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# Milray Park End User Agreement

## 1 Agreement

- (a) Please read the terms of this End-User Agreement (“**Agreement**”) carefully as they apply to your use of this website and our mobile site, including any content on these sites (the **Website**), and your use of our Services. The definitions for certain capitalised terms used in this Agreement can be found in clause 20.
- (b) In this Agreement:
  - (i) “Milray Park”, “we”, “us”, and “our” means Milray Park Pty Ltd (**ABN 15 606 160 034**) of Level 1, 204 Clarence Street, Sydney, New South Wales, 2000; and
  - (ii) “you” and “your” means you, the person or entity using our Website and Services, whether in your capacity as an End User generally or as a Designer or Customer (as applicable).
- (c) This Agreement is between you and us.
- (d) Your use of our Website and Services is subject to your agreement to, and compliance with, the terms of this Agreement.
- (e) By registering on the Website and using any of our Services, you:
  - (i) indicate your acceptance of the terms of this Agreement; and
  - (ii) represent that you are at least eighteen (18) years of age and have legal capacity to enter into this Agreement.

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## 2 The Website

- (a) Milray Park provides an online platform that connects Customers seeking interior design services with Designers who wish to provide such services, including, for example, through Design Projects (the “**Services**”).
- (b) “**End User**” means any user of our Website or of our Services.
- (c) This Agreement includes terms that apply generally to all End Users who access and use the Website (including Designers and Customers), terms that apply specifically to End Users registered as Customers and terms that apply specifically to End Users registered as Designers.
- (d) Milray Park provides Services (including facilitation services) to Designers, which enables them to provide Design Services to Customers.
- (e) You acknowledge that Designers providing Design Services to Customers through the Website are not the employees, agents, contractors, consultants or representatives of Milray Park.
- (f) To the maximum extent permitted by law:

- (i) we are not responsible for, and will not be liable in respect of, any breach or failure of Designers or Customers to perform any of the terms of this Agreement; and
  - (ii) we have no control over and do not accept responsibility for the acts or omissions of Designers, Customers or other third parties in connection with the Website or our Services.
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### **3 Term**

The Term of this Agreement commences on the date on which you register with us on our Website and continues until your registration is terminated by you or us in accordance with this Agreement.

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### **4 Registration**

#### **4.1 Registration**

- (a) To use the Website and the Services, you must register on the Website using your correct and full name, and in accordance with the registration procedures described on the Website.
- (b) To use the Design Services available on the Website, an End User must also register on the Website as either a “Designer” or “Customer”.
- (c) We reserve the right to accept or reject, in our sole discretion, the registration of any End User.
- (d) When you register, we may provide you with an initial password (which you may be able to change at a later stage) and user name which is personal to you. You must keep any user name and password that are allocated to you (as well as any password you subsequently choose) private, and not disclose them to any other person. If you have lost or forgotten your password, you can request that we send you a reminder email containing your password to your registered email address.
- (e) You may cancel your registration, by notifying us at [admin@milraypark.com.au](mailto:admin@milraypark.com.au) and by providing your user name.
- (f) We may suspend or cancel your registration, either temporarily or permanently, if you breach, or we reasonably believe you have breached, any of the terms of this Agreement.

#### **4.2 Special registration requirements for Designers**

- (a) To register as a Designer on the Website, an End User must satisfy the Designer Registration Requirements specified on the Website from the date of registration and on each day of the Term.
- (b) Designer acknowledges and agrees that we may determine, in our sole discretion, whether an End User satisfies, at any point during the Term, the Designer Registration Requirements.
- (c) Designer is not permitted to register more than one account on the Website.

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## 5 Design Projects

### 5.1 Submitting a Design Brief

- (a) Customer may initiate a Design Project by:
  - (i) selecting a Service Package and committing to pay the applicable Fees in full on release of the Final Design Package or otherwise in accordance with the terms of this Agreement; and
  - (ii) completing and submitting a Design Brief in the format specified by us and in accordance with the instructions on the Website.
- (b) Customer must clearly specify its requirements for the Design Project in the Design Brief so as to enable Designers to submit a responsive First Look.
- (c) Upon the completion of the steps outlined in clause 5.1(a) the Customer will be deemed to have irrevocably submitted to the payment of the applicable Fees for that Service Package and Milray Park will become immediately entitled to receipt of the applicable Fees. The timing of collection of the Fees will in no way prejudice our eligibility to them.

### 5.2 Designer invitation and acceptance to Design Project

- (a) Customer must invite at least one Designer to their Design Project.
- (b) Designers invited to a Design Project may view the Design Brief and choose to accept or reject the invitation.
- (c) The first Designer to accept a Design Project will be allocated as the Designer for that Design Project.

### 5.3 Submission of First Look

- (a) The allocated Designer must submit a First Look in response to Design Brief within five (5) days of accepting the Design Project.
- (b) If Designer has not submitted a First Look prior to the expiry of five (5) days we reserve the right to:
  - (i) reallocate the Design Project to another designer
  - (ii) award the Designer's fee to another Designer
- (c) Designer must ensure that its First Look fully complies with the requirements and specifications set out in a Design Brief and with the Minimum Design Standards. Milray Park may, in its sole and absolute discretion, reject any submitted First Look that does not comply with this clause 5.3.
- (d) Customer is responsible for reviewing the First Look provided by Designers through the Website in response to each Design Brief submitted by Customer.
- (e) Customer must notify us if they believe the First Look does not comply with the specifications set out in Design Brief and with the Minimum Design Standards within forty eight (48) hours of receipt of same.

