



SUBCONTRACTOR STANDARD PROCUREMENT TERMS AND CONDITIONS

1. GENERAL

The supply of Goods and/or Services referred to in a Purchase Order will be subject to the terms and conditions in these Standard Conditions.

2. AGREEMENT

2.1 The Supplier will provide the Goods and/or Services in accordance with the Agreement, which comprises:

- (a) the Special Conditions (if any);
- (b) any terms specified in the Purchase Order; and
- (c) these Standard Conditions.

2.2 To the extent that there is any inconsistency between them, the terms of the Agreement will be interpreted by reference to the terms specified in Condition 2.1, in that order of priority and precedence, to the exclusion of any other terms or conditions.

2.3 Each Purchase Order will create a separate Agreement between Mediabrands and the Supplier incorporating these Standard Conditions.

2.4 Each Agreement commences on the earlier of:

- (a) the Supplier notifying Mediabrands that the Purchase Order is accepted;
- (b) the Supplier delivering the Goods (in whole or in part) or commencing the provision of the Services; or
- (c) a date agreed in writing between Mediabrands and the Supplier.

2.5 The Supplier must notify Mediabrands of any error in the Purchase Order by 4.00pm (by email to the email address notated on the Purchase Order) on the Business Day immediately following its receipt or before the commencement of the Agreement in accordance with Condition 2.4, whichever occurs first.

2.6 The Supplier must respond within 24 hours of receipt of a Purchase Order from Mediabrands to confirm the Supplier's acceptance or to confirm that it cannot accept the Purchase Order. If the Supplier does not respond within 24 hours of receipt of the Purchase Order or commences supply of the Goods or Services, the Supplier will be deemed to have accepted the Purchase Order.

2.7 The Supplier may not alter or modify the requirements of the Purchase Order or Agreement without Mediabrands' prior written approval.

3. SUPPLY OF GOODS / SERVICES

3.1 The Supplier must supply the Goods to Mediabrands and/or provide the Services to Mediabrands strictly in accordance with the terms of the Agreement and all relevant Laws.

3.2 Nothing in these Standard Conditions or under any Agreement is intended or can be construed as:

- (a) obliging Mediabrands to purchase any Goods and/or Services and Mediabrands may, in its absolute discretion, purchase such number of Goods and/or the supply of Services, if any, as it sees fit; or
- (b) preventing Mediabrands from engaging any third party to provide any or all of the Goods and/or Services, whether in conjunction with the Supplier or otherwise.

4. PRICE

4.1 The Supplier must supply the Goods and/or perform the Services for the Price and in the quantities specified in the Purchase Order.

4.2 Unless otherwise stated in the Purchase Order, the Price includes any local and foreign duties and taxes (other than GST), freight, insurance, packaging and delivery, shipping costs and any other costs associated with or necessary for the supply and delivery of the Goods or the performance of the Services.

5. INVOICING AND PAYMENT

5.1 The Supplier must promptly issue an invoice to Mediabrands at or after the delivery of the Goods or the completion of the performance of the Services in accordance with the Agreement.

5.2 Each invoice issued by the Supplier must clearly state Mediabrands' Purchase Order number. Failure to clearly and accurately state the Purchase Order number on the invoice will entitle Mediabrands to return the invoice to the Supplier for correction and will not be processed for payment.

5.3 Where the Price is payable on a daily, hourly or other time spent basis, the invoice must be accompanied by adequate records and supporting documentation in relation to the time spent by the Supplier or its Personnel in providing the Services.

5.4 Each invoice issued by the Supplier to Mediabrands must be a valid tax invoice in the form required under the GST Act.

5.5 Unless otherwise specified in the Purchase Order, amounts payable under the Agreement do not include GST. Mediabrands will pay to the Supplier the amount of GST for which the Supplier becomes liable for any supply the Supplier makes to Mediabrands under the Agreement, provided that payment claims rendered by the Supplier comply with all Laws relevant to GST and are sufficient to allow Mediabrands to claim any input tax credits which may be available to it.

5.6 Mediabrands will pay the Amount Due no later than the Payment Date, subject to Mediabrands being satisfied that the terms of the Purchase Order and the Agreement have been complied with.

5.7 If a deposit is required under an Agreement the Supplier's invoice must clearly specify the amount of the deposit and the Deposit Date.

5.8 Mediabrands may deduct from an amount payable to the Supplier under an Agreement any amount that is, or in the opinion of Mediabrands is likely to become, payable to Mediabrands under the Agreement or otherwise, including in respect of:

- (a) any costs and expenses incurred by Mediabrands due to late, delayed or defective supply by the Supplier, including payment of labour costs to any contractors or sub-contractors of Mediabrands;
- (b) any costs and expenses associated with procurement of any third parties to complete any outstanding obligations with respect to the supply of Goods or Services to Mediabrands as a result of any suspension or termination by Mediabrands of the performance of any obligations by the Supplier under any Agreement; and
- (c) any other costs or expenses incurred by Mediabrands as a result of lateness, delay or defect in the supply of the Goods and/or Services by the supplier, including in the event of the suspension or termination of any Purchase Order (or any part thereof) or as a result of any breach of an Agreement by the Supplier.

5.9 Payments by Mediabrands are on account only and do not evidence Mediabrands' acceptance of the Goods or the Services the subject of a Purchase Order.

5.10 Each invoice issued by the Supplier must provide Mediabrands with written details of a bank account to enable Mediabrands to make payment of that invoice to that account by electronic funds transfer.

5.11 Mediabrands may require as a condition precedent to payment of an invoice, a statutory declaration that the Supplier has made all payments due to its Personnel and has paid all payroll tax and premiums.

6. PACKAGING AND LABELLING OF GOODS

6.1 The Supplier must properly pack and protect the Goods to prevent damage during transit and to ensure safe arrival at the Delivery Point.

6.2 The packaging, labelling and transport of the Goods must comply with all Laws of any jurisdiction and, where applicable, with appropriate Australian and other standards.

6.3 The Supplier must ensure that the Goods are clearly marked to the Delivery Point. The Supplier must enclose one copy of the packing list within each sub-package.

6.4 The Supplier must comply with all additional packing and labelling requirements reasonably requested by Mediabrands from time to time.

6.5 The Supplier must provide to Mediabrands with each delivery of Goods a dispatch note which includes: (a) the date of delivery; (b) the contents of the delivery; (c) Mediabrands' Purchase Order number; (d) the location of the delivery; and (e) any variance from the Purchase Order requirements.

7. DELIVERY, RISK AND TITLE

7.1 The Supplier must deliver the Goods in accordance with any delivery instructions specified in the Purchase Order to the Delivery Point by the Delivery Date.

7.2 The Supplier must notify Mediabrands immediately upon the Supplier becoming aware that the Goods, or any part of the Goods, will not be delivered to Mediabrands by the Delivery Date. If the Goods (or part of the Goods) are not delivered to Mediabrands by the Delivery Date or any alternative date agreed by Mediabrands, Mediabrands may, without prejudice to any other remedy available to Mediabrands, immediately terminate the Agreement by written notice to the Supplier.

7.3 Subject to Condition 8, title and risk in the Goods will pass from the Supplier to Mediabrands upon delivery at the Delivery Point and acceptance of the Goods by Mediabrands.

8. INSPECTION AND REJECTION OF GOODS

8.1 All Goods ordered are subject to inspect by Mediabrands upon arrival at the Delivery Point. Even though payment may have been made for the Goods prior to arrival, if, upon inspection (in the sole discretion of Mediabrands) the Goods fail to meet any requirements of the Agreement, Mediabrands may: (a) require the Supplier to make good the loss, damage or defect in the Goods to Mediabrands within 5 Business Days at no cost to Mediabrands; or (b) reject the Goods.

8.2 Mediabrands reserves the right, even after it has paid for the Goods, to make a Claim against the Supplier on account of any such Goods ordered which do not prove satisfactory or are defective or damaged. Mediabrands or its representative may inspect the Goods, and any work performed during their manufacture, engineering or installation, before deliver of the Goods and the Supplier must give Mediabrands access to its premises to do so. Inspection or examination (even if the Goods are satisfactory) of the work or the Goods will not be deemed to be an acceptance of the Goods by Mediabrands.

