

between **The party identified in the Booking Form (Client)**
and **Brick & Mortar Digital Pty Ltd ABN 60 653 435 182 of Level 9, 81 Flinders Street, Adelaide SA 5000 (BAM)**

Now it is agreed as follows:

1 Definitions and interpretation

Clause 20 sets out the meanings ascribed to certain defined terms used in this Agreement, and rules of interpretation that apply generally to this Agreement.

2 Appointment

2.1 Appointment by Client

The Client appoints BAM to provide the Services in accordance with this Agreement, and by signing this Agreement or requesting or accepting the Services the Client accepts and agrees to this Agreement.

2.2 Term

This Agreement commences on the Start Date and, unless terminated earlier under this Agreement, continues until the End Date.

2.3 Services and Platform

BAM agrees to:

- (a) provide the Services to the Client; and
- (b) license the Client to use the Platform, on the terms and conditions of this Agreement.

3 Services

3.1 Instructions

The Client agrees to provide BAM with timely instructions when BAM requires them in relation to the provision of the Services, and to not unreasonably withhold or delay any reasonable request by BAM for any Materials (such as Client Materials) or Approvals necessary for the provision of the Services.

3.2 Provision of Services

BAM will use all reasonable endeavours to adhere to any timeframe specified in this Agreement or any Approval, however unless this Agreement otherwise specifies, time will not be of the essence in performance of the Services.

3.3 Third Party Supplies

- (a) BAM may procure Third Party Supplies in connection with the provision of the Services as contemplated by this Agreement or an Approval.
- (b) Third Party Supplies will be subject to any terms and conditions applicable to such Third Party Supplies, and the Client agrees to pay for any Third Party Supplies in accordance with the applicable payment terms.
- (c) Supplier of Third Party Supplies may invoice the Client directly for their costs and charges, and in that case those amounts must be paid directly to the supplier by the Client.
- (d) The Client will indemnify and reimburse BAM for any charges or costs that may be incurred by BAM (including but not limited to late payment fees, interest or early termination charges) due to failure to pay or late payment of fees by the Client or breach by the Client of its obligations relating to any Third Party Supplies.
- (e) If any Third Party Supplies necessary to provide certain Services are suspended, terminated or otherwise not provided by the relevant supplier, BAM may suspend or terminate the relevant Services by notice to the Client.
- (f) BAM will have no Liability for failing to procure any Third Party Supplies if the Client fails to provide Approval and/or pay for those Third Party Supplies as and when requested by BAM.

4 Platform

4.1 Licence to use

BAM grants to the Client a non-exclusive, non-transferable licence to use the Platform for the Client's business purposes and in accordance with this Agreement.

4.2 Documentation

The Client must only use the Platform in accordance with the Documentation.

4.3 Access by others

The Client must ensure its Personnel who have access to the Platform are made aware of and, if required by BAM, agree in writing to be bound by this Agreement as if they were the Client.

4.4 Availability

- (a) BAM will endeavour to make the Platform available continuously, however the Platform is provided as-is and the Company does not promise or guarantee that it will always be available, uninterrupted or fault-free.
- (b) BAM is not liable to the Client or to any other person if the Platform becomes temporarily or permanently unavailable at any time.

4.5 Suspension

- (a) BAM may suspend the Services or any part of them if:
 - (i) they are or become unlawful, including if any licences, authorisations, permissions or consents required by Law are not granted, are insufficient or are terminated; or
 - (ii) there is a breach by the other party of this Agreement, or an actual or threatened security breach or fraud or unlawful conduct impacting the Services occurs,
 until the issue has been satisfactorily resolved.

- (b) To the extent practicable in the circumstances, BAM will endeavour to provide the Client with prior notice of any suspension.

- (c) If the cause of the suspension is reasonably able to be remedied by the Client, BAM will notify the Client of the actions to be taken for reinstatement of the Services.

- (d) BAM is not Liable due to a suspension in accordance with this clause, and BAM's rights to suspend the Services are without prejudice to any other rights and remedies of BAM under this Agreement.

4.6 Modification

BAM may modify the Platform at any time without notice to the Client but will use reasonable efforts to ensure such modification does not materially reduce the utility of the Platform.

5 Support and service Levels

5.1 Support

During the Term, BAM will, at no additional charge to the Client:

- (a) use commercially reasonable efforts to rectify material Defects in the Platform that are notified by the Client to BAM together with documented evidence describing the Defect;
- (b) offer to the Client access to support information for the Platform via email or the Internet; and
- (c) provide to the Client the support services described in the Documentation.

5.2 Meet or exceed

BAM must use commercially reasonable efforts to meet or exceed any Service Levels applicable to the Platform or Services.

5.3 Defects

BAM will promptly investigate Defects and seek to resolve them as required by this Agreement in accordance with the Service Levels.

5.4 Failure to meet

Any service level credits forming part of the Service Levels will be the Client's sole remedy for failure to meet an applicable Service Level, and such failure does not constitute a breach by BAM of this Agreement.

6 General Client obligations

6.1 Data access

The Client will provide BAM with access to the Data and Environment to the extent reasonably required by BAM to perform the Services.

