



TERMS OF BUSINESS

Spherify Pty Ltd

These terms govern the services Spherify Pty Ltd provides to its clients, and form part of every Proposal accepted under clause 7.

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1. Background

Spherify Pty Ltd is a full-end digital agency based in Brisbane, Queensland. It provides clients with the following services and the activities around them:

- 1) Brand strategy, brand design, and brand style guides
- 2) Design of marketing materials such as brochures and flyers
- 3) Website design, development, and optimisation
- 4) Ecommerce design, development, and optimisation
- 5) Software and platform development, including business systems and web applications
- 6) Access to platforms operated by Spherify Pty Ltd, including The Hub by Spherify
- 7) Search Engine Optimisation (hereinafter referred to as "SEO")
- 8) Search Engine Marketing Services (hereinafter referred to as "SEM")
- 9) Email Marketing Services (hereinafter referred to as "ESP")
- 10) Social Media Marketing Services (hereinafter referred to as "SMM")
- 11) Online digital marketing and paid media
- 12) Analytics, tracking, reporting, and data services
- 13) Content creation, including copywriting, video, and photography
- 14) Product and design visualisation, and design documentation
- 15) Website hosting, IT, and email systems setup
- 16) DNS administration, including Cloudflare

Clauses 3 and 4 define the terms used throughout this agreement. Other terms are specified elsewhere in this agreement.

2. Compliance with Australian Law

Nothing in these terms excludes, restricts, or modifies any rights, warranties, or guarantees the Client may have under the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 (Cth)) or any other applicable legislation that cannot lawfully be excluded or limited. Every other clause of this agreement, including clauses 17, 18, and 19, is read subject to this clause 2.

3. Materials

- a) Client Data refers to the raw information provided to Spherify Pty Ltd by the Client.

- b)** Spherify Pty Ltd Materials encompass all subject matter authored, created, produced, or licensed by Spherify Pty Ltd including presentations, analyses, advice, data, compilations of data, software, Source Code, frameworks, libraries, templates, components, configuration, build and deployment tooling, and methodologies, but excluding New Client Materials and Original Client Materials. For the avoidance of doubt, and subject only to clause **14.2(c)**, Source Code is Spherify Pty Ltd Materials in every case.
- c)** New Client Materials denote subject matter authored, created, or produced by Spherify Pty Ltd specifically for the Client which the parties expressly agree in writing is not Spherify Pty Ltd Materials. New Client Materials are limited to client-facing creative outputs such as design files, brand assets, logos, written copy, images, and video. New Client Materials do not include Source Code, and no website, application, or other software built by Spherify Pty Ltd becomes New Client Materials by reason of having been built specifically for the Client or paid for by the Client.
- d)** Original Client Materials comprise all subject matter authored, created, or produced by the Client, including Client Data and other data compilations, in which intellectual property or other rights subsist or relate.
- e)** Source Code means all source code authored, created, or produced by Spherify Pty Ltd, in any programming language, framework, platform, or technology whatsoever (including but not limited to React, Next.js, Astro, Payload CMS, WordPress themes and plugins, Shopify themes, and any successor, alternative, or later-adopted technology), together with all repositories, branches, commit and development history, build scripts, deployment and infrastructure configuration, environment configuration, and associated technical documentation. Source Code is separate from, and forms no part of, New Client Materials, Original Client Materials, or Client Data, and ownership of Source Code is governed exclusively by clause **14.2**.

4. Other Definitions

- a)** Bundled Service Package means a Proposal under which Spherify Pty Ltd delivers development, design, or set-up work without charging a separate upfront Project Fee for that work, and instead recovers the cost of it through fixed periodic fees over the Minimum Term. The Digital Growth Package is a Bundled Service Package.
- b)** Business Day means a day other than a Saturday, Sunday, or public holiday in Brisbane, Queensland.
- c)** Change Request means a request by the Client under clause **6** to change the Services or Deliverables.
- d)** Client refers to the individual or entity specified in the Proposal and/or Agreement.
- e)** Confidential Information pertains to any non-public information disclosed by one party to the other during the performance of this agreement, including but not limited to, Client Data, proprietary

methodologies, and business strategies.