8.3 If there is a deficiency in the quantity of Goods ordered, Mediabrands has the right to notify the Supplier within 5 Business Days of delivery (and the Supplier must promptly and at its own cost deliver the remaining amount of Goods to Mediabrands) or require the Supplier to credit Mediabrands for the amount of deficiency.

9. PERFORMANCE OF SERVICES

9.1 The Supplier must perform the Services in accordance with the Agreement by the Completion Date.

9.2 The Supplier must perform the Services diligently, expeditiously and conscientiously and in a proper and professional manner.

9.3 The Supplier must comply with all reasonable verbal and written Directions of Mediabrands in the performance of the Services.

9.4 The Supplier must ensure that all Personnel engaged by the Supplier in carrying out Services for Mediabrands comply with Mediabrands' policies and procedures, at its own expense, in particular those relating to workplace health and safety, privacy, personal conduct, use of electronic equipment, site induction and any other policies and procedures that may apply at the time.

9.5 Mediabrands may direct the Supplier to remove a person from the performance of the Services if Mediabrands considers the person to be guilty of misconduct, or incompetent or negligent.

9.6 The Supplier warrants that the Supplier has the materials, Personnel and resources to perform the Services in a timely, effective and professional manner and that all persons performing the Services are suitably trained, experienced and qualified to do so.

9.7 The Supplier must ensure the terms of employment for all persons performing the Services comply with the relevant Law or workplace agreement governing their employment.

9.8 The Supplier must notify Mediabrands immediately upon the Supplier becoming aware that the Services, or any part of the Services, will not have been performed by the Completion Date. If the Services (or part of the Services) are not performed by the Completion Date, Mediabrands may, without prejudice to any other remedy, immediately terminate the Agreement.

9.9 The Supplier remains responsible at all times for the work and performance of the Supplier's Personnel in respect of the supply of the Services to Mediabrands.

10. PROFESSIONAL SERVICES

10.1 This Condition 10 applies if the Agreement includes the supply of Professional Services.

10.2 The Supplier must ensure all Professional Services are carried out to a professional standard and in accordance with all Laws.

10.3 The Supplier acknowledges Mediabrands is relying on the professional judgement and skill of the Supplier's Personnel in performing all Professional Services.

10.4 Any Direction by Mediabrands, including approval or review, in relation to any Professional Services, is for Agreement management purposes only and does not relieve or reduce the



Supplier's obligations or liability under the Agreement or as a provider of Professional Services to Mediabrands, owing a duty of care to Mediabrands.

11. SAFETY

- 11.1 The Supplier must comply, and ensure that all Supplier Personnel comply, with all Laws and all occupational health, safety and environmental requirements of Mediabrands.
- 11.2 If requested by Mediabrands, the Supplier and each of the Supplier's Personnel who require access to an Mediabrands Site, must undertake, at the Supplier's expense, a site induction prior to performing the Services at the relevant Mediabrands Site.
- 11.3 Mediabrands may require the Supplier and Supplier Personnel to be accompanied by a nominated employee, contractor or agent of Mediabrands whilst present at an Mediabrands Site.
- 11.4 The Supplier must provide all safety devices or warnings which may be necessary or desirable for ensuring the protection of persons performing the Services or which are reasonably required by Mediabrands.
- 11.5 The Supplier must notify Mediabrands immediately upon the Supplier becoming aware of any matters which may affect the safety of persons delivering the Goods or performing the Services or of any other persons at an Mediabrands Site.

12. PRIVACY

The Supplier must comply with and ensure that the Supplier's Personnel comply with all requirements set out in Privacy Laws and handle the collection, disclosure, storage and use of personal information in a manner consistent with the Australian Privacy Principles.

13. MEDIABRANDS PROPERTY

- 13.1 Mediabrands Property remains the property of Mediabrands at all times.
- 13.2 The Supplier must:
- only use Mediabrands Property for the performance of its obligations under the Agreement, unless another purpose is authorised by Mediabrands in writing;
 - maintain any Mediabrands Property in accordance with good practice and the Directions of Mediabrands;
 - store Mediabrands Property in a safe and secure manner;
 - allow Mediabrands, and its representatives, to access and inspect Mediabrands Property at all times upon reasonable notice;
 - not dispose of or encumber any Mediabrands Property; and
 - return any Mediabrands Property to Mediabrands immediately upon demand by Mediabrands.

14. FURTHER OBLIGATIONS

- 14.1 The Supplier must not interfere with or disrupt the work of Mediabrands or any of Mediabrands' Personnel except to the minimum extent necessary for the proper performance of the Agreement.
- 14.2 On delivery of the Goods or completion of the performance of the Services or on earlier termination of the Agreement, the Supplier must promptly:
- deliver to Mediabrands all materials, documentation and things produced by the Supplier in the performance of the Agreement; and
 - return to Mediabrands all materials, documentation and things provided to the Supplier by Mediabrands for the performance of the Agreement.

15. WARRANTIES

- 15.1 **Goods.** The Supplier warrants that the Goods: (a) are new and unused (unless otherwise specified); (b) correspond with the description in the Purchase Order; (c) will comply with all specifications, drawings, samples, creative briefs or other descriptions provided by Mediabrands to the Supplier and any other requirements specified in the Agreement; (d) are free from defects in materials and workmanship; (e) are of merchantable quality; (f) are fit for Mediabrands' purpose or, if Mediabrands' purpose is not known, for the purpose for which Goods are commonly used; and (g) are free from all liens, encumbrances, reservations of title and other restrictions whatsoever and that it has good and marketable title to the Goods..
- 15.2 **Services.** The Supplier warrants that: (a) it has the necessary skills and know-how to provide the Services; (b) the Services will be provided with due care and skill in a timely and diligent manner; and (c) will be fit for Mediabrands' purpose or if Mediabrands' purpose is not known, for the purpose for which the Services are commonly supplied.
- 15.3 **Intellectual Property Rights.** The Supplier warrants that the Goods and/or Services do not and will not infringe any Intellectual Property Rights conferred on any person. The Supplier warrants that no conflict of interest exists or is likely to exist in the provision of the Goods and/or Services.
- 15.4 **Other.** The Supplier warrants that it: (a) has obtained from all models, actors or other individuals used in the production of the Goods or performance of the Services all clearances, licences and consents as may be necessary to enable Mediabrands and any client to make full and unrestricted use of the relevant Goods and Services; (b) will comply with, and will ensure all Goods and Services comply with, all Laws, regulatory requirements and codes of practice including without limitation advertising laws and codes of practice, and all other industry guidelines (whether statutory or non-statutory) or codes of practice; (c) will observe all health and safety regulations and any other security requirements that apply at a Mediabrands Site; (d) it will not make any statement, orally or in writing (including but not limited to online), publicly or privately or do any act or otherwise conduct itself in a manner as will or may in the opinion of Mediabrands, disparage Mediabrands, its clients, group companies or their businesses, products or services.
- 15.5 If the Supplier needs to repair or replace the Goods or re-perform the Services during the Warranty Period because they do not comply with the Agreement, the Warranty Period commences again from the time when the Goods are repaired or replaced or the Services are re-performed.
- 15.6 Nothing in the Agreement is meant to exclude any condition, warranty, guarantee, right or remedy implied by any Law for the benefit of a purchaser (whether of goods or of services) including the *Competition and Consumer Act 2010* (Cth).
- 15.7 The Supplier must ensure that Mediabrands obtains the benefit of any warranties provided by manufacturers of the Goods or of materials or other components which are used in the performance of the Services where ownership of those materials or components ultimately vests in Mediabrands.

- 15.8 The Supplier acknowledges that, in entering into the Agreement, the Supplier has not relied on any term, condition, warranty, undertaking, inducement or representation made by or on behalf of Mediabrands which is not expressly stated in the Agreement.

