

MEDIA SERVICES TERMS AND CONDITIONS

1. INTRODUCTION

These Terms and Conditions (“**T&Cs**”) apply to the provision by Agency to Client of the media planning and buying services set out in the Media Buying Authority order (“**MBA**”). In the event of any conflict or inconsistency, the documents shall prevail in the following order: (i) the MBA; and (ii) these T&Cs.

2. DEFINITIONS AND INTERPRETATION

2.1 Terms not defined in these T&Cs will have the meanings set out in the MBA. In addition, the following terms shall have the following meanings:

“**Additional Services**” means services which are not stated in the MBA or for which Fees are not stated in the MBA.

“**Advertising**” means any Client Materials provided to the Agency by or on behalf of the Client to be placed in the Media by the Agency pursuant to an MBA.

“**Agency**” means the Dentsu Aegis Network agency stated on the MBA and any Agency Affiliate involved in providing the Services.

“**Agency Affiliate**” means any of the following: (a) companies directly or indirectly belonging to or controlled by Agency through management appointment or otherwise; (b) companies directly or indirectly belonging to or controlled by companies which directly or indirectly own or control Agency; and (c) any companies having entered into an affiliation agreement with Agency or the above-referred companies. “**Control**” means the power of an entity to secure that the affairs of another are conducted in accordance with its wishes and “**controlled**” shall be construed accordingly.

“**Agency Materials**” means materials owned by Agency or Agency Affiliates prior to the date of this Agreement or developed or created or acquired by or on behalf of Agency or Agency Affiliates, and the derivatives of such materials.

“**Business Day**” means any day other than a Saturday, Sunday or a bank or public holiday in Agency’s principal place of business.

“**Charges**” means the Fees, Gross Media Expenditure and any other costs and/or commissions and expenses payable by Client in connection with the Services, as set out in the Statement of Work or the MBA as the case may be.

“**Client Materials**” means any materials and data provided by or on behalf of Client to Agency in connection with this Agreement (including without limitation Advertising, Client’s name, logo and trade marks and any third party materials provided by Client to Agency in connection with this Agreement).

“**Deliverables**” means any creative materials specified by the parties as included as part of the Services, but specifically excluding media plans, reports, presentations, data, methodologies, processes and tools or platforms used by Agency to provide the Services.

“**Fees**” means the fees invoiced and payable by Client as set out in each Statement of Work or MBA as the case may be.

“**Force Majeure**” has the meaning set out in clause 17.3.

“**Gross Media Expenditure**” means the amount of a Media Owner’s charges for placing the Advertising in the Media prior to deducting Standard Agency Commission as set out in the

Statement of Work or the MBA as the case may be.

“**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names, domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and the right to be granted renewals or extensions of, and rights to claim priority from, these rights and all similar or equivalent rights or forms of protections which subsist or will subsist, now or in the future, in any part of the world.

“**Media**” means the media inventory or media channels described in the MBA.

“**Media Owner**” means a third party who sells Media space or time to the Agency.

“**Services**” means media planning and buying services provided by the Agency to the Client relating to the placement of Advertising in the Media as described in the MBA.

“**Software**” means any program, application or code provided or used to provide the Services under this Agreement or incorporated into any Deliverable.

“**Standard Agency Commission**” means the remuneration certain Media Owners award the Agency in consideration of the Agency saving the Media Owner time and expense of direct sales, credit insurance, direct billing, and liaising with advertisers, represented as a percentage discount off the Media Owner’s gross charges for Media and retained by the Agency prior to paying the Media Owner’s charges for Media.

“**Statement of Work**” or “**SOW**” shall mean any additional document signed by both Parties relating to the Services or the Additional Services.

“**Term**” has the meaning given to it in clause 10.1.

“**Territory**” means Australia.

“**Third Party Materials**” means materials owned by a third party which are included by the Agency in the Deliverables (excluding, for the avoidance of doubt, Agency Materials and Client Materials).

