

# GENERAL TERMS

## 1 DEFINITIONS

**Aggregated Data** means anonymously aggregated information or data (including statistical information and data sets relating to customer usage profiles, purchasing behaviours and patterns) derived or generated in connection with the provision of the Services.

**Agreement** means the General Terms, applicable Product Terms and the Statement of Work;

**Business Day** means a day that is not a Saturday, Sunday, national public holiday or national bank holiday in the place within Australia where the Services are being provided;

**Client** is the party to whom Engage Australia is supplying the Services;

**Client Materials** means:

- (a) all text, data, images, documents, reports, logos, trademarks, copy, electronic files, proofs, designs, product descriptions and other materials, whether electronic or in hard copy form, submitted to Engage Australia by or on behalf of the Client for the purposes of providing the Services, and
- (b) any information or data that is imported by or on behalf of the Client in connection with the provision of the Services or the Client's use of technology services hosted by or on behalf of Engage Australia;

**Confidential Information** means any information of or relating to the business, data, systems, software and information technology systems, finances, operations, customers, fees or pricing, properties, assets or affairs of a party or a Related Body Corporate which is or has been disclosed by a party to the other party or learnt or acquired by the other party during the provision of the Services, whether orally, electronically or in writing;

**Fees** means the service fees payable by the Client as may be specified in the SOW;

**Force Majeure** means any event or circumstances beyond a party's control, including: acts of God, strikes, lockouts, third party service provider failures, telecommunications or equipment failures, network faults, power or water outages, unscheduled maintenance and repair or legislative changes;

**General Terms** means these general terms which are applicable to all of the Services being supplied;

**Intellectual Property** includes copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), trademarks, designs, circuit layouts, domain names, rights in databases, confidential information, trade secrets, know-how, and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing;

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the jurisdiction in which the Services are being supplied;

**Master Services Agreement (MSA)** means a formal agreement executed by an authorised representative of each party setting out the terms and conditions upon which the Services will be supplied, if any;

**Personal Information** has the meaning as defined in the Privacy Act from time to time;

**Privacy Act** means the *Privacy Act 1988* (Cth) and the Australian Privacy Principles contained in that Act, as amended from time to time;

**Product Terms** mean the unique service terms applicable to the Services being supplied, available at [Engage-Au.com](http://Engage-Au.com) or upon request;

**Related Body Corporate** has the meaning given to it in section 50 of the *Corporations Act 2001 (Cth)*;

**Engage Australia** means the Engage Australia company group member supplying the Services;

**Engage Australia Affiliate** means a Engage Australia Related Body Corporate or any other Engage Australia company group member specified in the Product Terms;

**Services** means the services and any deliverables set out in the SOW and any further services agreed in writing between the parties;

**Statement of Work (SOW)** means a document setting out service requirements and the commercial terms including fees and pricing, set out in a quotation, proposal, client brief, order or a statement of work, as the case may be;

**Term** means the term specified in the SOW, including any renewals.

## 2 TERMS OF SERVICE

- 2.1 Upon acceptance by Engage Australia of an order or the execution by both parties of an MSA, an individual contract for the supply of Services will be formed incorporating these General Term and any applicable Product Terms.
- 2.2 If there is any conflict of meaning between information contained in the documents which form part of the Agreement, the order of precedence will be as follows:
  - (a) the Statement of Work;
  - (b) the Product Terms;
  - (c) the General Terms.
- 2.3 Engage Australia may make commercially reasonable changes to the General Terms and the Product Terms (together the “**Terms of Service**”) from time to time. The Client will remain governed by the Terms of Service in effect on the Agreement commencement date until the end of the then-current term. If the Agreement is renewed, it will be renewed under Engage Australia's then current Terms of Service.

## 3 FEES AND PRICING

- 3.1 In the event of an increase in the costs of providing the Services, including without limitation the imposition of a new direct or indirect tax or impost, legislative change (including changes that directly impact minimum employee entitlements and employer obligations), exchange rate fluctuations or

supplier cost increase, Engage Australia reserves the right to review and request a variation to the Fees to take into account the impact of such changes. .