#### 5.4 Design Phase

- (a) Allocated Designer must work with Customer to develop the First Look into the Final Design Package in accordance with the Project Timeline.
- (b) Allocated Designer must obtain Customer sign off prior to submitting the Final Design Package.
- (c) Customer may provide feedback and request reasonable revisions of elements of, or products included in, the First Look within seven (7) calendar days of receipt of same (the “**Design Phase Period**”).
- (d) Designer may seek Customer’s consent to extend the deadlines set out in the Project Timeline for reasonable periods of no more than fourteen (14) days (unless agreed to by us), but Customer may not shorten any deadlines.
- (e) If Customer has not approved the release of their Final Design Package within twenty one (21) calendar days of receipt the First Look, we reserve the right to:
  - (i) suspend the Design Project until such time as Customer elects to continue with the Design Phase Period; and/or
  - (ii) retain the Fees and instruct the assigned Designer to release the Final Design Package without Customer approval.

#### 5.5 Development of Final Design Package

- (a) For the purposes of this clause 5.5, the Final Design Package must include:
  - (i) the Final Design Board;
  - (ii) a detailed Floor Plan;
  - (iii) Designer debrief (including an set up instructions); and
  - (iv) a Shopping List of items purchasable by Customer online at the time the Final Design Package is delivered.
- (b) Customer may request major changes to the Final Design Package and Designer may (at its discretion) undertake any such changes and may (at its discretion) request payment of a fee for any such changes.
- (c) For the avoidance of doubt, requests for a completely new concept will constitute a major change.
- (d) Designer must not commence any revision work that requires payment without the prior authorisation of the Customer and Milray Park.
- (e) Designer and Customer agree that we may participate in the Design Project at any point to assist the parties to meet their obligations under this Agreement.
- (f) Without limiting clause 5.5(e), Customer and Designer agree that we may send them notifications and prompts by electronic communication (including, but not limited to, emails, and SMS) during the development process to assist in meeting the Project Timeline.

## 5.6 Submission and acceptance of Final Design Package

- (a) Designer must submit the Final Design Package to Customer in accordance with the Project Timeline.
- (b) Customer must either accept, or reject, the Final Design Package within five (5) calendar days after receiving same (the “**Acceptance Period**”).
- (c) If Customer has not indicated its acceptance, or rejection, of the Final Design Package prior to the expiry of the Acceptance Period, Customer is deemed to have accepted the Final Design Package.
- (d) If, at the time the Final Design Package is submitted to Customer, items on the Shopping List are not purchasable by Customer within thirty (30) calendar days after delivery of the Final Design Package, Designer must provide to Customer, as soon as practicable, a list of substitutable items.
- (e) Customer may submit questions to Designer relating to the Final Design Package within fourteen (14) days after receiving same and Designer must promptly respond to any such questions.

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## 6 Your obligations and restrictions

### 6.1 General End User obligations and restrictions

- (a) You must not (and must not permit others to) use our Website or any of our Services to:
  - (i) publish or provide any material that is defamatory, offensive, harassing, indecent, menacing, obscene or illegal;
  - (ii) engage in, or fail to engage in, any activity in a manner which will expose us to any liability;
  - (iii) engage in misleading or deceptive conduct or fraud of any kind; and/or
  - (iv) publish or provide access to any content that is unsuitable for people under the age of eighteen (18) years old.
- (b) You are responsible for ensuring that we have accurate and up-to-date contact information for you at all times, including your correct and full name, postal address, telephone number and email address.
- (c) You must not use anyone else’s user name or password to access the Website.
- (d) You must conduct virus scanning and other tests as may be necessary to ensure that any data that is uploaded from, or downloaded to, our Website does not contain any computer virus. You are solely responsible for the backup of any files in connection with our Services, including without limitation in respect of Design Briefs, First Looks and Final Design Packages.
- (e) You undertake to ensure that any and all of Your Content:
  - (i) does not infringe the Intellectual Property Rights or any other rights of any person and that all royalties or licence fees have been paid to secure the use of that material;

- (ii) is not obscene, illegal, offensive, upsetting, defamatory or in any way unsuitable for people under the age of eighteen (18) years old; and
- (iii) does not comprise and cannot be used for any purpose or activity of an illegal, fraudulent or defamatory nature.

## **6.2 End User's acknowledgements and warranties**

- (a) You acknowledge that we may, at our sole discretion, do any of the following in respect of End Users of our website:
  - (i) use or display any of Your Content on our Website;
  - (ii) include (including after the termination of this Agreement) references to and/or use any of Your Content, your name(s) and/or profile pictures on our Website;
  - (iii) refuse to provide any Services to you, including if we believe (at our sole discretion) Your Content is capable of breaching your obligations under this Agreement;
  - (iv) limit, suspend or terminate any of our Services to you or remove any of Your Content;
  - (v) remove, block, not display and/or not store any of Your Content or any other information or materials at our discretion, including without limitation that which we deem to be offensive or inappropriate, regardless of whether this material is unlawful; and
  - (vi) to cease providing any of our Services to you in the event payment of Fees is not made in full and on time.
- (b) You warrant and represent that:
  - (i) you are solely liable and responsible for Your Content;
  - (ii) you are at least eighteen (18) years old and have legal capacity to agree to the terms of this Agreement;
  - (iii) you have the right, power and authority to enter into this Agreement and grant the rights granted in this Agreement (as applicable);
  - (iv) you shall comply with all applicable laws in your performance of your rights and obligations under this Agreement;
  - (v) none of Your Content infringes the Intellectual Property Rights or any other rights of any person;
  - (vi) Your Content is not the subject of any claim, demand, action or legal proceeding or to your knowledge any potential or pending claims, demand, action or proceeding;
  - (vii) Your Content does not contain material that is obscene, illegal, offensive, upsetting, defamatory or in any way unsuitable for people under the age of eighteen (18) years old; and
  - (viii) you are solely responsible for any third party payments or royalties payable in respect of Your Content.

