

Year13 Digital Advertising Terms and Conditions

By advertising with Year 13 you indicate you accept the following terms Terms & Conditions and agree to be bound by them.

1. Parties and agreement

1.1 This agreement is between Year 13 Pty Ltd (ACN 606 583 706) (**Year 13, us, we or our**) and the entity specified as Client in the Insertion Order (**Client, you or your**) and consists of:

(a) these agreed terms; and

(b) The Insertion Order,

(agreement).

1.2 To the extent of any inconsistency between the Insertion Order and these agreed terms the following order of precedence will apply:

(a) these agreed terms; and

(b) the Insertion Order in the order they are set out above.

2. Term

2.1 This agreement commences on the Start Date and continues in respect of the Services specified in the Insertion Order until the End Date (**Term**).

3. Services

You engage us to provide the Services during the Term and in accordance with these agreed terms.

3.1 We will:

(a) use reasonable commercial efforts to complete the Services:

(i) within any estimated timeframe, however you acknowledge that timeframes specified in any of the Schedules are estimates only and may depend on you providing us with information in accordance with clause 5, or as otherwise set out in this agreement; and

(ii) to a standard that meets or exceeds the KPIs;

(b) perform the Services:

(i) with due care, competence, and diligence; and

(ii) in accordance with these agreed terms and all applicable laws, codes, and regulations;

(c) ensure that the any of our Personnel involved in the Services will:

- (i) have the requisite skills, experience, and qualifications to provide the Services;
- (ii) conduct themselves in a respectful and professional manner;
- (iii) comply with all relevant laws connected with the performance of the Services; and
- (iv) not make or cause or permit to be made or to occur any false, misleading, or deceptive representations, statements or conduct for or in relation to the Services.

3.2 In respect of any Services created by Year 13 using or incorporating the Client Materials and that are to be published or made publicly available, Year 13 will obtain the Client's prior written approval (email deemed acceptable) prior to publishing such Deliverables or making them available publicly.

3.3 Where you do not approve any aspect of a Deliverable, we will use reasonable endeavours make the necessary changes to obtain your approval insofar as such changes relate to your genuine and reasonable concerns.

3.4 We may sub-contract the performance of any part of the Services to any third party, subject to remaining responsible and liable for the acts and omissions of any such third party as if they were our own.

4. Variations

4.1 Either party may propose reasonable changes to any of the Services during the Term. The parties agree to discuss and negotiate in good faith the impact of such proposed changes, including without limitation revised deliverables and timeframes; variations to the Pricing; and/or any other amendments to the agreement that may be necessary to affect such change. The parties will enter a written variation of the agreement if or once such changes are agreed.

5. Client obligations

5.1 You must comply with these agreed terms and any applicable laws, codes and regulations, including ensuring that you have all necessary permissions and licences (except to the extent that it is our obligation under the Services to obtain such permissions and licences) to receive the benefit of the Services and utilise the Services provided by us under this agreement.

5.2 As reasonably required by us in respect of the Services, and upon our request, you must promptly provide us with:

- (a) Client Materials;
- (b) decisions and approvals (if required);
- (c) relevant information; and
- (d) resources to ensure timely approval, development and sign-off of all Deliverables.

5.3 You acknowledge we are entitled to rely on the accuracy of that information without independently verifying it, whether the information is provided by you, your Personnel, or your advisers.

- 5.4 We will not be responsible for any deficiency or delays in the performance of the Services to the extent that it is attributable to your delay or breach of this agreement.

6. Warranties

- 6.1 Each party represents and warrants to the other that, to the best of its knowledge, each of the following statements is true, accurate and not misleading as at the date of this agreement and will be true and accurate on each day during the Term:

- (a) it has the corporate power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement; and
- (b) there are no pre-existing rights or obligations which would prevent it from complying with its obligations under this agreement.

- 6.2 We additionally represent and warrant that:

- (a) we will perform the Services:
 - (i) with due care, skill competence and diligence;
 - (ii) in accordance with all applicable laws, codes and regulations; and
 - (iii) according to best industry standards and practices; and
- (b) our Personnel will have any requisite skills, experience, and qualifications to provide the Services.