16. DEFECTIVE GOODS OR SERVICES

- 16.1 Mediabrands may notify the Supplier of any defect in the Goods or Services within a reasonable time of it becoming aware of the defects.
- 16.2 If any Goods or Services are defective or are not supplied or performed in accordance with the Agreement, Mediabrands may immediately terminate the Agreement and the Supplier will have no Claim against Mediabrands.
- 16.3 If Mediabrands elects not to terminate the Agreement under Condition 16.2, the Supplier must, within 5 days of receiving notice from Mediabrands, at Mediabrands' option, either:
- repair or rectify the defect or non-compliance in the Goods or the performance of the Services at no cost to Mediabrands;
 - replace the Goods or re-perform the Services at no cost to Mediabrands; or
 - refund any amount paid by Mediabrands to the Supplier on account of the Price for the defective or non-compliant Goods or Services.
- 16.4 The exercise of any rights under this Condition 16 by Mediabrands will not preclude or prejudice the exercise of any other rights, powers or remedies that may be available to Mediabrands.
- 16.5 Without limiting any other rights or remedies of Mediabrands, the Supplier must reimburse Mediabrands for any costs and expenses incurred by Mediabrands in returning defective Goods to the Supplier.

17. BREACH OF AGREEMENT

- 17.1 If the Supplier breaches a term of the Agreement, Mediabrands may suspend payment to the Supplier until the breach is rectified to the satisfaction of Mediabrands.
- 17.2 Mediabrands may terminate the Agreement immediately by notice to the Supplier if the Supplier breaches the Agreement and the breach is, in Mediabrands' reasonable opinion, incapable of remedy or if the breach is capable of remedy and the Supplier fails to remedy the breach within 5 Business Days of receiving a notice from Mediabrands requiring the Supplier to do so.

18. INDEMNITIES

- 18.1 The Supplier indemnifies Mediabrands from and against all Claims arising as a consequence of the supply of any Goods or performance of any Services under an Agreement which are caused or contributed to by the Supplier's or the Supplier's Personnel's (a) breach of the terms of any Agreement; and (b) fraud, negligence or misconduct.
- 18.2 The indemnities in each Agreement are continuing obligations, independent of the other obligations of the parties under the Agreement and continue after the Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under the Agreement.
- 18.3 The Supplier's indemnities in favour of Mediabrands are reduced to the extent that the personal injury or death of any person, or damage to property is directly contributed to by any negligent act or omission of Mediabrands.

19. INSURANCE

- 19.1 The Supplier must maintain, and must ensure that where applicable each of the Supplier's Personnel maintains:
- workers' compensation insurance as required by applicable Laws for all of the Supplier's Personnel performing any work under the Agreement with such insurance endorsed to indemnify Mediabrands for any and all statutory liability to the Supplier's Personnel to the extent that the Supplier's standard policy wording does not so indemnify Mediabrands;
 - public and products liability insurance providing a minimum indemnity limit of \$20 million per occurrence and in aggregate for products liability. Where required by Mediabrands, Mediabrands may also require the Supplier to ensure that Mediabrands is noted as an additional insured or interested party on the Supplier's public liability policies;
 - if the Agreement includes the supply of Professional Services, professional indemnity insurance, on a claims incurred basis, providing a minimum indemnity limit of \$5 million per claim, or such other amount as specified in the Agreement with such insurance being maintained for a period not less than 7 years following expiry or termination of the Agreement;
 - any other insurance specified in the Agreement or required by Law.
- 19.2 The Supplier must take out and maintain insurance covering the Goods under an all risks policy for their replacement value against loss or damage, including loss or damage in transit to the Delivery Point and during unloading until risk passes to Mediabrands in accordance with the Agreement.
- 19.3 The Supplier must provide such evidence as Mediabrands reasonably requires that the Supplier and the Supplier's Personnel are insured in accordance with the Agreement before the Supplier commences delivery of the Goods or performance of the Services and otherwise when requested by Mediabrands from time to time.

20. CONFIDENTIALITY

- 20.1 The Supplier must not, without the prior written consent of Mediabrands, disclose to any person any Confidential Information except any Confidential Information that is:
- in, or comes into, the public domain other than as a result of a breach of this Condition 20;
 - required to be disclosed by Law or by order of a Court; or
 - to be disclosed to legal or other advisors of a party for the purpose of advice in relation to the Agreement.
- 20.2 The Supplier may use Confidential Information provided to it by Mediabrands only for the purposes of giving effect to the Agreement.

21. INTELLECTUAL PROPERTY

- 21.1 If the Supplier is the manufacturer of the Goods and the Goods are required to be manufactured or fabricated to Mediabrands' specifications or special requirements (and are not standard stock goods), Mediabrands will be entitled to all Intellectual Property Rights that arise as a result of, or in the course of, the design and manufacture of the Goods.



- 21.2 Mediabrands will be entitled to all Intellectual Property Rights that arise as a result of, or in the course of, the performance of the Services by the Supplier.
- 21.3 The Supplier must execute and deliver to Mediabrands any deeds, agreements or other documents which Mediabrands may reasonably require to transfer or assure to Mediabrands any Intellectual Property Rights to which Mediabrands is entitled under the Agreement.
- 21.4 The Supplier indemnifies Mediabrands against all loss, cost, expense or damage suffered or incurred by Mediabrands as a result of the Goods or the Services infringing the Intellectual Property Rights of any person.

22. MODERN SLAVERY

- 22.1 The Supplier warrants that:
- the Supplier does not, and will not, engage in any activity that constitutes or involves Modern Slavery in the performance of obligations under any Agreement;
 - the Supplier has investigated its practices and those of its Personnel, any related companies and associates, and is satisfied that there are no activities that constitute or could constitute or involve Modern Slavery engaged in anywhere in its business, operations or supply chain;
 - the Supplier and each of its Personnel, any related companies and associates of the Supplier:
 - have not been convicted of any offence involving Modern Slavery; and
 - have not been, and are not currently, the subject of any formal complaint, investigation, inquiry or enforcement proceedings by any authority in connection with Modern Slavery; and
 - any information provided to Mediabrands under this clause 22 is, and will be, to the best of the Supplier's knowledge, true, complete and accurate.
- 22.2 The Supplier acknowledges that Mediabrands has similar obligations under the Modern Slavery Legislation and must not do or omit to do anything which would cause Mediabrands to breach those obligations. The Supplier must fully cooperate with Mediabrands in complying with its obligations under the Modern Slavery Legislation. Without limiting clause 18, the Supplier indemnifies Mediabrands against any costs, losses, expenses, claims, damages or other liabilities whatsoever arising from or in connection with a breach by the Supplier of its obligations in this clause 22.

23. TERMINATION

Mediabrands may terminate an Agreement immediately on written notice to the Supplier if the Supplier breaches an Agreement and the breach is not remedied within 15 Business Days of notification.

24. NOTICES

- 24.1 Notices given to a party under an Agreement must be in writing and delivered by hand delivery, pre-paid post or email to the contact details shown in the Purchase Order or to the contact details last notified by the party to the other party in writing as that party's contact details for the purpose of the Agreement.
- 24.2 Notices are deemed to have been given or made:
- in the case of delivery in person, upon hand-delivery;
 - in the case of delivery by pre-paid post, on the fifth Business Day following postage; or
 - in the case of delivery by email:
 - if sent before 5.00pm on a Business Day, at the time of sending; or
 - if sent after 5.00pm on a Business Day, then at 9.00am on the next Business Day.

