



TERMS AND CONDITIONS

1 BACKGROUND

- (a) Lamington is an independent contractor in the business of providing the Services.
- (b) Lamington agreed to provide the Services to the Client subject to certain terms and conditions.
- (c) The parties have agreed to enter into this Agreement to formally record the terms and conditions of Lamington's engagement by the Client.

NOW IT IS AGREED by and between the parties as follows:

2 DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

The definitions for this Agreement are set out in the section titled 'Definitions' at the end of this Agreement.

1.2 INTERPRETATION

In this Agreement unless the contrary is expressly provided:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural and vice versa and words importing gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures;
- (e) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to "AU\$", "\$AUD", "dollar" or "\$" is a reference to Australian currency;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (h) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
- (k) words and expression defined in the *Corporations Act 2001* (Cth) as at the date of this Agreement have the meanings given to them in the *Corporations Act 2001* at that date; and
- (l) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

1.3 PRECEDENCE OF DOCUMENTS

This Agreement is constituted by:

- (a) the Proposal;
- (b) these terms and conditions;
- (c) any schedule, annexure or other document,

and to the extent of any inconsistency between such documents, unless otherwise specified in these Terms and Conditions they shall be interpreted in the order of precedence as set out above.

2 APPOINTMENT & TERM

- (a) The Client appoints Lamington to act as a consultant and to perform the Services to the Client for the Term, or until this Agreement is terminated earlier in accordance with clause 11.
- (b) The Client's appointment of Lamington under clause 3(a) includes an express authority for Lamington to:
 - (i) incur third-party expenses on behalf of the Client in line with any budgets set out in the Proposal with a tolerance of 10%;
 - (ii) create accounts with third-party suppliers of services (including media) for the Client's benefit at the cost of the Client;
 - (iii) access, connect to and use third-party advertising buying platforms, advertising accounts, analytics tools and application programming interfaces (**APIs**), including any current or future third-party platforms the Client uses for media buying or advertising, for the purposes of providing the Services; and
 - (iv) any other matter outlined in the Proposal.
- (c) Notwithstanding anything contained in this Agreement to the contrary, the Parties may extend the Term of this Agreement by mutual agreement provided that any such agreement is documented in writing.

3 LAMINGTON'S OBLIGATIONS

During the Term, Lamington agrees to:

- (a) perform the Services in a diligent manner, with all necessary skill and care and in accordance with the Proposal;
- (b) ensure that it and all its Personnel act ethically and comply with all the necessary laws, licensing requirements and regulatory and statutory requirements relating to the delivery of the Services;
- (c) perform the Services in a timely manner and advise the Client as soon as practicable after the relevant event where a delay is likely in the performance of services due to any reason beyond Lamington's control. Lamington will not be liable to the Client for any damage or loss the Client may suffer by reason of any such delay where Lamington notifies the Client of the delay within a reasonable period;
- (d) where reasonably required for the provision of the Services, Lamington may use third-party software, analytics platforms and artificial intelligence tools to analyse campaign, advertising and related business data and generate insights, recommendations, reports or other deliverables for the Client; and
- (e) Lamington will use reasonable efforts to ensure that any use of artificial intelligence tools in connection with the Services is subject to appropriate human review and oversight, and Lamington will not use such tools to make autonomous decisions about campaign spend or strategy implementation except to the extent expressly approved by the Client in writing or otherwise set out in the Proposal.
- (f) The Client must not require or direct Lamington to input sensitive information or unnecessary personal information into any third-party artificial intelligence or analytics tools, and must not provide Lamington with such information for those purposes unless:

- (i) it is reasonably necessary for the Services; and
 - (ii) all additional notices, consents and safeguards required by law have been implemented.
- (g) Where Lamington uses third-party AI tools, Lamington will take reasonable steps (having regard to the capabilities and configuration options of those tools) to prevent Client data from being used to train or improve those tools' underlying models, unless such use is:
 - (i) disclosed to the Client in writing; and
 - (ii) permitted by applicable privacy laws and any relevant third-party terms.

Lamington must supply all tools, equipment and materials as necessary to properly and efficiently perform and carry out the Services unless otherwise agreed in writing from time to time.

