

Switchdigital Pty Limited

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Switch Digital Pty Ltd
Terms and Conditions
Updated: 24/6/2015

Definitions & interpretation

- 1.1 In this Agreement (**Agreement**), capitalised expressions have the meanings given in Schedule 1.
- 1.2 The Agreement will be interpreted in accordance with the rules in Schedule 1.
- 1.3 This agreement incorporates by reference all Service Orders. If there is any inconsistency between these terms and a Service Order, the Service Order prevails.

2. Services

- 2.1 Switchdigital agrees to provide the Services to You in return for the Fees on the terms of this Agreement and as recorded in each Service Order.
- 2.2 Where necessary and reasonably practicable, Switchdigital agrees to co-operate with other third parties at Your direction to facilitate the Services.
- 2.3 Any changes requested to an executed Service Order must be made in accordance with the procedure set out at clause 5.

3. Switchdigital's Obligations

- 3.1 Switchdigital must use reasonable endeavours in accordance with good industry practice to perform each of the following:
 - (a) any Services agreed in a Service Order, and always in a professional and businesslike manner; and
 - (b) any obligations set out in this Agreement.

4. Your Obligations

- 4.1 You must provide any assistance and information and make any arrangements for Switchdigital that are reasonably necessary for Switchdigital to perform its obligations under this Agreement and any Service Order.
- 4.2 You are responsible for all content provided or approved by You as part of the Services and Switchdigital has no liability to You for that content or its performance. You remain fully responsible and liable for Your marketing and other business activities and will comply with all laws, regulations and codes of practise in relation to the same.
- 4.3 You must ensure that:
 - (a) any materials supplied to Switchdigital do not contain any viruses or have any impact on the security or system of Switchdigital; and
 - (b) You do not act in any way that violates this Agreement.
 - (c) You comply with the insurance obligations in clause 6.1.
- 4.4 You acknowledge and agree to each of the following:
 - (a) You are responsible for all acts and omissions of Your employees and contractors and computer systems, whether you have authorised those acts or omissions or not;
 - (b) Services may be subject to technical limitations such as third party service availability;
 - (c) Services are provided on an AS IS and AS AVAILABLE basis and Switchdigital makes no warranties or guarantees in respect of any Services; and
 - (d) Switchdigital expressly assumes no responsibility for, without limitation, backing up Your data or damage to Your data.
- 4.5 You agree to indemnify Switchdigital for all expenses that are incurred by Switchdigital as a result of a failure to observe the conditions in clause 4.
- 4.6 Where Switchdigital gathers any information on Your behalf during the operation of the Site, You grant Switchdigital a right to use that information as is reasonably necessary (including reproducing it) for the operation of the Site and providing the Services.

5. Change Procedure

- 5.1 Any changes to any Service Order (**Change**) shall be made in accordance with this clause 5. Neither party is obliged to agree to any Change but will use reasonable and commercial efforts to do so.
- 5.2 Either party may make a request or recommendation for any Change by submitting a written request (**Change Request**) in reasonable detail to the other party for its approval.
- 5.3 Where Switchdigital intends to charge additional fees and/or expenses to implement and perform any Change, or where the Change affects ongoing Services and Fees, Switchdigital will provide details of such fees and expenses to You.

- 5.4 Where the parties agree to a Change Request, the authorised representative of each party will sign the Change Request and, unless otherwise agreed, the Change shall be effective from that date.

6. Third Party Contracts

- 6.1 Switchdigital will act as principal, and not as agent, for You in respect of dealings with media and other third party suppliers (**Suppliers**) in connection with the Services provided always that:
 - (a) You arrange and maintain suitable credit insurance cover on Switchdigital's expenditure;
 - (b) where, for any reason, this insurance cover is either refused, withdrawn, revised or inadequate to cover the liabilities of Switchdigital or You, You agree to arrange for the appropriate financial guarantees to be granted to Switchdigital; and
 - (c) if Your financial guarantees are not sufficient to meet the commitments of Switchdigital, then Switchdigital will invoice You for the amount to be paid prior to commitment and such commitment shall only be made following receipt Switchdigital of cleared funds in payment of such invoices.
- 6.2 With Your prior written permission, Switchdigital may place orders and enter into contracts with the Suppliers in your name and on Your account.
- 6.3 You agree to promptly provide financial and other information necessary for Switchdigital to establish credit terms with Suppliers. In the event that any Supplier will not grant credit terms for a reason related directly or indirectly to You, Switchdigital will not be required to perform the relevant Services unless You agree to pay for the related Services in advance.