25. MISCELLANEOUS

- 25.1 The Supplier supplies the Goods or performs the Services as an independent contractor and nothing in an Agreement will constitute any relationship of employer and employee, principal and agent, or partnership, between the parties.
- 25.2 If the Supplier comprises two or more persons, each of the persons is jointly and severally liable for the obligations and liabilities of the Supplier under the Agreement.
- 25.3 The Supplier must obtain Mediabrands' prior written approval to assign or subcontract the Agreement or any part thereof. Approval to assign or subcontract will not relieve the supplier of any of its obligations under an Agreement or impose any liability upon Mediabrands to an assignee or sub-contractor.
- 25.4 No amendment or variation to the terms of an Agreement (including but not limited to, any Claim by the Supplier for additional Goods or Services supplied) will be legally binding on either party unless it is agreed in writing and signed by both parties.
- 25.5 A failure, delay, relaxation or indulgence of a party in exercising any power, right or remedy conferred upon that party under an Agreement does not operate as a waiver of that power, right or remedy.
- 25.6 A single or partial exercise of any power, right or remedy does not preclude any other or future exercise of any other power, right or remedy under an Agreement.
- 25.7 A waiver of a breach of an Agreement or any power, right or remedy arising under the Agreement must be in writing signed by the party granting the waiver.
- 25.8 Time is of the essence in the performance of an Agreement by the Supplier. The failure by the Supplier to perform any of its obligations under an Agreement on or before the time specified in an Agreement gives Mediabrands the right, in addition to any other right, to cause the Supplier to do whatever is necessary to expedite the provision of the Goods and/or Services to occur on or as close to the proposed supply date as possible, at the Supplier's expense, including the payment of premium freight charges in relation to the Goods.
- 25.9 The warranties, indemnities and confidentiality obligations in each Agreement survive rescission, termination or completion of the Agreement and do not merge on completion of any transaction under the Agreement.

26. GOVERNING LAW

Each Agreement is governed by the laws of the State in which the Goods are to be delivered or the Services are to be primarily performed and the parties irrevocably submit to the non-exclusive jurisdiction of that State.

27. DEFINITIONS

Capitalised terms used in these Standard Conditions have the following meanings:

Amount Due means the amount invoiced by the Supplier to Mediabrands, or where Mediabrands reasonably considers a lesser amount to be payable to the Supplier under the terms of the Agreement as at the date of the invoice, that lesser amount.

Business Day means a day other than a Saturday, Sunday or public holiday in the capital city of the State in which the Goods are to be delivered or the Services are to be primarily performed.

Claim includes any claim, notice, demand, debt, account, action, lien, cost, loss, expense, liability, litigation (including legal costs), investigation, judgment or damages of any kind.

Completion Date means the date (if any) specified in the Purchase Order or the Special Conditions by which the Supplier is required to have completed performance of the Services.

Condition means a term or condition contained in these Standard Conditions.

Confidential Information means the terms or effect of the Agreement and any other information which a party gives to another party under or in connection with the Agreement that is non-public, confidential or proprietary in nature, including any information which Mediabrands provides to the Supplier and any Intellectual Property Rights of Mediabrands.

Agreement means each Agreement between Mediabrands and the Supplier as described in Condition 2.

Defect Liability Period means the longer of the period:

- of 12 months;
- specified in the Purchase Order or the Special Conditions;
- prescribed by Law in respect of the Services,

from the date the provision of the Services or Goods is complete.

Delivery Date means the date (if any) specified in the Purchase Order or the Special Conditions by which the Supplier is required to deliver the Goods to the Delivery Point.

Delivery Point means the Mediabrands Site specified in the Purchase Order or the Special Conditions (if any) or if no place is specified, the location nominated in writing by Mediabrands, where the Supplier is required to deliver the Goods or perform the Services.

Deposit Date means the date listed on the invoice as the final date for payment of a deposit (if any) required by the Supplier.

Direction includes any agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

Goods means the products and/or equipment specified in a Purchase Order.

GST means the same as in Section 195-1 of the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all intellectual property rights, including without limitation:

- patents, copyright, rights in circuit layouts, registered designs, trademarks, trade secrets and the right to have Confidential Information kept confidential; and
- any application or right to apply for registration of any of those rights.

Law includes any statute, regulation, proclamation, ordinance, by-law or common law relevant to the supply of Goods or performance of Services, and whether State, Federal or otherwise.

Mediabrands means Mediabrands Australia Pty Limited ACN 002 966 001.

Mediabrands Property includes any designs, materials, drawings, tools and equipment, including all items set for disposal as part of any works provided by Mediabrands to the Supplier in connection with the supply of the Goods or the performance of the Services.

Mediabrands Site means any sites or premises owned, occupied or operated by Mediabrands or a client of Mediabrands where Goods are being delivered or Services are being performed.

Modern Slavery has the same meaning as in the Modern Slavery Legislation, which includes, among other things, any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slave-like exploitation as prohibited under all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time.

Modern Slavery Legislation means, as applicable, the *Modern Slavery Act 2018* (Cth) and any State or Territory-based legislation applicable to Modern Slavery in the jurisdiction in which Goods and/or Services are supplied by the Supplier under any Agreement and their respective regulations and codes from time to time.

Payment Date means 45 days from the date of the Supplier's invoice issued in accordance with the requirements of the Agreement.

Personnel means employees, agents, consultants and sub-contractors but the Supplier and the Supplier's Personnel are not Mediabrands' Personnel.

Price means the unit cost, total price or fees payable (as applicable) for the Goods or Services specified in the Purchase Order.

Privacy Laws means the *Privacy Act 1988* (Cth) as amended from time to time and all associated legislation and regulations.

Professional Service means the professional services (if any) described in the Purchase Order or the Special Conditions required under the Agreement.

Purchase Order means only a written purchase order issued by Mediabrands to the Supplier in the form determined by Mediabrands from time to time, and which will clearly include a 'Purchase Order Number'.

Services means the services specified in the Purchase Order and includes the Professional Services (if any).

Special Conditions means any special terms and conditions agreed in writing between Mediabrands and the Supplier and annexed to these Standard Conditions or stated in the Purchase Order.

Standard Conditions means the terms and conditions set out in this document.

Supplier means the supplier named on each Purchase Order.

Warranty Period means the longer of the period:

- of 12 months;
- specified in the Purchase Order or the Special Conditions;
- prescribed by Law in respect of the Goods or Services,

from the date the Goods are delivered or the provision of the Services is complete.



SPECIAL CONDITIONS
AUSTRALIAN GOVERNMENT SUBCONTRACTORS

1. DEFINITIONS

In this Schedule, the following definitions apply:

Accounting Standards means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the *Australian Securities and Investments Commission Act 2001* (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.

Advisers means (a) the financial, commercial or legal advisers of a party; and (b) the respective officers and employees of those financial, commercial or legal advisers.

Agreement Material means any material created, prepared or delivered by the Supplier on or following the commencement of the Agreement, for the purposes of or as a result of performing its obligations under the Agreement.

Australian Government means the Commonwealth of Australia.

Biddable Digital Media means media that is bought by the Supplier via real-time bidding through online self-service platform channels. Biddable Digital Media includes without limitation programmatic media.

Business Day means a day that is not a Saturday, Sunday or a national public holiday.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Commonwealth means the Commonwealth of Australia.

Commonwealth Entities has the meaning given in the definition of 'Participant' set out in this Special Condition 1.

Conflicts of Interest means any actual potential or perceived conflict of interest including any situation, arrangement understanding association or agreement which might (a) jeopardise the ability of the Supplier or its Personnel to represent the Customer's best interest; (b) compromise the impartiality of the Supplier or its Personnel in providing the Services, including but not limited to (i) any bonus or incentive to Personnel based on spending recommendations; (ii) any financial interests or investments by the Supplier or its Personnel (whether by way of equity ownership, warrants or otherwise in the capacity as director, officer or consultant); (iii) the provision or receipt by the Supplier of any Services provided at a premium; or (iv) the establishment by the Supplier of a 'preferred partner' or other equivalent relationship with other Media Suppliers or Vendors.

Contract Management Meeting means meetings requested by Mediabrands with the Supplier to discuss this agreement.

Customer means the end user of the Services under the Agreement.

Customer Data means all data and information relating to Finance or a Participant (including Personal Information) provided by Finance or a Participant in relation to the Services in connection with the Agreement, in whatever form that data and information may exist, and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of Finance and the Participant.

Deliverables means any Agreement Material or other item or element of a Service to be provided by the Suppliers under this agreement.

Effective Date means the date of an Agreement.

Finance means the Commonwealth of Australia as represented by the Department of Finance (as the contract manager).

Intellectual Property Rights means (a) all intellectual property rights, including the following rights: (a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere.

Law means any applicable statute, regulation, by-law, ordinance or sub-ordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, including the common law and rules of equity as applicable from time to time.