- 3.2 In addition to clause 3.1, Engage Australia may review and adjust its Fees and charges (including its freight rates) for any Services, once each year on or after each anniversary of the date from which those Services are first provided with reference to the Consumer Price Index (All Groups Weighted Average of eight capital cities) as published by the Australian Bureau of Statistics. Any Fee increase will be limited to the percentage increase during the immediately preceding year or 2%, whichever is the greater.
- 3.3 The Fees cover work set out in a SOW. Any change to the SOW including a change to:
- (a) the scope, nature, location or volume of the Services; or
  - (b) the assumptions upon which the Fees are based;
- will be addressed as a Change Request and may lead to an adjustment in the Fees.
- 3.4 Where an invoice is paid by credit card, the payment will incur a credit card paymentsurcharge.
- 3.5 The parties will negotiate in good faith any variation to the Fees proposed by Engage Australia pursuant to clauses 3.1 or 3.3 and in the event that agreement cannot be reached, either party may terminate the Agreement by providing the other party with 90 days written notice.

#### **4 PAYMENT TERMS**

- 4.1 The Client acknowledges and agrees that invoices must be paid to the Engage Australia group member supplying the Services unless a different Engage Australia Affiliate is stipulated in the SOW.
- 4.2 In consideration for the provision of the Services, subject to clause 4.3 the Client agrees to pay the Fees for the full amount invoiced without set off or deduction, within 30 days of the date of invoice unless the relevant Product Terms provide otherwise.
- 4.3 If the Client disagrees with any amount claimed in an invoice, it must notify Engage Australia within 7 days of invoice receipt. The Client must pay any undisputed balance in accordance with this clause.
- 4.4 If an undisputed invoice is not paid when due Engage Australia may, in its sole discretion, suspend supply of the Services.
- 4.5 Payment terms are granted subject to the Client's successful application for commercial credit. The Client acknowledges and agrees that in granting credit Engage Australia reserves the right to:
- (a) withdraw or suspend credit at any time in its sole discretion;
  - (b) charge interest at the rate of 1.5% per calendar month on all overdue amounts;
  - (c) recover any expenses incurred in recovering outstanding monies; and
  - (d) collect, disclose and exchange Personal Information for the purpose of assessing the credit worthiness of the Client or any Client guarantor in accordance with Engage Australia's Credit Reporting Privacy Policy found at [Engage-Au.com](http://Engage-Au.com)
- 4.6 All pricing is exclusive of goods and services tax ("GST"). Engage Australia reserves the right to recover from the Client all GST payable in respect of the supply of Services to the Client.

4.7 Any credits granted to the Client are valid for a period of 6 months from the date of grant and must be used within that timeframe. Any monies held on account for the Client will be held for a period of 6 months, after which time those amounts will be converted to a credit held in favour of the Client.

## 5 WARRANTIES

5.1 Each of the parties warrants to the other that:

- (a) it has full power and authority to enter into and perform the Agreement;
- (b) it shall comply and shall ensure that its employees and agents comply, with any Law; and
- (c) it has or will acquire all Intellectual Property rights needed to perform its obligations under the Agreement.

5.2 The Client warrants that:

- (a) it will not do, and it will not direct or request Engage Australia to do, anything which may breach any Law or applicable industry code;
- (b) it will make any decisions and provide any approvals, data, documentation and information reasonably required by Engage Australia, promptly;
- (c) it will carry out any tasks assigned to it and its agents or contractors in a timely manner and in such a way as to not delay Engage Australia in the provision of the Services;
- (d) the Client Materials
  - (i) do not contain any matter which is obscene, defamatory, or illegal;
  - (ii) are not false, misleading or deceptive or likely to mislead or deceive;
  - (iii) are up to date, technically accurate, complete and correctly formatted for any distribution or use by Engage Australia in the provision of the Services;
  - (iv) are free from viruses and do not contain malware, spyware or any other code which could alter or disrupt any program, product, service or device;
- (e) the use of the Client Materials by Engage Australia for the purposes of providing the Services and all matters incidental thereto will not breach any Law or infringe the Intellectual Property rights or other rights of any person or entity; and
- (f) it will pay to Engage Australia any additional costs incurred by Engage Australia in converting or processing Client Materials which are not in compliance with this clause 5.2.

