

# IVE Distribution General Terms

## 1 DEFINITIONS AND INTERPRETATION

1.1 Capitalised terms or expressions used in the Agreement have the meanings set out in this clause.

**Aggregated Data** means anonymously aggregated information or data (including statistical information and data sets relating to customer usage profiles, purchasing behaviours and patterns) derived or generated in connection with the provision of the Services;

**Agreement** means the General Terms, applicable Product Terms, the Statement of Work and any schedules and annexures;

**Business Day** means a day that is not a Saturday, Sunday, national public holiday or national bank holiday in the place within Australia where the Services are being provided;

**Client** is the party to whom IVE is supplying the Services;

**Client Materials** means:

(a) all text, data, images, documents, reports, logos, trademarks, copy, electronic files, proofs, designs, product descriptions and other materials, whether electronic or in hard copy form, submitted to IVE by or on behalf of the Client for the purposes of providing the Services, and

(b) any information or data that is imported by or on behalf of the Client in connection with the provision of the Services or the Client's use of technology services hosted by or on behalf of IVE;

**Confidential Information** of a party (or a Related Body Corporate of a party), regardless of its form and whether the other party becomes aware of it before or after the date of this Agreement, means:

(a) information that is by its nature confidential to that party;

(b) information treated or designated as confidential by that party;

(c) information the other party knows, or ought to know, is confidential to that party, and includes but is not limited to: (i) legal, financial and business information (by way of example: quotes, pricing, cost estimates, invoices); (ii) business plans, models, processes,

trade secrets, reports and market projections; (iii) names of existing and potential customers and partners; (iv) customer information and data; (v) proposed business deals and contract arrangements; (vi) accounting and management information systems; and (vii) all technologies owned or being developed by a party or in which a party has an interest; but does not include information:

(a) lawfully in the public domain or which enters the public domain other than as a result of a breach of this Agreement;

(b) already known to the other party free of any obligation to keep it confidential; or

(c) proven beyond reasonable doubt to have been independently developed by the other party without use, directly or indirectly of Confidential Information.

**Data Breach Investigation:** an investigation as required to be carried out in accordance with clause 6.5(c);

**Data Incident:** an Eligible Data Breach that has, or is reasonably suspected to have, occurred in respect of any Personal Information the Supplier has collected, held, used or disclosed in the course of or relating to this agreement;

**Eligible Data Breach:** an eligible data breach as that term is defined in the *Privacy Amendment (Notifiable Data Breaches) Act 2016* (Cth), occurring on or after 22 February 2018;

**Fees** means the service fees payable by the Client as may be specified in the SOW;

**Force Majeure** means any event or circumstances beyond a party's control, including but not limited to: act of God, fire, explosion, flood, tempest, earthquake, riot, civil disturbance, industrial dispute, theft, crime, strike, lockout, work stoppage or other labour hindrance, breakdown, act of war (whether declared or not), sabotage, insurrection, epidemic, national emergency (whether in fact or law), requirements of restriction of, or failure to act by, any government, local body or judicial entity, COVID-19 and its consequences (including advice and guidelines provided by

governments), third party service provider failures, telecommunications or equipment failures, network faults, computer attacks or malicious acts (such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility), power or water outages, legislative changes and unscheduled maintenance or repair;

**General Terms** means the terms and conditions in this document comprising clauses 1 to 17 and which are applicable to all Services supplied by IVE;

**Intellectual Property** includes copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), trademarks, designs, circuit layouts, domain names, rights in databases, confidential information, trade secrets, know-how, and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing;

**IVE** means the IVE company group member supplying the Services, stipulated in the Statement of Work;

**IVE Affiliate** means an IVE Related Body Corporate;

**Lasoo Product Terms** means the terms and conditions applicable to the supply of marketing services associated with the Lasoo Website, set out in Schedule 1;

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the jurisdiction in which the Services are being supplied;

**Letterbox Product Terms** means the terms and conditions applicable to the supply of letterbox distribution services, set out in Schedule 2;

**Personal Information** has the meaning as defined in the Privacy Laws from time to time;

**Privacy Laws** means:

- (a) the *Privacy Act 1988* (Cth) and the Australian Privacy Principles contained in that Act, as amended from time to time;
- (b) legislation in force in any jurisdiction and affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of data (to the

extent that such legislation applies to IVE or the Client); and

(c) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under such instruments, as amended from time to time.

