MediaCo Terms and Conditions

1. Your agreement with MediaCo

1.1. **Agreement.** These terms and conditions (the **Terms**) govern your access to and use of our Services and form a legally binding contract between you and us. The **Agreement** between you and us is made up of the Order Form, these Terms and our Privacy Policy (and any amendments to those documents from time to time in accordance with the Agreement). If there is any conflict, the following order of priority applies: the Order Form; then these Terms; then the Privacy Policy.

1.2. **Order Form.** By signing the Order Form, clicking to accept these Terms, creating an account, or accessing or using the Services, you agree to the Agreement. If you accept the Agreement on behalf of an entity, you warrant that you have authority to bind that entity. Your electronic acceptance has the same effect as a handwritten signature, and we may retain an electronic record of that acceptance. If you do not agree, you must not access or use the Services.

1.3. **Parties.**

(a) '**MediaCo'**, '**we'**, '**our'** and '**us'** refers to MediaCo Limited, a company registered in New Zealand with company number 9433046, and our permitted successors and assigns.

(b) '**Customer'**, '**User'**, '**you'** and '**your'** refers to the customer entity identified in the Order Form.

2. Services and campaign approvals

2.1. **Service**. We will provide you with the Services in accordance with the Agreement.

2.2. **Services standards and Application availability**. We will provide the Services in accordance with Good Industry Practice. We will use reasonable efforts to achieve a target of 99% Service availability, excluding scheduled maintenance windows, emergency maintenance and circumstances beyond our reasonable control: this is an operational target only and not a guaranteed service level. You acknowledge that we may release updates to, or new versions of, the Services (or any parts of it), change the method of provision of, or access by you to, the Services, including as a result of changes to our arrangements with third party suppliers and/or to change or discontinue any feature or functionality of the Services for any reason as part of the evolution of the Services (including changing or switching out any of the underlying data or datasets). You also acknowledge that the Services may be temporarily unavailable or suspended for scheduled maintenance, updates or changes, or for unscheduled emergency maintenance, either by us or by our third-party providers, or because of other causes beyond our reasonable control. We will use reasonable efforts to provide advance notice in writing of any such material update, change or discontinuance and/or any scheduled service disruption, and to schedule such maintenance, updates or changes to occur outside of business hours.

2.3. **Campaign instructions and approvals.**

(a) You are responsible for all content, creative and other materials, and all instructions, that you submit or approve through the Services, and for the audiences and parameters stated in the media plan. We may rely on them without further verification.

(b) Before we submit or activate a campaign, you must approve the media plan in writing or through the Services. The media plan will set out the maximum Media Spend for the campaign or agreed period, a high-level indication of intended audiences and other initial considerations, and any expressly agreed restrictions.

(c) Once you approve the media plan, we may optimise the campaign without further approval, including by changing the channels used and varying the timing, placement and allocation of Media Spend across the buying arrangements available under clause 3.1, subject to clause 3.3 where we act as your agent. We must stay within the approved maximum Media Spend and comply with any expressly agreed restrictions. We must obtain your prior written approval before exceeding that maximum or departing from an expressly agreed restriction.

3. How we buy media

3.1. **Buying arrangements**

(a) Except where we purchase as your agent in accordance with clause 3.3, MediaCo purchases advertising media in its own name and as principal, for supply to you as part of the Services and in accordance with your approved campaign instructions. We may use media-buying

intermediaries, subcontractors, publishers, advertising platforms and other third-party providers to provide the Services and purchase advertising media.

(b) For purchases made as principal, the provider contracts with us and not with you, and we remain responsible for our contracts with and payment obligations to the relevant providers. For purchases made as your agent, the purchase is made on your behalf under your arrangements with the relevant provider. As between you and us, we will apply the relevant cleared Media Spend Advance to pay the provider for purchases made in accordance with clause 2.3 and, where we act as your agent, within the authority granted under clause 3.3. The Agreement does not alter either party's separate obligations to a provider, including any payment or other obligations we assume under the provider's terms.

(c) We will purchase as your agent where we place media orders on your behalf through an advertising account you have designated under clause 3.3, and the applicable provider arrangements permit us to do so. We will purchase as principal where we contract for the media in our own name. Subject to clause 2.3, we may allocate and reallocate Media Spend between those buying arrangements without further approval.

3.2. **Third-party providers**. Third-party inventory, services and data remain subject to availability and the relevant third party's terms, policies and decisions. We will exercise reasonable care in selecting and instructing our subcontractors, but are not responsible for their independent acts or omissions, or for any outage, rejection, suspension, change, error or failure of a publisher, platform or other third party, except to the extent directly caused by our breach of the Agreement. MediaCo does not guarantee that any campaign will be accepted or achieve any particular result.

3.3. **Agency authority**

(a) You appoint us, and we accept the appointment, as your agent to place, manage, vary and cancel media orders in your name and on your behalf through the advertising accounts you designate for that purpose, and to pay for those orders on your behalf from the applicable Media Spend Advance. You may designate an account during onboarding or subsequently through the Services. We may exercise this authority only in accordance with the applicable provider terms subject to clause 2.3 including the approved maximum Media Spend and any expressly agreed restrictions. This appointment includes authority to reimburse ourselves under clause 5.5(a). No separate agency letter is required. We may place individual orders without further approval where those orders comply with clauses 2.3 and 3.3.

