

Terms and Conditions

For the supply of professional services

Supplier	Apple Cart Investments Pty Ltd trading as Applecart Digital
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Contents

Part A — General Terms.....	4
1. Definitions and interpretation	4
2. Structure of the agreement and order of precedence	5
3. Our services.....	5
4. Variations and change control	5
5. Your responsibilities and dependencies.....	6
6. Fees, payments and expenses.....	6
7. GST	6
8. Acceptance and Defects.....	7
9. Third-Party Platforms and dependencies.....	7
10. Confidentiality.....	7
11. Privacy and data protection.....	7
12. Data handling and security	8
13. Intellectual property.....	8
14. Warranties and disclaimers	8
15. Australian Consumer Law.....	9
16. Limitation of liability	9
17. Indemnity.....	9
18. Suspension and termination.....	9
19. Effect of termination and handover	10
20. Subcontracting and assignment	10
21. Non-solicitation	10
22. Force majeure	10
23. Dispute resolution	10
24. Notices.....	11
25. General.....	11
Schedule 1 — Microsoft 365, SharePoint & Integration Services	12
S1.1. Access to the Client Environment.....	12
S1.2. Data migration.....	12
S1.3. Automation and workflows.....	12
S1.4. AI-assisted features	13
S1.5. Support boundary.....	13
Schedule 2 — Website Development Services.....	14
S2.1. Scope, design and revisions.....	14
S2.2. Content and accessibility.....	14
S2.3. Compatibility and performance	14
S2.4. Go-live.....	14
Schedule 3 — Hosting (Third-Party / Pantheon).....	15
S3.1. We do not provide hosting	15
S3.2. Hosting arrangements and fees.....	15

S3.3. Responsibility for the hosting platform.....	15
S3.4. Backups, domains and security	15

Part A — General Terms

These terms and conditions govern the supply of services by Apple Cart Investments Pty Ltd trading as Applecart Digital to you. They apply together with the relevant Statement of Work and Proposal, and with any Service Schedule referenced in the Statement of Work. By accepting a Proposal or Statement of Work that refers to these terms, or by instructing us to commence work, you agree to be bound by them.

1. Definitions and interpretation

1.1 In these terms, unless the context requires otherwise:

- (a) “AI Features” means functionality that relies on artificial intelligence or machine-learning services (for example Microsoft Copilot), whether provided by us or a third party.
- (b) “Client Data” means all data, files, documents and content owned or controlled by you, or your personnel, that we access, migrate, host, process or store in performing the Services.
- (c) “Client Environment” means your Microsoft 365 tenancy, systems, platforms and infrastructure that we are given access to in order to perform the Services.
- (d) “Confidential Information” means information disclosed by or on behalf of a party that is by its nature confidential, is marked confidential, or ought reasonably to be regarded as confidential, including Client Data and our methods, pricing and know-how.
- (e) “Deliverables” means the outputs we agree to deliver under a Statement of Work, which may include configurations, taxonomies, workflows, custom code, websites, reports and documentation.
- (f) “Defect” means a failure of a Deliverable to perform materially in accordance with the specification in the Statement of Work, excluding issues caused by Third-Party Platforms, Client Data, or matters listed in clause 14.3.
- (g) “Fees” means the fees, charges, disbursements and expenses payable for the Services as set out in, or calculated under, the Statement of Work.
- (h) “Proposal” means a proposal or quotation we provide to you prior to a Statement of Work.
- (i) “Services” means the services described in the Statement of Work, including any Service Schedule that applies.
- (j) “Service Schedule” means a schedule to these terms that sets out additional terms for a particular type of Service (Schedules 1 to 3).
- (k) “Statement of Work” or “SOW” means the document (however titled) that describes the scope, timing and Fees for a particular engagement or phase, and which incorporates these terms.
- (l) “Third-Party Platform” means any product, platform, service, connector or API that we do not own or control and that is used in or relied on by the Services,

including Microsoft 365, SharePoint, the Power Platform, Microsoft Copilot, Acumatica, WordPress, Shopify and Pantheon.

- (m) “we”, “us” or “our” means Apple Cart Investments Pty Ltd (ABN 16 618 439 357) trading as Applecart Digital; and “you” or “your” means the party identified as the client in the Statement of Work.

- 1.2** Headings are for convenience only. A reference to legislation includes any amendment to it. The words “including” and “for example” do not limit what else may be included.