6.2 Compliance

In using the Platform, the Client must (and must ensure that its Personnel):

- (a) comply with all applicable Laws and any other reasonable policies such as acceptable use policies notified in writing by BAM to the Client;
- (b) co-operate with BAM in any investigation of Client Materials or use of the Platform that may breach the Law or this Agreement; and
- (c) not permit the Platform to be used for any unlawful purpose, such as unauthorised access to or interference with network services or equipment, storage or distribution of Malicious Code, unsolicited or

deceptive messages, harassment, or compromising the security or integrity of passwords or network information.

6.3 Security

- (a) The Client must (and must ensure that its Personnel) keep all access credentials for the Platform (including account identification, log-in information and passwords), secure and confidential to prevent unauthorised access to or use of the Platform, and promptly notify BAM of any unauthorised access or use of which it becomes aware.
- (b) The Client must ensure that only its Personnel with authority to bind the Client in relation to this Agreement are provided with the Client's access credentials for the Platform.
- (c) The Client will be responsible for the use of the Platform by anyone who accesses the Services with the Client's account credentials.

6.4 Prohibited activities

The Client must not, and must not directly or indirectly allow a third party to, without BAM's prior written consent:

- (a) use, copy, distribute, transfer or transmit the Platform or other BAM Materials other than as permitted by this Agreement;
- (b) reverse compile, reverse engineer or disassemble the Platform;
- (c) create software to carry out functionality, and/or incorporating concepts, copied from the Platform;
- (d) create derivative works based upon the Platform or other BAM Materials;
- (e) remove or tamper with any proprietary notices or labels contained in the Platform or its output; or
- (f) modify the Platform, Documentation or other BAM Materials or incorporate or use any component of them in any other software, documentation or materials, and if the Client does so the terms and conditions of this Agreement will apply to those components (which will be deemed to be BAM Materials).

6.5 Backups

The Client is solely responsible for ensuring that adequate back-ups of the Client Materials are made.

7 Invoicing and payment

7.1 Fees

In consideration of the provision of the Services and Platform by BAM, the Client agrees to pay the Fees to BAM.

7.2 Payment Terms

Unless otherwise stated by BAM (such as on the Booking Form or an invoice), amounts payable by the Client under this Agreement are to be paid by direct deposit into BAM's nominated bank account no later than 3 Business Days prior to the date specified in this Agreement.

7.3 Default

If the Client fails to pay any amount under this Agreement when due and payable, BAM may charge interest at 1% per month calculated daily and compounding monthly on outstanding amounts and/or may suspend provision of access to the Platform and any Services.

7.4 Lien

The Client authorises BAM to retain by way of lien any funds, property or documents which are from time to time in BAM's possession or control until all fees, interest and other amounts due from the Client on any account have been paid to BAM.

7.5 Set off

BAM may set-off against any amount payable by BAM under this Agreement, any debt, sum or compensation owing to BAM by Client.

8 Taxes

8.1 GST

- (a) Unless otherwise stated, the amounts payable by the Client to BAM for, or in connection with, any Supply under this Agreement do not include any GST.
- (b) The Client must pay an additional amount on account of GST equal to the amounts payable by the Client for the Supply multiplied by the prevailing GST rate.
- (c) Subject to clause 8.1(d), the additional amount on account of GST referred to in clause 8.1(b) is payable at the same time and in the same manner as the Fees and any other amounts payable by the Client are required to be paid under this Agreement.

- (d) The Client is not required to pay the additional amount referred to in clause 8.1(c) until such time as the Client has been provided with a tax invoice which is in an approved form for GST purposes.

8.2 Other Taxes

- (a) Unless otherwise agreed by the parties, the Client is responsible for all Taxes applicable to the Platform and Services supplied under this Agreement.

9 Confidentiality

9.1 Keep confidential

The Recipient must keep confidential, and not directly or indirectly disclose, any Confidential Information of the Discloser, except:

- (a) to any Personnel of the Recipient who have a specific need to have access to that Confidential Information and who has been made aware of the terms upon which it has been disclosed to the Recipient;
- (b) where legally compelled to do so, provided that the Recipient notifies the Discloser prior to the disclosure (unless legally prevented from doing so) and cooperates with the Discloser's reasonable instructions concerning the disclosure including with respect to taking any lawful steps to resist disclosure and maintain the confidentiality of the Confidential Information;
- (c) where the Discloser has provided its prior written permission; or
- (d) as otherwise permitted by this Agreement.

9.2 Use

The Recipient may only use the Confidential Information of the Discloser for the purpose for which it was disclosed in connection with this Agreement.

9.3 Representatives

The Recipient must take all reasonable steps to ensure that any person to whom it discloses the Discloser's Confidential Information complies with clauses 9.1 and 9.2 as if that other person were the Recipient.

9.4 Injunction

The Recipient acknowledges that the Discloser may seek an injunction or other relief if the Recipient or a person to whom it discloses Confidential Information breaches or threatens to breach the confidentiality of the Confidential Information.

9.5 Notify

The Recipient must notify the Discloser immediately it becomes aware of any breach of confidentiality regarding the Discloser's Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of that Confidential Information.

