SOUTHERN CROSS AUSTEREO

SOUTHERN CROSS AUSTEREO STANDARD ADVERTISING TERMS AND CONDITIONS

1. INTRODUCTION

1.1 Southern Cross Austereo Pty Ltd ABN 78 109 243 110 (**Southern Cross Austereo**) is the owner and operator of television, radio and internet media outlets throughout Australia.

1.2 The Applicant agrees to advertise with Southern Cross Austereo and its subsidiaries and/or related bodies corporate (as those terms are defined in the *Corporations Act* 2001 (Cth)) on the terms set out in this document which together with the Advertiser Information and the annexed Schedules forms the Agreement.

1.3 The detail of the advertising to be placed is contained in the Sales Schedule and/or Authority to Broadcast.

2. DEFINITIONS

2.1 **Advertising** means the advertising airtime on any Southern Cross Austereo radio station or television station and/or publishing of any Advertising Material on the Southern Cross Austereo websites and/or sponsorship/promotion;

2.2 **Advertising Material** means any written, audio or audio visual material and all corresponding intellectual property rights created for the purpose of producing an advertisement for broadcast by Southern Cross Austereo under this Agreement;

2.3 **Accredited Advertising Agency** means any advertising agency accredited by Southern Cross Austereo that at all times has a minimum of five (5) clients and no individual client at any time provides more than 50% of the billings of the Accredited Advertising Agency for the prior twelve (12) months;

2.4 **Agreement** means this document together with any schedules and/or attachments including any Southern Cross Austereo sales agreement schedule or a broadcast agreement.

2.5 **Applicant** means any party to this Agreement who advertises with Southern Cross Austereo and for the purposes of this Agreement, except where expressly excluded, includes Accredited Advertising Agencies;

2.6 **Campaign** means the advertising campaign undertaken by a Client;

2.7 **Commercial Credit Account** means the credit terms that have been agreed in writing between the Applicant and Southern Cross Austereo based on the credit application completed by the Applicant and submitted to Southern Cross Austereo; and

2.8 **Fee** means the amount to be invoiced by Southern Cross Austereo and payable by the Applicant as set out in any schedules and/or attachments, including a Southern Cross Austereo Sales Agreement Schedule or a Broadcast Agreement.

3. SERVICES AND PAYMENT

3.1 Southern Cross Austereo will provide advertising services to the Applicant under this Agreement.

3.2 Each new Campaign represents a new contract between the parties governed by this Agreement. Southern Cross Austereo is under no obligation to accept any request by the Applicant for a new Campaign.

3.3 The Applicant, excluding Accredited Advertising Agencies, agrees to pay all Fees relating to the Advertising:

(a) on the last business day of the month following the month during which any Advertising took place, if the Applicant has an approved Commercial Credit Account with Southern Cross Austereo or as otherwise stipulated by the Applicant's Commercial Credit Account terms; or

(b) 5 Business Days before the first day of the scheduled Advertising, if the Applicant does not have an approved Commercial Credit Account with Southern Cross Austereo or the Applicant's Commercial Credit Account limit has been reached.

3.4 If the Applicant is an Accredited Advertising Agency, it agrees to pay all fees relating to the Advertising in full before the expiration of forty five (45) days from the date stated on the invoice.

3.5 Without limiting any other rights available to Southern Cross Austereo in the event that the Applicant fails to comply with clauses 3.3 or 3.4 (whichever is applicable), Southern Cross Austereo may in its absolute discretion:

(a) terminate this Agreement and the Applicant's Commercial Credit Account (if any) and immediately seek recovery of all monies owed by the Applicant from the Applicant and/or the guarantor (if any);

(b) suspend or refuse to broadcast any Advertising scheduled for the Applicant;

(c) by notice in writing suspend or cancel the Accredited Advertising Agency's registration as an accredited advertising agent;
(d) recover from the Applicant all costs relating to any action taken to recover monies from the Applicant (such costs will include but are not limited to a two percent (2%) administration fee and any legal costs and disbursements on a full indemnity basis);
(e) charge interest at four percent (4%) above the rate prescribed pursuant to the *Penalty Interest Rates Act* (VIC).

Any failure by Southern Cross Austereo to charge any of the fees set out in clause 3.5 above does not constitute a waiver of its right to do so in the future.

3.6 The Applicant acknowledges that it must pay the Fee for any Advertising notwithstanding that Southern Cross Austereo has exercised its right to vary the format or placement of the advertising in accordance with clause 9.1.

3.7 If the Accredited Advertising Agency is not in breach of this Agreement it will be entitled to a rebate of up to 10% on the amount charged for that Advertising (or as otherwise agreed between the parties). A rebate will not apply to Advertising placed by the Accredited Advertising Agency on behalf of Applicants which have advertised in the preceding twelve (12) months (other than advertising placed by the Accredited Advertising Agency) or who are currently advertising or have booked future Advertising with Southern Cross Austereo.