2. Structure of the agreement and order of precedence

- 2.1** These terms, together with each Statement of Work, the applicable Service Schedules and any Proposal, form the agreement between us in respect of the relevant Services.
- 2.2** If there is any inconsistency, the following order of precedence applies: (a) the Statement of Work; (b) the applicable Service Schedule; (c) these General Terms; and (d) the Proposal.
- 2.3** **Phased and staged engagements.** Where an engagement is delivered in phases or sprints, each phase may be documented in its own Statement of Work. Fees for an early phase may be fixed while later phases are indicative only and are formally scoped on completion of the earlier phase. Neither party is obliged to proceed to a subsequent phase, and any estimate for a future phase is provided for planning purposes and is not binding until set out in a signed Statement of Work.

3. Our services

- 3.1** We will perform the Services with due care and skill and in accordance with the Statement of Work.
- 3.2** The Services are limited to what the Statement of Work describes. Anything not expressly included is out of scope.
- 3.3** Timeframes in a Statement of Work are estimates given in good faith and are not guaranteed unless expressly stated to be fixed. Our ability to meet them depends on your timely performance of your responsibilities under clause 5.

4. Variations and change control

- 4.1** Any variation to the scope, timing or Fees must be agreed in writing. We may charge additional Fees for varied or additional work at our rates applying at the time.
- 4.2** Where a variation is required because of a change in your requirements, a delay attributable to you, or a change made by a Third-Party Platform, we will notify you of the likely impact on Fees and timing before proceeding where reasonably practicable.

5. Your responsibilities and dependencies

- 5.1** You acknowledge that timely delivery depends on your cooperation. You must, at your cost and in a timely way:
- (a) provide the access, information, decisions, approvals and content we reasonably require, including access to the Client Environment and to relevant personnel;
 - (b) make available subject-matter experts where the Services require your input (for example, to resolve ambiguous data during a migration);
 - (c) ensure that the Client Environment, licences and infrastructure are adequate for the Services; and
 - (d) ensure that Client Data and any content you supply is accurate, complete, lawfully held and free of malware.
- 5.2** If you do not meet a responsibility in clause 5.1, we are not liable for resulting delay or additional cost, and we may adjust timeframes, charge for standing time or re-mobilisation, or revise our Fees. Content readiness is a common cause of delay, and you are responsible for preparing your content and data in time for each phase.

6. Fees, payments and expenses

- 6.1** You must pay the Fees set out in, or calculated under, the Statement of Work. Smaller engagements are usually quoted as a fixed fee for the scope stated; larger engagements are usually charged on a time-and-materials basis at our applicable rates. For time-and-materials work, any estimate is for guidance only and is not a cap. No deposit is required.
- 6.2** **Fixed-fee engagements.** Where an engagement is quoted as a fixed fee, we will invoice on completion of the work and payment is due within 7 days of the invoice, without set-off or deduction, unless the Statement of Work states otherwise.
- 6.3** **Time-and-materials engagements.** Where an engagement is charged on a time-and-materials basis, we will record the time worked and invoice monthly in arrears. Each invoice is payable within 7 days of its date, without set-off or deduction.
- 6.4** We may pass on reasonable third-party costs and disbursements incurred in performing the Services, provided you have pre-approved them where they are not normal business overheads.
- 6.5** We may charge interest on overdue amounts at 12% per annum, calculated daily. We may withhold Deliverables until all outstanding invoices are paid in full.

7. GST

- 7.1** Unless stated otherwise, all amounts are exclusive of GST. If GST applies to a supply under the agreement, you must pay the GST-exclusive amount plus GST at the prevailing rate on receipt of a valid tax invoice.

8. Acceptance and Defects

- 8.1** Where a Statement of Work provides acceptance criteria or an acceptance testing period, you must test the relevant Deliverable and notify us of any Defect within the period stated (or, if none is stated, within 10 business days of delivery).
- 8.2** A Deliverable is taken to be accepted if you use it in production, or if you do not notify us of a Defect within the acceptance period.
- 8.3** For fixed-fee Deliverables, we will correct notified Defects at no further charge for 30 days after acceptance. This does not apply to issues caused by Third-Party Platforms, Client Data, changes made by you or a third party, or use outside the intended purpose.

9. Third-Party Platforms and dependencies

- 9.1** The Services are delivered on, and depend on, Third-Party Platforms that we do not own or control. You are responsible for holding and maintaining all necessary licences and subscriptions for those platforms and for paying their fees.
- 9.2** To the extent permitted by law, we are not responsible for, and give no warranty in respect of, the availability, performance, security, pricing, or continued existence of any Third-Party Platform, or for any change, deprecation or withdrawal of a platform, API or connector, even where this affects a Deliverable.
- 9.3** Where a change to a Third-Party Platform requires rework to maintain a Deliverable, that rework is a variation under clause 4 and may attract additional Fees.

