**TERMS AND CONDITIONS**

**PARTIES:**

1. This agreement is made between **S&J MEDIA GROUP PTY LIMITED (“S &J”)** ABN 49 144 915 471 and the Advertiser/Agency described in the Contract.

**RECITALS:**

1. S&J is in the business of advertising and marketing.
2. The Customer has agreed to engage S&J to provide advertising and marketing services on Train Interiors on the terms and conditions of this Agreement.

**IT IS AGREED** as follows:

1. **DEFINITIONS** In these terms and conditions:

(a) **Advertiser** means the advertiser named and described as the Customer in this Advertising Agreement;

(b) **Advertisement** means the advertising content and material to be installed, displayed, broadcast, run and/or streamed, as applicable, as set out in the Advertising Order Confirmation and any ancillary services provided by S&J to provide the advertising content

(c) **Advertising Media** means the media through which S&J will provide the Advertisement, as set out in the Advertising Order Confirmation (examples of such media include but is not limited to, billboards, train panels, magazines, newspapers, radio, television, social media sites and the internet);

(d) **Advertising Agency** means the advertising agency named and described as the Customer in this Advertising Agreement;

(d) **S&J** means S&J Media Group Pty Ltd. ABN 49 144 915 471;

(d) **Advertising Order Confirmation** means the order confirmation to which this Agreement is attached and which forms part of this Agreement;

(f) **Customer** means where this Advertising Order Confirmation is placed by an Advertiser, the Advertiser, and, where this Advertising Order Confirmation is placed by the Advertising Agency, the Advertising Agency, and all obligations, warranties, indemnities, releases and discharges expressed to be given in this Advertising Order by the Customer are expressed to be given by the Advertiser and the Advertising Agency on a joint and several basis;

(g) **Business Day** means a week day on which banks are open in Australia;

(h) **Panel** means the advertising content and material to be installed and displayed;

(i) **End Date** means the final day for the Advertisement to be displayed, broadcast, run, streamed and/or removed, which day will be:

(A) for train panel Advertisements, a day occurring at the discretion of S&J during the month described in the Advertising Order Confirmation under the heading ‘End Date’; and

(B) for Advertisements involving any other Advertising Media, a day elected as the ‘End Date’ by the Customer in the Order Form.

(j) **Intellectual Property** means any intellectual or industrial property, including a patent, trade mark or service mark, copyright, registered design, trade secret, confidential information or licence or other right to use or to grant the use of any of the foregoing or to be or be the registered proprietor or user of any of the foregoing;

(K) **Media Charge** means the charges as described in the Advertising Order Confirmation under the heading “‘Media Charge”;

(L) **Special Conditions** means the Special Conditions (if any) described in the Advertising Order Confirmation under the heading “Special Conditions”.

(M) **Start Date** means the first day on which the display of the Panel on the Train Advertisement is to be installed, displayed, broadcast, run and/or streamed, which day will be:

(A) For train panel Advertisements, a day occurring at the discretion of S&J during the month described in the Advertising Order Confirmation under the heading ‘Start Date’; or

(B) For Advertisement involving any other Advertising Media, a day elected as the ‘Start Date’ by the Customer in the Order Form;

(N) **Term** means the period from the Start Date to the End Date and includes the period of installation and removal of the Panel;

1.2 In these terms and conditions, any reference to:

1.2.1 “Writing”, “written” or any other similar expression includes transmission by facsimile or email;

1.2.2 Any word in the singular will also be taken to mean the plural;

2. **ADVERTISING AGENCY**

If the Customer is an Advertising Agency.

1. It warrants that it is an advertising agency, is authorised to place an Advertising Order on behalf of the Advertiser and it executes this Adverting Agreement on behalf of the Advertiser as agent for the Advertiser.

3. **PRODUCTION OF PANEL BY S&J**

S& J Media is required to produce Panel to meet specific requirements. The Customer must provide S&J with all sufficient artwork required by S&J at such address as S&J may direct in reasonable time to enable S&J to have the Panel produced and approved by the Customer.

4. **CHANGES OF PANEL**

Unless specified in the Special Conditions, no replacement of Panel will be made during the Term. Where replacements have been specified, an additional charge to the Media Charge or other rates specified from time to time by S&J may apply.

S&J shall make every reasonable effort to fit the panel within a relevant installation period of the Start Date. However, S&J shall not be responsible for any posting delay caused by any act or thing beyond its reasonable control, including inclement weather, safety issues, industrial or other disputes.

5. **INVOICES TO CUSTOMER**

The Media Charge will be invoiced prior to the campaign start date by S&J to the Customer unless otherwise agreed. Installation, production and other like costs and expenses will be invoiced by S&J to the Customer as and when such costs and expenses are incurred.

6. **PAYMENT BY THE CUSTOMER TO S&J**

The Advertising Agency and the Advertiser will be jointly and severally liable for payment of all money due under this Advertising Order. A reference to the Customer in relation to payment includes a reference to the Advertising Agency and the Advertiser.

7. **CUSTOMERS WARRANTY AS TO CONTENT APPROPRIATENESS**

7.1 The Customer warrants that the Advertisement:

(a) will not constitute a breach of or infringement of any statute, regulation order, rule or requirement of any government, semi-government or statutory authority, or public or private right, including (without limitation) any Intellectual Property right; and

(b) will comply with the requirements of any relevant code of conduct, including (without limitation) in relation to alcohol related advertising, the Alcohol Beverages Advertising Code with respect to which the Customer must have obtained an approval number under the Alcohol Advertising Pre Vetting System administered by the Australian Associated Brewers and Distilled Spirits lndustry Council of Australia. The Customer must on request by S&J provide evidence of compliance and approval under a relevant code.