Lamington is not liable or responsible for any delay or change in the provision of the Services to the Client as a result of a Force Majeure Event.

4 OBLIGATIONS OF THE CLIENT

4.1 CLIENT COOPERATION AND ACCESS

During the Term, the Client agrees to:

- (a) make available to Lamington all relevant accesses (such as creating users in third-party service provider systems), logins, instructions, information, documentation or data, including any access credentials, API permissions, platform authorisations and account-level permissions required for Lamington to connect to and use third-party platforms, analytics tools and AI tools for the purposes of performing the Services, or any other agreed tools, equipment and materials as required for the performance of the Services;
- (b) not interfere with the provision of the Services, including by changing any settings in any third-party services or accounts – for example, by changing the spend or making changes to campaign settings in a given month; and
- (c) provide assistance to Lamington as reasonably required so that Lamington may competently perform its duties under this Agreement.

4.2 CLIENT DATA WARRANTIES AND PRIVACY COMPLIANCE

To the extent the Client provides to Lamington any information, documentation or data, the Client represents and warrants:

- (a) that it has all necessary rights, approvals and authority to disclose that information, documentation or data to Lamington;
- (b) that it has disclosed to any person to whom that information, documentation or data relates that it may disclose that information, documentation or data to a service provider such as Lamington for the purposes of providing the Services;
- (c) that the disclosure of that information, documentation or data is in compliance with the law and that the Client has complied with all of its obligations under the *Privacy Act 1988* (Cth) in disclosing that information, documentation or data to Lamington;
- (d) that it has provided all notices, obtained all consents and has all rights necessary for Lamington to collect, access, use, disclose and process that information, documentation or data for the purposes of performing the Services, including by using third-party platforms, APIs and AI tools; and
- (e) that where the information, documentation or data includes personal information, sensitive information or third-party account data, the Client has ensured that such information may lawfully be disclosed to and used by Lamington in accordance with the *Privacy Act 1988* (Cth), applicable privacy policies and any applicable third-party platform terms.

4.3 BACKUPS AND DATA RETENTION

The Client acknowledges and agrees that it shall at all times be responsible for conducting and

maintaining the appropriate, up to date backups of all information, documentation or data relevant to the Services and Lamington shall not be liable to the Client for any damage or loss the Client suffers in connection with data loss or damage or any failure of the Client to comply with this clause.

4.4 NON-SOLICITATION OF PERSONNEL

The Client acknowledges and agrees that during the Term and for 12 months following the expiry of the Term or termination of the Agreement, it will not, without the prior written consent of Lamington, directly or indirectly engage or solicit the employment/engagement of services of any Personnel of Lamington, whether individually, through a service company or any third party, in connection with the provision of services the same as or similar to the Services.

4.5 CLIENT INDEMNITY FOR DATA AND PRIVACY BREACHES

The Client acknowledges and agrees that Lamington has entered into this Agreement with the Client on the basis of the representations and warranties contained in clause 5.2 and indemnifies and shall keep indemnified Lamington from any and all Loss suffered by Lamington in reliance upon the representations and warranties contained in clause 5.2.

5 CHANGES TO THE PROPOSAL OR SCOPE OF THE SERVICES

5.1 CHANGES TO THE PROPOSAL

The parties acknowledge and agree that Lamington may, in its discretion, make reasonable changes to timeframes for the commencement, delivery or completion of Services or the Service Fee where the Services are delayed for any reason outside the control of Lamington, including due to:

- (a) a Force Majeure Event;
- (b) suspension of the provision of Services by Lamington;
- (c) changes to the Proposal or scope of Services;
- (d) the unavailability of information, documentation or data necessary to provide the Services in the manner contemplated by this Agreement;
- (e) changes to how the strategy must be delivered in order to work with third-party platforms, APIs or AI tools as a result of changes to those platforms, APIs or tools after the date of the Proposal;
- (f) changes to the assumptions on which the Proposal or Schedule have been based;
- (g) changes to the Commencement Date;
- (h) any act or omission of the Client, its employees, agents or contractors.

