

STANDARD TERMS AND CONDITIONS

Ovato Communications Pty Ltd ABN 54 125 826 655 (who in these standard terms will be referred to as **Ovato**) is pleased to confirm the terms and conditions which will apply to our provision of goods and services to each purchaser or intending purchaser of such goods and services (who in these standard terms will be referred to as **Client**).

1. DEFINED TERMS

This clause 1 defines terms used in this agreement. Other terms are defined elsewhere in this agreement or in a separate agreement summary or schedule provided.

1.1. SERVICES, MATERIALS & IP

- (a) **Brief** means a communications or consultancy brief the subject of this agreement, and may comprise Consulting Services only.
- (b) **Brief Document** means a document setting out the objectives and other specifications of the Brief, usually supplied by Client to Ovato.
- (c) **Client Materials** means all subject matter authored, created, produced or supplied by Client in or to which Intellectual Property or other rights subsist or relate, including a Brief Document authored by Client.
- (d) **Confidential Information** means any discovery, fact, data, idea (including Creative Concept), plan, strategy, method, principle, technique, routine, practice, knowledge, design, trade secret, know-how, information, product specification, business proposal or marketing plan, that is not presently widely known or available to the public and that is held by Ovato or Client or generated by Ovato or Client in the course of the performance of this agreement.
- (e) **Consulting Services** means services of a consulting nature, usually supplied on a retainer or time-and-materials basis.
- (f) **Creative Concept** means an idea presented to Client by Ovato in draft form as an idea that is intended to realise the objectives of a Brief.
- (g) **Deliverable** means subject-matter authored, created, produced or licensed by Ovato and provided to Client as an object of and pursuant to this agreement and, insofar as specified in a Brief Document or SOW, as specified. A Deliverable is not a Creative Concept.
- (h) **Intellectual Property** means existing and future copyright, trademarks, designs or patents, whether registered or not.
- (i) **Pitch** means creative concepts that, if presented to Client, are presented on condition that Client is not obliged to engage Ovato to deliver the brief in relation to which Ovato is pitching.
- (j) **Retainer Brief** means a Brief in the nature of a retainer; that is, where Services are supplied on an ongoing basis in return for a fee is payable in respect of successive periods of time, e.g. monthly.
- (k) **SOW (statement of work)** means the document provided by Ovato to Client in relation to a Brief, specifying services, deliverables, costs and payment terms.
- (l) **Ovato Materials** means all subject-matter authored, created, produced or licensed by Ovato in or to which Intellectual Property or other rights subsist or relate, including Pitches, Creative Concepts, Deliverables and Brief Documents authored by Ovato.
- (m) **Selected Creative Concept** means a Creative Concept selected by Client to be worked-up and used in the final realisation of a Brief.
- (n) **Services** means the services necessary to deliver a Brief in accordance with the Brief Document (if any) and SOW.

1.2. FEES & EXPENSES

- (a) **Expenses** means reasonable expenses (such as travel expenses, printing, stock photography licences), that Ovato incurs specifically in order to perform its obligations under this agreement.
- (b) **Service Fee** means the fee for supplying the Services:
 - specified in the SOW;
 - estimated in the SOW and subsequently arrived at in light of the work performed and costs incurred; or
 - otherwise agreed by the parties in writing.

1.3. OTHER DEFINITIONS

- (a) **Business Day** means a weekday on which banks are open for business in NSW.
- (b) **Client** is the party identified as the client in the SOW.
- (c) **Legal Compliance** means compliance and consistency with all applicable laws and private legal rights, especially consumer laws.
- (d) **Loss** includes any loss, damage, cost, expense or liability, including legal costs, but excludes special (indirect, incidental) loss.
- (e) **Related Body Corporate** has the same meaning as in the Corporations Act 2001 (Cth).
- (f) **Ovato** means Ovato Communications Group Pty Limited (ACN 125 826 655) of Level 4, 60 Union Street, Pyrmont NSW 2009, Australia.

2. BRIEFS

2.1. PITCHES

Client may invite Ovato to present a Pitch. Ovato may decline to present any particular Pitch.