**Product Terms** means the Lasoo Product Terms or the Letterbox Product Terms;

**Related Body Corporate** has the meaning given to it in section 50 of the *Corporations Act 2001* (Cth);

**Services** means the services and any deliverables set out in the SOW and any further services agreed in writing between the parties from time to time;

**Statement of Work (SOW)** means a document setting out service requirements and the commercial terms including fees and pricing, set out in a quotation, proposal, client brief, order or a statement of work, as the case may be;

**Term** means the term specified in the SOW, including any renewals.

1.2 In the Agreement the following rules of interpretation apply, unless the contrary intention appears or context otherwise requires:

- (a) words importing one gender include the others;
- (b) words importing the singular or plural number include the plural and singular number respectively;
- (c) a reference to parties are references to parties to the Agreement;
- (d) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) specifying anything in the Agreement after the terms "include", "including", "includes", "for example", "such as" or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary;
- (f) a person includes any individual, corporation, unincorporated association, government department or municipal authority;
- (g) a day which is not specifically described as a Business Day means a calendar day;
- (h) if any act is required to be performed under the Agreement on or by a specified day and

- that day is not a Business Day, the act must be performed on or by the next Business Day;
- (i) headings and marginal notes are inserted for the sake of convenience of reference only and do not affect the interpretation of this Agreement; and
  - (j) the recitals to this Agreement do not form part of the Agreement;
  - (k) monetary references are references to Australian currency;
  - (l) if a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day;
  - (m) no provision of the Agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or the Agreement;
  - (n) the Agreement includes all schedules, annexures, appendices, attachments and exhibits to it.

## 2 AGREEMENT STRUCTURE

- 2.1 This Agreement sets out the terms under which IVE has agreed to supply the Services.
- 2.2 The Services to be provided by IVE, along with the Fees payable by the Client, will be set out in one or more Statements of Work.
- 2.3 Upon acceptance by IVE of an order or the execution by both parties of a Statement of Work, an individual contract for the supply of Services will be formed incorporating these General Terms, any applicable Product Terms and the Statement of Work.
- 2.4 If there is any conflict of meaning between information contained in the documents which form part of the Agreement, the order of precedence will be as follows:
  - (a) the Statement of Work;
  - (b) the Product Terms;
  - (c) the General Terms.
- 2.5 IVE may make commercially reasonable changes to the General Terms and the Product Terms (from time to time).
- 2.6 The Client will remain governed by the General Terms and the Product Terms in effect on the SOW commencement date until the end of the then current term. If the SOW is renewed, it will be renewed under IVE's then current General Terms and the Product Terms.

## 3 FEES AND PRICING

- 3.1 In the event of an increase in the costs of providing the Services, including without limitation the imposition of a new direct or

indirect tax or impost, legislative change (including changes that directly impact minimum employee entitlements and employer obligations), exchange rate fluctuations or supplier cost increase, IVE reserves the right to review and request a variation to the Fees to take into account the impact of such changes.

- 3.2 In addition to clause 3.1, IVE may review and adjust its Fees and charges (including its freight rates) for any Services, once each year on or after each anniversary of the date from which those Services are first provided with reference to the Consumer Price Index (All Groups Weighted Average of eight capital cities) as published by the Australian Bureau of Statistics. Any Fee increase will be limited to the percentage increase during the immediately preceding year or 2%, whichever is the greater.

- 3.3 The Fees cover work set out in a SOW. Any change to a SOW pursuant to clause 14 (Change Request) may lead to an adjustment in the Fees.

- 3.4 The parties will negotiate in good faith any variation to the Fees and in the event that they are unable to agree on the amount of a variation pursuant to clauses 3.1, then either party may terminate the relevant SOW(s) by providing the other party with 90 days written notice.