5.2 WORK OUTSIDE OF THE SCOPE OF THE SERVICES

If, from time-to-time, the Client requests Lamington to provide services which are outside of the scope of the Services (**Out of Scope of Services**), the Client shall be required to pay Lamington for such Out of Scope Services in accordance with clause 6.

6 PAYMENT OF SERVICES FEES

6.1 OUT-OF-POCKET EXPENSES

- (a) The Client must pay Lamington for out-of-pocket expenses, reasonably incurred in connection with Lamington performing the Services and complying with all its obligations under this Agreement.
- (b) If the Proposal provides that Lamington will incur any advertising or other third-party costs (such as payment for advertisements, search engine optimisation third-party expenses, Credit Card fees or similar), Lamington may:
 - (i) require the Client to pay Lamington ahead of incurring such expenses;
 - (ii) pay those third-party expenses directly to the relevant third-party; or

- (iii) invoice the Client in accordance with this clause 6 for such expenses, in Lamington's sole discretion exercised upon the incurring of any such costs.
- (c) Lamington may, in its sole discretion, incorporate third-party costs into the Service Fee which is charged under this Agreement whereupon Lamington shall have no obligation to disclose to the Client the details of the third-party costs.
- (d) If the Proposal includes a budget for the provision of media spending or other third-party expenses, the Client acknowledges and agrees that the budget is a reasonable estimate of that expense and is not binding upon Lamington.

6.2 INVOICE

- (a) Lamington will issue Tax Invoices to the Client for the Service Fee at the times specified in the Proposal and if no time is specified, monthly in advance.
- (b) Lamington will issue Tax Invoices to the Client for any Costs that it has incurred or reasonably expects to incur at the times specified in the Proposal, and if no time is specified, monthly.
- (c) Lamington represents and warrants that it is registered for GST.
- (d) The Tax Invoice must:
 - (i) contain sufficient detail about the Services;
 - (ii) specify the amount of the Services Fee payable;
 - (iii) specify the method of payment;
 - (iv) specify Lamington's ABN and any GST payable; and
 - (v) include all other details reasonably required from time-to-time.
 - (vi) outline Credit Card fees (if paying by credit card).

6.3 PAYMENT

- (a) The Client must pay the amount stated on a Tax Invoice issued by Lamington within 7 days of issue.
- (b) The Client acknowledges and agrees that the Services Fee and any Costs excludes all GST and that GST is payable in addition to the payment of the Services Fee and any Costs.
- (c) If the Client fails to pay a Tax Invoice when due for payment, Lamington may (in its sole discretion):
 - (i) suspend the performance of any or all of the Services until such time as payment is received and the duration of any such suspension of the Services shall result in a corresponding extension of time for the performance of the Services;
 - (ii) seek to recover any unpaid amount from the Client; and/or
 - (iii) notify a credit reporting agency as to the payment default, and to the extent Lamington incurs any costs in recovery of any outstanding amounts from the Client, the Client indemnifies Lamington for:
 - (iv) all debt recovery costs incurred including for the payment of debt collectors;
 - (v) all legal costs incurred on a full indemnity basis including all filing fees;
 - (vi) interest at the rate set out in the *Uniform Civil Procedure Rules 2005* or as set by the District Court (as applicable) to the circumstances; and
 - (vii) administration fee of \$50.00 plus GST for each attendance to recovering overdue amounts by Lamington or its personnel.
- (d) If any amount claimed is disputed, the Client must pay to Lamington any amount not in dispute.

7 INTELLECTUAL PROPERTY

7.1 DEVELOPED IP

- (a) Subject to the payment of all Services Fees and Costs under this Agreement, Lamington assigns any Intellectual Property Rights in Developed IP to the Client upon its creation.
- (b) To the extent that any AI Output forms part of the Developed IP, Lamington assigns to the Client its rights (if any) in that AI Output on the terms set out in this clause, but retains all rights in its underlying tools, models, prompts, templates, methodologies and know-how used to generate the AI Output.