4. OWNERSHIP OF INTELLECTUAL PROPERTY

4.1 In relation to Advertising Material created by Southern Cross Austereo or its employees, contractors or agents (**SCA Materials**) the Applicant acknowledges and agrees that:
(a) all rights, title, interest and intellectual property rights in any SCA Materials not specifically granted to the Applicant in writing vest with Southern Cross Austereo;
(b) it must not use any SCM Materials for any purpose other than advertising through Southern Cross Austereo and the SCM Materials must be kept strictly confidential by the Applicant; and
(c) at the end of the Campaign:
i. Southern Cross Austereo may require delivery by the Applicant of any material containing SCM Materials; and
ii. the Applicant may only continue to use the SCM Materials with the prior written consent of Southern Cross Austereo which may be subject to the payment of a licence fee.

4.2 In relation to Advertising Material created or provided by the Applicant or its employees, contractors or agents (**Applicant Materials**) the Applicant warrants that:
(a) the Applicant Materials are owned or licensed by the Applicant and that the use and/or broadcast by Southern Cross Austereo will not breach the intellectual property or other rights of any person; and
(b) the Applicant is responsible for obtaining, and must obtain, all third party authorisations, consents, approvals or permissions necessary or desirable for the broadcast by Southern Cross Austereo of any Advertising Material including Applicant Material.

5. CONTENT OF ADVERTISEMENTS

5.1 The Applicant must ensure that the content of Advertising does not result in a breach of any applicable law by the Applicant or by Southern Cross Austereo (as broadcaster of the advertisements). In this context, "applicable law" includes (but is not limited to) the *Broadcasting Services Act* 1992 (Cth) (**BSA**) and all relevant standards and codes of practice determined or registered under the BSA, the *Competition and Consumer Act* 2010 (Cth) (**CCA**), and all industry codes of practice that apply to the content of advertisements.

6. INDEMNITY

6.1 The Applicant continually indemnifies Southern Cross Austereo and each of its directors, employees and agents against all liability, losses, costs (on a full indemnity basis), damages, expenses and claims (whether threatened or actual) by any person which arise wholly or partially, or directly or indirectly, from:
(a) the preparation or broadcasting or publication of Advertising for the Applicant by Southern Cross Austereo; or
(b) any breach by the Applicant of any term of this Agreement.

7. LIMITATION OF LIABILITY

7.1 Nothing in this Agreement purports to limit or exclude the Applicant's rights under the CCA (**the Statutory Guarantees**). Except for the Statutory Guarantees, Southern Cross Austereo (including its respective officers, employees and agents) is not liable to the Applicant for any loss, damage cost or expense suffered or incurred by the Applicant (howsoever arising whether for negligence, breach of contract, breach of statutory duty or otherwise) as a result of the

preparation or broadcasting or publication of Advertising for the Applicant by Southern Cross Austereo.

7.2 To the maximum extent permitted by section 64A of the CCA, Southern Cross Austereo limits its liability, at its discretion to:

(a) the re-supply of the advertising services; or

(b) the payment of the cost of having the advertising services supplied again.

8. REPRESENTATIONS

8.1 Except for the Statutory Guarantees, Southern Cross Austereo disclaims and excludes all warranties, representations and claims in relation to the potential benefits of the Advertising provided to the Applicant under this Agreement and the Applicant acknowledges that it has not relied on any such representations.

9. WITHDRAWAL/CANCELLATION OF ADVERTISEMENT

9.1 Southern Cross Austereo may reject, cancel, amend (if in Southern Cross Austereo's opinion such change is necessary to comply with the law), refuse, change position or postpone publication or broadcast of an Advertisement for any reason at its discretion. Southern Cross Austereo must act reasonably in exercising this discretion.

10. CANCELLATIONS

10.1 Cancellation of Advertising by the Applicant may only be accepted if a minimum of 28 days written notice is provided. Notwithstanding the previous sentence, the Applicant acknowledges that some advertising and sponsorship arrangements cannot be cancelled under any circumstances in accordance with their specific terms.

11. RESCHEDULING ADVERTISING

11.1 Subject to Southern Cross Austereo's right of refusal, commercials may be rescheduled at the Applicant's request but still charged within 28 days' notice (i.e. commercials must be paid for within the credit period from the date in which they are originally booked). These commercials may be used at a later date mutually agreed to by both parties.

12. ONGOING DISCLOSURE

12.1 The Applicant must immediately notify Southern Cross Austereo in writing of any material change in any information provided to Southern Cross Austereo in relation to this Agreement or an application for a Commercial Credit Account.

13. FORCE MAJEURE

13.1 A failure by Southern Cross Austereo to discharge its obligations under this Agreement because of reasons beyond its reasonable control will not constitute a breach of this Agreement by Southern Cross Austereo.

14. GOVERNING LAW

14.1 The parties acknowledge and agree that this Agreement is governed by and subject to the laws of the State of Victoria.

15. WHOLE AGREEMENT

15.1 This Agreement together with any application for commercial credit embody the whole agreement between the parties and, subject to the express terms contained in any written order or written acceptance thereof, all previous dealings, representations and arrangements are hereby excluded and deemed void.

16. SEVERANCE

16.1 Should any part of these terms and conditions be held to be void or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.

The Applicant acknowledges that it has read, understood and agreed to be bound by these terms and conditions in relation to the services to be provided by Southern Cross Austereo to the Applicant.

Signed for and on behalf of the **Applicant** by its authorised representative:

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Name of authorised representative (please print)

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Signature of authorised representative

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Date