- 6.3 You additionally represent and warrant that:

- (a) you will comply with applicable laws, codes and regulations, including ensuring that you have all necessary permissions and licences (except to the extent that it is our obligation under the Services to obtain such permissions and licences) to receive the benefit of the Services and utilise the Services (including the Deliverables);
- (b) all Client Materials:
 - (i) comply with all applicable laws, codes and regulations;
 - (ii) are accurate, complete and current;
 - (iii) do, and will not, not infringe the rights (including Intellectual Property Rights and privacy rights) of any third party or person; and
 - (iv) are not unlawful, fraudulent or defamatory in itself or in respect of its intended use.

7. Advertising

- 7.1 This clause 7 applies in respect of any element of the Services that incorporates advertising services, including the creation or uploading of a company profile page, photo gallery and other advertising for the Client on:

- (a) the Year 13 website located at www.year13.com.au (Site); and/or

- (b) third party platforms, such as social media platforms (e.g. Facebook, Instagram, YouTube) (**Platforms**).

Our commitment

7.2 We will use commercially reasonable efforts to deliver any advertising benefits set out in the Insertion Order, including in accordance with these agreed terms. However, we cannot and do not warrant:

- (a) the number of visitors to the Client's site as a result; or
- (b) the exact times at which the impressions will be delivered.

Client Advertising Materials

7.3 To the extent that the Client provides advertising materials to Year 13 for use by Year 13 in the fulfilment of any related Services (**Client Advertising Materials**), the Client warrants, and will ensure that the Client Advertising Materials will:

- (a) comply with any Year13 policies we notify the Client of, from time to time;
- (b) not infringe the rights of any third party;
- (c) not link to products or services that infringe the rights of any third party (including but not limited to unlawful and counterfeit items);
- (d) be up-to-date, true, correct and accurate;
- (e) not be misleading, deceptive, involve any misrepresentation, or imply or represent that any party has approval or sponsorship of another party that it does not have;
- (f) not be defamatory;
- (g) not contain any virus, trojan horse, malicious code or any other damaging component(s);
- (h) will not contain any information or content that is illegal, contrary to any industry code, indecent, obscene, threatening, harassing, discriminatory, in breach of confidentiality, or otherwise objectionable; and
- (i) not breach any laws or regulations, including (but not limited to) the *Privacy Act 1988* (Cth), the *Broadcasting Services Act 1992* (Cth), the *Telecommunications Act 1997* (Cth), and the *Competition and Consumer Act 2010* and its equivalent state legislation.

7.4 You further warrant that each website represented by any URL shown, linked to or embedded in any Client Advertising Materials is controlled by the Client or the Client's related bodies corporate (as that term is defined in section 50 of the *Corporations Act 2001* (Cth)).

7.5 If the Client Advertising Materials provided are damaged, not to our specifications, or otherwise unacceptable, we will use commercially reasonable efforts to notify you prior to any removal of the Client Advertising Materials from any applicable Sites, and if we are unable to do so, we will notify the Client as soon as reasonably possible after any such removal.

Placement of advertising materials

- 7.6 We acknowledge that the Client may not want its Client Advertising Materials and/or any other advertising materials (including forming part of any Deliverables) placed adjacent to content that promotes pornography, violence, or the use of firearms, and/or that contains obscene language, or inappropriate content (**Adjacency Guidelines**). We will use commercially reasonable efforts to comply with the Adjacency Guidelines with respect to Client Advertising Materials and/or any other advertising materials (including forming part of any Deliverables) placed on the Site, however, you acknowledge and agree that we always retain editorial control over the Site.
- 7.7 Should the Client Advertising Materials and/or any other advertising materials (including forming part of any Deliverables) appear on the Site in violation of the Adjacency Guidelines, your sole and exclusive remedy is to request in writing that we remove the applicable material. After you notify us of any such violation, we will correct such violation within 24 hours.
- 7.8 As the Platforms are owned and operated by third parties and include user generated content, the Adjacency Guidelines and related obligations do not apply in respect of any Client Advertising Materials and/or any other advertising materials (including forming part of any Deliverables) placed on the Platforms. However, to the extent that any Client Advertising Materials and/or any other advertising materials is placed adjacent to content that violates a Platform's terms of use, you may notify us and we'll use reasonable commercial endeavours to liaise with the operators of the applicable Platform to attempt to correct the violation.
- 7.9 Where applicable, we may restrict or discontinue the delivery of any emails or other communications to any or all users containing advertisements or promotions featuring the Client:
- (c) if we are satisfied in our reasonable judgement that to send such emails to users may expose us or you to the risk of sanctions under applicable laws or regulations, including laws relating to data protection; or
 - (d) if any user of the Site has opted out or otherwise indicated to us that he or she does not want to receive any advertisements or promotions for services provided by any company other than us or our affiliated companies.