Material includes property, systems, tools, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

Media Booking Authority means a media booking authority approved in writing or by electronic means by Mediabrands.

Mediabrands Material means any Material provided to the Supplier by Mediabrands or a Customer.

Media Brief means a document approved and signed by a Participant.

Media Performance Report means the report prepared and delivered by the Supplier to Mediabrands.

Media Suppliers include, but are not limited to, Persons that own, sell or otherwise provide advertising and advertising related services (eg production), including any related body corporates of those Persons.

Moral Rights mean the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968*.

Notice means a notice, demand, consent, approval or communication issued under an Agreement.

Participant means (a) a non-corporate Commonwealth entity: being a Commonwealth entity that is not a body corporate as described in subsections 10(1) and 11(b) of the *Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**); (b) a corporate Commonwealth entity: being a Commonwealth entity that is a body corporate as described in subsections 10(a) and 11(a) of the PGPA Act; (c) a Commonwealth company: being a *Corporations Act 2001* (Cth) that the Commonwealth controls as described in subsection 89(1) of the PGPA Act (together the **Commonwealth Entities**); (d) the Australian Capital Territory government and the Northern Territory Government; and (e) an authorised organisation.

Person means any individual, corporation, limited liability company, trust, joint venture, association, company, limited or general partnership, unincorporated organisation, governmental authority or other entity.

Personnel means, in relation to a party, any employee, officer, director, authorised representative or professional adviser of that party, and in the case of the Supplier, includes any Subcontractors.

Pre-Existing Supplier Material means any Material developed by the Supplier before the commencement of the Agreement.

Subcontractor means a party engaged by the Supplier under a subcontract to perform any part of the Services under this Agreement and that party's directors, officers, employees, agents and consultants (as relevant).

Third Party Material means any Material in which a third party holds Intellectual Property Rights that is: (a) included, embodied in or attached to the Agreement Material; or (b) used as part of the performance of the Services, including (i) error corrections or translations to that Material; and (ii) derivatives of that Material where such derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.

Vendor means any Person that is required for the delivery, purchase or placement of the advertising services or the Supplier's provision of the Services, including without limitation, technology platforms (e.g. demand-side platforms, supply-side platforms, trading desks, ad exchanges, re-targeting companies, advertising networks, etc.), market research companies (e.g. MRI, Mendelsohn, Audit Bureau of Circulation, SRDS, Nielsen Andrews, etc), and technical service providers (e.g. providers of ad serving/delivery, ad tracking, social media listening and community management tools and other technology/technical services). A Vendor may also be a Media Supplier.

Warranted Materials means the Pre-Existing Supplier Material and Third Party Material provided by the Supplier, the Deliverables and the Agreement Material.

2. COMPLIANCE WITH LAWS AND POLICIES

2.1 Compliance with Legislation and Policies

The Supplier must comply with all Laws and policies relevant to the Services (in addition to those listed in these Special Conditions) in carrying out the Services and performing its obligations under the Agreement.

2.2 Protection of Personal Information

(a) This Special Condition 2.2 applies only where the Supplier deals with Personal Information when, and for the purpose of, providing the Services. In this Special Condition 2.2:

(A) 'Privacy Act' means the *Privacy Act 1988* (Cth); and

(B) the terms 'agency', 'Australian Privacy Principles' (APPs), 'eligible data breach', 'Information Commissioner', 'personal information', 'organisation' and 'registered APP code' have the same meaning as they have in section 6 of the Privacy Act.

(b) The Supplier acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the Privacy Act, and agrees in respect of the Services:

(A) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of the Agreement;

(B) not to do any act or engage in any practice that would breach an APP, which if done or engaged in by an agency, would be a breach of that APP;

(C) to carry out and discharge the obligations contained in the APPs as if it were an agency under the Privacy Act;

(D) to notify individuals whose Personal Information the Supplier holds, that complaints about acts or practices of the Supplier may be investigated by the Information Commissioner who has power to award compensation against the Supplier in appropriate circumstances;

(E) not to use or disclose Personal Information or engage in an act or practice that would breach APP 7 (direct marketing) of the Privacy Act, or a registered APP code, where that registered APP code is applicable to the Supplier;

(F) to disclose in writing to any person who asks, the content of the provisions of the Agreement (if any) that are inconsistent with an APP or a registered APP code binding a party to the Agreement;

(G) to immediately notify Mediabrands if the Supplier becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this Special Condition 2.2, whether by the Supplier or any Subcontractor;

(H) to comply with any directions, guidelines, determinations or recommendations of the Information Commissioner, to the extent that they are not inconsistent with the requirements of this Special Condition 2.2; and

(I) to ensure that any employee of the Supplier who is required to deal with Personal Information for the purposes of the Agreement is made aware of the obligations of the Supplier set out in this Special Condition 2.2.

(c) If the Supplier becomes aware that there are reasonable grounds to suspect that there may have been an eligible data breach in relation to any Personal Information held by the Supplier as a result of this Agreement or its provision of the Services, the Supplier must:

(A) notify Mediabrands in writing as soon as possible, which must be no later than within three (3) days of becoming aware;

(B) unless otherwise directed by Mediabrands, carry out an assessment in accordance with the requirements of the Privacy Act; and

(C) where requested by Mediabrands, assist Mediabrands in carrying out an assessment of the consequences to Mediabrands of the eligible data breach.

(d) Where the Supplier is aware that there are reasonable grounds to believe there has been, or where Mediabrands notifies the Supplier that there has been, an eligible data breach in relation to any Personal Information held by the Supplier as a result of this Agreement or its provision of the Services, the Supplier must:

(A) take all reasonable action to mitigate the risk of the eligible data breach causing serious harm to any of the individuals to whom the Personal Information relates;

(B) unless otherwise directed by Mediabrands, take all other action necessary to comply with the requirements of the Privacy Act; and

(C) take any other action as reasonably directed by Mediabrands.

(e) If the Supplier is providing the Services to a Customer:

- (A) that is not an agency, Special Condition 2.2(b) applies as if references to 'agency' were replaced with references to 'organisation'; and
- (B) that is the Australian Capital Territory government or the Northern Territory government, in addition to the Supplier's other obligations under this Special Condition 2.2, the Supplier must ensure that it complies with the relevant territory privacy laws, including any applicable territory privacy codes of practice or other instruments made under those laws.
- (f) The Supplier must ensure that any subcontract entered into for the purpose of fulfilling its obligations under the Agreement contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Supplier has under this Special Condition 2.2, including the requirement in relation to subcontracts.
- (g) The Supplier agrees to indemnify Mediabrands in respect of any Losses suffered or incurred by Mediabrands which arises directly or indirectly from a breach of any of the obligations of the Supplier under this Special Condition 2.2, or a Subcontractor under the subcontract provisions referred to in Special Condition 2.2(f).

2.3 Employment requirements

The Supplier must comply with:

- (a) all obligations relating to the payment of employment related taxes or levies in respect of its employees in Australia which arise in respect of any of the amounts paid to the Supplier in accordance with the Agreement;
- (b) any judicial decision made against it in respect of its employees in Australia (not including a decision under appeal) relating to employee entitlements and pay or resolving the claim; and
- (c) all other requirements imposed on an employer by Law.

2.4 Workplace Gender Equality Act 2012 (Cth)

- (a) This Special Condition 2.4 applies only to the extent that the Supplier is a 'relevant employer' for the purposes of the Workplace Gender Equality Act 2012 (Cth) (WGE Act).
- (b) The Supplier must comply with its obligations, if any, under the WGE Act.
- (c) If the Supplier becomes non-compliant with the WGE Act during the term of the Agreement, the Supplier must notify Mediabrands.
- (d) The Supplier must provide a letter of compliance with the WGE Act to the Finance Representative eighteen (18) months from the Effective Date and annually thereafter.

