

# Vesanique®

## Licensing and Service Agreement

[last updated October 2021]

You are entering into a contract with Vesanique Pty Ltd

Our main contact details are:

Company:	Vesanique Pty Ltd		
ABN:	75 631 576 175	Phone:	07 3103 2525
Address:	59 Aberleigh Road, Herston, 4006, QLD		

**This agreement is made up of all of the following:**

1. Terms and Conditions.
2. Any proposal or quote we have provided you with.

## Terms and Conditions

[last updated 22 June 2021]

The estimate, quote or proposal (proposal) we have provided to you, together with the schedules of this agreement set out who you are, what you've asked Vesanique to supply, the cost of supply and the contact details for the parties. These terms and conditions set out the conditions of supply to you.

### 1 Parties

- 1.1 When you read words "Vesanique", "us", "our" or "we" it means Vesanique Pty Ltd ABN 75 631 576 175 and where appropriate, includes our officers, employees and agents.
- 1.2 The words "Client", "you", "user" or "your" means you, the Client identified in the Schedule, and where appropriate, includes your officers and employees.

### 2 Binding agreement

- 2.1 These terms and conditions become binding upon you as soon as you ask us to undertake any services for you, whether or not you sign anything. You may ask us to start providing services by phone, email, completing our online engagement, making a deposit or other payment for proposed work or sending us information we have requested from you.
- 2.2 We may vary our terms and conditions from time to time.
- 2.3 If you are an existing subscriber, the updated terms and conditions will apply from the date of renewal of your subscription. We will give you notice via email or within the client portal that terms and conditions are being updated.

- 2.4 If you do not agree to the amended terms and conditions, please let us know so that we can make arrangements to end your subscription. If you do not contact us and continue with your subscription, the updated terms and conditions will apply from the start of your new subscription period.

### **3 What we do**

- 3.1 We are a Digital Services and Branding Agency, with services to assist you in constructing, growing, designing or developing your business or ideas. We will provide the services in a professional and competent manner and keep you updated as to our progress.
- 3.2 Where you have requested us to scope a project and prepare a strategy outline or similar report, we will invoice for this work upon completion of the report or proposal. Unless otherwise agreed, if you request us to proceed with the development work set out in the report or proposal, we will reduce the development work quoted by an amount equal to the cost of the scoping work. If you decide not to proceed with our services, once you have paid our invoice, you can use the report or proposal for your own purposes, including having the development work outlined in the report or proposal completed elsewhere.
- 3.3 Vesanique will perform the services set out in the estimate, quote or proposal (proposal) provided to you. We will provide those services during the term of this agreement in exchange for the applicable service fees.
- 3.4 If at any time after requesting our services your requirements change, you may request a scope of works change (fees will apply for additional services and may also apply for the time spent scoping your new requirements). If you agree to the new scope of works, we will either update the proposal to accommodate those changes or issue a new proposal. Either way, these terms and conditions will continue to apply.
- 3.5 The Services will be provided in accordance with any applicable timeframes set out in the proposal. If there is likely to be any adjustment in that timeframe due to a Force Majeure event or any other reason, we reserve the right to make changes to the timeframes and we agree to notify you as soon as possible.
- 3.6 We can assist you with additional services not already identified in the proposal subject to consultation and scope. This will attract an additional cost.
- 3.7 Any additional work outside the scope of the Services in the proposal (including small tasks) will be charged either at our hourly rate, or in an alternative manner if agreed with you.
- 3.8 We may subcontract part of the work or use external suppliers. Any subcontractors or external suppliers will be bound by these terms and conditions.

### **4 Services**

This clause 4 sets out procedures, terms and conditions that are specific to each of the services we offer. The balance of the agreement applies to all of our services. If you are not sure what services you are using, check in the proposal for details of the services we are providing. If you are purchasing a bundle of services, the terms for each individual service we supply will apply to you.