(b) You are responsible for accepting the provider terms applicable to your account. We may accept standard terms applicable to individual orders on your behalf where those orders comply with clause 2.3, and are placed under provider account terms that you have accepted or approved. We may accept new provider account terms or any material variation to those terms on your behalf only with your prior written approval. We may exercise our authority through an intermediary agreed with you in writing, to the extent permitted by the applicable provider terms. We will disclose any material conflict of interest arising in carrying out the appointment and obtain your informed consent before proceeding with the affected purchase, provided that the Media Spend Fee, our capacity as principal under clause 3.1 and our use of a payment method under clause 5 are not considered conflicts of interest for this clause.

4. Fees and payment

4.1. **Fees**. You must pay the Fees in accordance with this clause and the Payment Terms. The Platform Fee is payable annually in advance within 30 days after we invoice or otherwise notify you of it. Any other Fee that does not form part of a Media Spend Advance is payable within 30 days after we notify you of the amount payable, unless the Order Form states otherwise. The Media Spend Fee forms part of the relevant Media Spend Advance and is payable in accordance with clause 5. We will provide a payment record for each Media Spend Advance showing the gross amount, the Media Spend Fee included in it and the amount available for Media Spend. We will provide a valid tax invoice for each taxable supply. Unless expressly stated otherwise, all amounts payable under the Agreement are exclusive of GST and any other applicable taxes chargeable on those amounts. You must pay those taxes in addition to the amounts to which they relate. You must pay all amounts due in full, without set-off, counterclaim, deduction or withholding except as required by law. If a deduction or withholding is required by law, you must pay any additional amount required so that we receive the amount we would have received without that deduction or withholding.

4.2. **Late payments**. If any Fee or other amount is not paid when due, we may, no less than 14 days after written notice of the late payment: (a) charge interest on the outstanding balance from the due date at 1.5% per month or the maximum rate permitted by law, whichever is lower, plus reasonable collection

costs; and/or (b) suspend access to and use of the Services, and suspend or cancel campaign activity, until the overdue amount and any required Media Spend Advance is received in full, without prejudice to any other rights or remedies.

5. Media Spend Advances and client funds

5.1. **Funding and payment methods**.

(a) You must pay us, in cleared funds and in advance, all amounts we reasonably require before we purchase or commit to Media Spend or related third-party costs. The amount and timing of each Media Spend Advance will be determined in accordance with the Order Form or an approved campaign instruction, or notified by us in accordance with clause 5.3.

(b) We may collect a Media Spend Advance by charging a card you have provided to us for that purpose, or by invoicing or otherwise notifying you of the amount payable, as follows:

(i) Card payments: Where you give us a card for use under the Agreement, you authorise us to charge it for each Media Spend Advance and any other amount payable under the Agreement when it falls due, and to hold the card details for that purpose until all amounts are settled. You warrant that you are authorised to use the card, and you must keep it valid and promptly provide a replacement if it expires or a charge is declined. You must not dispute a charge authorised under this clause. If a charge is reversed, we may recover the reversed amount from you and treat it as unpaid, and your liability for Media Spend already incurred is unaffected. A card payment is received when it has settled into the Client Funds Account.

(ii) Invoiced payments: Where we invoice or notify you of a Media Spend Advance, you must pay it directly into the Client Funds Account.

(iii) Card processing fee: To the extent allowed by law, we may charge a card processing fee of our actual cost of processing the payment on each card payment. It is payable in addition to the amount being paid, is not part of any Media Spend Advance, Media Spend Fee or other Fee, is not held on trust and is our money on receipt. We will show it separately in the payment record. The fee does not reduce the amount of any Media Spend Advance received.

5.2. **No obligation without funds**. We are not required to purchase media, activate or continue a campaign, or provide any Service that requires third-party expenditure unless and until we have received sufficient cleared Media Spend Advances. We may delay, suspend, reduce or cancel any such activity if sufficient cleared Media Spend Advances are not available, without liability for resulting delay, non-delivery or loss. This clause applies to purchases made by us as principal and as your agent. Approval of a media plan does not oblige us to place or continue orders unless we have received sufficient cleared funds for the relevant purchases.

5.3. **Shortfall and top-up.** You must promptly pay any amount we notify you is required to cover an actual or anticipated shortfall in Media Spend Advance. Any additional amount payable under this clause to cover a shortfall, increased campaign budget, or Media Spend exceeding the portion of the existing Media Spend Advance available for application against Media Spend, will be treated as an additional Media Spend Advance and will include the applicable Media Spend Fee calculated in accordance with the Order Form. We may suspend or reduce campaign activity until the shortfall is received. You remain liable for Media Spend and related third-party costs validly incurred in accordance with your instructions, including amounts that exceed the portion of the existing Media Spend Advance available for application against Media Spend because of third-party reporting delays, adjustments or taxes, except to the extent caused by our failure to act with reasonable care and skill. Where we purchase as your agent, you must fund amounts properly incurred within the authority granted under clause 3.3, and we must apply the relevant Media Spend Advance in accordance with clause 5. This clause does not extend our purchasing authority or alter either party's obligations to the provider.