9.6 Return or destroy

The Recipient must, promptly upon reasonable request from the Discloser when no longer required under this Agreement, return to or destroy as directed by the Discloser the Confidential Information of the Discloser in its possession, custody or control, except that the Recipient may retain one copy where required to do so for compliance with its record-keeping requirements or the Law.

9.7 Public announcements

A public announcement in connection with this Agreement must be agreed by the parties before it is made (such agreement to not be unreasonably withheld), except if required by Law or a regulatory authority.

9.8 Survives termination

This clause survives the expiry or termination of this Agreement.

10 Intellectual Property Rights

10.1 Each party retains ownership

Nothing in this Agreement will be taken to constitute a transfer, assignment or grant of any ownership of, or licence rights to, any Client Materials, BAM Materials or Third Party Materials (each of which will be retained by the relevant owners), unless otherwise agreed.

10.2 Client retains ownership

As between the parties, the Client retains all rights, title and interest (including all Intellectual Property Rights) in and to the Client Materials.

10.3 Licence to provide Services

The Client grants to BAM a non-exclusive, perpetual, irrevocable, free, worldwide licence (with the right to sublicense) to use the Client Materials and any associated Intellectual Property Rights for the purpose of providing and developing the Services and related services.

10.4 Licence for use of name

BAM may, with the Client's consent (which the Client will not unreasonably withhold, and if such consent is given the Client grants BAM a non-exclusive,

perpetual, irrevocable, payment-free licence to) use the Client's name, trade mark and/or other Client Materials to refer to the Client as a client of BAM in connection with the promotion of BAM's business and to publicise BAM's services (including without limitation use on its website and in marketing material and in connection with its entry into industry events, award programs and competitions).

10.5 Moral rights

The Client consents (and will procure the consent of any holder of such rights) to any acts or omissions that may otherwise infringe any moral rights in connection with the Client Materials.

10.6 End of Agreement

Upon expiry or termination of this Agreement, to the extent that the Client Materials are stored in the Platform and within BAM's possession, custody or control, BAM will use reasonable endeavours to ensure that the Client Materials are available to the Client for access and/or extraction for a reasonable time, provided that the Client has paid all amounts due to BAM.

10.7 Platform

- (a) The Client acknowledges and agrees that:
- (i) the Platform and other BAM Materials are protected by copyright and other intellectual property laws and treaties;
 - (ii) the Platform and other BAM Materials are licensed, not sold, by BAM to the Client on the terms of this Agreement;
 - (iii) the Client and its Personnel will not obtain any title to (and this Agreement will not in any way transfer or assign to them) any part of the Platform and other BAM Materials including without limitation any Intellectual Property Rights in them; and
 - (iv) BAM will own (as between the parties) all rights, title and interest in and to the Platform and other BAM Materials (including as they may be modified or altered by the Client, BAM or a third party).
- (b) The Client assigns to BAM all Intellectual Property Rights that may be held by the Client, and must execute such documents and perform such other acts as BAM considers reasonably necessary, to give effect to clause 10.7(a)(iv).
- (c) The licence to use the Platform is personal to the Client and the Client may not transfer, assign, lease, deliver or otherwise dispose of this licence or the Platform to another person without the prior written consent of BAM, which (subject to clause 19.11) may be withheld in BAM's absolute discretion.
- (d) The Client agrees to take all reasonable steps to ensure that no unauthorised person accesses the Platform or BAM Materials and that all authorised persons having such access will refrain from any disclosure, duplication, or reproduction of BAM Materials.

11 Deliverables

11.1 Client may use

- (a) BAM grants the Client an exclusive, non-transferable licence to use the Deliverables for the Deliverables Purpose (or, if none is specified, for the purposes of any campaign contemplated by this Agreement in Australia during the Term).
- (b) If any BAM Materials are combined with, or are required in order to use, any Deliverables, BAM grants the Client a non-exclusive, non-transferable licence to use those BAM Materials as necessary in order to use the Deliverables as permitted by this Agreement.
- (c) The Client may request permission to use or exploit the Deliverables (and any corresponding BAM Materials) outside the scope of the licences under clauses 11.1 and 11.1(b), in which case BAM will negotiate in good faith with the Client to agree on such use (where any agreed terms must be documented in writing and signed by the parties).
- (d) The Client must not (and must not authorise any third party to) directly or indirectly use or exploit the Deliverables or BAM Materials (including without limitation by booking media or advertising containing them):
- (i) without notifying BAM beforehand; and
 - (ii) outside the scope of any licence without BAM's prior written consent, and must immediately cease use of the Deliverables and BAM Materials upon the Deliverables Purpose ceasing to apply (eg, expiry of any time limitation or campaign).

11.2 Use of Third Party Materials

BAM will use reasonable commercial endeavours to procure in favour of the Client a licence (on a non-exclusive basis unless otherwise agreed) on reasonable commercial terms for the use of the Third Party Materials as contemplated by this Agreement.