- f)** Discloser means the party disclosing Confidential Information, and Recipient means the party receiving it.
- g)** Spherify Pty Ltd designates the entity specified in the Proposal.
- h)** Deliverable denotes subject matter authored, created, produced, or licensed by Spherify Pty Ltd and provided to the Client as part of the services rendered under this agreement.
- i)** Development Value means the amount stated in a Bundled Service Package Proposal as the value of the development, design, or set-up work that Spherify Pty Ltd delivers up front and recovers over the Minimum Term.
- j)** Expenses comprise reasonable expenses, such as travel expenses, incurred by Spherify Pty Ltd specifically to provide services to the Client.
- k)** Intellectual Property encompasses existing and future copyright, trademarks, designs, patents, or circuit layouts, whether registered or not.
- l)** Loss includes any loss, damage, cost, expense, or liability, excluding special (indirect, consequential, incidental) loss.
- m)** Media Buying Components entail media placements purchased on behalf of the Client, such as paid search advertisements.
- n)** Minimum Term means the minimum term specified in the Proposal. If the Proposal specifies a retainer, Bundled Service Package, or other ongoing service but does not specify a minimum term, the Minimum Term is six months from the commencement date. If the Proposal specifies no minimum term, there is no Minimum Term and clauses **30.5** and **30.6** do not apply.
- o)** Project Fee signifies the fee specified in the Proposal for the project.
- p)** Proposal refers to the proposal, quote, return brief, fee schedule, or retainer schedule supplied by Spherify Pty Ltd and approved by the Client, detailing the project, fees, charges, and terms. Where more than one such document applies, they are read together as the Proposal, and the most recently approved document prevails to the extent of any inconsistency.
- q)** Related Body Corporate retains the same meaning as in the Corporations Act 2001 (Cth).
- r)** Services denote the services specified in the Proposal.
- s)** Third Party Products means goods, software, subscriptions, licences, plugins, themes, or services produced or supplied by a party other than Spherify Pty Ltd and supplied or resupplied to the Client under this agreement.

5. Services, Deliverables & Products

- a) Spherify Pty Ltd is obligated to provide the Services and Deliverables to the Client as outlined in the Proposal.
- b) Spherify Pty Ltd warrants that it will deliver the Services with due care, skill, and professionalism.
- c) The Client must provide reasonable cooperation to enable Spherify Pty Ltd to deliver the Services effectively.
- d) Spherify Pty Ltd warrants that the Deliverables will be of acceptable quality and function as supplied until accepted by the Client.
- e) The Client acknowledges that modifications to Deliverables without Spherify Pty Ltd's authorisation may void the warranty provided.
- f) If Third Party Products are specified in the Proposal, Spherify Pty Ltd must supply those products.

6. Change Requests

- a) The Client may request changes to the Services or Deliverables.
- b) Upon receiving a Change Request, Spherify Pty Ltd may accept or reject it, with acceptance potentially altering the Project Fee.
- c) If a Change Request involves a changed Project Fee, the Client may accept or reject it.
- d) If a Change Request is accepted without altering the Project Fee or if the Client accepts the changed Project Fee, Spherify Pty Ltd must implement the requested changes.
- e) If a Change Request is rejected, Spherify Pty Ltd is not obliged to implement the changes.
- f) All communications related to Change Requests must be in writing.

7. Commencement of Work

- a) To commence any activity, Spherify Pty Ltd will send the Client a detailed return brief by email, covering essential aspects such as services provided, client details, and any contractual terms including duration, start date, fees, and any recommended budgets. That return brief forms part of the Proposal. By acknowledging and accepting these particulars through email reply, the Client agrees to the terms and initiates the contract, setting the stage for the commencement of work. This step is mandatory before any work begins.

8. Acceptance

- a) The Client accepts a Deliverable when notified in writing of acceptance, modifies the Deliverable, or 14 days elapse from the delivery date without notification of non-acceptance.

9. Fees

- a) The rates, retainer tiers, and included hours for each client will be as specified in the Proposal agreed in writing between Spherify Pty Ltd and the Client.
- b) The Client must pay Spherify Pty Ltd the Project Fee, Expenses, charges for Third Party Products, and applicable GST. All prices and fees are exclusive of GST, which will be itemised separately on all invoices and must be paid in addition to the quoted amounts.
- c) Spherify Pty Ltd must not incur Expenses exceeding \$500 without prior written approval from the Client.
- d) Where the Client is on a retainer arrangement, a set number of service hours will be allocated to the Client each month as agreed in writing. The monthly retainer fee covers only the services provided within these allocated hours.
- e) Any requests or work required by the Client that either exceed the allocated monthly retainer hours or fall outside the scope of the agreed services (for example, if additional web development, creative work, or other services not specified in the retainer are requested) will be billed at Spherify Pty Ltd's standard rate of \$125 per hour (excluding GST), or at the rate otherwise agreed with the Client based on their retainer tier. Additional hours and/or out-of-scope services will be tracked and invoiced at the end of each month.
- f) It is the Client's responsibility to monitor the usage of their retainer hours. Spherify Pty Ltd will provide updates on retainer hour usage on request, and will use reasonable endeavours to notify the Client if usage approaches the agreed limit.
- g) Spherify Pty Ltd may adjust its rates once in any 12 month period by giving the Client at least 30 days' written notice. If the Client does not accept the adjustment, the Client may terminate the affected Services by written notice given before the adjustment takes effect, and no early termination fee is payable under clause 30.5 in that case.

10. Payment

- a) Unless otherwise specified, Spherify Pty Ltd may invoice the Client monthly for all fees and charges. Retainer fees are invoiced monthly in advance.
- b) For project work, Spherify Pty Ltd requires payment of 30% of the Project Fee before commencing work. That payment is not refundable except to the extent that Spherify Pty Ltd has not performed work or incurred costs. This clause does not apply to retainer arrangements or to Bundled Service Packages, which are dealt with under clause 30.6.
- c) The Client must pay all invoiced amounts within 7 days of the invoice date without set-off.
- d) Payment must be made in accordance with the method specified in the invoice.

