



AANA MEDIA CONTRACT

This is an Australian Association of National Advertisers (AANA) template agreement for use in connection with media buying agencies. There is no obligation on advertisers or AANA members to use this template. Advertisers are free to negotiate whatever terms and conditions they deem appropriate. The AANA makes no representation or warranties as to the content of this template. Anyone using this template is advised to consult with experienced legal counsel before adopting this template in whole or in part.

The AANA acknowledge the work of its legal partner Bird & Bird (Australia) in developing this template and thank them for their contribution. Any questions may be directed to the AANA at ceo@aana.com.au.

The AANA would also like to acknowledge the support of the ANA (Association of National Advertisers in the US) and their legal counsel Reed Smith LLP, for their consent to use the ANA template as a basis for the AANA template. Similarly, we thank ISBA (the Incorporated Society of British Advertisers) and its legal counsel Fieldfisher for their consent to use the ISBA Framework Agreement For Media Buying & Planning Services as a guide to some of the provisions.

Please note that the suggested terms in this template are not intended to represent the only methodology by which the contractual relationship between an advertiser and its media buying agency should be addressed. This template has been written to equip the advertiser with a starting point on how to approach each element of the contract conversation. The template does however, highlight the myriad of issues that should be openly discussed and resolved between advertiser and agency in order to ensure transparency and consequent stability in any such relationship.

Bracketed provisions highlighted in yellow are items that require insertions or additional items that should be considered, and/or modified by the advertiser.

MASTER MEDIA PLANNING & BUYING SERVICES AGREEMENT

THIS MASTER MEDIA PLANNING & BUYING SERVICES AGREEMENT is entered into on the __ day of [Month] 20____ (“Effective Date”) by and between [Advertiser], [ACN] having its principal place of business at [Address] (“Advertiser”); and [Agency], [ACN], having its principal place of business at [Address] (“Agency”); individually referred to as a “Party” or collectively referred to as the “Parties”.

The Parties agree as follows:

1. Definitions & Interpretation & Precedence

- 1.1 "Accredited Vendor" means Advertiser's chosen third party vendor for tracking Media Placements and/or measuring or tracking Viewability Standards.
- 1.2 "Advertiser Codes of Conduct" means the codes of conduct for Advertiser set out in Schedule 6.
- 1.3 "Advertiser Data" means any data and information in written or electronic form collected by Agency, Holding Company Members, a Media Owner Group Member or a Vendor on behalf of Advertiser or its Related Bodies Corporate in the course of providing the Services (including, but not limited to, data collected by Agency from Advertiser Properties and Media Placements) and any data derived from Advertiser Materials or produced as a result calculations using all or a portion of Advertiser Data.
- 1.4 "Advertiser Indemnitees" means Advertiser, its Related Bodies Corporate and their officers, directors, employees and shareholders.
- 1.5 "Advertiser Materials" means any data or information, content, materials, website terms and conditions, policies or guidelines provided by Advertiser or by any third party at the direction of Advertiser in connection with this Agreement, and any other Intellectual Property Rights owned by Advertiser.
- 1.6 "Advertiser Properties" means any websites, social media pages, mobile apps or other digital platforms that are owned, Controlled or operated by Advertiser.
- 1.7 "Advertiser Rebates and Incentives" means a pro-rated share of the total Rebates and Incentives in a given Year, the numerator of which is Advertiser's total spending placed via Agency or Holding Company Members with each third party, including Media Owner Group Members and Vendors, and the denominator of which is the total aggregate spending by Agency or Holding Company Members with such third party, including Media Owner Group Members and Vendors. Where a Rebate and Incentive is free, discounted, or Bartered inventory, Advertiser Rebates and Incentives shall mean the pro-rated share of such inventory at a day part/quality mix consistent with the average mix with the same Media Owner, or if the Advertiser consents, the revenue generated by the Holding Company Member from the sale of such inventory to a third party.
- 1.8 "Agency Codes of Conduct" means any codes of conduct for Agency as set out in Schedule 6.

- 1.9 **"Agency Data"** means all data processed by Agency which is not Advertiser Data and which Agency would otherwise collect and process independently of the provision of the Services to Advertiser.
- 1.10 **"Agency Indemnitees"** means Agency and its officers, directors, employees and shareholders.
- 1.11 **"Agency Information"** means software (including all programming code in object and source code form), Agency Data, methodology, know-how and processes and materials in relation to which the Intellectual Property Rights are owned by (or licensed to) Agency and which are:
- 1.11.1 in existence prior to the date the use of which falls within a Scope of Work; or
- 1.11.2 created by or for Agency outside of a Scope of Work and which are intended to be reused across its business.
- 1.12 **"Agreement"** or **"Master Media Planning & Buying Services Agreement"** means this agreement including the General Terms, Scopes of Work and Schedules.
- 1.13 **"Annual Financial Compliance Certification"** means the document set out in Schedule 3.
- 1.14 **"Annual Scope of Work"** means the Scope of Work setting out the Services to be provided by Agency on an annual basis as agreed between the Parties in writing, in the form as set out in Part 1 of Schedule 1, and as may be amended by the parties from time to time in writing.
- 1.15 **"Applicable Laws"** means all applicable Commonwealth, State, and local laws, guidelines and regulations governing the provision of the Services, including but not limited to Privacy Legislation, the *Competition and Consumer Act 2010* (Cth), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth), the Advertiser Codes of Conduct and Agency Codes of Conduct (where applicable).
- 1.16 **"Associate"** means any individual who is an employee, officer, director, agent, or authorised representative of Agency, a Holding Company Member or Advertiser.
- 1.17 **"Auditor"** means an independent or external third party auditor(s), industry specialist(s) appointed by the Advertiser.
- 1.18 **"Authorised Advertiser Approver"** means those Advertiser Associates specified in the applicable Scope of Work who have the authority to bind Advertiser contractually in all matters relating to this Agreement (and any successor(s) notified to Agency).
- 1.19 **"Authorised Agency Approver"** means those Agency Associates specified in the applicable Scope of Work who have the authority to bind Agency contractually in all matters relating to this Agreement (and any successor(s) notified to Advertiser).
- 1.20 **"Barter"** means a transaction in which two unrelated parties exchange goods or services without cash payment.
- 1.21 **"Blacklist"** means websites on which Media Placements are prohibited and for which Advertiser will not pay any Third Party Costs.
- 1.22 **"Blacklist Content"** means content described in Section 7.3.

- 1.23 **"Business Day"** means any day other than a Saturday, Sunday or New South Wales public holiday.
- 1.24 **"Claims"** means any claims, demands, or causes of action brought by a third party.
- 1.25 **"Competing Products or Services"** means those listed in Schedule 7.
- 1.26 **"Conflicts of Interest"** means any situation, arrangement, understanding, association, or agreement which might, in the reasonable opinion of Advertiser:
- 1.26.1 jeopardise the ability of Agency, a Holding Company Member or Associates of either to represent Advertiser's best interests;
 - 1.26.2 compromise the impartiality of Agency, a Holding Company Member or Associates of either in providing Services, including but not limited to:
 - (a) any bonus or incentive to Associates based on upon spending recommendations;
 - (b) any financial interests or investments by Agency, a Holding Company Member or Associates (whether by way of equity ownership, warrants, or otherwise or in the capacity of a director, officer, or consultant);
 - (c) the provision or receipt by Agency or Holding Company Member of any Services provided at a premium;
 - (d) the establishment by Agency or a Holding Company Member of a "preferred partner" or other equivalent relationship with other Holding Company Members, Media Owner Group Members or Vendors; or
 - (e) the referral by Agency to a Holding Company Member for creative or production services connected to any Media Placement, e.g., Native Advertising and outdoor billboards.
- 1.27 **"Confidential Information"** means information, a set out in Section 19, including in oral, tangible or electronic form relating to either Party, their Related Bodies Corporate, advertisers and/or customers (including their Personal Information), businesses, business plans or affairs, which information is proprietary and confidential to such Party.
- 1.28 **"Control", "Controlling" or "Controlled"** has the meaning given in Section 50AA of the Corporations Act.
- 1.29 **"Corporations Act"** means the *Corporations Act* 2001 (Cth);
- 1.30 **"Deliverables"** means all reports, Media Plans, Advertiser Data, Records and other work product created or developed by Agency or on Agency's behalf in connection with this Agreement.
- 1.31 **"Dispute"** means any dispute or difference arising out of or relating to this Agreement, or where agreement between the parties is required by this Agreement and there is absence of agreement after a reasonable period;

- 1.32 **"Dollars"**, **"A\$"** and **"\$"** mean the lawful currency of the Commonwealth of Australia;
- 1.33 **"Editorial Content"** means independent news reporting or editorial content.
- 1.34 **"Effective Date"** means the date set out in the preamble of this Agreement.
- 1.35 **"Expenses"** means reasonable transportation, hotel, meals and other expenses incurred by Agency (or Vendors, as the case may be) in connection with the supply of Services, provided that such expenses have either received Advertiser's prior written approval or, where applicable, are in accordance with any expense policies which have been supplied to Agency or set out in the applicable Scope of Work.
- 1.36 **"Fees"** means the fees due to Agency in connection with the Services as determined in accordance with this Agreement and the relevant Scope(s) of Work. For the avoidance of doubt, the Fees do not include Expenses, Third Party Costs or Unbilled Media.
- 1.37 **"Force Majeure"** means reasons or causes beyond a Party's reasonable control, including war (whether or not declared), sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of a public enemy, act of any government or any agency or subdivision thereof, fire, accident, explosion, epidemic, quarantine, restrictions, storm, flood, earthquake, or other act of God, which could not be reasonably expected to be avoided, or new laws or regulations forbidding or limiting the execution of this Agreement.
- 1.38 **"General Terms"** means the terms and conditions set out in this Agreement but not including any other Schedules and/or Scopes of Work.
- 1.39 **"GST"** means any goods and services tax, value added tax or other like tax;
- 1.40 **"GST Law"** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.41 **"Holding Company"** means [Insert name of ultimate holding company, e.g., WPP, IPG, Omnicom, Publicis, Dentsu, Havas, etc.] or any successor Person as set out in Schedule 4.
- 1.42 **"Holding Company Acknowledgement and Agreement"** means the document set out in Schedule 2.
- 1.43 **"Holding Company Member(s)"** means Holding Company and any of its Related Bodies Corporate, as well as any Person in which any of the foregoing has a financial interest or investment. As of the Effective Date, such Holding Company Members are listed in Schedule 4. Such Schedule will be amended from time to time as Holding Company acquires new members or divests itself of existing members on Schedule 4. Any such amendments must be made within thirty (30) days of the event giving rise to the amendment.
- 1.44 **"Indemnified Party"** means the Party being indemnified by another Party under this Agreement.
- 1.45 **"Indemnifying Party"** means the Party indemnifying another Party under this Agreement.
- 1.46 **"Initial Period"** means the period of [Insert Length of Initial Term, e.g., "one year commencing on the Effective Date"].

- 1.47 **"Insolvency Event"** means in relation to a Party:
- 1.47.1 the party being in liquidation or an order, petition, application, proceeding, meeting or resolution being made, presented, brought, called or passed for the purpose of winding up the party and not withdrawn;
 - 1.47.2 a Controller having possession or Control of any of the assets or undertaking of the party for the purpose of enforcing a charge;
 - 1.47.3 a charge holder or other person being entitled to be in, or having threatened to take, possession or Control of any of the assets or undertaking of the party for the purpose of enforcing a charge;
 - 1.47.4 an administrator (within the meaning of the Corporations Act) having been appointed or threatened to be appointed to the party;
 - 1.47.5 the party having stopped payments to creditors generally, or being insolvent (within the meaning of the Corporations Act) or unable to pay its debts as and when they fall due; or
 - 1.47.6 equivalent processes or steps to those outlined in Sections 1.48.1 to 1.48.4 have occurred with a similar effect in other jurisdictions or under other laws.
- 1.48 **"Intellectual Property Rights"** means any and all intellectual or proprietary rights of whatsoever nature anywhere in the world, including but not limited to:
- 1.48.1 any patents or patent applications;
 - 1.48.2 any trade marks or services marks (whether registered or unregistered);
 - 1.48.3 inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration;
 - 1.48.4 copyright or design rights (whether registered or unregistered);
 - 1.48.5 trade secrets and know-how and similar industrial, commercial and intellectual property rights;
 - 1.48.6 database rights; and
 - 1.48.7 any goodwill in any trade or service name.
- 1.49 **"Key Individuals"** means individuals named in any Scope of Work in respect to the Services provided under that Scope of Work and identified as Key Individuals.
- 1.50 **"Losses"** means all losses, damages, liabilities, Claims, penalties, fines, awards, costs and expenses (including any and all reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest, penalties and any other reasonable professional expenses).