3. AGENCY’S ROLE

3.1 Client hereby appoints Agency to provide, and Agency agrees to provide, the Services.

3.2 Agency will provide the Services: (a) with professional care and skill; and (b) in accordance with the terms of this Agreement.

3.3 Client will not obtain or use services from any third party that are the same as or similar to the Services during the Term.

3.4 If Client opts to place Advertising in Media using Amnet, such services are subject to additional terms and conditions set out in <https://www.amnetgroup.com/terms/australia/australiaterms.pdf> (the **Amnet T&Cs**) and the Client hereby authorises the Agency to enter into an agreement with Amnet and bind the Client to the Amnet T&Cs. In the event of conflict between this Agreement and the Amnet T&Cs, the Amnet T&Cs shall prevail.

4. CLIENT RESPONSIBILITIES

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- 4.1 Client will cooperate with Agency in all aspects relating to the Services, including, without limitation, giving Agency clear briefings and approving all Deliverables.
- 4.2 Client will be responsible for making all arrangements necessary for it to access, receive and utilise the Services and the Deliverables.
- 4.3 If Agency's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client, its agents, subcontractors, consultants or employees, such failure or delay in performance on the part of Agency shall not constitute a breach of this Agreement and Agency shall not be liable for any costs, charges or losses sustained or incurred by Client that arise directly or indirectly from such failure or delay.
- 5. PERFORMANCE OF THE SERVICES**
- 5.1 The general scope of Services to be provided by Agency to Client is set out in the MBA. Where the Client requests the Agency to provide Additional Services, these shall be set out in an SOW which, when signed by both parties, shall be subject to these T&Cs subject to any additional terms and conditions agreed between the parties including, but not limited to additional fees and charges.
- 5.2 In executing an approved creative idea, plan, program or campaign, Agency shall obtain Client's approval for copy, layouts, artwork, proofs, radio scripts, TV storyboards, scripts and answer prints, and other material that Agency proposes to use; and schedules showing the times when, and media through which, it is proposed that such material be presented (the "Approval Items").
- 5.3 Upon receipt of the Approval Items, Client shall, as soon as reasonably practicable (taking into account any campaign deadlines agreed with Agency), notify Agency as to whether it approves or rejects the Approval Items. Where it rejects the Approval Items, Client shall cooperate with Agency and provide a full explanation as to the reason for the rejection. Where Client does not confirm whether it approves or rejects the Approval Items within a period of 5 Business Days, or where it starts using any Approval Items, such items will be deemed approved by Client with immediate effect. Agency shall promptly resubmit rejected Approval Items, which will then be subject to the approval process described in this clause. Any delay in approvals may result in additional third party costs for which Client shall be responsible. Agency shall be entitled to order, contract, execute or otherwise arrange for the advertising idea, plan, program or campaign upon receiving the Approval Items.
- 5.4 Client may request Agency to cancel or amend any plans, schedules or work in progress forming part of the Services. Agency will use reasonable efforts to comply with any such request provided that Agency is able to do so within its contractual obligations to third parties.
- 5.5 In the event of any such cancellation or amendment, Client shall promptly pay to Agency: (a) Agency's Fees covering the cancelled or amended Services (calculated on a pro rata basis for the period up to the effective date of cancellation or amendment); and (b) any charges, expenses or additional costs including Gross Media Expenditure paid or payable by Agency in relation to the cancellation or amendment (including without limitation retrospective rate adjustments, cancellation charges or lower discounts from third parties).
