



# General Terms and Conditions

Aus Media TV Pty Ltd (ACN 605 804 251) trading as FIREY Productions, ("the Company")

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Prepared by

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**14. Definitions**

## **1 When a Contract is formed**

A Contract will be formed between Aus Media TV Pty Ltd and any Counterparty with which Aus Media TV Pty Ltd enters into an Agreement on the earlier of the date when:

- (i) Aus Media TV Pty Ltd accepts the other Party's offer in writing; or
- (ii) the authorised representatives of both parties have executed the appropriate section of the Agreement in accordance with Section 127 of the Corporations Act.

## **2 Parties**

For the purposes of these standard terms and conditions, the person(s), firm or corporation contracting under the agreement of which these terms and conditions form a part (the "Agreement"), whether as principal or as an agent is deemed to be duly authorised for all purposes relating to any Agreement to which these /terms and Conditions pertain.

If an Agency, or Agent, is, or has, accepted this Agreement and signs on behalf of any Counterparty, the Agency or Agent confirms that it is authorised to bind the Counterparty, the Agency or Agent, shall be jointly and severally liable for all obligations under this Agreement.

The Principal/Agent, or Agency, and Aus Media TV Pty Ltd hereby agree to the following terms and conditions.

## **3. Application**

These terms and conditions shall apply in respect of to the Agreement. Except to the extent that these terms and conditions are varied by mutual consent, they, together with any annexures and other attachments shall constitute the entire agreement between Aus Media TV Pty Ltd and shall prevail over any subsequent Agreement terms and conditions. The Parties agree that in entering into this agreement, they shall not rely on any representation or understanding, whether oral or in writing, which is not included or referred to in these terms and conditions.

## **4. Hierarchy**

If there is any inconsistency between the documents which make up any Agreement, then the following will prevail in descending order of precedence:

- i. the Agreement;
- ii. the Schedules to the Agreement (excluding any document incorporated by reference);
- iii. these General Terms and Conditions; and
- iv. any document incorporated by reference and duly executed as per the terms of the agreement.

## **5. Term**

The term of any agreement to which these Terms and Conditions pertain will begin on the date of execution and end upon its termination by either party in accordance with the terms and conditions of the agreement under which they are made or as otherwise stated in the Agreement.

## **6. Compliance with Laws**

Aus Media TV Pty Ltd and any Counterparty to any agreement to which these Terms and Conditions pertain shall comply with all Laws and industry regulations relating to their contractual obligations under that agreement and shall not engage in any conduct that may be deemed false, misleading and/or deceptive. Responsibility for all representations made outside those that are explicitly made in sales materials including, but not limited to, brochures, and advertising supplied by Aus Media TV Pty Ltd rests with the party making the representations.

## **7. Payments**

All sums due at any time under any Agreement with Aus Media TV Pty Ltd are payable in Australian dollars within Thirty (30) days of the date that an invoice is rendered to the Agency in respect of such sums unless otherwise agreed between the Parties.

Aus Media TV Pty Ltd reserves the right to charge interest at the rate of two percent (2%) per month (twenty-four percent (24%) per annum) on accounts that remain unpaid for, or after, Thirty (30) days from the date of the invoice.

In the event that any dispute arises over payment of an invoice, any Counterparty agrees to remit the undisputed portion of the invoice in accordance with the terms of the Agreement under which it is due, and acceptance by Aus Media TV Pty Ltd of such portion shall in no way be construed as an admission by Aus Media TV Pty Ltd of the validity of the Counterparty's dispute.

Any Counter party agrees that Aus Media TV Pty Ltd may conduct credit inquiries on their company and its directors and agents if it wishes to.