- 1.51 **"Media"** means all platforms upon which Media Placements are placed that now exist or may hereinafter be invented, including but not limited to television, cinema, radio, print, outdoor, Internet, mobile and all other forms of electronic media.
- 1.52 **"Media Owner"** means the Person that actually publishes or airs the Media Placements.
- 1.53 **"Media Owner Group Members"** means any Media Owner and any of its Related Bodies Corporate, as well as any Person in which any of the foregoing has a financial interest or investment.
- 1.54 **"Media Placement"** means advertising, sponsorship or promotional Media purchased by Agency, either directly or indirectly from third parties or Holding Company Members, in connection with the provision of Services.
- 1.55 **"Media Plan"** means a plan approved by Advertiser in writing in accordance with any Operating Procedures that may or may not have been created by Agency that specifies the Media on which Advertiser's Media Placements must appear in order to optimise Advertiser's return on investment in the Media Placements and to reach Advertiser's objectives and desired consumer demographic and psychographic profiles. A Media Plan may also reflect creative content and production requirements necessary to make an effective Media Placement.
- 1.56 **"Native Advertising"** means any Media Placements (and all hyperlinks that link to any such editorial) that constitute product integration, content sponsorship, or any other form of advertising that bears a similarity to the news, feature articles, product reviews, entertainment, and other material that surrounds it online.
- 1.57 **"Net Media Spend"** means the actual payment(s) made to a Media Owner Group Member for Media Placements net of all Rebates and Incentives and any other discounts due to Advertiser.
- 1.58 **"Non-Human and Fraudulent Traffic"** means data that counts or uses in calculations, anything other than natural persons viewing actually displayed Media Placements in the normal course of using any device, including, without limitation, browsing through online, mobile or any other technology or platform. For the avoidance of doubt, Non-Human and Fraudulent Traffic includes, without limitation, the inclusion or counting of views:
- 1.58.1 by a natural person who has been engaged for the purpose of viewing such Media Placements, whether exclusively or in conjunction with any other activities of that person;
 - 1.58.2 by non-human visitors;
 - 1.58.3 combinations of displays directed or redirected by any combination of (i) and/or (ii); and
 - 1.58.4 that are not actually visible to the human eye, discernible to human senses or perceived by a human being.
- 1.59 **"Non-Human and Fraudulent Traffic Prevention"** means technology, methodologies and actions to:

- 1.59.1 prevent Non-Human and Fraudulent Traffic;
- 1.59.2 detect Non-Human and Fraudulent Traffic should it occur; and (iii) prevent continuation and/or recurrence of occurrences thereof.
- 1.60 **"Operating Procedures"** means the communication and engagement protocols, and other operating procedures, with which Agency must comply in providing the Services as agreed between the parties from time to time in accordance with Section 2.7.
- 1.61 **"Payment Terms"** means any terms for payment of the Fees, Expenses, Third Party Costs, as set out in the applicable Scope of Work;
- 1.62 **"Person"** means any individual, corporation, limited liability company, trust, joint venture, association, company, limited or general partnership, unincorporated organisation, governmental authority or other entity.
- 1.63 **"PI" or "Personal Information"** means any information or opinion:
- 1.63.1 which by itself or in combination with other information:
- (i) can identify an individual, including but not limited to name, address, telephone number, account numbers, demographic, email address,
- (ii) has, pursuant to Applicable Law, been determined to be information which can identify an individual and
- 1.63.2 any other information that relates to an individual who has been so identified or authenticated, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not.
- 1.64 **"Principal or Inventory Mark-Up"** means the maximum percentage by which Agency or a Holding Company Member may mark-up a Principal or Inventory Sale over the cost of such goods or services incurred by Agency or a Holding Company Member.
- 1.65 **"Principal or Inventory Sale"** the sale to Advertiser of Media Placements held by Agency or a Holding Company Member, regardless of how Agency or Holding Company Member obtained such Media Placements (e.g., through a Principal Transaction, Barter, private exchange or pooling arrangement, agency inventory, free time from Media, etc.).
- 1.66 **"Privacy Legislation"** means:
- 1.66.1 the *Privacy Act 1988* (Cth);
- 1.66.2 any legislation (to the extent that such legislation applies to the Advertiser or Agency or any other recipient of Personal Information) from time to time in force in any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia) affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal data; and

- 1.66.3 any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in Section 1.67.2 above, as amended from time to time.
- 1.67 **"Project"** means any project(s) agreed between the Parties from time to time under which Agency is to perform Services to Advertiser in addition to those under an Annual Scope of Work, as more fully described in this Agreement and the applicable Project Scope of Work.
- 1.68 **"Project Commencement Date"** means the commencement date of each Project as set out in the corresponding Project Scope of Work.
- 1.69 **"Project Completion Date"** means the date by which each Project is to be completed, as set out in the corresponding Project Scope of Work.
- 1.70 **"Project Scope(s) of Work"** means a Scope of Work setting out the Services to be provided by Agency for a Project as agreed between the Parties in writing, in the form as set out in Part 2 of Schedule 1, and as may be amended by the Parties from time to time in writing.
- 1.71 **"Project Term"** means the period during which the Services for each Project will be provided as specified in the applicable Scope of Work.
- 1.72 **"Rebates and Incentives"** means any and all third party payments (including cash rebates, non-cash rebates or other incentives); agency volume bonifications or "AVBs" (an agency's receipt of a volume discount or compensation from media buys); discounted or unpaid media space or inventory; volume, early payment or other discounts; commissions; compensation, refunds or bonuses; bonus inventory, free or discounted media, sponsorship or promotional space; Barter inventory; Services Provided at a Premium; consulting or research agreements, service level agreements or any other source of financial or other benefit receivable directly or indirectly by Agency or Holding Company Members from third parties, including Media Owner Group Members or Vendors, which are either directly or indirectly related to:
- 1.72.1 Advertiser's Media Placements; and/or
- 1.72.2 the aggregate traded volume across all or multiple advertisers of Agency or Holding Company Members with the relevant third party, including Media Owner Group Members and Vendors, regardless as to whether these amounts are calculated as a function of media volume or given as a fixed amount.
- 1.72.3 without limiting the foregoing, anything in the nature of Rebates or Incentives received by Agency or a Holding Company Member on account of creative or production work performed on Advertiser's behalf shall be included within the definition of "Rebates and Incentives" as used herein.
- 1.73 **"Records"** means:
- 1.73.1 all Media Placements and any and all other purchases and payments incurred under this Agreement and the financial records showing such transactions;
- 1.73.2 records relating to the calculation and verification of Expenses, Fees, Third Party Costs, Unbilled Media and Principal or Inventory Mark-Up;

- 1.73.3 all data, contracts, terms and conditions, purchases, sales and payments (received or incurred) and all other documentation (including purchase orders and Third Party Contracts and proof of appearance) between Agency and Holding Company Members with Media Owner Group Members or Vendors that provide time, space, goods or services to Advertiser or relate to Advertiser, the Media Placements, Rebates and Incentives or Unbilled Media;
- 1.73.4 any and all documentation reasonably required by the Auditor or Advertiser to validate the allocation of Unbilled Media, Rebates and Incentives, Services Provided at a Premium and any other discounts, rebates, bonuses, payments, free space, service level agreements, or any other value afforded to Agency and/or Holding Company Members contemporaneously or retrospectively by third parties, including Media Owner Group Members and Vendors. Where necessary for the calculation of Advertiser Rebates and Incentives, access will be given to total Agency and Holding Company Member volume data from Agency's and Holding Company Member's financial records; and
- 1.73.5 any other records reasonably required by the Auditor or Advertiser to audit pursuant to Section 18.
- 1.74 **"Related Bodies Corporate"** has the meaning given to that term in the Corporations Act.
- 1.75 **"Scope of Work"** means the Annual Scope of Work together with any Project Scope(s) of Work in the form set out in Schedule 1 as agreed and signed by the Parties from time to time containing a description of the relevant Services.
- 1.76 **"Services"** means:
- 1.76.1 the services to be supplied by Agency under this Agreement as set out in the relevant Scope(s) of Work, which includes the provision of the Deliverables;
- 1.76.2 any other services, functions or responsibilities specified in, or contemplated by, this Agreement;
- 1.76.3 any other services, functions and responsibilities agreed between the Parties in writing from time to time; and
- 1.76.4 any related or incidental services, functions or responsibilities not specifically described in the Agreement which are required for the proper performance and provision of the services referred to in Sections 1.77.1 to 1.77.3.
- 1.77 **"Services Provided at a Premium"** means:
- 1.77.1 any goods or services provided by Agency or Holding Company Members to third parties, including Media Owner Group Members and Vendors, which are above the true market value for such goods or services; or
- 1.77.2 any goods or services provided by third parties, including Media Owner Group Members or Vendors to Agency or Holding Company Members which are below the true market value for such goods or services.

- 1.78 "**Spam Act**" means the *Spam Act 2003* (Cth) and any successor legislation.
- 1.79 "**Tax Invoice**" has the meaning given to that term in GST Law.
- 1.80 "**Term**" means the duration of this Agreement as set out in Section 3.1.
- 1.81 "**Territory**" means Australia, unless expressly specified otherwise in the applicable Scope of Work.
- 1.82 "**Third Party Contracts**" means contracts entered into by Agency or Holding Company Members with Vendors or Media Owner Group Members in respect of Services.
- 1.83 "**Third Party Costs**" means all third party costs incurred by Agency or any Holding Company Member on behalf of Advertiser in performing the Services, including Vendor and Media Owner Group Member costs and Media Placements. For the avoidance of doubt, Third Party Costs do not include Agency's Fees or Expenses.
- 1.84 "**Unbilled Media**" means amounts in respect of Media Placements for which Advertiser has paid Agency in full or in part, but where the cost for the Media Placement remains unbilled in full or in part by the relevant Media Owner. The cost for Media Placements will not be considered Unbilled Media until [6 months] of the date of the Media Placement has aired or run.
- 1.85 "**Vendor**" means any Person that is required for the delivery, purchase or placement of the Media Placements and/or Agency's provision of Services hereunder, 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 Advies, etc.), and technical service providers (e.g., providers of ad serving/delivery, ad tracking, listening and community management tools and other technology/technical services). For the avoidance of doubt, subject to Section 6.2, a Vendor may also be a Holding Company Member or a Media Owner Group Member hereunder.
- 1.86 "**Viewability Standards**" means, with respect to display Media Placements, [] of the pixels for such Media Placement is in view at any point in time and, with respect to video Media Placements, [] of the video is on screen or viewable and at least [] of the video Media Placement is played, with audio on after user initiation. With respect to mobile Media Placements, Viewability Standards will be no less favourable than those used by Agency for any other Advertiser of Agency for the same or similar time, space, goods or services.
- 1.87 "**Whitelist**" means a list of Advertiser's approved third party websites as described in Section 7.
- 1.88 "**Year**" means the twelve (12) month period commencing on and from the Effective Date and each twelve (12) month period thereafter during the Term.