2.2. BRIEFS

- (a) Under this agreement, Client may engage Ovato to deliver multiple Briefs, and more than one Brief at any one time. Ovato may decline to take any particular Brief.
- (b) A Brief starts when Ovato provides an SOW to Client and Client:
 - accepts the SOW in writing;
 - instructs Ovato to commence work on the Brief; or
 - pays part or all of the Service Fee,
 whichever occurs earlier.
- (c) When a Brief starts, the accepted SOW automatically becomes an appendix to this agreement. This is regardless of whether the SOW is physically attached to a copy of

this agreement or otherwise described as an appendix to this agreement.

- (d) Subject to clause 4(b), a Brief ends upon the supply of all the Services of a Brief and Client's acceptance of all the Deliverables of a Brief.

2.3. SERVICES

- (a) Ovato must supply the Services, within any timeframe specified in the SOW, with due care and skill and in a professional manner.
- (b) Client must provide such reasonable co-operation as required to enable Ovato to supply the Services in accordance with paragraph (a).

2.4. CREATIVE CONCEPTS

- (a) Unless an SOW specifies otherwise, the Service Fee includes no more than one Selected Creative Concept.
- (b) Client must not use a Creative Concept that is not a Selected Creative Concept.

2.5. DELIVERABLES

- (a) Within each Brief, Ovato must supply the Deliverables specified in the SOW.
- (b) Unless the SOW specifies otherwise, the Services are limited to two rounds of review of each Deliverable. A round of review of a Deliverable consists of Client's review of the Deliverable, Client's providing feedback to Ovato and Ovato's responding to that feedback and modifying the Deliverable as required.

3. RE-BRIEFS

- (a) Client may request a variation to the Services, Deliverables and Selected Creative Concepts of a Brief (re-brief). Such a request is a re-brief even if Ovato proposed that Client make the request.
- (b) Upon receiving a re-brief, Ovato may accept or reject the re-brief. Ovato's acceptance of a re-brief may be conditional on changing the Service Fee or SOW.
- (c) If Ovato accepts a re-brief that involves a changed Service Fee or SOW, Client may accept or reject the changed Service Fee or SOW.
- (d) If:
 - Ovato accepts a re-brief that does not involve a changed Service Fee or SOW; or
 - Client accepts a changed Service Fee or SOW relating to a re-brief,
 Ovato must perform the changes requested in the re-brief.
- (e) If:
 - Ovato rejects a re-brief; or
 - Client rejects a changed Service Fee or SOW relating to a re-brief,
 Ovato is under no obligation to perform the changes requested in the re-brief and the Brief will continue as though the re-brief had not been made.
- (f) All communications contemplated by this clause 3 must be in writing.

4. ACCEPTANCE OF SERVICES & DELIVERABLES

- (a) Client accepts Services or a Deliverable when the earlier of the following occurs:
 - Client notifies Ovato in writing that Client accepts the Services or Deliverable; or
 - five Business Days elapse from the date the Services are supplied or the Deliverable is delivered to Client in final form and Client has not notified Ovato in writing that Client does not accept the Services or Deliverable.
- (b) Client may request a re-brief of a Deliverable after it has accepted the Deliverable.

5. FEES & EXPENSES

Without limiting any other provision of this agreement, in relation to a Brief, this clause 5 is subject to the terms of the SOW to the extent of any direct, irreconcilable conflict.

5.1. SERVICE FEES

- (a) Client must pay to Ovato all Service Fees, plus GST (if applicable).
- (b) If Ovato presents a Pitch and Client ultimately:
 - does not engage Ovato to deliver a corresponding Brief, then Ovato must not charge any fee for presenting the Pitch; or
 - engages Ovato to deliver a Brief, then Ovato may include in the Service Fee a fee for presenting the Pitch,
 unless the parties agree otherwise in writing.
- (c) If Client later requests that a previously created Creative Concept becomes an additional Selected Creative Concept, Ovato may increase the Service Fee by the amount that Ovato would have charged had that Creative Concept originally been a Selected Creative Concept.
- (d) If an SOW describes fees as estimates, then the Service Fee estimates are themselves subject to variation by Ovato, acting reasonably in light of work performed and costs incurred, or to be performed or incurred.
- (e) Ovato may, acting reasonably, also vary a Service Fee if there are significant delays in the delivery of the Brief, being delays not caused by Ovato.