7. Warranties and indemnity

- 7.1 You warrant to the best of Your knowledge that the Content and other materials and information provided to Switchdigital for the purposes of providing the Services:
 - (a) are true, correct and current;
 - (b) are able to be disclosed by You;
 - (c) do not infringe the rights of any third party;
 - (d) are able to be legally provided to Switchdigital and their disclosure does not breach any law or any obligation (whether of confidence or otherwise) owed to any person;
 - (e) You have all necessary right, power and authority to enter into the Agreement and to perform the acts required of You under the Agreement.
- 7.2 You acknowledge that You have not relied upon or been induced by any representation by Switchdigital and Switchdigital makes no warranty or representation as to:
 - (a) the results that may be obtained through the Services;
 - (b) the accuracy, reliability or otherwise of any information obtained or displayed through the Service; or
 - (c) the Service being uninterrupted, timely or error free.
- 7.3 You continually indemnify Switchdigital, its directors, officers, servants, affiliates, agents and subcontractors, against all claims (including third party claims) or proceeding that is made, threatened or commenced, and against any liability, penalties, loss, damage or expense (including legal costs on a full indemnity basis) any of them incurs or suffers, as a direct or indirect result of any of the following:
 - (a) a breach of any term of this Agreement or a Service Order, including any warranty;
 - (b) any request by You;
 - (c) a wilful, unlawful or negligent act or omission by You or an officer, employee, agent or subcontractor of You;
 - (d) the Services;
 - (e) the Content;
 - (f) Your use of the Services; and
 - (g) damage to or loss of any of Switchdigital's property.The obligations in this clause 7.3 survive the termination of this Agreement.
- 7.4 The Deliverable is deemed to be accepted without fault 7 days from delivery, unless You show within 7 days of receipt

of Deliverable that the Deliverable fails to substantially comply with the Service Order.

- 7.5 Where you can successfully demonstrate that a Deliverable fails to comply with the Service Order, Switchdigital must use reasonable endeavours to modify the Deliverable so that it substantially complies.

8. Payment terms

- 8.1 Switchdigital will invoice You monthly in arrears for all Fees, subject to any arrangement in a Service Order which shall apply to the extent of any inconsistency.
- 8.2 You shall pay the Fees within 21 days of the date on Switchdigital's invoice.
- 8.3 Unless otherwise agreed in writing, in addition to the Fees You also agree to pay for:
- (a) any Cancellation Fee;
 - (b) any Adjustments and any additional fees or charges incurred in connection with any Adjustments;
 - (c) any costs incurred through contracts with Suppliers;
 - (d) the net cost incurred by Switchdigital for any additional production charges levied by media owners on Switchdigital in respect of Your advertising.
 - (e) disbursements incurred by Switchdigital on Your behalf including but not limited to; purchase of competitive data software, images or artwork, sound files or recording charges and other licence or royalty fees; and
 - (f) reasonable travel, accommodation, taxi, courier and parking expenses.
- on receipt of invoice.
- 8.4 Failure to comply with these payment terms shall entitle Switchdigital at its sole discretion to:
- (a) to charge interest on the outstanding amount at the rate of 10% per month from 5 Business Days after the due date until the outstanding sums are paid;
 - (b) suspend performance of the Services;
 - (c) require assurances from You as deemed appropriate by Switchdigital to secure current and future payment obligations; and
 - (d) immediately terminate the agreement.
- 8.5 Charges are exclusive of GST (see clause 8.6 below) and any other applicable taxes, which You shall be responsible for and will pay in full. If Switchdigital is required to pay any taxes, expenses, penalties, fines, costs, claims or interest arising out of or consequential upon the Services or Your obligations under this Agreement, You undertake to indemnify Switchdigital with respect to such payments.
- 8.6 All amounts agreed to be paid under this Agreement, being the consideration for the supply expressed in this Agreement, are exclusive of GST. If a Supplier becomes liable for GST in respect of a supply made under this Agreement, the recipient must pay to the Supplier an amount equivalent to the Supplier's GST liability, at the same time as the payment is made involving the Supplier in GST liability. If the Supplier is entitled to an input tax credit in relation to any amount recoverable from the recipient under this clause, the amount payable by the recipient must be reduced by the amount of the input tax credit that the Supplier has received or claims and is entitled to receive. The Supplier must deliver a tax invoice to the recipient.
- 8.7 Unless otherwise agreed in writing and set out in a Service Order, Switchdigital reserves the right to increase the Fees where it has incurred an increase in its operating costs. In the event of such increase, Switchdigital shall notify You at least 30 days prior to the increase taking effect and shall provide such evidence of its additional costs as reasonably required by You. Switchdigital agrees not to increase its Fees more than once in any 12-month period.
- 8.8 Ownership of any Deliverable and all Intellectual Property Rights remains with Switchdigital until full payment of the Fees for the Services have been received and have cleared.

