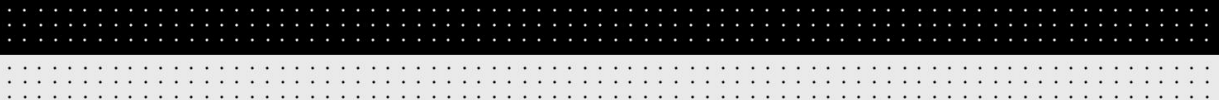


Master Service Agreement



REGARDING

Torn Marketing Pty Ltd

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This Master Service Agreement is dated _____

BETWEEN **TORN MARKETING PTY. LTD. ACN 625 493 665** of Level 18, 1 Nicholson Street, East Melbourne, VIC 3002

Email:

(Torn Marketing)

AND **[INSERT DETAILS OF CLIENT]** of [insert address]

Email:

(Client)

RECITALS

- A. Torn Marketing has agreed to supply the Services to the Client on the terms and conditions of this Agreement.

AGREEMENT

1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

Advertising Float means any prepaid amount required under an Engagement to fund Media Spend and other third-party advertising costs;

Applicable Laws means all laws, regulations, codes, standards, council requirements, WorkSafe Victoria requirements, venue rules and lawful directions applicable to the Services;

Business Day means a day other than a Saturday, Sunday or public holiday in Victoria;

Client Data means all data, information, content, personal information, lists, leads, Client records, CRM data, website content, materials, instructions and other information supplied or made available by or on behalf of the Client;

Default Interest means 10% per annum;

Deliverables means any work product, campaign materials, reports, website assets, designs, configurations, CRM workflows, content or other deliverables to be provided by Torn Marketing under an Engagement;

Engagement means each separate engagement of Torn Marketing by the Client to provide the Services and Deliverables as set out in an Engagement Schedule;

Engagement Schedule means a schedule, statement of work, booking confirmation, event schedule or other written document substantially in the form of the template Engagement Schedule set out in Schedule 1;

Engagement Start Date means the start date of the Engagement as specified in the relevant Engagement Schedule;

Expenses means any expenses, disbursements, Media Spend and third-party costs specified in or incurred in accordance with an Engagement;

Fee means the fees payable by the Client to Torn Marketing for the Services, as specified in the relevant Engagement;

Initial Term means the minimum term specified in the relevant Engagement;

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act*;

Media Spend means amounts payable to media owners, advertising platforms and other third-party providers for advertising placements, clicks, impressions, leads, campaign spend and related charges;

Personnel mean, in respect of a party, that party's officers, employees, contractors, subcontractors, agents, representatives, volunteers and any other persons engaged by or on behalf of that party in connection with this Agreement or any Engagement;

Services means the services to be provided by Torn Marketing for the relevant Engagement, as specified in the relevant Engagement Schedule and/or any Service Module and as otherwise required under this Agreement;

Service Levels means the service level requirements, conditions and exclusions set out in Annexure A and the applicable Target Response Time specified in the relevant Engagement Schedule;

Service Module means a module attached to the Engagement Schedule (if any);

Target Response Times means the response time specified in the relevant Engagement Schedule; and

Third-Party Materials means any material, software, content or Intellectual Property owned or licensed by a third party and incorporated into, used in connection with or required for the use of any Deliverable.

2. TERM

2.1. Term of this Agreement

This Agreement shall have effect from the date of this Agreement and shall continue unless terminated earlier in accordance with this Agreement.

2.2. Term of an Engagement

- (a) The parties may enter into one or more Engagements during the term of this Agreement, on the terms of this Agreement and any additional terms agreed in the relevant Engagements.
- (b) Each Engagement shall have effect from the Engagement Start Date and shall continue for the Initial Term.
- (c) After the Initial Term, the Engagement shall automatically renew on a month-to-month basis unless either party gives the other party not less than 30 days' prior written notice of its intention not to renew the relevant Engagement.

3. ENGAGEMENT

3.1. Separate Engagement

- (a) Upon request of the Client, Torn Marketing will issue an Engagement Schedule to the Client for the supply of any requested Services.
- (b) An Engagement Schedule is not accepted, and no Engagement arises, unless and until:
 - (i) the Engagement Schedule has been executed by the parties; and
 - (ii) the Client has paid any upfront fees, deposit, Advertising Float or other amount specified in the Engagement Schedule.
- (c) Upon acceptance of an Engagement under clause 3.1(b), a separate agreement is formed between the parties for the Services to be supplied

under the relevant Engagement and which remains subject to the terms of this Agreement.