- e) Spherify Pty Ltd may charge interest on unpaid invoices at a rate of 10% per annum, calculated daily, for any amount overdue by more than 7 days.
- f) The Client must pay all interest charged as though it were invoiced on the day the unpaid invoice is settled.
- g) Failure to make payments by due date may result in stopping of paid services, such as Virtual Machines and Paid Plugins.

11. Systems Access, Domains, Hosting & Accounts

- a) At the start of an agreement, Spherify Pty Ltd will set up the agreed services as outlined in the Proposal on an account controlled by the Client, except where clause 11.2 or clause 11.4 applies.
- b) Spherify Pty Ltd is granted separate access, typically with administrative rights, to deliver these services. This access can be revoked by the Client upon completion of the service agreement, as mutually agreed.

11.1. Domain Names

- a) Unless agreed otherwise in writing, the Client owns its domain names, is the registrant of record, and is responsible for registration, renewal, and all associated costs.
- b) Where Spherify Pty Ltd registers, renews, or administers a domain on the Client's behalf, it does so as agent for the Client. The domain remains the Client's property and will be transferred to, or held in, an account controlled by the Client on written request.
- c) Spherify Pty Ltd is not responsible for the expiry, lapse, or loss of a domain controlled by the Client, unless renewal of that domain is expressly included in the Services in writing.

11.2. Hosting

- a) Where Spherify Pty Ltd hosts a website or application for the Client, hosting is provided on infrastructure owned or controlled by Spherify Pty Ltd. Unless the Proposal states otherwise, that hosting is provided at Spherify Pty Ltd's own cost as part of the engagement, and the Client does not purchase, own, or acquire any interest in the hosting environment.
- b) Hosting provided under clause 11.2(a) continues only while this agreement is on foot and all invoices are paid. It ends on expiry or termination of the agreement, and may be suspended under clause 23.
- c) Spherify Pty Ltd may agree to continue hosting for a transition period following termination. Any such transition period, and any fee for it, must be agreed in writing before termination takes effect.
- d) On termination, the Client is responsible for arranging its own hosting and for redirecting its domain. Spherify Pty Ltd will cooperate with reasonable DNS change requests made by the Client.

- e) On written request made before or within 30 days after termination, Spherify Pty Ltd will provide the Client with a copy of the Client's content and data, being Original Client Materials, New Client Materials, and Client Data, in a reasonable standard format. This obligation does not extend to Source Code, repositories, or development history, which are dealt with under clause 14.2.

11.3. Advertising, Analytics & Marketing Accounts

- a) Unless agreed otherwise in writing, the Client owns and controls its own advertising, analytics, email marketing, and social media accounts, including but not limited to Google Ads, Meta, Microsoft Advertising, LinkedIn, TikTok, Google Analytics, and email marketing platforms, together with all campaign data and history held in them.
- b) Spherify Pty Ltd operates those accounts under administrative access granted by the Client under clause 12, and claims no ownership of them.
- c) On termination, the Client's ownership of and access to those accounts is unaffected. Spherify Pty Ltd's administrative access will be removed, and clause 30.4 applies.
- d) Media Buying Components are purchased on the Client's behalf and remain a cost of the Client.

11.4. Spherify Platforms & Integrations

- a) Spherify Pty Ltd may give the Client access to platforms, tools, or systems owned and operated by Spherify Pty Ltd, including The Hub by Spherify, and may build integrations between those platforms and the Client's own platform accounts, websites, or applications.
- b) That access is a non-exclusive, non-transferable licence for the term of this agreement only. The Client acquires no ownership of, and no continuing right to, any Spherify Pty Ltd platform, its Source Code, or any integration built on or connecting to it. Those are Agency Hosted Code under clause 14.2(b)(iii) and do not transfer to the Client under clause 14.2(c).
- c) Upon expiry, cancellation, or termination of this agreement, the Client's access to Spherify Pty Ltd platforms ends and all integrations between those platforms and the Client's accounts, websites, or applications cease to operate. Clause 14.2(g) governs whether any integration is handed over.
- d) The Client is responsible for satisfying itself as to the extent to which its own systems, stores, or reporting depend on those integrations, and for arranging replacements before termination takes effect. Spherify Pty Ltd will not be liable for any loss, cost, or consequence arising from those integrations ceasing to operate on termination.
- e) Client Data held within a Spherify Pty Ltd platform is dealt with under clause 11.2(e). Spherify Pty Ltd may delete that data once the period in clause 11.2(e) has passed.
- f) Where the Client also accepts platform-specific terms of service for a Spherify Pty Ltd platform, those terms govern the Client's use of that platform and this agreement governs the Services. If

there is any inconsistency between the two in relation to Client Data, ownership, or the consequences of termination, this agreement prevails.

12. Client Obligations & Access

The Client agrees to provide the following for general website services.

- a) Administrative access to existing website backend / CMS / FTP
- b) Administrative access to Cloudflare for DNS (Domain Name System) entry
- c) Permission to make changes on existing website for the purpose of optimisation, all changes will be communicated prior
- d) Administrative access to any existing website services, such as Google Analytics, for the purpose of optimisation, data analysis and tracking.
- e) Authorisation to use Client digital assets, trademarks, marketing materials and content as required for SEO, SEM, ESP, SMM or other items as outlined in the Proposal.