5.4. **Holding and recording advances**. We will hold each Media Spend Advance on trust for you in the Client Funds Account. We may hold Media Spend Advances for more than one customer in that account. We will keep a separate ledger for each customer recording receipts, the amounts allocated to Media Spend and the associated Media Spend Fee, all payments and transfers, and the balance held. If we receive a Media Spend Advance in any account other than the Client Funds Account, we will pay it into the Client Funds Account promptly on receipt. The Client Funds Account may also receive payment of the Platform Fee, any other Fee that does not form part of a Media Spend

Advance and any card processing fee charged under clause 5.1. Those amounts are not held on trust and are our money on receipt. We may transfer them to our operating account at any time, and will do so promptly upon receipt. We will record them separately in a ledger from Media Spend Advances.

5.5. **Paying providers**. You authorise us to apply the portion of the Media Spend Advance available for application against Media Spend as follows:

(a) Where we purchase as your agent, to pay the relevant provider on your behalf for Media Spend properly incurred in accordance with clause 2.3, including by reimbursing our operating account from the Client Funds Account for a charge we have paid on your behalf by a payment method we supply, but only up to the amount actually paid and only after we have verified the charge against the provider's invoice or statement and confirmed that the Media Spend was properly incurred in accordance with clause 2.3. We will make your ledger, and the invoices or statements supporting each reimbursement, available to you on request or through the Services; and

(b) Where we purchase as principal, towards the amount payable by you to us for Media Spend properly incurred in accordance with clause 2.3. You authorise us to apply that amount either by:

(i) paying the relevant provider directly from the Client Funds Account in settlement of our liability to that provider; or

(ii) reimbursing our operating account from the Client Funds Account for an amount we have paid in settlement of our liability to the relevant provider for that Media Spend, up to the amount actually paid and only after we have verified the payment against the provider's invoice or statement and confirmed that the Media Spend was properly incurred in accordance with clause 2.3.

To the extent of these payments, the amount paid ceases to be held on trust and is credited against the amount payable by you to us for that Media Spend.

No payment or reimbursement under clause 5.5 may exceed the balance available for Media Spend on your ledger, and each charge is applied once only.

5.6. **Reallocation**. We may allocate and reallocate the portion of the Media Spend Advance available for application against Media Spend between principal and agency purchases in accordance with clause 2.3. We will record the capacity in which each purchase is made. A reallocation does not release any amount from the trust.

5.7. **Reconciliation and unused funds**.

(a) We will maintain records of each Media Spend Advance, the portion of the Media Spend Advance available for application against Media Spend, the Media Spend applied against it and the associated Media Spend Fee.

(b) The Media Spend Fee is earned proportionately as the relevant Media Spend is incurred. Media Spend is deemed incurred when we, you, or a relevant third-party provider first pays, is charged for, or becomes committed to that Media Spend. Each amount will be counted only once, including where a provider charges you for an agency purchase and we subsequently settle that charge on your behalf.

(c) Unless the Order Form states otherwise, any unused portion of a Media Spend Advance, including the corresponding unearned Media Spend Fee, may be carried forward and applied towards a future Media Spend Advance.

(d) On termination or expiry of the Agreement, or final completion of the relevant campaign, we will refund any remaining unused portion of the Media Spend Advance within a reasonable period after final reconciliation. We may deduct amounts already incurred or irrevocably committed and retain reasonable amounts for anticipated adjustments, chargebacks, taxes or third-party claims. We will refund to the card used where practicable, and otherwise to a bank account in your name. We may require verified bank account details and completion of customer due diligence before making a refund. We are not required to refund card processing fees. Any payment or reimbursement of Media Spend from the Client Funds Account must comply with clause 5.5.

(e) We may transfer amounts held on trust from the Client Funds Account to our operating account only as (a) the Media Spend Fee, to the extent earned under this clause, and (b) reimbursement under clause 5.5(a) or clause 5.5(b). Each amount transferred ceases to be held on trust on transfer. All other amounts remaining in the Client Funds Account, including

amounts carried forward or retained pending final reconciliation, remain subject to the trust and will be applied or refunded in accordance with clauses 5.5, 5.7 and 5.8. This does not restrict transfers of amounts that are not held on trust under clause 5.4.

5.8. **Third-party refunds and credits**. If we receive a refund or credit from a media-buying intermediary, publisher, advertising platform or other third-party provider in respect of Media Spend charged to you, we will apply it against future Media Spend or credit or refund it to you following reconciliation in accordance with clause 5.7 unless the Order Form states otherwise. We are not required to provide a refund or credit before we receive the corresponding amount from the relevant third party. We will promptly pay into the Client Funds Account any cash refund or other monetary recovery we receive in respect of Media Spend funded from your Media Spend Advance, including any amount recovered by chargeback or credited to a payment method we supplied. This applies whether we purchased as principal or agent. We will hold those amounts on trust for you until applied or refunded under this clause 5. We will reflect any non-cash provider credit, and any amount the provider refunds or credits directly to you, in our reconciliation to the extent it relates to Media Spend funded from your Media Spend Advance. We will apply any non-cash provider credit available to us for your benefit against eligible future Media Spend where the provider permits.