5.2. EXPENSES

- (a) Ovato must not incur any Expense exceeding \$500 without Client's prior approval in writing.
- (b) Ovato may charge a premium of 15% on Expenses.
- (c) Client must pay the amount of the Expenses to Ovato, including GST (if any).

6. PAYMENT

6.1. SERVICE FEES

- Unless specified otherwise in an SOW and without limiting clauses 6.2, 6.3 and 16.4 (consequences of termination), Ovato may invoice Client the following portions of the amount of a Service Fee (the portions calculated as at the date of the invoice), plus GST:
- 25% when the Brief starts pursuant to clause 2.2 (b);

- 25% on completion of the presentation of Creative Concepts to Client, or a comparable phase of the Brief;
- 25% on completion and approval of all final artwork design elements, or a comparable phase of the Brief; and
- the balance of the Service Fee on delivery of the then-final Deliverable.

6.2. EXPENSES AND THIRD PARTY FEES

- If an Expense or fees invoiced by a third party contractor were included in an SOW and at any time exceed \$5,000 in aggregate, Ovato may immediately invoice Client for that Expense or those fees.
- If an Expense or fees invoiced by a third party contractor were included in the SOW, but not separately itemised, but have nevertheless been incurred in accordance with this agreement (in particular, clause 5.2 (a)), Ovato may immediately invoice Client for that Expense or those fees.

6.3. GENERALLY

- Client must pay to Ovato all invoiced amounts within the time for payment specified on each invoice, without any set-off.
- Client must pay all amounts in accordance with the payment method set out on the invoice.
- Ovato may charge simple interest on unpaid invoices at 8% per annum. Ovato may charge the interest on a daily basis from the date an invoice becomes overdue.
- Client must pay to Ovato all interest charged pursuant to paragraph (c) as though the interest had been invoiced pursuant to this clause on the day the payment of the unpaid invoice is paid.
- Notwithstanding anything else in this agreement, Ovato may suspend its supply of the Services and Deliverables until all amounts due and owing have been paid.

7. APPOINTMENT AS AGENT

Note: This clause applies only when Ovato is acting as an agent for Client, e.g. media buying or IP licensing, and does not apply in relation to Ovato's outsourcing to sub-contractors to assist Ovato to perform Ovato's obligations under this agreement, e.g. outsourced production. Clause 8 deals with sub-contracting.

- Client, as principal, hereby appoints Ovato as Client's special agent for the purpose of entering into agreements with third parties on Client's behalf where necessary for the purposes of the parties' performance of this agreement, and in accordance with Client instructions (including where arising from Client's acceptance of a Brief).
- Client acknowledges that, as against Ovato, Client and not Ovato is the party to any agreement entered into by Ovato as Client's special agent.
- Client indemnifies Ovato against any Loss suffered by Ovato as a result of any demand, claim or legal action made or brought against Ovato by a party to an agreement entered into by Ovato pursuant to this clause 7.

8. SUB-CONTRACTORS & CONTRACTORS

- This clause operates notwithstanding clause 17.7 (assignment and novation).
- Ovato may perform its obligations under this agreement by engaging sub-contractors.
- Ovato's liability for the performance of its obligations under this agreement is unaffected by its engagement of sub-contractors. To be clear, as against Client, Ovato remains the primary contractor.
- If:
 - Ovato enters into an agreement with a third party contractor, not in Ovato's capacity as Client's agent but otherwise in the performance of this agreement; and
 - Client subsequently terminates this agreement,
 Client is not entitled to prevent Ovato from terminating the agreement with the third party and, with Client's and the third party's consent, Ovato may novate the agreement to Client.

