

## AFFINITY PARTNERSHIP - STANDARD TERMS AND CONDITIONS

By signing the above Estimate, you ("the Client") agree to the following:

### 1. Definitions and Interpretation

1.1 The following terms shall have the following meanings:

**Affinity** means The Affinity Partnership Pty Ltd ABN 42 078 658 778 of Level 3, 50 Stanley Street, East Sydney NSW 2010

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in New South Wales.

**Client Material** means all documents, information and material provided to Affinity by or on behalf of the Client, including without limitation price and product information, supporting material, and material relating to Intellectual Property Rights.

**Confidential Information** means any information of a confidential nature obtained by one party in relation to the other party including without limitation strategies, concepts, budgets, trading terms, plans, methods, systems, know how, trade secrets, software, client lists, intellectual property, business or financial information, employee or supplier information, or any dealings, affairs or any other information in any form.

**Estimate** means the estimate document to which these terms and conditions are affixed.

**Force Majeure** means any act of God, war, sabotage, riot, insurrection, civil commotion, national emergency, industrial action, accident, transportation delay, communications or network failure, the effect of any applicable laws, or any other matters beyond the reasonable control of a party.

**Intellectual Property Rights** means any and all registered and unregistered intellectual property rights worldwide, subsisting now or in the future including designs, copyright, trade marks, patents, inventions, trade, business or company names or other intellectual property rights, or rights to registration of such rights.

**Pre Existing Works** means materials already owned or used by Affinity prior to providing the Services for the Client, or subsequently developed, owned or used by Affinity outside the course of providing the Services, that are used in providing the Services, including proprietary software, tools, templates, systems, know how, business processes, methodologies and Intellectual Property Rights therein.

**Media Booking Advice** means the document setting out any Media Expenses in respect of a media booking submitted by Affinity to the Client in the form determined by Affinity from time to time.

**Media Expenses** means any costs payable to a media vendor in respect of media space and time booked on the Client's behalf in relation to a media booking and as set out in the Media Booking Advice.

**Third Party Works** means any Works produced, developed, created or owned by a third party including without limitation subcontractors, agencies, freelancers, photographers, stock libraries, artists, musicians, record labels or film studios.

**Works** means any materials developed or created on behalf of the Client pursuant to this agreement including designs, artwork, brands, slogans, logos, advertising, campaign materials, films, layouts, storyboards, scripts or other works.

### 2. Services

2.1 The Client appoints Affinity to provide advertising and marketing services specified in any Estimate and the media services specified in any Media Booking Advice ("**Services**") during the Term.

2.2 Affinity agrees to perform the Services with the degree of skill, care and diligence expected of a service provider experienced in performing similar services and in accordance with all reasonable directions given by the Client from time to time.

### 3. Term

3.1 This agreement commences on the date of execution by the parties and continues until all Services are delivered, unless extended or terminated earlier in accordance with the agreement ("**Term**").

### 4. Remuneration

4.1 In consideration of the Services, the Client will pay Affinity the fees, charges and expenses as set out in the Estimate and approved by the Client. Client will also pay Affinity any Media Expenses as set out in any Media

Booking Advice signed by the Client. Payment will be made by the Client within 30 days of invoice date unless otherwise specified.

4.2 The Client will reimburse Affinity for all pre-approved costs, expenses and disbursements reasonably incurred by Affinity in providing the Services including without limitation travel, accommodation, couriers, freight, out of pocket expenses, and third party costs.

4.3 Affinity reserves the right to retain any commissions, rebates, allowances, credits, discounts or any other benefits allowed to Affinity by any media vendor or other third party supplier including any relating to prompt payment of media accounts or Affinity's volume with a particular media vendor. For digital media platforms that do not provide commission, Affinity reserves the right to mark up their costs by 20% as well any media fees listed on the Media Booking Advice.

## **5. Cancellations and Changes**

5.1 At any time upon reasonable notice from the Client, the Client may request Affinity to cancel or amend any Services, provided that (a) Affinity can do so within its contractual obligations to third parties; and (b) the Client reimburses Affinity for any charges or expenses to which it is committed including non-cancellable Media Expenses and other third party costs and also to pay the fees covering these items.

## **6. Intellectual Property**

6.1 The Client owns all Intellectual Property Rights in the Client Material.

6.2 Subject to this clause and to the extent permitted by law, Affinity agrees to assign to the Client all Intellectual Property Rights in any Works created by Affinity for the Client pursuant to this agreement, upon payment of all applicable fees.

6.3 If any Third Party Works are used: (a) Affinity shall obtain an assignment of intellectual property to the Client, or negotiate a license to the Client on such terms as may be negotiated; (b) the Client will pay any pre-approved license or assignment fees; and (c) the Client will comply with any limitations on use as notified to it by Affinity.

6.4 The Client agrees that any Intellectual Property Rights in any Pre Existing Works used in the Services are owned by Affinity and not by the Client at any time.

6.5 Affinity shall own any pitches, presentations, submissions, and creative concepts presented but not accepted or adopted by the Client.

6.6 Affinity may use the Works for self promotional purposes.

## **7. Confidential Information**

7.1 Each party will ensure that any Confidential Information relating to the other party is treated as strictly confidential, and is not used or disclosed to any other person, other than: (a) persons strictly requiring the information for the purpose of properly performing its obligations under this agreement, provided that they are made aware of the obligations in this clause; (b) with the other party's prior consent; (c) as required by law; (d) to related body corporate if necessary for reporting purposes; (e) to professional advisers in confidence; or (f) where the information is generally or publicly available other than through a breach of this agreement.