12 Warranties and liability

12.1 Warranties

BAM warrants that:

- (a) BAM will perform the Services with due care and skill;
- (b) the Platform will:
 - (i) conform to the Documentation in all material respects;
 - (ii) be fit for the purpose for which it was designed;
 - (iii) be free from material Defects;
 - (iv) not breach the Law; and
 - (v) not infringe the Intellectual Property Rights of any third party; and
- (c) the Documentation will not infringe the Intellectual Property Rights of any third party.

12.2 Exception Condition

BAM will not be liable for a breach of any warranty to the extent the breach is caused by an Exception Condition.

12.3 Client warranties

The Client warrants that:

- (a) the use by BAM of any Client Materials in accordance with this Agreement will not infringe the rights (including Intellectual Property Rights) of any third party, and the Client is authorised to grant the licence to use them under clause 10; and
- (b) the Client Materials will not contain any Material that:
 - (i) is illegal, contrary to or in breach of any Laws;
 - (ii) is false, misleading or deceptive or likely to mislead or deceive;
 - (iii) is contrary to any applicable advertising codes, industry codes, or the requirements of any regulatory authority;
 - (iv) is indecent, obscene, offensive, objectionable, threatening, discriminatory, harassing, defamatory, libellous, or in breach of confidence or any other obligation owed to a third party;
 - (v) knowingly contains any Malicious Code; or
 - (vi) would require BAM to hold any financial services or other licence.

13 Liability

13.1 No exclusion of statute where prohibited

Nothing in this Agreement operates to exclude or limit the application of any provision of any statute (including the Competition and Consumer Act 2010 (Cth)) where to do so would contravene that statute or cause any part of this clause to be void.

13.2 Mutual exclusion of consequential loss

Neither party will be liable for any indirect, special, incidental, economic or consequential loss or damage, or any loss of revenue, income, profits, data, goodwill, business, opportunities or anticipated savings, arising out of, in relation to or in connection with this Agreement, including without limitation, lost profits and damage suffered as a result of claims by any third party, such as any customer of the Client.

13.3 Exclusion or limitation of liability

- (a) Subject to clause 13.1 and to the extent permitted by law, BAM:
- (i) excludes all terms, conditions, warranties and guarantees implied or imposed by statute, law or other source external to this Agreement (including as to the description, merchantable quality or fitness for purpose of the Services);
 - (ii) except for liability expressly assumed under this Agreement (including under any indemnity), excludes all liability whatsoever, whether under statute, contract, for negligence or other tort, or otherwise, arising out of, in relation to or in connection with this Agreement, the Services, their supply or use (including for equipment failure or malfunction or destruction of data); and
 - (iii) limits any liability which cannot be excluded or limited under the other provisions of this clause 13.3 to, at BAM's option, the replacement, rectification or resupply of the Services or the supply of equivalent services, or the payment of the cost of doing so.
- (b) BAM's Liability to the Client for any Claim arising out of, in relation to or in connection with this Agreement will not exceed the total amount actually paid by the Client to BAM under this Agreement during the previous 6 months.
- (c) The exclusions and limitations of liability under clause 13.3 apply even if BAM was informed of the possibility of Liability or of any Claim by a third party, and operate in favour of BAM and its Personnel.

13.4 Contribution

- (a) The Liability of a party for any Loss suffered or incurred by the other party will be reduced to the extent that the other party caused or contributed to such Loss.
- (b) BAM will have no Liability in connection with:
- (i) any act or omission of the Client (including where the Client has failed to deliver Client Materials as required to enable BAM to perform the Services);
 - (ii) any act or omission of a third party (including any service provider or contractor) or for Third Party Supplies;
 - (iii) an Exception Condition; or
 - (iv) any other matter or circumstance beyond BAM's reasonable control.

13.5 Representations

- (a) While BAM will use all reasonable endeavours in accordance with industry standards to provide Services that comply with all applicable requirements and achieve the Client's desired outcomes, BAM gives no warranty, representation or guarantee that the Platform, Services, Deliverables or Third Party Supplies or their use, results, output or data:
- (i) will be accurate, correct or error-free;
 - (ii) will comply with all Laws, advertising codes, industry codes, or the requirements of any regulatory authority, or that any necessary or desirable approvals and releases have been obtained; or
 - (iii) will achieve any particular level of commercial success or effectiveness (including conversion or response rates, lead or sales generation or other outcomes), and the Client is not entitled to any reduction in Fees if such anticipated outcomes are not actually realised.
- (b) For the avoidance of doubt, the exclusions and limitations of liability set out in this Agreement extend to all use of the Platform and Services, whether used separately or in combination with any other software, equipment or product, and to all reliance on any data, output, results or outcomes of doing so by the Client or any other person.

13.6 No reliance

Subject to clause 13.7, the Client warrants that it has not relied on any representation made by BAM which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including publicity material produced by BAM.

13.7 Independent verification

The Client acknowledges that to the extent BAM has made any representation which is not otherwise expressly stated in this Agreement, the Client has independently verified the accuracy of that representation.