## **8. Protection of Company Marks and Intellectual Property**

No Counterparty shall, directly or indirectly:

- i. register or use any other trade name, trademark or service mark incorporating or based in whole or in part on any of Aus Media TV Pty Ltd's Marks without the express written permission of Aus Media TV Pty Ltd;
- ii. use any Company Mark as part of any corporate or trade name, as part of prominent signage displaying its business name, or in connection with unauthorised goods or services without the express written permission of Aus Media TV Pty Ltd;
- iii. use Aus Media TV Pty Ltd Marks in combination with any other trademarks;
- iv. de-brand, rebrand, or attach, by any means, any private label to any of Aus Media TV Pty Ltd Marks;

- v. hold itself out as having any ownership interest in Aus Media TV Pty Ltd Marks;
- vi. engage in any conduct that would constitute Infringement of or otherwise affect either Aus Media TV Pty Ltd's interest in Aus Media TV Pty Ltd Marks or the goodwill associated with them;
- vii. dispute the validity, ownership, or enforceability of any of Aus Media TV Pty Ltd Marks;
- vii. invalidate, dilute, or otherwise adversely affect the value of the goodwill associated with Aus Media TV Pty Ltd Marks; or
- ix. engage in any conduct that would constitute infringement of, or otherwise harm the intellectual property rights of third parties associated with or to Aus Media TV Pty Ltd.

## **9. Confidentiality and Social Media Policy/Confidentiality Obligations**

### **9.1 Confidentiality Obligations**

During the period starting on the effective date and ending after the date of termination or expiration of any agreement to which these Terms and Conditions pertain (the "Restricted Period"), parties to any agreement with Aus Media TV Pty Ltd shall hold all Confidential Information in confidence in accordance with the terms of any agreement.

### **9.2 Use only for the Purpose**

Confidential Information shall be used for the sole purpose of selling and/or promoting the Products of Aus Media TV Pty Ltd. For the purposes of clarification, all information involved in the production of media content by Aus Media TV Pty Ltd is of a confidential nature and may only be discussed outside of any contractually mandated line of communication with Aus Media TV Pty Ltd with the express written permission of Aus Media TV Pty Ltd.

### **9.3 Confidential Information**

In this agreement Confidential Information does not include information that:

- i. is or becomes publicly known through no wrongful act of the Counterparty;
- ii. the Counterparty received in good faith on a non-confidential basis from a source other than Aus Media TV Pty Ltd;
- iii. was in the Counterparty's possession before its disclosure by the disclosing party or its officers, agents or representatives;
- iv. the Counterparty developed independently without breach of this agreement; or

- v. Aus Media TV Pty Ltd has explicitly approved, by Notice to the Counterparty, for release to a third party.

## **9.4 Social Media Policy**

### **9.4.1 Use of Social Media Channels subject to this Agreement**

The Counterparty further agrees that use of Aus Media TV Pty Ltd's social media channels is subject to this Agreement and the terms of use of the social platform from which he/she/it accessed these terms of use. Aus Media TV Pty Ltd's goal is to provide useful and interesting content about Aus Media TV Pty Ltd and foster an open and respectful dialogue relating to the specific products and services provided by Aus Media TV Pty Ltd. Aus Media TV Pty Ltd Facebook page, Instagram, Twitter pages or such similar social media platforms, collectively ("social Media channels") are social media locations for community members to connect to and learn about Aus Media TV Pty Ltd through information, pictures and videos concerning initiatives and programs that are on air or in production.

Aus Media TV Pty Ltd may in its sole discretion, delete irresponsible content or content that is otherwise inconsistent with the purpose of Aus Media TV Pty Ltd's social media channels, namely, dissemination and sharing of on-topic, appropriate content. To the extent applicable, Aus Media TV Pty Ltd reserves the right to block any user that fails to follow the terms of use. Examples of inappropriate or off-topic messages include, but are not limited to the following:

- i. defamatory, malicious, obscene, intimidating, discriminatory, harassing or threatening comments or hate propaganda;
- ii. calls to violence of any kind;
- iii. activity that violates any law or regulation;
- iv. attempts to target Aus Media TV Pty Ltd or its followers to offer goods or services, of either a commercial or private nature;
- v. spam directed at Aus Media TV Pty Ltd or any of its followers, including any form of automatically generated content or repeatedly posting the same content;
- vi. content deemed to constitute an unapproved use of any of our products or is otherwise false or misleading; and
- vii. any potential infringement upon any intellectual property rights, including but not limited to, brand names, trade names, trademarks and logos, copyrights or trade secrets of any person, business or place.