## 4 PAYMENT TERMS

- 4.1 Payment terms are granted subject to the Client's successful application for commercial credit. The Client acknowledges and agrees that in granting credit IVE reserves the right to:

- (a) withdraw or suspend credit at any time in its sole discretion;
- (b) charge interest at the rate of 1.5% per calendar month on all overdue amounts;
- (c) recover any expenses incurred in recovering outstanding monies; and
- (d) collect, disclose and exchange Personal Information for the purpose of assessing the credit worthiness of the Client or any Client guarantor in accordance with IVE's Privacy Policy found at <https://www.ivehub.com.au/public/legal/ive-distribution-privacy-policy.pdf>.

Where payment terms have not been approved or have been withdrawn or suspended, then the provision of Services will be subject to payment upfront.

- 4.2 In consideration for the provision of the Services, subject to clauses 4.1 and 4.3, the Client must pay the Fees for the full amount invoiced without set

off or deduction within 30 days of the date of invoice unless the relevant Product Terms provide otherwise.

- 4.3 If the Client wishes to dispute an invoice, it must notify IVE promptly upon becoming aware of the circumstances giving rise to the dispute. Payment of an invoice or failure by the Client to dispute an invoice prior to the due date for payment will not prejudice the Client's right to raise a valid invoice dispute. The Client may dispute an invoice for up to 12 months from the date of invoice. The Client must pay any undisputed portion of the invoice in accordance with clause 4.2.
- 4.4 If an undisputed invoice is not paid when due IVE may, in its sole discretion, suspend supply of the Services.
- 4.5 The Client acknowledges and agrees that invoices must be paid to the IVE group member supplying the Services unless a different IVE Affiliate is stipulated in the SOW.
- 4.6 Where an invoice is paid by credit card, the payment will incur a credit card payment surcharge.
- 4.7 All pricing is exclusive of goods and services tax ("GST"). IVE reserves the right to recover from the Client all GST payable in respect of the supply of Services to the Client.
- 4.8 Any credits granted to the Client are valid for a period of 6 months from the date of grant and must be used within that time frame. Any monies held on account for the Client will be held for a period of 6 months, after which time those amounts will be converted to a credit held in favour of the Client.

## 5 WARRANTIES

- 5.1 Each of the parties warrants to the other that:
- (a) it has full power and authority to enter into and perform the Agreement;
  - (b) it shall comply and shall ensure that its employees and agents comply, with any Law; and
  - (c) it has or will acquire all Intellectual Property rights needed to perform its obligations under the Agreement.
- 5.2 The Client warrants that:
- (a) it will not do, and it will not direct or request IVE to do, anything which may breach any Law or applicable industry code;
  - (b) it will make any decisions and provide any approvals, data, documentation and information reasonably required by IVE, promptly;

- (c) it will carry out any tasks assigned to it and its agents or contractors in a timely manner and in such a way as to not delay IVE in the provision of the Services;
- (d) the Client Materials
  - (i) do not contain any matter which is obscene, defamatory, or illegal;
  - (ii) are not false, misleading or deceptive or likely to mislead or deceive;
  - (iii) are up to date, technically accurate, complete and correctly formatted for any distribution or use by IVE in the provision of the Services;
  - (iv) are free from viruses and do not contain malware, spyware or any other code which could alter or disrupt any program, product, service or device;
- (e) the use of the Client Materials by IVE for the purposes of providing the Services and all matters incidental thereto will not breach any Law or infringe the Intellectual Property rights or other rights of any person or entity; and
- (f) it will pay to IVE any additional costs incurred by IVE in converting or processing Client Materials which are not in compliance with this clause 5.2.

### 5.3 IVE warrants that:

- (a) the Services will conform in all material respects with any specifications or requirements set out in a SOW;
- (b) it will only store and use Client Materials:
  - (i) to the extent necessary to provide the Services to the Client (and any back-ups for those Services);
  - (ii) to the extent necessary to perform its obligations or enforce its rights under this Agreement; or
  - (iii) as required by Law; and
  - (iv) subject to implementing reasonable and appropriate information security practices including administrative, technical and physical security processes.