Personal information

- 7.10 All Site data and Leads are our property. All personal information collected by us under this agreement is subject to:
- (a) clause 10; and
 - (b) our privacy policy found on the Site.

8. Pricing and payment

- 8.1 We will issue you with invoices in accordance with the Payment Terms for the applicable Fees.
- 8.2 You acknowledge and agree any approved variation to the Services may result in a decrease or increase to the Fees payable by you under this agreement.
- 8.3 You must pay the Fees set out on an invoice within 30 days of the date of the invoice.

- 8.4 If you wish to raise a genuine dispute about an invoice, you must notify us of the dispute before the due date and pay the undisputed portion by the due date.
- 8.5 If you fail to pay an undisputed invoice by the due date, we reserve the right to charge interest on overdue amounts at the rate of 10% (or the highest rate permitted by law, if lower) per annum and/or suspend the Services until all overdue amounts are paid.
- 8.6 If you fail to pay an undisputed invoice within 5 days of an overdue notice from us, we may immediately suspend our provision of any Services until we have received such payment and, in such case, we will not be responsible for any deficiency or delays in the performance of the Services as a result of such suspension.
- 8.7 All amounts payable under this agreement are exclusive of GST. If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in this agreement plus GST.

9. Intellectual property

- 9.1 The ownership of the Intellectual Property Rights in any pre-existing materials as at the Start Date (**Pre-existing IP**) will not be altered, transferred or assigned.
- 9.2 You retain all rights (including Intellectual Property Rights), title and interest in your Client Materials. You grant to us a non-exclusive and royalty-free licence to use, publish, display, communicate, edit, adapt, and reproduce your Client Materials for the purpose of performing our obligations under this agreement, including for the purposes of providing the Services, including creating the Deliverables (including editing and reformatting the Client Materials as necessary for such creation).
- 9.3 We retain all rights (including Intellectual Property Rights), title and interest in and to all Deliverable Materials (excluding any Client Materials incorporated into or forming part of such Deliverable Materials). During the Term, we grant to you a non-exclusive, non-transferable licence to use and reproduce:
- (a) the Deliverable Materials; and
 - (b) our Pre-Existing IP to the extent it is incorporated into, or forms part of, any Deliverable Materials,
- for the purposes of obtaining the benefit of the Services.
- 9.4 You consent to us (including after the expiry or termination of this agreement):
- (a) naming you as a client and reproducing your business name and logos for marketing and publicity purposes; and
 - (b) using the Deliverable Materials for internal training and our marketing and publicity purposes, provided such material does not contain any commercially sensitive information or Confidential Information.

10. Privacy

- 10.1 Each party must comply with the *Privacy Act 1988* (Cth) and any other applicable privacy and data protection laws, codes or regulations in connection with the collection, use, handling,

disclosure, quality, security of and access to personal information (as such term is defined in the *Privacy Act 1988* (Cth) and/or any other applicable privacy and data protection laws, codes or regulations) in relation to this agreement.

10.2 Without limiting clause 10.1, you must protect the privacy and legal rights of the Site's end users and must:

- (a) use or disclose personal information only for the purpose of responding to the end user's enquiry;
- (b) not on sell any Site data and/or Leads regardless of whether they contain personal information or not; and
- (c) comply with the *Privacy Act 1988* (Cth) and any applicable privacy codes or principals contained within it, in connection with the collection, use, handing, disclosure, quality. security of and access to personal information.

10.3 Subject to clause 11, you consent to us:

- (a) collecting information in connection with performing the Services, including any personal information; and
- (b) disclosing that information to our related and associated entities and agents, including for the purpose of performing the Services and running credit checks on you.

