

GENERAL TERMS

1 DEFINITIONS AND CONSTRUCTION

1.1 **Defined terms:** In this Agreement, the words set out in the Key Terms have the meanings given to them in the Key Terms, and unless the context requires otherwise:

Business Day means any day excluding a Saturday, Sunday or public holiday in Auckland, New Zealand.

Confidential Information has the meaning given to it in clause 8.1.

Deliverables means any discrete items of work to be provided by the Supplier to Mediaworks in the course of providing the Services, as set out in the Key Terms.

Force Majeure Event means an event or circumstances beyond the reasonable control of the party, and includes fire, floods, tsunami, storms, earthquake or other act of God; any act of war, terrorism, civil disturbance, pandemic, epidemic or labour disruption and any act or direction of a government in response to any of these events or circumstances.

Good Industry Practice means that the Services will be performed in an efficient, effective, reliable and professional manner and with the standard of skill, care, knowledge and foresight which would reasonably and ordinarily be expected from an experienced person engaged in providing services which are the same as, or similar to, the Services.

GST means goods and services tax payable under the Goods and Services Tax Act 1985.

Mediaworks Group means Mediaworks and its Related Companies.

Order has the meaning given to it in clause 3.1(b);

Personal Information has the meaning given to that term in the Privacy Act 2020;

Related Company has the meaning given to that term in section 2(3) of the Companies Act 1993, provided that, for this purpose, references to "company" in that section extend to any body corporate or legal person.

1.2 **Construction:** In this Agreement:

A reference to a "person" includes a corporation, association, firm, company, partnership or individual.

A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.

A reference to any party under this Agreement includes a reference to that party's successors, transferees and permitted assigns and persons controlling their affairs.

2 APPLICATION

Unless agreed otherwise by the parties in writing, this Agreement applies to and governs all sales of Goods and Services by the Supplier to Mediaworks. Mediaworks is not bound by any terms and conditions contained in any documents issued by the Supplier.

3 ORDERS FOR GOODS AND SERVICES

3.1 **Orders:** Supplier will supply MediaWorks with the Goods and/or Services:

- (a) specified in the Key Terms; and/or
- (b) as otherwise ordered by Mediaworks in writing during the Term (an *Order*),

in accordance with the terms of this Agreement. Unless otherwise agreed by the parties, the Supplier will be deemed to have accepted an Order five Business Days after the Order was sent to the Supplier, unless the Supplier has notified Mediaworks that it cannot fulfil the Order.

3.2 **No minimum volume:** Unless expressly agreed in the Key Terms, Mediaworks is not bound to order any particular quantity of Products and/or Services from the Supplier.

4 SUPPLY OF GOODS

4.1 **Delivery:** The Supplier will deliver the Goods to the Delivery Location. The Supplier must deliver the Goods to Mediaworks within any timeframes and in accordance with any other requirements specified in the Key Terms and/or the Order.

4.2 **Inspection and acceptance:** Mediaworks will inspect the Goods on delivery and may accept the Goods, or reject the Goods if they are damaged or defective.

4.3 **Goods warranties:** The Supplier warrants that the Goods supplied will:

- (a) be free from defects in design, materials, and workmanship;
- (b) be fit for any purpose expressly or impliedly made known to the Supplier by

Mediaworks, or for which the Goods are commonly provided;

- (c) meet the Goods Specifications (if any);
- (d) be free of any security, charge, lien or other encumbrance; and
- (e) comply with all applicable laws, regulations, standards or other legal requirements regarding safety and quality of the Goods.

4.4 **Risk and title:** Risk and title to Goods passes from the Supplier to Mediaworks when Mediaworks accepts delivery of the Goods in accordance with clause 4.2.

5 SUPPLY OF SERVICES

5.1 **Supplier obligations:** The Supplier will provide the Services, including any Deliverables, to Mediaworks:

- (a) within any timeframes, and in accordance with any other requirements, specified in the Key Terms and/or the applicable Order;
- (b) using due care, efficiency and attention, utilising techniques and methods in accordance with Good Industry Practice and using suitably qualified and skilled personnel;
- (c) comply with all applicable laws, including the Privacy Act 2020 and Health and Safety at Work Act 2015, and obtain all necessary licenses and permissions required to provide the Services;
- (d) comply with all health and safety, environmental or other policies and procedures provided to the Supplier by Mediaworks;
- (e) comply with all access, security and identification requirements specified by Mediaworks; and
- (f) protect all Mediaworks information and information technology systems to which the Supplier is given access, or which is in the Supplier's possession, from unauthorised access.