5.9. **No credit or interest**. We are not obliged to extend credit, incur third-party expenditure or use our own funds for your campaigns. Media Spend Advance does not earn interest for you. Receipt of Media Spend Advance does not oblige us to place media where inventory is unavailable, instructions are incomplete or unlawful, or a third party rejects or suspends the relevant activity.

6. Access and acceptable use

6.1. **Permissions**. You may permit your Permitted Users to access and use the Application. Usage is limited to the number of Permitted Users specified in the Order Form (if any). You control which individuals are authorised as Permitted Users and must promptly remove access when authority ends. You must ensure each Permitted User complies with the Agreement, and an act or omission of a Permitted User is treated as your act or omission. User credentials are personal to the relevant Permitted User and must not be shared.

6.2. **Restrictions**. You will not, and you must ensure that your Permitted Users do not (nor attempt to), directly or indirectly:

(a) reverse engineer, de-aggregate, decompile, disassemble, translate or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services, MediaCo Data or Application;

(b) data mine, scrape, crawl, aggregate, copy, extract or attempt to harvest (whether by any automated process, 'brute force attack' or otherwise) the Services, MediaCo Data or Application for any purpose, including setting up or adding to a database;

(c) use the Services, MediaCo Data or Application for any purpose other than your own business purposes or for the benefit of anyone other than yourself or for any illegal, dishonest, fraudulent, malicious or unauthorised purpose;

(d) use the Services, MediaCo Data or Application in any way to build a product or service that competes in any way with our business;

(e) use the Services, MediaCo Data or Application for the purposes of monitoring the availability, performance or functionality of the Services, MediaCo Data or Application or for any other benchmarking or competitive purposes;

(f) use the Services, MediaCo Data or Application in a way that may damage, disable, overburden, or impair the Services, MediaCo Data or Application or the networks connected to the Services, MediaCo Data or Application;

(g) upload, submit, publish, distribute or use through the Services any User Content that: (i) infringes any Intellectual Property, privacy, publicity or other right; (ii) is unlawful, misleading, deceptive, defamatory, discriminatory, offensive or otherwise breaches an applicable advertising code, platform policy, industry standard or law; (iii) contains malicious code; or (iv) you are not authorised to use for the relevant campaign;

(h) use the Services, MediaCo Data or Application in any way that constitutes a misuse of any person's Confidential Information or breach of any person's rights (including Intellectual Property and privacy) or breaches applicable law.

6.3. **Unauthorised access**. You will take reasonable steps to prevent unauthorised access to the Services, including without limitation, by protecting user credentials or log-in information. You must

notify us immediately of any known or suspected unauthorised use of the Services or breach of its security and shall use your best efforts to stop any such unauthorised use or breach.

6.4. **Responsibility for users and account**. You are responsible and liable for all access to and use of the Services through your account or credentials, including all campaign instructions, commitments, purchases and other acts and omissions of your Permitted Users, as if they were your own. You are not responsible for unauthorised access caused solely by our breach of clause 7.6, provided you have complied with clause 6.3 and promptly notified us.

6.5. **Monitoring**. Although we have no obligation to monitor your use of the Services, we may do so and may suspend access and any use of the Services if we become aware of, or reasonably suspect, a breach of this clause 6.

7. Confidentiality privacy and security

7.1. **Confidentiality**. Each party (the **Receiving Party**) agrees and acknowledges that the other party (the **Disclosing Party**) has disclosed, or may disclose, Confidential Information pursuant to the Agreement. Where the Receiving Party receives Confidential Information from the Disclosing Party under or in connection with the Agreement, the Receiving Party will: (a) keep the Confidential Information strictly confidential; (b) not use, modify, reproduce or exploit the Confidential Information for any purpose other than as is permitted under the Agreement; and (c) subject to clause 7.2, not disclose Confidential Information to any person other than its representatives whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this clause 7. Other than as expressly stated, the Agreement does not transfer ownership of Confidential Information or grant a licence thereto.

7.2. **Permitted disclosures**. Notwithstanding clause 7.1, the Receiving Party may disclose Confidential Information: (a) to its professional advisors, to obtain legal or other professional advice in relation to matters arising under or in connection with the Agreement; and (b) to the extent required to comply with any applicable law, binding directive of a regulator or a court order, in which case the Recipient must use reasonable endeavours to give the Disclosing Party prior notice of such disclosure (to the extent permitted by law) and disclose only that portion of the Confidential Information necessary to satisfy the relevant requirement.

7.3. **Exclusions**. Clause 7.1 does not apply to information that the Receiving Party can demonstrate: (a) is or becomes publicly available other than through a breach of the Agreement; (b) was lawfully known to the Receiving Party without restriction before disclosure by the Disclosing Party; (c) is lawfully received from a third party without breach of a duty of confidence; or (d) is independently developed without use of the Disclosing Party's Confidential Information.

7.4. **Remedies**. Each party agrees that breach of this clause 7 may cause irreparable injury to the other party, for which monetary damages may not provide adequate compensation, and that, in addition to any other remedy, the other party will be entitled to seek injunctive relief against any breach or threatened breach, without proving actual damage or posting a bond or other security.