### **9.4.2 All Rights Reserved**

Aus Media TV Pty Ltd reserves all rights relating to its social media channels, including but not limited to:

- i. adding, removing, or modifying any content;
- ii. blocking disruptive users; and
- iii. discontinuing any of our social media channels at any time.

#### **9.4.3 No Representation**

Aus Media TV Pty Ltd does not represent that the information on its social media channels is accurate, complete, reliable, useful, timely or current. The Counterparty may read all or some of the content at its own risk and cannot rely on the information in any of the postings.

#### **9.4.4 Use of Aus Media TV Pty Ltd's social media channels**

Aus Media TV Pty Ltd's social media channels are not the appropriate place to resolve issues, complaints or suggestions about individual sales and service experiences or products. This does not mean Aus Media TV Pty Ltd does not want to hear about such issues, but these types of concerns are best handled by Aus Media TV Pty Ltd Management. If any Counterparty is interested in sharing comments or feedback outside the scope of these channels, the Counterparty may send a message through the "Contact Us" tab on our website.

The Counterparty agrees that Aus Media TV Pty Ltd does not create, control, represent, or endorse any opinions or statements expressed by others within its social media channels, including those that follow or like the content thereof, and that any content posted by anyone other than Aus Media TV Pty Ltd is the responsibility of the submitter and not Aus Media TV Pty Ltd. Links which take you out of the social media channels, websites, and digital assets are not under the control of Aus Media TV Pty Ltd and Aus Media TV Pty Ltd is not responsible for the terms and conditions, privacy policy, or content of any such site or any further links from such site. Aus Media TV Pty Ltd may provide these links to the public only as a convenience, and the inclusion of any link does not imply endorsement of the linked site by Aus Media TV Pty Ltd.

### **9.5 Equitable Remedies**

All Counterparties acknowledge that any breach or threatened breach of any obligation under this section would not be susceptible to adequate relief by way of monetary damages only. Accordingly, Aus Media TV Pty Ltd may, in that case, apply to a court of competent jurisdiction for any applicable equitable remedies (including injunctive relief), without the need to post any security.

## **10. Termination**

### **10.1 Termination on Breach**

If either party commits any material breach or material default in the performance of any obligation under his/her/its agreement with Aus Media TV Pty Ltd, and the breach or default continues for a period of 5 Business Days after Aus Media TV Pty Ltd delivers Notice to it reasonably detailing the breach or default, then Aus Media TV Pty Ltd may terminate any relevant agreement, with immediate effect, by giving Notice to the Counterparty in writing.

## **10.2 Termination on Insolvency**

Any agreement will terminate immediately upon either party's insolvency, bankruptcy, receivership, dissolution or liquidation.

## **11. Indemnification**

### **11.1 Counterparty's Indemnity**

Any Counterparty shall indemnify Aus Media TV Pty Ltd and its Indemnitees against all claims, liability, and expenses (including legal fees) arising from any third-party claim or proceeding brought against Aus Media TV Pty Ltd that alleges any grossly negligent act or omission or wilful conduct of the Counterparty or its Indemnitees.

The Counterparty hereby agrees to indemnify, defend and hold harmless Aus Media TV Pty Ltd and its officers, Directors, Shareholders, agents and affiliates against any and all suits, losses, liabilities, damages, awards, claims, settlements, costs and expenses, including reasonable legal costs or fees arising out of or otherwise relating to consequences that are a direct failure of the Counterparty's failure to adhere to the terms of this Agreement of arising out of negligent acts or omissions or wilful conduct of the Counterparty.

### **11.2 Company's Indemnity**

Aus Media TV Pty Ltd shall indemnify the Counterparty and its Indemnitees against all claims, liability, and expenses (including legal fees) arising from any third-party claim or proceeding brought against the Counterparty that alleges:

- i. any grossly negligent act or omission or wilful conduct of Aus Media TV Pty Ltd or its Indemnitees;
- ii. any defects in the Products caused by Aus Media TV Pty Ltd; or
- iii. Aus Media TV Pty Ltd's failure to provide any Products to a customer or client that were properly ordered through the Counterparty.