9. INTELLECTUAL PROPERTY

9.1. OWNERSHIP

- Except as expressly provided in this agreement, Ovato acknowledges that, as between it and Client:
 - Ovato does not own any Intellectual Property in Client Materials;
 - Ovato does not own, nor is entitled to exercise, any other rights in Client Materials.
- Except as expressly provided in this agreement, Client acknowledges that, as between it and Ovato:
 - Client does not own any Intellectual Property in Ovato Materials;
 - Client does not own, nor is entitled to exercise, any other rights in Ovato Materials.
 To be clear, such Ovato Materials include Creative Concepts that are not Selected Creative Concepts and Client acknowledges that Ovato may use, in relation to other clients, those Creative Concepts that are not Selected Creative Concepts, subject to this agreement.
- Upon full payment by Client of all fees and charges payable to Ovato pursuant to this agreement, Ovato must assign to Client or waive (as applicable), and must procure that its sub-contractors assign to Client or waive (as applicable), all Intellectual Property and other rights in Deliverables or Selected Creative Concepts.

9.2. LICENCES

- To the extent that Ovato or its sub-contractors continue to own Intellectual Property or own or be entitled to exercise other rights in Ovato Materials, Ovato hereby grants Client a licence to use those Ovato Materials as required to acquire the Services and use the Deliverables. Ovato warrants that, if applicable, it is entitled to grant the licence in relation to Intellectual Property and other rights held by sub-contractors.
- The licence referred to in paragraph (a) is:
 - for the life of the Services and Deliverables or until the Intellectual Property and the 'other rights' are assigned to Client or waived;
 - non-exclusive;
 - if the SOW specifies a country or other territory – in respect of that country or other territory;
 - if Client uses the Services or deploys Deliverables in relation to another country for the purposes of communication, marketing, public relations and advertising

- in respect of that other country or territory as well;
- royalty free;
- non-transferable and non-sublicensable other than to Related Bodies Corporate of Client; and
- granted subject to full payment by Client of such fees and charges as are due and payable to Ovato pursuant to this agreement.

- Client hereby grants Ovato a licence to use Client Materials as required to supply the Services and any deliverables.
- The licence referred to in paragraph (c) is:
 - for the term of this agreement;
 - non-exclusive;
 - in respect of Australia, New Zealand and Asia-Pacific, unless the parties agree otherwise in writing;
 - royalty free; and
 - non-transferable and non-sublicensable other than to Related Bodies Corporate and sub-contractors of Ovato.

9.3. INFRINGEMENT

- Ovato warrants that the production and presentation of Pitches, Creative Concepts and Deliverables, and Client's use of the Services and deployment of Deliverables in accordance with this agreement, will not infringe the Intellectual Property or other rights of any third party.
- Client warrants that Ovato's use of Client Materials in accordance with this agreement will not infringe the Intellectual Property or other rights of any third party.

9.4. MORAL RIGHTS

Ovato warrants that all partners, employees and sub-contractors of Ovato have or will waive all right, title and interest they may have in any right, action or remedy against Client for infringement of any moral rights they may have in Selected Creative Concepts and Deliverables.

10. CONFIDENTIAL INFORMATION

10.1. DISCLOSURE & USE

- The parties acknowledge that, in the course of performing this agreement, one party (Discloser) may disclose Confidential Information to the other (Recipient).
- Subject to the express provisions of this agreement, a Recipient must not:
 - disclose any of Discloser's Confidential Information to any person; or
 - use any of Discloser's Confidential Information for any purpose other than exercising its rights or performing its obligations under this agreement, without Discloser's express written authorisation.
- Each Recipient may disclose Discloser's Confidential Information to its directors, officers, employees, contractors, sub-contractors and agents as, and only as, reasonably necessary for the purposes of Recipient's performance of this agreement.

10.2. RETURN & DESTRUCTION

Within 10 Business Days of the termination of this agreement, Recipient must return to Discloser, permanently disable access to or destroy all copies of material embodying Discloser's Confidential Information.

10.3. RIGHTS IN CONFIDENTIAL INFORMATION

Each Recipient acknowledges to Discloser that Recipient has or acquires no right, title or interest in any of Discloser's Confidential Information.

11. PUBLICITY

Either party may make reasonable public announcements about the fact of Client's engagement of Ovato by notifying the other party in writing prior to the announcement.