5.3 Engage Australia warrants that it will:

- (a) use commercially reasonable endeavours to ensure that the Services are free from material defects in design, materials and workmanship and are provided substantially in accordance with any specification set out in a SOW;
- (b) only store and use Client Materials:
  - (i) to the extent necessary to provide the Services to the Client (and any back-ups for those Services);
  - (ii) to the extent necessary to perform its obligations or enforce its rights under this Agreement; or
  - (iii) where required or authorised by Law; and

- (c) implement reasonable and appropriate information security practices regarding the protection of Client Materials as required by law, including administrative, technical and physical security processes.
- 5.4 To the extent that the law permits and except as expressly provided in the relevant Product Terms, Engage Australia makes no other representations or warranties of any kind, express or implied, with respect to the Services.
- 5.5 The Client acknowledges and agrees that:
- (a) Engage Australia makes no guarantee regarding the results, outcomes or profitability of any campaigns conducted by Engage Australia for or on behalf of the Client; and
  - (b) the Client remains liable and responsible for any loss or damage suffered or incurred by Engage Australia (including the provision of compensation to any third party carriers) in connection with Engage Australia's use of the Client Materials in accordance with the Agreement.

## **6 PRIVACY**

- 6.1 If a party is provided with, or has access to Personal Information in connection with the Services, it must comply with the Privacy Act and any other applicable law in respect of that Personal Information.
- 6.2 If Personal Information is provided to Engage Australia by or on behalf of the Client, then the Client:
- (a) must do all things necessary, including but not limited to: (i) obtaining all appropriate consents from individuals; (ii) providing notifications to individuals; and (iii) maintaining accurate, up to date and complete records; to ensure that Engage Australia may lawfully use, process and disclose the Personal Information (and any changes made to any of them) in connection with the provision of the Services;
  - (b) acknowledges and agrees that except as may be required by this Agreement, Engage Australia is not required to take steps to ensure that any Personal Information has been collected in accordance with the Privacy Act;
  - (c) must do all things reasonably requested by Engage Australia to assist Engage Australia to comply with the Privacy Act in the course of its provision of the Services under this Agreement including: (i) assisting Engage Australia in the updating of an individual's records in circumstances where an individual elects to "opt out" and not receive direct marketing materials and services; (ii) providing Engage Australia with access to information held by the Client in respect of an individual when the individual makes a request for such access; and (iii) providing Engage Australia with the policies and procedures the Client has put into effect pursuant to the Privacy Act if requested to do so by Engage Australia.
- 6.3 If Engage Australia collects Personal Information in the name of or on behalf of the Client:
- (a) the Client must provide to Engage Australia such collection statements, scripts for use, privacy policies and other materials necessary to ensure compliance with the Privacy Act in the collection of such Personal Information; and
  - (b) the Client acknowledges and agrees that where Engage Australia is authorised or required by the Client to collect or otherwise deal with Personal Information in the name of or on behalf of the Client in connection with providing the Services, that Engage Australia does so as agent for the Client.

- 6.4 If Engage Australia processes any Personal Information in the name of or on behalf of the Client:
- (a) the Client acknowledges and agrees that the Personal Information may be disclosed or stored outside Australia in order to provide the Services. The Client consents for Engage Australia to receive, share and disclose Personal Information arising from use of the Services with telecommunication or other providers used in conjunction with the Services, or as may be required by Law;
  - (b) Engage Australia shall process the Personal Information in accordance with this Agreement and any lawful instructions reasonably given by the Client from time to time; and
  - (c) each party shall take appropriate security and organisational measures against unauthorised or unlawful processing of the Personal Information or its accidental loss, destruction or damage.
- 6.5 Engage Australia's Privacy Policy found at [Engage-Au.com](http://Engage-Au.com) will apply to any Personal Information that it collects, processes and holds.