### **11.3 Conditions for Indemnification**

A party's obligation to indemnify the other party under sections 22.1 and 22.2 is conditional upon the indemnified party:

- i. giving the indemnifying party prompt Notice of a claim or potential claim made against it;

- ii. giving the indemnifying party sole control of the defence and settlement of the claim, except that the indemnifying party may not settle the claim unless the settlement unconditionally releases the indemnified party of all liability; and
- iii. providing the indemnifying party with all reasonable assistance, at the indemnifying party's expense, in connection with the claim.

#### **11.4 Exception**

No party will be entitled to indemnification from the other party if the claim is based on the negligence or wilful omission of the other, or results in any material part from the negligence or unlawful or wrongful acts of the party seeking indemnification.

#### **11.5 Exclusive Remedies**

The indemnification rights granted under this section 10 (Indemnification) are the exclusive remedies available under this agreement in connection with the claims and losses that this section addresses.

### **12. General Provisions**

#### **12.1 Entire agreement**

Any Agreement to which these Terms and Conditions apply contains all the terms agreed to by the parties relating to its subject matter contained therein and no changes or modifications of any of its terms or provisions shall be effective unless made in writing, signed by all parties and incorporated into the Agreement. Any Agreement replaces all previous discussions, understandings, and agreements and shall constitute the entire agreement between Aus Media TV Pty Ltd and the Counterparty.

#### **12.2 Amendment/Modification**

This Agreement may be only amended or modified hereto by both parties and must be in writing and signed by both parties.

#### **12.3 Assignment**

- i. The Counterparties may not assign any agreement or any of its rights or obligations under any agreement without the prior written consent of Aus Media TV.
- ii. Aus Media TV Pty Ltd reserves the right to assign any agreement or any of its rights or obligations under any agreement, effective upon Notice of the assignment to the counterparty to that agreement.

#### **12.4 No Partnership**

Unless otherwise explicitly stated, nothing contained in any Agreement to which these Terms and Conditions pertain creates a partnership, joint venture, employer/employee, principal-and-agent, or any similar relationship between the parties.

#### **12.5 Survival**

Unless otherwise explicitly stated, sections of any agreement dealing with, but not limited to, Commissions and Expenses, Confidentiality and Social Media, Effect of Termination Indemnification, Dispute Resolution and other such terms as may be agreed by the parties survive the termination or expiration of any to which these Terms and Conditions pertain agreement.

#### **12.7 Waiver**

A party's failure or neglect to exercise or enforce any of its rights under any Agreement will not be deemed to be a waiver of that party's rights.

#### **12.8 Renewal Terms**

Following the initial term, any agreement may be renewed for successive terms by agreement between the parties, unless terminated earlier. If a party elects not to renew any agreement, that party shall provide Notice of that intention to the other party at least 30 days before the renewal date.

#### **12.9 Adequate and Complete Performance, Time Essential**

Failure to adequately perform or complete any contractual obligation within the time frame agreed by the parties shall constitute a material breach of any agreement to which these Terms and Conditions pertain and shall entitle Aus Media TV Pty Ltd to withhold payments until such breach is cured as set forth herein.

#### **12.10 Headings**

The headings used in any Agreement to which these Terms and Conditions pertain, and the division of same into sections, schedules, and other subdivisions do not affect its interpretation.

#### **12.11 Counterparts**

Any Agreement to which these Terms and Conditions pertain may be signed in any number of counterparts, each of which is, or will be taken by the parties to be, an original for the purposes of any agreement to which these Terms and Conditions pertain and all of which, taken together, form one single document.

#### **12.11 Governing or Applicable Law**

Any agreement to which these Terms and Conditions pertain is governed by and construed exclusively in accordance with the laws of Western Australia and the

parties submit to the jurisdiction of the Courts of Western Australia and their appellate Courts in relation to this Agreement

#### **12.12 Severability and Enforceability**

If any of the terms and provisions of any agreement to which these Terms and Conditions pertain is determined to be invalid or unenforceable by any court such determination and consequential severance (if any) shall not invalidate the remainder of any agreement to which these Terms and Conditions pertain which shall remain in full force and effect as if such terms and provisions had not been made a part of that Agreement.

If one or more of the provisions of any agreement to which these Terms and Conditions pertain shall be held unenforceable, it shall not affect the enforceability of the other provisions.