11. Confidential Information

11.1 Each party must keep all Confidential Information confidential and use such information for the sole purpose of performing the obligations under this agreement.

11.2 Neither party may use or disclose the Confidential Information except:

- (a) to that party's employees or advisers on a need-to-know basis and that party must ensure that such persons understand and comply with the obligations imposed by this agreement;
- (b) as required by law, subject to that party notifying the other party immediately if that party becomes aware that such disclosure may be required; or
- (c) with the other party's prior written consent.

12. Exclusion of liability and indemnity

12.1 Notwithstanding any other provision of this agreement and to the fullest extent permitted by law:

- (a) our aggregate liability in connection with this agreement whether in contract, tort (including negligence), statute or otherwise will not exceed an amount equal to the fees paid by you to us in the 6 months preceding the event that gives rise to any claim of liability;
- (b) neither party is liable, whether such liability is based on breach of contract, tort (including negligence), statute or otherwise for any Consequential Loss, indirect, incidental, punitive

or special Losses of any kind (including loss of profit, loss of opportunities or business interruption).

- 12.2 Subject to any express warranties in this agreement but otherwise to the fullest extent permitted by law, we expressly exclude all warranties, conditions and representations in whatever form, relating to the Services, including any warranties or representations relating to performance, quality or fitness for use, or guarantee of a particular outcome.
- 12.3 Where a mandatory term or consumer guarantee is implied by law, our liability for breach of such term or consumer guarantee is limited, at our option, to the supplying of the services again or the cost of having the services supplied again.

Insurance

We will effect and maintain insurance in an amount sufficient to cover our potential liability under this agreement for the Term and we will provide you with a certificate of currency on your request.

13. Termination

- 13.1 Either party may terminate this agreement (either in full, or in part in respect of specific Services) on notice if the other party:
- (a) fails to remedy a material breach within 60 days' notice from the other party requesting the breach be remedied; or
 - (b) becomes insolvent or has a controller appointed to any of its property within the meaning given in the *Corporations Act 2001* (Cth) for insolvent and controller.
- 13.2 Where this agreement is only terminated in part in respect of specific Services, the agreement will continue in full force and effect in respect of all other Services.
- 13.3 Upon the expiry or termination of this agreement (in whole or in part):
- (a) you must pay all Fees attributable to any Services (including Deliverables) provided up to and including the effective date of termination, within 14 days of that date;
 - (b) unless you have terminated this agreement because of a material breach by us or our insolvency, you must pay us all reasonable costs incurred by us as a result of the termination (including third party cancellation fees and administrative costs) And
 - (c) we reserve the right to, in our discretion, continue to display any Deliverable Materials on our websites and platforms (including the Site and the Platforms), including to the extent that such Deliverable Materials incorporate any Client Materials and, in such instance, you grant to us a perpetual, non-exclusive and royalty-free licence to use, publish, display, communicate and reproduce such Client Materials for the purpose of continuing to display such Deliverables Materials.

14. Force Majeure

If a Force Majeure Event occurs, the affected party must notify the other party and the obligations of the party will be suspended to the extent that they are affected by the relevant

Force Majeure Event until that Force Majeure Event has ceased. This clause does not apply to any payment obligations set out under this agreement.

15. Dispute resolution

- 15.1 Any party who claims to have a dispute against another party must issue a Dispute Notice.
- 15.2 Within 7 days after receiving the Dispute Notice, the parties must meet to resolve the dispute. Each party will be represented by a person having authority to agree to such resolution or methods. All aspects of the meetings will be confidential and without prejudice to the parties' rights, obligations and liabilities.
- 15.3 If the parties do not resolve the dispute within 30 days (or such longer period the parties may agree in writing) after the Dispute Notice, then either party may initiate court proceedings in relation to the dispute.
- 15.4 Despite the existence of a dispute, each party must continue to perform its obligations under the agreement unless those obligations are the subject of the dispute.

