

DIGITAL ADVERTISING AGREEMENT

This is a legally binding agreement between the Owner and Advertiser described in the schedule. The Owner is the owner, controller or operator of the website or app (or part of a website or app) described in the schedule (**Site**). The Advertiser wishes to place advertising on the Site, either for the Advertiser or for a Client. This agreement sets out the agreement between them.

1. SUPPLY OF SERVICE

1.1 Obligation to advertise

Subject to the other provisions of this agreement, the Owner will provide the service of displaying the relevant advertisement, as applicable from time to time under clauses 1.2 and 1.3 (**Advertisement**), on the Site (**the Service**) during the Advertising Period.

1.2 Submission of Advertisement

The Advertiser must submit the required initial advertisement to the Owner by emailing an electronic version of it to the Owner in a format that complies with the Technical Requirements.

Subsequently the Advertiser may from time to time notify the Owner of a replacement advertisement and the date (during the Advertising Period) from which the replacement advertisement is to be used (**Replacement Date**). The Advertiser may not do so with effect earlier than the Minimum Display Period after either the Start Date or last Replacement Date (as applicable).

For both the initial advertisement and any subsequent replacement advertisement, the Advertiser must provide the relevant advertisement to the Owner on a date that is at least the Minimum Review Period before the Start Date or applicable Replacement Date (as applicable). If the Advertiser fails to do so then the Owner will not be obliged to use the relevant advertisement to provide the Service until the Minimum Review Period after the date that the advertisement was provided to the Owner.

1.3 Rejection of Advertisement

The Owner may review or vet any proposed advertisement submitted by the Advertiser, but is not obliged to do so. The Owner is not responsible for any error or omission in any advertisement submitted by the Advertiser, even if it should have been obvious to the Owner.

The Owner may at any time by notice to the Advertiser with immediate effect reject any advertisement submitted by the Advertiser that in the opinion of the Owner:

- (a) results in a breach of clause 3.1 (or if not yet displayed on the Site, is likely to result in such a breach once displayed); or
- (b) is incompatible with the Technical Requirements.

The Owner may reject an advertisement (and cease displaying it on the Site) even if the Owner has commenced providing the Service using the advertisement (i.e. not just during any applicable Minimum Review Period). The Owner may endeavour to facilitate the replacement of any rejected advertisement more rapidly than contemplated by clause 1.2 (including by using an advertisement previously submitted by the Advertiser) but is not obliged to do so.

No refund of Fees (on a pro rata basis or otherwise) will apply due to any rejection of an advertisement in accordance with this clause 1.3.

2. PAYMENT

2.1 Amount

The Advertiser must pay the Fees. All amounts specified in this agreement are exclusive of GST unless stated otherwise. If GST applies, then the amount payable will be increased by the amount of GST. The Owner must provide a valid tax invoice (which may be in electronic form) to the Advertiser for each required payment of Fees.

2.2 Timing

The Advertiser must pay all Fees in accordance with the payment timing specified in the schedule. If the Advertiser does not make a payment when due, then the amount unpaid will bear interest at 1% per month, compounding monthly and the Advertiser must reimburse the Owner for all debt collection costs and expenses (including legal fees) incurred in connection with seeking or obtaining payment.

2.3 Measurement

Where the amount of Fees depends wholly or partly on the number of impressions of the Advertisement or other form of measurement of the number of views of the Advertisement or Site, the Owner must:

- (a) use the measurement software specified in the schedule to measure the number of impressions or views in each relevant period; and
- (b) provide a corresponding report to the Advertiser with each invoice for those Fees.

3. CUSTOMER'S PERFORMANCE OBLIGATIONS

3.1 General obligations

During the term of this agreement the Advertiser must:

- (a) comply with all Laws applicable in any way in relation to the Service or relevant Advertisement;
- (b) ensure that each Advertisement complies with all relevant codes, initiatives, rules, recommendations and guidelines administered by the Advertising Standards Bureau;
- (c) not use the Service, or permit the Service to be used (directly or indirectly), in any way that is, or includes Content or links to any website or Content that:
 - (i) commits, or encourages or causes to be committed by any person, any offence or any act or omission that is unlawful or would commonly be regarded as immoral; and
 - (ii) is sexist, racist, hateful, violent, defamatory, harassing, abusive, threatening, malicious, inflammatory or otherwise objectionable;
 - (iii) is pornographic, sexually explicit, obscene or excessively profane;
 - (iv) is fraudulent, false, misleading or deceptive; or
 - (v) infringes, or encourages the infringement of, a third party's rights, including any form of intellectual property, confidentiality or privacy rights; and
- (d) not use the Service, or permit it to be used, in any way that could damage the reputation of the Owner or mock or belittle the Site or any person, goods or services associated with it.