7.5. **Personal information**. To the extent either party does collect, use, access or process any Personal Information in connection with the Agreement each party warrants and agrees that it will comply with applicable Privacy Laws. Without limiting the foregoing, you warrant that any Personal Information contained in the User Data or otherwise disclosed by you, or on your behalf, to us in connection with the Agreement has been collected in accordance with applicable Privacy Laws, and that, as required by applicable Privacy Laws, you have provided affected individuals with any information required to ensure that the individuals understand how their Personal Information may be used by us or obtained the affected individuals consent to the same. In addition to applicable Privacy Laws, our Privacy Policy sets out how we process any Personal Information disclosed by you, or on your behalf, to us in connection with the Agreement. You agree to and acknowledge our use, processing, transfer and/or disclosure of any Personal Information in the manner described in the Privacy Policy. Without limiting our obligations under applicable Privacy Laws, we will notify you without undue delay after becoming aware of a privacy or security breach affecting Personal Information processed in connection with the Services, where notification to you is required by law or reasonably necessary for you to comply with your legal obligations.

7.6. **Security**. We will use commercially reasonable efforts to maintain the security and integrity of the Services and to implement appropriate administrative, physical, and technical safeguards designed to protect the security, confidentiality, and integrity of Confidential Information and any User Data.

8. Intellectual property and data

8.1. **Ownership of Intellectual Property**. You acknowledge and agree that we (or our third-party suppliers) own and/or retain all Intellectual Property: (a) in or arising out of the Services (including the Application and the MediaCo Data); and (b) in any software, applications, inventions or other technology developed in connection with the Services, and all improvements, enhancements or modifications thereto. The Agreement does not grant you any rights, title or licence to the Intellectual Property in or to the Services or any of its components, except as expressly set out in the Agreement. Subject to any applicable terms in the Order Form, we grant you a non-exclusive, non-transferable, royalty-free, licence to use the Application Data for your own business purposes subject to complying with clause 7.1 in relation to such use (including any use following the end of the Term).

8.2. **Feedback**. If you provide us with any feedback about the Services, we may use that feedback without any restriction or compensation to you provided that any feedback we use will not publicly identify you. We acknowledge all feedback you provide is provided as-is without warranties of any kind and that use of the feedback by us is at our own risk.

8.3. **User Data and User Content**. You (or your licensors) retain ownership of Intellectual Property in User Data, User Generated Data and User Content. You grant us, and permit us to grant our media-buying intermediaries, subcontractors, suppliers, publishers, advertising platforms and other service providers, a worldwide, non-exclusive, royalty-free, transferable and sublicensable licence during the Term, and afterwards to the extent necessary to complete, evidence or reconcile campaigns, to host, copy, adapt, format, transmit, display, publish and otherwise use User Data, User Generated Data and User Content to provide, administer and reconcile the Services and campaigns. You also grant us a non-exclusive licence to use de-identified and aggregated User Data and User Generated Data to provide, secure, analyse and improve the Services, provided it cannot reasonably identify you or an individual. We will not otherwise use User Data or User Content without your prior written consent. You represent and warrant that: (a) the User Data and User Content are accurate in all material respects; (b) you hold and will maintain all rights, licences, clearances, consents and authorisations required for the permitted use of them; (c) their use and the campaigns they form part of comply with all applicable laws, advertising standards, industry codes and third-party platform policies; and (d) they do not infringe any person's Intellectual Property, privacy, publicity or other rights. We may reject, remove or suspend User Content or campaign activity that we reasonably believe breaches the Agreement or may expose us or a third party to legal, regulatory, reputational or operational risk.

8.4. **Brand**. You grant us a royalty-free, non-exclusive right to use your name and/or to display your brand (a) on our website and (b) in our marketing materials, solely in connection with promoting your use of the Services.

8.5. **Analytics**. We reserve the right to gather analytics in relation to your activity on, and use of, the Services for our internal purposes, such as billing, gauging interest, identifying usage patterns, benchmarking and research and development. You agree that such analytics do not comprise User Data for the purposes of the Agreement.

9. Term, renewal and exit

9.1. **Term**. The Agreement starts on the Start Date set out in the Order Form and, unless terminated earlier in accordance with its terms, shall continue until the End Date (**Initial Term**). At the End Date, this Agreement will renew automatically for successive renewal periods of 12 months each (each a **Renewal Period**) unless either party gives the other party not less than 30 days' notice to terminate in advance of such End Date or the then-current Renewal Period, in which case this Agreement ends on expiry of the End Date or the then-current Renewal Period (as applicable). The Initial Term together with any Renewal Period(s) constitutes the **Term** of this Agreement.

9.2. **Termination for cause**. Either party may terminate the Agreement immediately by notice in writing to the other party if the other party: (a) commits any material breach of the Agreement which is not capable of remedy; (b) commits any material breach of the Agreement which is capable of remedy (which includes your failure to make any payment due under the Agreement) and fails to remedy such breach within thirty days of receipt of written notice requiring it to do so; (c) commits repeated breaches of the Agreement that, while individually do not constitute a material breach, collectively amount to a material breach when taken together; or (d) becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.

9.3. **Termination by MediaCo**. We may terminate the Agreement (including, to avoid doubt, the Order Form) on 30 days' written notice to you. We may terminate the Agreement immediately by written notice where continued provision of the Services may expose us or a third party to legal, regulatory, security, reputational or material commercial risk. If we terminate on 30 days' notice under this clause,

we will refund any prepaid Platform Fee attributable to the period after termination. This clause does not apply to a termination under clause 9.4.