## **7 INTELLECTUAL PROPERTY**

Except as expressly provided:

- 7.1 Nothing in this Agreement conveys to either party any right, title or interest in the other party's pre-existing Intellectual Property.
- 7.2 Intellectual Property in all items, information, materials, and works (including software developments and enhancements, modifications to applications or data insights) developed or produced by Engage Australia in connection with the provision of the Services will be the sole and exclusive property of Engage Australia.
- 7.3 Rights in Intellectual Property owned by Engage Australia remain at all times the sole and exclusive property of Engage Australia and no license of these rights is granted to the Client except a right to use the same to the extent required for the Client's enjoyment of the Services.
- 7.4 Rights in third party Intellectual Property licensed or procured by Engage Australia in connection with the provision of the Service remain at all times the sole and exclusive property of that third party and no license of these rights is granted to the Client except a right to use the same during the Term to the extent required for the Client's enjoyment of the Services, subject always to any third party end user terms and payment of any applicable third party license fees.
- 7.5 All Intellectual Property rights in the Client Materials remain at all times the sole and exclusive property of the Client and no license of these rights is granted to Engage Australia except for a right to use and reproduce the same for the purposes of providing the Services or as may be otherwise specified in the Agreement.

## **8 INDEMNIFICATION**

- 8.1 Engage Australia will, at its expense, defend or settle any third-party claim against the Client caused by Engage Australia's failure to comply with clauses 5.1(c)(Intellectual Property), to the extent such failure results in liability, damages, and costs (including reasonable legal costs) to the Client. Engage Australia will pay (in relation to such claim) any:
- (a) Engage Australia-negotiated settlement amounts (to the extent Engage Australia is permitted to settle); or

- (b) damages finally awarded by a court, to the extent directly attributable to Engage Australia's non-compliance.

8.2 Engage Australia will have no obligations or liability under clause 8.1 to the extent such claim arises from:

- (a) the Client's use of any Services in a modified form not approved by Engage Australia in writing or in combination with materials not furnished by Engage Australia,
- (b) the Client Materials or Engage Australia's use of the Client Material in accordance with this Agreement;
- (c) any act or omission of the Client that impedes or prevents Engage Australia's ability to comply with clauses 5.1(c)(Intellectual Property).

8.3 Engage Australia's indemnity obligations are conditional upon the Client (to the extent permitted by Law):

- (a) giving Engage Australia prompt written notice of the claim;
- (b) permitting Engage Australia to have full and complete control over the defence and settlement of the claim;
- (c) providing assistance in connection with the defence and settlement of the claim as Engage Australia may reasonably request; and
- (d) complying with any settlement or court order made in connection with the claim (e.g., relating to the future use of any infringing materials).

8.4 To the extent permitted by law, the remedies in clause 8.1 are the Client's sole and exclusive remedies and Engage Australia's sole liability regarding the subject matter giving rise to any such claim.

## **9 CONFIDENTIAL INFORMATION**

9.1 Each party shall, and shall use its best endeavours to ensure that its employees and agents, keep the Confidential Information confidential and not use or disclose the Confidential Information to any person other than:

- (a) in confidence to that party's professional advisers to obtain professional advice;
- (b) as may be properly required for the purpose of the provision of the Services and the performance of any obligations under the Agreement but subject to any such person being made aware of, and undertaking to comply with, the obligations in relation to the Confidential Information as set out in this Agreement;
- (c) with the consent of the other party;
- (d) as may be required by any Law, the rules of any stock exchange or any court of competent jurisdiction; or
- (e) to the extent that any part of the confidential information is in the public domain otherwise than through the breach by a party of its obligations under this clause 9.

