

# EKM ENGAGEMENT OF SERVICES AGREEMENT

## CONTRACT DETAILS

The following document sets out the terms and conditions of your engagement with Ellie Kate Media (EKM).

Ellie Kate Media (51 826 878 677) of Gold Coast, Queensland, 4220.

## THE FINDER DETAILS

This agreement applies to any of Ellie Kate Media's courses or services including:

Executive assistant online course (\$1100 AUD), social media management training (\$350 AUD), introduction to freelance work training (\$110 AUD) and access to the EKM recruitment network.

These courses and services are conducted online. Payments are processed through Stripe

## LEGAL TERMS

To review the definitions of this agreement please scroll to the bottom of this document.

### 1. Commencing the Online Courses and Services

#### 1. 1. Commencing the Services

- (a) EKM will commence the Services on the advertised date.
- (b) EKM must within 48 hours provide written notice to the Recipient requesting additional information if all of the relevant information and material for completion of the Services has not been provided for the completion of the Services. If no written notice is provided, it is implied all relevant information and materials have been supplied.

#### 1. 2. Term

The Services will continue until both parties decide to terminate the Agreement in accordance with clause 5 of this Agreement.

### 2. Warranty Period for the Services

- (a) Where the Services include the provision of technology, then due to the inherently complex nature of technology, EKM is unable to provide the

Recipient with a guarantee that the Services will be free from technical errors and/or bugs (**Errors**).

- (b) EKM's Services come with guarantees that cannot be excluded under the Australian Consumer Law. For a major failure (as defined by the Australian Consumer Law) with the service, the Recipient is entitled to:
- terminate this Agreement;
  - a refund for any fees paid by the Recipient to EKM; and
  - compensation for any damage or loss (whether direct or consequential) that was, or reasonably ought to have been, foreseeable by EKM.

### **3. Payment for the Services**

The Recipient agrees to pay EKM an amount set out in Finer Details, which is due at the time of booking, or as instalments as arranged through Stripe.

#### **3.1. Goods and Services Tax**

Unless otherwise stated, all amounts, including out of pocket expenses, expressed and described on or in connection with this Agreement and/or its Order Details, are listed in Australian Dollars (AUD) and are GST inclusive, being goods and services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999*, inclusive amounts. Where the services are provided outside Australia, GST is inapplicable.

### **4. Copyright and Intellectual Property Rights**

#### **4.1. Intellectual Property Rights**

- (a) The Recipient recognises that all Intellectual Property are the property of EKM and will take all such steps as practicable to ensure that the Intellectual Property will vest in and remain vested in EKM.
- (b) The Recipient warrants that EKM owns the Intellectual Property Rights in the Intellectual Property delivered to the Recipient in the provision of the Services.
- (c) EKM grants to the Recipient a limited licence to use intellectual property rights owned by EKM, which have been used in completion of the course or the services provided by EKM.

#### **4.2. Indemnification**

The Recipient hereby indemnifies and agrees to keep indemnified EKM against all liability, losses or expenses incurred by EKM in relation to or in any way directly or indirectly connected with any breach of copyright or any rights in relation to copyright in such literary and artistic works supplied as aforesaid.

## **5. Liability and waivers**

### **5.1. Liability**

- (a) The total liability of either party or the other for damage, loss or reliance shall be limited to the price paid for course or services.
- (b) Neither party shall not be liable to the other for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by either party, however caused and under any theory of liability; including, but not limited to: any loss of profit (incurred directly or indirectly), any loss of goodwill or business reputation, death or personal injury and any other intangible loss.

### **5.2. Waivers**

- (a) A waiver of any right, power or remedy under this Agreement must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver.

## **6. No employment**

No provision of this Agreement may be interpreted as establishing an employment relationship between the parties, including any of their employees or contractors.

## **7. General matters**

### **7.1. Communication between Parties**

The parties agree on the forms of communication pursuant to Item 7 of Order Details.