- (c) You acknowledge that we may, but are under no obligation, moderate or monitor the use of our Services and/or our Website by End Users, including without limitation any of Your Content.

### **6.3 Designer's obligations and restrictions**

If you are a Designer:

- (a) You agree to use your best professional and creative efforts and skills to produce First Looks and/or Final Design Packages in accordance with the requirements of the applicable Design Brief and the terms of this Agreement.
- (b) Without limiting clause 6.3(a), you must at all times during the Design Project, adhere to the:
  - (i) Minimum Design Standards set out on the Website;
  - (ii) Project Budget specified by the Customer in its Design Brief (excluding any shipping and labour costs); and
  - (iii) Project Timeline;except with our prior written consent.
- (c) You agree to communicate with Customers in a professional, courteous, and timely manner.
- (d) Upon accepting an invitation to a Design Project, you undertake to complete all elements of the Design Project in accordance with this Agreement, including, but not limited to, completion and delivery of the Final Design Package.
- (e) If you are unable to complete any element of a Design Project (including without limitation production of a Final Design Package) or if there is, or likely to be a problem or delay with completion of the Design Project, you must inform us and the Customer as soon as possible.
- (f) You must not:
  - (i) solicit Customers from the Website for the purpose of providing services to those Customers other than through the Website;
  - (ii) share or otherwise distribute your personal contact details (including, but not limited to, your phone numbers, or email addresses) to Customers;
  - (iii) communicate with Customers, except through the Website and in connection with a Design Project;
  - (iv) share pricing information relating to any Design Project with any third party, or source Shopping List items prior to the delivery of the Final Design Package;
  - (v) offer to purchase any goods or services on behalf of Customer;
  - (vi) include products in the Final Design Package that are not generally available for purchase by Customer online; or
  - (vii) source photographs or other images of your completed Work(s) in Customer spaces except through Milray Park.

#### **6.4 Designer's acknowledgements and warranties**

If you are a Designer, you warrant and agree that:

- (a) we may assign a replacement Designer to complete the Design Project if you fail to comply with the terms of this Agreement, including, but not limited to, a failure to comply with the Project Timeline;
- (b) if you are unable to complete a Design Project, you will forfeit the Designer's Fee in respect of a Design Project, in which case, we may award the Designer's Fee to the replacement Designer;
- (c) Customers may rate your performance as a Designer and we may collect such ratings and post them, in averaged form, on the Website;
- (d) you will comply with all applicable laws, and effect and maintain all necessary insurances in connection with the completion of the Design Project and the provision of the Design Services to the Customer; and
- (e) nothing in this Agreement:
  - (i) renders you an employee or independent contractor of Milray Park;
  - (ii) creates an employment or independent contracting relationship between you and Milray Park; or
  - (iii) creates an employment or independent contracting relationship between Milray Park and any third party who is employed or engaged by you.

#### **6.5 Customer's obligations and restrictions**

If you are a Customer, you must not:

- (a) cancel a Design Project for the purpose of contracting separately with a Designer who you have met through the Website;
- (b) shorten any deadlines set out in the Project Timeline; or
- (c) communicate with Designer other than through the Website and in accordance with the terms of this Agreement.

#### **6.6 Customer's acknowledgements and warranties**

If you are a Customer, you acknowledge and agree that:

- (a) You are solely responsible for the requirements specified in your Design Brief.
- (b) We reserve the right, at our sole discretion, to deny a Design Brief from being posted on the Website and/or remove a Brief from the Website, without notice.
- (c) We may, but are under no obligation to, review any Design Brief for accuracy, completeness of information, quality and/or clarity.



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## 7 Payment

### 7.1 Customer Payment terms

- (a) This clause 7 sets out the terms on which Customer is to pay the Fees to Designer.
- (b) We provide the Services (including facilitation services) to Designer which enables Designer to provide Customer with the Design Services. We and the Designer will jointly appoint Stripe to collect payment of the Fees from the Customer.