2. Appointment & Scope of Work

2.1 On and from the Effective Date:

- 2.1.1 Advertiser appoints Agency to provide the Services to Advertiser in the Territory, during the Term; and

- 2.1.2 Agency accepts the appointment referred to in Section 2.1.1
- 2.2 Agency must provide the Services to Advertiser in the Territory in accordance with the Annual Scope of Work and any Project Scopes of Work (if applicable) which are agreed to and executed between the Parties from time to time in writing in accordance with the terms of this Agreement.
- 2.3 Except as expressly permitted under a Scope of Work or by an Authorised Advertiser Approver in writing, all Services will be performed by Agency employees and Key Individuals and not by any other Person (e.g., not by a subcontractor, Holding Company Member, Vendor, etc.).
- 2.4 Agency shall remain responsible for the performance of all of its obligations under this Agreement, and for the performance of its obligations under this Agreement by any Vendor providing Services hereunder. Any agreement between Agency and a Vendor must contain terms and provisions consistent with those contained in this Agreement.
- 2.5 Agency will act in all Third Party Contracts with regard to the provision of Services set out in a Scope of Work as an agent for a disclosed principal, unless an Authorised Advertiser Approver agrees on a case by case basis to a Principal or Inventory Sale. Should an Authorised Advertiser Approver and Agency agree to a Principal or Inventory Sale from pre-identified third parties (including Holding Company Members) in certain Authorised instances, neither the transparency of such transactions nor Agency's duty to act in the best interest of Advertiser shall be limited.
- 2.6 The Parties may agree on new Scope of Work Projects from time to time by agreeing to new Scope of Work in writing which will automatically form part of this Agreement once signed by the Authorised Agency Approver and Authorised Advertiser Approver.
- 2.7 Agency must ensure that, when requested by Advertiser from time to time during the Term, Agency develops with Advertiser in good faith, a set of Operating Procedures with which the Agency must comply when providing the relevant Services to Advertiser. Agency acknowledges and agrees that any Operating Procedures developed and implemented under Section 2.7 may set out the procedure for:
- 2.7.1 planning processes;
 - 2.7.2 briefing and approval processes, including for any Media Plan;
 - 2.7.3 reporting details;
 - 2.7.4 performance reviews;
 - 2.7.5 such other services as specified by Advertiser.
- 2.8 The Annual Scope of Work may incorporate one or more Schedules which will form part of this Agreement for the duration of the Annual Scope of Work.
- 2.9 A Project Scope of Work may incorporate one or more Schedules which will form part of this Agreement only for the duration of that Project.
- 2.10 Upon execution of this Agreement, Agency will provide to Advertiser an executed Holding Company Acknowledgement and Agreement in the form set out in Schedule 2.

- 2.11 Agency acknowledges that:
- 2.11.1 Advertiser is not obliged to purchase any Services from Agency or any Vendor except as provided under this Agreement;
 - 2.11.2 The volume of Services which Advertiser requires Agency to provide under this Agreement may vary from time to time; and
 - 2.11.3 Advertiser does not in any way undertake or represent that the Agreement will generate a specified or guaranteed volume of business or revenue for Agency or any Vendor.

3. Term

- 3.1 This Agreement will commence on the Effective Date and will continue until terminated in accordance with Section 25.
- 3.2 Where the Parties agree on Projects in addition to the Annual Scope of Work, each such Project will commence on the Project Commencement Date and continue until the Project Completion Date, subject to earlier termination in accordance with Section 25.

4. Advertiser's Obligations

- 4.1 Advertiser will provide Agency with clear instructions as to its requirements for the Services to be included in any Project Scope of Work.
- 4.2 Without waiving any rights it has under this Agreement, Advertiser will promptly inform Agency if Advertiser considers that any Services provided to Advertiser by Agency are inadequate or non-compliant with this Agreement or the applicable Scope of Work.
- 4.3 Advertiser will provide to Agency promptly and at no charge any Advertiser Materials necessary to provide the Services. Advertiser will ensure that it has all rights and licenses in place to enable use of all Advertiser Materials by Agency in accordance with this Agreement and the applicable Scope of Work.
- 4.4 In consideration for the provision of the Services, Advertiser will pay the Agency the Fees, the Expenses and Third Party Costs (as applicable) in accordance with Section 16 of this Agreement.

5. Agency's Service Delivery

- 5.1 Agency will provide Advertiser with clear instructions as to Advertiser Materials it reasonably requires to provide the Services.
- 5.2 Agency must provide the Services:
- 5.2.1 using due care, skill, competence and diligence and with a level of knowledge and expertise as may be necessary or appropriate for its proper performance and provision of the Services;
 - 5.2.2 in accordance with this Agreement, any Scope of Work and Media Plan;

- 5.2.3 in accordance with any Operating Procedures;
 - 5.2.4 in a manner calculated to protect, enhance and not adversely interfere with the business or brand of the Advertiser or its Related Bodies Corporate;
 - 5.2.5 using industry and proprietary tools and data for the provision of Services that are generally accepted as suited to protect Advertiser's best interests;
 - 5.2.6 in accordance with all Applicable Laws;
 - 5.2.7 in accordance with all reasonable directions regarding the Services communicated to it from time to time by Advertiser;
 - 5.2.8 keeping Advertiser Materials and Advertiser Data that are in its possession or control safe and secure;
 - 5.2.9 delivering all Deliverables by the dates set out in the applicable Scope of Work or any other delivery date(s) agreed by the Parties in writing; and
 - 5.2.10 in accordance with the Agency Codes of Conduct.
- 5.3 If at any time Agency becomes aware that it may not be able to perform the Services or deliver any Deliverables by any date set out in the applicable Scope of Work (or any other deadline agreed by the Parties in writing), Agency will promptly notify Advertiser and give details of the reasons for the delay. Unless the delay is caused by Force Majeure, in which case the provisions of Section 27 will apply, Agency's failure to perform the Services would represent a material breach of this Agreement entitling Advertiser to terminate this Agreement if the breach is not remedied in accordance with Section 25.4.2.
- 5.4 Where Advertiser introduces a particular policy that, due to regulatory, legal or industry code or best practices requirements, is relevant to the Services, Agency will comply in a timely manner with that policy once provided to Agency in writing. Agency will comply with any other Advertiser policies that are supplied to it in writing. In the event of a conflict between this Agreement and an Advertiser policy, Agency will notify Advertiser in writing and the Parties will use their reasonable efforts to resolve the conflict in question.
- 5.5 Agency will maintain a business continuity and disaster recovery plan in respect of the provision of the Services and will provide a copy to Advertiser. Agency may revise the plan as necessary during the Term, but must keep Advertiser informed of any material changes to the plan.

6. Agency Services and Transparency

- 6.1 Should an Agency or a Holding Company Member earn interest on Advertiser funds to be used for Third Party Costs, Agency shall return to Advertiser the amount of the interest in its entirety to Advertiser.
- 6.2 Agency will notify Advertiser in writing at each instance if a recommended Media Owner or Vendor is also a Holding Company Member and obtain Advertiser's written approval, on a case-by-case basis, before commissioning services from any such Holding Company Member.

- 6.3 Agency will not (and will ensure that Holding Company Members do 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 Agency or a Holding Company Member and a Media Owner or Media Owner Group Member or Vendor, unless Advertiser has authorised such arrangement in writing. Agency and Holding Company Members shall disclose in writing any and all actual or potential Conflicts of Interest.
- 6.4 For each Media Plan, the Authorised Agency Approver must confirm in writing that the plan is free of undisclosed Conflicts of Interest.
- 6.5 Agency will purchase Media Placements in accordance with the Media Plans and any Operating Procedures or other authorisations provided by Advertiser.
- 6.6 Agency will use best efforts and skill in the selection and appointment of Media Owner Group Members and Vendors to optimise Advertiser's return on investment in the Media Placements and to reach the optimal objectives and desired consumer demographic and psychographic profiles of Advertiser with Media Placements.
- 6.7 Agency and Holding Company Members must disclose to Advertiser their policy regarding gifts to employees from Media Owner Group Members or Vendors, including but not limited to cash or rebates, and shall describe in writing how Agency and Holding Company Members enforce and ensure compliance with such policy. Agency and Holding Company Members will provide Advertiser with updates to the policy (if any) on an on-going basis.
- 6.8 Upon Advertiser request, Agency will obtain quotes from multiple Media Owners and Vendors for Media. Agency must not make a Media Placement without written approval by Advertiser and in accordance with any Operating Procedures.
- 6.9 Unless expressly agreed in writing otherwise, Agency will at all times act as a fiduciary and in the best interest of Advertiser.
- 6.10 Agency will at all times act in the best interests of Advertiser when negotiating and entering into Third Party Contracts. Agency will use best efforts to ensure that Third Party Contracts provide for terms that are consistent with, or more favourable to Advertiser than, the terms of this Agreement.
- 6.11 Agency will, to the extent applicable, require compliance by Media Owner Group Members with the Australian Internet Advertising Bureau (IAB) Guidelines for Ad Verification and Digital Workflow (or such other terms and conditions provided by Advertiser), all Applicable Laws (including with respect to cookies, self-regulatory guidelines, industry standards and best practices), Advertiser's standard privacy policy and Advertiser's promotional guidelines provided to Agency in writing, in each case as they may be amended from time to time.
- 6.12 Agency will use available industry systems, technology and proprietary tools which provide proof of appearance of Media Placements and ensure placement compliance with the insertion order, industry best practices, and Advertiser guidelines.
- 6.13 Agency will notify Advertiser in writing promptly if it becomes aware that any Media Owner Group Member or Vendor is, or is likely to, prevent from being published or aired or become unable, for

any reason, to publish or air any Media Placement which has been purchased by or on behalf of Agency for Advertiser.

- 6.14 Agency must disclose any Media Placements which are proposed to be included by it as part of a Principal or Inventory Sale. Agency and Advertiser will meet in good faith to discuss and agree in writing to the maximum Principal or Inventory Mark-Up amount for any agreed upon Principal or Inventory Sale. Agency will provide Advertiser with proof and certification that any Media Placements through a Principal or Inventory Sale were legitimately sourced and the favourable terms received on the Media in a Principal or Inventory Sale by Agency or the applicable third party (which may be a Holding Company Member), directly or indirectly, were not in whole or in part on account of Advertiser's spending with the applicable Media Owner Group or other Vendor.
- 6.15 Agency will provide ongoing training to Agency Associates and Key Individuals who work on Advertiser's behalf on Agency's obligations as an agent and/or principal for Advertiser and Agency's ethical, contractual and confidentiality obligations hereunder.

7. Content Verification, Brand Safety and Standards

- 7.1 At Advertiser's request, Agency will provide Advertiser with a list of URLs (including web pages) and other Media that Agency considers safe and protective of Advertiser's brand so that Advertiser can create its own Advertiser Whitelist to be used as a guide for Media Placements.
- 7.2 Unless otherwise agreed to in writing by Advertiser, Agency will use its best efforts to ensure that Media Placements will appear solely on websites on the Advertiser Whitelist.
- 7.3 Agency will not, without the prior written consent of Advertiser, place Media Placements on websites that it should reasonably be aware are, contain or link to the following content ("**Blacklist Content**"):
- 7.3.1 obscene, indecent or pornographic content (including child pornography);
 - 7.3.2 content that is hateful, threatening, harassing or abusive;
 - 7.3.3 violent content;
 - 7.3.4 content liable to incite racial hatred or other forms of unlawful discrimination;
 - 7.3.5 content liable to incite acts of terrorism;
 - 7.3.6 content containing excessive profanity;
 - 7.3.7 content relating to illegal drugs or drug paraphernalia;
 - 7.3.8 content relating to the sale of firearms, ammunition or other weapons;
 - 7.3.9 content that is defamatory or libelous;
 - 7.3.10 content relating to the sale or promotion of counterfeit goods;
 - 7.3.11 content that infringes any third party's Intellectual Property Rights, other proprietary rights or rights of publicity or privacy;

- 7.3.12 content that contains viruses, trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, surreptitiously intercept, detrimentally interfere with or expropriate any system, data or Personal Information;
- 7.3.13 content that is otherwise harmful, unlawful or illegal;
- 7.3.14 URLs (or web pages) that are fraudulent and/or are used for sourcing Non-Human and Fraudulent Traffic;
- 7.3.15 [alcohol-related content;]
- 7.3.16 [gambling-related content;]
- 7.3.17 [tobacco-related content;]
- 7.3.18 [content relating to prescription drugs;]
- 7.3.19 [blogs or unmoderated forums;]
- 7.3.20 [content that is harmful to minors in any way or otherwise unsuitable for them to view;]
- 7.3.21 [add additional as per Advertiser policies.]

Agency will use appropriate software tools to verify that any websites on the Advertiser Whitelist do not contain any Blacklist Content.

- 7.4 In the event that Agency discovers or is notified that a Media Placement has appeared on a website that contains or links to Blacklist Content, Agency will immediately notify Advertiser and use Agency's best efforts to remove the Media Placement immediately upon discovery or notification. Advertiser will not be liable to Agency for any payments to any Third Party in relation to Media Placement appearing on websites that contain or link to Blacklist Content. Notwithstanding the foregoing, Agency will not be in breach of this Section or any other Section in this Agreement if Media Placements are made on Advertiser Whitelist websites featuring Editorial Content about Blacklist Content. Further, Advertiser understands that certain publishers may not pre-screen user-generated content; in the event Advertiser instructs Agency to make Media Placements on such websites, Agency will use commercially reasonable efforts to ensure that Advertiser's Media Placements are promptly removed from such sites containing unacceptable user-generated content in accordance with Advertiser's instructions.
- 7.5 Agency will ensure that any Media Placement does not appear on any websites known to divert traffic to piracy sites.
- 7.6 Agency will undertake by all legally enforceable means, to ensure that all third parties to which Media Placements are delivered, displayed or made available have adopted and implemented commercially reasonable Non-Human and Fraudulent Traffic Prevention tactics. Without limiting the foregoing, Agency will use commercially reasonable efforts to implement Non-Human and Fraudulent Traffic Prevention, including without limitation, ensuring Media Owners and Vendors are maintaining best practices for Non-Human and Fraudulent Traffic Prevention.