3.2. Engagement Schedule prevails for Engagement-specific details

- (a) Each Engagement is governed by this Agreement, the relevant Engagement Schedule and any Service Module attached to that Engagement Schedule. If there is any inconsistency between the documents comprising an Engagement, the inconsistency must be resolved in the following descending order of priority:
 - (i) the Engagement Schedule;
 - (ii) the applicable Service Module, but only to the extent that the inconsistency relates to the description or scope of the Services;
 - (iii) this Agreement ;
 - (iv) the remaining provisions of the applicable Service Module; and
 - (v) any other documents incorporated into the Engagement Schedule by reference.

3.3. Exclusive Engagement

Unless otherwise agreed in writing between the parties, the appointment of Torn Marketing to provide the Services under an Engagement is exclusive. During the term of that Engagement, the Client must not engage any other person to provide services that are the same as, or substantially similar to, the Services.

4. SERVICES

4.1. Torn Marketing's general obligations

Torn Marketing will:

- (a) use reasonable skill and care in performing the Services;
- (b) use reasonable endeavours to meet any Service Levels specified in the relevant Engagement Schedule;
- (c) provide appropriately skilled Personnel to perform the Services; and
- (d) comply with any Applicable Laws that apply to Torn Marketing's performance of the Services.

4.2. Client's general obligations

The Client must:

- (a) provide Torn Marketing with timely access to all systems, accounts, websites, CRM platforms, approvals and information reasonably required to perform the Services;
- (b) ensure that all Client Data is accurate, complete, lawfully collected, lawfully supplied to Torn Marketing and permitted to be used for the purposes of the Services; and
- (c) review and approve Deliverables, Media Spend and other matters within the timeframes reasonably requested by Torn Marketing.

4.3. Personnel

- (a) Torn Marketing will perform the Services using Personnel who are suitably qualified, skilled, experienced and competent to perform their assigned duties.
- (b) Unless an Engagement Schedule expressly provides otherwise, Torn Marketing may perform the Services remotely and may determine the Personnel, tools and methods used to perform the Services.

4.4. Service Level

- (a) If an Engagement Schedule states that the Service Levels apply, Torn Marketing will use reasonable endeavours to meet the Service Levels in providing the relevant Services.
- (b) Unless otherwise specified in the relevant Engagement Schedule, the Service Levels do not apply to:
 - (i) services, systems, infrastructure or platforms not managed or controlled by Torn Marketing;
 - (ii) issues caused by the Client, a third party or an unauthorised change;
 - (iii) internet, telecommunications, hosting, platform or network outages outside Torn Marketing's reasonable control;
 - (iv) scheduled maintenance notified to the Client;

- (v) any period during which Torn Marketing is awaiting access, information, instructions, decisions or approvals from the Client or a third party.
- (c) The Client acknowledges that:
 - (i) any Target Response Time is not a commitment to resolve a request within that period; and
 - (ii) the Service Levels are service objectives only and do not entitle the Client to any service credit, refund or other financial remedy.

5. EXPENSES AND ADVERTISING FLOAT

5.1. Media Spend budget

- (a) If an Engagement requires Torn Marketing to incur Media Spend:
 - (i) the parties acknowledge that any amount specified as Media Spend in an Engagement Schedule is the agreed Media Spend budget for that Engagement;
 - (ii) If no amount is specified, Torn Marketing must not incur or commit to any Media Spend unless and until the parties agree the budget in writing; and
 - (iii) any subsequent change to the agreed budget must be dealt with as a Variation under clause 9.
- (b) Torn Marketing may allocate and optimise the Media Spend across the approved media channels within that budget but must not exceed the total approved budget without the Client's prior written approval.

5.2. Advertising Float

- (a) The Client must, upon commencement of the Engagement and before Torn Marketing is required to commit to any Media Spend, pay Torn Marketing an amount equal to the budget Media Spend agreed under clause 5.1.
- (b) Such amount will form a prepaid Advertising Float to be applied by Torn Marketing towards the Media Spend.
- (c) The Client must maintain the Advertising Float at the minimum amount specified in the relevant Engagement Schedule or, if no minimum amount is

specified, at an amount reasonably determined by Torn Marketing having regard to the approved Media Spend for the following month.