### 7.2 Payment of Fees

- (a) Customer must pay the Fees and any other charges at the rates and/or in the manner specified and referred to in this Agreement or on our Website, subject to any discounts or special offers that may apply pursuant to valid Milray Park vouchers and/or promotional codes.
- (b) All Fees must be paid in Australian dollars.
- (c) Without limiting this clause 7, the Fees payable by Customer to Designer will comprise:
  - (i) the Platform Fee;
  - (ii) the Designer's Fee; and
  - (iii) any applicable transaction fees or charges.
- (d) We will transfer the Designer's Fee (less any applicable transaction fees or charges) to Designer's specified account subject to:
  - (i) Customer making full payment of the Fees in respect of such Final Design Package;
  - (ii) Customer's acceptance of the Final Design Package, or acceptance of the Final Design Package in the event of the Customer's failure to accept the Final Design Package within the Acceptance Period; and
  - (iii) Designer's compliance with the terms of this Agreement, including (but not limited to) clause 8 ("GST").
- (e) Designer acknowledges and agrees that we will retain the Platform Fee as consideration for the supply the Services,
- (f) You acknowledge and agree that:
  - (i) the Platform Fee will amount to fifteen (15) percent; and
  - (ii) the Designer's Fee will amount to eighty-five (85) percent (less any transaction fees); and
  - (iii) any applicable transaction fees or charges.
- (g) Without limiting the foregoing, Designers and Customers shall be liable for any taxes, duties or charges imposed in respect of our Services (other than taxes imposed on our income). For the avoidance of doubt, if the effect of any tax, duty or charge applied to the Fees is to reduce our revenue under this Agreement, the

Fees will be grossed up such that our revenue under this Agreement is not reduced.

### 7.3 Processing of payments

- (a) You must notify us as soon as possible in respect of any changes to your billing and account information.
- (b) You acknowledge that Fees are processed via a third party payment processing services and will be subject to the applicable terms and conditions offered by such third party.

### 7.4 Cancellation policy

- (a) Customer cannot cancel their Design Project after they submit their Design Brief.
- (b) Customer will be charged for the full amount due under this Agreement upon release of their Final Design Package or in accordance with this Agreement.

### 7.5 Refunds policy

- (a) Customer is eligible for and may request a full refund of its Fees in respect of a Design Project if:
  - (i) No Designer has accepted their invitation to Design Project by the specified deadline; or
  - (ii) it requests a refund in writing using the procedure described on the Website ("**Refund Request**").
- (b) If, during a Design Project, Customer receives a First Look that does not meet the Minimum Design Standards, Customer may request an extension of the submission deadline for the purpose of receiving an additional First Look (the "**Additional First Look**").
- (c) Customer is eligible for and may request a full refund of its Fees in respect of a Design Project if:
  - (i) the Additional First Look does not meet the Minimum Design Standards ("**Non-compliant Additional First Look**"); and
  - (ii) Customer submits a Refund Request within forty-eight (48) hours of its receipt of the Non-compliant Additional First Look.
- (d) Customer acknowledges that it is solely responsible for notifying us of the submission of a First Look that does not meet, objectively assessed, the Minimum Design Standards ("**Non-compliant First Look**"). Such notification must be made prior to the Customer's request for further work on the Non-compliant First Look (and commencement of Design Phase Period) and within forty-eight (48) hours of receipt of the Non-compliant First Look.
- (e) For the avoidance of doubt, in the event Customer receives a refund Customer will have no rights or interest (express or implied) in and to any Submission or Work(s) received in connection with the relevant Design Project.
- (f) Nothing in this clause 7.4 excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other condition, implied or imposed under any legislation which cannot lawfully be excluded or limited. This may include the Australian

Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.

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## 8 GST

### 8.1 Definitions

- (a) All capitalised terms have the same meaning as those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### 8.2 Gross up

- (a) Unless specifically stated otherwise, any consideration or amount payable under this Agreement, including any non-monetary consideration (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made by Supplier under or in connection with this Agreement, an additional amount (**Additional Amount**) is payable by Recipient equal to the amount of GST payable on that Supply as calculated by Supplier in accordance with the GST Law.
- (c) The Additional Amount payable under clause 8.2(b) is payable at the same time and in the same manner as the Consideration for the Supply but is only payable on receipt of a valid Tax Invoice.

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## 9 Purchasing of Products

- (a) Our Website includes products available for purchase from various third party sellers ("**Sellers**"). It is important that you understand that when you place an order for a product on the Website ("**Product**"), you are placing an order with the Seller of the Product, and not with Milray Park. We make the Products available for purchase (including by taking orders and collecting payment) as the agent of the Seller, and not on our own behalf.
- (b) We are not a party to, and have no obligations under, the terms by which the Seller sells you its Products. Rather, any such contract will only be between you and the relevant Seller. To the maximum extent permitted by law, we are not liable for any losses or claims that you may suffer or incur in relation to the Products you purchase from Sellers through the Website, except to the extent that such losses or claims arise from our breach of this Agreement.
- (c) You should read the terms and conditions on which each Seller makes their products available for purchase.
- (d) Sellers of Products on our Website are located in Australia and are subject to Australian laws and regulations.

### 9.2 Ordering procedure

- (a) When you place an order to purchase a Product via the Website, you are making an offer to the Seller. No contract for the purchase of a Product will come into existence until the Seller has accepted your order.
- (b) To facilitate the purchase of Products from Sellers, you consent to us accepting payment for the purchase of the Product(s) and placing the order/s on your behalf with the relevant Seller/s.

### 9.3 Products may only be purchased by Australian customers

Orders for Products will only be accepted if you provide a local billing address for your credit card in Australia.