12.1. For SEM & SMM Services

The Client also agrees to provide the following:

- a) Administrative access to social media channels required and specified in the Proposal, such as Meta Platforms including but not limited to Facebook and Instagram, X (formerly Twitter), LinkedIn, and TikTok
- b) In addition, for SEM services, administrative access to ads platforms including but not limited to Meta, Google Ads, Microsoft Advertising, X (formerly Twitter), LinkedIn, and TikTok
- c) Monthly marketing channel budgets no later than 7 days prior to the start of the month. If budgets are not received, previous month budgets will continue to be applied.

12.2. For ESP Services

The Client also agrees to provide the following:

- a) Administrative access to any email marketing platforms, such as Mailchimp, Campaign Monitor, SendGrid, or Klaviyo
- b) Permission to optimise contact lists and remove obvious spam emails

12.3. WordPress Plugin Access

- a) For WordPress sites under our management, plugin installation privileges are granted to the Client only at the end of a maintenance term. This policy ensures site integrity by minimising the risk of disruptions caused by plugin conflicts, thereby reducing the need for Spherify Pty Ltd to rectify issues related to such errors. We will install any requested plugins should they be required.

12.4. Client Compliance

- a)** The Client warrants that all contact data supplied to, or used by, Spherify Pty Ltd for email, SMS, or other electronic marketing has been collected with the consent required by the Spam Act 2003 (Cth), that each message will identify the Client as sender, and that the Client will honour unsubscribe requests.
 - b)** Where the Services include SMS or other mobile messaging, the Client is responsible for obtaining and maintaining any sender identification registration required by the Australian Communications and Media Authority, including registration of any alphanumeric sender ID on the SMS Sender ID Register, as those requirements apply from time to time. The Client warrants that it is entitled to use each sender ID it asks Spherify Pty Ltd to use.
 - c)** Where Spherify Pty Ltd applies for or administers a sender ID on the Client's behalf, it does so as agent for the Client. The Client remains the registered brand owner, is responsible for the accuracy of the information it supplies, and must notify Spherify Pty Ltd promptly of any change affecting that registration.
 - d)** The Client acknowledges that carriers may block, filter, or refuse to deliver messages sent using an unregistered or incorrectly registered sender ID, and that Spherify Pty Ltd is not liable for any resulting loss of delivery, campaign performance, or revenue.
 - e)** The Client warrants that all claims, offers, pricing, testimonials, and other content it supplies or approves for use in advertising are accurate and are not misleading or deceptive.
 - f)** The Client is responsible for its own compliance with the terms, policies, and advertising standards of third party platforms. Spherify Pty Ltd is not liable for the suspension, restriction, or closure of a Client account by a third party platform, except to the extent caused by Spherify Pty Ltd's breach of this agreement.
 - g)** The Client indemnifies Spherify Pty Ltd against any Loss arising from a breach of this clause
- 12.4.**

13. Privacy and Data Security

- a)** Each party must comply with the Privacy Act 1988 (Cth) and the Australian Privacy Principles in relation to any personal information collected, used, or disclosed in connection with this agreement. Spherify Pty Ltd will take reasonable steps to protect all Client Data and confidential information against unauthorised access, disclosure, or loss.
- b)** Spherify Pty Ltd will notify the Client without undue delay after becoming aware of an eligible data breach affecting Client Data, and the parties will cooperate in meeting their obligations under the Notifiable Data Breaches scheme.
- c)** The Client acknowledges that Spherify Pty Ltd uses third party service providers, subcontractors, and cloud platforms to deliver the Services, some of which store or process data outside Australia,

and consents to disclosure of Client Data to those providers for the purpose of providing the Services.

14. Intellectual Property

14.1. Ownership

- a) Client does not own any Intellectual Property in Spherify Pty Ltd Materials, except as expressly provided.
- b) Spherify Pty Ltd does not own any Intellectual Property in New Client Materials or Original Client Materials, except as expressly provided.
- c) Any Intellectual Property owned by Spherify Pty Ltd in New Client Materials is hereby assigned to the Client on full payment of all relevant invoices for that project. This assignment does not extend to Spherify Pty Ltd Materials or Source Code, which are excluded from New Client Materials under clause 3 and are dealt with exclusively under clause 14.2.
- d) Where Spherify Pty Ltd builds a website, application, or other software for the Client, the Client owns its Original Client Materials and any New Client Materials incorporated into it, such as logos, brand assets, copy, images, and video, and Spherify Pty Ltd owns the Source Code and all other Spherify Pty Ltd Materials used to build, deploy, and run it. Payment of the Project Fee does not transfer ownership of Source Code, except where clause 14.2(c) applies.
- e) If there is any inconsistency between this clause 14.1 and clause 14.2, clause 14.2 prevails.