- (d) Torn Marketing may issue a top-up request whenever the Advertising Float falls below the required amount, and the Client must pay the requested amount within [2] Business Days after receiving the request; and
- (e) Torn Marketing is not required to book, place or commit to any Media Spend unless it has received sufficient cleared funds in the Advertising Float.

5.3. Suspension of Service

- (a) If the Client fails to pay the Advertising Float after receipt of top-up request under clause 5.2(d), Torn Marketing may, for so long as the Advertising Float is insufficient, suspend the relevant Services or decline to incur or commit to any further Media Spend.
- (b) Torn Marketing shall not be liable for any claims or loss incurred by the Client resulting from a suspension under this clause.

5.4. Reconciliation

- (a) Torn Marketing will provide a monthly reconciliation of the Advertising Float, setting out:
 - (i) the opening balance;
 - (ii) the Media Spend applied during the relevant month;
 - (iii) any additional amounts paid by the Client; and
 - (iv) the closing balance.
- (b) Upon expiry or termination of the relevant Engagement, Torn Marketing may apply any remaining Advertising Float against:
 - (i) Media Spend already incurred or committed;
 - (ii) any non-cancellable third-party costs;
 - (iii) any other amounts due and payable by the Client under the Engagement; and
 - (iv) Torn Marketing must refund any remaining balance to the Client after those amounts have been deducted.

6. FEES AND PAYMENT

6.1. Payment of Fees

In consideration of Torn Marketing providing the Services, the Client must pay Torn Marketing:

- (a) the Fees specified in the relevant Engagement Schedule; and
- (b) any other amounts payable under this Agreement or the relevant Engagement.

6.2. Payment of Expenses

The Client must reimburse Torn Marketing for the Expenses incurred by Torn Marketing in performing the Services.

6.3. Invoice and payment terms

- (a) Unless otherwise specified in the relevant Engagement Schedule, Torn Marketing will invoice the Client monthly in arrears for:
 - (i) the Fees for Services performed during the preceding month; and
 - (ii) any Expenses incurred or paid by Torn Marketing during that month, other than Expenses paid from an Advertising Float under paragraph 5.2(b).
- (b) The Client must pay each invoice within 14 days after the invoice date unless otherwise specified in the Engagement Schedule or agreed between the parties in writing.
- (c) If the Client fails to pay an invoice by its due date:
 - (i) interest will accrue on the overdue amount from the due date until it is paid in full at the Default Interest rate, calculated daily and capitalised monthly; and
 - (ii) Torn Marketing may, without liability, suspend the performance of the relevant Engagement under clause 7.3.

6.4. No withholding, deductions, or set off

- (a) The Client must not withhold or deduct from, or set off any amount against, any amount due and payable to Torn Marketing under this Agreement.

- (b) If the Client is required by law to withhold or deduct an amount from the Fees or Expenses payable to Torn Marketing, then the Fees or Expenses (as the case may be) will be grossed up by such amount as necessary to ensure that the Fees or Expenses are received in full by Torn Marketing exclusive of any withheld or deducted amount.

7. CLIENT OBLIGATIONS

7.1. Access, information and approvals

- (a) The Client must provide Torn Marketing with:
 - (i) timely access to the Client's systems, platforms, accounts, premises, personnel, records and Client Data to the extent reasonably required to perform the Services;
 - (ii) all permissions, credentials, information and assistance reasonably required to perform the Services; and
 - (iii) the authority to access and use those systems, platforms, accounts and Client Data, and to take actions on the Client's behalf, to the extent necessary to perform the Services.
- (b) The Client warrants that:
 - (i) it has lawfully collected and used the Client Data;
 - (ii) it is authorised to grant the access and authority referred to in clause 6.1(a); and
 - (iii) providing and using the Client Data, and Torn Marketing performing the Services in accordance with the Client's instructions, will not breach any applicable law, privacy policy, confidentiality obligation or third-party right.
- (c) The Client acknowledges that Torn Marketing may rely on the access, authority, information, instructions and approvals provided by the Client without independently verifying them.

7.2. Timely response

- (a) The Client must provide Torn Marketing with all information, instructions, decisions, approvals, access and assistance reasonably required to perform the Services within the timeframes notified by Torn Marketing.