3.2 Technical Requirements

The Technical Requirements comprise the following (unless stated otherwise in the Special Conditions):

- (a) the technical requirements listed in the schedule;
- (b) all images, graphics and video must be oriented upright, not sideways or upside down;
- (c) all images, graphics, video, text and other Content in the advertisement must be (as applicable) clear, legible and in English;
- (d) the Advertisement must be recognisable as an advertisement and as being distinct from the Content of the Site and must include the name, brand or logo of the Advertiser or Client (as applicable);
- (e) the Advertisement must present as a single advertisement and must not be segmented or contain repeated copies of the same or similar image; and
- (f) the Advertisement must be compatible with the software used to operate the Site and the configuration of that software.

3.3 Overriding Owner rights

At all times the Owner retains the right to edit or revise the Site, including the:

- (a) structure, navigation and features of the Site;
- (b) position of any Advertisement within the Site; and
- (c) right to label any Advertisement as an "advertisement" on the Site.

4. WARRANTIES AND LIABILITY

4.1 Exclusion of other terms

To the extent permitted by law, and except as expressly provided in this agreement, all terms, conditions, warranties and representations (in each case whether express, implied, statutory or otherwise) relating in any way to the Service, any Incidental Service or this agreement are excluded.

The Owner excludes all warranties or representations regarding the number of visitors to the Site and the Advertiser agrees that the Advertiser has not relied on any information regarding same.

Given the nature of technology, the Owner does not promise that the Service will be provided a continuous or fault free basis. To the extent permitted by law, the Owner excludes all liability in relation to:

- (a) any fault in, or failure of, any equipment (e.g. servers or networking equipment) used in connection with the supply of the Service; or
- (b) any fault or failure in the supply of the Service involving any act, omission or event outside of the Owner's reasonable control, including any equipment failure, power failure, fire, flood, water, labour dispute or shortage, utility curtailment, explosion, emergency, civil disturbance, war, act of God, governmental action or act or omission of any Supplier or other person.

If the Owner becomes aware of any such fault or failure, the Owner will use reasonable endeavours to address it. The Advertiser must promptly notify the Owner of any fault of which the Advertiser becomes aware.

4.2 General limitation of liability

Without limiting clause 4.3, to the extent permitted by law, any liability of the Owner in connection with the Service, any Incidental Service or this agreement:

- (a) under any condition or warranty that by law cannot be excluded (**Statutory Warranty**); or
- (b) under any guarantee or other right under any statute (including the *Competition and Consumer Act*) (**Consumer Guarantee**),
- (c) on any other basis (including contract or negligence), is, where permitted by law, limited at the option of the Owner to the replacement, repair or resupply of the relevant goods or services or the payment of the cost of same.

Despite any other provision of this agreement, no provision of this agreement other than this clause 4.2 limits or excludes any liability of the Owner under a Consumer Guarantee or Statutory Warranty.

4.3 Exclusion of categories of loss

The following applies only to the extent permitted by law. All liability of the Owner is excluded in respect of any indirect or consequential Loss suffered or incurred by the Advertiser, in relation to:

- (a) the Service or any Incidental Services;
- (b) any delay or failure in providing any of them; or
- (c) otherwise under or in connection with this Agreement, and in any event (including where amounting to a direct loss) for any lost profits or goodwill or lost or corrupted data.

4.4 Indemnity

To the maximum extent permitted by law, the Advertiser hereby indemnifies and must keep indemnified the Owner against all Losses incurred by the Owner in relation in any way to:

- (a) any negligence of the Advertiser or any breach of this agreement by Advertiser;
- (b) any Claim against the Owner, or any Supplier, by any person in relation to any Content included in any Advertisement; or
- (c) where the Advertiser submits an Advertisement at the request of, or for the benefit of, a Client – any Claim against the Owner by that Client.