14.2. Source Code

- a) Subject only to clause 14.2(c), all Source Code developed by Spherify Pty Ltd remains the proprietary asset of Spherify Pty Ltd, regardless of the programming language, framework, platform, or technology used to build it, and regardless of whether it was developed specifically for the Client.
- b) For the purposes of this clause:
 - i) Agency Hosted Code means Source Code that is deployed to, hosted on, or run from infrastructure owned or controlled by Spherify Pty Ltd, including any website or application hosted under clause 11.2.
 - ii) Client Platform Code means Source Code that Spherify Pty Ltd develops and deploys into any platform, system, environment, or account owned, managed, or controlled by the Client, whatever that platform may be. Examples include a Shopify store, a WordPress installation on Client-controlled hosting, a Client-owned marketing, analytics, or automation platform, and any Client-controlled server or hosting account. The list is not exhaustive, and the test is whether the Client, rather than Spherify Pty Ltd, owns or controls the destination the code is deployed to.

iii) Source Code that runs on infrastructure owned or controlled by Spherify Pty Ltd is Agency Hosted Code even where it connects to, extends, or exchanges data with a platform account owned by the Client. This includes custom or private applications, middleware, headless storefronts, and API integrations, whichever platform they serve.

c) Spherify Pty Ltd assigns to the Client its Intellectual Property in Client Platform Code, in the form that code exists in the Client's account, once both of the following are satisfied:

- i) the development of that code was quoted as a discrete Project Fee in a Proposal, and that Project Fee has been paid in full; and
- ii) no other amount owing by the Client to Spherify Pty Ltd is outstanding.

The assignment is of that code in its deployed form, as it stands in the Client's account, being the version last published by Spherify Pty Ltd to that account. It is not an obligation to deliver anything further. In particular, Spherify Pty Ltd is not required to provide repositories, branches, commit or development history, unreleased or in-progress work, staging or development environments, build, deployment, or local tooling, uncompiled or unminified source, or technical documentation, and may withhold all of them.

d) The assignment in clause **14.2(c)** does not extend to any Spherify Pty Ltd Materials embedded in, used by, or required to operate that code, including reusable libraries, components, frameworks, templates, tooling, and methodologies. Those remain the property of Spherify Pty Ltd, and the Client receives a perpetual, non-exclusive licence under clause **14.3** to continue using them solely as part of, and for the continued operation of, that platform.

e) Source Code developed under a retainer or a Bundled Service Package, or otherwise developed without a discrete Project Fee being quoted and paid in full for that development, does not transfer to the Client under clause **14.2(c)**, regardless of where it is deployed. Where Spherify Pty Ltd has developed Source Code, provided the Client with the use of it, or hosted it at Spherify Pty Ltd's own cost without receiving full payment of a Project Fee for that development, the Client acknowledges that the commercial basis of the arrangement is access to a working system for the term of the agreement, and not the acquisition of Source Code or of any Intellectual Property in it.

f) Where Source Code that has not transferred to the Client under clause **14.2(c)** is deployed into a platform, system, or account controlled by the Client, Spherify Pty Ltd may, on termination, remove or disable that Source Code, or require the Client to cease using it, on written notice of not less than 14 days. Spherify Pty Ltd will exercise this right reasonably, and will not exercise it in a manner intended to disrupt the Client's business beyond what is necessary to protect its Intellectual Property.

g) Upon expiry, cancellation, or termination of this agreement, Spherify Pty Ltd determines which custom integrations, scripts, automations, connectors, or API integrations developed by Spherify

Pty Ltd are handed over to the Client, and on what terms. Any hand-over is subject to a separate written agreement and may be subject to a fee. This clause does not affect Client Platform Code already assigned under clause **14.2(c)**, or the Client's ownership of its own accounts, Client Data, Original Client Materials, or New Client Materials.

- h)** Source Code, including any repositories or development history, may be managed and stored using platforms such as GitHub or other version control systems solely under the control of Spherify Pty Ltd. The Client is not granted access to these repositories except where explicitly agreed in writing.
- i)** Upon termination of an agreement, the Client will no longer have access to any Source Code repositories, and Spherify Pty Ltd is not required to provide development history, commit logs, or repository access to the Client. Subject to clause **14.2(c)**, all Source Code and version control assets remain the exclusive property of Spherify Pty Ltd, and are retained, archived, or deleted at Spherify Pty Ltd's discretion.
- j)** Except as provided in clause **14.2(c)**, any release, transfer, escrow, or licensing of Source Code to the Client, or to a third party nominated by the Client, requires a separate written agreement and is subject to a separate fee agreed in writing.
- k)** This clause **14.2** survives termination of this agreement.