14 Indemnification

14.1 By Client

The Client indemnifies BAM and its Personnel from and against all Liability that they may incur as a result of:

- (a) any breach of Law or this Agreement by the Client;
- (b) any negligent, wilful, fraudulent, dishonest or otherwise wrongful act or omission of the Client or its Personnel in connection with this Agreement;
- (c) the death of, or personal injury to, any person, or any damage to or destruction of any property, to the extent caused by any act or omission of the Client or its Personnel; and
- (d) use of the Platform and Services by the Client or its Personnel.

14.2 By BAM

BAM will indemnify the Client against Liability under any final judgment in proceedings brought by a third party against the Client which determines that the Platform constitutes an infringement of any Intellectual Property Rights of the third party, subject to compliance by the Client with clause 15 and except to the extent that the infringement is caused by an Exception Condition.

15 Infringement

15.1 Notification

Each party must immediately notify the other party if it becomes aware of any Third Party Claim.

15.2 Practical requirements

Each party must reasonably cooperate with the other party in respect of any negotiations or defence regarding a Third Party Claim (at its cost if it is responsible for the infringement or breach giving rise to the Third Party Claim).

15.3 BAM's rights

In the event of a Third Party Claim BAM will be entitled to:

- (a) procure for the Client the right to continue to use the Platform, Services or Deliverables (as applicable) so that the infringement or breach ceases;
- (b) modify or substitute the infringing part of the Platform, Services or Deliverables (as applicable) so that the infringement or breach ceases, provided that BAM will use reasonable efforts to ensure such modification does not materially reduce the utility of the Platform or Services; or
- (c) if the actions described in clauses 15.3(a) and 15.3(b) are not reasonably commercially viable or available, terminate this Agreement in respect of the infringing Platform, Services or Deliverables (as applicable) and provide a refund to the Client of the amounts paid by the Client for them,

and the Client will comply with BAM's reasonable directions in respect of avoiding continuing Intellectual Property Rights infringement.

15.4 Defence

If BAM decides (acting reasonably) that the Client is not satisfactorily defending a Third Party Claim that may adversely affect BAM, BAM may opt to defend the Third Party Claim itself by written notice to the Client, in which case the Client must promptly transfer the conduct of the Third Party Claim to BAM.

15.5 Client liability

The Client must indemnify BAM against any Liability arising out of a Claim by a third party alleging such infringement if and to the extent that:

- (a) the Claim arises from an Exception Condition within the control of the Client or its Personnel; or
- (b) the ability of BAM to defend the Claim has been prejudiced by the failure of the Client to comply with any requirements of this clause.

16 Privacy

16.1 Privacy disclosures

- (a) BAM collects personal information in order to provide the Services and occasionally for other purposes, such as to invite its clients to functions or events.
- (b) BAM does not usually disclose personal information to other organisations (including overseas recipients) unless necessary for the provision of the Services or if approved by the Client.
- (c) BAM's ability to provide the Services may be affected if it is not provided with all personal information requested.
- (d) BAM's privacy policy contains information about how an individual may access personal information BAM holds about that individual, seek the correction of such information, and complain about a breach of the Australian Privacy Principles under the Privacy Laws and how BAM will deal with such a complaint.
- (e) If the Client discloses personal information to BAM, the Client confirms that BAM is authorised to collect it (if such authorisation is required by the Privacy Laws), and the Client has taken reasonable steps to notify the individual of the fact that BAM will collect it and the circumstances of that collection, together with BAM's identity and contact details and the matters referred to in clauses 16.1(a) to 16.1(d) inclusive.

16.2 Data breach

Each party must, if it becomes aware of any complaint under or breach of the Privacy Laws (including an "eligible data breach") relating to personal information handled by that party in connection with this Agreement, promptly notify the other party and then reasonably cooperate with that other party in connection with addressing or resolving that complaint or breach.

16.3 Tracking

The Client acknowledges that BAM may implement and use systems or features to identify, monitor, track and analyse the use, effectiveness or performance of:

- (a) the Platform; and/or
- (b) any Services (including any campaign).

16.4 Purpose

Any systems or features referred to under clause 16.3 (Tracking) will be used for purposes that include tracking and reporting on the Services, assessing compliance with this Agreement, and improving the Services and Platform.

16.5 Reporting

BAM may agree that the outcomes of Tracking under clause 16.3(b) are Deliverables.

16.6 Consent

The Client hereby consents and must procure any consent of its Personnel required for the use of Tracking.

16.7 Other Tracking

Unless otherwise agreed by BAM, the Client will not directly or indirectly conduct or use any Tracking.

17 Termination

17.1 Termination

Without limiting its other rights, either party (**Terminating Party**) may terminate this Agreement with immediate effect by written notice to the other party (**Defaulting Party**) if:

- (a) the Defaulting Party commits a breach of any material provision of this Agreement and fails to remedy that breach within 14 days after receiving a notice from the Terminating Party requiring it to do so;
- (b) the Defaulting Party commits a breach of any material provision of this Agreement which is incapable of remedy in the Terminating Party's reasonable opinion;
- (c) the Client commits a breach of any provision of this Agreement and fails to remedy that breach within 21 days after receiving a notice from BAM requiring the Client to do so; or
- (d) there is a change in Control of the Client where a Competitor of BAM acquires an interest in the Client; or
- (e) the Defaulting Party becomes subject to any form of Insolvency Administration.

