

1 ENGAGEMENT

1.1 Agreement

- (a) Work180 has provided as attached to these terms and conditions a letter of quotation (**Quotation**) specifying, amongst other things, the scope of the Advertising Services to be provided to the Advertiser and an estimate of the Fee for providing those Advertising Services.
- (b) These terms and conditions form part of the Quotation as if incorporated into the Quotation (together the **agreement**).
- (c) These terms and conditions replace any terms and conditions previously supplied by Work180.

1.2 Acceptance

The Advertiser accepts the agreement (**Acceptance**) by:

- (a) signing the Quotation;
- (b) the payment of any amount to Work180; or
- (c) their willing participation through oral, written or electronic communication.

1.3 Term

The agreement commences on Acceptance and will continue until the end of the term as specified in the Quotation (**Term**), unless terminated earlier in accordance with these terms and conditions.

1.4 Fees

The Advertiser must pay the Fee for the Advertising Services.

2 DEFINITIONS

In this agreement, unless the context otherwise requires capitalised terms have the meaning set out below:

Advertiser means the party placing the order for the Advertising Services as specified in the Quotation;

Advertisement means any material in any form lodged for publication or other distribution as an advertisement, including job advertisements;

Advertiser Content means any information, images or other material in respect of the Advertiser's organisation or its jobs, provided by the Advertiser;

Advertising Package means the program of Advertising and branding initiatives as set out in the Quotation;

Advertising Services means the services set out in the Quotation, and may include Advertisements or Advertising Package, preparing Developed Content, establishing a Company Page and any other media promotion for the Advertising Services;

Business Day means a day on which banks are open for business in Melbourne, Victoria that is not a Saturday, Sunday or public holiday;

Claim means any claim, judgment, damage, loss, cost, expense or liability of any kind (including one that is prospective or contingent and one the amount of which is not ascertained) and costs (whether or not determined by a Court order);

Company Page means the Advertiser's information page and job portal on the Website;

Confidential Information means means all information (whether written or oral) disclosed by a party to another party which is either:

- (a) identified as confidential by the discloser at the time of disclosure; or
- (b) of a nature which should reasonably be regarded by the recipient as confidential,

but does not include information which:

- (c) is in the public domain without fault of the discloser;
- (d) was in the recipient's lawful possession at the time of disclosure;
- (e) is disclosed to obtain the consent of any third party to any requirement of, or to any act pursuant to, this agreement; or
- (f) is required by law, by an order of a court or tribunal or by the requirements of a stock exchange to be disclosed;

Consequential Loss means all indirect, special and/or consequential losses, damages, costs or expenses of any nature whatsoever incurred or suffered, including any economic loss or other loss of turnover, any loss of reputation or goodwill, any loss of value of intellectual property, any legal costs and other expenses of any nature whatsoever in respect of them;

Developed Content means all marketing and media content developed by Work180 in respect of the Advertiser, and may incorporate any Advertiser Content;

Developed IP Rights means any IP Rights developed during the Term in the course of providing the Advertising Services, including in respect of the Developed Content;

Existing IP Rights means the IP Rights of each party existing as at the date of Acceptance;

Fee is as set out in the Quotation;

Force Majeure Event means an event, or series of events, outside the reasonable control of a party including (but not limited to), network or power outages, fire, lightning, explosion, flood, earthquake, storm, hurricane, action of the elements, riots, civil commotion, malicious damage, armed conflicts, acts of terrorism, war (declared or undeclared), blockade, revolution, sabotage, radioactive, toxic or dangerous chemical contamination or any other catastrophes;

GST Law has the meaning given in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth);

IP Rights means all present and future statutory or other intellectual property rights which exist or may in future exist in respect of:

- (g) any inventions, innovations, patents copyright, confidential information and know-how; and
- (h) all rights with respect to intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of July 1967,

including, but not limited to programmes, designs, briefs, materials, manuals, records, procedures, systems, marketing techniques, plans or specifications; and

Website means Work180's website displayed at www.work180.com.au (for Australia) or www.work180.co (for the United Kingdom).

3 RESERVED RIGHTS OF WORK180

3.1 No warranty or guarantee

Work180 gives no warranty or guarantee in relation to:

- (a) the dates of publication of any Advertising Service (unless specified in the Quotation);

- (b) the placement or positioning of any Advertising Service (unless specified in the Quotation);
- (c) distribution of Advertisements, Advertiser Content or Developed Content to a particular number of consumers or readers in a particular geographical area;
- (d) the availability or the absence of technical or other disturbances on the Work180 network or Website;
- (e) the number of clicks, page impressions or views of any Advertising Service;
- (f) the attendance or response rate or take up in respect of any Advertisement or for any Advertiser event; or
- (g) the increase in the number job applicants or external media coverage to the Advertiser.

3.2 Work180 discretion

- (a) Work180 is not obliged to review, approve or amend any Advertiser Content or Advertisement, and any such review, approval or amendment will not affect the Advertiser's responsibility in relation to the Advertisement.
- (b) Work180 may review any Advertiser Content or Advertisements provided by the Advertiser, and may in its sole discretion refuse any Advertiser Content or Advertisements to the extent it is inconsistent with the agreement or with Work180's values or objectives.
- (c) Work180 may postpone the publication of any Advertising Service by notice to the Advertiser for a temporary period, and the parties will negotiate in good faith and agree alternative dates for the publication.
- (d) Work180 may make any changes or variations to the format or other technical specifications of its Website or other media platform at any time during the Term.

3.3 Use of materials

Work180 may share displays of any Developed Content Advertisement or Advertising Package for internal purposes or for the purpose of marketing its services to prospective advertisers.

4 OBLIGATIONS OF ADVERTISER

4.1 Information

- (a) The Advertiser must provide the Advertiser Content and Advertisements as requested by Work180 for the purpose of providing the Advertising Services.
- (b) To the extent the Advertiser Content or Advertisements are not provided by the Advertiser within the timeframe specified by Work180 in its request, Work180 will not be responsible for any delays in providing the Advertising Services.

4.2 Errors

- (a) The Advertiser must notify Work180 of any error in an Advertisement or any Advertiser Content immediately after becoming aware of such error.
- (b) To the extent the Advertiser fails to notify Work180 of any error in accordance with clause 4.2(a), Work180 is not responsible for any recurring error in the Advertising Services.

4.3 Third party buyer

- (a) The Advertiser may purchase Advertising Services through a third party agent, including an advertising agency or media buyer (**Agent**).

- (b) To the extent an Agent purchases the Advertising Services on behalf of the Advertiser, the Advertiser remains responsible for all of its obligations under this agreement, including any obligations of the Agent in respect of the Advertising Services.

4.4 Restrictions on Advertiser Content and Advertisements

The Advertiser must ensure that:

- (a) all Advertiser Content and Advertisements:
 - (i) comply with all applicable laws and regulations, and do not infringe any third party rights (including third party IP Rights); and
 - (ii) do not include any material that is offensive, unethical or illegal (in the opinion of Work180); and
- (b) it does not knowingly transmit any viruses or other disabling features to the Website.

5 INTELLECTUAL PROPERTY

5.1 Licence

- (a) The Advertiser grants to Work180 a worldwide non-exclusive, royalty free licence to:
 - (iii) use, reproduce, distribute, display, publish and adapt any part of or all of the Advertiser Content and Advertisements; and
 - (iv) publish the Advertiser's logo (which may include a registered or unregistered trademark) on the Website, in any Advertisement and in any Work180 marketing materials.
- (b) Work180 grants to the Advertiser a worldwide, non-exclusive, royalty free licence to publish Work180's logo (which may include a registered or unregistered trademark), for the sole purpose of promoting its status as an endorsed employer by Work180.

5.2 Ownership of IP Rights

- (a) Each party will retain the rights, title and interest in its Existing IP Rights.
- (b) The Advertiser agrees that Work180 will own all Developed IP Rights, and that all right, title and interest in the Developed IP Rights will vest beneficially in favour of Work180 and, to the extent this does not occur, the Advertiser assigns them (by way of present assignment) to Work180.

5.3 IP Rights Warranties

- (a) Each party warrants that it will not, in any way, infringe or allow any other person to infringe the other party's Existing IP Rights.
- (b) The Advertiser warrants that it will not, in any way, infringe or allow any other person to infringe the Developed IP Rights.

6 PRIVACY AND CONFIDENTIALTY

6.1 Confidential Information

Each party agrees not to disclose any Confidential Information under any circumstances without the prior consent of the other party, except:

- (a) to its staff and officers requiring that information for the conduct of their duties pursuant to this agreement; and
- (b) as required or permitted by law.

6.2 Privacy and data protection

Each party must ensure that to the extent it shares any data with the other party, it is compliant with all relevant privacy and data protection laws and regulations.

7 PAYMENT

7.1 Invoices

Work180 will issue invoices as set out in the Quotation.

7.2 Payment obligation

The Advertiser must pay all invoices:

- (a) by the due date specified in the invoice. If the invoice does not list a payment date, the Advertiser must make full payment to Work180 within 30 days from the date of its issue; and
- (b) in full without set off, deduction or counterclaim, and the Advertiser acknowledges that this clause may be relied on in bar of any such proceeding.

7.3 Failure to pay

- (a) If the Advertiser does not pay in accordance with this clause 7, Work180 is entitled to do any or all of the following:
 - (i) charge interest on the outstanding account at the Default Rate from the Default Date until the account is paid in full;
 - (ii) suspend the 'go live' date of the Advertisers Company Page and any Advertisements and not perform any further Advertising Services (or any part of the Advertising Services) until payment is made in full or another arrangement is made to the satisfaction of Work180; and
 - (iii) exercise a lien over documents or material produced or prepared by Work180 for the Advertiser until payment is made in full (including the payment of any applicable interest) or another arrangement is made to the satisfaction of Work180.
- (b) If the Advertiser or any third party issues a cheque for payment of an invoice and that cheque is dishonoured, Work180 may:
 - (i) refuse to provide any further Advertising Services until full payment is received, including any bank charges Work180 incurred as a result of the dishonoured cheque; and
 - (ii) treat the dishonoured cheque as a repudiation and elect to either terminate or affirm the provisions of the agreement and in either case, Work180 will be entitled to seek compensation from the Advertiser.

7.4 Further costs

- (a) If an outstanding account is referred to a law firm and/or debt collection agency for recovery, the Advertiser will be liable for:
 - (i) any recovery costs incurred; and
 - (ii) any commission payable by Work180.
- (b) If an outstanding account is referred to a legal practitioner, the Advertiser will pay all costs reasonably claimed by the legal practitioner on a solicitor/client basis.

8 LIMITATION OF LIABILITY AND INDEMNITY

8.1 Statutory warranties

- (a) The provisions of this agreement do not exclude or limit the application of any laws, (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene those laws or cause any part of this agreement to be void.
- (b) To the maximum extent permitted by law, the provisions of this agreement exclude all implied conditions and warranties except any implied condition or warranty, the exclusion of which would contravene any laws or cause this condition to be void.

8.2 Limitation of Work180 liability

Subject to clause 8.1, the liability of Work180 in connection with the provision of the Advertising Services whether arising in contract, tort, negligence, breach of statutory duty or otherwise will, to the extent permitted by law, be limited to:

- (a) the re-supply of the Advertising Services;
- (b) the payment of the costs of having the Advertising Services provided again, the amount of which must not exceed the Fee; or
- (c) the reimbursement of any amounts paid by the Advertiser to Work180 for the defective Advertising Services.

8.3 Limitation of liability of both parties

- (a) To the fullest extent permitted by law, no party will be liable to the other party:
 - (i) for any Consequential Loss of the other party in contract, tort, negligence, breach of statutory duty or otherwise.
 - (ii) to the extent that the other party or its agents, employees or subcontractors has caused or contributed to any loss or damage.
- (b) Each party releases the other party from any liability for any Claim arising as a result of delay or failure to provide the Advertising Services or to comply with this agreement to the extent that such delay or failure is caused by a Force Majeure Event, and which by its nature could not have been foreseen or, if it could have been foreseen, was unavoidable, provided that the affected party has used all reasonable endeavours to promptly cure such an event or circumstance.

8.4 Indemnity

The Advertiser will indemnify, keep indemnified and hold Work180 harmless from and against all Claims and loss or damage, to the extent caused or contributed to by the Advertiser.

9 REPRESENTATIONS AND WARRANTIES

9.1 By each party

Each party represents and warrants to the other party that:

- (a) the execution of this agreement has been properly authorised by all necessary corporate or other action;
- (b) it has full corporate or statutory power and authority to execute this agreement and to perform or cause to be performed its obligations under this agreement;

- (c) this agreement constitutes a legal, valid and binding obligation on it;
- (d) it is solvent, no controller, administrator or statutory manager has been appointed in respect of it or in respect of any of its assets and it has not entered into any voluntary arrangement with one or more creditors.

9.2 Advertiser warranties

The Advertiser warrants that:

- (a) the Advertiser solely owns the Advertiser Content and Advertisements provided to Work180, and has obtained any necessary rights, approvals or consents relating to the use and publication of the Advertiser Content and Advertisements;
- (b) the Advertiser Content and Advertisements comply with all relevant laws and regulations and do not infringe any third party rights (including IP Rights);
- (c) the Advertiser is not aware of any pending or ongoing litigation in relation to the Advertiser Content or Advertisements or any part of the Advertiser Content or Advertisements as at the date of Acceptance;
- (d) the Advertiser Content and Advertisements do not contain any viruses or other destructive code or content.

9.3 No reliance on representations

Each party represents and warrants to the other party that it has not relied and will not rely during the Term, on any representation or communication made by the other party on, or before, the date of this agreement, except as expressly made in this agreement.

10 RENEWAL

- (a) 60 days prior to the expiry of the Term, Work180 will give a notice to the Advertiser (**Expiry Notice**)
- (b) Within 30 days of receipt of the Expiry Notice, the parties will agree to:
 - (i) end the agreement on expiry of the Term;
 - (ii) continue the agreement on a monthly basis at a fee determined by Work180 (acting reasonably); or
 - (iii) extend the agreement for a further term for a period and fee determined by Work180 (acting reasonably).
- (c) On expiry of the Term, Work 180 may amend, revise or modify these terms and conditions at its sole discretion by notice to the Advertiser, and the amended terms and conditions will apply to any further term.

11 TERMINATION

11.1 Termination for breach

Either party may terminate the agreement by giving 7 days notice in writing to the other, if the other party has:

- (a) failed to comply with the terms and conditions of the agreement; and
- (b) failed to rectify that breach, to the satisfaction of the notifying party, following the expiration of 7 days' notice of the breach.

11.2 Immediate termination

- (a) Either party may terminate this agreement immediately by notice to the other party if the other party:
 - (i) is no longer able to perform its obligations under this agreement, including by failing to pay any amount when due to the other party;
 - (ii) where it is a body corporate, any officer or employee:
 - (A) is charged with or found guilty of any criminal offence;
 - (B) by their conduct, act or omission brings the other party or any of its officers, employees or agents into disrepute; or
 - (C) commits fraud or is alleged to have committed any impropriety in their financial dealings;
 - (iii) breaches a material term (or persistently breaches any term) of this agreement.
- (b) Work180 may terminate this agreement immediately by notice to the Advertiser, where the Advertiser (whether in its own capacity, or through its officers or employees) acts in a manner which is inconsistent with Work180's values and objectives.

11.3 Consequences of termination

Upon termination of this agreement:

- (a) any Fee, expense or reimbursement (whether invoiced or not) payable by the Advertiser to Work180 in respect of any period prior to the termination must be paid by the Advertiser within 7 days after the termination;
- (b) each party retains the rights it has against the other party, including in respect of any breach of this agreement that arose before termination or out of the events that caused termination;
- (c) the rights and obligations of each party under this agreement which are expressed to survive termination will remain in force;
- (d) the licences granted under clause 5.1(a) and 5.1(b) terminate immediately; and
- (e) neither party may represent to any other person, whether directly or indirectly, that it remains associated with the other party.

12 GST

- (a) Unless the contrary intention appears, any amount specified in the Quotation is exclusive of GST.
- (b) For the purposes of this clause, the terms words defined in the GST Law, have the same meaning in this agreement.
- (c) If GST has any application to any supply made under or in connection with this agreement, the party making the supply (**Supplier**) may in addition to any amount or consideration expressed as payable elsewhere in this agreement, recover from the recipient of the supply (**Recipient**) an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Recipient for the relevant supply by the prevailing GST rate.

- (d) Any additional amount on account of GST recoverable from the Recipient under this clause shall be calculated without any deduction or set-off of any amount, and is payable by the Recipient at the same time and in the same manner as paying the amount or consideration for the relevant supply under this agreement.
- (e) The Supplier must issue to the Recipient a tax invoice, and must do anything else which may be reasonably required to enable or assist the Recipient to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this agreement or in respect of any supply under this agreement.

13 NOTICES

13.1 Method of giving

- (a) A notice, consent, approval or other communication under this agreement must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (i) delivered to that person's address;
 - (ii) sent by registered pre-paid mail to that person's address; or
 - (iii) sent by email to that person's email address.
- (b) Communications sent by email are deemed to be signed by the named sender.

13.2 Time of receipt

- (a) Unless a later time is specified in a notice, the notice takes effect from the time it is received.
- (b) A notice is deemed to be received if:
 - (i) delivered by hand, when so delivered;
 - (ii) sent by pre-paid post, on the fifth clear Business Day after the date of posting; and
 - (iii) sent by email at the time on the day that it is sent unless the sender receives within 12 hours of that time an automated message that the email has not been delivered.

13.3 Address for notices

For the purpose of this clause, the address or email address of a person is the address or email address set out in the Quotation.

14 GENERAL

14.1 Costs

- (a) Each party will bear, and is responsible for its own costs (including legal and accounting costs) in connection with the negotiation, preparation, execution and completion of this agreement.
- (b) A party in default of this agreement will be responsible for the costs (including legal costs on a solicitor/client basis) of enforcing that default.

14.2 Assignment

A party must not dispose (directly or indirectly, which includes a change of control of a party) of any of its rights under this agreement, or attempt or purport to do so, without the written consent of the other party.

14.3 Amendment

This agreement may only be amended or supplemented in writing, signed by the parties.

14.4 Waiver

- (a) The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right or preclude any other or further exercise of it or the exercise of any other power or right.
- (b) A power or right may only be waived in writing, signed by the party to be bound by the waiver.

14.5 Further assurances

Each party will do all things and sign, execute and deliver all agreements, deeds and other documents as may be legally necessary or reasonably required of it by notice from another party to carry out and give effect to the terms and intentions of this document and to protect and preserve the rights of the other party.

14.6 Severability

- (a) If any part of this agreement is invalid, illegal, unlawful or otherwise incapable of enforcement:
 - (i) that part will be severed and will be of no force and effect; and
 - (ii) all remaining parts of this agreement will prevail and remain in full force and effect.
- (b) No part of this agreement will be construed to be dependent upon any severed clause or part of a severed clause unless expressly stated to be.

14.7 Entire agreement

This agreement sets out the entire agreement between the parties in relation to the subject matter.

14.8 Survival of obligations

The obligations accepted by the parties under clauses 5 through 8 survive termination or expiry of the agreement or the provision of the Advertising Services.

14.9 Application of law

The rights and remedies provided in the agreement are cumulative and not exclusive of any rights and remedies provided by law.

14.10 Indemnities

- (a) Each indemnity is a continuing obligation, separate from the other obligations of the parties, and continues after this agreement ends.
- (b) A party may enforce a right of indemnity at any time (including before it has incurred loss).

14.11 Exclusion of agency and partnership

Nothing in this agreement creates a relationship of partnership between any of the parties, and no party may act, or purport to act, as the agent of, or in any way bind or release any other party, without their express written permission.

14.12 Governing law

- (a) This agreement is governed by the law in force in Victoria.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from those courts.

15 INTERPRETATION

15.1 Interpretation

In this agreement, unless the context otherwise requires:

- (a) a reference to any law includes any subordinate legislation as amended, replaced, re-enacted or consolidated;
- (b) the singular includes the plural and vice versa;
- (c) where a party is to determine a matter they are to do so acting reasonably;
- (d) a reference to 'person' includes:
 - (i) a corporation, partnership, joint venture, association, authority, trust, state or government authority; and
 - (ii) their executors, administrators, substitutes, successors and permitted assigns;
- (e) a reference to a clause, schedule or annexure is to a clause, schedule or annexure of this agreement;
- (f) headings are included for convenience only and do not affect interpretation;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to a matter being *written* includes that matter being in any mode of representing or reproducing words, figures or symbols capable of written form;
- (i) a reference to dollars or \$ is to Australian currency;
- (j) if a period of time starts from a given day (or event), it is calculated exclusive of that day (or the day the event occurs);
- (k) "includes", "including", or similar expressions, are not words of limitation.

15.2 Neutral interpretation

Nothing in this agreement is to be interpreted against a party solely on the ground that the party put forward this agreement or a relevant part of it.