7.2 This clause survives termination of this agreement.

## **8. Responsibility and Approvals**

8.1 Before proceeding with a project or incurring any costs or expenses, Affinity will provide to the Client for approval: (a) its proposals in relation to the project; and (b) an estimate of costs and expenses relating to the project. In relation to media bookings, Affinity will provide to the Client media plans and related cost estimates to the Client for approval via a Media Booking Advice or other written document. Upon receipt of such written approval Affinity has the authority to commence the applicable Services.

8.2 The Client warrants that the Client Material and any Works approved by the Client is true, accurate, not misleading, not in breach of any third party rights and complies with any applicable laws, regulations and codes.

## **9. Insurance and Security**

- 9.1 Affinity must be able to take out credit insurance on the Client's media billings. If credit insurance is declined, or the credit limit reduced for any reason, Affinity will not make any media bookings on the Client's behalf until the Client provides upfront payment or debt guarantees for any shortfall amount. If such arrangements are not in place within 10 Business Days Affinity may suspend its services or terminate this agreement by written notice.
- 9.2 If requested by Affinity, the Client will provide an independent party with financial information to enable the independent party to provide Affinity with a credit analysis of the Client. The Client authorises Affinity or a party authorised by Affinity to contact the Client's financing institutions, vendor references and credit reporting agencies, and grants permission for such parties to make available commercial credit information to Affinity, and Affinity will treat such information as confidential information of the Client.

## **10. Indemnity**

- 10.1 The Client will indemnify Affinity against any loss or claim arising from or relating to:
- (a) Affinity complying with or acting in accordance with express directions or instructions provided by the Client in connection with the provision of the Services;
  - (b) the Client Material;
  - (c) a breach of this agreement by the Client; or
  - (d) a negligent act or omission by the Client.
- 10.2 Affinity will indemnify the Client against any loss or claim arising from or relating to:
- (a) a breach of this agreement by Affinity; or
  - (b) a negligent act or omission by Affinity.

10.3 This clause survives termination of this agreement.

## **11. Liability**

- 11.1 Affinity shall not be responsible or held in breach for any failure or delay in providing the Services that may arise out of a Force Majeure.
- 11.2 To the extent permitted by law, Affinity shall not be liable in any circumstances for any indirect, special, economic or consequential loss or damage. Without limitation and subject to the terms of the agreement, the maximum liability of Affinity under this agreement shall be limited to the total fees paid by the Client to Affinity during the 12 months prior to the date when such liability arose.
- 11.3 If Affinity fails to carry out a Media Booking as instructed by the Client due to a default or error by Affinity, Affinity will (as the Client's sole remedy) use reasonable endeavours to arrange a new Media Booking for approval by the Client with the same media vendor or substitute media vendor.

## **12. Termination**

- 12.1 Either party may terminate this agreement by giving 90 days prior written notice to the other party for any reason.
- 12.2 Either party may terminate this agreement immediately by written notice if any of the following events occur:
- (a) the other party commits a breach of this agreement and does not remedy the breach within 21 days of notice of the breach in writing;
  - (b) if the other party enters into, or resolves to enter into, an arrangement, composition or compromise with, or assignment for, the benefit of its creditors generally, or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise;
  - (c) if the other party has a receiver or receiver and manager, official manager, trustee, provisional liquidator or similar officer appointed in respect of any of its assets; or

- (d) if an order is made or a resolution is passed for the winding up or dissolution of the other party.

### **13. Effect of Termination**

13.1 Upon termination of this agreement:

- (a) Affinity may charge all remuneration for Services provided prior to the effective date of termination and any non-cancellable third party costs;
- (b) each party will return to the other party all Confidential Information and such other information and documentation which belongs to the other party; and
- (c) digital platforms such as but not limited to Google, Facebook or other advertising and data accounts will be retained by Affinity in accordance with industry practice to protect any of Affinity's commercially sensitive information.

### **14. General**

- 14.1 The relationship between the parties is that of independent contractors and nothing in this agreement will be construed as giving rise to the relationship of principal and agent, trustee and beneficiary, joint venture or partnership.
- 14.2 A party may not assign its rights under this agreement without the consent of the other party, other than as provided for under this agreement.
- 14.3 A provision in or right created under this agreement may not be waived except in writing signed by the party granting the waiver.
- 14.4 Any term of this agreement which is fully or partly void or unenforceable is severed to the extent that it is void or unenforceable, and the remainder of this agreement continues in force.
- 14.5 All notices must be sent in writing to the address on this agreement or the address last notified by the intended recipient to the sender and delivered or sent by post, email or fax. A notice is taken to be received if hand delivered, on delivery, if sent by post, 3 Business Days after the date of posting, and if sent by fax, when the sender's fax system generates a message confirming successful transmission or by email. If delivery, receipt or transmission is not a Business Day or after 5pm on a Business Day, the notice is taken to be received at 9am the next Business Day.
- 14.6 This agreement is governed by the laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the Courts of New South Wales, Australia.
- 14.7 This agreement is the entire agreement of the parties about its subject matter and supersedes any previous agreements, understandings and negotiations on that subject matter.