10. Confidentiality

- 10.1** Each party must keep the other's Confidential Information confidential, use it only to perform or receive the Services, and not disclose it except to personnel and subcontractors who need it and are bound by equivalent obligations, or as required by law.
- 10.2** We may be given wide-ranging access to your systems and data in the course of the Services. We will treat all information accessible within the Client Environment as your Confidential Information, whether or not marked.
- 10.3** On termination, each party must return or destroy the other's Confidential Information on request, except for copies required by law or held in routine backups.
- 10.4** Where the parties enter into a separate confidentiality or non-disclosure agreement, that agreement applies in addition to this clause 10 in respect of confidentiality. To the extent any such agreement is inconsistent with clause 13 (Intellectual property), clause 13 of these terms prevails unless the Statement of Work expressly provides otherwise.

11. Privacy and data protection

- 11.1** Each party will comply with the Privacy Act 1988 (Cth) and the Australian Privacy Principles in connection with personal information handled under the agreement.

- 11.2** Where we handle personal information on your behalf, we do so only to perform the Services and on your reasonable instructions. You are responsible for ensuring you are entitled to provide that personal information to us.
- 11.3** We may use sub-processors (including Microsoft) to provide the Services. Client Data is stored in the Client Environment and other Third-Party Platforms you have engaged, and its location is determined by those platforms.
- 11.4** If either party becomes aware of an eligible data breach involving personal information handled under the agreement, it will promptly notify the other and cooperate in meeting obligations under the Notifiable Data Breaches scheme.

12. Data handling and security

- 12.1** We will take reasonable technical and organisational measures to protect Client Data in our possession or control against unauthorised access, loss or misuse.
- 12.2** You remain responsible for maintaining your own backups of Client Data, for access controls within the Client Environment other than those we are engaged to configure, and for the security of your own credentials and devices.

13. Intellectual property

- 13.1** You own, and retain all rights in, Client Data and any content or materials you provide to us.
- 13.2** **Deliverables.** On full payment of the Fees for the relevant Deliverable, we grant you a perpetual, non-exclusive, royalty-free licence to use the Deliverable for your internal business purposes. Custom code, configurations, taxonomies and workflows developed specifically for you are licensed to you on the same basis. We do not assign ownership of the Deliverables to you unless expressly agreed in writing in the Statement of Work.
- 13.3** **Our materials.** We retain ownership of our pre-existing materials, tools, templates, frameworks, methodologies and know-how, and of any general skills, techniques and know-how acquired in performing the Services. Nothing in the agreement prevents us from using these for other clients. Where our materials are embedded in a Deliverable, we grant you a licence to use them as part of that Deliverable.
- 13.4** Some Deliverables may include open-source or third-party licensed components (for example under the MIT or GNU GPL licences). You agree to comply with the terms of those licences, which we will identify where they impose obligations on you.
- 13.5** Original graphics and creative files we create for a Deliverable may not be re-used in another project or medium without our written consent, which we may condition on payment of additional Fees.

14. Warranties and disclaimers

- 14.1** We warrant that we will perform the Services with due care and skill and in accordance with the Statement of Work.

- 14.2** Except as expressly stated and to the extent permitted by law, the Services and Deliverables are provided on an “as is” basis and we give no other warranty, including as to uninterrupted or error-free operation, or that any particular result, efficiency or return will be achieved.
- 14.3 Excluded matters.** We are not responsible for: (a) faults in, or changes to, Third-Party Platforms; (b) issues arising from Client Data or content you supply, including pre-existing errors, corruption or gaps; (c) matters outside the scope of the Statement of Work; or (d) use of a Deliverable other than as intended.

15. Australian Consumer Law

- 15.1** Nothing in the agreement excludes, restricts or modifies any guarantee, right or remedy under the Competition and Consumer Act 2010 (Cth), including the Australian Consumer Law, that cannot lawfully be excluded (a non-excludable guarantee).
- 15.2** Where our liability for breach of a non-excludable guarantee can be limited, our liability is limited, at our option, to re-supplying the relevant Services (or paying the cost of having them re-supplied) or, for goods, replacing or repairing them (or paying the equivalent cost).

16. Limitation of liability

- 16.1** Subject to clause 15 and to the extent permitted by law, neither party is liable to the other for any loss of profit, revenue, business, goodwill, anticipated savings, or for any indirect or consequential loss, however arising.
- 16.2** Subject to clause 15, and to the extent permitted by law, our total aggregate liability arising out of or in connection with a Statement of Work, however arising (including in contract, tort or under statute), is limited to the total Fees paid by you under that Statement of Work in the 12 months before the event giving rise to the liability.
- 16.3** This clause survives termination and applies to our directors, officers, employees and subcontractors.