### 5.4 To the extent that the law permits and except as expressly provided in the relevant Product Terms, IVE makes no other representations or warranties of any kind, express or implied, with respect to the Services.

### 5.5 The Client acknowledges and agrees that:

- (a) IVE makes no guarantee regarding the results, outcomes or profitability of any

- Services or campaigns conducted or provided by IVE for or on behalf of the Client; and
- (b) the Client remains liable and responsible for any loss or damage suffered or incurred by IVE (including the provision of compensation to any third party carriers) in connection with IVE's use of the Client Materials in accordance with the Agreement.

## 6 PRIVACY

- 6.1 If a party is provided with, or has access to Personal Information in connection with the Services, it must comply with the Privacy Laws and any other applicable law in respect of that Personal Information. Neither party must do anything (or omit to do anything) that causes the other party to fail to comply with its obligations under Privacy Laws. Nothing in this Agreement must be treated as preventing any party from taking the steps it reasonably considers necessary to comply with Privacy Laws.
- 6.2 If Personal Information is provided to IVE by or on behalf of the Client, then the Client:
- (a) must do all things necessary, including but not limited to:
- (i) obtaining all appropriate consents from individuals;
  - (ii) providing notifications to individuals; and
  - (iii) maintaining accurate, up to date and complete records;
- to ensure that IVE may lawfully use, process and disclose the Personal Information (and any changes made to any of them) in connection with the provision of the Services;
- (b) acknowledges and agrees that except as may be required by this Agreement, IVE is not required to take steps to ensure that any Personal Information has been collected in accordance with the Privacy Laws;
- (c) must do all things reasonably requested by IVE to assist IVE to comply with the Privacy Laws in the course of its provision of the Services under this Agreement including:
- (i) assisting IVE in the updating of an individual's records in circumstances where an individual elects to "opt out" and not receive direct marketing materials and services;
  - (ii) providing IVE with access to information held by the Client in respect of an individual when the individual makes a request for such access; and

- (iii) providing IVE with the policies and procedures the Client has put into effect pursuant to the Privacy Laws if requested to do so by IVE.

- 6.3 If IVE collects Personal Information in the name of or on behalf of the Client:
- (a) the Client must provide to IVE such collection statements, scripts for use, privacy policies and other materials necessary to ensure compliance with the Privacy Laws in the collection of such Personal Information; and
  - (b) the Client acknowledges and agrees that where IVE is authorised or required by the Client to collect or otherwise deal with Personal Information in the name of or on behalf of the Client, that IVE does so as agent for the Client.
- 6.4 If IVE processes any Personal Information in the name of or on behalf of the Client:
- (a) the Client acknowledges and agrees that the Personal Information may be disclosed or stored outside Australia in order to provide the Services. The Client consents for IVE to receive, share and disclose Personal Information arising from use of the Services with telecommunication or other providers used in conjunction with the Services, or as may be required by Law;
  - (b) IVE shall process the Personal Information in accordance with this Agreement and any lawful instructions reasonably given by the Client from time to time; and
  - (c) each party shall take appropriate security and organisational measures against unauthorised or unlawful processing of the Personal Information or its accidental loss, destruction or damage.
- 6.5 If IVE becomes aware, or has reasonable grounds to believe, that there has been a Data Incident, IVE must:
- (a) immediately take reasonable steps to contain the Data Incident and prevent any further serious harm to affected individuals;
  - (b) notify the Client promptly and without unreasonable delay stating the:
    - (i) nature and details of the Data Incident;
    - (ii) specific Personal Information affected; and
    - (iii) actions taken by IVE at clause 6.5(a);
  - (c) identify whether the Data Incident is an Eligible Data Breach by conducting a thorough investigation of the Data Incident