12. CLIENT'S LEGAL COMPLIANCE

12.1. DISCUSSIONS WITH OVATO

Client acknowledges that:

- by operating as a communications, marketing and advertising services provider, Ovato has been exposed to Legal Compliance requirements relating to deliverables and client conduct in advertising, public relations and marketing;
- Ovato may share with Client such experience in Legal Compliance, but that such sharing is gratuitous, not part of the Services and does not constitute legal or other professional advice; and
- under no circumstances does Ovato 'sign off' on Legal Compliance of Briefs, Creative Concepts, Deliverables or Client's conduct in advertising or marketing, regardless of whether Ovato discusses Legal Compliance with Client.

12.2. LIABILITY FOR LEGAL COMPLIANCE

- Client warrants that it does not rely on discussions with Ovato about Legal Compliance.
- Client acknowledges that it is at all times solely liable for the Legal Compliance of Briefs, Creative Concepts, Deliverables and Client's commercial conduct and affairs.
- Client hereby releases Ovato and its directors, employees and agents from any liability for any loss arising from or related to discussions with Ovato about Legal Compliance.

12.3. OVATO'S RIGHT TO REFUSE

Ovato may refuse to deliver a Brief or otherwise act on Client's feedback or directions to the extent that Ovato reasonably believes that doing so would likely involve Ovato's or Client's engaging in conduct or producing a Creative Concept or Deliverable inconsistent with Legal Compliance.

13. ADDITIONAL WARRANTIES

13.1. ADDITIONAL WARRANTIES CLIENT GIVES

In addition to and without limiting any warranty Client gives elsewhere in this agreement, Client warrants that:

- Ovato's performing this agreement will not cause Ovato to act inconsistently with

Legal Compliance by reason merely of Ovato's supplying the Services and otherwise following Client's feedback and directions and relying on information supplied by Client to Ovato;

- Client does not rely on any representation from Ovato that is not expressly contained in this agreement; and
- any representative of Client who signs the SOW is authorised to sign for Client and bind Client under this agreement.

13.2. ADDITIONAL WARRANTIES OVATO DOES NOT GIVE

In addition to warranties expressly disclaimed elsewhere in this agreement, Ovato gives no warranty that the delivery of the Brief will confer on Client any particular commercial objective, outcome or benefit.

14. INDEMNITY & LIMITATION OF LIABILITY

14.1. INDEMNITY

- (a) Ovato indemnifies Client against any Loss suffered by Client:
- as a result of any breach of this agreement (including its warranties) by Ovato or any other unlawful conduct engaged in by Ovato in relation to the performance of its obligations under this agreement; and
 - including where such loss arises from legal action brought against Client by a third party or brought by Client against a third party.
- (b) Client indemnifies Ovato against any Loss suffered by Ovato:
- as a result of any breach of this agreement (including its warranties) by Client or any other unlawful conduct engaged in by Client in relation to the acquisition or use of the Services or deployment of Deliverables; and
 - including where such Loss arises from legal action brought against Ovato by a third party or brought by Ovato against a third party.

Note: Clause 7(c) contains further provision for an indemnity in favour of Ovato.

14.2. LIMITATION OF LIABILITY

- (a) Without limiting clauses 7 (c) and 14.1, the liability of each party to the other is limited to:
- general or direct losses to the exclusion of indirect or special losses; and
 - in any event, an amount equal to the Service Fee or, in the case of Ovato, resupplying the Services in respect of which the liability arose or paying the cost of doing so.
- (b) If the Service Fee is an estimated fee, the amount of the Service Fee for the purposes of this clause 14.2 is the maximum amount estimated.

15. INSURANCE

Ovato must maintain professional indemnity, public and product liability and workers' compensation insurances.

16. TERM & TERMINATION

16.1. TERM

This agreement commences on the date that the parties enter into this agreement in accordance with clause 17.1 and continues until lawfully terminated or 12 months pass without there being any active Briefs.