2.5 Illegal workers

- (a) The Supplier must ensure that its Personnel are at all times:
 - (A) Australian citizens; or
 - (B) in the case of persons who are not Australian citizens, not illegal workers.
- (b) The Supplier must remove or cause to be removed any illegal worker from any involvement in the carrying out of the Services and arrange for their replacement at no cost to Mediabrands immediately upon becoming aware of the involvement of the illegal worker. The Supplier must immediately notify Mediabrands of the involvement of the illegal worker and of the removal.
- (c) For the avoidance of doubt, compliance with the Supplier's obligations under this Special Condition 2.5 will not constitute a force majeure event, give rise to an entitlement to claim any delay or otherwise excuse the Supplier from compliance with its obligations under the Agreement.
- (d) When requested by Mediabrands, the Supplier must promptly provide evidence that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations under this Special Condition 2.5, including in relation to any Subcontractors or other Vendors.
- (e) For the purposes of this Special Condition, an 'illegal worker' is a person who:
 - (A) has unlawfully entered and remains in Australia;
 - (B) has lawfully entered Australia, but remains in Australia after his/her visa has expired; or
 - (C) is working in breach of his or her visa conditions.

2.6 Anti-Competitive Conduct

- (a) The Supplier must comply with the provisions of the Competition and Consumer Act 2010 (Cth) and must not engage in any collusive conduct, anti-competitive conduct or other similar conduct in relation to performing their obligations under the Agreement.
- (b) If Mediabrands suspects that the Supplier or its Personnel have engaged in conduct contrary to the Competition and Consumer Act 2010 (Cth), Mediabrands may notify the appropriate regulatory authority and provide the authority with information regarding the conduct. The provision of such information will not be taken to be an infringement of any obligation of confidentiality from Mediabrands to the Supplier.
- (c) Mediabrands may terminate the Agreement if:
 - (A) the Supplier or its Personnel contravene the Competition and Consumer Act 2010 (Cth) or equivalent laws in Australia or overseas; or
 - (B) full disclosure of any or all previous contraventions of the Competition and Consumer Act 2010 (Cth), or equivalent laws in Australia or overseas, by the Supplier, was not made to Mediabrands prior to the commencement of the Agreement.

2.7 Commonwealth Criminal Code

The Supplier acknowledges that giving false or misleading information to the Commonwealth is a serious offence under the Criminal Code Act 1995 (Cth).

2.8 Lobbying Code of Conduct

- (a) In providing the Services, the Supplier must, and must ensure that its Personnel, comply with the Lobbying Code of Conduct and the Australian Public Service Commission's requirements relating to the Lobbying Code of Conduct and Post Separation Contact with Government, where their activities fall within the scope of the Lobbying Code of Conduct.
- (b) A copy of the Lobbying Code of Conduct is available at: <http://lobbyists.pmc.gov.au/lobbyistsregister/index.cfm?event=contactwithLobbyistsCode>.

2.9 Indigenous Procurement Policy

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy, 1 July 2015 for further information).
- (b) The Supplier will use its reasonable endeavours to increase its:
 - (A) purchasing from Indigenous enterprises; and
 - (B) employment of Indigenous Australians, in the delivery of the Services.
- (c) Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a Subcontractor, and use of Indigenous suppliers in the Supplier's supply chain.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 Ownership of Pre-Existing Supplier Material, Mediabrands Material and Third Party Material

This Special Condition 3 does not affect the ownership of the Intellectual Property Rights in any Pre-Existing Supplier Material, Mediabrands Material or Third Party Material.

3.2 Third party consents

The Supplier must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Third Party Material available for the purpose of the Agreement.

3.3 Ownership of Agreement Material

Upon its creation all Intellectual Property Rights in the Agreement Material vest in Mediabrands.

3.4 Licences

- (a) The Supplier grants to, or must obtain for, Mediabrands a perpetual, world-wide, irrevocable, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Pre-Existing Material or Third Party Material to receive the full benefit of the Services.
- (b) Where the Contactor is unable to obtain a licence of Third Party Material under the terms of Special Condition 3.4(a), the Supplier must advise Mediabrands of the terms on which a licence can be obtained. The Supplier must not obtain any such Third Party Material without the written approval of Mediabrands. Mediabrands must comply with the terms of any licence of Third Party Material approved by it under this Special Condition 3.4(b).
- (c) To the extent that the Supplier needs to use any of the:
 - (A) Mediabrands Material; or
 - (B) Agreement Material,
 for the purpose of performing its obligations under the Agreement, Mediabrands will procure the grant to the Supplier for the term of the Agreement, subject to any direction by Mediabrands, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate such Material solely for the purpose of providing the Services.

3.5 Documents

- (a) The Supplier must, at its own cost, do all things and execute all documents necessary or convenient to give effect to this Special Condition 3.
- (b) The Supplier must, if requested by Mediabrands, establish and maintain a register that records the Intellectual Property Rights in any Agreement Material, Pre-Existing Supplier Material, Third Party Material as relevant to that Mediabrands.

3.6 Trademarks

- (a) The Customer retains all right, title and interest to any Customer trade mark incorporated in the Customer Material and any use of any Customer trade mark by or under the authority of the Supplier will not create in the Supplier or in any other person (other than the Customer) any right, title or interest in or to either that trade mark or any registration or application for registration of it.
- (b) The Supplier must not do any act or thing in relation to any Customer trade mark without the prior consent of the Customer.

3.7 Warranty

The Supplier warrants that:

- (a) the Warranted Materials and Mediabrands' use of the Warranted Materials will not infringe the Intellectual Property Rights of any person; and
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this Special Condition 3.

3.8 Remedy for breach of warranty

If someone claims, or Mediabrands reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Supplier must promptly at the Supplier's expense:

- (a) use its best efforts to secure the rights for Mediabrands to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

3.9 Delivery of Agreement Material

On the expiry or termination of the Agreement or on such date as may be specified by Mediabrands, the Supplier must deliver to Mediabrands all Agreement Material.

4. MORAL RIGHTS

4.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of Mediabrands, the Supplier must:

- (a) give, where the Supplier is an individual, in a form acceptable to Mediabrands;
- (b) use its best endeavours to ensure that each of the Personnel used by the Supplier in the production or creation of the Agreement Material gives, in a form acceptable to Mediabrands; and
- (c) use its best endeavours to ensure that any holder of Moral Rights in Third Party Material included in the Agreement Material gives,



genuine consent in writing to the use of the Agreement Material for the Specified Acts (as defined below), even if such use would otherwise be an infringement of its or their Moral Rights.

4.2 Specified Acts

In this Special Condition 4:

- (a) Specified Acts means:
- (A) mistakenly attributing the authorship of any Agreement Material, or any content in the Agreement Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the Copyright Act 1968 (Cth));
 - (B) materially altering the style, format, colours, content or layout of the Agreement Material and dealing in any way with the altered Agreement Material;
 - (C) reproducing, communicating, adapting, publishing or exhibiting any Agreement Material; and
 - (D) adding any additional content or information to the Agreement Material; and
- (b) Agreement Material includes any Pre-Existing Supplier Material and Third Party Material to the extent that it is included in, forms part of or is attached to the Agreement Material.

5. CONFIDENTIALITY

5.1 Confidential Information not to be disclosed

- (a) Subject to Special Condition 5.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of:
- (A) Finance Confidential Information;
 - (B) Participant Confidential Information,
- the Participant or Finance may impose such conditions as it thinks fit, and the Supplier will comply with those conditions.
- (c) For the avoidance of doubt, Finance and Participant Confidential Information includes, but is not limited to, Media Briefs (and any data or research provided in support), Media Booking Authorities, Media strategies, Media Plans, Media Performance Reports and management reports.

5.2 Written undertakings

- (a) The Participant may at any time require the Supplier to arrange for:
- (A) its Advisers; or
 - (B) any other third party,
- to give a written undertaking in the form of a deed relating to the use and non-disclosure of the Participant's Confidential Information, in the form required by the Participant or Mediabrands.
- (b) If the Supplier receives a request under Special Condition 5.2(a), it must promptly arrange for all such undertakings to be given.