- within 20 days of becoming aware of the Data Incident (Data Breach Investigation);
- (d) provide a copy of the report of the Data Breach Investigation in clause 6.5(c) to the Client on completion;
  - (e) engage in discussions with the Client regarding:
    - (i) the conduct and outcomes of the Data Breach Investigation; and
    - (ii) in the case of an Eligible Data Breach, whether the Client or IVE will make the relevant notifications under the *Privacy Act 1988* (Cth); and
    - (iii) where it is agreed by the parties that IVE is making the relevant notifications, the Client must approve the notifications before they are made (such approval to be given promptly and not to be unreasonably withheld).
- 6.6 Each party shall take all appropriate action necessary to identify, remedy or mitigate the effects of the Data Incident and shall provide each other with such information as the other may reasonably require to ensure that any obligations under the Privacy Laws are met.
- 6.7 IVE's Privacy Policy found at <https://www.ivehub.com.au/public/legal/ive-distribution-privacy-policy.pdf> will apply to any Personal Information that it collects, processes and holds.

## 7 INTELLECTUAL PROPERTY

Except as expressly provided:

- 7.1 Nothing in this Agreement conveys to either party any right, title or interest in the other party's pre-existing Intellectual Property.
- 7.2 Intellectual Property in all items, information, materials, and works (including software developments and enhancements, modifications to applications or data insights) developed or produced by IVE in connection with the provision of the Services will be the sole and exclusive property of IVE.
- 7.3 Rights in Intellectual Property owned by IVE remain at all times the sole and exclusive property of IVE and no licence of these rights is granted to the Client except a right to use the same to the extent required for the Client's enjoyment of the Services.
- 7.4 Rights in third party Intellectual Property licensed or procured by IVE in connection with the provision of the Service remain at all times the sole and exclusive property of that third party

and no licence of these rights is granted to the Client except a right to use the same during the Term to the extent required for the Client's enjoyment of the Services, subject always to any third party end user terms and payment of any applicable third party licence fees.

- 7.5 All Intellectual Property rights in the Client Materials remain at all times the sole and exclusive property of the Client and no licence of these rights is granted to IVE except for a right to use and reproduce the same for the purposes of providing the Services or as may be otherwise specified in the Agreement.

## 8 CONFIDENTIAL INFORMATION

- 8.1 A party (the "**receiving party**") who obtains the Confidential Information of the other party (the "**disclosing party**") in connection with the Services or this Agreement, shall, and shall ensure that its officers, employees and agents, keep the Confidential Information of the disclosing party confidential and not use or disclose the Confidential Information to any third party other than:

- (a) in confidence to the receiving party's professional advisers to obtain professional advice;
- (b) as may be properly required for the purpose of the provision of the Services and the performance of any obligations under the Agreement but subject to any such person being made aware of, and undertaking to comply with, the obligations in relation to the Confidential Information as set out in this Agreement;
- (c) with the consent of the disclosing party; or
- (d) as may be required by any Law, the rules of any stock exchange under which a party is listed or any court of competent jurisdiction.

- 8.2 Upon termination or expiration of this Agreement, the receiving party must cease using the Confidential Information of the disclosing party and subject to clause 8.3, destroy or return the Confidential Information and if requested by the disclosing party, certify in writing that the Confidential Information and all copies of the Confidential Information in the receiving party's possession or control has been destroyed or returned.

- 8.3 The receiving party: (i) will not be required to destroy copies made as part of the receiving party's normal back up and disaster recovery policies and procedures and which cannot be

reasonably deleted (which copies will be destroyed in the normal course pursuant to such policies); and (ii) will be entitled to retain any documents which need to be retained by the receiving party for legal record purposes. The parties acknowledge and agree that any Confidential Information which is retained pursuant to parts (i) and (ii) will be held and kept confidential by the receiving party in accordance with the terms and conditions of this Agreement.

8.4 Each party acknowledges that in the event of any alleged breach of this clause 8, damages may not be an adequate remedy and the disclosing party will be entitled to seek equitable relief in the nature of specific performance and injunctive relief, in addition to damages.