9.4. **Discontinuation.** If we decide to permanently cease providing the Services, we may terminate the Agreement by giving you not less than 30 days' written notice. Termination takes effect on the date specified in the notice. If we terminate under this clause, we may retain any Platform Fee already paid, including the portion attributable to the period after termination, to the extent permitted by law. Any Platform Fee scheduled to fall due after termination will cease to be payable. We will reconcile and refund any unused Media Spend Advance or other amount held on trust in accordance with clauses 5.7, 5.8, and 9.5.

9.5. **Effect of termination**. On termination or expiry of the Agreement:

(a) your right to access and use the Services ends (and you shall destroy all access codes or passwords related to the Service in your possession or control);

(b) each party shall delete, destroy, or return all of the other party's Confidential Information in its possession or control except to the extent retention is required by law or the information remains in routine backup systems and is not accessed except for disaster recovery or compliance purposes;

(c) we will reconcile each Media Spend Advance, including the earned and unearned portions of the associated Media Spend Fee, and any third-party refunds or credits, and deal with the resulting balance in accordance with clauses 5.7 and 5.8;

(d) the rights and liabilities of the parties accrued at any time up to the termination date are not affected;

(e) all clauses and sections of the Agreement which by their nature should survive termination will survive termination, including the trust, and clauses 5.4, 5.5, 5.7 and 5.8, which will survive until all funds are applied or refunded;

(f) at any time prior to the date of termination or expiry, you may request a copy of any User Data stored using the Services, provided that you pay our reasonable costs of providing that copy. On receipt of that request, we will provide a copy of the User Data in a common electronic form but we do not warrant that the format of the User Data will be compatible with any software; and

(g) our authority to incur new commitments as your agent ends.

Subject to your instructions and the applicable provider terms, we may take the steps reasonably necessary to pause or cancel existing orders, settle authorised commitments and reconcile Media Spend Advances. We will cooperate with you to remove our management access and any payment method we supplied as part of the handover. Any charges properly incurred in accordance with clause 2.3 before termination or expiry that are posted to a payment method we supplied after its removal will be settled and, where applicable, reimbursed in accordance with clauses 5.5 and 5.7. Termination or expiry does not discharge either party's accrued liabilities to a provider.

10. Warranties indemnities and liability

10.1. **Compliance with laws**. Each party represents and warrants to the other on a continuing basis that it will comply with all applicable laws relating to: (a) in our case, providing the Services; and (b) in your case, the User Data and your use of the Services. Our warranty in paragraph (a) does not extend to any non-compliance to the extent caused by the acts, omissions, technology or policies of a media-buying intermediary, subcontractor, publisher, advertising platform or other third-party provider.

10.2. **Disclaimer**. Except as expressly set out in the Agreement and to the maximum extent permitted by law, the Services (including the Application and the MediaCo Data) are provided on an "as-is" and "as available" basis and all terms, warranties, representations and conditions are expressly excluded and disclaimed by us (whether express or implied, by law or otherwise) in respect of the Services, including that the Services will be merchantable; will meet your requirements; are fit or suitable for your intended purpose or use; or will be uninterrupted, error-free, correct, accurate, complete, current or up-to-date. You are responsible for any business decision made on the basis of the information derived from using the Services.

10.3. **Indemnification**. The first party (**Indemnifying Party**) will defend the other party (**Indemnified Party**) against any third party claim against the other party and indemnify and keep indemnified the other party from and against any liabilities, losses, damages, costs and expenses including reasonable legal costs (on a solicitor-client basis) associated with such third party claim to the extent caused by:

(a) where we are the Indemnifying Party, the Services (or any part of them) as provided by us infringing or misappropriating a third party's Intellectual Property, provided that our obligations under this clause will not apply to the extent that the Third Party Claim (as defined below) arises from or relates to:

(i) Any use, act or omission by you that is in breach of the Agreement;

(ii) Any modification of the Services by any person other than us or a person acting on our instruction;

(iii) Combination of the Services with any software, hardware, data or materials not provided by us, where the infringement would not have occurred but for that combination;

(iv) Use of the Services other than in accordance with the Agreement or our documentation;

(v) Your continued use of the Services after we have notified you to cease use, or offered a modification or replacement that would avoid the infringement, and such modification or replacement would not materially degrade the Services; or

(vi) Any inventory, technology, platform, data or materials supplied by a publisher, advertising platform, media-buying intermediary or other third-party provider, to the extent the alleged infringement or misappropriation arises from that third party's inventory, technology, platform, data or materials and not from our own acts or omissions, and

(b) where you are the Indemnifying Party, any User Data, User Content, campaign instruction, campaign or use of the Services by or on behalf of you infringing a third party's rights or breaching applicable law, an advertising standard, an industry code or a third-party platform policy,

each a **Third Party Claim**. The indemnifying Party's obligations under this clause will not apply to the extent that the Third Party Claim results from the Indemnified Party's breach of the Agreement. Where a Third Party Claim is excluded from clause 10.3(a) by clause 10.3(a)(vi), our only obligation is to use reasonable endeavours to pass through and enforce, for your benefit, any equivalent indemnity, warranty or remedy we hold against the relevant third-party provider in respect of that Third Party Claim.