### **7.2. Disclosure and Use of Confidential Information**

- (a) All obligations of confidence set out in this Agreement continue in full force and effect after this Agreement is terminated or any Completion Date for the services.
- (b) EKM must not disclose any Confidential Information to any third party without the prior consent of the Recipient.
- (c) If EKM discloses any Confidential Information to a third party without prior consent of the Recipient, EKM will notify the Recipient as soon as practicable.
- (d) If EKM discloses any Confidential Information to a third party without the prior written consent of the Recipient, EKM is liable for any damage suffered by the Recipient as a consequence of the disclosure.
- (e) Each party must keep confidential the terms of this Agreement. If a party becomes aware of a breach of this obligation, that party will immediately notify the other party.
- (f) EKM must not use any Confidential Information without the prior consent of the Recipient.
- (g) If EKM uses any Confidential Information without the prior written consent of the Recipient, EKM will notify the Recipient as soon as practicable.
- (h) If EKM uses any Confidential Information without the prior consent of the Recipient, EKM is liable for any damage suffered by the Recipient as a result of the use.
- (i) This Agreement prohibits the disclosure of Confidential Information by EKM with exception to the following circumstances:
  - (i) the disclosure is to a professional adviser for it to provide advice in relation to matters arising under or in connection with this Agreement and the Recipient has consented to the disclosure of such information to the professional adviser;
  - (ii) the disclosure is required by applicable law or regulation; or
  - (iii) if the confidential information is already in the public domain at no fault of EKM.

### **7.3. No partnership or agency**

Nothing contained or implied in this Agreement will create or constitute, or be deemed to create or constitute, a partnership between the parties. A party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other parties to any obligation.

#### **7.4. Governing Law & Jurisdiction**

- (a) This Agreement is governed by the laws of Queensland, Australia.
- (b) In the event of any dispute arising out of or in relation to the Services, EKM agrees that the exclusive venue for resolving any dispute shall be in the courts of Australia, situated in Queensland, Australia.

#### **7.5. Severance**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

#### **7.6. Entire Agreement and Modifications**

- (a) Both the Recipient and EKM confirm and acknowledge that:
  - (i) This Agreement shall constitute the entire agreement between EKM and the Recipient and shall supersede and override all previous communications, either oral or written, between the parties;
  - (ii) No agreement or understanding varying or extending this Agreement shall be binding upon any party unless arising out of the specific provisions of this Agreement; and
  - (iii) If for whatever reason there is inconsistency between this Agreement and any other agreement, this Agreement shall prevail.

### **Definitions**

The following words have these meanings in this Agreement unless the contrary intention appears:

**Agreement** means this Personal Services Agreement including any annexure;

**Business Day** means any day excluding Saturday, Sunday, a public holiday in and/or a Commonwealth public holiday;

**Confidential Information** means any information that is:

- (a) Information, ideas forms, specifications, processes, statements, formulae, trade secrets, drawings and data (and copies and extracts made of or from that information and data) that is not in public domain is considered confidential information; and
- (b) confidential by nature, stipulated as confidential or any other information that would be reasonably considered to be confidential due to the value of the information;

**Intellectual Property Rights** means all present and future rights in relation to copyright, trademarks, designs, patents or other proprietary rights, or any rights to registration of such rights, whether created, written, developed or brought to existence by the Recipient or EKM in the provision of the Services;

**Order Details** means the order for Services provided to EKM from the Recipient from time to time; and

**Services** means the services specified in Item 2 of the Order Details or as agreed between the Parties from time to time.

## 1.2. Interpretation In

this Agreement:

- (a) references to a person include an individual, firm or a body, whether incorporated or unincorporated;  
  
clause headings are for references only and shall not form part of this Agreement nor used in the interpretation of this Agreement;
- (c) if the time of doing an act or thing under this Agreement falls on a day which is not a Business Day, then the time of doing that act or thing shall be deemed to be the next Business Day;
- (d) words in the singular include the plural and vice versa in accordance with the context of which that word is used;
- (e) words importing a gender include other genders;
- (f) a reference to a clause is a reference to a clause in this Agreement;
- (g) a reference to any of the words 'include', 'includes' and 'including' is to be read as if followed by the words "without limitation";
- (h) a reference to a statute, ordinance, code or law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of any of them;

- (i) a reference to any party include that party's executors, administrators, substitutes, successors and permitted assigns; and
- (j) each party has participated in the negotiating and drafting of this document and in the event of ambiguity or a question of interpretation arising, this Agreement is to be construed as if the Agreement was drafted jointly.

**Executed as an Agreement by Ellie Kate Media.**

By confirming your booking and payment of EKM services or courses you acknowledge that you have read and agreed to the terms outlined in this document.