

Essential Media Communications Pty Ltd

General Business Terms

These General Terms apply in respect of the Statement of Work (SOW) between the parties named in that SOW. Capitalised terms in these General Terms have the meanings given in the SOW, unless the context requires otherwise.

1. Definitions

The following definitions apply unless the context requires otherwise:

Agreement means the SOW and these General Terms.

Associate means an entity with substantially the same ownership or control as us or an associate of ours as that expression is defined in the Corporations Act 2001.

Confidential Information means information which by its nature is confidential, including, without limitation: (a) in our case, Our Materials, and (b) in your case, Your Materials.

Deliverables means the deliverable that we are required to deliver to you identified in the SOW.

Fees means the fees payable in return for the Services and Deliverables, as further described in the SOW.

Force Majeure Event means any circumstances beyond the reasonable control of a party.

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time, and words used in this Agreement which have a particular meaning in the GST Law have the same meaning, unless the context otherwise requires.

Insolvency Event in respect of a party means: (a) that party has become a bankrupt (in the case of a natural person); (b) any step is taken for the winding up, dissolution or administration of that party, or amalgamation or reconstruction, or that party enters into any arrangement, compromise or composition for the benefit of its creditors or any class of them; or (c) a receiver, receiver and manager, administrative receiver or trustee or similar officer is lawfully appointed to that party's undertakings or assets.

Intellectual Property means any and all intellectual and industrial property rights throughout the world including rights in connection with any confidential information, copyright, moral rights, inventions (including patents), trademarks, service marks, design and circuit layouts, knowhow, trade secrets, methodologies, databases or other tools.

Key Delivery Dates means dates agreed as such between the parties and identified as such in the SOW.

Our Materials means all works of authorship and material owned, licensed, or made available by us (including Intellectual Property in such works) in any form under this Agreement.

Preliminary Material means Our Materials presented to you as part of the pitch process or developed by us and which may or may not be shown to you, and which are not included in the Deliverables.

Proposal means a proposal or quotation prepared by us setting out such things as the proposed services, Fees, Deliverables and any other information relating to performance of the Services.

Services means the services we are required to provide to you identified in the SOW.

SOW means the Statement of Work agreed by the parties.

Term has the meaning given in the SOW.

Third Party Material means third party Intellectual Property and other proprietary materials which are incorporated in or used in conjunction with provision of the Services and the Deliverables.

Your Materials means all works of authorship that are owned or licensed by you and which are provided to us under this Agreement.

2. Our Obligations

We will provide the Services and Deliverables to you in exchange for the Fees.

3. Additional Services and Change Requests

Either party may request or suggest additional or revised Services or Deliverables at any time during the Term (**New Proposal**). We must agree the New Proposal before it is adopted as an additional Service or Deliverable under this Agreement.

4. Key Delivery Dates

4.1 We will notify you as soon as practicable after we become aware that we will not meet, or have not met, a Key Delivery Date.

4.2 If we fail to meet any Key Delivery Date and such failure was a Force Majeure Event or not caused or contributed to by an act or omission of ours it will not be a breach of this Agreement.

5. Extension of Term

On extension of the Term, any Retainer Fees will be subject to a minimum 5% increase (Standard Increase). No more than one Standard Increase will apply in any 12-month period.

6. Fees and Reimbursable Expenses

6.1 You must pay the Fees in accordance with the timing in the SOW, and without set-off or other deduction. You acknowledge that we may increase our Fees on written notice to you from time to time.

6.2 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the consideration for that supply is increased by an amount equal to the rate at which GST is imposed in respect of the supply, and is payable at the same time. Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply under this Agreement.

6.3 If you fail to make any payment due under this Agreement, you must pay us any costs of enforcement of this Agreement (including legal costs).

6.4 We may incur additional expenses with your prior approval including, without limitation: (a) Reasonable travel and accommodation costs; and (b) Reasonable expenses incurred for approved media releases or approved media monitoring costs, together (**Additional Expenses**). All approved Additional Expenses will be added to the Fees for the relevant month in which they are incurred.

7. Intellectual Property and Rights to Deliverables

7.1 The Intellectual Property in Your Materials, as between the parties, will be owned by you. You grant us a non-exclusive, perpetual, worldwide, royalty-free licence (and the right to sub-licence) to use, edit, modify, adapt or alter Your Materials to provide the Services and to incorporate the same into the Deliverables, and to sub-licence such rights to our sub-contractors.