## 9 INDEMNIFICATION

9.1 Each party (the “**indemnifying party**”) will, at its expense, defend or settle any third-party claim against the other party (the “**indemnified party**”) caused by the indemnifying party’s failure to comply with the warranty in clause 5.1(c), to the extent such claim results in liability, damages, and costs (including reasonable legal costs) to the indemnified party. The indemnifying party will pay (in relation to such claim) any:

- (a) negotiated settlement amounts (to the extent the indemnifying party is permitted to settle); or
- (b) damages, fines or penalties finally awarded by a court or regulatory authority, to the extent directly attributable to the indemnifying party’s conduct.

9.2 The indemnifying party will have no obligations or liability under clause 9.1 to the extent such claim arises from:

- (a) the indemnified party’s use of any Intellectual Property of the indemnifying party in a modified form not approved by the indemnifying party in writing or in combination with materials not furnished by the indemnifying party,
- (b) the indemnified party’s use of materials, data or information provided by the indemnifying party in a way that breaches any Laws or this Agreement;
- (c) any act or omission of the indemnified party that impedes or prevents the indemnifying party’s ability to comply with its obligations under this Agreement.

9.3 A party’s indemnity obligation are conditional upon the indemnified party (to the extent permitted by Law):

- (a) giving prompt written notice of the claim;
- (b) permitting the indemnifying party to have full and complete control over the defence and settlement of the claim;
- (c) providing assistance in connection with the defence and settlement of the claim as the indemnifying party may reasonably request; and
- (d) complying with any settlement or court order made in connection with the claim (e.g., relating to the future use of any infringing materials).

9.4 To the extent permitted by law, the remedies in clause 9.1 are the sole and exclusive remedies and the indemnifying party’s sole liability regarding the subject matter giving rise to any such claim.

## 10 LIMITATION OF LIABILITY

10.1 To the extent that any Law (including the *Competition and Consumer Act 2010* (Cth)) implies certain non-excludable conditions, guarantees or warranties into the Agreement (“**Non-Excludable Consumer Guarantee**”), IVE limits its liability in relation to such Non-Excludable Consumer Guarantee to the supplying of the Services again or the payment of the costs of having the Services supplied again.

10.2 Subject to clause 10.4, the maximum aggregate liability of a party to the other party for any damages, losses, claims and expenses arising out of or in connection with this Agreement, whether in contract, tort (including negligence), under product liability legislation, under any other statute, under any indemnity or otherwise, shall be limited to an amount equal to the last tax invoice issued by IVE to, and paid by, the Client.

10.3 Subject to clause 10.4, in no event shall either party be liable for any incidental, indirect, punitive, exemplary or consequential damages, or for any:

- (a) loss of profits;
- (b) loss of revenue;
- (c) loss of goodwill;
- (d) loss of agreements or contracts;
- (e) loss of anticipated savings;
- (f) loss of use of products or equipment;
- (g) loss of management time;