#### 4.1 Website design and development

- (a) Consultation - We will discuss your needs with you and ask you to provide your specifications, business brief (including branding and 'look and feel' if appropriate), product placement information, content, data, video and any other requested information before we can start work.
- (b) Production Schedule - We will provide you with a timeline of development including all of the functionality you have requested in the consultation phase and the costs of development. Changes cannot be made to that schedule without affecting the cost of the build.
- (c) Once you accept our build costs, you must pay a deposit equal to 50% of the quote for work to commence. The deposit is non-refundable.
- (d) Design - For each major section of the website, we'll create a design. This may be only the homepage, or several pages if they require individual design.
  - (i) We'll ask for feedback and you can make two rounds of changes.
  - (ii) If you don't give us feedback within the timeframe we have specified (usually 7 days), we will assume you are satisfied with the content and design and will start the development phase.
  - (iii) Any additional changes at that time will increase the time required to complete your project and incur additional fees.
- (e) Development – The design you have approved will be turned into a working website on our development server.
- (f) Testing and acceptance –
  - (i) Once development is complete, we will provide a link and ask you to test and review the website. Colour and image quality may vary different depending on your systems. Not all computers or monitors are the same.
  - (ii) If there is something we have done that is not consistent with your accepted design, we will carry out any necessary and reasonable modifications without extra charge. Other minor changes may be requested before the website is made viewable by the public.
  - (iii) Any design related changes will incur additional re-design fees. We will let you know if re-design is required before starting that work.
- (g) Handover - We will assist you in uploading the final files to your preferred hosting company after our invoices have been paid or other arrangement for payment has been agreed.
- (h) Exclusions
  - (i) Unless set out in our proposal, you will be responsible for registering the website's domain name, arranging hosting, setting up third party providers (for example shopping carts), optimisation and all costs associated with these items.

- (ii) We can assist you with hosting, e-commerce solutions, optimisation and future changes to the website design however each of these will incur additional fees which we will provide a separate quote for (if requested).
  - (iii) We do not create content for you.
  - (iv) Hosting and ongoing website management are not included unless set out in our proposal.
  - (v) During development or after handover of the website, if anyone other than us attempts to update, edit or alter website pages, infrastructure, source files or hosting management in a way that causes damage to individual pages or the website's architecture, time to repair pages will be treated as additional work and charged at our standard or overtime rates as applicable.
  - (vi) We are not responsible for any downtime or security breaches occurring after the date of handover.
- (i) What happens if you do not like the work we complete for you? This can happen. There is a creative element in website design and, as with any creative pursuit, despite following the brief and applying skill in producing a quality product, you may not like the outcome. However, we will have still spent valuable time creating your work and have the right to be paid. To avoid ending up in this scenario we recommend you:
- (i) check out other websites we have designed before you engage us and make sure our style fits your concept. Once you pay your 50% deposit, it is non-refundable, so make sure you do your research first.
  - (ii) let us know the feel and look you are chasing and provide images/video that reflect this feel
  - (iii) spend a bit of time reviewing the draft and making sure you are happy
  - (iv) provide clear guidance if you require amendments
  - (v) talk to us if you have any concerns.
- (j) If you decide you no longer wish to use our services, you may finish your agreement with us at any time and take the work we have completed to date (which we will charge for accordingly, for the work completed to this point). Note however 50% of the project cost (where you paid 100% upfront) or the 50% deposit you paid, is non-refundable even if you terminate our working relationship before we have completed 50% of the work.

## 4.2 Website hosting

### (a) White Label Reseller

- (i) We act as a reseller of hosting services provided by AWS – Amazon Web Services. The benefit of working with us is that we are able to discuss any hosting issues with the host on your behalf and resolve those issues promptly without any hassle to you.
- (ii) Vesanique and you are each bound by the terms and conditions for hosting services published and updated from time to time by AWS [https://aws.amazon.com/legal/?nc1=f\\_cc](https://aws.amazon.com/legal/?nc1=f_cc).

- (iii) We will let you know if we intend to move your website to a different hosting service, together with a link to their terms and conditions. In unusual circumstances we may be required to move your website before giving notice, and will provide notice as soon as possible after doing so.

(b) Servers

- (i) Hosting services are usually provided as part of a shared server environment. This means that your website may not be the only website residing on a web server connected to the internet. It is possible, although unlikely, that an event affecting another website may impact all websites on the same server.
- (ii) VPN (virtual private networks) and dedicated servers are not shared server environments and attract different hosting fees.
- (iii) Our hosting services will be limited by the service parameters identified by the hosting service, including the steps available to ensure the security of the server and your website.
- (iv) While we will communicate with the hosting provider, we offer no guarantee that the server or your website will be free from unauthorized users or hackers. We will not be liability for loss or damage arising from a security breach.
- (v) We reserve the right to change, remove, amend, suspend or terminate your account at any time if your website has a negative impact on the server. If this occurs, we will assist in promptly transferring your website to a new server. Additional costs may be incurred in this process.
- (vi) From time to time, the hosting provider may carry out maintenance on its servers, and during that time your website may not be visible to the public.