- 5.6 Where a Media Owner levies late copy charges against Agency and such charges do not result from the negligent or wilful act or omission of Agency, Client shall immediately upon presentation of an invoice reimburse the amount of such late copy charges to Agency.
- 5.7 Where applicable, it is further expressly understood and agreed between both parties that in planning the media buying campaign for Client, while Agency undertakes to use all reasonable care in the preparation of estimated and target figures relating to television ratings and the cost of airtime as regards : i) the number, proportion and type of person likely to be exposed to the campaign; ii) the number of exposures each person is likely to receive; and iii) the cost of achieving such exposures, these are matters which are ultimately beyond the control of Agency, and hence no warranties are given by Agency as to the accuracy of such estimates or targets or as to the figure actually occurring and no liability shall attach to Agency in respect of any losses suffered by Client or by any third party by reason of the reliance of Client on such estimates/targets.
- 5.8 If it is agreed as part of the Services that domain names or trade marks are to be created, Agency shall carry out clearances and registrations only where agreed in writing with Client and at Client's cost. All other clearances, registrations and renewals will be Client's sole responsibility.
- 5.9 The Agency will use reasonable endeavours to implement brand safety measures to prevent the display of Advertising on websites and/or in proximity to content that is of a pornographic, defamatory, obscene or illegal nature. However, the Client accepts and acknowledges that Advertising may be displayed on websites as determined by ad-serving technology operated by third parties or upon reputable websites in proximity to objectionable third party content. Consequently, the display of Advertising is not ultimately within the control of the Agency and, as such, the Agency cannot guarantee that such brand safety measures are successful in every instance. The Agency will promptly take steps to remove any Advertising that is displayed on websites in a manner that does not comply with the brand safety measures described above, upon becoming aware of such display.
- 6. FINANCIAL PROVISIONS**
- 6.1 In consideration of providing the Services, Client shall pay to Agency the Charges set out in an MBA or (where applicable) SOW in accordance with this clause 6.
- 6.2 Amounts stated are exclusive of applicable sales tax, which shall be payable by Client in addition to the relevant amounts at the prevailing rate.
- 6.3 The Charges shall be payable by Client in full, without set-off, counterclaim or withholding, by bank transfer into the bank account nominated by Agency in the currency specified in the invoice.
- 6.4 Unless otherwise specified, Agency shall be entitled to issue its invoices on an ad hoc basis and invoices will be payable within 30 days of the date of the invoice, unless stated otherwise thereon. All sums paid late shall, without prejudice to Agency's other rights and remedies, be subject to interest at the rate of 2% per annum above the base lending rate of Agency's principal lending bank from the due date until the date of payment in full.
- 6.5 For some aspects of the Services that are provided by third parties, those third parties may require an advance or down-payment. Under such circumstances, Agency will inform Client, and an invoice covering the advance or down-payment will be prepared and sent by Agency to Client for immediate settlement.
- 6.6 All out-of-pocket expenses incurred by Agency in pursuance of