9. Intellectual Property Rights

- 9.1 You and Your licensors shall own and retain all Intellectual Property Rights in and to any Content.
- 9.2 Switchdigital and its licensors shall own and retain all Intellectual Property Rights in and to the Background Materials.
- 9.3 Subject to clause 9.4, Switchdigital hereby grants to You a worldwide, non-exclusive, non-transferable, royalty-free licence in

perpetuity to use the Background Materials (in object code form only) for the purpose of and to the extent necessary for receiving the Services in the Territory ("**Licence**").

- 9.4 The Licence is granted to You subject to the following conditions (as well as any additional conditions which may be set out in a Service Order). You may not:
- (a) display or use the Background Materials in any manner except as specifically authorised in this Agreement;
 - (b) copy, reproduce, modify, make derivative works of, reverse engineer, decompile, disassemble or attempt to derive the source code of any Background Materials, except as and to the extent permitted by law;
 - (c) rent, lease, sell, sub-licence, assign or otherwise transfer any Background Materials to any third party; or
 - (d) modify or remove any proprietary notices or legends placed on or within the Background Materials.
- 9.5 Any rights not expressly granted in this clause 9 are reserved by Switchdigital. Switchdigital does not grant any licence or copyright where such a grant would preclude Switchdigital from making use of the techniques or know how underlying the Site, the Deliverables, the Services or any part of them.
- 9.6 Subject to full payment of the Fees and anything in a Service Order, You shall own all Intellectual Property Rights in and to the Foreground Materials and Switchdigital assigns its rights to the Foreground Materials to You without reservation.
- 9.7 You grant to Switchdigital a worldwide, non-exclusive, royalty-free licence to use the Content and the Foreground Materials to the extent necessary to allow Switchdigital to perform the Services, which shall include the right to sub-licence the same to Suppliers and sub-contractors in connection with the performance of any part of the Services. Subject to anything in a Service Order, the licence granted under this clause 9.7 shall expire upon completion of the Services or, if sooner, upon termination of a Service Order to which the Content and Foreground Materials relate.
- 9.8 Any use of Switchdigital's trade names, trade marks, service marks, logos, domain names, and other distinctive brand features ("**Brand Features**") by You must be only in connection with the Service, in compliance with the Agreement and with the prior written permission of Switchdigital. You must not alter any Brand Features or copyright notices that are posted by Switchdigital in connection with the Service or the Deliverable.

10. Subcontracting

Switchdigital may sub-contract the whole or any part of its obligations under this Agreement at its discretion providing that Switchdigital ensures any sub-contractor is bound by confidentiality obligations similar to those that Switchdigital is bound in relation to Your Confidential Information.

11. Confidentiality

- 11.1 Each party must:
- (a) use the Confidential Information only for the purposes of meeting an obligation under this Agreement;
 - (b) keep the Confidential Information confidential and not disclose it or allow it to be disclosed to a third party except:
 - (i) with the prior written approval of the other parties; or
 - (ii) to officers, employees and consultants or advisers of the party (or its related bodies corporate) who have a need to know (and only to the extent that each has a need to know) and are aware that the Confidential Information must be kept confidential; and
 - (c) take or cause to be taken reasonable precautions necessary to maintain the secrecy and confidentiality of the Confidential Information.
- 11.2 No announcement, press release or other communication of any kind relating to the negotiations of the parties or the subject matter or terms of this Agreement must be made or authorised by or on behalf of a party without the prior written approval of each other party unless that announcement, press release or communication is required

to be made by law or any order of any court, tribunal, authority or regulatory body.

