

1. INTERPRETATION

1.1. In this Agreement, the following definitions apply unless the context makes it clear that a definition is not intended to apply:

"Acceptance" or **"Accepted"** means the Services satisfies the requirements of this Agreement;

"Agreement" means the terms and conditions of this agreement and includes any attached annexures;

"Business Day" means between 8.30am and 5.00pm on a weekday other than a Saturday, Sunday or public holiday at Client's Site, unless specified otherwise in this Agreement;

"Commencement Date" has the meaning specified in clause 2.1;

"Confidential Information" means all information obtained by a Party in the course of performing this Agreement including any client database created prior to commencement of this Agreement or during the term of this Agreement;

"Contract Details" means those details specified in the Schedule of this Agreement;

"Client" means the entity detailed in Item 2 of Schedule 1 of this Agreement;

"Expiry Date" has the meaning specified in clause 2.2;

"Fees" refers to the amounts payable by the Client to the Supplier as noted in Item 5 of the Schedule, and amended from time to time as agreed in writing between the parties;

"Force Majeure" means an event or circumstance beyond the reasonable control of a Party, which results in that Party being unable to perform an obligation on time, and is limited to natural events like fire, flood or earthquake, national emergency, terrorist act, or war;

"GST" means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

"GST Law" has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"Insolvency Event" means any of the following:

- (a) a Party becomes unable to pay its debts as and when they fall due;
- (b) an application for winding up is made regarding the Party and not stayed within 10 Business Days;
- (c) a winding up order is made against the Party;
- (d) controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed to the Party;
- (e) a mortgagee enters into the possession of any property of the Party;
- (f) notice is given of a meeting of creditors of the Party for the purposes of a deed of arrangement; or
- (g) any actions of a similar effect are taken;

"Intellectual Property Rights" means all present and future rights in relation to copyright, trademarks, designs, patents, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this Agreement, and whether in Australia or otherwise;

"Misconduct" includes, but is not limited to:

- (a) material non-compliance with statutory requirements, including relevant occupational health and safety laws;
- (b) material non-compliance with anti-discrimination and harassment laws;
- (c) material non-compliance with all rules, procedures and policies adopted by the Supplier and brought to the attention of the Client by the Supplier; or
- (d) unauthorised representation which may damage the reputation or business of the Supplier;

"Moral Rights" means the moral rights granted under the Copyright Act 1968 (Cth) and any similar rights existing under foreign laws.

"Occurrence" means either a single occurrence, or a series of occurrences if these are linked or occur in connection with one another from one root

cause, as the case may be;

"Parties" means the Client and the Supplier;

"Personal Information" means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

"Product" means all filmed materials, marketing and promotion materials, online platforms, instructions, editorials, audio, educational materials and all other media content;

"Services" means the services specified in Item 6 of the Schedule to be supplied by the Supplier to the Client under this Agreement;

"Supplier" means the entity in Item 1 of the Schedule;

"Term" means the period(s) of this Agreement and any extension of time of the Term approved under clause 2, or as otherwise agreed in writing by the Parties;

1.2. Headings are for convenience only, and do not affect interpretation. The following rules will apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

1.3. A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a clause is a reference to all of its sub-clauses;
- (c) monetary references are references to Australian currency;
- (d) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
- (e) a person includes bodies corporate, unincorporated associations and partnerships; and
- (f) anything (including a right, obligation or concept) includes each part of it.

1.4. If this Agreement expressly or impliedly binds more than one person then it will bind such persons jointly and severally.

1.5. A singular word includes the plural, and vice versa.

1.6. A word which suggests one gender includes the other gender.

1.7. If a word is defined, another part of speech of that word has a corresponding meaning.

2. TERM OF AGREEMENT

2.1. The Commencement Date for the Services to commence being provided is the date specified on the front page of this Agreement, or if no Commencement Date is specified, then the date the latter of the Parties executes this Agreement.

2.2. The Expiry Date is the expiry date specified on the front page of this Agreement, after which time Client no longer requires the Supplier to provide the Services.

2.3. The Supplier will provide the Services for the Term of this Agreement unless the Agreement is terminated earlier in accordance with its terms.

2.4. Unless specified otherwise in this Agreement, the Term will start on the Commencement Date and finish on the Expiry Date or the date on which this Agreement is terminated earlier in accordance with the terms of clause 14.

3. VARIATIONS

3.1. The provisions of this Agreement will not be varied either in law or in equity except by agreement in writing between the Parties.