- 7.7 Agency agrees that Advertiser will have no obligation, liability or otherwise in respect of Non-Human and Fraudulent Traffic and will not be billed or required to pay for Non-Human and Fraudulent Traffic. To the extent any payment attributable to Non-Human and Fraudulent Traffic is discovered to have been paid by Advertiser, Agency will, within five (5) days, cause the applicable Media Owner or Vendor to reimburse and refund such payment to Advertiser, together with reasonably adequate documentation to substantiate the accuracy of any such reimbursement or refund.
- 7.8 Agency will adopt and implement all commercially reasonable technology and methodologies to track and report to Advertiser all Media Placements and the flow of monies between the amount paid by Advertiser for such Media Placements and the monies that are ultimately paid to the Media Owners.
- 7.9 Agency will adopt and implement technology and methodologies to track and report to Advertiser accurate Media Placements using Accredited Vendors.
- 7.10 Agency must ensure that any electronic communications sent by it on behalf of an Advertiser or by a Media Owner pursuant to a Media Placement which refers to Advertiser, complies with the Spam Act.
- 7.11 Notwithstanding any other provision or agreement to the contrary, it is expressly agreed and acknowledged that Advertiser will not be obligated to pay for Media Placements which do not meet the Viewability Standards (where applicable). Viewability Standards will be measured using the viewable impression data generated by an Accredited Vendor for all tracking, reporting and invoicing purposes for applicable Media Placements, and Agency hereby agrees to accept Advertiser's Accredited Vendor as the basis for measurement and payment for all applicable Media Placements.
- 7.12 Agency will comply with any instructions provided by Advertiser in connection with Native Advertising. Such instructions may include ensuring that any such Native Advertising is clearly, conspicuously, and proximately labelled or identified to consumers as sponsored material or advertising copy in accordance with all Applicable Laws.
- 7.13 Agency will disclose in writing all technology employed (for example ad servers) for distribution or storage of Media Placements and related Advertiser Data, together with Agency's commercial rationale and net costs for using such technology. Advertiser has the right to audit and evaluate technology Vendors against Advertiser's requirements to determine effectiveness and objectivity. Advertiser may, in its sole discretion, direct Agency to use specific technology Vendors for the Services provided to Advertiser.

8. Rebates and Incentives

- 8.1 All transactions entered into on Advertiser's behalf by Agency and Holding Company Members, the flow of Advertiser's funds entrusted to Agency, and any Rebates and Incentives received by Agency and Holding Company Members from third parties, including Media Owner Group Members and Vendors, directly or indirectly, must be transparent and fully disclosed to Advertiser.
- 8.2 Agency and Holding Company Members will at no time receive or retain (without disclosure to Advertiser), either inside Australia or outside Australia, any Rebates and Incentives or other

benefits of any value from third parties, including Media Owner Group Members or Vendors, as a direct or indirect result of Advertiser's spending under this Agreement, unless any Advertiser Rebates and Incentives are passed on to Advertiser, in full.

- 8.3 Unless otherwise provided by Applicable Laws, Agency must provide Advertiser on a quarterly basis (during the Term and for twelve (12) months thereafter) with a full and accurate report which sets out in detail:
- 8.3.1 the rates and terms of payment offered to Agency or Holding Company Members in the ordinary course of business between the Agency or Holding Company Members (before any Rebates and Incentives have been applied) and a Media Owner Group Member for any Media Placements made by Agency or Holding Company Members on behalf of Advertiser;
 - 8.3.2 the gross amounts of Rebates and Incentives Agency or any Holding Company Member, directly or indirectly, receives or is entitled to receive in sufficient detail to permit an accurate assessment by Advertiser of the Advertiser Rebates and Incentives due to Advertiser;
 - 8.3.3 any actions by Advertiser, Agency or Holding Company Members that are required in order for the Rebates and Incentives to accrue; and
 - 8.3.4 any early payment discounts received by or eligible to be received by Agency or Holding Company Members from a Media Owner Group Member or Vendor. Advertiser is entitled to receive any early payment discounts received by Agency or Holding Company Member on account of Advertiser's Media Placements, unless Advertiser expressly chooses not to receive such discounts or Agency notifies Advertiser with reasonable advanced notice of the deadline to qualify for such early payment discounts and Advertiser fails to pay Agency for such Media Placement within the qualification period to receive such discounts.
- 8.4 Agency must provide to Advertiser in writing details of Rebates and Incentives, including the nature of and the amount of any of the Rebates and Incentives received by Agency or Holding Company Member from third parties, including Media Owner Group Members and Vendors, in respect of Advertiser, whether such Rebates and Incentives are reflected in the amount invoiced by the Media Owner or subsequently provided (even after the expiration of the Term) directly or indirectly to any Holding Company Member. Such information will indicate, in the event Agency or a Holding Company Member aggregates Advertiser's spending with other Agency or Holding Company Member Advertisers, the portion of such Rebates and Incentives allocated to Advertiser and the basis upon which such allocation is made to ensure that any such allocation is compliant with the formula provided in Section 1.7.
- 8.5 Subject to Section 8.6, Advertiser Rebates and Incentives must be passed on to Advertiser in the same manner in which they are received by Agency (or Holding Company Member or Vendor) within thirty (30) days of receipt of the same by Agency or Holding Company Member.
- 8.6 If Advertiser requires Rebates and Incentives to be passed back to Advertiser in any other manner than set out in Section 8.5 (including, but not limited to by way of credit note issued against old invoices, credit note against future Media Placements, or invoiced for payment by

Agency), it will provide Agency with prior written notice of its requirements in this regard and Agency must comply with such request.

- 8.7 Where Rebates or Incentives are provided by way of gifts, credits, discounts, or other Bartered inventory, Agency or Holding Company Member shall provide written details to Advertiser of such inventory and timing for when such inventory must be used.
- 8.8 Agency must at all times act in the best interests of the Advertiser in the provision of the Services including that it will take all reasonable steps to pursue third parties, including Media Owner Group Members and Vendors, for any Advertiser Rebates and Incentives.
- 8.9 Agency will keep Advertiser informed of any relevant discounted Media available to Advertiser on account of Agency's dealings with Media Owner Group Members together with any dates by which such discounted Media must be used by Advertiser in order to take advantage of the discount (and for the avoidance of doubt such discounted media space will be included in the definition of Rebates and Incentives for the purpose of this Agreement whether directly or indirectly related to Advertiser's Media Placements).

9. Unbilled Media

- 9.1 Agency will calculate and report to Advertiser any Unbilled Media arising on an annual basis (by no later than thirty (30) days after the end of each Year related to Unbilled Media arising in the previous Year). Agency will pay back such Unbilled Media to Advertiser by no later than sixty (60) days from the end of each Year.
- 9.2 Where Agency passes back monies for Unbilled Media to Advertiser and Agency subsequently receives (within a period of twelve (12) months from the date the monies for Unbilled Media was passed back to Advertiser) a valid Media Placement Tax Invoice from the Media Owner relating to the value of the Media Placement which has been passed back to Advertiser as Unbilled Media, Advertiser shall, upon receipt of Media Owner's invoice from Agency, repay the same to Agency in accordance with the Payment Terms set out in any Scope of Work.

10. Relationship; Exclusivity

- 10.1 Advertiser's relationship with Agency is non-exclusive and Advertiser is entitled to appoint any other agency to perform services and deliver deliverables which are the same as or similar to the Services.
- 10.2 Prior to providing any Services to Advertiser, Agency will inform Advertiser in writing of the existence of any contracts or business relationships that Agency and/or Holding Company Members have with companies manufacturing, distributing or selling Competing Products or Services. During the Term of this Agreement, Agency will not accept new assignments from any Person that markets or sells Competing Products or Services (**Agency Client**).
- 10.3 Key Individuals (while employed by Agency) will not, during the Term and for a period of six (6) months after each such individual ceases providing services to Advertiser, without the prior written consent of Advertiser, provide services to any Person (other than Advertiser) that markets or sells Competing Products or Services. Agency will ensure that there is no overlap of Associates or Key Individuals with any existing Agency Client that markets or sells Competing Products or Services and will take reasonable steps to ensure the confidentiality of Advertiser's

information including, restricting access to systems and erecting a “virtual wall” so that none of the Key Individuals or Associates working on Advertiser’s business shares any information with people working on Competing Products or Services.

11. Associates and Key Individuals

- 11.1 Agency will allocate suitable Associates with appropriate levels of experience and seniority to provide the Services. The composition of Agency’s team assigned to Advertiser and the allocation of their work time will comply with the specifications set out in the relevant Scopes of Work. Notwithstanding the foregoing, Advertiser acknowledges and agrees that it may be necessary for Agency to replace Associates providing the Services with alternative Associates with similar levels of seniority and experience.
- 11.2 Agency may only use Key Individuals for the provision of the Services, if it has obtained Advertiser’s prior written consent.
- 11.3 Agency must ensure that the Key Individuals are directly and substantially involved in the provision of the Services.
- 11.4 Should any Key Individual leave the Agency or cease to be involved in the provision of Services for any reason (including, by way of example, because the Key Individual is promoted to a different role within the Agency), Agency will consult with Advertiser and, subject to Advertiser’s prior written approval, appoint a suitable replacement. Any such change in the Key Individuals will occur with full and timely transfer of know-how at Agency’s sole expense.
- 11.5 Should Agency fail to provide at least the staffing mutually agreed upon by Advertiser and Agency during the term of the applicable Scope of Work, Advertiser will have the right, in addition to any other right set out herein, to prospectively renegotiate the Fees in light of any staffing deficiency.

12. Scope of Work Amendments and Project Cancellations

- 12.1 Subject to Sections 12.3 and 25.3, Advertiser may, by written notice to Agency, cancel, suspend or amend any Project or part thereof for any reason, including any plans, schedules or work in progress in respect of any Project. Agency will take all reasonable steps to comply with any such request provided that Agency is able to do so in accordance with any contractual obligations to Vendors.
- 12.2 For the avoidance of doubt, any cancellation or termination of the Annual Scope of Work will be subject to Advertiser giving notice to Agency, in accordance with Section 25.1.
- 12.3 In the event of any such cancellation, suspension or amendment pursuant to clause 12.1, Advertiser will reimburse Agency for all Fees up to the date of cancellation, suspension or amendment, together with any Third Party Costs or other Expenses incurred by Agency or to which Agency is committed as well as any charges or other costs imposed on Agency by Vendors arising from the cancellation, suspension or amendment provided that Agency will use reasonable efforts to mitigate any such Third Party Costs or Expenses wherever possible.

13. Approvals and Authority

- 13.1 This Agreement takes precedence over any other agreements relating to the same subject matter entered into by the Parties and cannot be superseded without authorisation by the signatories to this Agreement or such other person(s) authorised in writing by Advertiser.
- 13.2 For the purposes of this Agreement, any reference to "approval" to be given by Advertiser will mean Advertiser giving approval by one of the following methods:
- 13.2.1 Advertiser issuing a written confirmation of such approval by way of purchase order or otherwise bearing the signature of an Authorised Advertiser Approver;
- 13.2.2 e-mail from the individual business e-mail address of an Authorised Advertiser Approver;
or
- 13.2.3 the signature of an Authorised Advertiser Approver on Agency's documentation.
- 13.3 For the purposes of this Agreement, any reference to "approval" to be given by Agency will mean Agency giving approval by one of the following methods:
- 13.3.1 e-mail from the individual business e-mail address of an Authorised Agency Approver; or
- 13.3.2 the signature of an Authorised Agency Approver on Advertiser's documentation.
- 13.4 If a Party is requested to give approval under this Agreement or in connection with it (or disapproval where Advertiser has such right), such approval (or disapproval) will not be unreasonably withheld or delayed.
- 13.5 Without limiting Advertiser's rights of approval provided elsewhere in this Agreement, Agency must obtain Advertiser's prior written approval of:
- 13.5.1 any estimates or quotations for any Third Party Costs;
- 13.5.2 any Media Plans; and
- 13.5.3 any Media Placements.