- 11.3 The obligations of confidentiality under this Agreement do not extend to information (whether before or after this Agreement is executed):
- (a) disclosed to a party, but at the time of disclosure is rightfully known to or in the possession or control of the party and not subject to an obligation of confidentiality on the party;
 - (b) that is public knowledge (except because of a breach of this Agreement or any other obligation of confidence);
 - (c) required to be disclosed by law or any order of any court, tribunal, authority or regulatory body or in connection with the enforcement of this Agreement or by the rules of a Stock Exchange; or
 - (d) a party wishes to disclose to an adviser if the disclosure is made on a confidential basis.

12. Term and Termination

- 12.1 This Agreement commences on the date of agreement nominated in the Agreement Details above, and continues until terminated.
- 12.2 Subject to clause 12.6, You may cancel a Service Order or part of a Service Order by providing at least ninety (90) days written notice to Switchdigital, unless otherwise agreed in writing and set out in a Service Order. For the avoidance of doubt, the termination of a Service Order will not operate to terminate any other Service Order or this Agreement and any sums due to Switchdigital will immediately become payable in full by You.
- 12.3 Either party may terminate this Agreement immediately by notice in writing to the other party ("Breaching Party") after following the Dispute Resolution process at clause 14 if any of the following events occurs:
- (a) the Breaching Party commits a material breach of any terms of this Agreement and fails to remedy the same within thirty (30) days of being required to do so by written notice;
 - (b) the Breaching Party ceases, or threatens to cease, to carry on business;
 - (c) the Breaching Party passes a resolution for its winding up or a court of competent jurisdiction makes an order for the Breaching Party to be wound up or dissolved or the Breaching Party being otherwise dissolved or any similar event occurs under the law of any other jurisdiction (other than for the sole purpose of amalgamation or reconstruction);
 - (d) the appointment of an administrator of, or the making of an administration order in relation to the Breaching Party or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the Breaching Party's undertaking, assets, rights or revenue or any similar event occurs under the law of any other jurisdiction;
 - (e) the Breaching Party is unable to pay its debts or is capable of being deemed unable to pay its debts.
- 12.4 Either party shall be entitled to terminate this Agreement for any reason by giving ninety (90) days prior written notice in writing to the other. Any such termination will not affect the parties' rights and obligations hereunder arising prior to the date of termination and, notwithstanding any such termination, You will remain fully responsible and liable for all charges, expenses and fees incurred or earned prior to the date of termination.
- 12.5 On termination of this Agreement, howsoever caused, all Service Orders automatically terminate and any sums due to Switchdigital are immediately payable in full by You.
- 12.6 On cancellation of a Service Order (or part of a Service Order) pursuant to clause 12.2 You shall pay the Cancellation Fee. In the absence of a Cancellation Fee, Switchdigital reserves the right to charge a reasonable fee equivalent to the sum of any additional costs incurred by Switchdigital as a result of cancellation of that Service Order. On cancellation of any part of a Service Order or termination of this Agreement (for whatever reason) You shall pay all Charges incurred and payable up the date of cancellation/terminations and shall indemnify Switchdigital against any loss, damage, cost, cancellation fee or expense (including reasonable fees and expenses) which the Suppliers may impose against Switchdigital as a result of such cancellation or termination.
- 12.7 If this Agreement is terminated by Switchdigital under clause 12.3, You shall cease using the Background Materials and shall (at Switchdigital's reasonable direction) either return or destroy all

copies of such Background Materials and any Confidential Information that Switchdigital has made available to You.

- 12.8 Termination shall not affect any of the Terms expressed to survive or operate in the event of the termination and shall not prejudice the rights of either party in respect of any breach prior to termination.
- 12.9 Thirty (30) days prior to anniversary of the Agreement Date, Switchdigital will write to You, notifying You of any increase to the Fees and any other relevant terms to continue the Services provided by Switchdigital at the expiration of this Agreement.
- 12.10 You must pay Switchdigital for all work done by Switchdigital up to and including the effective date of termination, whether or not Switchdigital has delivered any Deliverables to You by that time (unless otherwise expressly agreed in writing, any Deliverable which has not been paid for in full, must be returned to Switchdigital, ceased or destroyed at Switchdigital's discretion, and not used in any way by You).