3.2. If a Party ("proposing party") wishes to vary this Agreement, the proposing party will submit the proposed variation to the other Party ("receiving party"). The receiving party will advise the proposing party within 10 Business Days, or such other period as agreed between the Parties, of receipt of the proposed variation either that the receiving party

accepts or rejects the proposed variation.

3.3. If the receiving party accepts the proposed variation including any variation of the Fees, this Agreement will be deemed to incorporate the accepted variation from the date upon which the receiving party notifies the proposing party that it accepts the variation, unless an alternate date is specified in the agreed variation.

3.4. If the receiving party rejects the proposed variation, including for reason of price, this Agreement remains unvaried.

4. SERVICES

4.1. The Supplier will provide the Services in a professional manner in accordance with the standards stipulated by the Client.

4.2. Subject to the Supplier first obtaining the prior written approval of the Client, additional work may be performed by the Supplier as agreed between the parties in writing prior to commencement of any additional work.

5. CLIENT OBLIGATIONS

5.1. In addition to any other obligations under this Agreement, the Client will, unless specified otherwise in this Agreement:

- (a) Deal with the Supplier in a professional manner;
- (b) Proactively notify the Supplier of any suggestions which would improve the Services or the delivery of the Services without making claim for the benefit of the improvements; and
- (c) Give clear and precise instructions to the Supplier.

5.2. The Client will refrain from making any comments or representations, directly or indirectly, to a third party which may be considered by a reasonable person to be derogatory in nature and/or have the potential to harm the reputation of the Supplier and/or the Services. This clause survives termination of the Agreement.

6. SERVICES TO BE PROVIDED

6.1. The Supplier will provide the Services as detailed in Item 6 of the Schedule in exchange for the Fees and Payment as detailed in Item 5 of the Schedule, paid in accordance with clause 7 below.

7. PAYMENT AND INVOICING

7.1. Unless otherwise specified in this Agreement, the Client will make payment to the Supplier in accordance with terms set out in this clause 7 and Item 5 of the Schedule.

7.2. If the Client disputes the amount payable, the Client will promptly:
(a) certify the amount it believes to be due for payment ("the undisputed amount"); and
(b) provide its reasons to the Supplier in writing for the disputed amount, and the liability for any outstanding claims will be determined in accordance with this Agreement.

7.3. If any supply under this Agreement is a Taxable Supply (as such term is defined in the GST Law) then the party making the supply may, at the same time that an invoice is rendered for the agreed consideration for the Taxable Supply, recover the amount of GST payable on that Taxable Supply, subject to the issue of a valid Tax Invoice (as such term is defined in the GST Law).

8. INTELLECTUAL PROPERTY

8.1. Unless otherwise agreed in writing, the Supplier will own the Intellectual Property Rights in all materials created by the Supplier and by the Client during its performance of the Services, and any other intellectual property shared by the Client for improvement of Service delivery during the term of this Agreement and the Client is granted a licence to use that Intellectual Property.

9. CONFIDENTIALITY

9.1. Each Party must not, and must ensure that its officers, employees, agents and contractors do not, use or disclose any Confidential Information without the other Party's consent, other than for the purposes of performing this Agreement.

9.2. Each Party may disclose Confidential Information to its officers,

employees, agents and sub-Clients to the extent necessary for the performance of this Agreement, provided that the disclosing Party makes such persons aware that the information is confidential and must be kept confidential.

9.3. The Client acknowledges that the Supplier may outsource aspects of provision of the Services to a third party who will be required to comply with this clause 9, and any such work performed by a third party will be reviewed by the Supplier, who will remain the sole point of contact for both the third party and the Client.

9.4. The Client cannot object to the party engaged to provide editing and other services for preparation and provision of the Services.

9.5. The obligations under this clause 9 do not apply to the extent that:
(a) any information is publicly available (other than as a result of a Party's breach of this Agreement);
(b) any information is lawfully provided to a Party by a third party;
(c) a Party is required by law to disclose the information (and prior notice of the disclosure is given to the other Party); or
(d) a Party is required by this Agreement to disclose the information to a third party.

9.6. During the Term, each Party must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.

9.7. The Party must, upon the earlier of the:
(a) receipt of a written request by the other Party; and/or
(b) termination of this Agreement,
promptly return any Confidential Information supplied by the other Party. The Party may keep one copy of such Confidential Information for its audit and record keeping purposes.

10. PRIVACY

10.1. The Supplier:
(a) must comply with the Privacy Act 1988 (Cth) ("Privacy Act") in relation to Personal Information, as if the Supplier was an organisation bound by the Privacy Act, even if it is not; and
(b) if it is classed as a small business operator under the Privacy Act, agrees to choose to be treated as an organisation bound by the Privacy Act in accordance with Section 6EA of the Privacy Act during the Term.