17.2 Breach

The Client must pay and indemnify BAM for any costs and expenses BAM incurs (including debt collection costs and internal, administrative and legal costs on a solicitor and own client basis) associated with any breach by the Client of its obligations under this Agreement.

17.3 Consequences of termination

- (a) Upon expiry or termination of this Agreement:
 - (i) the Client must immediately discontinue all use of the Platform and must (as directed by BAM) return to BAM (if capable of return) or destroy all BAM Materials (including all copies) in the Client's or any of its Personnel's possession, custody or control, and must certify in writing to BAM the Client's compliance with this clause promptly upon request by BAM;
 - (ii) all fees incurred, including for Services rendered, will be immediately due and payable by the Client; and
 - (iii) each party must comply with clause 9.6 for all Confidential Information of the other party in its possession, custody or control.
- (b) Termination of this Agreement will not affect any accrued rights or remedies a party may have as at the date of termination, unless explicitly stated otherwise in this Agreement.

17.4 No further obligations

Upon the termination of this Agreement for any reason, subject as otherwise provided in this Agreement and to any rights which have accrued prior to termination, neither party will have any further obligations to the other under this Agreement.

18 Dispute resolution

18.1 Resolution of Disputes

Neither party may commence court proceedings in respect of a dispute arising out of this Agreement (**Dispute**) until it has complied with this clause 18.

18.2 Notification

A party claiming that a Dispute has arisen must notify the other party in writing, setting out details of the Dispute.

18.3 Nomination of Representatives and Resolution

During the seven day period after a notice is given under clause 9.2 (**Initial Period**) each party must use its best efforts to resolve the Dispute.

18.4 Mediation

If the parties are unable to resolve the Dispute within the Initial Period (or any extension of that period agreed in writing) then:

- (a) they must within a further seven days appoint a mediator to mediate the Dispute; or
- (b) if the parties fail to agree on a mediator within that time, either of them may refer the Dispute for mediation to a mediator nominated by the then current president of the Law Society of South Australia,

and the parties must thereafter mediate the Dispute.

18.5 Terms

The terms on which the mediation is conducted and the procedure for the mediation will unless otherwise agreed in writing between the parties and the mediator be those prescribed by the Rules and Practice Directions of the Supreme Court of South Australia from time to time.

18.6 Location

Unless otherwise agreed in writing between the parties the mediation will be conducted in Adelaide, Australia.

18.7 Costs

Each party must bear its own costs of resolving a Dispute in accordance with this clause and the parties must unless otherwise agreed bear equally the fees and proper out of pocket expenses of the mediator and any other third party expenses related to the mediation

18.8 Urgent relief

Nothing in this clause 18 shall prevent the making of an application to the court by any party to the Dispute for urgent injunctive or declaratory relief.

19 General

19.1 Notices

A party giving notice under this Agreement must do so by notice in writing, hand delivered or sent by pre-paid post or email to the address of the recipient, and such a notice will be deemed received:

- (a) if hand delivered, upon delivery;
- (b) if sent by pre-paid post, five Business Days after the date of posting;
- (c) if sent by email, at the time that would be the time of receipt under the Electronic Transactions Act 1999 (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5pm on a Business Day, the notice is taken to be received at 9am on the following Business Day.

19.2 Relationship

- (a) BAM is an independent contractor and nothing in this Agreement constitutes, or will operate to create, a joint venture, a relationship of employer and employee, a relationship of agency or a partnership between the Client, BAM and/or any of their respective personnel.
- (b) Except as authorised by a party in writing, the other party will not:
 - (i) represent that it is the agent of the first-mentioned party;
 - (ii) sell, licence, or enter into any contracts or seek to bind the first-mentioned party in any way; or
 - (iii) create any liabilities on behalf of the first-mentioned party.

19.3 Costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

19.4 Severability

Subject to clause **Error! Reference source not found.**, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.

19.5 Further action

Each party must promptly do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and to perform its obligations under it.

19.6 Consents

Except as expressly stated otherwise in this Agreement, a party may conditionally or unconditionally give or withhold consent to be given under this Agreement and is not obliged to give reasons for doing so.

19.7 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

19.8 Waiver and exercise of rights

- (a) A party may only waive its rights under this Agreement by a clear statement in writing.
- (b) Any failure or delay by a party to exercise a right or insist on strict performance of any obligation under this Agreement shall not constitute a waiver.
- (c) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

- (d) A party is not liable for any Loss of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

19.9 Survival

Any provision expressly stated or by its nature intended to survive expiry or termination of this Agreement survives expiry or termination of this Agreement.

19.10 Amendment

A variation or modification of this Agreement must be in writing and signed by the parties.