(c) Format

- (i) If you are transferring an existing website to us for hosting, it must be provided in the format specified by us.
- (ii) Any website transferred for web hosting services must not contain any material detrimental to us or any other user, including any viruses, trap doors, back doors, Trojan horses, time bombs, Easter eggs, worms, cancelbots or other computer programming routines that are intended to detrimentally interfere with, damage, expropriate or surreptitiously intercept any system, data or personal information.

- (d) Acceptable use - You agree to use the web hosting Services for legal purposes. If we become aware or suspect that your website is being used for illegal purposes, we will be entitled to immediately cease the web hosting services and terminate this agreement.

(e) Disk Space

- (i) We consider your intended business functions prior to recommending a plan for you however data usage is subject to reasonable usage allowances. If your usage is higher than anticipated or changes over time, you may need to move to a new or varied plan. If you have any questions

about data usage, please ask us. We provide for hosting of up to 20GB, 50GB or 100GB of data, depending on your chosen plan, for each website. We will provide notice to you if you are getting close to that limit. To find out what plan you have selected, please refer to the proposal.

- (ii) The amount of traffic to a website may also affect its hosting. A large number of visits in a short period of time can overload a server. Access to your website will be unavailable if the server is overloaded.
- (iii) If you have requested a VPN or dedicated server, higher limits will apply and will be included in your Proposal or notified to you.

(f) **Bandwidth**

- (i) We provide for hosting of up to 25GB, 100GB or 400GB of data, depending on your chosen plan, for each website. We will provide notice to you if you are getting close to that limit. To find out what plan you have selected, please refer to the proposal.
- (ii) Additional bandwidth will be charged at \$0.50 cents per GB.
- (iii) If you have requested a VPN or dedicated server, higher limits may apply and will be included in your Proposal or notified to you.

#### **4.3 App design and development**

- (a) We will follow the same process for App design and development as set out for websites in clause 4.1 above. In addition, the following provisions will also apply.
- (b) Submission of an App must be made individually to each individual marketplace, and we scope our fees based on the marketplaces you have requested assistance with. We will assist you to have your App listed only in the iOS or Android marketplaces listed in our proposal for services. If you request assistance with marketplaces not listed in the proposal, additional fees will apply. Where any App marketplace has pre-conditions for listing, like the provision of a privacy policy or meeting 'do-not-track' options, meeting those pre-conditions is your responsibility. If you fail to do so within 14 days a request, our obligation to assist you in having your App listed, will lapse.

#### **4.4 E-commerce**

- (a) We may assist you to identify a suitable e-commerce platform for your website or other services.
- (b) We can assist in the set up of your online store as well as integration of that store with your payment systems, email marketing systems and stock management systems.

#### **4.5 Digital marketing**

- (a) We will assist you to develop a digital marketing strategy as set out in the proposal.
- (b) Development of an online marketing strategy may include business analysis, identifying the results to be measured, situation analysis, recommending platforms for your use, and designing marketing campaigns for email, social media or other platforms.

- (c) All marketing strategies take time, are tested, measured and changed incrementally to try and achieve the best results. What we do is dependent on how the third party platforms work. Those third party platforms may change without notice.
- (d) We cannot guarantee that your objectives will be met or that your results will be consistent or improve. We are not responsible for any loss or damage incurred by you as a result of changes made by third party platforms.
- (e) Third Party Platforms
  - (i) We may recommend third party platforms for you to support your digital marketing strategy. Your third party provider has its own terms and conditions. It is your responsibility to read the terms and conditions. You will need to establish an account, including adding your billing details.
  - (ii) If necessary, you authorise us to access or create, establish and configure accounts with third party platforms on your behalf to perform the Services. We will provide you with the full login and administration details of any account established on your behalf.
  - (iii) You authorise us to share your details with third party platforms to create accounts and perform the Services. Your third party platform accounts will be accessible to you at all times.
  - (iv) You will be responsible for the cost of maintaining your third party platform accounts and agree to keep your billing details up to date. It is usual for the third party providers to automatically deduct any monthly cost from your nominated account. You are responsible for ensuring that there are sufficient funds available to cover any monthly billing.
- (f) You acknowledge that third party platforms may change their policies, algorithms, regulations or systems at any time. We cannot be held liable for loss or damage incurred by you as a result of changes made to third party platforms, this includes the closure of an account by the platform provider without notice or explanation.
- (g) Making changes
  - (i) We will propose changes to your marketing strategy, or additional campaigns, for your approval prior to implementation. You have five (5) days to provide changes and comments after we send work to you for approval. If you do not provide a response, we will proceed as if no changes are required.
  - (ii) If you make changes to any campaigns or advertising through third party platforms without informing us, this could negatively affect results and costs. Vesanique will not be liable for any loss or damage arising as a result of your changes.