7.2 LICENCE TO BACKGROUND IP

To the extent necessary, Lamington grants to the Client a perpetual, worldwide, irrevocable, sub-licensable and transferable licence to use the Background IP solely for the purposes of its use of the Developed IP within the scope of the Services however, the licence granted under this clause shall not grant the Client with the right to modify, amend, adapt or otherwise develop the Background IP or grant the Client with any proprietary interest in the Background IP.

7.3 DISCLOSURE OF INTELLECTUAL PROPERTY

Lamington must disclose to the Client each Intellectual Property Right of the Client and each drawing, specification or record in relation to that Intellectual Property Right promptly after it is brought into existence.

7.4 FURTHER ASSURANCES

Lamington must, at the expense of the Client (which is not included in the Services Fee), execute all documents and do all other things reasonably necessary and within its power to:

- (a) enable the Client or its nominee to obtain letters patent, design registration or other official protection for Lamington's interest in each of its Intellectual Property Rights; and
- (b) transfer to the Client or its nominee the full ownership of each of its Intellectual Property Rights in the Developed IP.

7.5 SURVIVAL OF IP OBLIGATIONS

The obligations of Lamington relating to Intellectual Property Rights continue after the termination of this Agreement.

7.6 MORAL RIGHTS

Lamington may, during the performance of the Services, be entitled to Moral Rights in work Lamington produces. The Moral Rights may include the right:

- (a) to be attributed authorship of the work;
- (b) not to have authorship falsely attributed; and
- (c) of integrity of authorship.

7.7 CONSENT TO ACTS OR OMISSIONS

Lamington consents to the Client infringing any Moral Rights that Lamington may have or become entitled to in any Work created, developed, modified or enhanced in the course of the performance of the Services. For the purposes of this consent:

- (a) 'Work' has the meaning given to the term in the *Copyright Amendment (Moral Rights) Act 2000* (Cth);
- (b) Lamington agrees that any such Work covered by this clause is created, developed, modified or enhanced in the course of Lamington's performance of the Services.

8 LIABILITY AND INDEMNITY

8.1 DEFINITIONS

- (a) In this clause 9:
 - (i) **Loss** includes any loss, damage, liability, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent; and
 - (ii) **Claim** means, in relation to a person, any claim, cause of action, proceeding, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

8.2 LIABILITY AND INDEMNITY

- (a) The parties must indemnify and keep indemnified the other party against Loss or Claim:
 - (i) arising from or in connection with any breach or non-performance of any provision of this Agreement by the indemnifying party; and
 - (ii) any Loss or Claim to the extent that the Loss or Claim arises from or is connected with any breach of any warranty given by the indemnifying party in this Agreement.
- (b) The indemnified party must have incurred an expense or made a payment before enforcing this indemnity.
- (c) The indemnity contained in clause 9.2(a) extends (without limitation and generality of the foregoing) to any costs, damages, loss or liability (including legal costs and disbursements in defending or settling a claim) incurred by the indemnified party by virtue of any injury or disability suffered by any employee, contractor, agent of the indemnifying party, arising by whatever legal theory (whether statutory, tortious or otherwise).
- (d) Without limiting the above, Lamington is not liable for any Loss or Claim arising from:
 - (i) any unauthorised access to or use of the Client's third-party advertising buying platform accounts or other third-party advertising or analytics account, resulting from the Client's failure to maintain appropriate access controls, security configurations or credentials; or
 - (ii) any security or privacy incident, interruption or unavailability affecting a third-party platform, API, analytics provider or AI tool, except to the extent caused by Lamington's failure to take reasonable steps within its control.

8.3 EXCLUSIONS AND LIMITATIONS

- (a) With the exception of a liability arising in respect of the indemnity contained in clause 5.5 but otherwise despite any other provision of this Agreement, neither party is liable to the other party for any Consequential Loss, whether arising in contract (including under any indemnity), tort (including negligence) or otherwise.
- (b) All conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on the parties are expressly excluded under this Agreement.
- (c) Lamington's total aggregate liability to the Client is limited to an amount not exceeding the total Services Fee less any Costs paid in the 12 months immediately prior to the Loss or Claim arising.