14.3. Licences

- a)** Spherify Pty Ltd grants the Client a perpetual, non-exclusive licence to use the Spherify Pty Ltd Materials incorporated into the Deliverables, for the Client's own business purposes.
- b)** In respect of Agency Hosted Code, and of any Source Code that has not been assigned to the Client under clause **14.2(c)**, the licence in clause **14.3(a)** is a licence to use and operate the Deliverable in its deployed, running form only. It does not entitle the Client to receive, access, copy, modify, host, or have any third party host the Source Code, and it does not oblige Spherify Pty Ltd to host, maintain, support, or continue to make the Deliverable available after termination.
- c)** The Client acknowledges that where Spherify Pty Ltd hosts a Deliverable under clause **11.2**, the practical benefit of the licence in clause **14.3(a)** depends on that hosting continuing. If the Client wants the ability to keep operating a website or application built by Spherify Pty Ltd after termination, the Client must agree separate written terms under clause **14.2(j)** before termination takes effect.
- d)** Nothing in this clause **14.3** limits the Client's rights in its Original Client Materials, New Client Materials, or Client Data, or Spherify Pty Ltd's obligation to provide a copy of that content and data under clause **11.2(e)**.
- e)** The licence granted is non-transferable and non-sublicensable, except to Related Bodies Corporate of the Client.

- f)** The Client grants Spherify Pty Ltd a licence to use Original Client Materials and New Client Materials to provide the Services.
- g)** This licence is non-exclusive and non-transferable, except to Related Bodies Corporate and subcontractors of Spherify Pty Ltd.
- h)** Any licence required for Third Party Products must be obtained directly from the manufacturer.

14.4. Infringement

- a)** The Client must not infringe any Intellectual Property rights in Spherify Pty Ltd Materials.
- b)** Spherify Pty Ltd must not infringe any Intellectual Property rights in New Client Materials, Original Client Materials, or Client Data.

14.5. Moral Rights

- a)** Spherify Pty Ltd waives any moral rights it may have in New Client Materials against the Client.

15. Confidential Information

15.1. Disclosure & Use

- a)** Both parties must refrain from disclosing Confidential Information to third parties or using it for purposes other than those outlined in this agreement.
- b)** Recipients may disclose Confidential Information to authorised personnel only as necessary for fulfilling obligations under this agreement.
- c)** This clause **15.1** does not restrict the use permitted by clause **24**.

15.2. Return & Destruction

- a)** Recipients must return, permanently disable access to, or destroy all copies of Confidential Information upon termination of this agreement, subject to clause **11.2(e)** and to each party's right to retain material it is required to keep by law.

15.3. Rights in Confidential Information

- a)** Recipients acknowledge they have no rights to the Discloser's Confidential Information, except as expressly provided in this agreement.

16. Restraint

16.1. Non-Solicitation

- a)** The Client must not solicit any employee of Spherify Pty Ltd to leave their employment during the term of this agreement and for 12 months after it ends.
- b)** The parties acknowledge the reasonableness of this restraint.

16.2. Consequences of Breach

- a) If the Client breaches clause **16.1**, resulting in an employee leaving Spherify Pty Ltd, the Client must pay Spherify Pty Ltd an amount equal to 30% of that employee's annual salary package, which the parties agree is a genuine pre-estimate of the cost of recruiting and training a replacement.
- b) This sum becomes payable to Spherify Pty Ltd upon the employee's departure.

17. Additional Warranties

17.1. Additional warranties client gives

- a) In addition to warranties elsewhere in this agreement, the Client warrants that the instructions issued will not lead to unlawful conduct by Spherify Pty Ltd and that it does not rely on any representation not expressly contained in this agreement.

17.2. Additional warranties Spherify Pty Ltd does not give

- a) Spherify Pty Ltd does not warrant that Deliverables will continue to function as supplied after acceptance by the Client or that Services will achieve specific commercial objectives.
- b) No warranty is provided for Third Party Products.

18. Indemnity & Limitation Of Liability

18.1. Indemnity

- a) The Client indemnifies Spherify Pty Ltd against any Loss resulting from a breach of this agreement by the Client or any unlawful conduct related to the Services.
- b) Spherify Pty Ltd indemnifies the Client against any Loss resulting from a breach of this agreement by Spherify Pty Ltd or any unlawful conduct related to its obligations.

18.2. Limitation of Liability

- a) Subject to clause **2** and to clause **18.2(b)**, the liability of each party under or in connection with this agreement is limited to the fees paid by the Client in the two months prior to the event giving rise to the claim.
- b) The limit in clause **18.2(a)** does not apply to:
 - i) the Client's obligation to pay fees, Expenses, charges for Third Party Products, interest, GST, or recovery costs;
 - ii) an indemnity given under clause **12.4** or clause **18.1**;
 - iii) a breach of clause **14** (Intellectual Property), clause **15** (Confidential Information), or clause **16** (Restraint); or
 - iv) liability that cannot lawfully be limited.

18.3. Australian Consumer Law

- a) Where the Australian Consumer Law applies and the Services are not of a kind ordinarily acquired for personal, domestic, or household use or consumption, Spherify Pty Ltd's liability for failure to comply with a consumer guarantee is limited, to the extent permitted by section 64A of the Australian Consumer Law, to supplying the Services again or paying the cost of having the Services supplied again.

19. Limitation of Liability - Additional

Subject to clause 2, Spherify Pty Ltd is not liable for any loss of profits, loss of business, loss of data, or any indirect, special, or consequential loss or damage, even if Spherify Pty Ltd has been advised of the possibility of such loss or damage. Spherify Pty Ltd's total aggregate liability to the Client for all claims is limited as set out in clause 18.2.