### 9.4 Payment

- (a) When you purchase a Product, you agree to pay the purchase price specified on this Website at the time of purchase. All amounts are stated in Australian dollars. All purchase prices include Australian GST (where applicable) and shipping charges.
- (b) If the Product is being delivered outside of Australia, you must pay any other sales, use, goods and services, value added, customers, excise or similar taxes or charges (“**Other Taxes**”) imposed by any applicable government agency. You should contact the taxing authorities of the country to which the Products are shipped if you are unsure whether any Other Taxes will apply.
- (c) You will be required to pay for the Product online by credit card or debit card. We will process the transaction upon receipt of your order. The credit cards that are accepted from time to time will be described on this Website. A surcharge may apply for the use of certain credit cards, and where this is the case this will also be described on the Website.

### 9.5 Cancellation of orders

Unforeseen supply problems or unexpected demand may occasionally result in a Product being unavailable. If there is a delay in shipping your order, the Seller will contact you by email as soon as possible to advise you of the reason for the delay. If this occurs, you may cancel your order at any time prior to when the Seller ships the Product to you.

### 9.6 Delivery

- (a) Upon payment of the purchase price for a Product, we will forward your contact details to the Seller of the Product. If the item you have purchased requires coordination for shipping, the Seller will contact you directly to arrange for the delivery of the Product to the place of delivery you specify when making your order.
- (b) Delivery of the Product will be subject to the Seller’s own delivery terms.

### 9.7 Returns

- (a) The return of Products is subject to the Seller’s own returns policy. If you wish to return any Products or have any complaints in relation to a Product you purchase from a Seller, you should contact the relevant Seller directly.

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## 10 Intellectual Property Rights

### 10.1 Your licence

- (a) The Website is subject to copyright and other Intellectual Property Rights.
- (b) We grant you a limited, non-transferable licence to access and use the Website for the purpose of:
  - (i) if you are an End User, selling or purchasing Products via the Website; and

- (ii) if you are a Customer:
  - (A) initiating and participating in all aspects of a Design Project in accordance with this Agreement; and
  - (B) communicating with Designers and us in relation to your Design Project;
- (iii) if you are a Designer:
  - (A) providing Design Services to Customer in response to a Design Brief and in accordance with this Agreement; and
  - (B) communicating with Customers and us in relation to the Design Services you provide or seek to provide.
- (c) We (or our licensors) retain all right, title, and interest in and to the Website, and nothing you do on or in relation to the Website will transfer any Intellectual Property Rights to you or, except for the licence referred to in paragraph 10.1(b), licence you to exercise any Intellectual Property Rights unless this is expressly stated.
- (d) Except as provided in this Agreement, any use or copying of the Website for any other purpose is expressly prohibited, unless prior written consent is obtained from us. You may contact us at admin@milraypark.com.au if you wish to seek such consent.
- (e) Subject to applicable law, we may revoke the permission referred to in paragraphs 10.1(b) and 10.1(d) at any time and may suspend or deny your access to or use of the Website without notice, if you breach, or we reasonably believe you have breached, any of the terms of this Agreement.

## 10.2 Your Content

- (a) By submitting Your Content to the Website or in connection with our Services:
  - (i) You grant us a worldwide, non-exclusive, royalty-free, transferable licence to use, reproduce, alter, amend, publish, and display the submission (including without limitation the Design Briefs, the First Looks, Concepts and the Final Design Package, and any part thereof) on and in connection with the Website; and
  - (ii) Designer grants the Customer a non-transferable, non-exclusive, royalty-free licence to reproduce and display the Work(s) prior to (as applicable):
    - (A) the deadline for selecting a winning First Look solely for the purpose of assisting in the selection of the winning First Look; or
    - (B) the Acceptance Period for the relevant Final Design Package.

Designer and Customer (as applicable) are each responsible for obtaining any consents or agreements that are required in respect of the licences granted in this clause.

- (b) You must immediately advise us of any infringement or threatened infringement, unauthorised use, or attack or threatened attack on the validity of any Intellectual Property Rights in connection with Your Content which may come to your attention and provide to us at your cost such assistance as we may reasonably require in relation thereto.

- (c) Upon purchasing any Work(s) and becoming the owner of the rights in the Work(s) pursuant to this clause 10, Customer grants us a perpetual, worldwide, irrevocable, non-exclusive, royalty-free, transferrable licence to use, reproduce, alter, amend and display the Work (and all parts thereof) for promotional purposes on the Website and in connection with our Services (including without limitation in marketing materials, the press and on other websites owned or operated by us, and in connection with the sale of Products on our Website).

### **10.3 Designer's grant to Customer of all rights, title and interest in Work(s)**

- (a) In consideration of the payment to Designer of the Designer's Fees in clause 7.1, Designer assigns to Customer and its successors in title all rights, title and interest in and to the Work(s) (and every part thereof), including copyright, for the full period of copyright and other applicable rights, and all extensions and renewals thereof.
- (b) Customer shall be free to use the Work(s) (and any part thereof) or authorise others to use the Work(s) (and any part thereof) in its absolute discretion free from any claims and in perpetuity throughout the world.
- (c) Designer acknowledges and agrees that Customer will own the entire rights (including copyright) in and to the Work(s) and, pursuant to the rights granted to Customer in this clause, Customer shall have the sole and exclusive right to (and authorise others to):
  - (i) adapt and/or alter the Work(s) (and any part thereof): and/or
  - (ii) use, distribute, reproduce, communicate to the public, promote and/or exploit the Work(s) (and any part thereof).
- (d) Designer must not use and/or exploit (or authorise any third party to use and/or exploit) any part of the Work(s) without Customer's prior written consent which may be withheld in Customer's sole discretion.
- (e) Despite clause 10.3(d), Designer may display any part of the Work(s) on their Website profile page.
- (f) Designer and Customer acknowledge that pursuant to this clause 10, Milray Park is granted a perpetual, worldwide, irrevocable, non-exclusive, royalty-free, transferable licence to use, reproduce, alter, amend and display the Work(s) (and all parts thereof) for promotional purposes on the Website and otherwise in connection with our Services and the Products available for purchase on the Website.