- (b) Torn Marketing is not responsible for any delay, failure or additional cost arising from the Client's failure to do so, and any affected timeframe will be extended to the extent reasonably required.

7.3. **Suspension of Service**

- (a) Torn Marketing may, by written notice to the Client, suspend performance of all or any part of an Engagement if:
 - (i) an invoice remains unpaid for [5] Business Days after its due date;
 - (ii) the Client breaches this Agreement or the relevant Engagement and fails to remedy that breach within any applicable remedy period;
 - (iii) the Client fails to provide any access, information, approval, instruction or cooperation reasonably required by Torn Marketing to perform the Services; or
 - (iv) Torn Marketing reasonably considers that continued performance of the Services may create a security, legal, regulatory or reputational risk.
- (b) Any suspension must, so far as reasonably practicable:
 - (i) be limited to the Services affected by the relevant matter;
 - (ii) continue only for so long as the grounds for suspension remain; and
 - (iii) Torn Marketing must recommence the suspended Services as soon as reasonably practicable after the grounds for suspension have been remedied.
- (c) Torn Marketing will not be liable for any delay, interruption, loss or failure arising from a suspension under this clause.

8. **VARIATION**

8.1. **Notice of Variation**

- (a) Any material change to the requirements in the Agreement or any Engagement, including the engagement of any additional or out-of-scope work, will be treated as a variation (**Variation**).
- (b) The Client may request a Variation by providing written notice to Torn Marketing:

- (i) identifying any proposed changes to the Deliverables, Services or other requirements under a relevant Engagement Schedule;
 - (ii) providing any information, documents or instructions reasonably required by Torn Marketing to assess the proposed Variation; and
 - (iii) specifying any requested timing or priority for the proposed Variation; and
 - (iv) any other information reasonably required by Torn Marketing to assess and price the proposed Variation.
- (c) Torn Marketing is not required to perform any Variation requested under clause 8.1(b) unless Torn Marketing accepts the Variation and any relevant Fee adjustments in writing.
- (d) Torn Marketing may initiate a Variation by providing written notice to the Client if Torn Marketing reasonably considers that:
 - (i) any instruction, assumption, requirement, or other information provided by or on behalf of the Client is inaccurate, incomplete, inconsistent or misleading from the basis on which an Engagement was agreed; or
 - (ii) a Variation is required to comply with any Applicable Law or requirement of any government agency, authority or other competent body.
- (e) Upon receipt of a notice under clause 8.1(d), the Client must promptly review and respond to the proposed Variation. Torn Marketing may suspend performance of any affected Services under clause 7.3 until the Client has approved the Variation or the matter has otherwise been resolved.

8.2. Price adjustments for Variations

- (a) Unless otherwise agreed in writing, the Client must pay Torn Marketing for any Variation:
 - (i) at the rates specified in the relevant Engagement Schedule;
 - (ii) if no applicable rates are specified, at Torn Marketing's then-current standard rates; or
 - (iii) as otherwise reasonably determined by Torn Marketing having regard to the nature and cost of the Variation.

- (b) Torn Marketing may invoice the Client for a Variation as and when the Variation is performed, unless otherwise agreed in writing.

9. INTELLECTUAL PROPERTY

9.1. Definitions

For the purposes of this clause:

Client IP means the Intellectual Property owned or licensed by the Client, or created or developed by or for the Client, other than in connection with this Agreement;

Contract IP means all Intellectual Property created specifically for the Client by or on behalf of Torn Marketing in performing the Services and incorporated into the Deliverables, but excludes:

- (a) Torn Marketing IP;
- (b) Client IP;
- (c) Third-Party Materials; and
- (d) any general ideas, concepts, techniques, skills, know-how, methods, processes, templates, tools or reusable components developed or used by Torn Marketing in providing the Services;

Intellectual Property or IP means all current and future intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, copyright and analogous rights, circuit layouts, confidential information, trade secrets, know-how and any right to apply for registration of, or any application for, such rights;

Moral Rights means the moral rights granted to creators under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws; and

Torn Marketing IP means the Intellectual Property:

- (a) owned or licensed by Torn Marketing before the commencement of the relevant Engagement;
- (b) developed by or for Torn Marketing independently of this Agreement and any Engagement;

- (c) comprising Torn Marketing's systems, software, code, platforms, templates, tools, processes, methodologies, know-how and reusable materials; or
- (d) comprising any modification, enhancement or development of the Intellectual Property referred to in paragraphs (a) to (c),

whether created before or during an Engagement.