20. No Guarantee of Results

Spherify Pty Ltd does not guarantee any specific commercial outcomes, search engine rankings, digital campaign results, website traffic, or sales as a result of the services provided.

21. Timeframes and Delays

Any delivery dates or timeframes provided by Spherify Pty Ltd are estimates only. Delays may occur due to factors outside Spherify Pty Ltd's control, including but not limited to late delivery of content, materials, or approvals from the Client. Spherify Pty Ltd will not be liable for any loss or damage arising from such delays.

22. Client Responsibilities

The Client is responsible for providing all necessary content, approvals, feedback, and access in a timely manner. Delays in providing requested information or access may result in additional charges or delayed delivery of services.

23. Right to Suspend Services

Spherify Pty Ltd reserves the right to suspend services, restrict access, or withhold deliverables if any invoice remains unpaid or if the Client breaches this agreement.

24. Portfolio Use and Publicity

Spherify Pty Ltd may display completed projects and deliverables, including the Client's name and logo, in its portfolio, website, and other marketing materials unless otherwise agreed in writing. This clause applies despite clause 15, but does not permit disclosure of the Client's Confidential Information such as pricing, strategy documents, or performance data without the Client's written consent.

25. Third-Party Licences and Content

The Client is responsible for obtaining and maintaining all third-party software, images, fonts, or licences required for the project, unless expressly agreed otherwise. The Client warrants that all materials supplied to Spherify Pty Ltd do not infringe any third-party rights.

26. Non-Disparagement

Neither party will make or authorise any public statement or communication that disparages the other party or could reasonably be expected to damage the other party's reputation. Nothing in this clause prevents a party from making an honest statement of opinion, giving truthful evidence, or making a disclosure required by law.

27. Data Backups and Recovery

Unless expressly agreed as part of the services, Spherify Pty Ltd is not responsible for ongoing backup or recovery of the Client's website, data, or content.

28. Expenses for Legal and Recovery Costs

If Spherify Pty Ltd is required to recover unpaid fees or enforce this agreement, the Client is responsible for all reasonable legal, debt recovery, and related costs incurred by Spherify Pty Ltd.

29. Force Majeure

Neither party is liable for any delay or failure to perform its obligations (except payment obligations) under this agreement if such delay or failure is due to circumstances beyond its reasonable control, including but not limited to acts of God, fire, flood, accident, pandemic, telecommunications or internet failures, or actions of government.

30. Term & Termination Of Agreement

30.1. Term

- a)** This agreement commences on the date the Client accepts the Proposal under clause 7 and continues until terminated in accordance with this clause 30.
- b)** Where the Proposal specifies a Minimum Term, this agreement continues for at least that Minimum Term.

30.2. Termination for Convenience

- a)** At the end of the Minimum Term, the term automatically renews for successive periods equal to the Minimum Term unless the Client provides 60 days' written notice to Spherify Pty Ltd.
- b)** Spherify Pty Ltd may terminate this agreement, or any part of the Services, by giving the Client 30 days' written notice. No early termination fee is payable under clause 30.5 where Spherify

Pty Ltd terminates under this clause.

30.3. Termination for Breach

- a) Either party may terminate this agreement if the other party breaches its obligations and fails to remedy the breach within 14 days of written notice.

30.4. Paid Media Campaigns and Reporting at Termination

- a) Upon expiry, cancellation, or termination of this agreement, Spherify Pty Ltd will cease all active paid media campaigns (including but not limited to SEM, SMM, and other advertising placements) within a reasonable timeframe, unless otherwise agreed in writing.
- b) All campaign reporting and performance monitoring provided by Spherify Pty Ltd will cease upon termination. The Client acknowledges that ongoing access to historical reports, data, or analytics is their responsibility to arrange prior to termination.
- c) The Client owns its advertising, analytics, email marketing, and social media accounts, and all campaign data and history held in them, in accordance with clause 11.3. Those accounts remain with the Client on termination.
- d) It is the Client's responsibility, or the responsibility of any subsequent agency or provider, to assume day-to-day control of those accounts and to recommence or adjust campaigns and reporting as required.
- e) Spherify Pty Ltd will not be liable for any loss, cost, or consequence arising from the cessation of such campaigns or reporting following termination of this agreement.

30.5. Early Termination

- a) This clause 30.5 applies only where the Proposal specifies a Minimum Term and the Client terminates, or causes Spherify Pty Ltd to terminate for breach, before the end of that Minimum Term.
- b) In addition to all outstanding fees for Services already provided, the Client must pay an early termination fee calculated as a percentage of the fees that would have been payable for the unexpired balance of the Minimum Term:
 - i) where 1 to 3 months remain, 10%
 - ii) where 4 to 6 months remain, 20%
 - iii) where 7 to 9 months remain, 30%
 - iv) where 10 or more months remain, 40%
- c) The parties agree that this fee is a genuine pre-estimate of the loss Spherify Pty Ltd suffers on early termination, including committed resourcing, hosting costs borne under clause 11.2, and the cost of replacing the engagement.