Advertiser's approval of such estimates will be Agency's authority to enter into contracts with relevant third parties on behalf of Advertiser, subject to the terms and conditions of this Agreement.

14. Relationship Management and Contact Reports

- 14.1 During the Term, Agency will keep Advertiser informed as to the progress and status of all Services. Agency will prepare and submit written reports at such intervals and in such format as is agreed by the parties and will promptly inform Advertiser of any actual or anticipated problems relating to delivery of the Services.
- 14.2 During the Term, the Parties will arrange and attend meetings to review the status and progress of the Services and the Project(s), and to seek to resolve any issues that have arisen. Such

meetings will be held at such locations and at such intervals set out in the Operating Procedures or as otherwise agreed between the Parties.

15. Reporting

- 15.1 Agency will provide to Advertiser reporting and Advertiser Data, in addition to any other reports specified in a Scope of Work or the Operating Procedures. Such reporting and data will be supplied by Agency to Advertiser in relation to all of the Services which have been provided, at a frequency and in a form and format reasonably required by Advertiser. The reporting and data that will be supplied by Agency include, but are not limited to, the following: [Insert Details].
- 15.2 Advertiser will be provided with online access to relevant parts of Agency's systems where Advertiser will be able to review (and download/export if it so desires) the following information regarding the Services: [Insert Details]— e.g., third party technologies, including technologies used in programmatic or real time buying, which enable the purchase of programmatically traded media and data, including but not limited to agency trading desks and demand-side platforms]. Agency will provide appropriate training to Advertiser's staff and a reasonable level of ongoing technical support. All information provided will be classed as Confidential Information of Advertiser.
- 15.3 No later than [thirty (30) days] after the end of each Year, the Holding Company Chief Financial Officer shall provide to Advertiser's Chief Financial Officer an Annual Financial Compliance Certification.

16. Fees, Expenses, Third Party Costs and Invoicing

- 16.1 The Fees, Expenses and Third Party Costs will be invoiced by Agency in accordance with the Payment Terms set out in the applicable Scope of Work and will be payable (subject to Section 17.4) within [Insert Number] days of the date of the relevant Tax Invoice, or such other reasonable period as the Parties may agree in the applicable Scope of Work.
- 16.2 Where a Project is agreed in addition to the Annual Scope of Work, notwithstanding any other provision of this Agreement, Advertiser will not be obliged to pay Fees relating to that Project and Agency will not be obliged to supply any Services for a Project until each Party has signed the applicable Project Scope of Work.
- 16.3 The Parties may commence negotiations in good faith on or before [Insert Date] and then on or before [Insert Date] in each subsequent Year of the Term to agree to a new Annual Scope of Work for the next Year of the Term of this Agreement. If the Parties fail to reach agreement before the start of that Year, Advertiser will have the option of rolling forward the Annual Scope of Work for the previous Year without any increase whatsoever in the applicable Fees which apply to that Annual Scope of Work.
- 16.4 Any consideration, quotation, estimate or amount payable under this Agreement, including any non-monetary consideration (as reduced in accordance with Section 16.7 if required) (**Consideration**) is exclusive of GST.
- 16.5 If GST is or becomes payable on a Supply made under or in connection with this Agreement, an additional amount (**Additional Amount**) is payable by the party providing consideration for the

Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with GST Law.

- 16.6 The Additional Amount payable under Section 16.5 is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a valid tax invoice (**Tax Invoice**) within 14 days after the time of payment of the Additional Amount.
- 16.7 Despite any other provision in this Agreement, if an amount payable under or in connection with this Agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise, the amount payable must be reduced by the amount of any Input Tax Credit to which that party, or a related party, is entitled in respect of that amount incurred.
- 16.8 Advertiser reserves the right to withhold payment of any Tax Invoice or part of a Tax Invoice where Advertiser has a bona fide reason to challenge the validity or accuracy of such Tax Invoice. On receipt of any such Tax Invoice Advertiser will:
- 16.8.1 within ten (10) Business Days of discovery of the inaccuracy or disputed amounts, notify Agency in writing of the reason for such withholding;
 - 16.8.2 pay the undisputed part of such Tax Invoice in accordance with Section 16.1; and
 - 16.8.3 work promptly and in good faith with Agency to resolve any such dispute over the relevant Tax Invoice.
- 16.9 Where a late fee or other surcharge is invoiced by a Media Owner or Vendor against Agency due to a late payment and such late payment results from late payment by Advertiser with respect to the time, space, goods or services specified in the Media Owner or Vendor's Tax Invoice, Advertiser will reimburse to Agency within [Insert Number of Days] of a receipt of a Tax Invoice from Agency for the amount of such surcharge together with appropriate documentary evidence of such charge, together with any accrued interest charged by the Media Owner or Vendor in respect of the overdue amount.
- 16.10 Agency will be liable for any late advertising materials charge made by a Media Owner against Agency due to advertising materials being delivered late unless due to Advertiser's own negligent or willful act or omission, in which case Advertiser will reimburse Agency within [Insert Number of Days] of a receipt of a Tax Invoice from Agency for the amount of such late advertising materials charge together with appropriate documentary evidence of such charge.

17. Third Party Costs

- 17.1 Third Party Costs, including any costs associated with Media Placements must not be incurred, unless Advertiser has approved such Third Party costs in advance in writing.
- 17.2 Unless otherwise approved by Advertiser in writing, or set out in a Scope of Work, all Third Party Costs will be charged to Advertiser at net cost paid by Agency or its Related Bodies Corporate without any mark up and with full credit to Advertiser for all Rebates and Incentives obtained by Agency or any Holding Company Member.

- 17.3 Agency will advise Advertiser promptly of any changes in estimated Third Party Costs. If the sum paid or owing by Agency in respect of Third Party Costs is greater than the relevant sum approved by Advertiser, the amount of the difference will be disclosed and, unless agreed to in writing by an Authorised Advertiser Approver, such additional costs will be borne by Agency.
- 17.4 Agency will disclose to Advertiser all payment terms for Third Party Costs as negotiated and committed to with the relevant third party and will supply Advertiser with evidence of such payment terms on request and with copies of Third Party Contracts relating to the Services. Agency will notify Advertiser in writing as soon as reasonably practicable in the event a Media Owner or Vendor requires payment in advance or sooner than the payment terms set out in Section 16.1.

18. Audit and Access to Records

- 18.1 Advertiser will be entitled to appoint an independent Auditor(s) to: (i) audit the performance of the Services and Agency's compliance with this Agreement (including any prior agreements between Agency and Advertiser); and (ii) audit and benchmark Media Placements and Records. Advertiser will be entitled to determine the scope of any and all audits.
- 18.2 During the Term and for a period of seven (7) years after its termination, Agency will maintain clear, accurate, complete and up-to-date Records in respect of the performance of its and Holding Company Members' obligations under this Agreement, and such Records will be kept in accordance with generally accepted accounting principles (GAAP) consistently applied and in such manner as may be readily audited. Agency will procure compliance by Holding Company Members with its obligation to maintain Records as set out in this Agreement.
- 18.3 Agency will obtain at its own cost all necessary rights in Records with respect to all services or products which Agency or Holding Company Members obtain from Vendors to enable Agency to supply to Advertiser and its Auditor all such data as the Auditor reasonably requires to fully perform an audit hereunder, including with respect to the principle of full transparency in the flow of Advertiser's payments to Agency and any Rebates and Incentives received by Agency or Holding Company Members, and access to agreements between Agency or Holding Company Members and Media Owner Group Members or Vendors, to confirm whether such agreements relate at all to time, space, goods or services provided to Advertiser.
- 18.4 Except to the extent that any Records relate exclusively to Agency's Confidential Information or Agency's other Agency advertisers and do not in any manner, directly or indirectly, relate at all to Advertiser all rights in the Records (including Intellectual Property Rights and any data and information created, obtained, compiled or verified by Agency, including prices paid for Media Placements by Agency or Holding Company Members, directly or indirectly, on behalf of Advertiser) will belong to Advertiser, will constitute Confidential Information of Advertiser and will be deemed to be assigned to Advertiser under Section 24.1 for the purpose of this Agreement;
- 18.5 Agency and Holding Company Members will allow the Auditor access to all Records, including all documents and information to verify Principal or Inventory Mark-Ups and contracts and invoices for Advertiser's Media Placements (provided that Agency or Holding Company Members may redact from Third Party Contracts the individual names of other advertisers) and any such access will be at any time during normal business hours for the purposes of auditing or otherwise inspecting the Records. Agency and Holding Company Members will provide all Records and data in a format reasonably requested by the Auditor(s).

- 18.6 Should any audit or inspection of the Records by Advertiser reveal that Advertiser has been overcharged, Agency will reimburse to Advertiser:
- 18.6.1 the amount of the overcharge, plus interest at the greater amount of the rate of [Insert Percentage Number] % or the maximum amount allowable by law calculated from the due date up to the date of payment, within seven (7) days; and
 - 18.6.2 the third party costs charged by the Auditor, investigator, or legal counsel in respect of the audit, if such overcharge relates to the Fees and is more than [Insert Percentage Number] % of the Fees for the Year audited or if such overcharge relates to Media Placement costs and is more than [Insert Percentage Number] % of the Media Placement spending for the Year audited.
- 18.7 Agency and Holding Company Members must provide the Auditor all reasonable assistance in the performance of the audit. Advertiser and the Auditor will ensure that any information obtained in the course of the audit relating specifically to Agency's and Holding Company Members' business (excluding the Records) is kept in the strictest confidence. The report and results of any audit shall be considered Advertiser Confidential Information and Agency and Holding Company Members shall protect such information in accordance with Section 19 and the terms of this Agreement.

19. Confidentiality

- 19.1 Each Party acknowledges that, whether by virtue of and in the course of this Agreement or otherwise, it may receive or otherwise become aware of Confidential Information belonging to the other Party.
- 19.2 Confidential Information will include any document marked "Confidential", or any information which the receiving party has been informed is confidential or which it ought reasonably to expect the disclosing party would regard as confidential.
- 19.3 Confidential Information will exclude information which:
- 19.3.1 at the time of receipt by the receiving party is in the public domain;
 - 19.3.2 subsequently comes into the public domain through no fault of the receiving party or its Associates;
 - 19.3.3 is lawfully received by the receiving party from a third party on an unrestricted basis; and/or
 - 19.3.4 can be demonstrated to have already been known to the receiving party before receipt hereunder.
- 19.4 Each Party undertakes to maintain the confidentiality of the other Party's Confidential Information at all times and to use no less adequate measures than it uses in respect of its own confidential information to keep the other Party's Confidential Information reasonably secure. Without limiting the generality of the foregoing, each Party will institute, implement and maintain at all times during the Term appropriate information security measures designed to: (i) help ensure the security and confidentiality of the other Party's Confidential Information, (ii) reduce the risk of

reproduction, misuse, or modification of the other Party's Confidential Information (including, but not limited to, Personal Information, consumer data and cookies), (iii) identify potential threats or hazards to the security or integrity of the other Party's Confidential Information and help protect against any anticipated threats or hazards, and (iv) help protect against unauthorised access to or use of the other Party's Confidential Information.

- 19.5 Neither Party will at any time, whether during the Term or at any time thereafter, without the prior written approval of the other Party, use, disclose, exploit, copy or modify any of the other Party's Confidential Information (including, media audit reports), or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations in connection with this Agreement.
- 19.6 Agency undertakes to disclose Advertiser's Confidential Information only to those of its Associates to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.
- 19.7 Neither Party will be in breach of this Section 19 if it discloses the other Party's Confidential Information in circumstances where such disclosure is required by law, regulation or order of a competent authority, provided that the owner of the Confidential Information is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.
- 19.8 Each Party acknowledges that money damages may not be sufficient remedy for any prohibited or unauthorised disclosure or use of Confidential Information of the other Party and that the other Party will be entitled, in addition to any other remedies available at law or otherwise, to an order of specific performance or other equitable relief against the breaching Party, without needing to post bond or other surety.