5.2 **Acceptance:** The provision of any Services or Deliverables will be complete when Mediaworks confirms that the Service and/or Deliverable has been provided to its satisfaction and accepts those Services and Deliverables. Title in any Deliverable passes to Mediaworks on acceptance.

5.3 **Services warranties:** The Supplier warrants that:

- (a) the Services will be fit for the purposes for which the Services are commonly provided;
- (b) the Services meet the Service Levels (if any);
- (c) it has the right to transfer the Deliverables to Mediaworks free of any security, charge, lien or other encumbrance; and
- (d) the Services and Deliverables will comply with all applicable laws, regulations, standards or other legal requirements regarding safety and quality.

6 CHARGES AND PAYMENT

6.1 **Charges:** Mediaworks will pay the Supplier the Charges, as set out in the Key Terms or as otherwise agreed in writing between the parties, in consideration for the supply of the Goods and/or Services. Unless expressly agreed otherwise, the Charges are exclusive of GST. The Charges are the total amount payable by Mediaworks for the provision of the Goods and/or Services, expenses and daily allowances will only be payable by Mediaworks if those amounts are agreed to be part of the Charges in the Key Terms.

6.2 **Invoices:** Supplier will invoice Mediaworks for the applicable Charges at the time Goods are delivered and accepted by Mediaworks in accordance with clause 4.2, or at the time Services have been provided and accepted by Mediaworks as being complete in accordance with clause 5.2. All invoices must:

- (a) be dated and clearly marked "tax invoice";
- (b) be addressed to Mediaworks using Mediaworks' full legal name and physical address, and be marked for the attention of Mediaworks' business contact (all as set out in the front page of this Agreement) and, if applicable, include Mediaworks' contract reference or purchase order number;

- (c) include Supplier's full legal name, physical address and GST number (if the Supplier is registered for GST);
- (d) contain a description of the Services and/or Goods provided to Mediaworks, including, if applicable, the amount of time spent in the delivery of the Services (if payment is based on a time fee rate);
- (e) state the correct amount of Charges due in New Zealand dollars, and if the Supplier is registered for GST, all GST due;
- (f) emailed to MWinvoices@mediaworks.co.nz in pdf format
- (g) if any expenses or third party cost are claimed as part of the Charges, be supported by GST receipts and any other verifying documentation as reasonable requested by Mediaworks; and
- (h) be submitted in pdf format either:
 - (i) through electronic data interchange (*EDI*); or
 - (ii) as an attachment to a centralised email address as provided by Mediaworks to the Supplier,
 as set out in the Key Terms.

6.3 **Payment:** Unless agreed otherwise in the Key Terms and subject to clause 6.4, Mediaworks will pay all invoices submitted in accordance with the requirements of clause 6.2 as follows:

- (a) if the invoice is received by Mediaworks on or before the third Business Day of the month, Mediaworks will use best endeavours to pay the invoice by the 25th calendar day of that month; and
- (b) if the invoice is received by Mediaworks after the third Business Day of the month, Mediaworks will pay the amount of that invoice by the 25th calendar day of the month following the month the invoice was received by Mediaworks.

6.4 **Disputed invoices:** If Mediaworks disputes any Charges in an invoice or requires further information from the Supplier, Mediaworks will promptly notify the Supplier, and the matter will be resolved in accordance with clause 12. Mediaworks will not be liable to pay any disputed Charges until resolution of the dispute. However, Mediaworks shall pay any part of the invoice that is not disputed. The Supplier will

continue to provide the Goods and Services notwithstanding any such dispute.

7 INTELLECTUAL PROPERTY

7.1 **Intellectual property indemnity:** The Supplier indemnifies and will keep indemnified Mediaworks from and against all liabilities, costs and damages arising in connection with any claim from a third party that Mediaworks' receipt or use of the Goods or Services infringes that third party's intellectual property rights

8 CONFIDENTIALITY

8.1 **Confidential information:** All confidential or proprietary information of one party disclosed to or acquired by the other party under or in connection with this Agreement will be Confidential Information of and proprietary to the party disclosing that information (*Confidential Information*).

