or End Date for us to perform the Services is set out in the Proposal.
- 2.6 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.
- 2.7 Third parties who are not our employees or our direct contractors (**Third Parties**) will be your responsibility. We are not responsible for the services provided by Third Parties.
- 2.8 If you request amended or additional services, including but not limited to changes to the Proposal, scope or variations (**Variation**), we have discretion as to whether we perform this work for you and whether an adjustment to the Fee may be required in respect of the same. If we are unable to accommodate the Variation, we may request that we be paid for Services performed to date and terminate these Terms.
- 2.9 If we agree to perform a Variation, then we will inform you of any additional cost (**Variation Fee**). You need to approve the Variation and Variation Fee before we commence work. We will invoice you accordingly for the Variation.
- 2.10 We will provide you with one initial draft copy of an edited video file (**Draft Copy**). You must inform us of any required amendments, changes or alterations you require within fourteen days of receipt of the Draft Copy (**Proposed Changes**).
- 2.11 We will make changes to the Draft Copy based on these Proposed Changes. Once we have made the Proposed Changes to the Draft Copy, we will send you a final edited video file (**Final Copy**). You must use the Final Copy solely for the purpose of verifying that the Proposed Changes have been correctly incorporated. If further changes are required, we may perform this Variation for you in our discretion and on an agreed Variation Fee.
- 3. QUOTATIONS**
- 3.1 We may provide you with a quote (**Quote**) for our Services.
- 3.2 We calculate our Quotes by estimating the period we will need to provide you with the Services under standard circumstances and are based on an hourly rate.
- 3.3 If you ask for changes during the performance of the Services, these changes will not have been incorporated into our original Quote and we will deal with any Variations in accordance with these Terms.
- 4. PRICE, INVOICING AND PAYMENT**
- 4.1 You agree to pay us the Fees and Expenses for the Services that you have requested, using the Payment Method, as set out in the Proposal including any Deposit (**Price**). All amounts are stated in Australian dollars. All amounts exclude Australian GST (unless stated).

- 4.2 The Price and Services can be varied by written agreement between us, including by email.
- 4.3 You agree to pay our invoices by the payment date set out on the invoice (**Payment Date**). If an invoice is unpaid after the Payment Date, we may cease to provide the Services to you until we receive payment of the invoice.
- 4.4 We may charge interest at the rate of 2% per month on any amounts unpaid after the Payment Date.
- 4.5 If invoices are unpaid after this period, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 4.6 We reserve the right to report bad debts to independent credit data agencies.
- 4.7 If the Proposal states that the Fees and Expenses are an estimate only, you acknowledge that the final Fees and Expenses may be more or less than the estimated amounts. We will endeavour to inform you of any material variation as it becomes apparent.
- 4.8 Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion. The pricing changes will apply to you for Services provided to you after the date of the change. All other changes will apply from the date that the amended or new Terms are provided to you or if you enter into a new Proposal, whichever is earlier.
- 5. YOUR OBLIGATIONS AND WARRANTIES**
- 5.1 You warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Services to you or the prior 12 month period.
- 5.2 You warrant that throughout the term of these Terms that:
- (a) there are no legal restrictions preventing you from agreeing to these Terms;
 - (b) you will cooperate with us, and provide us with information, images and video and other material that is reasonably necessary to enable us to perform the Services, as requested by us from time to time, and comply with these requests in a timely manner;
 - (c) the information you provide to us is true, correct and complete;
 - (d) you will not infringe any third party rights in working with us and receiving the Services;
 - (e) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
- (f) you are responsible for obtaining any consents, licences and permissions (including obtaining any permissions required or paying any fee to enable us to film at a particular venue or location) from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
 - (g) you will ensure that your premises or any location we use for filming are safe working environments to perform the Services;
 - (h) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
 - (i) if applicable, you hold a valid ABN which has been advised to us; and
 - (j) if applicable, you are registered for GST purposes.
- 6. OUR INTELLECTUAL PROPERTY**
- 6.1 The work and materials that we provide to you in carrying out the Services contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 6.2 **Artistic Licence:** You acknowledge and agree that any final Material we provide to you may include elements of artistic expression and interpretation. You agree and acknowledge that we reserve the right to use artistic licence in any Services you purchase from us, that require our editing Services or the production of finished works. The re-editing of commissioned works is offered as an optional extra by prior arrangement.
- 6.3 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, including any master footage, video files, audio files, raw images, raw footage and edited video files (**Raw Footage**) created as part of the Services, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials or the Raw Footage, except as stated in these Terms or with our written permission.
- 6.4 We may use any Raw Footage created for promotional or commercial purposes, unless we agree a different arrangement with you.
- 6.5 Your use of our Materials or Raw Footage does not grant you a licence, or act as a right to use any Intellectual Property in the Materials or Raw Footage, whether registered or unregistered, except as stated in these Terms or with our written permission.