20. Agency Representations and Warranties

- 20.1 Agency represents and warrants to Advertiser that:
- 20.1.1 it has full power and authority to enter into this Agreement and that by doing so it will not be in breach of any obligation to a third party;
- 20.1.2 any Associate, Media Owner, Media Owner Member, Holding Company Member or Vendor that Agency uses to perform the Services is and will be competent and suitable, whether as to qualifications, experience or otherwise, to provide the Services;
- 20.1.3 it has no conflict in providing the Services, and will provide continuous disclosure to Advertiser of any conflicts which may arise during the Term;
- 20.1.4 it has and will continue during the Term of this Agreement to have all licences, authorisations, consents, approval and permits required by all Applicable Laws in order to perform its obligations under this Agreement;
- 20.1.5 the provision of the Services by Agency, and their use by Advertiser, will not infringe the rights (including Intellectual Property Rights) of any third party;
- 20.1.6 the use by Advertiser of any Agency Information will not infringe the rights (including Intellectual Property Rights) of any third party; and

20.1.7 it will comply with all Applicable Laws in connection with its performance under this Agreement.

21. Advertiser Representations and Warranties

21.1 Advertiser represents and warrants to Agency that:

21.1.1 it has full power and authority to enter into this Agreement and that by doing so it will not be in breach of any obligation to a third party;

21.1.2 to the best of its knowledge and belief, Advertiser Materials will comply with all Applicable Laws.

22. Indemnification; Limitation of Liability

22.1 Agency will defend Advertiser Indemnitees from and against any and all Claims which any of them may suffer, incur, or which may be asserted against any of them, in whole or in part, to the extent by reason of, or to the extent in connection with, the following:

22.1.1 the Services provided by Agency, including its Associates, Key Individuals and Vendors and any of their respective suppliers or personnel (except to the extent such Claims are brought as a result of any inaccuracy, incompleteness or impropriety of information provided to Agency by Advertiser);

22.1.2 any breach of Agency's representations, warranties, covenants and obligations set out in this Agreement;

22.1.3 an act by Agency or its Associates of negligence or willful misconduct;

22.1.4 any death, injury to person or damage to property in connection with the Services caused by the acts or omissions of Agency or its Associates,

22.1.5 any breach by Agency Associates, Vendors or Key Individuals of Section 19 (Confidentiality), Section 24 (Intellectual Property), Section 31 (Privacy).

22.1.6 any alleged or actual violation by Agency of any Applicable Laws; or

22.1.7 Agency will further indemnify and hold harmless Advertiser Indemnitees from any and all Losses incurred by Advertiser Indemnitees in connection with such Advertiser Claims.

22.2 Advertiser will defend Agency Indemnitees from and against any and all Claims which any of them may suffer or incur, or which may be asserted against any of them in whole or in part, to the extent by reason of, or to the extent in connection with, the following:

22.2.1 acts by Advertiser of gross negligence or willful misconduct; and

22.2.2 death, injury to person or damage to tangible property arising from use of Advertiser's products.

22.3 Indemnification obligations are subject to the Indemnified Party complying with the following process in the event that a Claim arises:

- 22.3.1 the Indemnified Party must promptly notify the Indemnifying Party in writing of the Claim for which it is seeking indemnification;
 - 22.3.2 the Indemnified Party must not make any admission of liability, settlement or compromise without the prior written consent of the Indemnifying Party;
 - 22.3.3 the Indemnified Party must give the Indemnifying Party express authority to conduct all negotiations and litigation and to defend and/or settle all litigation arising from such Claim, provided that the Indemnifying Party regularly consults the Indemnified Party on the conduct and defense of the claim and does not settle or compromise such Claim without the prior written consent of the Indemnified Party, which will not be unreasonably withheld;
 - 22.3.4 the Indemnified Party must provide the Indemnifying Party with all available information and assistance in relation to such Claim as the Indemnifying Party may reasonably require at the Indemnifying Party's cost and expense; and
 - 22.3.5 Notwithstanding Section 22.3.3 above, if within ninety (90) days after the Indemnifying Party's receipt of notice of any such Claim, the Indemnifying Party fails to take action to defend or settle such Claim, the Indemnified Party may at the Indemnifying Party's expense undertake the defense, compromise or settlement of the Claim as it sees fit upon written notice to the other Party.
- 22.4 Nothing in this Agreement will exclude or in any way limit either Party's: (i) indemnification obligations, (ii) breach of its confidentiality obligations, (iii) gross negligence or willful misconduct, or (iv) any other liability to the extent such liability may not be excluded or limited as a matter of law.
 - 22.5 Subject to Section 22.4, in no event will either Party be liable under or in connection with this Agreement for:
 - 22.5.1 loss of actual or anticipated income or profits;
 - 22.5.2 any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

23. Insurance and Risk Management

- 23.1 Agency will take out and maintain insurance policies to the values set out in Schedule 5. Upon Advertiser's request, Agency must provide Advertiser with certificates of currency of insurances required to be effected by Agency:
- 23.2 Agency will implement risk management processes to reduce risks to the maximum extent possible, including, but not limited to risks associated with infringement of Intellectual Property Rights. Upon the request of Advertiser, Agency will provide Advertiser with its risk management protocol, which protocol will be subject to Advertiser's reasonable approval. Should Advertiser fail to approve any part of Agency's protocol, Agency will take such steps as necessary to address and correct any deficiencies cited by Advertiser.

23.3 Agency must notify Advertiser in writing of any claim and any event associated with this Agreement which is likely to give rise to a claim against the insurances effected by Agency, within five (5) Business Days after it becomes aware of such claim or event and provide such further information to Advertiser in relation to the claim or event as Advertiser may reasonably require.

24. Intellectual Property

24.1 Agency acknowledges that, as between Agency and Advertiser, Advertiser will own all rights, title and interest (including all Intellectual Property Rights) in and to any Advertiser Materials and Advertiser Data (including any modifications or adaptations of such Advertiser Materials or Advertiser Data produced in the course of providing the Services). Advertiser hereby grants to Agency a non-exclusive, non-transferrable license during the Term to use Advertiser Materials and Advertiser Data solely for the purposes of providing the Services.

24.2 Agency acknowledges and agrees that all Deliverables will constitute "works made for hire" and belong exclusively to Advertiser. To the extent that the ownership of any Deliverable or other original works of authorship do not vest in Advertiser by operation of law and in accordance with the foregoing, Agency hereby agrees, and will cause its Associates to agree, to the extent permitted by law, to irrevocably assign and hereby does irrevocably assign to Advertiser all of its and their respective rights, title and interest in and to any and all Deliverables and any and all proprietary rights contained therein. Agency will ensure and hereby agrees that all Associates creating such Deliverables have assigned to Agency (or Advertiser directly) all of their rights in such Deliverables on terms no less favourable to Advertiser than those set out herein.

24.3 Advertiser acknowledges and agrees that Agency Information may be incorporated, in whole or part, into the Deliverables and that, notwithstanding any other provision of this Agreement, Agency retains all rights and interest in and to Agency Information subject only to a perpetual, royalty-free, non-exclusive, non-transferrable worldwide irrevocable license granted to Advertiser and its current and future Related Bodies Corporate to use, modify, amend, create derivative works or otherwise alter such Agency Information solely to the extent necessary for Advertiser to use the Deliverables for its intended purpose. The foregoing license includes the right to grant any of the foregoing rights to third parties engaged by Advertiser or any of its Related Bodies Corporate, provided that such third parties use the foregoing solely for the benefit of Advertiser or such Related Bodies Corporate. Agency will seek Advertiser's prior written approval before incorporating third party materials into Deliverables and shall inform Advertiser in writing if Advertiser's ownership of Deliverables will be limited in any way by the rights of third parties.

24.4 Agency agrees, at Advertiser's request and expense, to take all such actions and execute all such documents as are necessary (in Advertiser's reasonable opinion) to enable Advertiser to obtain, defend or enforce its rights in the Deliverables, and will not do or fail to do any act which would or might prejudice Advertiser's rights under this Section 24.

25. Termination

25.1 Advertiser may terminate this Agreement and the Annual Scope of Work at any time after expiration of the Initial Period without cause by giving not less than ninety (90) days prior written notice to Agency.

- 25.2 Agency may terminate this Agreement and the Annual Scope of Work at any time after expiration of the Initial Period without cause by giving not less than one hundred and eighty (180) days prior written notice to Agency.
- 25.3 Advertiser may cancel or terminate a Project at any time subject to the provisions of Section 12.
- 25.4 In addition to any other termination rights set out in this Agreement, either Party may terminate this Agreement immediately upon written notice to the other Party:
- 25.4.1 pursuant to Section 267 (Force Majeure);
- 25.4.2 in the event of any material breach of this Agreement by the other Party which breach is not remediable or, if remediable, is not remedied within thirty (30) days after the service by the Party not in default of a written notice on the defaulting Party, specifying the nature of the breach and requiring such breach to be remedied;
- 25.4.3 if the other Party suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due; or
- 25.4.4 if the other Party becomes subject to an Insolvency Event.
- 25.4.5 Without limiting its rights in Section 25.4, Advertiser may terminate this Agreement immediately upon written notice to Agency if:
- (i) Agency does or omits to do anything which, in Advertiser's reasonable opinion, may adversely affect Advertiser's brand or the reputation of Advertiser or Advertiser's goodwill, or any of the products, services or brands sold or represented by Advertiser; or
 - (ii) there is a change in Control of Agency (except in respect of a change of Control notified to Advertiser to which Advertiser has not objected).

Consequences of Termination

- 25.5 Termination of a Project in accordance with the terms of this Agreement by either Party will not serve to terminate this Agreement (other than a Project) including any Annual Scope of Work, which will continue in full force and effect.
- 25.6 Upon termination of this Agreement under Section 25.1, all outstanding Scope of Works will also be terminated.
- 25.7 Upon termination of this Agreement, the Annual Scope of Work or a Project:
- 25.7.1 Except if termination is by Advertiser pursuant to Section 25.4, Advertiser will pay Agency all Fees, Expenses and Third Party Costs due to Agency (in accordance with Section 12 where relevant) up to the date of termination;
- 25.7.2 Each Party will on the reasonable request of the other Party promptly deliver or dispose of any and all materials and property belonging or relating to the other Party (including all Confidential Information) and all copies of the same, which are then in its possession,

custody or control and which relate to all affected Scope of Work, and will on the request of the other Party certify in writing that the same has been done;

- 25.7.3 Agency will co-operate in transferring and assigning, with the approval of the relevant third parties, all reservations, contracts and arrangements with third parties, Intellectual Property Rights in Deliverables to Advertiser or any successor agency of Advertiser;
- 25.7.4 Agency will return all outstanding monies to Advertiser in accordance with the timeframes agreed under this Agreement, including all Unbilled Media balances and Advertiser Rebates and Incentives;
- 25.7.5 Agency will provide Rebates and Incentives declarations and return Rebates and Incentives to Advertiser in accordance with the terms of this Agreement for all periods in which Advertiser's spend contributes, directly or indirectly, including all periods post termination.

26. Disputes

- 26.1 Subject to Section 26.6, the parties must attempt to settle by negotiation any Dispute in accordance with this Section before resorting to arbitration or litigation.
- 26.2 If a Party considers that a Dispute has arisen, that party must promptly send a notice to the other party (**Dispute Notice**) setting out a full description of the matters in dispute.
- 26.3 Any Dispute which is not resolved within five (5) Business Days of the Dispute Notice must be referred to an Authorised Agency Approver and Authorised Advertiser Approver, respectively.
- 26.4 If the Dispute is not resolved by the parties referred to in Section 26.3 within ten (10) Business Days of being referred to them, the Dispute must be referred to the [Advertiser Managing Director] to be resolved with the [Agency Managing Director].
- 26.5 If the Dispute is not resolved by the Parties referred to in Section 26.4 within fourteen (14) Business Days of being referred to them, or within such period as the Parties may otherwise agree, either party may commence or initiate legal proceedings.
- 26.6 A Party may commence court proceedings relating to any Dispute at any time if that party seeks urgent interlocutory relief.

27. Force Majeure

In the event that either Party will be rendered wholly or partially unable to carry out its obligations under this Agreement due to Force Majeure, then the performance of either Party or both parties, as they are affected by such cause, will be excused during the continuance of any inability so caused, but such inability will be remedied with all reasonable dispatch. In the event such Force Majeure affecting either Party continues for more than thirty (30) days, the Party not subject to the Force Majeure may terminate this Agreement. During the period of a Force Majeure, Advertiser will be entitled to seek an alternative service provider at its own cost with respect to the Services affected. Advertiser will be relieved of the obligation to pay any Fees or any other charges for the provision of the affected Services throughout the duration of such Force Majeure.