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- the fulfilment of the Services may be charged to Client, subject to Client's prior approval of the applicable amounts, including without limitation: (a) research work; (b) any costs incurred for production work required in connection with the Services including, without limitation, film production, artwork, engravings, electros, photography, talent fees, recordings (including for test purposes), the services of performers, block-making, type-setting, typography and print work; (c) travel costs; (d) long-distance telephone calls; (e) production costs involved in the preparation of packaging, labels and cartons, exhibition and display material, booklets, sales letters, product publicity and other promotional material or services as may be prepared or suggested by the Agency; (f) costs incurred in taking legal or other advice and undertaking trade mark, domain name or other searches, enquiries, registrations, renewals and clearances; and (g) despatch and carrier costs; (h) ad-serving and other technology related costs.
- 6.7 Where a surcharge is levied by a supplier against Agency due to late payment and this results from late payment by Client, Client shall (without prejudice to Agency's other rights and remedies) immediately upon presentation of an invoice reimburse to Agency the amount of such surcharge, together with any accrued interest charged by the supplier in respect of the overdue amount.
- 6.8 The cost to Agency of Media, materials or services purchased overseas in connection with the Services may be more or less than the cost anticipated at the date when Agency ordered the relevant materials or services as a result of fluctuations in the rate or currency exchange. If so, Agency will charge Client at the rate of currency exchange in operation on the date Agency pays for the relevant Media, materials or services and upon request Agency will promptly supply Client with such documentation as Client may reasonably require in order to verify such rate of currency exchange.
- 6.9 Agency shall be entitled to arrange and maintain credit insurance cover on the expenditure (including without limitation media expenditure) incurred on behalf of Client. Where, for any reason this insurance cover is either refused, withdrawn, revised or inadequate to cover the liabilities of Agency, Client agrees to arrange for suitable financial guarantees to be granted to Agency. If such guarantees are unavailable or are in Agency's opinion not sufficient to meet the commitments of Client then Agency will invoice Client for the amount to be paid prior to commitment and such commitment shall only be made following receipt by Agency of cleared funds in payment of such invoices. If Client is unwilling and/or unable to provide advance payment or arrange for suitable (to the reasonable satisfaction of Agency) financial guarantees, Agency shall be entitled to (i) cancel existing commitments, without being responsible for any losses or additional costs incurred by Client as a result of any such cancellation, (ii) automatically suspend all of its obligations in relation to committing to other expenditure under this Agreement and/or (iii) terminate this Agreement upon no less than seven (7) days' written notice.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 Other than in respect of Client Materials, the Agency shall retain all copyright and all other intellectual property rights in the Deliverables and shall grant to the Client the licences in clauses 7.4, 7.5 and 7.6 to make use of the Deliverables.
- 7.2 The Client grants the Agency a non-exclusive licence during the Term to use the Client Materials solely for the purposes of providing the Services. The Agency acknowledges that ownership of (including, without limitation, ownership of all intellectual property rights in) any Client Materials shall remain vested in Client or its licensors. Client is solely responsible for all consents and licences required for the use of Client Materials in accordance with this Agreement and their compliance with applicable law.
- 7.3 The Agency warrants that its research techniques and any data, information or materials supplied to the Client shall not violate any patents, copyrights, trademarks or other intellectual property rights of any third parties and complies with applicable laws.
- 7.4 The Agency will retain all Intellectual Property Rights in the Agency Materials. In respect of the Agency Materials other than the Software, the Agency hereby grants to the Client a worldwide, royalty-free, non-exclusive, non-transferable licence ("Materials Licence") to use and copy the Agency Materials to the extent necessary to receive or use the Deliverables during the Term and perform obligations or exercise rights under this Agreement. The Materials Licence shall be granted to the Client subject to the following conditions: the Client shall use the Agency Materials as part of and to the extent required to make use of the Deliverables provided that the Client shall not share, rent, lease, sell, sub-licence (other than in accordance with the Materials Licence), assign or otherwise transfer any of the Agency Materials to any third party or modify or remove any proprietary notices or legends placed on or within the Agency Materials.
- 7.5 The Agency will retain all Intellectual Property Rights in the Software. Where Software is a Deliverable, the Agency hereby grants to the Client a worldwide, royalty-free, non-exclusive, non-transferable licence ("Software Licence") for the Term to install and use the Software for the Client's internal business purposes only for the number of concurrent users agreed between the parties and use any documentation provided by the Agency in support of the use of the Software and make copies of such documentation as are reasonably necessary for its lawful use, provided that the Client does not: (i) copy or reproduce the Software other than as reasonably required for the purposes of making one back-up copy, (ii) modify, make derivative works of, reverse engineer, decompile, disassemble or attempt to derive the source code of any Software, except as and to the extent permitted by law; (iii) rent, lease, sell, sub-licence (other than in accordance with the Software Licence), assign or otherwise transfer any of the Software to any third party; or (iv) modify or remove any proprietary notices or legends placed on or within the Software. The Agency shall own all versions, releases, patches, modifications, developments and upgrades to the Software and all Intellectual Property Rights therein and the Client shall have no rights in or to the Software other than the right to use it in accordance with the terms of the Software Licence.
- 7.6 Agency shall, at Client's cost, use reasonable endeavours to obtain for Client all usage rights in Third Party Materials as agreed by the parties at the time such material is commissioned. Save to the extent that the applicable Intellectual Property Rights in and to the Third Party Materials are assigned to Client, such Intellectual Property Rights shall remain vested in the applicable third party. Client is responsible for all other clearances.
- 7.7 Client shall only use the Services and Deliverables in accordance with any usage restrictions and licence conditions specified by Agency or third party licensor. Save as otherwise expressly permitted by this Agreement or otherwise agreed in writing, Client shall not copy, reproduce, make derivative works of, reverse engineer, decompile or disassemble any Agency Materials or Third Party Materials or modify or remove any proprietary notices or legends placed on or within the Agency Materials or Third Party Materials.