This indemnity may be enforced by the Owner before and without incurring any expense or making any payment to any person.

4.5 Maximum liability

Without limiting the above, to the extent permitted by law the total liability of the Owner arising in any calendar year on any basis

(including in contract or negligence) relating in any way to the Service, any Incidental Service or this agreement is limited to the amount of Fees actually paid to the Owner under this agreement during that calendar year.

4.6 Deadlines

Despite any other provision of this agreement, any applicable dates (including the Start Date and any Replacement Dates) in relation to provision of the Service apply on the basis that the Owner will use reasonable endeavours to satisfy them, rather than applying on an absolute basis. To the extent permitted by law, the Owner has no liability to the Advertiser for any failure to satisfy any date, and in any event the other provisions of this clause 4 will apply to any such liability.

5. TERMINATION AND SUSPENSION

5.1 Termination for cause

Either party may by written notice to the other terminate this agreement if the other party is subject to an Insolvency Event or if the other party is in breach of this agreement and the breach is not been remedied within 28 days of a written notice to the other party that specifies reasonable details of the breach and requires that the breach be remedied.

5.2 Suspension

Without limiting clause 5.1, the Owner may suspend the provision of the Service or any Incidental Service if:

- (a) any amount payable by the Advertiser to the Owner (whether under this agreement or otherwise) is overdue; or
- (b) the Advertiser is in breach of this agreement and the breach is not remedied within 7 days of a written notice to the Advertiser that specifies reasonable details of the breach and requires it be remedied.

A suspension will not affect any obligation of the Advertiser to continue paying Fees.

5.3 Termination without cause

If the Advertising Period is for an indefinite period then either the Owner or Advertiser may at any time, in its sole discretion, terminate this agreement by giving the other at least 3 months prior written notice. In any other case this agreement will continue until it expires at the end of the Advertising Period and may not be terminated except in accordance with this agreement or with the mutual agreement of the parties in their discretion.

5.4 Effect of termination or expiry

The termination or expiry of this agreement will not affect the accrued rights of either party as at the date of termination or expiry. Clauses 2 to 10 will survive the termination or expiry of this agreement.

6. INTELLECTUAL PROPERTY

All intellectual property (including copyright and trade mark rights) in anything provided by or behalf of either party to the other in connection with this agreement will remain the property of the party providing it (or its licensors).

The Advertiser hereby grants the Owner a non-exclusive, irrevocable, perpetual transferable licence to copy, use and adapt in any way any Content provided by or on behalf of the Advertiser to the Owner (or any person acting on behalf of the Owner) but only for the purpose of providing the Service and any related administrative purposes of the Owner (including IT back up and general record keeping).

7. CONFIDENTIALITY

The Owner and Advertiser each agree to keep confidential any Confidential Information of the other party, and to use the other party's Confidential Information only for the purposes of this agreement. This clause does not apply to any information that:

- (a) enters the public domain other than by breach of this agreement;
- (b) is or becomes known by the relevant party from another source without being subject to an obligation of confidentiality; or

- (c) is required by law to be disclosed, provided that the disclosing party uses reasonable efforts to protect the confidentiality of such information.

8. NOTICES

All notices, demands, requests and other communications required or permitted under this agreement must be in writing and will be deemed to be delivered when actually received, whether sent by email, ordinary or certified mail, courier or otherwise to the receiving party.

Any notice or other written communication given under this agreement (**Notice**) by either party to the other must be sent by ordinary prepaid mail or email to the corresponding address indicated in the schedule, unless either party notifies the other of a change of the relevant address.

Each party must ensure that at all times the email address applicable to it under this clause is current, and endeavour to ensure it is operational.

A Notice by ordinary prepaid mail will be taken to have been served on the sixth Business Day after posting. A Notice by email will be taken to have been served at the time of sending, unless within 24 hours of it being sent the sender receives a manual or automated response indicating that it was not delivered successfully.

9. MISCELLANEOUS

9.1 Applicable law

This agreement is to be construed according to, and is governed by, the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts in and of Victoria in relation to any dispute arising under this agreement.

9.2 Assignment and subcontracting

The Advertiser may not transfer or assign its rights or obligations under this agreement to any other person except with the prior written consent of the Owner, such consent not to be unreasonably withheld. The Owner may subcontract any or all of its obligations under this agreement.