10.4. **Indemnification procedure**. The Indemnified Party's rights under clause 10.3 are conditional on the Indemnified Party:

(a) giving the Indemnifying Party prompt written notice of the Third Party Claim;

(b) giving the Indemnifying Party sole control of the defence and settlement of the Third Party Claim, provided the Indemnifying Party must not settle in a way that imposes liability on, or admits fault by, the Indemnified Party without the Indemnified Party's prior written consent (not to be unreasonably withheld or delayed); and

(c) providing reasonable cooperation and assistance, at the Indemnifying Party's cost, in the defence or settlement.

A delay in giving notice under paragraph (a) does not relieve the Indemnifying Party of its obligations under clause 10.3, except to the extent the delay materially prejudices the Indemnifying Party's ability to defend the claim.

10.5. **Indemnification remedy**. Where we are the Indemnifying Party and the Services are held by a court of competent jurisdiction to be or are believed by us to be potentially infringing a third party's Intellectual Property, your sole and exclusive remedy will be, at our option and expense: (a) the replacement or modification of the Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality; (b) obtaining for you a licence to continue using the Services; or (c) if neither of the foregoing is commercially practicable, terminating the Agreement, refunding any prepaid Platform Fee attributable to the period after termination, and reconciling any Media Spend Advance in accordance with clauses 5.7 and 5.8.

10.6. **Mutual limitation**. Subject to clauses 10.7, 10.8 and 10.9, to the extent permitted by law, each party's maximum aggregate liability to the other party for all liabilities, losses and damages under or in connection with the Agreement is limited to the total Fees paid or payable by you to us in the 12 months before the event giving rise to the claim. Media Spend and any portion of any Media Spend Advance available for application against Media Spend are excluded when calculating this cap. This

cap does not limit our obligation to credit or refund any unapplied portion of a Media Spend Advance or any third-party refund or credit in accordance with clauses 5.7 and 5.8.

10.7. **Exceptions to mutual limitation**. Subject to clause 10.8, the limitation of liability in clause 10.6 will not limit the liability of either party arising from or in connection with (a) the gross negligence or wilful misconduct of a party; (b) death or personal injury caused by a party; (c) fraudulent acts or intentional misrepresentations by a party; or (d) any liability to the extent such liability cannot be limited or excluded by applicable law.

10.8. **Excluded loss**. To the maximum extent permitted by law, neither party will be liable to the other for any: (a) special, indirect or consequential loss or damage; or (b) loss of use, revenue, profit, savings, opportunity, business, goodwill or reputation, or loss of or damage to data, whether direct or indirect and whether arising in equity, contract, tort (including negligence), statute, indemnity or otherwise, regardless of foreseeability. Without limiting the foregoing, we are not liable for campaign under-performance, unavailable inventory, or any act or omission of a publisher, advertising platform or other third party, except to the extent directly caused by our breach of the Agreement.

10.9. **Licensing and IP**. The limitations and exclusions of liability in clauses 10.6 and 10.8 will not limit your liability arising from or in connection with your breach of: (a) clause 6; or (b) the representations and warranties set out in clause 8.3.

11. General provisions

11.1. **Disputes**. For any dispute between the parties, both parties agree to first contact the other party in writing and refer such dispute to a senior executive officer of each party who will use best commercial efforts to resolve the dispute informally and in good faith. If the dispute is not resolved within thirty (30) days of the written notice of dispute, then either party may commence proceedings in any court or tribunal of competent jurisdiction. Nothing in this clause 11.1 prevents either party from seeking urgent interim or interlocutory or equitable relief from a court of competent jurisdiction as necessary to prevent an actual or threatened infringement of the Agreement, to preserve property or to prevent irreparable harm.

11.2. **Waivers and Severability**. Waivers must be signed by the waiving party's authorized representative and cannot be implied from conduct. If any provision of the Agreement is held invalid, illegal or unenforceable, it will be limited to the minimum extent necessary so the rest of the Agreement remains in effect.

11.3. **Force majeure**. No delay, failure, or default, other than a failure to pay amounts when due, will constitute a breach of the Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labour disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.

11.4. **Assignment**. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld). Notwithstanding this, MediaCo may assign or transfer the Agreement without your consent to an affiliate or in connection with a merger, reorganisation, financing, or sale of all or substantially all of its business or assets, provided the assignee assumes MediaCo's obligations under the Agreement.

11.5. **Entire agreement**. The Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of the Agreement. To the maximum extent permitted by applicable law, each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any warranty or representation that is not set out in the Agreement.

11.6. **Relationship**. MediaCo purchases advertising media as principal or as your agent in accordance with clauses 3.1 and 3.3. Except as expressly provided in clause 3.3, nothing in the Agreement creates an agency, partnership, joint venture or employment relationship, and neither party may bind the other or assume an obligation or responsibility on the other's behalf except to the extent expressly authorised in clause 3.3.

11.7. **Delivery of notices**. All notices under the Agreement will be in writing and will be deemed to have been duly given: (a) when received, if personally delivered; (b) when receipt is electronically confirmed, if transmitted by e-mail; (c) the day after it is sent, if sent for next day delivery by a recognised overnight delivery service; and (d) upon receipt, if sent by certified or registered mail, return receipt requested.