8.2 **Obligation of confidence:** The receiving party will hold the Confidential Information in strictest confidence and in trust for the sole and exclusive benefit of the disclosing party and shall not use the Confidential Information except to the extent required to perform its obligations under this Agreement. The receiving party shall effect and maintain adequate security measures to safeguard the storage and use of the Confidential Information.

8.3 **Continuing obligation:** These confidentiality obligations in this clause 8 will continue in full force and effect regardless of termination or expiration of this Agreement.

9 PRIVACY

To the extent the Supplier receives any Personal Information from Mediaworks, or any Mediaworks personnel in connection with this Agreement, the Supplier agrees to:

- (a) only collect, use, disclose, transfer or otherwise process any such Personal Information for the purposes of providing the Goods and Services, or to perform any of its obligations, under this Agreement;
- (b) ensure that any such Personal Information is protected against misuse and loss, or unauthorised access, modification or disclosure by reasonable security safeguards; and
- (c) not do anything with such personal information that will cause Mediaworks to breach any applicable privacy law, and assist Mediaworks with responding to any

requests from individuals or complaints made under applicable privacy law;

- (d) immediately notify Mediaworks if it becomes aware of a privacy breach involving Personal Information supplied by Mediaworks under this Agreement; and
- (e) at the termination or expiry of this Agreement, at Mediaworks' request, either destroy or return to Mediaworks all Personal Information still held by the Supplier.

10 TERMINATION

10.1 **Termination for convenience:** Mediaworks may terminate this Agreement by giving the Supplier written notice for the period specified as the "Termination Notice Period" in the Key Terms (if any).

10.2 **Termination for cause:** Either party may terminate this Agreement immediately if the other party:

- (a) commits a material breach of this Agreement which is not remedied within 20 Business Days of receiving a notice from the other party requiring it to do so; or
- (b) is, or is deemed to be, insolvent, is unable to pay its debts as they fall due, or takes any action or proceedings are commenced for the:
 - (i) winding up, dissolution, liquidation or re-organisation of that party; or
 - (ii) appointment of a controller, receiver, administrator, office manager, trustee over the party or the revenues and assets of that party.

10.3 **Consequences of termination or expiry:** Upon termination, or expiry of this Agreement:

- (a) the parties must return to the other any Confidential Information and Personal Information of the other party in the first party's possession;
- (b) all invoices issued under the Agreement will become immediately due and payable;
- (c) where Mediaworks has terminated the Agreement under clause 10.1, any Orders that were accepted by the Supplier prior to notice of termination

being given will remain on foot, and Mediaworks will pay for those Goods and Services in accordance with the terms of this Agreement;

- (d) where either party has terminated the Agreement under clause 7.1, any Orders that were accepted by the Supplier prior to notice of termination being given will be cancelled.

11 LIABILITY

11.1 **Remedies for breach of warranty:** In addition to any other remedy available to Mediaworks, where the Supplier is in breach of:

- (a) a warranty under clause 4.3 in relation to Goods, then Mediaworks may, in its sole discretion:
 - (i) require the Supplier to promptly replace or repair those Goods at the Supplier's cost; or
 - (ii) remedy such warranty itself, or through a third party at the cost of the Supplier, or withhold payment to the Supplier of an amount commensurate with the loss of value in that non-conforming Good;
- (b) a warranty under clause 5.3 in relation to Services, then Mediaworks may, in its sole discretion:
 - (i) require the Supplier to promptly re-perform the Service to Mediaworks' satisfaction, at the Supplier's cost;
 - (ii) remedy such warranty itself, or through a third party at the cost of the Supplier, or withhold payment to the Supplier of an amount commensurate with the loss of value in that non-conforming Service.

11.2 **No liability for consequential losses:** Neither party will be liable to the other for indirect or consequential losses or for any loss of profits, revenue or anticipated savings.

11.3 **Mediaworks' liability:** Mediaworks' liability to the Supplier under this Agreement shall be limited to paying the Charges.

11.4 **Supplier's liability:** The Supplier's liability to Mediaworks in relation to each claim brought by Mediaworks under this Agreement will be limited to the higher of two times the amount of Charges paid by Mediaworks to the Supplier in

the twelve (12) months prior to the date the relevant claim arose, or \$100,000.