- 6.6 You must not breach our Intellectual Property rights by, including but not limited to:
- (a) altering or modifying any of the Materials;
 - (b) creating derivative works from the Materials; or
 - (c) using our Materials for commercial purposes such as onsale to third parties.

Disposal:

- 6.7 Raw Footage will be retained for up to twelve (12) months. We may delete, erase or destroy Raw Footage after this time, in our sole discretion.

Our material assigned to you:

- 6.8 We will assign the ownership of the Final Copy we create, to you, upon full payment of our invoices.
- 6.9 This clause will survive the termination of these Terms.

Purchasing Raw Footage

- 6.10 If you wish to purchase Raw Footage in viewable format, we will charge an additional fee. You must notify us, when you engage us, if you wish to purchase Raw Footage.

7. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS

- 7.1 You agree to provide information including any Intellectual Property to us to enable us to provide the Services. You:
- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
 - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
 - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 7.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
- (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us for the purposes of providing Services to you;
 - (b) irrevocably consent to us using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
 - (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
 - (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statements.
- 7.3 This clause will survive the termination of these Terms.

8. CONFIDENTIAL INFORMATION

- 8.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than, where necessary, Third Party Suppliers; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you and ancillary business purposes, and not for any other purpose.
- 8.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- 8.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
 - (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
 - (c) is received from a third party, except where there has been a breach of confidence; or
 - (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 8.4 This clause will survive the termination of these Terms.
- 9. FEEDBACK AND DISPUTE RESOLUTION**
- 9.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
- 9.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
 - (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Western Australia to appoint a mediator. The mediator will decide the time and place for mediation.

- The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 9.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 10. TERM AND TERMINATION**
- 10.1 This Agreement will begin on the Commencement Date and continue until the end of the Estimated Period and/or End Date, or the date on which these Terms are terminated in accordance with this clause 10, if earlier.
- 10.2 The Parties may terminate these Terms by mutual agreement, by notice per the Notice Period in writing, including by email.
- 10.3 Either Party may terminate these Terms without cause providing the other Party 30 days' notice in writing.
- 10.4 Either Party may terminate these Terms, if there has been a material breach of these Terms, subject to the dispute resolution procedure in these Terms.
- 10.5 We may terminate these Terms immediately, at our sole discretion, if:
- we consider that a request for the Services is inappropriate, improper or unlawful;
 - you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - we consider that our working relationship has broken down including a loss of confidence and trust;
 - for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
 - you fail to pay an Invoice by the payment date as set out in the Invoice Terms.
- 10.6 On termination of these Terms you agree that any Deposit or payments made are not refundable to you, and you are to pay all Invoices for Services rendered to you.
- 10.7 If you terminate these Terms before the Estimated Period and/or End Date, you must pay for all Services provided prior to termination, including any Services which have been performed and have not yet been invoiced to you.
- 10.8 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 10.9 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.
- 10.10 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 10.11 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 11. CANCELLATION FOR SERVICES TO BE PROVIDED ON A SPECIFIC DATE**
- 11.1 If you engage us to provide the Services on a specific day and date (**Service Delivery Date**), you must notify us if you no longer require the Services to be provided, or provided on that date (**Cancellation**).
- 11.2 If we receive notification of the Cancellation outside normal business hours, the notification is deemed to have been provided at the commencement of the following Business Day.
- 11.3 If the Cancellation is made more than 48 hours prior to the Service Delivery Date, you must reimburse us for any Expenses we incur in preparation for the provision of the Services on the Service Delivery Date.
- 11.4 If the Cancellation is made between 48 and 24 hours prior to the Service Delivery Date, you must pay us 50% of the total Fee, including any Deposit.
- 11.5 If the Cancellation is made within 24 hours of the Service Delivery Date, you must pay us the Fee in full.
- 11.6 Any Fee payable to us pursuant to a Cancellation must be paid within 30 days of the Cancellation.
- 12. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 12.1 **Australian Consumer Law (ACL):** If you are a consumer as defined in the ACL, the following applies to you: You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the services remedied if they are not rendered with due care and skill or they are not fit for purpose and the failure does not amount to a major failure. To the extent we are able to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.