9.2 Each party must as reasonably required by the other party, destroy or return to the other party any Confidential Information, at the requesting party's cost.

9.3 Each party acknowledges that in the event of any alleged breach of clause 9.1 by it, damages may not be an adequate remedy and the other party will be entitled to seek equitable relief in the nature of specific performance and injunctive relief, in addition to damages.

## 10 LIMITATION OF LIABILITY

- 10.1 To the extent that any Law (including the *Competition and Consumer Act 2010*(Cth)) implies certain non-excludable conditions and warranties into the Agreement for the supply of goods and services, Engage Australia limits its liability in relation to the provision of the Services under the Agreement to the supplying of the Services again or the payment of the costs of having the Services supplied again, at Engage Australia's option.
- 10.2 Except as otherwise provided in the Agreement, Engage Australia's total liability for any loss or damage, whether arising in contract, tort (including negligence), under product liability legislation, under any other statute, under any indemnity or otherwise, sustained by the Client or any other person directly or indirectly from or in connection with the supply of goods or services or otherwise arising out of the Agreement shall be limited to the Fees specified in the SOW under which the loss or damage arose or the average of twelve (12) months fees paid or payable by the Client, whichever is the lesser.
- 10.3 In no event shall either party be liable for any incidental, indirect, punitive, exemplary, or consequential damages or any loss of any of the following - revenue or Client's, goodwill, bargain, anticipated savings, use of products or equipment, software, data or management time in connection with or arising out of this Agreement.
- 10.4 The Client acknowledges that Engage Australia does not control the transfer of data over communications facilities, including the internet, and that the Services may be subject to limitations, delays and security issues inherent in the use of such communications facilities ("service limitations"). Engage Australia is not responsible for any delays, service level failures or data breaches caused by such service limitations including: corruption, piracy or malicious third party attacks (including DDoS attacks), which are beyond the reasonable control of Engage Australia. The Client expressly waives any claim against Engage Australia for compensation, service credits, damages or loss of data arising from the service limitations and agrees their occurrence will not constitute a breach of this Agreement.
- 10.5 The liability of a party is reduced proportionately to the extent to which the liability is caused, or contributed to, by the other party or any other person, and each party must do what is reasonable in the circumstances to mitigate and minimise any costs, damages, expenses and/or losses incurred or suffered by it in connection with any claim under the Agreement.
- 10.6 The limitations of liability in this clause 10 shall not apply where prohibited by applicable law, but shall be restricted only to the minimum extent required to satisfy that law.

## 11 TERMINATION

- 11.1 Either party may terminate the Agreement without prejudice to its other remedies by notice in writing to the other (Defaulter):
- (a) if the Defaulter commits a material breach of the Agreement and the Defaulter has not remedied the breach within 30 days of having been given notice in writing specifying the breach and requiring it to be remedied;



- (b) if the Defaulter is or becomes insolvent or bankrupt, becomes an externally-administered body corporate under the Corporations Act 2001 or steps are taken by any person towards external administration; or
- (c) if any monies to be paid under the Agreement are not paid by their due date and remain unpaid for a period of 7 days after notice has been served requiring the payment default to be remedied.

11.2 On termination of the Agreement:

- (a) the Client's right to use the Services ceases;
- (b) except for Fees that are the subject of a genuine dispute notified to Engage Australia in accordance with clause 4.3, the Client must immediately pay to Engage Australia, without deduction or set off, all outstanding Fees and any other amounts payable to Engage Australia under the Agreement at the date of termination; and
- (c) Engage Australia will, upon Client request and subject to clause 11.3, return any proprietary information or data of the Client ("Client Data") generated in connection with the Services and stored on Engage Australia systems.

11.3 Engage Australia shall be entitled to recover its costs in connection with the retrieval of Client Data pursuant to clause 11.2(c), including any data conversion costs. Engage Australia will have no obligation to maintain or make available any Client Data for longer than ninety (90) days following termination and may thereafter, unless legally prohibited or otherwise specified otherwise in a Statement of Work, permanently deleted all such Client Data.