16. Notices

- 16.1 A notice, consent or other communication under this agreement is only effective if it is in writing, signed by or on behalf of the party giving it and it is received in full and legible form at the addressee's address or email address (as set out in the Commercial Schedule).
- 16.2 A copy of any notice, consent or other communication under this agreement sent in accordance with clause 18.1 must also be sent to the addressee's email address.
- 16.3 A notice given or served in accordance with this agreement is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
 - (a) delivery by hand, on delivery;
 - (b) prepaid express post sent to an address in the same country, on the fifth day after the date of posting;
 - (c) prepaid express post sent to an address in another country, on the seventh day after the date of posting; and
 - (d) email, the earlier of:
 - (i) delivery to the email address to which it was sent; or
 - (ii) one hour after the email enters the server of the email address to which it was sent,

provided that the sender does not receive any delivery or transmission error or other automated message that the email has not been delivered.

17. General

- 17.1 Nothing in this agreement will be taken as giving rise to a relationship of employment, agency, partnership or joint venture. Except as otherwise provided in this agreement, the parties

acknowledge and agree that neither party will have any authority to bind the other party or to enter into an agreement in the name of the other party.

- 17.2 This agreement contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications.
- 17.3 The failure of either party to enforce any provisions under this agreement will not waive the right of such party thereafter to enforce any such provisions.
- 17.4 If any term or provision of this agreement is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from this agreement and the remaining terms and conditions will be unaffected.
- 17.5 This agreement may be executed in any number of counterparts and all counterparts taken together will constitute one document.
- 17.6 Unless otherwise expressly set out elsewhere in this agreement, this agreement may not be amended or varied unless the amendment or variation is in writing and signed by all parties.
- 17.7 Neither party may assign, transfer or otherwise deal with this agreement or any right under this agreement without the prior written consent of the other party, which must not be unreasonably withheld.
- 17.8 Any warranty, indemnity, or obligation of confidentiality in this agreement will survive termination. Any other term which by its nature is intended to survive termination of this agreement survives termination of this agreement.
- 17.9 This agreement is governed by, and construed in accordance with, the laws of New South Wales, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

18. Definitions and interpretation

- 18.1 In this agreement, unless the context otherwise requires:

Client Materials means your logos (including unregistered and registered trade marks), business and brand names and all content provided by you to us, including words, images, information, documents and materials and includes any Client Advertising Materials and your Pre-Existing IP.

Confidential Information means confidential, proprietary, and commercially-sensitive information (irrespective of the form or the manner in which the information is disclosed, or the time of such disclosure) including information which:

- (a) is identified as confidential or ought to have been known to be confidential; and
- (b) relates to the business affairs and practices, including financial information, business opportunities, business plans, business processes and methodologies,

but does not include information which is in, or comes into, the public domain other than by a breach of this agreement, or which is independently known to the other party as evidenced by its written record.

Consequential Loss means any Loss that does not arise naturally in the ordinary course of things from the event or circumstance giving rise to the Loss.

Dispute Notice means a notice issued by a party claiming a dispute has arisen, which is issued to the other party setting out the nature of the dispute and all other information relevant to the dispute.

Fees mean the fees and charges set out in the Insertion Order.

Force Majeure Event means any act, event or cause including earthquakes, cyclones, floods, fires, lightening, storms or other acts of God, strikes or industrial disputes, riots, terrorist acts, civil disturbances, breakages of machinery, or industrial conditions, or arising out of any other unexpected and exceptional cause, delays in transportation, or governmental or court ordered laws, dispositions, regulations, requirements, orders or actions (including any public health orders or directions), which:

- (a) directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under this agreement; and
- (b) is beyond the reasonable control of that party.

GST has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, confidential information, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable.

KPIs means the key performance indicators set out in the Insertion order.

Losses means any judgment, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, or otherwise.

Personnel means the personnel of a party, including their employees, officers, directors, contractors, subcontractors, and agents of that party.

Services means the services we provide you as set out in the applicable Insertion Order.

Start Date means the date set out in the Insertion Order.

Taxable Supply has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Term means the term set out in the Insertion order.

1.1 In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;

- (c) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (d) references to statutes include all statutes amending, consolidating or replacing such statutes;
- (e) \$ means the lawful currency of Australia;
- (f) any reference to a party to this document includes its successors and permitted assigns;
and

the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it.

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