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7.8 Agency shall be entitled (both during and after the Term) to use the Deliverables for the purpose of promoting its own business (for example, but without limitation, on its corporate websites and in entering materials for industry awards).

8. WARRANTIES

8.1 Save as expressly set out in this Agreement, all conditions, warranties or other terms on the part of Agency which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded by Agency, including the implied conditions, warranties or other terms as to satisfactory quality or fitness for purpose. For the avoidance of doubt this clause does not exclude those statutory warranties which are not excludable by contract.

8.2 Agency will not be liable for delays or errors in any of the Deliverables as published unless and to the extent that this is caused by its breach of this Agreement or whether such Deliverables have been approved by the Client.

8.3 Agency warrants that to the best of its knowledge and belief, the use of Agency Materials in accordance with this Agreement shall not infringe the Intellectual Property Rights of any other person.

8.4 Save as expressly agreed otherwise under this Agreement or in writing, Agency makes no warranty and is not responsible for any third party content (including without limitation user-generated content or material) published on or in platforms, services or channels operated by or on behalf of Client. Without limitation, Agency is not responsible for: (a) the accuracy of such content; (b) the compliance of such content with applicable laws, regulations, guidelines or codes of practice or Client's policies or requirements; (c) reporting any matters which by virtue of applicable laws are required to be reported to authorities; or (d) any third party claim in relation to such content, including without limitation a claim that such content infringes third party rights, including without limitation intellectual property, data protection and privacy rights, or a claim that such content is defamatory, libellous, slanderous or seditious.

8.5 Agency makes no warranty and is not responsible for any materials once such materials are released or posted in the public domain as requested or approved by Client, including, without limitation, via seeding materials on social media (being any digital platform which allows individuals or businesses to post content for viewing by others) and/or video sharing websites or the use of internet-based "widgets".

8.6 Client warrants that to the best of its knowledge and belief:

- a. Client Materials and all information supplied to Agency in relation to Client's products and services before and during the Term will be true, accurate, complete, up-to-date and not misleading; and
- b. Client Materials and the use of such Client Materials in accordance with this Agreement shall comply with applicable law, regulations, guidelines or codes of practice and shall not infringe the Intellectual Property Rights of any other person. Without prejudice to Client's responsibility and Agency's other rights and remedies, Agency is entitled to refuse to perform Client's request if, in Agency's opinion, such action may result in violation of any applicable law, regulation, guideline or code of practice. Where the law or an appropriate authority requests, Client shall also be obliged to provide Agency with factual evidence in respect of product or advertisements.

c. Client shall ensure it has in place suitable and compatible equipment, networks and software to receive the Deliverables and the Services.

d. Client shall ensure that any Client Materials and any equipment or networks which connect to Agency's systems do not contain software viruses or any other computer code, files or programmes designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.

9. INDEMNITIES

9.1 Agency shall indemnify and hold harmless Client from and against any and all costs, expenses, charges, damages, liabilities, claims or actions of any kind which may be incurred, suffered, brought or threatened against Client arising out of (and only to the extent of) a breach by Agency of clause 8.3. Agency shall not be liable under this indemnity in respect of any costs, expenses, charges, damages, liabilities, claims or actions to the extent that these are caused by acts or omissions of Client.

9.2 Client shall indemnify and hold harmless Agency from and against any and all costs, expenses, charges, damages, liabilities, claims or actions of any kind which may be incurred, suffered, brought or threatened against Agency arising out of (and only to the extent of) a breach by Client of clause 8.6.

9.3 The party entitled to an indemnity under this Agreement shall take all reasonable steps to mitigate the applicable costs, expenses, charges, damages, liabilities, claims or actions.

10. TERM AND TERMINATION

10.1 The Agreement comes into effect on the Start Date and continues for the duration of the campaign, unless terminated earlier in accordance with its terms (the Term).