19.11 Assignment

- (a) A party may assign its interest in this Agreement to a third party with the prior written consent of the other party.
- (b) Consent under clause 19.11(a):
- (i) will not be unreasonably withheld if the third party:
 - (A) is a related body corporate Related Body Corporate (within the meaning of the Corporations Act 2001 (Cth)) of the assigning party; or
 - (B) is a bona fide purchaser of any business or assets of the assigning party in connection with which the Platform is used; or
 - (ii) may be withheld by BAM if the third party is a Competitor of BAM, and notwithstanding clause 19.11(b)(i).
- (c) BAM may assign any rights under this Agreement to any legal entity that assumes all of BAM's obligations under this Agreement by giving 14 days' notice to the Client
- (d) The parties will promptly execute any documentation required to give effect to any assignment or novation permitted by this clause.
- (e) Other than as permitted by this clause, neither party may assign any right, benefit or interest under this Agreement to a third party, and any purported dealing in breach of this clause is of no effect.

19.12 Subcontracting

BAM may subcontract or otherwise arrange for another person to perform any part of the Services or to discharge any of its obligations under this Agreement, and every right, exemption from liability and defence to which BAM is entitled under this Agreement also extends to all subcontractors.

19.13 Entire understanding

This Agreement constitutes the entire agreement between the parties about its subject matter and supersedes all previous representations, understandings and agreements in connection with that subject matter.

19.14 Governing law and jurisdiction

This Agreement is governed by and construed in accordance with the laws of South Australia and the parties submit to the exclusive jurisdiction of the South Australian courts and the South Australian Registry of the Federal Court.

20 Definitions and interpretation

20.1 Definitions

In this Agreement, unless the contrary intention appears:

Agreement means this contract between BAM and the Client, comprising these terms and conditions and the Booking Form;

Approval means any approval, authorisation, agreement or consent given by the Client to BAM (for example, a signed media buying authority);

BAM Materials means the Platform (including any part of it or its content), the Documentation, BAM's Confidential Information, BAM's Intellectual Property Rights, and any other Material provided to the Client or its Personnel by BAM or at BAM's direction in connection with this Agreement;

Booking Form means the form (which may be attached to these terms and conditions) regarding the engagement between BAM and the Client and signed by their representatives;

Business Day means a day which is not a Saturday, Sunday or public holiday in South Australia;

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, Loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement;

Client Materials means Material that is provided to BAM by the Client or at the Client's direction in connection with this Agreement;

Competitor of BAM means a third party who in BAM's reasonable opinion is or is associated with a competitor of BAM;

Confidential Information of the Discloser means information in any form (including oral and written information) that is imparted to or acquired by the Recipient directly or indirectly from the Discloser before or after the date of this Agreement, including:

- (a) information about the products, concepts, inventions, discoveries, technology, methodologies, processes, trade secrets, knowledge, data, documents, manuals, policies, Intellectual Property Rights and Personnel of the Discloser;
 - (b) all business, financial, accounting, marketing, commercial, customer and technical information, used by or relating to the Discloser or its transactions or affairs;
 - (c) other information that by its nature is confidential, was obtained by the Recipient in circumstances of confidence, and/or that the Recipient knows or ought to know is confidential;
- but excluding information:
- (d) that is in the public domain otherwise than as a result of a breach of confidentiality or this Agreement by the Recipient; or
 - (e) the other party can prove by the production of documentary evidence was rightfully known to or in the possession, custody or control of that other party and not subject to an obligation of confidentiality;

Control, in relation to an entity, means the ability (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors (or other governing body) of that entity, the voting rights of the majority of voting securities of the entity, or the management or affairs of the entity;

Data and Environment means the Client's data and physical and electronic environment (including hardware, software, databases and premises);

Defect means a failure of the Platform or Services to perform substantially in accordance with the Documentation and this Agreement other than where due to an Exception Condition;

Deliverables means any Materials created, developed, prepared or produced by BAM specifically for the Client under this Agreement and provided for the purposes, and in the process, of the provision of the Services, but excluding Client Materials, BAM Materials, Third Party Materials and any materials provided on a pitch or proposal basis by BAM unless subsequently included in the Services;

Deliverables Purpose means any purpose for which the Deliverables may be used as agreed by the parties or specified by BAM (including in the Booking Form), which may without limitation allow the Deliverables to be used only for a specified period of time, territory, campaign, execution and/or media, or otherwise limit its use to a specific purpose;

Discloser means the Client or BAM (as the case may be) who (or whose Personnel) provides or has provided Confidential Information of that party to the other party (being the Recipient);

Documentation means the user manuals, product literature and other materials which relate to the Platform as current from time to time published by BAM in electronic or printed form and provided or made available by BAM to the Client;

End Date means that date as specified in the Booking Form;

Exception Condition means:

- (a) a breach of this Agreement by the Client;
- (b) use of the Platform or Services other than under conditions of normal use and strictly in accordance with this Agreement and the Documentation;
- (c) use of the Platform or Services in a manner or for a purpose not reasonably contemplated or not authorised by BAM;
- (d) use of the Platform or Services in combination by any means and in any form with other products, goods or items not specifically approved by BAM;
- (e) any malfunction or defect in the Client's equipment or software environment;
- (f) an error in or modification of software other than the Platform, including the operating system;
- (g) any Malicious Code;
- (h) any fault, defect or error in any information supplied by the Client or its Personnel to BAM;
- (i) a circumstance beyond the reasonable control of BAM which results in BAM being unable to observe or perform on time an obligation under this Agreement, or any cause within the reasonable control of the Client and outside the reasonable control of BAM;
- (j) modification or alteration of the Platform, Services or BAM Materials without the prior written consent of BAM;