13. Liability

- 13.1 Switchdigital indemnifies You against (i) any loss, damage, cost or expense (including reasonable fees and expenses) which You may suffer or incur as a result of the gross negligence or wilful misconduct of Switchdigital in performing the Services or (ii) any third-party claims alleging infringement by Switchdigital or You of intellectual property rights contained in the Foreground Materials; provided, however, that Switchdigital's total liability for loss or damage arising in connection with performance of the Services and its obligations under this Agreement shall be limited to the aggregate Fees paid by You in the twelve months preceding the date of the relevant breach or alleged default.
- 13.2 Subject to clause 13.1, Switchdigital expressly excludes liability to You for any indirect, incidental, special, or consequential damages including (but not limited to) loss of anticipated profit or savings, loss of business, loss of revenue, depletion of goodwill, loss or corruption of data and/or similar losses, even if Switchdigital has been advised of the possibility of such loss or damages. Further, Switchdigital shall not have any liability to You with respect to intellectual property infringement claims to the extent that any infringement claim is based upon (i) the acts or omissions of You or any other third parties to whom the Foreground Materials are transferred, which acts or omissions constitute breach or negligence with respect to the terms of any license or other agreement governing their use of the Foreground Materials; (ii) the operation or use of the Foreground Materials using designs, specifications or instructions not provided by Switchdigital, or (iii) modification of the Foreground Materials by anyone other than Switchdigital where the unmodified version of the Foreground Materials would not be infringing or subject to a third party claim.
- 13.3 Switchdigital shall not in any way responsible or liable for:
- (a) the preparation, contents, production or supplying of copy for advertisements irrespective of the medium in which it appears;
 - (b) any delay in or omission of publication/transmission or any error in the insertion of advertisements arising from the provision of copy, in the absence of wilful default or negligence on the part of Switchdigital.
- 13.4 Switchdigital does not exclude liability for death or personal injury, to the extent that the same arises directly from the negligence of Switchdigital or its employees.
- 13.5 The indemnification obligations stated in clause 13.1 apply only in the event that You provide Switchdigital prompt written notice of such claims; grant Switchdigital sole authority to defend, manage, negotiate or settle such claims; and makes available all reasonable assistance in defending the claims (at the expense of Switchdigital).
- 13.6 Switchdigital warrants that it will, at its option, resupply or refund the cost of any defective goods or services provided by Switchdigital under this Agreement or a Service Order. To the extent permissible by law, Switchdigital otherwise excludes all implied warranties in relation to any goods or services provided under this contract.
- 13.7 Switchdigital is not required to perform any obligation under this Agreement where the performance of that obligation

- would involve Switchdigital being in breach of any third party Intellectual Property Rights.
- 13.8 You expressly agree that You use of Switchdigital's Services and Deliverables at Your own risk.
- 13.9 Switchdigital gives no warranty in relation to the Service provided or supplied. Under no circumstances is Switchdigital or any of its carriers or suppliers liable or responsible in any way to You or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Service including its form, content and timeliness of delivery, including, without limitation, for and in relation to any of the following:
- (a) any Service or Deliverable supplied to You;
 - (b) any delay in supply of the Service or Deliverable;
 - (c) any failure to supply the Service or Deliverable;
 - (d) any technical or non-technical failure; or
 - (e) any content or information accessed via the Service or the Deliverable with or without Your authorisation.
- 13.10 The Australian Trade Practices Act 1974 and certain State and Territory legislation may imply certain conditions and warranties into the Agreement. To the extent permitted by law those conditions or warranties are expressly excluded. Where they cannot be excluded, Switchdigital' liability (if any) arising from the breach of those conditions and warranties is limited, in Switchdigital' sole discretion, to the supply of the Service again or cost of re-supplying the Service again.
- 14. Dispute Resolution**
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- If a dispute arises between any parties in relation to this Agreement (**Dispute**) the parties will follow the procedure in Schedule 3.
- 15. Miscellaneous**
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- 15.1 You must not assign or attempt to assign any right or obligation under this Agreement without Switchdigital's written consent. Switchdigital may assign its rights and obligations without restriction.
- 15.2 This Agreement is governed by and interpreted under the laws in effect in the State of New South Wales, Australia. The parties agree submit exclusively to the courts exercising jurisdiction in that State.
- 15.3 Any notice or other communication required or authorised to be given or served upon a party in this Agreement to the address on page 1 of this Agreement by post, facsimile transmission or by hand.
- 15.4 The relationship between the parties is solely that independent contractors and this Agreement does not create a joint venture, partnership, or employee/employer relationship between the parties. Except as expressly provided in this Agreement, neither party has any authority or power to bind the other party.
- 15.5 If any part of this Agreement is void or unenforceable in any jurisdiction, then for the purposes of that jurisdiction if possible, that part is to be read down so as to be valid and enforceable. If this is not possible, and that part does not go to the essence of this Agreement, that part will be severed from this Agreement and the rest of this Agreement continues to have full force and effect so as to give effect to the intention of the parties.
- 15.6 Any amendment to this Agreement will be notified to you in writing
- 15.7 A person who is not a party to this Agreement has no rights to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise.
- 15.8 This agreement is the entire agreement of the parties in respect of this subject matter. All previous correspondence and negotiations in respect of it are superseded. You warrant that you have not relied on any representations made by Switchdigital other than those set out or referenced by this Agreement.
- 15.9 A failure by a party to insist upon strict performance of any of the terms and conditions of this Agreement is not deemed a waiver of that party's rights under this Agreement.
- 15.10 Neither party will be liable for any delay or inability to perform which is caused by events beyond its reasonable control.
- 15.11 Each party must bear their respective costs and expenses, including legal costs, in obtaining relevant approvals and consents, negotiations, assignments and the execution of this Agreement, and all other necessary documents related to this Agreement.