5.3 Exceptions to obligations

The obligations on the parties under this Special Condition 5.3 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by the party to its Advisers or Personnel solely in order to comply with obligations, or to exercise rights, under the Agreement;
- (b) is disclosed to the party's internal management personnel, solely to enable effective management or auditing of Agreement-related activities;
- (c) is disclosed by Finance to the Minister for Finance, the Cabinet or its Committees, or a responsible Minister;
- (d) is disclosed by a Participant to the responsible Minister for that Mediabrands or Participant;
- (e) is disclosed by Finance or a Participant to another Commonwealth Entity or with another Commonwealth, State or Territory agency or department, if this serves the Commonwealth's legitimate interests;
- (f) is disclosed by a Participant within that Participant's organisation, if this serves the legitimate interests of that Participant;
- (g) is disclosed by Finance or a Participant in response to a request from a House or a Committee of the Parliament of the Commonwealth, or from a State or Territory Parliament or Assembly if the relevant Customer is a State or Territory body;
- (h) is authorised or required by law, including under the Agreement, under a licence or otherwise, to be disclosed; or
- (i) is in the public domain other than due to a breach of this Special Condition 5.

5.4 Obligation on disclosure

Without limiting Special Condition 5.2, where the Supplier discloses Confidential Information to another Person pursuant to Special Conditions 5.3(a) or Special Condition 5.3(b), the Supplier must:

- (a) notify the receiving Person that the information is Confidential Information; and
- (b) not provide the information unless the receiving Person agrees to keep the information confidential.

5.5 Additional Confidential Information

The Participant, Mediabrands and the Supplier may agree in writing after the Effective Date that certain additional information is to constitute Confidential Information for the purposes of the Agreement.

5.6 Period of confidentiality

The obligations under this Special Condition 5 continue, notwithstanding the expiry or termination of the Agreement:

- (a) in relation to any Confidential Information of Finance, Mediabrands or a Participant, the obligations under this Special Condition 5 continue indefinitely, notwithstanding the expiry or termination of the Agreement; and
- (b) in relation to any information which the Participant, Mediabrands and the Supplier agree in writing after the date of the Agreement is to constitute Confidential Information for the purposes of the Agreement, for the period agreed by the Participant, Mediabrands and the Supplier in writing in respect of that information.

5.7 No reduction in privacy obligations

Nothing in this Special Condition 5 derogates from any obligation which the Participant or the Supplier may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under the Agreement, in relation to the protection of Personal Information.

5.8 Return of Mediabrands Confidential Information and Mediabrands Material

- (a) On the expiry or termination of the Agreement or on such earlier date as may be specified by Mediabrands, the Supplier must deliver to the Mediabrands all Mediabrands Confidential Information and Mediabrands Material.
- (b) The Supplier, when directed by the Participant in writing, agrees to destroy any document in its possession, power or control which contain or relate to any Confidential Information.

6. SECURITY

6.1 Interpretation

In this Special Condition 6, the term 'security incident' has the meaning given in the Protective Security Policy Framework Australian Government protective security policy framework – glossary of security terms.

6.2 Compliance with Mediabrands security requirements

- (a) The Supplier must, and must ensure that Supplier Personnel, including its Subcontractors, comply with:
 - (A) any security requirements notified to the Supplier by Mediabrands or as set out in any Media Instruction or Media Booking Authority;
 - (B) the Australian Government Protective Security Policy Framework (outlined at www.protectivesecurity.gov.au) and the Australian Government Information Security Manual (outlined at www.asd.gov.au), as updated from time to time (as applicable to the Services); and
 - (C) any other security procedures or requirements notified, in writing, by Mediabrands to the Supplier. The Supplier must comply with such a security procedure or requirement, from the date specified in the Notice, or if none is specified, within five Business Days after receipt of the Notice.
- (b) The Supplier must notify Mediabrands no later than twelve (12) hours after becoming aware of any security incident that occurs in connection with Customer Data.
- (c) The Supplier must promptly comply with any additional security requirements notified by Mediabrands to the Supplier from time to time. Mediabrands will give the Supplier as much notice as reasonably practicable of any additional security requirements.

6.3 Security clearance

- (a) If required by Mediabrands, each of the Supplier Personnel must hold and maintain an Australian Government security clearance to the level required by Mediabrands. Mediabrands will Notify the Supplier of any security clearance requirements and the Supplier must comply with and ensure that Supplier Personnel act in accordance with that Notice.
- (b) The Supplier is responsible for all costs associated with obtaining security clearances.

6.4 Removal of Customer Data

The Supplier must not, and must ensure that Supplier Personnel do not:

- (a) remove Customer Data or allow Customer Data to be removed from the Customer's premises; or
 - (b) take Customer Data or allow Customer Data to be taken, transferred, transmitted, accessed or disclosed outside of Australia,
- without the Customer's prior written consent.

7. INSURANCE AND RISK MANAGEMENT

7.1 Obligation to maintain insurance

In connection with the provision of the Services, the Supplier must have and maintain:

- (a) for the term of the Agreement, valid and enforceable insurance policies for:
 - (A) public liability in an amount of not less than \$10 million per claim;
 - (B) either professional indemnity or errors or omissions in an amount of not less than \$20 million in aggregate per year; and
 - (C) workers' compensation as required by Law; and
- (b) for seven years following the expiry or termination of the Agreement, valid and enforceable insurance policies for either professional indemnity or errors or omissions, in an amount of not less than \$20 million in aggregate per year.

7.2 Confirmation of insurance

The Supplier must provide to Mediabrands evidence of current, relevant insurance from its insurers or insurance brokers certifying that it has insurance as required by this Special Condition 7:

- (a) on the Effective Date; and
- (b) at any other time, promptly on request by Mediabrands.

7.3 Risk Management

- (a) The Supplier must have a formal process for identifying, evaluating and managing both operational and strategic risks in relation to the provision of the Services and the Supplier's obligations under this Agreement and must provide the Services and perform the Supplier's obligations under this Agreement to manage any risks identified in accordance with the plans identified at Special Condition 7.3(b).
- (b) As a minimum, the Supplier must prepare and provide the following plans and documents to Mediabrands within 45 Business Days after the Effective Date:
 - (A) a risk management plan that is aligned with AS/NZS ISO 31000:2009;
 - (B) a risk register relating to the provision of the Services and the Supplier's obligations under this Agreement;
 - (C) an issue management strategy, which may be a component of the risk management plan, and ensures that significant issues are addressed in a timely manner;
 - (D) a business continuity plan for its operations; and
 - (E) a disaster recovery plan for its operations.

- (c) The Supplier must maintain and update the plans and documents referred to in Special Condition 7.3(b) to reflect any changes, but at a minimum, on an annual basis.
- (d) The Supplier must report on risks in relation to the provision of the Services and the Supplier's obligations under the Agreement at each Contract Management Meeting.
- (e) On request from Mediabrands, the Supplier must provide any plan or document identified in this Special Condition 7.3, for review by Mediabrands.

8. CONFLICT OF INTEREST

8.1 Warranty

The Supplier warrants that, to the best of its knowledge after making diligent inquiry, at the date of the Agreement no Conflict of Interest exists or is likely to arise in the performance of its obligations under the Agreement, except as disclosed in writing to Mediabrands.

8.2 Conflict of Interest

- (a) The Supplier must not enter into any arrangements (whether directly or indirectly) which would or could lead to any Conflicts of Interest. This includes any consulting, research or other services agreement between the Supplier and a Media Supplier or Vendor, unless Mediabrands has authorised such arrangement in writing.
- (b) For each Media Plan, the Supplier or its representative must confirm in writing that the Media Plan is free of undisclosed Conflicts of Interest.
- (c) If, during the performance of the Services, a Conflict of Interest arises or appears likely to arise, the Supplier must:
 - (A) notify Mediabrands immediately in writing;
 - (B) make full disclosure of all relevant information relating to the Conflict of Interest; and
 - (C) take such steps as Mediabrands requires to resolve or otherwise deal with the Conflict of Interest.
- (d) If Mediabrands provides any authorisation of a Conflict of Interest (whether on conditions or unconditionally), Mediabrands may withdraw its authorisation of the Conflict of Interest provided under Special Condition 8.2(a) where, in the opinion of Mediabrands, circumstances concerning the Conflict of Interest change.