9.2. Contract IP

- (a) All right, title and interest in the Contract IP vests in Torn Marketing on creation.
- (b) Until ownership of the Contract IP transfers to the Client under clause 9.2(c), Torn Marketing grants the Client a revocable, non-exclusive and non-transferable licence to use the Contract IP solely for the purposes contemplated by the relevant Engagement.
- (c) Subject to Torn Marketing receiving full payment of all Fees, Expenses and other amounts payable in connection with the relevant Deliverables, Torn Marketing assigns to the Client all right, title and interest in the Contract IP incorporated into those Deliverables free of encumbrances and third party rights, and agrees to execute and deliver, and procure all relevant personnel involved in creating or developing the Contract IP to execute and deliver, to the Client all further documents necessary to:
 - (i) confirm or give effect to this Agreement and any relevant Engagement; and
 - (ii) enable the Client to file any application to register any Intellectual Property in respect of the Contract IP.
- (d) Except for the Contract IP expressly assigned under clause 8.2(c), nothing in this Agreement transfers or assigns to the Client any Torn Marketing IP or Third-Party Materials.

9.3. Torn Marketing IP

- (a) Torn Marketing retains all right, title and interest in the Torn Marketing IP.
- (b) If any Torn Marketing IP is incorporated into or required to use a Deliverable transferred to the Client under clause 8.2(c), Torn Marketing grants the Client a perpetual, worldwide, non-exclusive, royalty-free licence

to use that Torn Marketing IP solely as part of, and to the extent necessary to use, that Deliverable.

- (c) The Client must not extract, reproduce, commercialise, distribute or otherwise use any Torn Marketing IP separately from the relevant Deliverable unless Torn Marketing agrees otherwise in writing.
- (d) Nothing in this Agreement prevents Torn Marketing from using:
 - (i) its general ideas, concepts, skills, experience, know-how, techniques, methods and processes; or
 - (ii) any generic or reusable materials that do not disclose the Client's Confidential Information or identify the Client,

for other clients or purposes.

9.4. Third-Party Materials

- (a) Ownership of Third-Party Materials remains with the relevant third-party owner.

The Client's right to use Third-Party Materials is subject to the applicable third-party licence terms, restrictions and fees.

- (b) Torn Marketing is not required to assign any Third-Party Materials or grant the Client any rights greater than those which Torn Marketing is authorised to grant.
- (c) The Client is responsible for any ongoing licence, subscription or usage fees relating to Third-Party Materials unless the relevant Engagement Schedule expressly provides otherwise.

9.5. Client IP

- (a) The Client retains all right, title and interest in the Client IP.
- (b) The Client grants Torn Marketing and its Personnel a non-exclusive, royalty-free licence to use, reproduce, modify, adapt, store and communicate the Client IP to the extent reasonably required to perform its obligations under this Agreement.
- (a) The Client warrants that:

- (i) it owns, or has obtained all necessary rights, licences and consents to use and provide, the Client IP;
- (ii) Torn Marketing's permitted use of the Client IP will not infringe any third-party right or breach any law or obligation of confidentiality; and
- (iii) all Client IP provided to Torn Marketing is accurate, complete and lawful for its intended use.

9.6. **Moral rights**

To the extent that Torn Marketing has Moral Rights in the Contract IP, Torn Marketing:

- (a) waives those Moral Rights to the extent permitted by law; and
- (b) consents to any use contemplated by the nature of the Services and any reproduction, publication, adaptation or communication to the public of the Contract IP by or on behalf of the Client or any licensee or subsequent owner of copyright.

9.7. **Survival of clause**

The rights and obligations of the parties under this clause will survive termination of this Agreement.

10. **LIABILITY**

10.1. **Limitation of Liability**

To the maximum extent permitted by law, the maximum aggregate liability of Torn Marketing to the Client in respect of loss or damage sustained by the Client under or in connection with an Engagement is limited to the Fees paid or payable by the Client under that Engagement.