Schedule 1

Definitions

In this Agreement, the following definitions apply:

Background Materials means any items or concepts created, developed and/or provided by Switchdigital (or its licensors, agents or sub-contractors) which is: (i) pre-existing prior to the relevant Service Order; (ii) developed independently from You or not specifically for You; or (iii) identified by Switchdigital as 'Background Materials' at the time of commencement of Services.

Cancellation Fee means the cancellation fee (if any) payable to Switchdigital by You as set out in the Service Order;

Confidential Information means any of the following which is not in the public domain other than by a breach of confidentiality:

- (a) information concerning your business, Switchdigital's business or the services;
- (b) all data bases, source codes, methodologies, manuals, artwork, advertising manuals, trade secrets and all financial, accounting, marketing and technical information, supplier lists, know-how, technology, operating procedures and other information, used by or relating to a party and its transactions and affairs;
- (c) content, Background Materials and Foreground Materials
- (d) all notes and reports incorporating or derived from information referred to in paragraph (a) (b) or (c); and
- (e) all copies of the information, notes and reports referred to in paragraphs (a) to (c).

Content means any graphic design, copy writing, animation, sound production, video, graphic production, html or other website code, software, data, marketing strategy documents, advertising materials and other creative or marketing materials; documents and information supplied by You to Switchdigital in connection with the Services, including any trade marks (whether registered or not) for use in connection with the Services.

Deliverable means end product/s as recorded in each Service Order.

Fees means the amount payable for the work as recorded in each Service Order.

Foreground Materials means all items or concepts first created or developed by Switchdigital, its employees, agents or sub-contractors specifically for (and on behalf of) You in connection with the Services but excluding any Background Materials.

Intellectual Property Rights means any and all intellectual property rights throughout the world including rights in respect of copyright (including future copyright), trade marks, service marks, whether or not now existing or registered, licensed to or designed, or developed by or in the course of this Agreement.

Related Body Corporate has the same meaning as in the *Corporations Act 2001* (Cth).

Schedule means any schedule referenced in this Agreement.

Service Order means any order for Services placed by You with Switchdigital, accepted by Switchdigital and signed by all the parties in the form of Schedule 2.

Services means the work and Deliverables contemplated in each and every Service Order.

Site means the nominated website set out in each Service Order.

You means the client named in the Agreement Details.

Schedule 2

As per individual Service Order and/or Media Schedule

Schedule 3

Dispute Resolution

- 1 If a Dispute arises between any parties in relation to this Agreement, the following procedure applies:
 - (a) a party must give the other party a notice of the Dispute, and the Dispute must be dealt with in accordance with clause 2 below; and
 - (b) a party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless the parties have followed and exhausted the process in accordance with clause 2 below.
- 2 After a notice is given under clause 1 above, the parties to the Dispute must, within 30 days, use their best endeavours to do either of the following:
 - (a) resolve the dispute;
 - (b) agree on a process to resolve the dispute, including a timetable for remedial action or the appointment and payment of a third party to resolve the Dispute.
- 3 If the parties cannot resolve the Dispute by following clause 2 above, then the matter must be elevated to the CEO for each party or their delegate, who must resolve the Dispute within 10 days of notification of the elevation.