8.3 Activities and interests

The Supplier must not, and must use its best endeavours to ensure that Supplier Personnel do not, engage in any activity or obtain any interest during the term of the Agreement that is likely to raise either a Conflict of Interest, or a risk of a Conflict of Interest, or otherwise conflict with or restrict the Supplier in providing the Services fairly and independently.

9. BOOKS AND RECORDS

9.1 Supplier to keep books and records

The Supplier must:

- (a) keep and require its Subcontractors to keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by Mediabrands under the Agreement to be determined; and
- (b) retain and require its Subcontractors to retain for a period of seven (7) years after the expiry or termination of the Agreement all books and records relating to the Services.

9.2 Archives requirements

- (a) The Supplier must, in the performance of its obligations under the Agreement, at all times comply with the requirements of the *Archives Act 1983* (Cth) (**Archives Act**) and any Records Disposal Authority in respect of Commonwealth Records which are under the custody or control of the Supplier.
- (b) The Archives Act sets out the legislative requirements for access, preservation and transfer or proper destruction of Commonwealth Records. The Archives Act provides (among other things) that:
 - (A) a person must not transfer, or be a party to the transfer of a Commonwealth Record unless the transfer is authorised by the National Archives of Australia or is required under a mandatory provision of Law or is otherwise permitted under the Archives Act; and
 - (B) the prior records of an organisation which are subsequently removed from the application of the Archives Act, remain subject to the Archives Act, unless specifically excluded from its operation.
- (c) The Supplier must:
 - (A) comply with any reasonable direction given by Mediabrands or the National Archives of Australia for the purpose of transferring Commonwealth Records to the National Archives of Australia or providing the National Archives of Australia with full and free access to those records; and
 - (B) without limiting the other provisions of the Agreement, at all times:
 - (I) permit Mediabrands to access all Commonwealth Records in the Supplier's custody; and
 - (II) assist Mediabrands to comply with Laws providing for public access to Commonwealth Records. To avoid doubt, the Supplier will not be the entity providing public access to the Commonwealth Records.
- (d) In this Special Condition, '**Commonwealth Records**' and '**Records Disposal Authority**' have the same meanings as in the Archives Act.

9.3 Costs

The Supplier must bear its own costs of complying with this Special Condition 9.

9.4 Survival

This Special Condition 9 applies for the term of the Agreement and for a period of seven (7) years from the date of the conclusion of the delivery of the Services under this Agreement.

10. AUDIT AND ACCESS

10.1 Right to conduct audits

- (a) Mediabrands or a representative may conduct audits relevant to the performance of the Supplier's obligations under the Agreement. Audits may be conducted of, but not limited to:

- (A) the Supplier's operational practices and procedures as they relate to the Agreement, including security procedures;
- (B) the accuracy and timeliness of the Supplier's invoices and reports in relation to the provision of the Services;
- (C) the Supplier's compliance with its confidentiality, privacy and security obligations under the Agreement;
- (D) Material (including books and records) in the possession of the Supplier relevant to the Services or the Agreement; and
- (E) any other matters determined by Mediabrands to be relevant to the Services or the Agreement.

- (b) For the avoidance of doubt and subject to the requirements of Special Condition 10.5, the Supplier is not required to provide the salaries and overhead costs for Supplier employees as part of an audit.

10.2 Access by Mediabrands or its nominee

- (a) Mediabrands or its nominee may, at reasonable times and on giving reasonable notice to the Supplier:
 - (A) access the premises of the Supplier during Business Hours, except in the case of emergencies, to the extent relevant to the performance of the Agreement;
 - (B) require the provision by the Supplier, its employees, agents or Subcontractors, of records and information in a data format and storage medium accessible by Mediabrands by use of Mediabrands' existing computer hardware and software;
 - (C) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Supplier, its employees, agents or Subcontractors; and
 - (D) require assistance in respect of any inquiry into or concerning the Services or the Agreement. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to Mediabrands), any request for information directed to Mediabrands, and any inquiry conducted by the Australian Parliament or any Parliamentary Committee.
- (b) The Supplier must provide read only access to its computer hardware and software, including third party technologies and tools used to buy Biddable Digital Media and programmatic media, to the extent necessary for Mediabrands to exercise its rights under this Special Condition 10, and provide Mediabrands with any reasonable assistance and training requested by Mediabrands to use that hardware and software.

10.3 Conduct of audit and access

Mediabrands must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to Special Condition 10.1; and
- (b) the exercise of the general rights granted by Special Condition 10.2 by Mediabrands,

do not unreasonably delay or disrupt in any material respect the Supplier's performance of its obligations under the Agreement.

10.4 Costs

- (a) Except as set out in Special Condition 10.4(b), each party must bear its own costs of any reviews and/or audits.
- (b) The Supplier must pay the cost of an audit or review, conducted pursuant to this Special Condition 10, that demonstrates the Supplier has:
 - (A) issued invoices with incorrect Fees to Mediabrands, which in the opinion of Mediabrands or Finance, have a material financial or operational effect, and the Supplier has not rectified the issue(s) prior to the audit; or
 - (B) not complied with the Agreement, including not met the relevant service levels.
- (c) Where Special Condition 10.4(b) applies, Mediabrands may recover some or all of its costs of conducting that review or audit as a debt due from the Supplier.
- (d) The Supplier acknowledges that any liability it incurs under Special Condition 10.4(b) is a genuine pre-estimate of the loss given the whole of Australian Government operation of the advertising arrangement.

10.5 Auditor-General, Information Commissioner and Privacy Commissioner

- (a) The Supplier agrees that the rights of Mediabrands under Special Conditions 10.2(a)(i) to Special Condition 10.2(a)(iii) apply equally to Finance, the Auditor-General or a delegate of the Auditor-General, the Information Commissioner or a delegate of the Information Commissioner or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's, the Information Commissioner's or the Privacy Commissioner's respective functions or activities.
- (b) The Supplier must do all things necessary to comply with the Auditor-General's, or Information Commissioner's or Privacy Commissioner's or his or her delegate's requirements, notified under Special Condition 10.2, provided such requirements are legally enforceable and within the power of the Auditor-General, Information Commissioner or Privacy Commissioner's or his or her respective delegate.

10.6 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Supplier's responsibility to perform its obligations in accordance with the Agreement.

10.7 Subcontractor requirements

The Supplier must ensure that any subcontract entered into for the purpose of the Agreement contains an equivalent clause granting the rights specified in this Special Condition 10.

10.8 No restriction

Nothing in the Agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, the Information Commissioner or a delegate of the Information Commissioner or the Privacy Commissioner's or a delegate of the Privacy Commissioner. The rights of Mediabrands under the Agreement are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, the Information Commissioner or a delegate of the Information Commissioner or the Privacy Commissioner's or a delegate of the Privacy Commissioner.



10.9 Survival

This Special Condition 10 applies for the term of the Agreement and for a period of seven (7) years from the expiry or termination of the Agreement.

11. FREEDOM OF INFORMATION

- (a) If Mediabrands receives a request for access to a document created by, or in the possession of, the Supplier or any of its Personnel, Mediabrands may at any time by written Notice require the Supplier to provide the document to Mediabrands and the Supplier must, at no additional cost, promptly comply with the Notice.
- (b) The Supplier must include in any subcontract relating to the performance of the Agreement provisions that will enable the Supplier to comply with its obligations under this Special Condition.
- (c) In this Special Condition, 'document' has the same meaning as in the Freedom of Information Act 1982 (Cth).

12. ANNOUNCEMENTS

- (a) The Supplier, together with its Personnel, must not make a public announcement, public disclosure or media release relating to or in connection with the Agreement or any transaction contemplated by it, without obtaining Mediabrands' prior written agreement to the announcement, public disclosure or media release, except if required by Law or a regulatory body (including a relevant stock exchange).
- (b) If the Supplier is required by Law or a regulatory body to make a public announcement in connection with the Agreement or any transaction contemplated by the Agreement, the Supplier must, to the extent practicable, first consult with and take into account the reasonable requirements of Mediabrands.