#### 4.6 Email marketing

- (a) You will either need to establish an account, including adding your billing details or provide us with the account details of your preferred email marketing automation system. We may recommend systems we are more familiar with using if you do not already have an account.

- (b) You will need to add Vesanique as an authorised user on that account once established. We will provide the information you need to complete that process.
- (c) You authorise us to access your email marketing automation system so that we can set up the campaigns identified and agreed in your online marketing strategy.
- (d) You warrant that every customer on your database who will receive your email campaigns has given their consent to receive electronic message from you, and that you will comply with relevant anti-spam legislation at all times.
- (e) All emails campaigns set up by us will have an unsubscribe facility, and you agree that you will not attempt to disable this function at any time.
- (f) You agree that any customers who opt to unsubscribe from emails will be removed from your database immediately, and not receive further emails.
- (g) You agree to indemnify, defend and hold harmless Vesanique against any loss, damage, costs or liability resulting from a third party claim in relation to your breach of this clause.

#### **4.7 Graphic design**

- (a) At your request we may design, create, write or edit content on your behalf. We may also purchase licenses to use themes, stock images, stock music or stock videos on your behalf.
- (b) Consultation - We will discuss your needs with you and ask you to provide your requirements before we can start work.
- (c) Production Schedule - We will let you know how long it will take to produce your designs.
- (d) Where we are to provide content, you undertake to review all material supplied by us to satisfy yourself that it does not infringe third party intellectual property rights, before approving that material for inclusion in your website.
- (e) All content created by us will be provided to you for approval. Before giving approval, you will have two (2) opportunities to ask for revision. Additional revisions will attract an additional cost as set out in the proposal.
- (f) You may authorise us to create content and conduct campaigns on your behalf without your direct involvement. We will carry out the work consistently with the objectives you have told us, and any work completed for you in the past. We act as your agent in this process and you indemnify us against any liability (including legal fees and costs) threatened or actual, arising from that work.
- (g) All intellectual property rights in content created on your behalf will transfer to you automatically upon payment in full for the Services delivered in the immediately preceding month.
- (h) Once you have accepted and paid for the design, we will provide it to you in a file format suitable for printing. Source files, if required, may be purchased separately, please contact our office for assistance.

#### **4.8 Domains**



- (a) There is no guarantee that a domain you wish to register is available.
- (b) Domain name registration and hosting are separate things. Hosting is attached to a domain name in order to make website content visible to the public. Domain name registration secures the address where people can find your website.
- (c) You must establish and configure your own account for domain name registrations, including the appropriate billing details to be attached to that account, unless you ask us to do that for you. We still need your billing details to set up on the account.
- (d) Your account should be set up so that the registrar will automatically deduct registration renewal costs from your credit card account. You are responsible for ensuring that there are sufficient funds available in your account and your payment details are up to date. Your details can be updated at any time.
- (e) The registrar requests a check and update of account contact details annually. If Vesanique is listed as an administrator contact on that account, we will notify you of any request received by us on your behalf, and the time frame for response.
- (f) Any fees payable to register a domain name are processed by the registrar and any billing enquiries will need to be taken up directly with the registrar.

#### **4.9 Consulting services**

- (a) We can provide consulting services to assist you in clarifying your business objectives online, streamlining or integrating systems, installing and configuring software or other similar services, but request.
- (b) Before providing any consulting services, we may be required to prepare a suggested scope of services before properly understanding your needs. Scoping will be charged at our hourly rate, or a fixed fee notified before we start. The scoping fee will remain due and payable regardless of whether or not you proceed with the scoped work.
- (c) Consulting fees are charged at a fixed fee, or on an hourly rate.

#### **4.10 Subscription services**

- (a) Our subscription service provides you with a cost effective way to have a site built and maintained over the long term, without having to pay the initial development costs in full up front.
- (b) Because we are effectively financing the development costs, all websites or apps developed by us under a subscription service remain the sole property of Vesanique, and we licence to you the use of that domain name and developed website or app so long as you maintain your subscription. If you wish to take ownership of the developed site or app at any time, please contact us and we will advise you of the cost to complete transfer of that site or app, taking into consideration development costs and the already expired term of your subscription.
- (c) The inclusions for your subscription service will be set out in the proposal and usually incorporate:
  - (i) Website design and development consistent with clause 4.1;

- (ii) Hosting consistent with clause 4.2; and
- (iii) If included, ongoing website management. Website management ensures a website remains functional. Updates or changes to your website may require an additional subscription or scope of services.