- (h) loss of use or corruption of software, data or information;  
arising out of or in connection with this Agreement whether in contract, tort (including negligence), under product liability legislation, under any other statute, under any indemnity or otherwise.
- 10.4 Nothing in this agreement limits or excludes IVE's liability:
- (a) for death or personal injury caused by its negligence or wilful misconduct or that of its employees, as applicable;
  - (b) for fraud or fraudulent misrepresentation by it or its employees, as applicable;
  - (c) in respect of a Non-Excludable Consumer Guarantee; or
  - (d) where prohibited by Law (but only to the minimum extent required to satisfy that law).
- 10.5 The liability of a party is reduced proportionately to the extent to which the liability is caused, or contributed to, by the other party and each party must do what is reasonable in the circumstances to mitigate and minimise any costs, damages, expenses and/or losses incurred or suffered by it in connection with any claim under the Agreement.
- 10.6 IVE is not liable for any claim by the Client relating to the performance (or non-performance) of the Services (the "**Claim**") unless the Client has given the Company notice in writing of the Claim summarising the nature of the Claim as far as is known to the Client within a period of 12 months of the circumstances giving rise to the Claim and has raised an action in a court of law within a period of two years of such notification.
- 11 TERM AND TERMINATION**
- 11.1 Either party may terminate the Agreement without prejudice to its other remedies with immediate effect by giving notice in writing to the other party if:
- (a) the other party commits a material breach of the Agreement, which breach is irremediable or (if such breach is remediable) fails to remedy that breach within fourteen (14) days after being notified in writing to do so;
  - (b) the other party is or becomes insolvent or bankrupt, becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth) or steps are taken by any person towards external administration.
- 11.2 IVE may terminate the Agreement with immediate effect without prejudice to its other remedies by giving written notice to the Client if the Client fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing by IVE to make such payment.
- 11.3 On termination of the Agreement:
- (a) the Client's right to use the Services ceases;
  - (b) except for Fees that are the subject of a genuine dispute notified to IVE in accordance with clause 4.3, the Client must immediately pay to IVE, without deduction or set off, all outstanding Fees and any other amounts payable to IVE under the Agreement at the date of termination;
  - (c) IVE will, upon Client request and subject to clause 11.4, return any proprietary information or data of the Client ("**Client Data**") generated in connection with the Services and/or stored on IVE systems.
- 11.4 IVE shall be entitled to recover its costs in connection with the retrieval of Client Data pursuant to clause 11.3 (c), including any data conversion costs. IVE will have no obligation to maintain or make available any Client Data for longer than ninety (90) days following termination and may thereafter, unless legally prohibited or otherwise specified otherwise in a Statement of Work, permanently delete all such Client Data.
- 11.5 At any time prior to the termination or expiry of the Agreement, the Client may submit a written request for disengagement services and/or assistance with transitioning to a new provider. Unless these services are agreed, scoped and costed pursuant to a Change Request or a separate SOW, such services are provided in IVE's absolute discretion at IVE's then current rates and charges.
- 11.6 Termination of the Agreement does not affect the accrued rights or liabilities of either party.
- 12 FORCE MAJEURE**
- 12.1 Neither party will be responsible for any delay, non-performance or degradation of performance of any of the obligations under the Agreement caused by or resulting from a Force Majeure, except for an obligation to make any payment. The affected party will notify the other party as soon as reasonably practicable in the case such



an event causes a delay in the provision of the Services and the cause of the delay.

12.2 The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure is removed or has ceased.

12.3 If a party is prevented from carrying out its obligations under the Agreement pursuant to clause 12.1 for a period of 30 days, either party may terminate the Agreement immediately by providing notice to the other party, without prejudice to any of the rights of either party accrued prior to the date of termination.

### 13 DISPUTES

13.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this Agreement (a "dispute") prior to commencing any proceedings in any court or otherwise in respect of that dispute ("proceedings").

13.2 If a party requires resolution of a dispute it must do so in accordance with the provisions of this clause 13 and the parties acknowledge that compliance with those provisions is a condition precedent to any entitlement to claim relief or remedy by way of proceedings in respect of a dispute.

13.3 If a party requires resolution of a dispute it must immediately submit full details of the dispute to its managing director or equivalent officer (each called a "responsible party").

13.4 On submission of details of a dispute in accordance with clause 13.3 the parties must procure each of their responsible parties to meet and try, on a bona fide basis, to resolve that dispute.

13.5 If a dispute is not resolved within 20 Business Days of submission of the dispute in accordance with clause 13.3 or within such other longer period as they agree, the provisions of clauses 13.6 and 13.7 will apply.

13.6 A dispute must be submitted to mediation at the option of the party requiring resolution of that dispute in Sydney, NSW in accordance with the ACDC's standard rules before a mediator to be agreed. If the parties cannot agree on a mediator, the chief executive for the time being of the Australian Commercial Dispute Resolution Centre (ACDC) (or nominee) will be requested to appoint a mediator within 10 Business Days of the request.

13.7 A party may not commence proceedings in respect of a dispute unless that dispute is not

settled by mediation within 20 Business Days of submission to mediation or within such other longer period as the parties agree.