- 12.2 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out in the Proposal where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 12.3 You must appointed a person who has complete authority to provide instructions to us and respond to requests for feedback until we have ceased providing Services to you.
- 12.4 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.
- 12.5 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 12.6 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and these Terms, except those set out in these Terms, including but not limited to:
- (a) the Services being unavailable; and
 - (b) any loss, damage, costs (including legal costs), expense (whether direct, indirect, incidental, special, consequential and/or incidental), loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruptions or otherwise, suffered by you or claims made against you, arising out of or in connection with your inability to access or use the Services, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 12.7 To the extent permitted by law, we are not liable, nor our officers, employees, agents or sub-contractors, for any loss, destruction or damage of any of your Intellectual Property, including Intellectual Property contained in video files, images or other material. We are not liable for any loss of Intellectual Property arising out of any action by a person or entity not employee, engaged or associated with us.
- 12.8 You must retain a master copy of every recording delivered to us for the purposes of this Agreement.
- 12.9 **Limitation:** To the extent permitted by law our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made, as applicable.
- 12.10 This clause will survive the termination of these Terms.
- 13. INDEMNITY**
- 13.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - (b) this engagement and any breach of these Terms;
 - (c) any misuse of the Services from or by you, your employees, contractors or agents; and
 - (d) your breach of any law or third party rights.
- 13.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 13.3 This clause will survive the termination of these Terms.
- 14. GENERAL**
- 14.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 14.2 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.
- 14.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information

- and for any damage caused to your system or any files by a transfer.
- 14.4 **GST:** If and when applicable, GST payable on the Services will be set out on our Invoices. By accepting these Terms, you agree to pay us an amount equivalent to the GST imposed on these charges.
- 14.5 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 14.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 14.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 14.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 Business Days' notice in writing.
- 14.9 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to you at the address in the Proposal. Our address is set out in the Proposal. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 14.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Western Australia and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia.
- 14.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.
15. **DEFINITIONS**
- 15.1 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Western Australia, Australia.
- 15.2 **Commencement Date** is set out in the Proposal.
- 15.3 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.
- 15.4 **Confidential Information** includes confidential information about you, your credit card or payment details, the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 15.5 **Deposit** is set out in the Proposal.
- 15.6 **End Date** is set out in the Proposal.
- 15.7 **Estimated Period** is set out in the Proposal.
- 15.8 **Fees** is set out in the Proposal
- 15.9 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 15.10 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions, patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 15.11 **Invoice Terms** is set out in the Proposal.
- 15.12 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of

authorship, as defined in the *Copyright Act 1968* (Cth).

15.13 **Notice Period** is set out in the Proposal.

15.14 **Payment Method** is set out in the Proposal

15.15 **Proposal** means the final written proposal entered into between you and us in relation to the provision of Services.

15.16 **Retainer** is set out in the Proposal

15.17 **Services** means video production and other related services and is set out in the Proposal.

Unless otherwise defined herein or the context otherwise requires, capitalised terms used in these

Terms will have the meanings given to them in the Proposal.

Contact details:

Stunique Pty Ltd trading as Clip Media Motion ABN 57 159 985 654

Unit 10/573 Canning Highway

Alfred Cove WA 6154

accounts@clipmedia.com.au

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