## **5 Duration of this agreement**

5.1 This agreement runs for the initial period set out in the proposal (or if no period is stated, for 12 months from the start date), and then automatically renews for ongoing one-year periods unless terminated in accordance with clause 14.

## **6 Requesting changes**

6.1 To request a revision:

- (a) You have five (5) days to provide changes and comments after we send work to you for approval. If you do not provide a response, we will proceed as if no changes are required.
- (b) Changes and comments must be provided in writing.
- (c) Changes and comments must be provided in one complete brief and not multiple emails.
- (d) We will consider each email about changes as a separate round (our quoted fee includes two (2) rounds of revision only).
- (e) Extended revisions outside of these limits will be charged either at our hourly rates or, if required, a change request process will be used and a fixed fee provided.
- (f) If a project is abandoned or suspended, an administration fee will apply to reactivate that project.

## **7 Abandonment**

- 7.1 If after repeated attempts to begin, continue or finalise the delivery of services You fail to participate or provide required materials in a timely manner, or become unresponsive to our emails or phone calls for a period of five (5) business days without explanation (abandonment), the Services will be placed in abeyance or cancelled at our discretion.
- 7.2 Upon cancellation of the Services all fees currently owed but not yet paid will immediately become due and payable, together with an administration fee of \$500, or a reasonable amount for the expenses already incurred, and the work we have completed at that time.
- 7.3 If the Services are terminated due to abandonment, we are not under any obligation to continue to provide any Services.
- 7.4 If the Services are placed in abeyance, all outstanding fees will immediately become due and payable. If you ask us to restart the work, you agree to pay an administration fee notified by us up to 10% of the total project value, to reactivate the Services.
- 7.5 Upon receipt of payment for reactivation, we will allocate time to your project in our workflow, as time becomes available.

## **8 Your responsibilities**

- 8.1 You warrant that the person signing this agreement on behalf of the Client is duly authorised to bind the Client to the terms of this agreement.
- 8.2 You agree to provide Vesanique with a dedicated contact person, remote connection capabilities, all passwords and system access and authorisation to your systems as necessary for Vesanique to carry out its obligations under this agreement.
- 8.3 You agree:
- (g) to be bound by and comply with the terms of this agreement;
  - (h) to promptly provide information or feedback when requested;
  - (i) not to directly or indirectly induce any employee of Vesanique to contract directly with you or become an employee of yours or of an entity related to you;
  - (j) to pay invoices and fees owing to us in full and on time in accordance with the payment terms shown on our invoice, and understand that we may, at our discretion, suspend or cease to provide services to you if any invoice or fees becomes overdue.
- 8.4 If you breach your responsibilities or other parts of this agreement, we may terminate this agreement and you may be subject to prosecution and damages.
- 8.5 You agree to promptly notify Vesanique of any defects arising in the services provided.
- 8.6 You warrant that you have the right or license to use all information provided to Vesanique. You agree to indemnify us against any loss or damage (including consequential loss) that may result from any information provided by you, including but not limited to copyright breach or other intellectual property infringement.

## **9 Your Data**

- 9.1 Title to and proprietary rights in your business information, or other material provided to us to complete the services, and any information you upload during the term of this agreement (data), remains your property.
- 9.2 While all care is taken to store your data, we will not be responsible or liable for the theft, deletion, correction, destruction, damage, loss or failure of any stored data.
- 9.3 All information or data uploaded is the sole responsibility of you, or the person providing the data. We are not responsible for this content and will have no liability in respect of the quality of the data, or any third-party rights in respect of that data.
- 9.4 If this agreement is terminated, we will hold your data for a maximum period of ninety (90) days from the date of termination. At your request, your data will be accessible by you during this period. Fees may apply for provision of data by request. At the end of the ninety (90) day period, your stored data will be permanently deleted from the Vesanique Platform.

## **10 Security, Accessibility and Integrations**

- 10.1 Any data stored in or processed through us is stored or processed in Australia.
- 10.2 Continuous access to the Vesanique website, hosting, e-commerce or other platforms ('platforms') are dependent on third party services. As a result, these items may be inaccessible from time to time.
- 10.3 We cannot guarantee that the Vesanique platforms will always be error free. We will not be liable for any periods that the Vesanique platforms are not functioning or are malfunctioning.
- 10.4 We are committed to maintaining the security of our platforms however, no system can be 100% secure, so we do not provide any guarantee of the security of the Vesanique platforms or your data.
- 10.5 Where our Vesanique platforms integrate with other systems including yours, we are not responsible for the integration process, impact on existing systems or the loss of information if integration is unsuccessful.
- 10.6 Vesanique disclaims all liability for any computer virus or technological problems that were not intentionally caused by us or are beyond our control. You are encouraged to install and maintain up-to-date security on your systems. We do not warrant that the Vesanique platforms are free from viruses, malware or similar damaging code.