11.4 At any time prior to the termination or expiry of the Agreement, the Client may submit a written request for disengagement services and/or assistance with transitioning to a new provider. Unless these services are agreed, scoped and costed pursuant to a Change Request or a separate SOW, such services are provided in Engage Australia's absolute discretion at Engage Australia's then current rates and charges.

11.5 Termination of the Agreement does not affect the accrued rights or liabilities of either party.

## 12 FORCE MAJEURE

- 12.1 Neither party will be responsible for any delay, non-performance or degradation of performance of any of the obligations under the Agreement caused by or resulting from a Force Majeure, except for an obligation to make any payment. The affected party will notify the other party as soon as reasonably practicable in the case such an event causes a delay in the provision of the Services and the cause of the delay.
- 12.2 If a party is prevented from carrying out its obligations under the Agreement pursuant to clause 12.1 for a period of 30 days, either party may terminate the Agreement by giving 7 days' notice to the other party, without prejudice to any of the rights of either party accrued prior to the date of termination.

## 13 DISPUTES

- 13.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this Agreement (a "dispute") prior to commencing any proceedings in any court or otherwise in respect of that dispute ("proceedings").

- 13.2 If a party requires resolution of a dispute it must do so in accordance with the provisions of this clause 13 and the parties acknowledge that compliance with those provisions is a condition precedent to any entitlement to claim relief or remedy by way of proceedings in respect of a dispute.
- 13.3 If a party requires resolution of a dispute it must immediately submit full details of the dispute to its managing director or equivalent officer (each called a "responsible party").
- 13.4 On submission of details of a dispute in accordance with clause 13.3 the parties must procure each of their responsible parties to meet and try, on a bona fide basis, to resolve that dispute.
- 13.5 If a dispute is not resolved within 20 Business Days of submission of the dispute in accordance with clause 13.3 or within such other longer period as they agree, the provisions of clauses 13.6 and 13.7 will apply.
- 13.6 A dispute must be submitted to mediation at the option of the party requiring resolution of that dispute in Sydney, NSW in accordance with the ACDC's standard rules before a mediator to be agreed. If the parties cannot agree on a mediator, the chief executive for the time being of the Australian Commercial Dispute Resolution Centre (ACDC) (or nominee) will be requested to appoint a mediator within 10 Business Days of the request.
- 13.7 A party may not commence proceedings in respect of a dispute unless that dispute is not settled by mediation within 20 Business Days of submission to mediation or within such other longer period as the parties agree.
- 13.8 Each party will pay its own costs associated with this dispute resolution procedure unless the mediator determines otherwise.
- 13.9 While any dispute remains unresolved, the parties agree to continue to perform the Agreement to the extent that such performance is possible, given the nature of the dispute.
- 13.10 This clause 13 does not limit in any way a party's right to seek any form of equitable relief including, without limitation, injunctive relief.

## 14 CHANGE REQUESTS

- 14.1 The parties will follow the change request process described in this clause 14 to initiate and consider:
- (a) new Services that are not within the scope of an SOW; or
  - (b) changes to the Services (including any changes to the nature or scope of the Services or to the timing or the delivery of the Services) which cannot be accommodated by another process in this Agreement, each being referred to in the Agreement as a "**Change Request**".
- 14.2 A Change Request must
- (a) contain a detailed description of the proposed change;
  - (b) detail the effect (if any) on the Services (including the functionality and performance of any deliverables);
  - (c) detail impact on the Fees;
  - (d) detail the impact to any agreed service levels; and
  - (e) contain a timeline for implementation of the change, including any significant milestones.