9 RELATIONSHIP OF THE PARTIES

- (a) Lamington's relationship with the Client is that of independent contractor under a contract for services.
- (b) Neither Lamington nor the Client has (nor may it represent that it has) any power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in the other's name.

- (c) Subject to the terms of this Agreement, the parties acknowledge that Lamington is solely responsible for controlling the manner in which Lamington provides the Services.
- (d) The relationship between the parties is non-exclusive in that:
 - (i) Lamington may, in its sole discretion, accept contracts from other persons; and
 - (ii) the Client may engage as many other contractors as the Client sees fit to appropriately operate the Client's business.
- (e) Nothing stated in this Agreement shall be construed as constituting Lamington and the Client as partners, or as creating the relationship of Client and Contractor, master and servant or Client and agent between the parties.

10 RIGHT TO REFUSE WORK AND DELEGATE

- (a) Lamington has the right to refuse to perform the Services as and when requested by the Client and is entitled to do so for any reason that Lamington deems appropriate.
- (b) Lamington has the right to delegate all or some of the tasks comprising the Services to a subcontractor and/or contractor of Lamington.
- (c) Lamington does not require the Client's consent or permission to delegate the work the subject of the Services to a subcontractor however Lamington must notify the Client so that its clientele can be appropriately advised as to who will be attending at the relevant work site to provide the Services, for operational and security purposes. Notwithstanding Lamington's right to subcontract the performance of the Services, Lamington shall remain responsible for the performance of the Services including the quality thereof.

11 TERMINATION

- (a) Either party may terminate this Agreement on the provision of written notice to the other party in writing with the notice period which is specified in the Proposal.
- (b) Upon termination of this Agreement, the Client is obliged to pay Lamington for all Services performed until the date of termination.
- (c) Lamington may terminate this Agreement by written notice to the Client if:
 - (i) the Client fails to make payment in accordance with clause 6;
 - (ii) Lamington has provided a payment reminder notice; and
 - (iii) following the receipt of the notice under clause 11.3(b), the Client does not rectify its payment default within 5 Business Days.
- (d) Where this Agreement is terminated by Lamington under clause 11.3, the Client:
 - (i) shall pay any amounts outstanding to Lamington including in respect of any work in progress yet to be invoiced to the Client under clause 6;
 - (ii) indemnifies Lamington in respect of any loss or damage it suffers as a result of the Client's default under this Agreement; and
 - (iii) releases Lamington in respect of any obligations it may owe to the Client.

12 GST

- (a) Unless otherwise expressly stated, any fees and other payments required to be made under this Agreement are deemed to be exclusive of GST.
- (b) In the event that a supply under this Agreement is a taxable supply within the meaning of the GST Act:
 - (i) the supplier may recover from the recipient of the supply an amount equal to the GST payable on the supply ('**GST Amount**'); and
 - (ii) the recipient must pay the GST Amount to the supplier on the date the consideration for the supply is due for payment, or in exchange for a valid Tax Invoice.

- (c) The parties agree that each party shall be solely liable for their respective GST liabilities.
- (d) To the extent that the Services are performed in a jurisdiction to which the GST Act does not apply but an analogous or other form of sales or value added tax applies, this clause 13 shall be read so as to apply the local regulations and laws to the imposition and payment of such sales or value added tax.

13 DISPUTE RESOLUTION

- (a) If a dispute arises in connection with this Agreement then a party may only deal with that dispute in the manner set out in this clause.
- (b) A party to a dispute which arises in connection with this Agreement may give to the other party or parties to the dispute a notice specifying the dispute and requiring its resolution under this clause.
- (c) Within 14 days after a notice is given under clause 14(b) (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use its best efforts to resolve the dispute in good faith.
- (d) If, despite the parties' best efforts, a dispute not resolved within 14 days after notice, a party may by notice to the other party or parties to the dispute refer the dispute for mediation in accordance with the Mediation Rules of The Institute of Arbitrators and Mediators Australia. The mediation will be conducted by a mediator to be appointed by agreement of the parties or in default of agreement to be appointed by the Law Society of New South Wales at the request of a party.
- (e) If the dispute is not resolved within 14 days after the appointment of the mediator, any party may take legal proceedings to resolve the dispute.
- (f) The provisions of this clause do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