Fees means the amounts payable by the Client to BAM for the Services that BAM agrees to provide as specified in the Booking Form (or, if not specified, determined on the basis of BAM's published professional rates for providing such services);

GST has the meaning given by the GST Act;

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related or similar legislation;

Insolvency Administration means, in respect of a party:

- (a) the party is insolvent, insolvent under administration, or states that it is unable to pay its debts when they become due and payable;
- (b) the party is placed in or under any form of external administration including if the party or its property is subject to the appointment of an administrator, a controller, receiver or receiver and manager, a liquidator or an official manager;
- (c) the party is made subject to any compromise or arrangement with any of its creditors or members or scheme for its reconstruction or amalgamation, otherwise than as a result of voluntary corporate reconstruction;
- (d) the party is wound up or dissolved, or an order or resolution is made to wind up or dissolve the party;
- (e) the party is or applies to be protected from any of its creditors under any applicable legislation; or
- (f) the party ceases or threatens to cease conducting its business in the normal manner; or
- (g) anything similar to any of the events in paragraphs (a) to (f) happen to the party under the law of any applicable jurisdiction;

Intellectual Property Rights means all current and future intellectual property rights including without limitation patents, copyright, rights in circuit layouts, registered designs, trade marks and the right to have confidential information kept confidential, and any application or right to apply for registration of any of those rights;

Laws includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, code of conduct or protocol, principles of common law and equity, writs, orders, injunctions, judgments, and Australian generally accepted accounting principles;

Liability means any liability or obligation (whether actual, contingent or prospective) including relating to a Claim, irrespective of when the acts, events or things giving rise to the liability or obligation occurred;

Loss includes any loss, damage, cost, charge, liability (including Tax liability) or expense (including legal costs and expenses);

Malicious Code includes third-party software known as viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs that may perform unauthorised processes on a computer or network or adversely affect data integrity or system security;

Materials includes documents, information, data, content, subject matter, artwork, copy, layouts, designs, storyboards, scripts, equipment, software, customer lists, items, works, materials, recordings, films, other matter and materials and Intellectual Property Rights (including where applicable in tangible, electronic or other intangible form);

Personnel includes directors, officers, employees, servants, agents, contractors and service providers;

Platform means the software made available by BAM to the Client, including any mobile device application, online or hosted platform or portal including SaaS, cloud hosted platforms, services and facilities;

Privacy Laws means the Privacy Act 1988 (Cth) and any other applicable Laws pertaining to privacy or the handling of personal information or data about individuals;

Recipient means BAM or the Client (as the case may be) to whom (or to whose Personnel) the other party (being the Discloser) provides or has provided Confidential Information of the Discloser; and

Service Level, for a Service, means the targets the Services must meet as specified in the Documentation;

Services means the services provided by BAM under this Agreement, including:

- (a) any that are described in the Booking Form;
- (b) the provision of the Platform;
- (c) communications, marketing, advertising, campaign or other services to be provided by BAM including the production of any Deliverables and the acquisition of any Third Party Supplies;

Start Date means that date as specified in the Booking Form;

Supply has the meaning given by section 9-10 of the GST Act and excludes any "GST-free supplies" and "input taxed supplies" under the GST Act;

Tax means all forms of taxes, duties, excises, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition (not being taxes assessed on BAM's income);

Term means the duration of this Agreement (as described in clause 2.2);

Third Party Claim means a Claim by a third party that the Platform or Services or any right enjoyed by a party under this Agreement infringes the rights (including Intellectual Property Rights) of any person, or breaches any Laws, including any legal proceedings arising in connection with such a Claim;

Third Party Materials means Materials are owned or provided by a third party; and

Third Party Supplies means goods or services to be procured from third parties (such as media or online placement services) as requested or Approved by the Client or required for or in connection with the provision of the Services, including any Third Party Materials.

20.2 Interpretation

In this Agreement:

- (a) words or expressions:
 - (i) importing the singular include the plural and vice versa; and
 - (ii) denoting a person or individual include natural persons, partnerships, bodies corporate, firms, associations, unincorporated bodies, governmental or local authorities, instrumentalities or agencies and other entities;
- (b) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning;
- (c) a reference to \$ or dollars is a reference to Australian dollars;
- (d) a reference to two or more persons means those persons jointly and severally;
- (e) a reference to this Agreement includes any schedule or annexures, and schedules or annexures to this Agreement form part of this Agreement;
- (f) a reference to time is to time in South Australia;
- (g) "including" and similar expressions, and the giving of examples, do not limit what else may be included;
- (h) headings are for ease of reference only and do not affect interpretation.

Executed as an agreement

Executed by the Client

in accordance with section 127 of the Corporations Act:

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Executed by Brick & Mortar Digital Pty Ltd

ABN 60 653 435 182 in accordance with section 127 of the
Corporations Act:



Director

*Director/*Company Secretary

Keiren Hemming

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate