

DIGITAL MARKETING PRODUCT TERMS

Digital marketing services are provided by **ENGAGE AUSTRALIA PTY LTD ABN 29 090 618 278** of Level 8, 56 Clarence Street, Sydney, 2000 pursuant to the general terms and the Product Terms set out below.

1 DEFINITIONS

In addition to the definitions set out in clause 1 of the General Terms, the following definitions also apply to these Product Terms:

End User Licence Agreement (“EULA”) means the terms and conditions governing the use of the software specified in a SOW or if none are specified, the [EULA](#) available at www.engage-au.com

Use means to load, copy, store, transmit or run.

2 APPOINTMENT

- 2.1 All quotations are valid only for a period of thirty (30) days and Engage Australia may, in its discretion, refuse any purported acceptance by the Client which occurs after that time.
- 2.2 The Client agrees to obtain the Services exclusively from Engage Australia during the Term.
- 2.3 Engage Australia will provide the Services in accordance with the Agreement.

3 SOFTWARE USE

- 3.1 Where the Services include Client access to Engage Australia or third party software applications, the Client acknowledges and agrees that its use of such applications is subject to the terms and conditions set out in the applicable EULA. The EULA terms and conditions are incorporated herein by reference and Client Use of any software applications will constitute acceptance of the EULA.

4 SERVICE LIMITATIONS

- 4.1 Where the Services include search engine optimisation services, Engage Australia does not represent, warrant, or guarantee that the Client URLs will achieve a favourable position, or any position, within search engines. Engage Australia cannot control or guarantee which, if any, search engines will improve the rankings, or even accept inclusion of the site; nor shall Engage Australia be responsible for URLs dropped or excluded.

- 4.2 Where the Services include data analytics and reporting services by Engage Australia or the provision of data to the Client for its own performance-tracking or other analytics purposes, the Client acknowledges that there is no guarantee of 100% accurate analytical prediction, and that the outcomes are subject to the type and quality of data supplied to Engage Australia.

- 4.3 Where the Services include outbound email and SMS communications, the Client acknowledges and agrees that: (a) all pre-paid credit will expire, without refunds, after 12 months of non-use, or upon closure of the Client’s account, whichever is the earlier; and (b) Engage Australia cannot guarantee or control the delivery or the rate of delivery of these services, which (i) in the case of emails, are dependent

upon accurate and up to date email addresses, upon suitable internet availability and connectivity, on various anti-spam and junk mail policies adopted by recipient email service providers as well as restrictions regarding the content, wording and graphics on the receiving server; and (ii) in the case of SMS, are dependent upon suitable network coverage and any content or size restrictions set by third party carriers or SMS recipients.

- 4.4 The Client understands that from time to time a third party supplier, including a carrier, on whom Engage Australia is reliant in the provision of all or part of the Services, may lawfully modify their terms of supply of infrastructure or other matters required by Engage Australia and the Client agrees to modify the terms of this Agreement to the extent necessary to accommodate corresponding changes due to the amendment to those third party supply terms. If this occurs Engage Australia will notify the Client in writing as soon as practicably possible after it has been notified by the third party supplier. Engage Australia is not liable for any failure to deliver Services which occurs as a result of any such change including, but not limited to, a change in the technical capabilities of a telecommunications carrier. Where the modification has a material impact on the Services, the Client may terminate the Agreement by providing 30 days written notice without liability on either party except as expressly provided under clause 11.2 (Termination) of the [General Terms](#).

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CLIENT OBLIGATIONS The Client must not use or direct Engage Australia to use Services to

- 5.1 send any unsolicited electronic communication to a person in breach of the *Spam Act 2003* (Cth) or to breach any other Law, or to:

- (a) send anonymous communications;
- (b) communicate with someone who has asked the Client to cease communicating;
- (c) engage in any form of harassment or offensive behaviour; or
- (d) infringe the privacy rights, property rights, or any other rights of any person.

- 5.2 The Client is responsible for the accuracy, quality and standard of Client Materials provided to Salmat for use in the provision of the Services. The Client must ensure that any Client Materials comply with any applicable content guidelines of telecommunication carriers or Engage Australia guidelines which are provided to the Client.

6 DELAYS

- 6.1 Client will be liable to Engage Australia for all direct and indirect costs reasonably incurred by Engage Australia by reason of any delay, or, variation of work (unless otherwise addressed under a Change Request) arising from any act or omission by the Client, its employees, agents or contractors (other than Engage Australia). These costs include, but are not limited to:

- (a) any cancellation charges payable to our subcontractors; and
- (b) the costs of materials and goods ordered to provide the Services for which Engage Australia has paid or is legally bound to pay.

7 NON-SOLICITATION

The Client must not, for any reason, during the term of this Agreement or within six (6) months (or such other period specified in a SOW) after its termination, induce, solicit, engage or employ (or procure the inducement, solicitation, engagement or employment of) any officer, employee or contractor of Engage Australia (“**Engage Australia Personnel**”) without Engage Australia's prior written consent. This restraint will not apply to Engage Australia Personnel who are engaged as a consequence of responding to a bona fide publicly advertised position with the Client.

8 CONSEQUENCES OF TERMINATION

Except as expressly provided, upon the expiry or earlier termination of a SOW all software licences granted by Engage Australia to the Client shall terminate immediately and the Client will comply with any and all reasonable instructions of Engage Australia in relation to the termination of licences applicable to any software applications.