Notwithstanding the foregoing, in no event will any delay caused by a strike or other labour dispute within Agency excuse Agency's obligation to perform as required under this Agreement.

28. Notices

28.1 A notice given to a Party under or in connection with this Agreement will be in writing and sent to the Party at the address given in this Agreement or as otherwise notified in writing to the other Party, and addressed to **[Insert Job Titles of Each Party]**.

28.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage.	9.00 am on the second Business Day after posting.
Pre-paid airmail providing proof of postage.	9.00 am on the fifth Business Day after posting.

28.3 For the purpose of this Section and calculating receipt, all references to time are to local time in the place of deemed receipt.

28.4 This Section does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

29. Assignment and Sub-Contracting

29.1 Without limiting the generality of Section 2.3, Agency will not be entitled to sub-contract its performance of the Services without the prior written approval of an Authorised Advertiser Approver.

29.2 In the event that Advertiser authorises Agency to sub-contract its performance of the Services in accordance with Section 29.1:

29.2.1 any sub-contracting will not relieve Agency from its obligations to Advertiser under this Agreement, including its obligations of transparency and to avoid Conflicts of Interest;

29.2.2 Agency will ensure that any agreement it enters into which relates solely to the Services for Advertiser will be assignable to Advertiser at Advertiser's request and include a provision stating that Advertiser is the intended third party beneficiary of the subcontractor's obligations under its agreement with Agency and that Advertiser will have the right to directly enforce the terms and conditions of the agreement; and

29.2.3 Advertiser will have the right to require Agency to discharge any subcontractor that is no longer reasonably acceptable to Advertiser.

29.3 This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement is personal to Agency, and Agency may not directly or indirectly assign this Agreement (by operation of law or otherwise) or any of its rights or obligations under the Agreement without the prior written consent of Advertiser, including full or partial assignment, delegation to any agent or subcontractor, and any purported assignment not permitted hereunder will be null and void.

30. Publicity

30.1 Agency and Holding Company Members, together with their respective Associates will not, without Advertiser's prior written consent and a potential applicable fee in each instance, use Advertiser's or any of its Related Bodies Corporate', divisions' or brands' names or logos, or any of its employees' or agents' names or identities, or refer to any of them in any media release, public announcement or public disclosure relating to this Agreement or any Scope of Work including any promotional materials, web sites, customer lists, referral lists or business presentation.

30.2 No attribution to Agency or any Holding Company Member will appear on any Advertiser Properties, advertisement or other advertising material, without Advertiser's written prior approval by an Authorised Advertiser Approver. Agency and Holding Company Members may not link to any Advertiser Properties without Advertiser's written prior approval by an Authorised Advertiser Approver. Any approvals granted hereunder may be rescinded at any time.

31. Privacy and Data

31.1 Each Party warrants to the other that it is and will continue to be in compliance with, and be appropriately notified under, the terms of any applicable Privacy Legislation.

31.2 Unless otherwise agreed by an Authorised Advertiser Approver in writing, Agency agrees for itself and Holding Company Members and shall ensure that Media Owner Group Members and Vendors agree by contract or otherwise that they:

31.2.1 will not collect, use or store any Advertiser Data;

31.2.2 all Advertiser Data is owned by Advertiser;

31.2.3 Advertiser shall have the right to access, store or otherwise download, export, track, transfer or use Advertiser Data;

31.2.4 will delete or otherwise deal with Advertiser Data in accordance with Advertiser's direction;

31.2.5 will not disclose, sell, assign, lease or otherwise provide Advertiser Data to third parties,

31.2.6 will not commercially exploit Advertiser Data on behalf of itself or third parties;

- 31.2.7 aggregate Advertiser Data with the data of any third party;
- 31.2.8 will not use the Advertiser Data for any purpose other than for the provision of Services.
- 31.3 Agency will process Advertiser Data in the course of providing the Services as a data processor on behalf of Advertiser. Agency will process Advertiser Data solely in accordance with Advertiser's instructions and such policies as may be provided by Advertiser from time to time and only for the purpose of providing the Services. Advertiser shall have the right to require that Agency use specific Vendors with respect to where, how and in what manner Advertiser Data is collected, used, stored and disclosed.
- 31.4 Agency will not and will ensure that its Associates do not use cookies to collect data from any individual who has opted out of receiving cookies from Agency or Advertiser whether through Agency's own notice and consent mechanisms or those provided on Advertiser Properties.
- 31.5 Where Agency or its Associates uses any Agency Data in the course of providing the Services Agency will ensure that all such use is in accordance with Privacy Legislation and that any required consents have been provided by the data subjects.
- 31.6 Where Agency or its Associates processes PI on behalf of Advertiser, then Agency will, and will procure that its Associates will:
 - 31.6.1 process such data solely in accordance with Advertiser's instructions from time to time and in accordance with its duties under Privacy Legislation;
 - 31.6.2 adopt and maintain reasonably appropriate security and organisational measures against unauthorised, unlawful processing, accidental loss or destruction of such data;
 - 31.6.3 notify Advertiser promptly in the event that it or its Associates receive any request from a data subject for access to that person's personal information, where such personal information is processed by or on behalf of Agency as part of the Services; and
 - 31.6.4 notify Advertiser promptly in the event that it or its Associates receive any complaint, notice or communication that relates directly to its compliance with Privacy Legislation and/or the processing of personal information under or in connection with this Agreement.

32. General

- 32.1 This Agreement will take precedence over and supersedes any other agreements or terms and conditions between Advertiser and Agency and Holding Company Members relating to Media Placements (including but not limited to any trading desk or inventory media terms and conditions which are made available to Advertiser from time to time). Any attempt to amend this Agreement by the Parties will not be valid unless signed by the Authorised Advertiser Approver in writing. For the avoidance of doubt, the signature or acceptance by a member of staff of Advertiser to other contractual terms with Agency or Holding Company Members will not be valid, unless and until the Authorised Advertiser Approver has signed such contractual terms.
- 32.2 Unless the context otherwise requires, the words "include" and "including" will be construed without limitation.

- 32.3 The failure of either Party to enforce or exercise at any time any term or any right under this Agreement does not constitute and will not be construed as a waiver of such term or right and will in no way affect that Party's later right to enforce or to exercise it.
- 32.4 Provisions of this Agreement which are either expressed to survive its termination or which from their nature or context are contemplated to survive termination (including audit provisions) will remain in full force and effect notwithstanding termination of this Agreement.
- 32.5 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term will, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and will in no way affect the legality, validity or enforceability of the remaining terms provided that if any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification(s) as may be necessary to make it valid.
- 32.6 This Agreement contains all the terms agreed between the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. Each of the Parties acknowledges and agrees that:
- 32.6.1 in entering into this Agreement it has not relied on, and will have no remedy in respect of, any statement, representation, warranty or understanding other than the statements, representations, warranties and understandings expressly set out in this Agreement; and
- 32.6.2 its only remedies in connection with any statements, representations, warranties and understandings expressly set out in this Agreement will be for breach of contract as provided in this Agreement. Nothing in this Section 32.6.2 will, however, operate to limit or exclude any liability for fraud.
- 32.7 No modification or variation of this Agreement will be valid unless it is in writing and signed by each of the Parties. Unless expressly set out in this Agreement, no modification or variation of this Agreement will:
- 32.7.1 be valid if made by e-mail;
- 32.7.2 be construed as a general waiver of any provisions of this Agreement; or
- 32.7.3 affect any rights, obligations or liabilities under this Agreement which have already accrued up to the date of such modification or waiver. The rights and obligations of the Parties will remain in full force and effect, except and only to the extent that they are so modified or varied.
- 32.8 Except as expressly provided in this Agreement, nothing in this Agreement is intended to or will operate to create a partnership, trust or joint venture of any kind between the Parties or to authorise either Party to act as agent for the other, and neither Party will have authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 32.9 Nothing in this Agreement, express or implied, will create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement.

- 32.10 This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by PDF file (portable document format file) will be as effective as delivery of a manually executed counterpart of this Agreement.
- 32.11 In this Agreement, references to Sections, schedules and appendices are to Sections of and schedules to and appendices to this Agreement. Where any provision contained in the Schedules or a Scope of Work conflicts with any provision of the General Terms the following order of precedence will apply (unless otherwise expressly stated in the Scope of Work):
- 32.11.1 Schedules;
- 32.11.2 General Terms;
- 32.11.3 Scope of Work;
- 32.12 Paragraph headings in this Agreement are for ease of reference only and will be disregarded in construing or interpreting the Agreement.
- 32.13 For purposes of this Agreement, whenever the context requires:
- 32.13.1 the singular number shall include the plural, and vice versa;
- 32.13.2 the masculine gender shall include the feminine and neuter genders, the feminine gender shall include the masculine and neuter genders, the neuter gender shall include the masculine and feminine genders; and
- 32.13.3 the words include and including, and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words without limitation.
- 32.14 Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.
- 32.15 This Agreement will be governed by and construed in accordance with the laws of the State of New South Wales applicable to contracts made and performed in such State without regard to conflicts of law principles. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the State of New South Wales over any dispute arising out of or relating to this Agreement and each Party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action, or proceeding related thereto may be heard and determined in such courts. The Parties irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
- 32.16 Except as otherwise provided in this Agreement, each party must pay its own costs and expenses of negotiation, preparing and executing this Agreement and any other instrument executed under this Agreement.

32.17 Each of the Parties acknowledge that in relation to this Agreement, each Party has received legal advice or has had the opportunity of obtaining legal advice.

Signed by:.....

by (print name):.....

As an Authorised Agency Approver for and on behalf of

[Agency]

Date.....

Signed by:.....

by (print name):.....

As an Authorised Advertiser Approver for and on behalf of

[Advertiser]

Date.....

Schedule 1

Scopes of Work

Part 1 - Annual Scope of Work

This Annual Scope of Work is issued pursuant to and is in accordance with the Master Media Planning & Buying Services Agreement entered into between the parties dated [Insert Effective Date of Agreement].

Accounts

[Specify Advertiser products/brands in relation to which Agency will be providing services]

Territory

[If services will be supplied outside the Australia, then specify any additional territories]

Advertiser Related Bodies Corporate

[If relevant, specify any Advertiser Related Bodies Corporate that you wish to be able to enforce the terms of the agreement]

Services/Deliverables

[Describe the Services and Deliverables to be supplied by Agency including any service levels – if only certain types of media will be covered then this should be clarified. In some cases, for example where Agency will be providing creative services, the purpose of the Deliverables and how Advertiser intends to make use of them should be stated, as this information will be relevant with respect to the third party licenses, consents and clearances that Agency needs to obtain.]

Example headings and service descriptions:

Media Planning (including all traditional and digital media)

- General account management of full media strategy and planning service
- Development and analysis of Advertiser's paid media strategy
- Supply of detailed media plans and any updates or amendments to those plans (as required)
- Identification and selection of channels and setting relevant goals per channel
- Budget setting, analysis and justification
- Providing regular insights, market updates, training and know how sharing on topics relevant to Advertiser's media planning including upcoming trends and developments
- Monitoring paid media activities of Advertiser's competitors and providing [Insert Frequency, e.g., Monthly] overview

- Cooperating fully with Advertiser strategic partners (e.g. Google, Facebook, Twitter, etc.) and third party technology providers (e.g. Data Management Platforms or Demand Side Platforms)
- Working in full collaboration with other agencies instructed by Advertiser (at Advertiser's request)

Media Buying (including all traditional and digital media)

- General account management of full media buying service
- Negotiation of agreements and placing of orders with Media Owners (including negotiation of optimised rebates/discounts and payment terms)
- Campaign optimisation
- Monitoring of placements and compliance with agreements by Media Owners (e.g. ensuring that placements reflect the relevant orders and Tax Invoices, Advertiser guidelines have been followed, etc.)
- Pre- and post-campaign analysis and reporting. Media Placement reporting should include at minimum (where relevant):
 - Webpage (URL) placement of all impressions, and instances of non-approved placements (whitelist/blacklist)
 - Performance versus all agreed target metrics (for example audience, CPM, click-through rates)
 - Declaration of all audience extension/sourced traffic unless otherwise agreed
 - Viewability rates at the agreed standards (for example, percentage of advertisement and duration), after deduction of invalid traffic (for example, invalid impressions)
 - Presence of invalid traffic by Media Owner/webpage
 - Reporting of underperformance of trades based on viewable impressions, with associated compensation methodology
 - Completion rates for all online video
 - Actual net cost of all placements by Media Owner/site and format, in aggregated and individual form
 - Click-through rates or other agreed metrics by Media Owner/site and format
- Online audience measurement through third party tools, such as Nielsen OCR
- Cooperating fully with Advertiser strategic partners (e.g. Google, Facebook, Twitter, etc.) and third party technology providers (e.g. Data Management Platforms or Demand Side Platforms)
- Working in full collaboration with other agencies instructed by Advertiser (at Advertiser's request)]

Fees and Payment Terms

[Describe how the fees payable to Agency will be calculated and invoiced, any processes for the issue of purchase orders (including for example, whether Fees will be paid on a commission basis, via a fixed fee, on a time/materials basis, etc and timelines for invoicing and payment.]