17. Indemnity

- 17.1** You indemnify us and our personnel against any claim, liability, loss or cost (including reasonable legal costs) arising from Client Data or content you supply, from your breach of the agreement, or from use of a Deliverable by you or a third party, except to the extent caused by our breach or negligence.

18. Suspension and termination

- 18.1** Either party may terminate a Statement of Work for convenience on 30 days' written notice. On such termination, you must pay for all Services performed and costs committed up to the termination date.
- 18.2** We may suspend the Services or terminate immediately by notice if you fail to pay an invoice when due and do not remedy the failure within 14 days of notice, or if you commit a material breach that is not remedied within 14 days of notice.

- 18.3** Either party may terminate immediately if the other becomes insolvent or is subject to an insolvency event.

19. Effect of termination and handover

- 19.1** On termination, all Fees for Services performed and costs committed become payable, and each party's accrued rights are preserved.
- 19.2** On request and on payment of any outstanding Fees, we will provide a reasonable, orderly handover of completed Deliverables and revoke or hand back any access we held to the Client Environment. Handover work beyond a reasonable transfer of Deliverables is chargeable.
- 19.3** Clauses that by their nature should survive termination (including confidentiality, privacy, intellectual property, liability, indemnity and dispute resolution) continue in force.

20. Subcontracting and assignment

- 20.1** We may subcontract performance of the Services, but we remain responsible for the subcontracted work.
- 20.2** Neither party may assign the agreement without the other's consent, which must not be unreasonably withheld, except that we may assign to a related entity or on a sale of our business on notice to you.

21. Non-solicitation

- 21.1** During an engagement and for 12 months after it ends, neither party will solicit for employment or engagement any personnel of the other who were involved in the Services, except through a general recruitment process not targeted at that person.

22. Force majeure

- 22.1** Neither party is liable for a delay or failure to perform (other than a payment obligation) caused by an event beyond its reasonable control, including outages of Third-Party Platforms, natural disasters, and failures of telecommunications or infrastructure. The affected party will use reasonable efforts to mitigate the impact.

23. Dispute resolution

- 23.1** Before starting court proceedings (except for urgent injunctive relief), a party with a dispute must notify the other in writing setting out the issue and the outcome sought. The other party will respond within 10 business days.
- 23.2** If the dispute is not resolved within a further 10 business days, the parties will attempt to resolve it by mediation before litigating. Each party bears its own costs and the parties share the cost of any mediator equally.

24. Notices

- 24.1** Notices may be given by email to the address each party notifies to the other. Notices to us may be sent to accounts@applecartdigital.com.au or PO Box 460, Red Hill QLD 4059. It is your responsibility to keep your notified email address current.

25. General

- 25.1** The agreement is the entire agreement between the parties about its subject matter and supersedes prior discussions and representations.
- 25.2** If a provision is void or unenforceable, it is severed and the rest continues in force.
- 25.3** A failure to enforce a right is not a waiver of it.
- 25.4** The agreement is governed by the laws of Queensland, and the parties submit to the exclusive jurisdiction of the courts of that State.
- 25.5** We may update these terms from time to time. The version in force for an engagement is the version referenced in, or current at the date of, the relevant Statement of Work. The current version is the version published on our website at applecartdigital.com.au.

Schedule 1 — Microsoft 365, SharePoint & Integration Services

This Schedule applies where a Statement of Work includes Microsoft 365, SharePoint, data migration, automation or integration services. It applies in addition to the General Terms.

S1.1. Access to the Client Environment

- S1.1.1** You will provide the access we reasonably require to your Microsoft 365 tenancy and systems, including guest or administrator access where necessary. You are responsible for provisioning and, on completion or termination, revoking that access.
- S1.1.2** We will use access only to perform the Services and will follow your reasonable security requirements notified to us in advance. We rely on your tenancy, licensing and infrastructure being adequate; we are not responsible for limitations arising from them.

S1.2. Data migration

- S1.2.1** You must maintain a complete, verified backup of all source data before any migration begins. We are not responsible for loss of data occurring in, or as a result of, a migration process.
- S1.2.2** Migration is performed on an “as is” basis from the source data provided. We do not warrant that every file will migrate. Some files may not migrate, or may require remediation, due to factors including path length, illegal characters, permissions, file locks, or pre-existing corruption in the source.
- S1.2.3** Where the Services include de-duplication, sanitisation, archiving or naming decisions, we will apply the rules agreed in the Statement of Work. You are responsible for reviewing and confirming ambiguous cases, and for verifying and signing off migrated data. We may retain source data until you accept the migration.
- S1.2.4** We are not responsible for the accuracy, completeness or quality of your source data, or for consequences arising from pre-existing issues in it.