16.2. CANCELLATION AND TERMINATION FOR CONVENIENCE

- (a) Client may cancel active Briefs for convenience by giving Ovato notice in writing as follows:
- in respect of a Retainer Brief, no less notice than the number of days until the end of the following calendar month; and
 - in respect of any other Brief, no less than 30 days' notice.
- (b) Either party may terminate this agreement for convenience by giving the other party notice in writing as follows:
- if there are any active Retainer Briefs, no less notice than the number of days until the end of the following calendar month; and
 - otherwise, no less than 30 days' notice.
- (c) To be clear, Ovato may, and at Client's request must, continue performing an active Brief or this agreement, as the case may be, during the notice period and Client's obligations to pay fees and charges in relation to that performance are unaffected by the giving of notice, the cancellation of the Brief or termination of this agreement.
- (d) However, Ovato must not, during the notice period, incur irrevocable liabilities to pay fees to contractors or sub-contractors for work that Ovato ought reasonably know will not be performed by reason of the cancellation of a Brief or termination of this agreement taking effect prior to the performance of that work.

16.3. TERMINATION FOR BREACH

Without prejudice to any other right, action or remedy, if a party (the first party) breaches this agreement and:

- the breach is reasonably capable of being remedied by the first party and the first party does not remedy the breach within 14 days of the other party's notifying the first party in writing about the breach; or
- the breach is not reasonably capable of being remedied by the first party,

then the other party may terminate this agreement with immediate effect by giving the first party notice in writing.

16.4. CONSEQUENCES OF CANCELLATION OR TERMINATION

- (a) Cancellation of a Brief does not, of itself, terminate this agreement. Termination of this agreement automatically cancels all active Briefs (if any).
- (b) If this agreement terminates, the fees and charges that Client must pay are as follows:
- so much of the Service Fees as reflects the work performed by Ovato;
 - all Expenses validly incurred by Ovato, including any premium; and
 - all irrevocable liabilities (if any) of Ovato to pay fees to contractors and sub-contractors for work not performed by the contractors and sub-contractors by reason only of the cancellation or termination, except to the extent that Ovato incurs the liabilities in breach of clause 16.2 (d), plus GST, up to and including the date of cancellation or termination.
- (c) Client must pay the fees and charges referred to in paragraph (b) on the earlier of:
- seven days after the Brief is cancelled or this agreement terminates; or

- in accordance with an invoice issued by Ovato for payment of those fees and charges.

(d) Paragraph (b) is without prejudice to Client's other obligations under this agreement, including the obligation to pay fees and charges, or any other right, action or remedy that Ovato may have against Client for breach of this agreement.

(e) To the extent that Client has already paid fees and charges that it is not liable to pay pursuant to paragraph (a), Client may set off those fees and charges against those liabilities and, if the total fees and charges paid by Client pursuant to this agreement exceed those liabilities, Ovato must refund to Client the difference between the fees and charges paid to Ovato and those liabilities.

Note: Clause 10.2 is also relevant to the consequences of termination of this agreement.

16.5. NOTICE IN ADVANCE

To be clear, any notice in writing given under this clause 16 is notice given in advance.

17. THIS AGREEMENT

17.1. FORMATION

- (a) The communication of this agreement to Client is the making of a contractual offer by Ovato to Client. Client may accept the offer in any of the following ways:
- Client signs a copy of this agreement;
 - Client notifies Ovato in writing that it accepts the offer;
 - any Brief starts pursuant to clause 2.2 (b); or
 - without limiting clause 2.2 (b), Client instructs Ovato to commence work on any Services, Deliverable, Creative Concept or Pitch.
- (b) By accepting Ovato's offer, Client enters into an agreement with Ovato on the terms and conditions recorded in this agreement.

17.2. TERMS AND CONDITIONS

- (a) This agreement includes the SOWs and any other schedules to this agreement. To the extent there is any irreconcilable inconsistency between the body of this agreement and an SOW or a schedule, the terms and conditions of the SOW or schedule prevail.
- (b) Subject to paragraph (a) and clause 17.4, this agreement:
- as a document, embodies all the express terms of the agreement; and
 - supersedes or excludes all other agreements, arrangements, understandings and representations, written or oral, in relation to Client's engagement of Ovato to provide the Services and the like.