7.2 Without limitation to Clause 7.1(b) the Customer further warrants that prior to the Start Date it has or will have obtained all necessary permits, licences and approvals required for the display of the Panel and that the Panel will not be offensive, defamatory or inappropriate to display in public.

8. **S&J NOT LIABLE FOR ANY DELAY**

8.1 S&J is not liable or responsible for any loss suffered by the Customer caused by any delay or interruption in the production or approval of the Panel or the installation of the Panel which arises out of or in connection with any cause beyond the reasonable control of S&J including (without limitation) the Customer’s delay in supplying artwork and proofs, inclement weather, safety issues, industrial or other dispute, restricted access to the Train Interior.

8.2 If any such delay referred to in clause 8.1 arises:

(a) Nothing will affect the obligation of the Customer to pay the Media Charge and other charges for the Term; and

(b) S&J will use reasonable endeavours to mitigate the impact on the Customer for such delay (other than delays caused solely by the Customer); and

(c) if the delay is in connection with the installation of the Advertisement, S&J will use reasonable endeavours to ensure that the Advertisement is installed as close as possible to the time specified in the Advertising Order Confirmation.

9. **INDEMNITY BY THE CUSTOMER**

The Customer indemnifies and will keep indemnified S&J against:

(a) any claim, action demand, damage, cost, proceeding, loss or other liability whatsoever, including (but not limited to) any claim, action or liability involving Intellectual Property, made on or against S&J arising directly or indirectly from or in connection with the production, installation or removal or relocation of the Panel and the display of the Panel on the Train Interior and any claim, action or liability arising directly or indirectly as a consequence of a breach of this Advertising Agreement including a breach of any of the warranties given in Clause 8; and

(b) any loss resulting from S&J having entered into this Advertising Agreement whether from the Advertisers failure to perform its obligations to the Advertising Agency or from this Advertising Agreement being or becoming unenforceable against the Advertiser.

10. **PUBLIC RISK INSURANCE**

S&J will maintain throughout the Term public risk insurance with respect to the Advertising Panels.

11. **MAINTENANCE AND LIABILITY FOR REPLACEMENT FOR DESTRUCTION OR DAMAGE OF PANEL**

11.1 S&J will maintain the Advertising Panels in good order, repair and condition.

11.2 Where a Panel is destroyed or damaged, from any cause whatsoever, S&J will replace the same or repair the damage (as the case may be) at its discretion, at no charge to the Customer;

12. **REMOVAL OF ADVERTISEMENT**

S&J will remove an Advertisement at the expiration of the term unless an extension is sought (clause 15).

13. **NO ASSIGNMENT**

The Customer may not without the prior written consent of S&J assign its rights under this Advertising Order. S&J may assign its rights under this Advertising Order by giving written notice to the Customer

14. **TERMINATION**

14.1 The Customer may not cancel an accepted Advertising Agreement or Order Confirmed prior to the expiration of the Term without the written consent of S&J which may be granted or withheld by S&J in its absolute discretion.

14.2 S&J may terminate this Advertising Agreement and remove all Panels by serving a written notice to that effect on the Customer, If :

A. the Customer fails to supply artworks and/or display in compliance with the requirements of this Advertising Agreement within the required time;

B. Any requisite authority approval is not obtained by the Customer within a reasonable time or is revoked;

C. the Customer fails to make a payment within the terms of payment on the invoice;

Or

D. the Customer fails to rectify any other breach of this Advertising Agreement within a reasonable time of being requested to do so by S&J.

14.3 If during the Term of the Advertising Agreement, S&J ceases to hold the necessary rights to exhibit displays, then S&J may in its absolute discretion either:

A. Assign or otherwise dispose of its interest in this Advertising Agreement to the party who holds that right; or

B. Terminate this Advertising Agreement effective immediately on written notice to the Customer.

In the event of a termination of this Advertising Order:

A. In the case of a termination pursuant to clause 14.2, S&J will be entitled to payment of a fee not exceeding the Media Charge, determined by S&J to be a reasonable amount to compensate S&J for the loss of Advertising orders and disruption to S&J’s business.

B. In the case of a termination pursuant to clause 14.3B, S&J will refund a proportionate part of the Media Charge and S&J will have no other liability to the Customer.

15. **EXTENSION OF ADVERTISING PERIOD**

Any request for an extension of the Advertising Agreement beyond its specified Term must be given to S&J in writing and, subject to the agreement of S&J, will be extended on the same terms and conditions as outlined herein.

16. **DEFAULT**

If the Customer breaches any of its obligations under this Advertising Agreement, then S&J may terminate this Advertising Agreement and, in addition to its other rights and remedies, S&J may require the Customer to pay on demand:

(a) S&J’s legal costs (on a solicitor and own client basis) arising from such breach.

(b) Interest on any unpaid moneys at the rate prescribed from time to time by Section 2 of the

Penalty Interest Rates Act 1983 (Vic) or relevant Commonwealth legislation.

(c) Any other costs incurred by S&J by reason of the default.

17. **GST**

Unless otherwise expressly agreed, all amounts payable, or to be offset with respect to any Taxable Supply under this Advertising Agreement are exclusive of GST. For purposes of this clause, GST and Tax Invoice have the meanings given by the A New Tax System (Goods and Services Tax) Act 1999.

19. **GOVERNING LAW**

This Advertising Agreement is governed by the laws of the Commonwealth of Australia and the Customer submits to the non-exclusive jurisdiction of the courts.

**I have read and accept the terms and conditions of this Agreement for:**

**Advertising Order Confirmation number**: \_\_

**Customer’s signature**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Date: \_\_\_\_/\_\_\_\_/\_\_\_**

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Sales Agent’s Signature**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Date: \_\_\_\_/\_\_\_\_/\_\_\_\_**

Print Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**