S1.3. Automation and workflows

- S1.3.1** Automated workflows (for example, Power Automate flows) depend on Third-Party Platform APIs, connectors and service limits, and may be subject to throttling, quotas and vendor changes. We do not warrant that automated workflows will operate uninterrupted or error-free.
- S1.3.2** Unless the Statement of Work includes ongoing monitoring or support, responsibility for monitoring workflows after handover rests with you. Rework required because of a Third-Party Platform change is a variation under clause 4.

S1.4. AI-assisted features

- S1.4.1** Where the Services use AI Features (for example, Microsoft Copilot for tagging or classification), outputs are generated automatically and may be inaccurate or incomplete. You are responsible for reviewing AI-generated outputs before relying on them.
- S1.4.2** AI Features provided by a third party are Third-Party Platforms and are governed by that provider's terms. We give no warranty as to the accuracy of AI-generated outputs.

S1.5. Support boundary

- S1.5.1** Unless a Statement of Work expressly provides for ongoing support or administration, our engagement ends at handover. After handover, you own and administer the Client Environment. Ongoing support, administration or monitoring is provided only under a separate written agreement.

Schedule 2 — Website Development Services

This Schedule applies where a Statement of Work includes website design or development. It applies in addition to the General Terms.

S2.1. Scope, design and revisions

- S2.1.1** We will design and develop the website described in the Statement of Work. The number of design concepts and revision rounds included is as stated in the Statement of Work; further revisions are chargeable as a variation.
- S2.1.2** You are responsible for reviewing and approving designs and development stages at the points set out in the Statement of Work. Approval of a stage confirms it meets your requirements for that stage.

S2.2. Content and accessibility

- S2.2.1** Unless the Statement of Work says otherwise, you are responsible for providing all website content (text, images, video and data), and for ensuring you hold the necessary rights to it. We are not responsible for proofreading content unless expressly engaged to do so.
- S2.2.2** Where accessibility standards (for example WCAG) apply, we will use reasonable efforts to assist as set out in the Statement of Work, but you are responsible for ensuring the website meets any accessibility, legal or regulatory requirements that apply to you, including carrying out your own testing.

S2.3. Compatibility and performance

- S2.3.1** We will test the website against the browsers and devices identified in the Statement of Work. We do not warrant compatibility with every browser, device or future platform version.
- S2.3.2** We do not warrant any particular search engine ranking, traffic level or performance outcome.

S2.4. Go-live

- S2.4.1** The website is taken to be accepted in accordance with clause 8. We are not responsible for issues arising after go-live that are caused by changes made by you or a third party, by content, or by Third-Party Platforms.

Schedule 3 — Hosting (Third-Party / Pantheon)

This Schedule applies where a website or application delivered under a Statement of Work is hosted on a third-party hosting platform (for example, Pantheon). It applies in addition to the General Terms.

S3.1. We do not provide hosting

S3.1.1 We do not provide hosting services. Hosting is provided by a third-party hosting platform (the “Hosting Provider”, for example Pantheon) under the Hosting Provider's own terms, which govern the hosting and are independent of the agreement.

S3.2. Hosting arrangements and fees

S3.2.1 Unless the Statement of Work says otherwise, you contract directly with the Hosting Provider and are responsible for all hosting, subscription and usage fees. Where we arrange hosting on your behalf, we do so as a pass-through and you reimburse those fees; the Hosting Provider may change its fees at its discretion, and we have no control over them.

S3.2.2 We may require you to enter into, or transfer to, a direct agreement with the Hosting Provider at any time, after which we have no further obligation in respect of hosting fees or arrangements.

S3.3. Responsibility for the hosting platform

S3.3.1 To the extent permitted by law, we are not responsible for, and you release us from liability for, any downtime, outage, performance issue, data loss, breach, defect, fault or other act or omission of the Hosting Provider or the hosting platform, and you indemnify us against claims arising from the Hosting Provider or hosting platform.

S3.3.2 The Hosting Provider is a Third-Party Platform for the purposes of the General Terms, and clause 9 applies to it.

S3.4. Backups, domains and security

S3.4.1 Responsibility for backups, domain name registration and renewal, SSL certificates, and platform-level security is as set out in the Statement of Work. Except to the extent we are expressly engaged to configure these, they are your responsibility.

End of Terms and Conditions