17.3. PRINCIPLES OF INTERPRETATION OF AGREEMENT

In this agreement, unless expressly to the contrary and as appropriate in the context:

- (a) an expression in the plural may be read in the singular, and vice versa;
- (b) all references to and obligation of time are by reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is in effect at the time;
- (c) all references to currency or amounts of money are in Australian Dollars;
- (d) in relation to an expression reflecting a present state of affairs, if the existence of an obligation is conditional on the existence of that state of affairs, the obligation only survives to the extent that the condition remains satisfied during the term of this agreement;
- (e) a reference to a thing or things includes a reference to any, some or all, or part or whole, of the thing or things;
- (f) a reference to an act includes an omission and to the causing to be done of that act or omission, including the execution of legal documentation;
- (g) a reference to a person doing an act includes a reference to the doing of the act on behalf of the person;
- (h) a reference to one alternative does not, of itself, exclude any other alternative;
- (i) an expression of the exercise of a right means the exercise of that right at the sole and absolute discretion of the relevant party;
- (j) an expression prohibiting the doing of an act includes the prohibiting of:
- offering, attempting or purporting to do the act; or
 - aiding, abetting, authorising, approving, contributing to, directing or materially being involved with the doing of the act;
- (k) a list of rights is not to be read as an exhaustive list of rights;
- (l) an expression of ownership includes the legal or beneficial ownership;
- (m) a reference to an assignment or transfer of proprietary rights is a reference to the absolute and irrevocable assignment or transfer;
- (n) a reference to an indemnity is a reference to compensation for loss, not prevention of loss;
- (o) a reference to a 'copy' of a thing includes the original embodiment in material form of the thing;
- (p) where a defined term refers another defined term, e.g. 'Unless an SOW specifies otherwise, the Service Fee includes ...', each defined term is taken to be referring to the other defined term in the context of one particular Brief, e.g. 'Unless an SOW specifies otherwise, the corresponding Service Fee includes ...';
- (q) a reference to 'this agreement' includes a reference to the terms and conditions of this agreement, or this document, regardless of whether the terms and conditions of this agreement, or this document, are sometimes expressly referred to in this agreement; and
- (r) a reference to a provision, clause or paragraph is a reference to a provision, clause or paragraph of this agreement.

17.4. VARIATION

The parties may vary this agreement only by agreement in writing.

17.5. WAIVER

Subject to this agreement, no waiver of rights, actions or remedies is effective unless in writing. To be clear, the failure of any party to exercise or enforce a right, action or remedy under this agreement, or otherwise, does not constitute a waiver of the relevant right, action or remedy.

17.6. COMPULSORY PROVISIONS AND SEVERABILITY

- (a) Ovato acknowledges that, by operation of law:
- certain agreements contain certain terms, conditions, guarantees, warranties or liabilities (Compulsory Terms), whether by implication or otherwise;

- Compulsory Terms cannot or must not be excluded, modified or limited by agreement; and
 - to the extent that any provision of this agreement excludes, modifies or limits those Compulsory Terms, that provision may be unlawful, unenforceable or void.
- (b) Notwithstanding anything else in this agreement, but subject to clause 14.2 (a), this agreement does not, nor purports to, exclude, modify or limit any Compulsory Terms.
- (c) To the extent that any provision of this agreement would be unlawful, void or unenforceable for any reason (including by reason of the matters acknowledged in paragraph (a)) or is found to be so, the other provisions of this agreement are valid and enforceable.

17.7. ASSIGNMENT AND NOVATION

Neither party may assign its rights or novate its rights and obligations under this agreement without the other party's written consent, which consent must not be unreasonably refused.

17.8. SURVIVAL

- (a) Clauses 1, 6, 7(c), 9, 10, 12, 14, 16.4, 17.2, 17.3, 17.8 and 17.9 and all accrued liabilities survive the termination of this agreement.
- (b) Without limiting paragraph (a), all accrued obligations to pay fees and charges survive the termination of this agreement.

17.9. GOVERNING LAW AND JURISDICTION

- (a) The laws of the state of New South Wales, Australia, govern this agreement.
- (b) The parties acknowledge that the courts of NSW are an appropriate forum for the settlement of disputes arising under or in relation to this agreement.
- (c) To the extent they come before any court, all disputes arising under or in relation to this agreement will be determined in the courts of NSW.