10.2. If the Supplier collects or has access to Personal Information in order to provide the Services, the Supplier must:
(a) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
(b) not use Personal Information other than for the purposes of performance of the Services, unless required or authorised by law;
(c) not disclose Personal Information without the consent of the Client, unless required or authorised by law;
(d) ensure that only authorised personnel have access to Personal Information;
(e) immediately notify the Client if the Supplier becomes aware that a disclosure of Personal Information is or may be required or authorised by law;
(f) make its officers, employees and contractors aware of the Supplier's obligations under this clause 10;
(g) comply with any request or direction of the Client arising from or in connection with the exercise of the functions of the Privacy Commissioner under the Privacy Act, and any guideline or regime on privacy as provided by the Client; and
(h) comply with such other privacy and security measures as the Supplier reasonably advises the Client of from time to time.

10.3. The Supplier must immediately notify the Client upon becoming aware of any breach of this clause 10.

11. LIABILITY

11.1. The Client indemnifies the Supplier and its officers, employees and agents (those indemnified) from and against any claim, action, demand, damage, loss, liability, cost, charge, expense, outgoing, fine or payment which the Client pays, suffers, incurs or is liable for arising out of or in connection with:

- (a) any breach of this Agreement by the Client;
- (b) any breach of law or infringement of a third party's rights (including Intellectual Property Rights);
- (c) any act or omission of fraud, dishonesty, reckless or wilful misconduct

or misrepresentation, to the extent caused or contributed to by any act or omission of the Client.

11.2. The Client will not make any claim against the Supplier for any loss or damages suffered by the Client (other than for payments due under this Agreement) for any reason whatsoever.

11.3. The Client will not make a claim against the Supplier, or join the Supplier as a defendant in any action brought against the Client by any person for any reason in connection with the Services.

11.4. Notwithstanding any other provision of this Agreement, the liability of a Party arising under and/or in connection with this Agreement will exclude any liability for indirect or consequential loss.

12. NOTICES

12.1. All notices for the Parties must be provided to the address as provided for the Parties in the Schedule, or such other address as advised from time to time to the other party in writing.

12.2. A notice or other communication which may be given to or served on either Party under the Agreement is deemed to have been duly given or served if it is in writing, signed by the Party giving the notice ("the first Party") and is either delivered by hand, posted or a copy transmitted via electronic mail or other electronic means to the other Party at the address set out in the Schedule, or such other address as is notified in writing to the first Party from time to time.

12.3. Such notice or other communication is deemed to have been duly received:

- (a) if delivered by hand – at the time when the first Party holds a receipt for that document signed by a person apparently employed at that address for service;
- (b) if sent by post – at the time when, in the ordinary course of the post, it would have been delivered at the address to which it is sent; or
- (c) If sent via electronic mail or other electronic means – at the time when the other Party acknowledges receipt by any means, including an electronic read receipt or such other electronic notification that the email has arrived in the inbox of the recipient or the facsimile has transmitted successfully.

12.4. If delivery or receipt of a notice or communication occurs on a day other than a Business Day or is later than 4:00 pm (local time of the Client's address or as otherwise agreed between the Parties) it will be taken to have duly occurred at 9:00 am (local time of the Client's address or as otherwise agreed between the Parties) on the next Business Day.

13. DISPUTE RESOLUTION

Objectives

13.1. Nothing in this clause 13 prevents either Party from exercising its rights under this Agreement, which may include commencement of court proceedings.

13.2. The Parties agree to use reasonable commercial efforts to resolve by negotiation any problem that arises between them under this Agreement. Neither Party will resort to legal proceedings until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.

13.3. Each Party will bear its own costs in relation to its participation in any dispute resolution process. Costs resulting from the engagement of a mediator under clause 13.5 will be equally shared between the Parties.

Notification

13.4. If a dispute arises (including a breach or an alleged breach) under this Agreement, then the Party disputing the issue will provide the other Party with written notice of the nature and details of the dispute. If the dispute is not resolved at an operational level or is sufficiently serious that it cannot be resolved at the operational level, the senior management representatives of each of the Parties will endeavour to agree upon a resolution. The Parties acknowledge that it is in their respective interests to resolve disputes at this level.

Mediation

13.5. Should the senior management representatives fail to reach a solution in accordance with clause 13.4 within 15 Business Days (or such other period as the Parties agree) of receipt of a notice of dispute, the Parties may proceed to mediation. The mediator will be agreed between the Parties or, failing agreement, will be an accredited mediator appointed by the Chairman of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia.