### **10.4 Moral Rights**

- (a) Designer warrants that written consents have been obtained from all persons and/or entities engaged by Designer in the production of the Work(s) in respect of the exercise of all rights as afforded under this Agreement without infringement of any Moral Rights in the product of their services.
- (b) Designer consents to Customer exercising all rights as afforded under this Agreement and reproducing or otherwise exploiting the Work(s) (and any part thereof) without infringement of Designer's Moral Rights, and to doing any other acts that might otherwise infringe Designer's Moral Rights.

### **10.5 Designer's warranties**

- (a) Without limiting any other warranties in this Agreement, Designer warrants and represents that:

- (i) Designer has the right, power and authority to grant the rights granted in this Agreement;
  - (ii) the Work(s) (and any part thereof) does not infringe the Intellectual Property Rights or any other rights of any person;
  - (iii) the Work(s) (and any part thereof) is not the subject of any claim, demand, action or legal proceeding or to Designer's knowledge any potential or pending claim, demand, action or proceeding;
  - (iv) the Work(s) is an original copyright work;
  - (v) Designer owns the copyright in the Work(s) or, to the extent the copyright in any part of the Work(s) is owned by a third party, Designer has obtained all licences, consents and/or permissions required to permit Designer to use, reproduce and amend such part (as applicable) as required to enable Customer to exploit the Work(s) in accordance with this Agreement;
  - (vi) the Work(s) is delivered to Customer free from third party encumbrances and Designer has obtained a full buy-out of all rights of any third party engaged by Designer or in respect of the production of the Work(s);
  - (vii) Designer is solely responsible for any third party payments or royalties payable in respect of the Work(s); and
  - (viii) Designer has not entered into any agreement or arrangements or understandings which may conflict with the terms of this Agreement.
- (b) Designer must immediately advise Customer of any infringement or threatened infringement, unauthorised use, or attack or threatened attack on the validity of any Intellectual Property Rights in connection with the Work(s) which may come to Designer's attention and provide to Customer at Designer's expense such assistance as Customer may reasonably require in relation thereto.

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## 11 Communication with End Users

- (a) By clicking to accept this Agreement, you agree that we may send you, from time to time, electronic communications (including, but not limited, emails and/or SMS) in relation to a Design Project, your use of the Website, or any of our other goods or services that we consider may interest you.
- (b) You may unsubscribe from these communications at any time by following the instructions set out in the relevant communication.

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## 12 Privacy

### 12.1 Our Privacy Policy

All of the Personal Information we collect from you is subject to our privacy collection notice and our privacy policy, a copy of which is accessible via our Website.

### 12.2 Designer's obligations

- (a) Designer must comply with all applicable Privacy Laws in relation to its handling of Personal Information in connection with the Website, irrespective as to whether the Designer is bound by those Privacy Laws or not.

- (b) Without limiting clause 12.2(a), Designer must:
    - (i) only use Personal Information (including without limitation Customers' Personal Information) to the extent necessary to perform its obligations in accordance with this Agreement; and
    - (ii) not disclose any Personal Information to any other person without our prior written consent; and
    - (iii) not post Personal Information about, or otherwise identify, a Customer on Designer's Website profile page except with the Customer's prior written consent; and
    - (iv) protect any Personal Information from misuse, interference and loss, and unauthorised access, modification or disclosure; and
    - (v) notify us immediately if it becomes aware of any actual or suspected misuse, interference, loss or unauthorised access, modification or disclosure of Personal Information, or if it becomes aware of a breach of this clause 12.
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## 13 Liability

13.1 Our Services and our Website are provided "as is" and all guarantees, conditions and warranties expressed, implied or imposed by any legislation, the common law, or otherwise in relation to the supply of our Services, our Website or otherwise in connection with our obligations under this Agreement are expressly excluded and disclaimed to the fullest extent permitted by law, except where such exclusion is prohibited by law.

13.2 Without limiting clause 13.1, we make no warranty or representation that:

- (a) our Services, our Website or any content made available on such will meet your requirements or expectations;
- (b) the use of our Services, our Website or any content made available on such will be uninterrupted, timely, secure, error free or virus free, or unable to be accessed by hackers, viruses or other harmful components;
- (c) that results that may be obtained from the use of our Services, our Website or any content made available on such will be inaccurate or reliable; and
- (d) any errors in our Services, our Websites or any content made available on such will be corrected.

13.3 Notwithstanding clauses 13.1 and 13.2 above, nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other condition, implied or imposed under any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.

13.4 If any guarantee, warranty, term or condition is implied or imposed in relation to the Agreement under the Australian Consumer Law or any other applicable legislation and cannot be excluded (a "**Non-Excludable Provision**"), and we are able to limit your remedy for a breach of the Non-Excludable Provision, our liability for a breach of the Non-Excludable Provision is limited to one or more of the following, at our option:

- (a) in the case of the supply of goods: (i) the replacement of the goods or the supply of equivalent goods; or (ii) the repair of the goods; or (iii) the payment of the cost of



replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; or

(b) in the case of the supply of services: (i) the supply of the services again; or (ii) the payment of the cost of having the services supplied again.