10.2. **Indemnity**

- (a) The Client agrees at all times to indemnify and hold harmless Torn Marketing and its officers, employees, agents, contractors, and other applicable third parties (**those indemnified**) from and against any loss (including reasonable legal costs) or liability incurred or suffered, including without limitation death, personal injury, or property damage by any of those indemnified where such loss or liability was caused or contributed to by:

- (i) a breach of any term of this Agreement by the Client or the Client's officers, employees, agents or contractors; or
 - (ii) any act or omission of the Client or its Personnel, subcontractors or agents;
- (b) Where the relevant loss or liability is contributed to by Torn Marketing or its Personnel, the Client's liability under the indemnity in this clause shall be reduced proportionately to the extent of the contribution.

10.3. Consequential Loss

Neither party is liable to the other for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this Agreement or any Engagement to the maximum extent permitted by law.

11. TERMINATION

11.1. Termination for cause

Either party may terminate this Agreement or any Engagement immediately by written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Agreement or any Engagement and:
 - (i) if that breach is capable of being remedied, the other party fails or refuses to remedy that breach upon 10 Business Days' written notice requiring it to do so; or
 - (ii) that breach is incapable of remedy;
 - (iii) for the avoidance of doubt, any failure by the Client to pay an invoiced amount by its due date constitutes a material breach capable of remedy for the purposes of clause 10.1(a)(i).
- (b) the other party has a liquidator, provisional liquidator, receiver, receiver and manager, mortgagee in possession or administrator appointed to it or over some or all of its assets;
- (c) the other party commits an act of bankruptcy or is declared bankrupt; or

- (d) the other party is otherwise unable to pay its debts or presumed to be insolvent.

11.2. Termination for convenience

- (a) The Client may not terminate an Engagement for convenience during the Initial Term. After the Initial Term, either party may terminate the relevant Engagement for convenience by giving at least 30 days' written notice, with termination taking effect at the end of the monthly term in which the required notice period expires.
- (b) Subject to clause 11.4, either party may terminate this Agreement for convenience by giving 30 days' written notice to the other party.

11.3. Effect of Termination of an Engagement

- (a) On termination or expiry of an Engagement:
 - (i) the Client must immediately pay all outstanding Fees, Media Spend, Expenses, approved Variations and other amounts payable under this Agreement or that Engagement; and
 - (ii) each party shall return or delete any Confidential Information in its possession as required by law and reasonably practicable, subject to the party's ordinary backup, archival and legal compliance processes.
- (b) Notwithstanding clause 11.3(a), if the Client purports to terminate, abandons or repudiates an Engagement during the Initial Term, the Client remains liable for all Fees and committed costs for the remainder of the Initial Term.

11.4. Effect of termination of this Agreement

- (a) Termination or expiry of this Agreement does not affect any Engagement that has already been accepted before the date of termination or expiry, unless otherwise agreed between the parties in writing.
- (b) If this Agreement is terminated, the terms of this Agreement continue to apply to any existing Engagement until that Engagement expires or is terminated in accordance with this Agreement.

11.5. **Accrued Rights and Liabilities**

The expiration or termination of this Agreement or any Engagement will not prejudice any accrued rights or liabilities of either party, nor excuse either party from a breach of this Agreement or any Engagement occurring before expiration or termination.

11.6. **Survival**

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this Agreement will survive and be enforceable after such termination or expiry.

12. **CONFIDENTIALITY**

12.1. **Definitions**

For the purposes of this Clause:

Confidential Information means all confidential information obtained from or relating to a Disclosing Party and provided to, learned by, or accessed by a Recipient, including, but not limited to:

- (a) the terms and conditions of this Agreement;
- (b) trade secrets; know how; financial, accounting, marketing and technical information; research and development; technology; operating procedures; specifications, processes or formulae;
- (c) the identity of the Client's clients, agents and suppliers; and
- (d) anything else that is marked "confidential" or which is otherwise indicated expressly or impliedly to be subject to an obligation of confidence,

but does not include information that was public knowledge when this Agreement was executed or became so at a later date (other than as a result of a breach of confidentiality by or involving either party);

Disclosing Party means a party that is disclosing Confidential Information; and

Recipient means a party that is the recipient of Confidential Information.