9.3 Entire agreement

This agreement constitutes the entire agreement between the Owner and Advertiser in relation to its subject matter. Any prior arrangements, agreements, representations or undertakings are superseded and, except as expressly provided, each party warrants that it has not relied on any arrangement, agreement, representation or understanding which is not expressly set out in this agreement or incorporated by reference.

9.4 Counterparts

This agreement may be executed in counterparts, and by the parties on separate or the same counterparts. Each counterpart is taken to be an original, but all of them make up the same instrument.

10. INTERPRETATION

10.1 Dictionary

In this agreement the following terms have the corresponding meaning:

Advertisement has the meaning given in clause 1.1.

Advertising Period means the period starting on the Start Date and continuing for the advertising period described in the schedule.

Business Day means a day on which the major trading banks are open for ordinary business in Melbourne, excluding a Saturday, Sunday or any public holiday in Melbourne or Victoria.

Claim means any demand, action, suit, claim, proceeding or cause of action incurred by a person.

Client means a client of the Advertiser, any client of a client of the Advertiser, and so on.

Confidential Information of a party means all information of a confidential nature of or relating to that party, including anything which is indicated to be subject to an obligation of confidence which is disclosed by that party to the other party in relation to this agreement, or that comes to the knowledge or into the possession of the other party in connection with this agreement.

Content means information, data, documents, pictures, images, graphics, video, audio, text or other content, in each case in any form.

Fees means the fees, charges, interest and other amounts described in the schedule.

Incidental Services means any services (including software or advice) provided in connection with the Service.

Insolvency Event means the happening of any of these events:

- (a) in respect of a body corporate - an order is made that it be wound up, a liquidator, provisional liquidator, receiver, manager, receiver and manager, controller, trustee or administrator is appointed over it or any of its assets or an application is made to a court, or meeting is proposed, to do any of the foregoing, it enters into an arrangement with its creditors or seeks to obtain protection from its creditors or it resolves to wind itself up; or
- (b) in respect of an individual - the individual becomes an insolvent under administration as defined in the Corporations Act.

Laws means all applicable laws, regulations, standards, codes, orders and directions, including those issued by any governmental authority.

Loss means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, liability or award of damages and includes legal costs on an indemnity basis and indirect or consequential losses.

Replacement Date has the meaning given in clause 1.2.

Service has the meaning given in clause 1.1.

Start Date means the advertising start date described in the schedule.

Supplier means any person from whom the Owner purchases any services in connection with the supply of any the Service.

Technical Requirements has the meaning given in clause 3.2.

10.2 Rules of interpretation

In this agreement:

- (a) words importing any gender include the other genders;
- (b) headings will be ignored in construing this document;
- (c) "including" and similar expressions are not words of limitation;
- (d) words importing the singular include the plural and vice versa;
- (e) references to persons include corporations;
- (f) references to writing include any mode of representing or reproducing words in visible form, and include email; and
- (g) a provision must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

10.3 Special conditions

This agreement applies subject to any special conditions set out in the schedule. To the extent of any inconsistency between the body of this agreement and the special conditions, the special conditions will prevail.

SCHEDULE

Site: *(insert the location of the website (or relevant web page(s), or description of the app and location of advertising within the app.)*

Start Date:

Advertising Period: *(e.g. 12 months)*

Fees and payment timing:

Measurement software: *(e.g. Google DFP, see clause 2.3)*

Technical Requirements: *(e.g. size in pixels; required format, see also clause 3.2)*

Minimum Display Period: *(make this the same as the Advertising Period if the same ad is to be used for the whole advertising period)*

Minimum Review Period: *(this is the minimum period that the Advertiser must allow for the Owner to review and upload an advertisement, e.g. 5 Business Days)*

Special Conditions: *(for example, to prohibit resale of the advertising space by the Advertiser to a Client, or to impose a minimum rotor speed for any Advertisement)*

EXECUTED as an agreement:

OWNER'S DETAILS AND EXECUTION

Name (including ACN/ABN):

Street address:

Email address:

Executed by or on behalf of the Owner:

Signature

Name (printed)

Title

Date

ADVERTISER'S DETAILS AND EXECUTION

Name (including ACN/ABN):

Street address:

Email address:

Executed by or on behalf of the Advertiser:

Signature

Name (printed)

Title

Date