7.2 The Intellectual Property in Our Materials, as between the parties, will be owned by us.

7.3 Subject to payment by you of all Fees, we will: (a) transfer to you the rights in the Deliverables to use them solely for the purpose for which they were produced; and (b) grant you a perpetual, non-exclusive, non-transferable, royalty-free worldwide licence to use any of Our Materials embodied in the Deliverables solely for the purpose for which the Deliverables were produced.

7.4 We will be: (a) entitled, along with our Associates, to develop, use or market services or products that are similar or related to such Deliverables, excluding any part of the Deliverables that comprise your Confidential Information; and (b) permitted, on a non-exclusive basis, to use the Deliverables to publicise our, and our Associates' businesses.

7.5 The rights granted by us under this clause 7 are subject to any restrictions imposed by third parties in connection with Third Party Material of which we advise you. The parties acknowledge that the Deliverables may include trade

secrets within the meaning of relevant freedom of information legislation.

7.6 You agree that: (a) you will return all Preliminary Material in your possession or control to us within (30) days of completion of the Services or termination of this Agreement whichever is earlier; and (b) any new inventions, designs or processes which evolve or are created in the provision of the Services vest in us and will comprise Our Materials.

7.7 You will: (a) not decompile, decompress, reverse engineer, sell, rent, lease, charge or otherwise licence Our Materials without our previous written consent; (b) use reasonable care to protect against the unauthorised use, copying, publication or dissemination of Our Material; and (c) ensure your employees, subcontractors, agents and any other users of Our Materials are bound by the same restrictions as this clause 7.7.

7.8 We will not be liable to you for any loss, damage, costs, expenses or other claims for compensation by you or any third party arising from any information or data supplied by you which is incomplete, incorrect, inaccurate, illegible, or otherwise damaged or corrupt.

7.9 You will ensure that when you use Our Materials you will: (a) provide a credit to us in an agreed form in any publication of Our Materials; and (b) not remove any copyright or other Intellectual Property notice on Our Materials.

8. Representations and Warranties

8.1 You represent and warrant to us that: (a) you are the owner or authorised licensee of Your Materials and that our use of Your Materials does not constitute a breach of any other agreement or arrangement to which you are a party; and (b) all information that you provide to us is true and accurate and not misleading, defamatory, racist, unlawful or otherwise objectionable.

8.2 We warrant that: (a) We will provide the Services with all reasonable care and skill and will ensure that our employees and sub-contractors use all reasonable care and skill; and (b) Our Materials (other than Your Materials as incorporated within Our Materials) are owned by, or lawfully licensed by, us and that the use of Our Materials by you does not constitute a breach of any other agreement or arrangement with respect to Our Materials or any third party rights with respect to Our Materials.

9. Indemnities and Limitation of Liability

9.1 Each party (**Indemnitor**) unconditionally indemnifies the other party, its agents and subcontractors (**Indemnitee**) in respect of any liability, claim, action, threatened action or demand arising directly or indirectly from or out of any breach of any provision of this Agreement including a demand from any third party (a **Claim**).

9.2 The parties acknowledge that we will not be liable to you for any Claim that arises by reason of you requiring or inserting any language into a press release or any other content released to the public by us on your behalf that may contain defamatory language about any person or corporation, is in contempt of any court proceedings or gives rise to proceedings instituted by a third party against you or us, and you agree to fully indemnify us in respect of the same.

9.3 Notwithstanding anything in this Agreement, neither party will be liable to the other party for any indirect or consequential loss. You acknowledge that our aggregate liability for all direct, damages, costs, expenses, actions and claims arising out of, or otherwise in connection with, this Agreement, however arising, is limited to the total fees paid by you for the affected Service(s) in the preceding 12 months.

10. Termination

A party may terminate this Agreement by notice in writing when: (a) the other party breaches a term of this Agreement and if such breach is capable of remedy, has not remedied that breach within 10 business days after notice of breach from the party giving notice of its intention to terminate; (b) the occurrence of an Insolvency Event in respect of the other party; (c) a Force Majeure Event prevents a party from performing any of its obligations under this Agreement for more than 60 days; (d) a party ceases to conduct the entirety of its business operations.