13.5 To the maximum extent permitted by law, in relation to our Services and the subject matter of this Agreement in no event shall we or our employees, officers, representatives and directors be liable for any loss of profits, management time, savings, contracts, revenue, invest, goodwill, data, or for any penalties, fines, for any consequential, special, indirect, or exemplary damages, costs, expenses, or losses (including negligence).

13.6 To the maximum extent permitted by law, you agree that we, our employees, officers, representatives and directors shall not be liable to You for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to this Agreement (whether that liability arises in contract, tort (including negligence) or statute) which are not otherwise excluded or limited for an aggregate amount in excess of the sum of the applicable Fees in respect of the transaction or project that gave rise to the relevant loss.

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## 14 Indemnity

14.1 You indemnify and hold us (and our directors and employees), harmless against all loss, damage, liability, costs and expenses (including legal costs) suffered or incurred by us:

- (a) in respect of any claim or demand made by any person in connection with any of Your Content (as applicable) (including from a person's use of Your Content);
- (b) in respect of any claim or demand made by any person in connection with your use of any content obtained through our Services;
- (c) in respect of any claim that any of Your Content (as applicable) infringes the Intellectual Property Rights of any person;
- (d) in respect of your (or any person claiming through you) use of our Services or our Website or resulting from a breach of this Agreement by you and/or the violation by you of any law;
- (e) any allegation that you or any of your employees or contractors is an employee or contractor of Milray Park at law or entitled to any employment related benefit, payment or entitlement (including but not limited to superannuation); and/or
- (f) any liability Milray Park may have to pay any tax, levy or other impost, including all related interest, penalties and fines (including for late payment), where that liability arises as a consequence of you or any of your employees or contractors being regarded as an employee or independent contractor of Milray Park or entitled to superannuation at general law or under any legislation.

14.2 The indemnity referred to above shall be granted whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

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## 15 Suspension or termination

15.1 Without limiting any other rights of termination under this Agreement and subject to clauses 15.5 and 15.6, you may close your account with us and terminate this Agreement at any time and for any reason on written notice to us.

- 15.2 Without limiting any other rights of termination under this Agreement and subject to clauses 15.5 and 15.6, we may close your account with us and terminate this Agreement at any time and for any reason on written notice to you.
- 15.3 In addition to any other rights of suspension or termination under this Agreement, from time to time during the Term we may, without notice to you, suspend, disconnect or deny you access to any of our Services if you fail to comply with any of your obligations under this Agreement until the breach (if capable of remedy) is cured to our satisfaction. If you breach the terms of this Agreement, we reserve the right not to make any payment to you, which you may otherwise be entitled to under this Agreement.
- 15.4 Any amounts paid to us up to and including the date of termination will not be refundable.
- 15.5 If this Agreement is terminated you must immediately pay to us all outstanding amounts owing to us under this Agreement as at the date of termination.
- 15.6 Termination of this Agreement will not extinguish or otherwise affect any accrued rights or remedies of either party. The following clauses continue to apply after termination: Clauses 6, and 9 to 20 (inclusive).
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## 16 Confidentiality

- 16.1 A party shall not, without prior written approval of the other party, disclose the other party's Confidential Information. A party shall not be in breach of this Agreement in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- 16.2 Each party shall take all reasonable steps to ensure that its employees and agents do not disclose the other party's Confidential Information.
- 16.3 The parties may disclose the other party's Confidential Information:
- (a) to its related companies, solicitors, auditors, insurers and accountants who require information for the purpose of this Agreement; or
  - (b) if required to disclose the information by law or the rules of any Stock Exchange.
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## 17 Amendments to this Agreement

- (a) We may amend the terms of this Agreement (including our Services) from time to time. We will display a notice on the Website indicating when any such amendments have been made, and may provide written notification to you. All such amendments will be effective as of the date of publication of the updated applicable part of the Agreement on our Website.
  - (b) Your continued use of our Services, after such amendments are made in accordance with clause 17(a), shall be deemed to be acceptance of the amended terms.
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## 18 Governing law and dispute resolution

- 18.1 This Agreement is governed by the laws of New South Wales, Australia, and the parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

- 18.2 A party must not commence any arbitration or court proceedings relating to a dispute unless it has complied with the provisions of this clause, except where a party seeks urgent injunctive relief.
- 18.3 If there is a dispute arising out of or in connection with this Agreement, then:
- (a) the party raising the dispute must first notify the other party in writing of the dispute, and provide sufficient detail to enable the dispute to be considered;
  - (b) the parties must discuss or enter into correspondence about the dispute and attempt to resolve it; and
  - (c) if the dispute is not resolved within 14 days of when the dispute was first notified, then the dispute shall be submitted to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia Fast Track Arbitration Rules.
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## 19 General