11.8. **Governing law.** The Agreement will be governed and interpreted by the laws of New Zealand, and each party submits to the exclusive jurisdiction of the New Zealand courts.

11.9. **Amendments**. Subject to clause 11.10, no variation to the terms of the Agreement will be of any force or effect unless it is in writing and agreed by the parties.

11.10. **Permitted updates**. Notwithstanding clause 11.9, the following update provisions apply:

(a) Terms and Privacy Policy: We may update these Terms or the Privacy Policy by posting the updated version on our website or the Application, and giving you at least 30 days' notice of any material change; and/or

(b) Fees: We may change the Fees on at least 30 days' notice, but any increase will take effect from the next Renewal Period unless the Order Form expressly provides otherwise or the change reflects an increase in applicable third-party costs or taxes.

An update under this clause will not materially reduce your rights or increase your obligations during the then-current Term unless it is reasonably required to comply with law, address a security risk, or reflect a change imposed by a third-party provider. Any other material change will take effect from the next Renewal Period. Your continued use of the Services and/or the Application following any such updates constitutes your acceptance of the updated Terms, Privacy Policy and/or Fees.

12. Definitions

Except when expressly provided otherwise, the definitions in this clause apply in the Agreement.

Agreement means the Order Form, these Terms and our Privacy Policy, and any amendments to those documents made in accordance with the Agreement.

Application means the Software and Application Data presented in an online application hosted by us and which may be accessed by you and your Permitted Users (including via the web application).

Application Data means all data and information provided or made available by us to you as part of the Services, regardless of format and delivery method, but excluding any User Data or User Generated Data.

Client Funds Account means the bank account we designate for receiving Media Spend Advances, that is separate from our operating account.

Confidential Information means the Agreement and any information that is not public knowledge that is directly or indirectly obtained from, or disclosed by, the other party in the course of, or in connection with, the Agreement and the provision and use of the Services (regardless of whether identified as such or not), and includes:

(a) the business, technical or financial information relating to the relevant party's business;

(b) the terms of the Agreement and the commercial arrangements between the parties;

(c) any information that the other party knows, or ought to know, is confidential; and

(d) trade secrets, know-how, specifications, inventions, processes or initiatives which are of a confidential nature.

End Date means end date for expiry of the Services as set out in the Order Form.

Fees means the Platform Fee, Media Spend Fee and any other fees payable by you for the Services as set out in the Order Form, but excludes Media Spend and the portion of any Media Spend Advance available for application against Media Spend.

Good Industry Practice means exercising the degree of skill, diligence, prudence, foresight, and care which would reasonably and ordinarily be expected from a skilled and experienced provider of services or software products similar to those contemplated under the Agreement, operating in similar circumstances, and using commonly accepted methodologies and practices.

Intellectual Property means all present and future industrial and intellectual property rights whether conferred by statute, at common law or in equity, including all patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights (whether registrable or unregistrable), including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

MediaCo Data means: (a) Application Data; (b) any metadata generated by us and/or the Services in connection with your use of the Services, regardless of format and delivery method, but excluding any User Data or User Generated Data.

Media Spend means amounts charged or payable to publishers, advertising platforms or other third parties for advertising inventory, delivery and directly related third-party services for your campaigns, whether the media is purchased by us as principal or as your agent.

Media Spend Advance means the gross amount paid by you in advance for Media Spend and the associated Media Spend Fee, whether we purchase as principal or as your agent, as determined under clause 5.1.

Media Spend Fee means the percentage of each Media Spend Advance specified in the Order Form. The Media Spend Fee forms part of, and is not additional to, the relevant Media Spend Advance. The portion of the Media Spend Advance after deducting the Media Spend Fee will be available for application against Media Spend.

Payment Terms means the payment terms set out in the Order Form, as supplemented by clauses 4 and 5.

Permitted User means your representatives who are authorised by you to access the Services for the purposes permitted under the Agreement.

Personal Information means any information as defined by similar terms under any relevant Privacy Laws.

Platform Fee means the fixed subscription, access or platform fee specified in the Order Form.

Privacy Laws means the Privacy Act 2020.

Privacy Policy means the privacy policy posted on our website.

Order Form means the order form, quote, proposal or other ordering document agreed between you and us that identifies the Services, Fees and other commercial terms.

Services means the services agreed to be provided to you in the Order Form.

Software means the MediaCo platform software application and any software, documentation or data related to the Services and/or made available to you, and includes any maintenance releases or updates to that software from time to time.

Term has the meaning set out in clause 9.1.

User Content means advertising copy, images, video, audio, trade marks, links, claims, audience information and other content uploaded, submitted or otherwise made available by or on behalf of you for use in connection with the Services.

User Data means any data, information, text, content or other materials you provide or make available to us in connection with the Agreement or Services, directly or indirectly, including User Content, but excluding information already held by us independently of that supply and metadata generated by us or the Services.

User Generated Data means any data, information, or content that is generated, derived, or produced as a result of your use of the Services, including but not limited to usage data, transactional data, and operational metrics, where such data is a summarised, aggregated or processed form of the User Data.