- d) No early termination fee is payable where the Client terminates under clause **9(g)**, where the Client terminates under clause **30.3** for Spherify Pty Ltd's breach, or where Spherify Pty Ltd terminates under clause **30.2(b)**.
- e) This sum becomes due upon termination.
- f) This provision is without prejudice to other obligations under this agreement.

30.6. Bundled Service Packages

- a) Where the Proposal is a Bundled Service Package, the Client acknowledges that Spherify Pty Ltd performs and pays for the development, design, and set-up work at the start of the engagement, and recovers the cost of that work through the periodic fees over the Minimum Term. The Client receives the benefit of a fixed periodic cost in place of a lump sum payable up front, and Spherify Pty Ltd carries the cost and the risk of that work until it is recovered.
- b) The Proposal will state the Development Value. If it does not, no amount is payable under clause **30.6(c)**.
- c) If the Client terminates before the end of the Minimum Term, or Spherify Pty Ltd terminates for the Client's breach under clause **30.3**, the Client must pay the unrecovered portion of the Development Value. That amount is the Development Value reduced pro rata for each complete month of the Minimum Term for which the Client has paid the periodic fees in full.
- d) The amount payable under clause **30.6(c)** is instead of, and not in addition to, the early termination fee under clause **30.5(b)**.
- e) The parties agree that clause **30.6(c)** is a genuine pre-estimate of the loss Spherify Pty Ltd suffers on early termination of a Bundled Service Package, because it recovers no more than the cost Spherify Pty Ltd has already incurred and has not yet recovered.
- f) No amount is payable under clause **30.6(c)** where the Client terminates under clause **9(g)**, where the Client terminates under clause **30.3** for Spherify Pty Ltd's breach, or where Spherify Pty Ltd terminates under clause **30.2(b)**.
- g) For the avoidance of doubt, a Bundled Service Package does not involve a discrete Project Fee for the development work. Clause **14.2(e)** applies, and no Source Code transfers to the Client under clause **14.2(c)** by reason of the periodic fees being paid.

31. Dispute Resolution

- a) If a dispute arises out of or in connection with this agreement, the parties must first attempt to resolve it by negotiation. If the dispute remains unresolved after 14 days, either party may refer the dispute to mediation administered by the Australian Disputes Centre. Only if mediation fails may the dispute be litigated in the courts of Queensland, Australia.

- b)** This clause does not prevent either party from seeking urgent injunctive or declaratory relief, and does not apply to the recovery of undisputed amounts owing under an unpaid invoice.

32. Non-Exclusivity

Unless otherwise specified in the Proposal, nothing in this agreement restricts Spherify Pty Ltd from providing similar services to other clients, including competitors of the Client.

33. Subcontracting

Spherify Pty Ltd may subcontract any part of the Services, provided that Spherify Pty Ltd remains responsible for the performance of those Services.

34. Electronic Execution

This agreement may be executed and accepted by electronic means, including email confirmation, and such execution is binding on the parties.

35. Goods and Services Tax (GST)

All amounts specified in this agreement are exclusive of GST. Spherify Pty Ltd will provide valid tax invoices, and the Client must pay the applicable GST in addition to the quoted or invoiced amount.

36. This Agreement

36.1. Formation

- a)** By entering into this agreement, the Client agrees to abide by its terms and conditions.

36.2. Terms and Conditions

- a)** This agreement includes the Proposal and all related documents but excludes any terms imposed by Third Party Product manufacturers. In case of inconsistency, the Proposal prevails, except in relation to clause **14**, which prevails over the Proposal unless the Proposal expressly refers to clause **14** and states the variation agreed.
- b)** This agreement constitutes the entire understanding between the parties, superseding all prior agreements.

36.3. Principles of Interpretation of Agreement

- a)** Headings are for convenience only and do not affect interpretation. The singular includes the plural and the reverse. A reference to legislation includes any amendment or replacement of it. "Including" and similar words are not words of limitation. A reference to a party includes that party's successors and permitted assigns. No rule of construction applies to the disadvantage of a party because that party prepared this agreement.

36.4. Variation

- a)** The agreement may only be varied by written agreement of the parties.

36.5. Waiver

- a)** No waiver of rights, actions, or remedies is effective unless in writing.

36.6. Compulsory Provisions & Severability

- a)** Certain provisions are subject to legal requirements, and if any provision is found unlawful or unenforceable, the remaining provisions remain valid.

36.7. Assignment and Novation

- a)** Assignment of rights is permissible with written notice, while novation requires written consent.

36.8. Survival

- a)** Clauses 10, 13, 14, 15, 16, 18, 19, 24, 26, 28, 30.4, 30.5, 31, and 36, and any other clause which by its nature is intended to survive, continue after termination of this agreement.

36.9. Governing Law & Jurisdiction

- a)** This agreement is governed by the laws of Queensland, Australia, with disputes to be settled in the courts of Queensland.

36.10. Notices

- a)** A notice under this agreement must be in writing and sent by email to the address specified in the Proposal, or to any other address a party notifies in writing.
- b)** A notice is taken to be received when sent, unless it is sent after 5.00pm or on a day that is not a Business Day, in which case it is taken to be received at 9.00am on the next Business Day.