## **11 Fees and Payment**

- 11.1 All fees quoted are expressed in Australian dollars (AUD) and are exclusive of GST unless otherwise noted. You agree to pay to Vesanique an amount attributable to GST in addition to any amount payable.
- 11.2 For continuing services (for example monthly hosting plans), upon acceptance of our quote, you will be invoiced for:
  - (a) the agreed continuing services set out in the quote in advance for the first month; and
  - (b) if required, a security deposit (equal to one month's services). For example, a security deposit may be required where you are not on a shared environment.

Invoices will then be issued monthly in advance on the first day of each month. Payment for invoices are due within fourteen (14) days of issue, unless otherwise specified. We reserve the right to suspend or cease to provide services to you if payments become overdue.
- 11.3 For one-off, shorter term services (for example graphic design), upon acceptance of our quote, you will be invoiced for 100% of the quoted amount. Work will not commence until the invoice is paid. Payment for invoices are due within fourteen (14) days of issue, unless otherwise specified.
- 11.4 For one-off, longer term services, upon acceptance of our quote, you will be invoiced for 50% of the quote up-front. Work will not commence until the invoice is paid. The remaining 50% will be invoiced 30 days after the first invoice. Payment for invoices are due within fourteen (14) days of issue, unless otherwise specified.
- 11.5 If you require work to be completed at an hourly rate, we can accommodate this request. In this scenario, unless we agree otherwise, we will issue you an up-front invoice with an estimate of the number of hours we anticipate the work will take. Work will not commence until the invoice is paid. If the number of hours

varies from our estimate, we will invoice accordingly either at completion of the project or, for longer term work, monthly during the duration of the project.

- 11.6 Expenses - Unless otherwise agreed, any necessary expenses will be invoiced at cost with tax invoices provided, and any necessary travel, accommodation and meal fees will be charged in accordance with the reasonable allowance rates set by the ATO in Tax Determination TD 2018/11 for the then current financial year. These amounts will be updated to match the tax determination set by the ATO for each subsequent financial year. When using the tax determination, we will apply the rates for the middle salary range.
- 11.7 Invoices are issued electronically to the email address nominated by you.
- 11.8 Unless otherwise agreed upon by both parties, all charges will be subject to the end of financial year Queensland cost of living increase (CPI) each financial year that the contract is in effect.
- 11.9 Our continuing services fees may be paid by direct debit. You authorise us to deduct our continuing service fees at the agreed payment frequency until this agreement comes to an end. If your continuing service fees fall into arrears, you authorise us to deduct the outstanding balance to bring your account back up to date.
- 11.10 If an automatic direct debit payment is reversed by your financial institution, it will be processed again within 14 days of the reversal together with any reversal fees that apply. You authorise us to debit your account an amount equivalent to the amount our bank charges us for reversal fees in addition to the outstanding balance.
- 11.11 Please be aware that it is your responsibility to cancel direct debit facilities in respect of your Monthly Service Fee when this agreement expires, is cancelled or terminated.
- 11.12 You agree to pay any applicable surcharge on payments made by credit card.
- 11.13 Interest will be charged on any overdue payment, accruing daily from the date when payment becomes due, until the date of payment, at a rate of 8% per annum (compounding monthly). If unpaid fees remain outstanding, we may forward the debt to a collection agency to take further action.
- 11.14 If any payment is dishonoured for any reason you agree to pay any dishonour fees incurred by Vesanique, as well as any costs and disbursements incurred by Vesanique in pursuing the debt (including legal costs on a solicitor and own client basis and collection agency costs).
- 11.15 Cancellation of services – After we commence work on a project, if you decide not to proceed with the project, we may retain part or all of your upfront payments depending on the stage the project is at:
  - (a) where you have paid a 50% deposit, we retain the 50% deposit. Additionally, if we have completed more than 50% of the quoted services, we will invoice you for the services completed up to the date of termination.
  - (b) where you have paid 100% of the project costs up front, where we have completed more than 50% of the work, we will calculate the work we have completed to the date of termination and account to you for the balance you had paid in advance. If the services have not reached 50% completion, we will issue a refund of 50% of the amount you paid in advance.