It may be that the parties decide to use a combination of these different methods, impose maximum or minimum fee caps, etc. If fees will be charged on a time/materials basis, then Agency's standard rate card should be attached. Relevant Tax Invoice dates or milestones that trigger payment should be stated. The rules that apply to the recovery of expenses should also be set out here.

Examples of different wording for Fees:

Commission

The Fees will be calculated on the following basis: Advertiser will pay Agency a commission of [Insert Percentage Number] % ("**Agreed Commission**") of the Net Media Spend. For the avoidance of doubt, the Agreed Commission will be payable in addition to all Third Party Costs.

Annual Fee

Advertiser will pay Agency the Fee of \$[Insert Amount] in respect of each Year of the Services, payable in equal monthly installments. For the avoidance of doubt, the Fee will be payable in addition to all Third Party Costs.

This Fee is fixed for each Year of this Agreement and will not be increased or decreased unless the parties mutually agree to amend the Annual Scope of Work in accordance with Section 12.

Time Charges

The Fees will be calculated using the hourly charge out rates shown in the Annual Scope of Work. For the avoidance of doubt, the Fees will be payable in addition to all Third Party Costs.

Payment By Results

In addition to the Fees set out above, if Agency meets the criteria specified in this Annual Scope of Work for a performance related payment, Advertiser will also pay Agency the performance related payment.

Expenses, Third Party Costs, Unbilled Media and Payment Terms

[Detail processes and timelines for the invoicing and payment of Expenses, Third Party Costs and any Unbilled Media]

Timetable

[Detail any timelines for different phases of the Services or key milestones in the supply of the Deliverables]

Advertiser Materials

[Provide details of any materials or information that Advertiser will provide to Agency (e.g. documents, imagery, etc.)]

License Duration and Purpose

[State the purposes for which any licenses are granted under Section 24, their duration and any other applicable restrictions]

Key Individuals

[Insert details of key employees from Agency that you wish to be involved in providing the Services, if relevant]

Authorised Agency Approver

[Insert details of the directors or other senior officers or Associates who have the authority to bind the Agency in relation to the Services]

Authorised Advertiser Approver

[Insert details of the directors or other senior officers or Associates who have the authority to bind the Advertiser in relation to the Services]

Special Terms

[Provide any special terms which you wish to take precedence over the General Terms and/or the Schedules]

Additional Appendices

[Insert]

Part 2 - Project Scope of Work

This Project Scope of Work is issued pursuant to and is in accordance with the **Master Media Planning & Buying Services Agreement** entered into between the parties dated **[Insert Effective Date of Agreement]**.

Project

[Provide an overview of the Project]

Project Commencement Date

[Set out the date on which the Project will commence]

Project Term

[Set out the duration of the Project]

Project Completion Date

[Set out the date on which the Project will complete]

Accounts

[Specify Advertiser products/brands in relation to which Agency will be providing services]

Territory

[If services will be supplied outside the Australia, then specify any additional territories]

Advertiser Related Bodies Corporate

[If relevant, specify any Advertiser Related Bodies Corporate that you wish to be able to enforce the terms of the Agreement in relation to the Project]

Services/Deliverables

[Describe the Services and Deliverables to be supplied by Agency for this Project including any service levels. If only certain types of media will be covered then this should be clarified. In some cases, for example where Agency will be providing creative services, the purpose of the Deliverables and how Advertiser intends to make use of them should be stated, as this information will be relevant with respect to the third party licenses, consents and clearances that Agency needs to obtain. Example headings and service descriptions]:

Media Planning (including all traditional and digital media)

- General account management of full media strategy and planning service
- Development and analysis of Advertiser's paid media strategy

- Supply of detailed media plans and any updates or amendments to those plans (as required)
- Identification and selection of channels and setting relevant goals per channel
- Budget setting, analysis and justification
- Providing regular insights, market updates, training and know how sharing on topics relevant to Advertiser's media planning including upcoming trends and developments
- Monitoring paid media activities of Advertiser's competitors and providing [Insert Frequency, e.g., Monthly] overview
- Cooperating fully with Advertiser strategic partners (e.g. Google, Facebook, Twitter, etc.) and third party technology providers (e.g. Data Management Platforms or Demand Side Platforms)
- Working in full collaboration with other agencies instructed by Advertiser (at Advertiser's request)

Media Buying (including all traditional and digital media)

- General account management of full media buying service
- Negotiation of agreements and placing of orders with media vendors/owners (including negotiation of optimised rebates/discounts and payment terms)
- Campaign optimisation
- Monitoring of placements and compliance with agreements by media vendors/owners (e.g. ensuring that placements reflect the relevant orders and Tax Invoices, Advertiser guidelines have been followed, etc.)
- Pre- and post-campaign analysis
- Online audience measurement through third party tools such as Nielsen OCR
- Cooperating fully with Advertiser strategic partners (e.g. Google, Facebook, Twitter, etc.) and third party technology providers (e.g. Data Management Platforms or Demand Side Platforms)
- Working in full collaboration with other agencies instructed by Advertiser (at Advertiser's request)]

Fees and Payment Terms

[Describe how the fees payable to Agency will be calculated and invoiced, any processes and procedures for the issue of purchase orders (including for example, whether Fees will be paid on a commission basis, via a fixed fee, on a time/materials basis, etc and timelines for invoicing and payment.).

It may be that the parties decide to use a combination of these different methods, impose maximum or minimum fee caps, etc. If fees will be charged on a time/materials basis then Agency's standard rate card should be attached. Relevant Tax Invoice dates or milestones that trigger payment should be stated. The rules that apply to the recovery of expenses should also be set out here. Examples of different wording for Fees:

Commission

The Fees will be calculated on the following basis: Advertiser will pay Agency a commission of [Insert Percentage Amount] % ("**Agreed Commission**") of the Net Media Spend. For the avoidance of doubt, the Agreed Commission will be payable in addition to all Third Party Costs.

Annual Fee

Advertiser will pay Agency the Fee of \$[Insert Amount] in respect of each Year of the Services, payable in equal monthly instalments. For the avoidance of doubt, the Fee will be payable in addition to all Third Party Costs

Time Charges

The Fees will be calculated using the hourly charge out rates shown in the Project Scope of Work. For the avoidance of doubt, the Fees will be payable in addition to all Third Party Costs.

Payment By Results

In addition to the Fees set out above, if Agency meets the criteria specified in this Project Scope of Work for a performance related payment, Advertiser will also pay Agency the performance related payment.

Expenses, Third Party Costs, Unbilled Media and Payment Terms

[Detail processes and timelines for the invoicing and payment of Expenses, Third Party Costs and Unbilled Media]

Timetable

[Detail any timelines for different phases of the Services or key milestones in the supply of the Deliverables]

Advertiser Materials

[Provide details of any materials or information that Advertiser will provide to Agency (e.g. documents, imagery, etc.)]

License Duration and Purpose

[State the purposes for which any licenses are granted under Section 24, their duration and any other applicable restrictions]

Key Individuals

[Insert details of key employees from Agency that you wish to be involved in the Project, if relevant]

Authorised Agency Approver

[Insert details of the directors or other senior officers or Associates who have the authority to bind the Agency in relation to the Services]

Authorised Advertiser Approver

[Insert details of the directors or other senior officers or Associates who have the authority to bind the Advertiser in relation to the Services]

Special Terms

[Provide any special terms which you wish to take precedence over the General Terms and/or the Schedules]

Additional Appendices

[Insert]

Schedule 2

Holding Company Acknowledgement and Agreement

[Advertiser]
[Street Address]
[City, State and Postcode]
Attn: [Advertiser CFO or CMO]

[Date]

To Whom it May Concern:

Reference is hereby drawn to a certain Master Media Planning & Buying Services Agreement by and between [Agency] ("Agency") and [Advertiser] ("Advertiser") effective as of [Month] [Day], 20____ (the "Agreement").

Wherever in this letter references appear in capital letters, such references shall be as defined in the Agreement.

For good and valuable consideration, the receipt whereof is hereby acknowledged and as an inducement for Advertiser to enter into the Agreement with Agency, the undersigned, on behalf of [Holding Company] ("Holding Company"), acknowledges and agrees as follows:

- Holding Company fully understands the Agreement;
- Transparency in all financial matters relating to payments made by Advertiser to Agency for Media Placements is of utmost importance;
- To verify the accuracy and transparency of Agency's Services under the Agreement, Advertiser requires the right to audit contracts, documents and information relating to the Agency, the Holding Company, and Holding Company Members;
- Advertiser is entitled to and will receive all Rebates or Incentives allocated to Advertiser as provided in the Agreement;
- Holding Company will and will ensure that it and the Holding Company Members comply with Section 18 (Audit and Access to Records) of the Agreement should Advertiser request that they do so;
- In all other respects where the Agreement imposes obligations or duties on the Holding Company or Holding Company Members, the Holding Company agrees and will cause the Holding Company Members to comply with such obligations and duties;
- Holding Company will take all reasonable efforts to ensure that it and Holding Company Members do not engage in activities that constitute Conflicts of Interest.

[Holding Company]

By: _____

Name: _____

Title: _____

Schedule 3

Annual Financial Compliance Certification

[Date]

[Full Name of Advertiser CFO]

[Advertiser]

[Address]

[Address]

[City, State, Postcode]

Re: Annual Financial Compliance Certification

Dear [Advertiser CFO Surname]:

Reference is hereby made to a certain Master Media Planning & Buying Services Agreement dated [Date of Execution] between [Advertiser] (“Advertiser”) and [Agency] (“Agency”) and any amendments thereto that may have been entered into by Advertiser and Agency from time to time (collectively the “Agreement”). Capitalised references in this letter are as defined and used in the Agreement.

As the Chief Financial Officer of [Holding Company] (“Holding Company”), parent of Agency, I have read and understand the Agreement and hereby certify that I have conducted an appropriate review of all Services provided under the Agreement and to the best of my knowledge Agency, Holding Company, and Holding Company Members together with their respective Associates have complied with all financial and disclosure obligations and limitations under the Agreement including, but not limited to the sections of the Agreement relating to Agency Services and Transparency, Rebates and Incentives, Principal or Inventory Mark-Up, Unbilled Media, Confidentiality, and Conflicts of Interest.

Nothing in this letter modifies or amends the respective rights and obligations of Advertiser and Agency under the Agreement.

[Holding Company]

By: _____
[Full Name of Holding Company CFO]
Chief Financial Officer

Schedule 4

Holding Company and Holding Company Members

[Insert Holding Company Corporate Tree]

Schedule 5

Insurance

Agency will at all times during the Term and for two (2) years thereafter, without limiting Agency's liability to Advertiser, maintain the following insurance coverage with a reputable Australian insurer:

(i) public and products liability insurance appropriate to Agency's activities, with Advertiser named as an additional insured to Agency for an amount of not less than A\$[20 million], for any one occurrence in respect of any liability for bodily injury (including death) of any person, personal injury, or property damage arising out of or in connection with the performance of the Services or this Agreement;

(ii) Worker's Compensation insurance in accordance with applicable awards or legislation and insurance against common law liability to any person employed by Agency in connection with the Services and this Agreement.

(ii) professional indemnity insurance for an amount of not less than A\$[20 million] in respect of any one claim and in the annual aggregate, for liability arising from breach of professional duty or breach of Agency's obligations under this Agreement, whether such liability arises in contract or otherwise by reason of any act, error or omission by Agency;

Agency is solely responsible to inform itself of the types or amounts of insurance it may need beyond these requirements to protect itself from liability or loss.

This Schedule 5 will in no way affect the indemnification, remedies or warranty provisions of this Agreement.

Schedule 6

Codes of Conduct

Advertiser Codes of Conduct

[Insert]

Agency Codes of Conduct

[Insert]

Schedule 7

Competing Products or Services

[Insert]