- 14.3 Each party will cooperate with the other party as necessary to enable the preparation of a Change Request, including by providing information, documents and details.
- 14.4 The Client will, within a reasonable period of time from receipt of the relevant information provided pursuant to 14.2, notify Engage Australia of its decision in respect of a Change Request including, without limitation, whether it:
- (a) accepts the Change Request;
  - (b) wishes to renegotiate any aspect of the Change Request;
  - (c) withdraws the Change Request, if initiated by the Client; or
  - (d) does not accept the Change Request, if initiated by Engage Australia.
- 14.5 A party must not unreasonably refuse (directly or indirectly) any Change Request by the other party.
- 14.6 Neither party has any obligation to proceed with any Change Request unless and until the parties have agreed in writing on the necessary variations to the Services, the Fees, any applicable timeframes and/or any other relevant terms of the Agreement to take account of the change.
- 14.7 Where:
- (a) the Change Request is relatively minor (in terms of cost and impact) and is fairly routine; or
  - (b) if agreed by the parties (agreement not to be unreasonably withheld),
- a truncated change request process (acceptable to both parties) may be adopted to deal with any particular Change Request.

## 15 DISCLOSURE

Engage Australia may be the recipient of rebates and commissions as a result of volume based incentives and preferred supplier arrangements negotiated with some of its suppliers.

## 16 GENERAL

- 16.1 **Relationship.** This Agreement constitutes a relationship between the Client and Engage Australia of principal and independent contractor. Without prejudice to clause 6.3(b), nothing in the Agreement shall constitute any relationship of agency, partnership or joint venture. Neither party, unless expressly stated in the Agreement, shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party.
- 16.2 **Subcontracting.** Engage Australia may subcontract performance of all or any of its obligations under the Agreement and may substitute or change subcontractors but remains liable at all times for performance of its obligations by each subcontractor.
- 16.3 **Insurance.** During the Term and at all times that Engage Australia performs the Services for the Client, Engage Australia must take out and maintain with a reputable insurer, sufficient insurances relevant to the provision of the Services, including:
- (a) public risk and liability insurance in an amount of not less than \$10 million;
  - (b) errors and omissions insurance in an amount of not less than \$5 million; and

- (c) Workers Compensation insurance in compliance with each State's (or Territory's) legislative requirements.
- 16.4 **Assignment.** Engage Australia may assign or transfer its rights or obligations under this Agreement to a Related Body Corporate in its absolute discretion. A party may not otherwise assign or transfer its rights or obligations without the prior written consent of the other party.
- 16.5 **Variation.** This Agreement may only be varied, modified, amended or added to in writing executed by the parties in the manner that the Agreement is executed.
- 16.6 **No Waiver.** No delay by a party in exercising any right under this document will operate as a waiver of that right nor will any waiver by a party of any right under this document operate as a waiver of any other right of that party, nor will any single or partial exercise of any right preclude any further exercise of that or any other right under this document.
- 16.7 **Counterparts.** This Agreement may be executed in two counterparts which, when taken together, will constitute one single Agreement between the parties.
- 16.8 **Severability.** If any provision of the Agreement is unenforceable it will be read down so as to be enforceable or, if it cannot be so read down, the provision (or where possible, the offending part) will be severed from the Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of the Agreement which will continue in effect.
- 16.9 **Survival.** The provisions of the Agreement which are capable of having effect after termination of the Agreement will remain in full force and effect following the termination of the Agreement.
- 16.10 **Entire Agreement.** This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of the Agreement.
- 16.11 **Notices.** If either party gives or is required to give a notice to the other party under the Agreement, that notice must be in writing and hand delivered, sent by pre-paid post or emailed to the address specified in the SOW.
- 16.12 **Use of logos.** Unless the Client expressly specifies otherwise, in writing, Engage Australia may use and publish the Client's logo for marketing purposes and otherwise disclose that the Client is a customer of Engage Australia.
- 16.13 **Aggregated Data.** Engage Australia shall be permitted to use Aggregated Data for any purpose or disclose Aggregated Data to any third party. The foregoing shall not limit in any way Engage Australia's confidentiality or privacy obligations under the Agreement.
- 16.14 **Governing Law.** This Agreement is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of that State.