12.2. **Use or disclosure of Confidential Information**

- (a) Each party covenants and undertakes that it will not either during the subsistence of this Agreement or at any time thereafter (except in the proper course of the party's duties under this Agreement or as required by law) use or disclose to any person any Confidential Information.
- (b) A Recipient may use the Confidential Information solely for the purpose of giving effect to this Agreement and must keep this information confidential and ensure that its officers, employees, agents and advisers keep it confidential and must not disclose this information to any person except:
 - (i) with the prior written consent of the Disclosing Party;
 - (ii) to the extent required by law or the rules of any stock exchange; or
 - (iii) to any officers, employees, agents and advisers of the Recipient on a need to know basis in relation to the supply of the Services.
- (c) Nothing in this clause confers upon the Recipient any right, licence or intellectual property in or to the Confidential Information.
- (d) The Recipient will be deemed to have breached its obligations under this clause if any of its officers, employees, agents or advisers commits any act or omission that, if committed by the Recipient, would be a breach of this clause.

12.3. Indemnity

Each party agrees to indemnify the other against any and all claims, demands, actions, suits, losses, damages, costs and expenses (including legal fees) (Claims) that the other party incurs as a result of any breach of this clause, subject to the limitation of liability in clause 10.1.

12.4. Return of Confidential Information

A Recipient must, on demand, immediately return to the Disclosing Party all documents and things, regardless of form, in its possession or control which contain or embody Confidential Information, delete any electronic copies of this information and cease to use this information or any part of it.

12.5. Survival of clause

The rights and obligations of the parties under this clause will survive termination of this Agreement.

13. GENERAL

13.1. Interpretation

In this Agreement except to the extent that the context otherwise requires:

- (a) words importing the singular include the plural and vice versa and words importing a gender include other genders;
- (b) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (c) references to a clause, schedule or annexure shall be construed as references to a clause of or schedule or annexure to this Agreement and references to this Agreement include its schedules and any annexures;
- (d) a reference to a party to this Agreement or any other document or agreement includes its successors and permitted assigns;
- (e) a reference to a party shall be construed as a reference to a party to this Agreement;
- (f) a reference to a document or agreement including this Agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) in the interpretation of this Agreement, headings shall be disregarded;
- (h) references to currency shall be construed as references to Australian currency;
- (i) if any day appointed or specified by this Agreement for the payment of any money falls on a non-Business Day, the day so appointed or specified shall be deemed to be the next Business Day.

13.2. Subcontracting

- (a) Torn Marketing may use subcontractors, suppliers and third-party providers to perform or support the Services, provided Torn Marketing remains responsible for the performance of the Services in accordance with this Agreement.

- (b) The Client acknowledges that Third-Party Materials may be subject to separate terms, policies, charges and availability requirements imposed by the relevant third-party provider.

13.3. Public Announcement

Torn Marketing may identify the Client as a client and describe the Services in proposals, capability statements and marketing materials, unless the Client notifies Torn Marketing in writing that it must not do so.

13.4. Further Assurances

Each of the parties shall sign and execute all such further documents and do all such acts, matters and things as shall be necessary or desirable to give full effect to this Agreement.

13.5. Assignment

No party to this Agreement shall assign or purport to assign any right under this Agreement without the prior written consent of the other party.

13.6. Entire Agreement and Variation

This Agreement:

- (a) contains the entire understanding of the parties as to its subject matter and there is no other understanding, agreement, warranty or representation, whether express or implied, in any way defining, extending or otherwise relating to these provisions or any of the matters to which this Agreement relates; and
- (b) may only be altered in writing and signed by all parties.

13.7. Counterparts

This Agreement may be executed in any number of counterparts all of which, when taken together, shall constitute one and the same instrument.

13.8. Waiver

In this Agreement:

- (a) the failure of a party at any time to require full or partial performance of any provision of this Agreement will not affect in any way the full right of that party to require that performance subsequently;
- (b) the waiver of any party of a breach of a provision of this Agreement will not be deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently; and
- (c) any waiver of a breach of this Agreement must be in writing signed by the party granting the waiver, and will be effective only to the extent specifically set out in that waiver.

13.9. Notices

Any notice required or authorised to be given or served upon a party pursuant to this Agreement shall be:

- (a) in writing;
- (b) be deemed duly given or made if delivered or sent by prepaid mail or email to the party's address specified in this Agreement; and
- (c) where served by post, shall be deemed served 48 hours following its posting.

13.10. Modification and Severability

The parties agree and acknowledge that:

- (a) all the provisions of this Agreement are reasonable in all the circumstances and that each provision is and will be deemed to be severable and independent; and
- (b) if all or any part of any provision is judged invalid or unenforceable in all the circumstances, it will be deemed to be deleted and will not affect the validity or enforceability of the remaining provisions.