14 CONFIDENTIAL INFORMATION

- (a) The parties acknowledge that during the course of this Agreement it may become acquainted with or have access to Confidential Information.
- (b) The parties must, both during and after the operation of the Agreement:
 - (i) take all steps necessary to safeguard the confidentiality of all Confidential Information; and
 - (ii) refrain from using, disclosing, copying or removing any Confidential Information without the consent of the other party.
- (c) The parties agree that they must not:
 - (i) use Confidential Information for any purpose other than for the benefit of the other party during or after the term of this Agreement;
 - (ii) remove Confidential Information from the other party's business or other premises without the written consent of that party; and
 - (iii) for whatever reason, either for itself or a third party, appropriate, copy, memorise or in any manner reproduce any of the Confidential Information.
- (d) The parties agree that they must not, both during or after the term of this Agreement for whatever reason, make improper use of Confidential Information acquired by virtue of this Agreement, to gain directly or indirectly, an advantage for itself or for any other person or to cause detriment to the other party.
- (e) On demand by the other party, and in any event on termination of this Agreement for any reason, the first party must:
 - (i) deliver to the other party all Confidential Information in the first party's possession or control; and
 - (ii) delete all Confidential Information held electronically in any medium in the first party's possession or control.

- (f) The parties must ensure that before any of other party's contractors, sub-contractors, agents or have access to Confidential Information, each such person enters into a confidentiality agreement with receiving party in the same terms as this Agreement.
- (g) The parties shall not at any time following the date of this Agreement copy, reproduce or transmit in any form or by any means (including but not limited to electronic, mechanical, microcopying, photocopying, recording, storage and retrieval systems) any Confidential Information.
- (h) This clause does not apply to any Confidential Information that:
 - (i) is publicly available at the date of this Agreement;
 - (ii) becomes publicly available after the date of this Agreement without breach of this Agreement by either party;
 - (iii) is related to the Client's failure to make payment and results in Lamington disclosing such information to credit reporting agencies; or
 - (iv) the party is obliged by law to disclose.
- (i) If the party is obliged by law to disclose any Confidential Information, then that party must immediately notify the other party of the actual or anticipated requirement.
- (j) The parties acknowledge that:
 - (i) Confidential Information is at all times the property of the Client;
 - (ii) a breach of this clause would be harmful to the business interests of the Client should such disclosure of Confidential Information occur; and
 - (iii) monetary damages alone would not be a sufficient remedy for a breach of this Agreement.
- (k) The parties' obligations under this clause continue after the termination of this Agreement.

15 PRIVACY

The parties acknowledge that Lamington's handling of personal information in connection with the Services is governed by Lamington's Privacy Policy (as updated from time to time), which is available on its website. To the extent of any inconsistency between this Agreement and the Privacy Policy in relation to the handling of personal information, the Privacy Policy prevails.

16 WARRANTIES

- (a) Lamington gives no warranties as to the future performance and outcomes of the Services provided to the Client.
- (b) Lamington warrants that Lamington has the skill, knowledge, experience and expertise to provide the Services to the standard required by the Client.
- (c) Lamington warrants and undertakes to have all necessary insurances as required by law and required by the Client within reason including, but not limited to, workers compensation insurance and public liability/risk insurance.
- (d) Lamington warrants that no literary or other works employed or created by Lamington in the provision of the Services infringe any copyright, obligation of confidentiality, patent or other right of property belonging to or benefiting any third party.
- (e) The Client acknowledges and agrees that any outputs, recommendations, reports or insights generated or assisted by artificial intelligence tools are provided for general informational and analytical purposes only, may contain errors or inaccuracies, and do not constitute a guarantee of performance, advertising results, revenue, conversions or any other commercial outcome.
- (f) Lamington is not responsible for any interruption, suspension, modification, restriction, inaccuracy or unavailability arising from any third-party platform, API, analytics provider or artificial intelligence tool used in connection with the Services, except to the extent caused by Lamington's breach of this Agreement.