#### **12.13 Correspondence**

Any notice, demand or other communication required to be given or made under this Agreement shall be in writing and shall be delivered personally or sent by prepaid registered mail to each of the parties at their respective registered addresses or any other such mode of communications agreed by both parties under any such Agreement. Any notice or other communication sent by mail shall be deemed to have been received by the Party to whom it was sent on the third day following posting. Parties may choose to communicate by email or text message.

#### **12.14 Acceptance of Terms and Conditions**

Unless Counterparties provide Aus Media TV Pty Ltd with an objection in writing, within Five (5) business days of receipt of confirmation from Aus Media TV Pty Ltd, the Counterparty shall be deemed to have accepted these terms and conditions.

#### **12.15 No Obligation**

Nothing in this agreement creates any obligation between either party and any third party which/who is not a party to any agreement to which these Terms and Conditions pertain.

### **13. Dispute Resolution**

**13.1** If a Dispute arises in respect to any agreement to which these Terms and Conditions pertain then either party may give a Dispute Notice to the other party and if a Dispute Notice is given then the Dispute shall be determined in accordance with this Clause 14 of these Terms and Conditions.

**13.2** If not resolved within 14 days of the Dispute Notice (or such longer period as the parties may agree upon), the Dispute shall be referred to the authorised representative of each party who shall meet and undertake genuine negotiations in good faith with a view to resolving the Dispute.

- 13.3 If the parties agree to Mediation then each party shall use its best endeavours to mediate in good faith and the parties and their representatives shall comply with all the procedures and time limits identified by the Mediator.
- 13.4 If all efforts to resolve the Dispute under clauses 14.2 and 14.3 fail and 21 days (or such longer period of time as the parties may agree) has expired since the giving of the Dispute Notice then the Dispute shall be submitted for expert determination to be conducted by a person appointed by the parties or, failing agreement on such appointment within 35 days after the giving of the Dispute Notice, a person appointed by the President for the time being of the Law Society of Western Australia. The person appointed ("the Expert") shall act as an expert and not an arbitrator and his or her decision shall be final and binding upon the parties. The Expert shall determine the dispute within 90 days of his or her appointment and the Experts determination shall be final.
- 13.5 Each party shall bear its own costs in respect of any expert determination undertaken in accordance with clause 14.4 and each party shall pay one-half of the Expert's costs.
- 13.6 This clause 14 shall survive the termination of this Agreement.

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## 14. DEFINITIONS

In this Agreement unless the contrary intention appears:

- a) "**Agreement**" means this document and any subordinate documents and Aus Media TV Pty Ltd's Terms and Conditions.
- b) "**AVOD Rights**" means the right to communicate the Program by way of any form of technology (including Digital Media) where the timing and selection of that Program is at the viewer's discretion and that service is provided without charge to the viewer.
- c) "**(the) Broadcaster**" means the network designated in Clause 2 (Recitals) of this agreement.
- d) "**Channel[s]**" means the channels operated by and as specified the Broadcaster.
- e) "**Digital Media**" means digital content platforms that are accessible to end users through the use of an internet protocol network or the use of a mobile carriage service.
- f) "**Broadcast**" means transmission by means of the Free Television Rights.
- g) "**(the) Company**" means Aus Media TV Pty Ltd, its subsidiaries, employees, agents, consultants and sub-contractors.
- h) "**Claim**" means any claim, demand, right, action or proceeding whether in contract, tort, equity, statute or under any other law of Western Australia or the

Commonwealth of Australia or any expenses, costs, damages or losses (whether direct or consequential) of any nature which is suffered or incurred by any party arising out of or in connection with this Agreement.