10.2 Either party may terminate this Agreement immediately on written notice to the other party if the other party breaches any material provision of the Agreement (including clause 16) and (where such breach is capable of remedy) does not remedy that breach within 28 days of being required to do so in writing.

10.3 Either party may terminate this Agreement immediately on written notice to the other party if the other party has a receiver, administrative receiver, administrator, liquidator or provisional liquidator appointed over all or any part of its assets (or their respective equivalents in any other jurisdiction).

11. LIABILITY

11.1 Nothing in this Agreement seeks to limit or exclude liability for death or personal injury caused by negligence, for fraud or for any other type of liability that cannot be limited or excluded under applicable law.

11.2 To the maximum extent permitted by law, neither party shall be liable to the other for any:

- a. loss of actual or anticipated income;
- b. loss of actual or anticipated profits;
- c. loss of contracts; or
- d. for any special, indirect or consequential loss or damage of any kind,

howsoever arising in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, and including under the indemnity obligations under this Agreement.

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- 11.3 Save in relation to the confidentiality obligations under clause 14, to the maximum extent permitted by law, the maximum aggregate liability of Agency to Client under or in connection with this Agreement, whether in contract, tort (including negligence) breach of statutory duty or otherwise (including under the indemnity obligations under this Agreement), shall not exceed an amount equal to 100% of the Fees (excluding, for the avoidance of doubt, any third party expenditure paid or payable by Agency on Client's behalf) paid or payable by Client under this Agreement to Agency in the Territory during the 12 months immediately preceding the relevant claim.
- 12. NON-SOLICITATION**
- Client agrees that it will not either on its own account or in partnership or association with any person, firm, company or organisation or otherwise and whether directly or indirectly during the Term and for a period of twelve months thereafter solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any employee of Agency who has been engaged on the performance or receipt of the Services.
- 13. ASSIGNMENT AND SUB-CONTRACTING**
- 13.1 Agency may: (a) sub-contract any or all of its obligations under this Agreement provided that Agency shall remain at all times liable for the performance of this Agreement; and (b) assign or sublicense any or all of its rights under this Agreement to any Agency Affiliate.
- 13.2 Save as set out in clause 13.1, no assignment, subcontracting or sublicensing is permitted.
- 14. CONFIDENTIALITY**
- Each party undertakes that it will not at any time hereafter use or disclose to any person, except: (i) to its professional representatives and advisors, (ii) in the case of Agency only, to its Agency Affiliates or sub-contractors (including, without limitation, business process outsourcing services providers); or (iii) as may be required by law or any legal or regulatory authority, the terms and conditions or existence of this Agreement or any business ideas, market opinions, pricing information, business methodologies and/or material concerning the business or affairs of the other party which may have or may in the future come to its knowledge. Neither party shall use any such confidential information except for the performance of this Agreement or make any announcement relating to this Agreement or its subject matter without the prior written approval of the other party. Unless otherwise agreed in writing, no intellectual property rights or licences are implied or granted in respect of the same.
- 15. PRIVACY**
- 15.1 The Client may supply the Agency with 'personal information' and 'sensitive information' as defined in the *Privacy Act 1988 (Cth)*. The Client warrants that it has obtained all necessary permissions and consents for the Agency to use any personal information in connection with the Services. The Agency shall comply with all obligations upon it arising under the *Privacy Act 1988 (Cth)* which are relevant to the subject matter and performance of its obligations under this Agreement. The Agency shall immediately notify the Client in writing if it has failed to comply with its obligations pursuant to the *Privacy Act 1988 (Cth)*, and if such a breach could impact on the activities and obligations of the Client.
- 16. ANTI-BRIBERY**
- 16.1 Each party warrants and undertakes that:
- a. it will comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 ("**Relevant Requirements**"); and
 - b. it has and shall maintain in place throughout the Term all policies and procedures necessary to ensure compliance with the Relevant Requirements.
- 17. GENERAL**
- 17.1 Unless otherwise agreed by the parties, Agency acts in all its contracts as a principal and not as agent for Client in respect of dealings with media owners and other third party suppliers ("Suppliers") and shall place orders and enter into contracts with the Suppliers in its own name and on its own account. Nothing in this Agreement is intended to or shall operate to create a partnership or relationship of principal and agent between the parties.
- 17.2 The service of proceedings, and any notice of termination, given under or in connection with this Agreement shall be in writing (excluding email) and served by hand, prepaid first class recorded delivery or prepaid international recorded airmail to the other party's address. Such notice shall be deemed to have been served at the time of delivery. All other communications (including in relation to approvals) under this Agreement may be given via email and shall be deemed received upon sending, save in the case of manifest technical error.
- 17.3 Neither party shall be liable for any failure to perform or delay in performance of any of its obligations under this Agreement (other than payment obligations) caused by circumstances beyond its reasonable control ("**Force Majeure Event**"). The affected party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 17.4 No provision of this Agreement (or any document entered into in connection with this Agreement) shall be modified or varied without the written consent of the parties.
- 17.5 No delay, failure or omission (in whole or in part) in exercising or pursuing any right or remedy under this Agreement will be construed as a waiver of that right or remedy.
- 17.6 The provisions of clauses 2 (Interpretations and Definitions), 7 (Intellectual Property Rights), 8 (Warranties), 9 (Indemnities), 11 (Liability), 12 (Non-Solicitation), 14 (Confidentiality), 15 (Privacy), 16 (Anti-Bribery) and 17 (General) shall survive termination or expiry of this Agreement
- 17.7 This Agreement is formed upon the date of last signature of the relevant MBA or SOW, or the date upon which the Agency commences the Services, whichever is earlier.
- 17.8 A person who is not a party to this Agreement has no right to rely upon or enforce any term of this Agreement.
- 17.9 This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes any previous agreement or understanding between the parties in relation to such subject matter. Notwithstanding the foregoing, these T&Cs shall not apply where the parties have executed a negotiated agreement for the provision of the Services (which, for the avoidance of doubt and notwithstanding anything to the contrary therein, expressly excludes non-negotiated standard terms of purchase attached to any Supplier purchase order, invitation to tender, or similar documents), in which case the terms of such agreement shall