11. Consequences of Termination

11.1 The termination of this Agreement however caused will not affect any accrued rights or liabilities including your liability to pay all amounts properly due to us under this Agreement for work done up to and including the effective date of termination, together with any costs properly incurred or are committed to which are not recoverable.

11.2 Upon termination of this Agreement for any reason and payment by you of all monies properly chargeable to you under this Agreement, we will return all Your Materials in our possession and control as at the date of termination

within 30 days. We may continue to use Your Materials incorporated in any of Our Materials.

11.3 You may continue to use Our Materials delivered to you under this Agreement but if this Agreement is terminated as a result of your breach, you must cease to use Our Materials.

12. Confidential Information

12.1 You may only use our Confidential Information for the purposes for which you obtained the Services or Deliverables. We may only use your Confidential Information for the purposes of providing the Services and Deliverables under this Agreement. Each Party must do everything reasonably necessary to keep Confidential Information secret and confidential. At either party's request, the other party must obtain from its personnel or contractors a confidentiality undertaking to the first party in an equivalent form to this clause 12.

12.2 Each party will keep the terms of this Agreement confidential, provided that a party may make any disclosures in relation to this Agreement and the subject matter of this Agreement: (a) to its professional advisers, if those persons undertake to keep the information confidential on equivalent terms to this clause 13; (b) in order to comply with any applicable law or requirement of any government agency; or (c) to any of its employees to whom it is necessary to disclose the information, if that employee undertakes to keep the information confidential.

12.3 We may receive information or material from third parties (**Third Party Material**) in the course of other commercial, consultancy or research arrangements which is similar to your confidential information.

13. Dispute Resolution

13.1 If a dispute arises in relation to this Agreement, the parties must first endeavour to settle the dispute by negotiation, and failing any resolution of the dispute within seven (7) days, the matter must be referred to each party's Project Manager for resolution within a further period of seven (7) days (**Escalation Period**).

13.2 If the parties are unable to resolve the dispute within the Escalation Period, then: (a) they must refer the dispute to mediation to be conducted by an independent mediator and appointed by agreement of the parties or, failing agreement within 7 days of receiving any party's notice of dispute, by a person appointed by the Chair of LEADR; and the LEADR "Mediation Rules" shall apply to the mediation; and (b) this clause will not prevent either party from seeking injunctive relief. Pending the settlement or determination of any dispute or difference under this Agreement, the parties must fulfill all of their respective obligations under this Agreement. Notwithstanding the foregoing, if you have failed to pay any amount, including a disputed amount, owed to us under this Agreement, we may take such steps as we consider appropriate (including commencing court proceedings).

14. General

14.1 Non-Solicitation: During the Term and for a period of twelve (12) months thereafter, both parties agree not to solicit any employees of the other party.

14.2 Assignment: Neither party may assign, novate or deal with any of its rights and obligations under this Agreement without the other party's prior consent, not to be unreasonably withheld or delayed.

14.3 No Partnership: Nothing in this Agreement will be deemed to create any joint venture, partnership or principal and agent relationship between the parties.

14.4 Force Majeure: We reserve the right to defer the date of delivery or to cancel the provision of Services, without any liability to us, if we are prevented from or delayed in the carrying on of our business due to a Force Majeure Event.

14.5 Further Assurances: Each party will undertake all necessary tasks and execute all necessary documents to give effect to the terms of this Agreement.

14.6 Notices: The parties chose the addresses set out on the first page of the SOW as the addresses at which they will accept service of all documents and notices relating to this Agreement. The parties will promptly give the other notice of any address change. All notices required under this Agreement must be made in writing.

14.7 Other: This Agreement constitutes the entire agreement between the parties with respect to its subject matter and cannot be altered, amended or modified except in writing signed by the parties. If any provision of this Agreement is held to be invalid or unenforceable, the validity of all the other provisions will not be affected by such invalidation. The invalid provisions will be deemed to be severed from this Agreement and of no force and effect, provided that such invalidity does not affect the remaining provisions of this Agreement that continue to be valid and enforceable. If any

part of this Agreement is found to be illegal or unenforceable by a court it will be read down to the extent necessary to make it legal and enforceable. If this is not possible, that part will be severed from this Agreement with all other parts remaining in full force and effect. A waiver is not effective unless it is in writing. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

14.8 Survival: Clauses 7, 8, 9, 11, 12 and this 14 survive termination of this Agreement.

14.9 Governing Law: This Agreement will be governed by the laws of New South Wales.