13.6. The Parties agree to abide by the mediation rules agreed between them, or failing agreement, the mediation rules of the Institute of Arbitrators and Mediators Australia, in seeking to resolve the dispute in accordance with this clause 13.

Continued Performance

13.7. Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under this Agreement, wherever practicable.

14. TERMINATION

14.1. The Supplier may terminate this Agreement by written notice to the Client effective immediately if any of the following apply:

- (a) the Client is in breach and fails to remedy the breach within 5 Business Days after written notice to do so, or such longer period as agreed in writing between the Parties;
- (b) the Client breaches clause 5;
- (c) the Client's reputation falls into disrepute as determined by a reasonable person and representation of the brand by the Client would be likely to cause direct or indirect harm to the Supplier, the Services or the Supplier's brand;
- (d) the Client fails to carry out any material provision of this Agreement and the failure is not capable of remedy; or
- (e) an Insolvency Event occurs.

14.2. It is acknowledged by the Client that ownership of the Intellectual Property Rights at all times belongs to and remains with the Supplier regardless of Termination of this agreement by either party for any reason.

14.3. The Client may terminate this Agreement immediately upon written notice to the Supplier if the Supplier:

- (a) commits a material breach of an obligation of this Agreement and does not remedy that breach within 10 days of receipt of a notice from the Client specifying the breach and requiring the breach to be remedied; or
- (b) for any reason by giving not less than 20 Business Days prior written notice to the Client to terminate this Agreement; or
- (c) is the subject of an Insolvency Event.

14.4. In the event of Termination, the Supplier's only remedy is for payment in accordance with clause 7, of all amounts owing to the Supplier as at the date of Termination.

15. FORCE MAJEURE

15.1. If a Force Majeure event arises, the affected Party will give written notice to the other Party as soon as reasonably practical of the:

- (a) Force Majeure event;
- (b) anticipated duration of any delays arising from the Force Majeure;
- (c) obligations the affected Party is prevented and/or likely to be prevented from performing under this Agreement; and
- (d) affected Party's plans to work around or minimise the impact of the Force Majeure.

15.2. A Party will be excused from performing its obligations to the extent that it is caused by Force Majeure event. Each Party will make all reasonable efforts to minimise the effects of the Force Majeure event. If the affected Party is prevented by the Force Majeure event from performing its obligations under this Agreement for 20 Business Days or such other period as agreed in writing between the Parties, then the other Party may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination to the affected Party.

15.3. Where this Agreement is terminated by a Party in accordance with clause 15.2:

- (a) The Supplier will be entitled to payment for all work performed for the Client up to the date of termination; and
- (b) Parties will otherwise bear their own costs and will be under no further liability to perform this Agreement.

16. ENTIRE AGREEMENT

16.1. This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, in relation to its subject matter.

17. ASSIGNMENT AND NOVATION

17.1. The Supplier may assign or novate, in whole or in part, this Agreement without first obtaining the prior written consent of the Client. In circumstances where the Parties agree to a novation of this Agreement, the Agreement will be varied in accordance with clause 3.

18. SET-OFF

Client must not reduce any fees or other charges or costs payable to the Supplier under this Agreement by any amount which may be payable to the Client.

19. WAIVER

A waiver in respect of a breach of a term of this Agreement by the other Party will not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce a term of this Agreement will not be interpreted as a waiver of that term.

20. RELATIONSHIP OF PARTIES

Nothing in this Agreement gives rise to any relationship of agency, partnership, employment or otherwise between the Parties.

21. SEVERABILITY

If any part of this Agreement is void or voidable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of this Agreement.

22. FURTHER ASSURANCE

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements contained in this Agreement.

23. RIGHTS CUMULATIVE

The rights and remedies provided under this Agreement are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

24. SURVIVAL

Clauses 5, 8, 9, 10, 11, 12 and 16 to 26 will remain in full force and effect following the expiry or termination of this Agreement.

25. APPLICABLE LAW

The laws of the State of Queensland govern this Agreement and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

26. SPECIAL CONDITIONS

The special conditions attaching to this contract, if any, are contained in Item 7 of the Schedule and take precedent over any other provision of this Agreement.

27. RIGHT OF LIEN

We have a right of lien on all created items, records, passwords and any other business data, that is, we reserve the right to hold all items and or data pertaining to your account against any outstanding debts. Note this will only apply to items or data that have been worked on but for which full payment is outstanding.

28. APPENDIX A - SPECIAL CONDITIONS