- 19.1 You must not assign this Agreement without our prior written consent.
- 19.2 We may assign, novate or otherwise deal with this Agreement, or any rights or obligations under this Agreement, at any time without your consent by transfer to a third party. To the extent that you are required to give your consent to such an assignment, novation or other dealing, you hereby give your consent.
- 19.3 All notices must be in writing and addressed to the relevant party at the address as provided pursuant to this Agreement.
- 19.4 Each party must take all steps as may be reasonably required by the other party to give effect to the terms of this Agreement and transactions contemplated by this Agreement.
- 19.5 This Agreement contains the entire agreement between the parties with respect to its subject matter.
- 19.6 Each party acknowledges that in entering into this Agreement it has not relied on any representations or warranties about its subject matter except as provided in this Agreement.
- 19.7 No delay, neglect or forbearance on the part of any party in enforcing against any other party any obligation under this Agreement will operate as a waiver or in any way prejudice any right under this Agreement.
- 19.8 If any provision of this Agreement is held to be invalid, illegal or unenforceable, this Agreement will continue otherwise in full force and effect part from such provision which will be taken to have been deleted.
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## 20 Definitions and interpretation

### 20.1 Definitions

In this Agreement, unless the context otherwise requires:

“**Acceptance Period**” has the same meaning as in clause 5.6(b);

“**Agreement**” has the meaning given in clause 1(a);

**“Confidential Information”** means the confidential information of a party which relates to the subject matter of this Agreement which is not already in the public domain through no breach by the recipient of its obligations of confidentiality owned to the discloser;

**“Customer”** means a person or entity that registers with us as a “Customer” in accordance with the registration procedure on our Website;

**“Design Brief”** means a document detailing the requirements for a Design Project and set out in the format prescribed on the Website;

**“Design Phase”** means the period directly following the selection of the winning First Look within which Customer and Designer work together to develop the Final Design Package. The Design Phase ends upon the submission of the Final Design Package to Customer.

**“Design Phase Period”** has the same meaning as in clause 5.3(b);

**“Design Project”** means a design project the subject of a Design Brief;

**“Design Services”** means the services provided by a Designer to a Customer in response to a Design Brief and in accordance with this Agreement;

**“Designer”** means a person or entity that registers with us as a “Designer” in accordance with the registration procedure on our Website;

**“Designer Debrief”** means a final message and any set up instructions from Designer to Customer and comprises part of the Final Design Package;

**“Designer Fees”** means part of the fees payable by a Customer to a Designer for the supply of the Design Services;

**“Designer Registration Requirements”** means the special registration requirements applicable to End Users wishing to register as a Designer, as specified on the Website (and amended from time to time);

**“End User”** has the meaning given in clause 2(a).

**“Fees”** means the total fees payable by a Customer to a Designer for the supply of the Design Services;

**“Final Design Board”** means a visual representation of the agreed final design developed for Customer as a result of the Design Phase and comprises part of the Final Design Package;

**“Final Design Package”** means the deliverable package of items of a Design Project. The package comprises items described in clause 5.5(a);

**“Floor Plan”** means a to scale diagram of the space the design is to occupy showing how items of the design will be arranged and comprises part of the Final Design Package;

**“Intellectual Property Rights”** means all industrial and intellectual property rights including, but not limited to, copyright, trade marks, patents, circuit layouts, designs and confidential information and know how;

**“Minimum Design Standards”** means the minimum design standards specified on our Website;

**“Moral Rights”** means moral rights within the meaning of Part IX of the *Copyright Act 1968* (Cth) and any analogous rights arising under statute that exist, or may come to exist anywhere in the world;

**“Personal Information”** has the meaning given in the *Privacy Act 1988* (Cth).

**“First Look”** means a visual representation of a proposed design(s) developed for a Customer in response to a Design Brief;

**“Platform Fee”** means part of the fees payable by a Customer to a Designer for the supply of the Design Services, but which is retained by us as consideration for the supply of the Services;

**“Privacy Laws”** means the *Privacy Act 1988* (Cth) and any legislation, rules, guidelines, codes or other instruments affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal data;

**“Project Budget”** means the budget for the Design Project specified by the Customer in its Design Brief;

**“Project Timeline”** means the period within which a Design Project is to be developed, and includes deadlines agreed between a Customer and Designer for the finalisation of particular tasks and/or deliverables for a Design Project, except as otherwise agreed by Milray Park.

**“Services”** has the meaning given in clause 2(a);

**“Service Package(s)”** means the Design Services available for purchase by Customers, as specified on the Website (and updated from time to time);

**“Shopping List”** means the recommended list of items to be purchased by the Customer in connection with a particular Design Project;

**“Website”** has the meaning given in clause 1(a);

**“Work(s)”** means the designs and other works created by a Designer for a Customer in the course of a Design Project;

**“Term”** means the duration of this Agreement, as specified in clause 3; and

**“Your Content”** means all content and materials uploaded, provided or submitted by you or on Your behalf to our Website or otherwise in connection with our Services, including any logos, designs, images, documentation, written and/or audio-visual content, music recordings, photographs, illustrations, information or specifications.

## 20.2 Interpretation

The following rules of interpretation apply to this Agreement unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and conversely;
- (c) a gender includes all genders;
- (d) where a word or phrase is defined its other grammatical forms have a corresponding meaning;

- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation;
- (f) a reference to a person includes a body corporate, an unincorporated body or other entity and conversely;
- (g) a reference to a clause or schedule is to a clause or schedule to this Agreement;
- (h) a reference to any party to this Agreement or any other agreement or document includes the party's successors and assigns;
- (i) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, where applicable, in accordance with this Agreement or that other agreement or document;
- (j) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (k) a reference to conduct includes, without limitation, any omissions, statement or undertaking, whether or not in writing.