## **12 Third Party services**

- 12.1 The services we provide rely upon the continued operation of online facilities that we use. We will not be liable for any third party failures affecting the provision of our services. You agree to indemnify us against any loss or damage arising directly or indirectly from any failure of software or other third party services provided to you.
- 12.2 If we make any third party recommendations, we do so because to the best of our knowledge they are professional and successful service providers. You are still required to do all due diligence to protect your own legal rights. If you enter into an agreement with a third party as a result of our recommendation it is still your responsibility to understand and negotiate your own terms of agreement with them.
- 12.3 We may earn commission or referral fees from a provider that we recommend to you.
- 12.4 In the use of third party services we complete the development work as your agent and any liability arising from the use of your accounts remains your sole responsibility.
- 12.5 Third party search engines may change their policies and systems at any time. We cannot be held liable for fluctuations, changes or removal of your listing from search engine results.

### **13 Intellectual Property**

- 13.1 Intellectual property rights means all intellectual property rights whether now existing or created after the Start Date including copyright and related rights, registered and unregistered trade and service marks, business and domain names, all rights in relation to inventions (including patents and patent applications), designs, plant varieties, circuit layouts, coding, confidential information, manuals, trade secrets, know how, research data, recipes, formulae, discoveries and any other intangible proprietary rights whether registered or not, arising from intellectual activity related in any way to the invention, software, plant variety, circuit layouts, products or services or our platform.
- 13.2 What intellectual property rights belong to Vesanique:
- (a) all intellectual property rights in the Vesanique tools used to complete the services, including source code, supporting documentation, third-party applications, other, stock images, or generally; any item or services not provided by you for the development of your project, remain the exclusive property of Vesanique. Nothing in this agreement can be construed to confer on you any rights or ownership to the Vesanique tools. We do not grant you any other right or license to use our intellectual property.
  - (b) Until you have paid our final invoice in full, all work we have completed for you and product we have created belongs to us. For example, if we build a new website for you and send you through draft mock-ups, we still own these items. If there was a dispute and you did not pay our final invoice for any reason, we would retain ownership of all work completed. Unless we agreed otherwise in writing, you would not be able to use the drafts we had sent through to you, even to give to another developer to complete the work.
  - (c) the intellectual property rights in the final product we create for you will, upon payment in full of all of our invoices, belong to you.

### **14 Unacceptable behaviour**

- 14.1 We believe our clients have a right to be heard, understood, and respected. We also believe that our staff have the right to work in a safe environment free from any abuse or harm caused by others.

14.2 We do not tolerate behaviour from clients that is derogatory, discriminatory, offensive, contains threats of physical harm or violence, threatens adverse reviews or other potentially defamatory or detrimental action, or includes unreasonable demands or unreasonable levels of contact (unacceptable behaviour).

## **15 Termination**

15.1 For continuing services, either party may terminate this agreement by providing 90 days written notice to the other party and this agreement will continue until the end of the billing period ending closest to 90 days after the notice date ('final billing period'). We will continue providing the continuing services until the end of the final billing period. You will continue paying our invoices until the end of the final billing period. This agreement will terminate at the end of the final billing period.

15.2 For other services, you may elect to terminate this agreement at any time by providing us with written notice. You undertake to pay for the work we have completed up to the date of termination.

15.3 We may terminate this agreement immediately, without notice in the following circumstances:

- (a) the Client or a person associated with the Client participates in behaviour that we, in our absolute discretion, deem to be unacceptable behaviour;
- (b) there is a change of control of the Client;
- (c) the Client commits a serious breach of this agreement;
- (d) the Client engages conduct that is detrimental to, or could be seen to be detrimental to the reputation of Vesanique;
- (e) the Client ceases to carry on business; or
- (f) the Client fails to pay a validly issued invoice issued by Vesanique to Client within 7 days of the due date.

## **16 Consequences of Termination**

16.1 Upon termination:

- (a) any outstanding fees become immediately due and payable;
- (b) for one-off services where fees have been paid in advance, refunds (if any) will be dealt with in the same manner as discontinued projects as detailed in clause 11.15.
- (c) for continuing services, you will be liable to pay all service fees incurred up to the date of termination and necessarily incurred up to the date that the continuing services can be cancelled;
- (d) Vesanique will hold Client data for a maximum period of ninety (90) days from the date of termination. Data will be accessible by request during this period. Fees may apply for provision of data by request.

16.2 Termination by either party is without prejudice to any accrued rights or remedies of that party and will not release the other party from liability in respect of any breach or non-performance of any obligation.

## **17 Confidentiality**

- 17.1 All confidential information disclosed by either party must be kept confidential by the other party and must only be used for purposes for which that information was disclosed. Our contracts and business methods are confidential to our business, and we request that you keep them confidential.
- 17.2 These obligations of confidence will cease to apply in relation to information that either party is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach by the disclosing party of its obligations of confidence under this agreement. The obligation to maintain confidentiality continues after the termination of this agreement.
- 17.3 Information you provide for publication as part of our Service will not be kept confidential.