- i) **“Company Marks”** means all service marks, trademarks, and trade names used by Aus Media TV Pty Ltd whether registered or not.
- j) **“Confidential Information”** means all non-public business-related information, written or oral, disclosed or made available by Aus Media TV Pty Ltd to the Counterparty, directly or indirectly, through any means of communication or observation.
- k) **“Counterparty”** means any party with which Aus Media TV Pty Ltd enters into an agreement which carries or implies the force and obligations of a contract.
- l) **“(the) Customer”** means the party or parties, other than Aus Media TV Pty Ltd Aus Media TV Pty Ltd, the details of which have been entered at Clause 1.1 of this agreement.
- m) **“Dispute”** means a dispute between the parties in respect of any fact, matter or thing arising out of or in connection with the Services or this Agreement and includes a Claim.
- n) **“Dispute Notice”** means written notice given by one party to the other giving full particulars of the Dispute and that party’s view of the correct position in relation to the Dispute.
- o) **“Fees”** means the estimated fees and expenses (including the contingency amount) detailed in this Agreement together with the costs of flights and travel and any other costs, expenses, taxes or disbursements incurred by Aus Media TV Pty Ltd in providing the Services plus a 5% administration levy on consulting Fees payable.
- p) **“Free Television Rights”** means the right to transmit the Program for delivery to a viewer without charge to that viewer (other than fees or taxes levied by government agencies) by any manner of television transmission now known or hereafter developed and including by way of simultaneous or near simultaneous transmission or re-transmission by cable, satellite, MDS and other television delivery systems or technologies.
- q) **“Governmental Authority”** means the government of Australia or any other nation, or any of its or their geographical or political units or subdivisions and includes any body, agency, tribunal, arbitrator, court, authority, or other entity that exercises executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of, or relating to, government.
- r) **“GST”** has the same meaning as in the A New Tax System (Goods and Services) Tax Act 1999, any associated regulations and associated legislation.
- s) **“Indemnatee”** means, for either party, any of that party’s directors, officers, employees, shareholders, partners, agents, or affiliates.

- t) **“Intellectual Property”** means any concept, product methodology, technique, procedure, algorithm, management tool, manual, software, data file, idea, design, invention, know-how, process or other intellectual capital developed, discovered or used by Aus Media TV in the course of providing the Services and includes all drawings, specifications and other material provided by Aus Media TV Pty Ltd.
- u) **“Intellectual Property Right”** means any statutory or proprietary right (including a moral right) in respect of copyright, trade mark, design, patent, circuit layout right, trade or business or company name or domain name and any right to registration of such a right whether created before or after the commencement of this Agreement.
- v) **“Law”** means any law (including the common law), statute, by-law, rule, regulation, order, ordinance, treaty, decree, judgment, official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.
- w) **Notice** means any notice, request, direction, or other document that a party can or must make or give under this agreement.
- x) **“Net Amount”** means the sales price of the sold product as listed on the applicable invoice, less charges for handling, freight, sales, use, GST, import or export taxes or levies taxes, COD charges, insurance, customs duties, trade discounts, and any other fees or charges of any Governmental Authority.
- y) **“Pay TV Rights”** means the right to deliver the Program by means of any form of technology (including, without limitation, Digital Media) as part of a linear pre-scheduled program service in respect of which a periodic subscription fee is charged to the viewer for receipt of such program service and where the scheduling of such programming is pre-determined by the program service.
- z) **“Products and Services”** means the services described in this Agreement;
- aa) **“Rights”** means:
  - (a) [exclusive] Free Television Rights [on the main Perth Channel] [for [3] runs];
  - (b) [exclusive] AVOD Rights [with respect to each episode of the Program for up to 30 days from Nine’s transmission of the relevant episode via Free Television Rights];
  - (c) [exclusive] SVOD Rights; and
  - (d) [exclusive] TVOD Rights in all Territories to which this agreement pertains during the License Period.
- ab) **“SVOD Rights”** means, in respect of a Program, the right to communicate that Program by way of any form of technology (including Digital Media) where the timing and selection of that Program is at the viewer’s discretion and that viewer is ordinarily required to pay a basic or periodic access charge to receive that service.

- ac) **“Territory”** means those parts of the Commonwealth of Australia as specified in this agreement and as defined by State borders;
- ad) **“Tax Invoice”** has the same meaning as in the A New Tax System (Goods and Services) Tax Act 1999, any associated regulations and associated legislation.
- ae) **“TVOD Rights”** means the right to communicate the Program by way of any form of technology (including Digital Media) where the timing and selection of the Program is at the viewer’s discretion (by way of a temporary download for future playback on authorised storage devices) and the viewer is ordinarily required to pay a per-program fee for each such temporary download.