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- apply and will prevail over these T&Cs.
- 17.10 In entering into this Agreement, the parties have not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance of any person other than as expressly set out in this Agreement. Each party irrevocably and unconditionally waives all claims, rights and remedies which but for this clause it might otherwise have had in relation to any of the foregoing.
- 17.11 If any provision of this Agreement is found to be invalid or unenforceable then such invalidity or unenforceability shall not affect the other provisions of this Agreement, which will remain in full force and effect.
- 17.12 This Agreement (and any and all disputes arising out of or in connection with this Agreement (including without limitation any alleged breach, or challenge to the validity or enforceability, of this Agreement or any provision hereof)) shall be subject to the laws of the state of Victoria and the Commonwealth of Australia.
- 17.13 No party may start any proceedings relating to any dispute between the parties (except where the party seeks urgent interlocutory relief) unless the party has taken all reasonable steps to comply with this section.
- 17.14 If either party believes that there is a dispute between the parties concerning this Agreement that party will give written notice to the other party setting out details of the dispute. If a notice of dispute is given:
- 17.15 Negotiations: each party will direct a senior manager with necessary authority to resolve the dispute (or his/her nominee) to use his or her reasonable endeavours to resolve the dispute within ten (10) days of the date of the notice (or such other period as may be agreed); and
- 17.16 Mediation: if the dispute is not resolved by negotiation, then either party may (by written notice to the other party) require that the dispute be referred to mediation. The mediator shall be agreed by the parties or in the absence of Agreement one appointed by the Law Institute of Victoria. The cost of the mediation will be shared equally between the parties or as the mediator otherwise directs.
- 17.17 In the event of a dispute between the parties concerning this agreement, the Agency will continue to perform its obligations under this agreement, unless the Client requests otherwise.