## **18 Privacy**

- 18.1 Each party undertakes to take reasonable steps to protect the security of any personal information coming into its possession as a result of this agreement, and to immediately notify the other party in the event of a breach.

## **19 Indemnity**

- 19.1 To the extent that our act or omission (including negligent act or omission) has not contributed to the loss, you agree to indemnify and defend Vesanique from any claims, damages, liabilities, costs, or expenses (including without limitation court costs, collection costs, and reasonable legal fees) related to:
- (a) any copyright breach or intellectual property infringement claims by third parties arising from the supply of information or data by you;
  - (b) your use of our platforms or product we design for you;
  - (c) your breach of this agreement.

## **20 Limitation of liability**

- 20.1 Either party's liability for any claim relating to this agreement will be reduced to the extent to which the other party's negligence contributed to the damage relating to the claim.
- 20.2 Other than as required under Australian consumer laws, Vesanique makes no warranties or representations about the suitability, reliability, availability, timeliness or accuracy of any services provided.
- 20.3 To the fullest extent permitted by law, Vesanique:
- (a) excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this agreement; and
  - (b) excludes all liability for consequential or incidental damages suffered by you or any other person or entity resulting from any claim based on breach of warranty, breach of contract, or any other law, even if Vesanique should have known of the possibility of the damage or loss being suffered.
- 20.4 Where warranties are implied by law the liability of Vesanique will be limited in respect of any claim to, at the option Vesanique, supplying the services or promptly remedying the fault in the services.



- 20.5 The parties agree that Vesanique's total aggregate liability for all claims relating to this agreement is limited to the fees received by Vesanique from the Client in the 6 (six) months immediately preceding the date of claim.
- 20.6 This limitation of liability applies to the fullest extent permitted by law and survives any termination or expiration of this agreement or your use of our services.

## **21 Notices**

- 21.1 If either party needs to give notice to the other it must be provided in writing and can be provided electronically, using the contact details set out in this agreement, or any updated details provided in writing from time to time.
- 21.2 Communications delivered by mail are deemed received three business days after posting. Communications sent via electronic means are deemed received the same day if sent prior to 4:00pm during business hours in Queensland, or otherwise the next business day.

## **22 Dispute Resolution**

- 22.1 If the parties are unable to agree on any matter under this agreement either of them may give written notice to the other stating details of the matter in dispute and requiring that the matter be resolved by a meeting and negotiation between the parties.
- 22.2 Within seven (7) days of receipt of the notice of a dispute under this agreement, representatives of both parties must meet in good faith and acting reasonably, do their best to resolve the dispute quickly through negotiation.
- 22.3 Any dispute or difference that the parties cannot resolve within twenty (20) business days will be submitted to mediation. The mediator will be a person agreed between the parties. If the parties fail to agree upon a mediator, then the mediator will be a person agreed between the parties chosen from a panel suggested by the Australian Disputes Centre (ADC – [disputescentre.com.au](http://disputescentre.com.au)) and failing agreement, will be a person nominated by an authorised representative of the ADC.
- 22.4 The mediation shall be held in accordance with the ADC Guidelines and subject to the laws of the Queensland.
- 22.5 This clause will not prohibit a party from seeking urgent interlocutory relief from the courts if a party will incur irreparable harm if not permitted to do so. This clause survives the termination of this agreement.

## **23 General provisions**

- 23.1 Relationship - The relationship between the parties is one of independent contractors. There is no partnership or employment relationship between Vesanique and Client. This agreement does not create any legal relationship other than the contractual relationship formed under the provisions of this agreement.
- 23.2 Costs - Each party must pay its own costs in relation to the negotiation, preparation, execution and performance of its obligations under this agreement.
- 23.3 No Waiver - Any time or other indulgence granted by either party will not in any way amount to a waiver of any of that party's rights or remedies under this agreement.

- 23.4 Governing Law - This agreement is governed by the laws of Queensland and each party agrees to be subject to the jurisdiction of the courts of Queensland in the event of a serious dispute.
- 23.5 Severability - If any of the provisions of this agreement are determined to be invalid or unenforceable, then the invalid or unenforceable provision will be deemed replaced by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the terms and conditions will continue in effect.
- 23.6 Entire agreement – this agreement forms the entire agreement of the parties for the assignment of the Intellectual Property and supersedes all prior understandings, negotiations, agreements, written or oral, express or implied.

End.