- (g) The Client must not use, and must not direct Lamington to use, any AI tools in connection with the Services in a way that:
 - (i) contravenes applicable privacy, data protection or consumer laws; or
 - (ii) involves profiling, automated decision-making or other activities that would be regarded as high-risk under applicable AI or privacy guidance, unless this has been expressly agreed in writing and appropriate safeguards have been implemented.

17 MISCELLANEOUS

17.1 ASSURANCES

Each party shall take all steps, execute all documents and do everything reasonably required by the other party to give effect to any of the transactions contemplated by this Agreement.

17.2 SEVERANCE

Any provision of this Agreement which is prohibited or unenforceable in the jurisdiction specified in clause 18.10 below will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

17.3 AMENDMENT

This Agreement may be amended only by another agreement executed by all parties.

17.4 CONFIDENTIALITY

The parties to this Agreement must not disclose to any other person or entity the contents of this Agreement except to:

- (a) the parties' legal, accounting, taxation and other professional advisors;
- (b) any other party whom by law the party is compelled to make disclosure; or
- (c) any other party where the written consent of all parties to this Agreement is obtained to make such disclosure.

17.5 COSTS

Each party shall bear its own costs.

17.6 GIVING EFFECT TO THIS AGREEMENT

Each party must do everything reasonably practicable to comply with and give effect to the terms of this Agreement.

17.7 VARIATION

No variation, modification or waiver of any provision in this Agreement, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

17.8 CONTRA PROFERENTEM

The contra proferentem rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.

17.9 WAIVERS

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent

another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

17.10 GOVERNING LAW

The Agreement is governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

17.11 COUNTERPARTS

- (a) This Agreement may be executed in any number of counterparts. All counterparts taken together shall be taken to constitute one agreement.
- (b) The parties agree that a facsimile or email copy of a counterpart received from a party shall be regarded as, and deemed to be, an original copy of that counterpart received from that party.

17.12 SURVIVAL

Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

17.13 NO MERGER

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

17.14 RELATIONSHIP

Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

17.15 ENTIRE AGREEMENT

This Agreement contains all the contractual arrangements of the parties with respect to the items to which it relates, and supersedes all earlier conduct (including any agreements in relation thereto) by the parties with respect to those items.

17.16 EMAIL FORM

Both parties acknowledge that the original of this Agreement may be in email form and agree to accept the email as an original which is binding on the parties.

17.17 ELECTRONIC TRANSACTIONS

The parties acknowledge that their representatives may communicate utilising electronic communication, in accordance with the ETA.

17.18 NOTICES

- (a) Method of giving notices: A notice, consent, approval or other communication (each a '**notice**') under this Agreement must be 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 pre-paid mail to that person's address; or
 - (iii) transmitted by email to that person's address.
- (b) Time of receipt: A notice given to a person in accordance with this clause is treated as having been given and received:
 - (i) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
 - (ii) if sent by pre-paid mail, on the third business day after posting; or

- (iii) if transmitted by email to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day.
- (c) Address of parties: For the purposes of this clause 18.18 the address of a party, is the address referred to above in the title of the Agreement.

DEFINITIONS

Term	Definition
Agreement	has the meaning set out in clause 1.3.
AI Output	means any content, analysis, report, recommendation, summary or other material generated or assisted by an artificial intelligence tool in connection with the Services.
Background IP	means the Intellectual Property Rights in any materials developed or discovered by
Business Day	means any day other than a Saturday, Sunday or public holiday in New South Wales,
Client	means the person or party identified in the Proposal as being the “Client”
Commencement Date	means the date specified in the Proposal as being the commencement date.
Confidential Information	means confidential information of the parties which includes, but is not limited to: (a) contractor details; (b) information relating to Customers including their Personal Information and details of any Services which have been provided to those Customers; (c) information specifically designated by the parties as being confidential; (d) intellectual property; (e) developments relating to existing and future products; (f) projects and services marketed or used or to be marketed or used, or rejected, by the parties and persons or companies dealing with the parties; and (g) information relating to the general business operations of the parties including: (i) profit and loss statements; (ii) balance sheets and any other financial reports or documents; (iii) client lists and any personal or business details relating to clients of the parties and/or the parties’ business; (iv) costing and selling price information, including, pricing, credit policies, credit procedures, payment policies, payment procedures and systems; (v) trade secrets, commercial property management, leasing and finance plans and processes, technical designs or specifications, and know-how; (vi) business and marketing plans and strategies; (vii) current activities and future plans relating to all or any matters of development including the timing of all such matters; (viii) agreements and arrangements with third parties; (ix) third party information disclosed in confidence to the Contractor; (x) contractual and technical information; (xi) the terms of this Agreement; and (xii) notes concerning any of the above.
Consequential Loss	means: (a) in the case of loss or damage or liability to a party resulting from a breach of contract, that which is indirect, remote or unforeseeable loss,