- 11.5 **Exclusions from limitations:** The limitations and exclusions of liability in clauses 11.2, 11.3 and 11.4 will not apply to any liability, loss or damage arising out of:
- (a) the indemnity given by the Supplier in clause 7.1; or
 - (b) any breach of clause 8; or
 - (c) death or personal injury caused by a party's negligence and other losses which cannot be excluded by law; or
 - (d) any intentionally harmful or fraudulent act or omission of either party.

12 DISPUTES

- 12.1 **Internal resolution:** All disputes arising out of this Agreement will be referred to a senior representative of each of the parties to resolve.
- 12.2 **Mediation:** If the senior representatives have not resolved the dispute under clause 12.1 within 10 Business Days of the dispute being referred to them, the parties will refer the dispute to mediation in accordance with the Resolution Institute's standard Mediation Agreement (NZ version). The mediation shall be conducted by a mediator and at a fee agreed by the parties. If the parties cannot agree on a mediator, the mediator shall be selected by the Chair of the Resolution Institute.
- 12.3 **Urgent relief:** Nothing in this Agreement will prevent any party from seeking urgent injunctive or interlocutory relief in respect of a dispute or any matter arising under this Agreement.

13 NOTICES

All notices under this Agreement must be in writing. Notices are deemed to be received:

- (a) in the case of physical delivery, when such notice is delivered to the address set out on the front page of this Agreement;
- (b) in the case of pre-paid post to the postal address of the relevant party set out on the front page of this Agreement, five Business Days after the date of posting; or
- (c) in the case of email to the email address of the relevant party set out on the front page of this Agreement, at the time of transmission, unless the sender receives

an automatically generated notice of non-delivery,

provided that, notice served by a party after 5:00pm on a Business Day, or on a day which is not a Business Day, will be deemed to have been received at 9:00am on the next Business Day.

14 FORCE MAJEURE

- 14.1 **No liability:** Notwithstanding any other provision of this Agreement, a party shall not be liable for any omission, failure or delay in the performance of any of its obligations under this Agreement, if such omission, failure or delay is caused by or arises from a Force Majeure Event.
- 14.2 **Process:** If a party believes it may fail to meet any of its obligations under this Agreement due to a Force Majeure Event it must:

- (a) promptly give notice to the other party specifying the cause and the extent of its inability to perform any of its obligations and the likely duration of that non-performance; and
- (b) take all reasonable steps which may be necessary to rectify, remedy or overcome the event or circumstance and minimise any loss, damage or expense caused by the Force Majeure Event.

- 14.3 **Termination right:** If the omission, failure or delay arising from a Force Majeure Event continues for 15 Business Days, either party may immediately terminate this Agreement on providing written notice to the other.

15 GENERAL

- 15.1 **Assignment:** Neither party may assign or subcontract any or all of its rights or obligations under this Agreement without the other party's prior written consent, except Mediaworks may assign or novate this Agreement:
- (a) to a member of the Mediaworks Group; or
 - (b) to any successor pursuant to a merger, consolidation or sale of shares, assets or business of Mediaworks, or that part of the business to which this Agreement relates.
- 15.2 **Amendments:** No amendment to this Agreement is effective unless it is in writing and signed by both parties.
- 15.3 **Legal nature of the relationship:** Nothing in this Agreement evidences or will be deemed to constitute a partnership or joint venture relationship between all or any of the parties, or

otherwise imposes any fiduciary duties on a party in relation to any other party. Nothing in this Agreement gives a party authority to bind any other party in any way.

- 15.4 **Severability:** If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this Agreement.
- 15.5 **No waiver:** A waiver of any provision of this Agreement only be effective if expressly given in writing. A failure, delay or indulgence by either party in exercising any power or right shall not operate as a waiver of that power or right.
- 15.6 **Entire agreement:** This Agreement is the entire agreement between the parties in relation to its subject matter and replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties relating to the Goods or Services.
- 15.7 **Counterparts:** This Agreement may be executed in any number of counterparts (including scanned and emailed copies). So long as each party has received a counterpart signed by each of the other parties, the counterparts together shall constitute a binding and enforceable agreement.
- 15.8 **Governing law:** This Agreement is governed by and construed in accordance with New Zealand law. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with this Agreement.