13.11. Costs

The parties shall bear their own costs in connection with the preparation and execution of this Agreement.

13.12. **GST**

- (a) If a party makes a supply to another party under, or in connection with, this Agreement, then (unless the consideration is expressly stated to be inclusive of GST) the consideration for that supply is exclusive of GST.
- (b) In addition to paying consideration for a supply (unless the consideration is expressly stated to be inclusive of GST) the person making the payment must:
 - (i) pay to the supplier an amount equal to any GST for which the supplier is liable on that supply, without deduction or set-off of any other amount; and
 - (ii) make that payment as and when the consideration must be paid or provided.
- (c) The person making a payment under this Agreement need not pay GST unless that person has received an invoice for that supply.

13.13. **Governing Law and Jurisdiction**

- (a) This Agreement is governed by and is to be construed in accordance with the laws of the State of Victoria, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria, Australia, and Courts entitled to hear appeals from these Courts.

13.14. **Electronic execution**

- (a) The parties acknowledge and agree that:
 - (i) this Agreement will be executed and entered into using electronic means; and
 - (ii) they have each received and reviewed an entire copy of this Agreement prior to applying their respective electronic signatures.
- (b) If, at any time, this Agreement or any of its terms and conditions are invalid or unenforceable or a party is not bound by them as a result of this Agreement being executed and entered into using electronic means, then the parties agree:

- (i) to execute and exchange printed copies of this Agreement (in the same form as set out in this document); and
 - (ii) to take such other steps or provide such assurances as are reasonably necessary to ensure that the Agreement is binding upon the parties and enforceable.
- (c) Nothing in this clause prevents or restricts the parties from executing and exchanging physical copies of this Agreement.

EXECUTION AND ATTESTATION

EXECUTED AS AN AGREEMENT

EXECUTED by **TORN MARKETING PTY.**)
LTD. ACN 625 493 665 in accordance with)
Section 127 of the *Corporations Act 2001* (Cth):

Director/Sole Director and Sole Secretary

Director/Secretary

Name (Print)

Name (Print)

EXECUTED by **###** in accordance with Section)
127 of the *Corporations Act 2001* (Cth):)

Director/Sole Director and Sole Secretary

Director/Secretary

Name (Print)

Name (Print)

Annexure A – Service Level

1. DEFINITIONS

For the purposes of this Annexure, capitalised terms have the meaning given below unless context requires otherwise:

Authorised User means a person nominated by the Client in writing as authorised to submit support requests under this Annexure;

Support Hours have its meaning given in paragraph 2;

2. OPERATION

2.1. Support Hours

Torn Marketing's standard support hours are between 9.00 am and 5.00 pm on Business Days (**Support Hours**).

2.2. Submitting a request

- (a) The Client must submit each support request:
 - (i) through the support channel specified in the relevant Engagement;
 - (ii) through an Authorised User; and
 - (iii) with sufficient information to enable Torn Marketing to assess the request, including a description of the issue, its impact, the affected systems or Services and any relevant supporting material.
- (b) A support request is treated as received:
 - (i) when submitted in accordance with paragraph (a), if submitted during Support Hours; or
 - (ii) at the commencement of the next period of Support Hours, if submitted outside Support Hours.

2.3. Classification

- (a) The Client may nominate a severity level when submitting a support request.

- (b) Torn Marketing may reasonably reclassify the request having regard to its actual impact, urgency, available workarounds and the scope of the Services.
- (c) Torn Marketing must notify the Client if it reclassifies a request.

3. SEVERITY LEVELS AND TARGET RESPONSE TIMES

3.1. Severity Description

Severity Level	Description
[insert details]	

3.2. Target Response Times

- (a) A Target Response Time is the period within which Torn Marketing will use reasonable endeavours to:
 - (i) acknowledge the support request;
 - (ii) conduct an initial assessment; and
 - (iii) notify the Client of the proposed next steps.
- (b) A Target Response Time is not a commitment to resolve the request within that period. Any estimated resolution time is indicative only.

4. THIRD-PARTY SUPPORT

If an Engagement Schedule identifies a third-party provider as the primary support provider for particular issues or severity levels:

- (a) the Client must first submit those issues to that provider through its required support process;

- (b) Torn Marketing is not responsible for that provider's response or resolution times; and
- (c) Torn Marketing's Service Levels do not apply to those issues unless the Engagement expressly states otherwise.