Term	Definition
	pure economic loss, loss of use, loss of contracts, loss of revenue, loss of profit, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, loss of production, increased overhead costs, or wasted overheads or any other similar loss occasioned by that breach, whether or not in the reasonable contemplation of the parties at the time of execution of this agreement as being a probable result of the relevant breach; (b) in the case of loss or damage arising from any tort (including negligence), that which is indirect, remote or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the commission of the tort; or (c) in the case of loss or damage arising from any breach of law, that which is indirect, remote or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the breach of the law, save where such loss or damage cannot be excluded or limited by operation of mandatory provisions of law.
Copyright Material	means any work or other subject-matter in which copyright subsists or is capable of subsisting under the <i>Copyright Act 1968</i> (Cth) or equivalent legislation.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Costs	means any out-of-pocket or third-party costs which Lamington incurs in the performance of the Services to the Client including: (a) payments for advertising through any channel; (b) any costs for third-party contractors engaged for the purposes of performance of specialised services; (c) any other costs or expenses specified as being the cost of the Client or otherwise excluded from the Services Fee in the Proposal.
Developed IP	means Intellectual Property Rights developed or discovered directly in the performance of the Services by Lamington.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Electronic Communication	has the same as defined in the ETA.
ETA	means the <i>Electronic Transactions Act 2000</i> (NSW).
Force Majeure Event	means events, circumstances or causes beyond a party's reasonable control including (but not limited to): (a) strikes, lock-outs or other industrial action; (b) civil commotion, riot, invasion, cyber-attack, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic, health emergencies, disease, or other natural disaster; (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; (e) interruption or failure of utility services (including the inability to use public or private telecommunications networks); (f) interruption of networks or third-party services (including 4G, 5G or web services); (g) changes to networks or third-party services; and

Term	Definition
	(h) the act, decrees, legislation, regulations or restrictions of any Government Agency, however, does not include a lack of funds.
Intellectual Property	means any Confidential Information, Copyright Material, Moral Rights, inventions (including patents), trademarks, business name registrations, service marks, designs, circuit layouts and performance protection (whether or not now existing and whether or not registered or registerable) in relation to the parties or as otherwise required.
Intellectual Property Right	means any and all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of or analogous to copyright), Moral Rights, inventions (including patents), trade marks, service marks, designs, circuit layouts and performance protection (whether or not now existing and whether or not registered or registrable) and includes any affairs; right to apply for the registration of such right and all renewals and extensions.
Lamington	means Lamington Group Pty Ltd (ACN 678 314 666).
Moral Rights	has the same meaning as in Divisions 2, 3 and/or 4 of Part IX of the <i>Copyright Act 1968</i> (Cth).
Personal Information	has the meaning given to it by the Privacy Act.
Personnel	means the officers, directors, employees, agents, contractors or sub-contractors of a party.
Privacy Act	means the <i>Privacy Act 1988</i> (Cth).
Proposal	means the document titled "Digital Strategy and Performance Recommendation" and "Client Agreement" to which this Agreement is annexed.
Schedule	means the schedule attached to and forming part of this Agreement.
Services	mean the services to be provided by Lamington to the Client as specified in the Proposal.
Service Fee	means all fees and other amounts payable to Lamington as set out in the Proposal and unless specified otherwise in the Proposal, excluding Costs.
Tax Invoice	has the same meaning as in the GST Act.
Term	means the period specified as being the term for the performance of the Services in the Proposal.