13.8 Each party will pay its own costs associated with this dispute resolution procedure unless the mediator determines otherwise.

13.9 While any dispute remains unresolved, the parties agree to continue to perform the Agreement to the extent that such performance is possible, given the nature of the dispute.

13.10 This clause 13 does not limit in any way a party's right to seek any form of equitable relief including, without limitation, injunctive relief.

### 14 CHANGE REQUESTS

14.1 The parties will follow the change request process described in this clause 14 to initiate and consider:

- (a) new Services that are not within the scope of a SOW; or
- (b) changes to the Services (including any changes to the nature or scope of the Services or to the timing or the delivery of the Services) which cannot be accommodated by another process in this Agreement, each being referred to in the Agreement as a "Change Request".

14.2 A Change Request must:

- (a) contain a detailed description of the proposed change;
- (b) detail the effect (if any) on the Services (including the functionality and performance of any deliverables);
- (c) detail impact on the Fees;
- (d) detail the impact to any agreed service levels; and
- (e) contain a timeline for implementation of the change, including any significant milestones.

14.3 Each party will cooperate with the other party as necessary to enable the preparation of a Change Request, including by providing information, documents and details.

14.4 The Client will, within a reasonable period of time from receipt of the relevant information provided pursuant to 14.2, notify IVE of its decision in respect of a Change Request including, without limitation, whether it:

- (a) accepts the Change Request;
- (b) wishes to renegotiate any aspect of the Change Request;
- (c) withdraws the Change Request, if initiated by the Client; or
- (d) does not accept the Change Request, if initiated by IVE.

- 14.5 A party must not unreasonably refuse (directly or indirectly) any Change Request by the other party.
- 14.6 Neither party has any obligation to proceed with any Change Request unless and until the parties have agreed in writing on the necessary variations to the Services, the Fees, any applicable timeframes and/or any other relevant terms of the Agreement to take account of the change.
- 14.7 Where:
- (a) the Change Request is relatively minor (in terms of cost and impact) and is fairly routine; or
  - (b) if agreed by the parties (agreement not to be unreasonably withheld), a truncated change request process (acceptable to both parties) may be adopted to deal with any particular Change Request.
- 14.8 IVE may charge for the time it spends on preparing and negotiating a Change Request which implement changes proposed by the Customer pursuant to clause 14.2 on a time and materials basis on IVE's rates set out in the SOW, or where none are specified, at IVE's standard hourly rate.
- 15 COMPLIANCE WITH MODERN SLAVERY AND ANTI-BRIBERY LAWS**
- 15.1 In performing its obligations under this Agreement, IVE will:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the *Modern Slavery Act 2018* (NSW);
  - (b) not engage in any activity, practice or conduct that would constitute a bribery offence under Part 7.6 of the *Criminal Code Act 1995* (Cth) if such activity, practice or conduct were carried out in Australia;
  - (c) have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance with parts (a) and (b) above.
- 15.2 IVE shall use reasonable endeavours to include in its contracts with its direct subcontractors and suppliers, provisions that are at least as onerous as those set out in clause 15.1.
- 16 NOTICES**
- 16.1 A notice or other communication to a party under this Agreement (**Notice**) must be:
- (a) in writing and in English;
  - (b) signed by the sender or a person authorised to sign on behalf of the sender; and
  - (c) addressed to that party in accordance with the details set out in the Statement of Work as varied by any notice;
  - (d) hand-delivered or sent by pre-paid post or by email to that address.
- 16.2 A notice under this Agreement will be deemed to have been given:
- (a) where the notice is delivered by hand, when delivered to the addressee;
  - (b) where the notice is sent by prepaid post, 3 Business Days after posting where the notice is sent from within Australia to an address within Australia, and 10 Business Days in any other case; and
  - (c) where the notice is sent by:
    - (i) facsimile, at the time denoted in an automated report produced by the sender's facsimile machine (in the absence of manifest error or tampering) which shows that the facsimile was sent in full; and
    - (ii) e-mail, at the time denoted in an automated receipt notification received by the sender (in the absence of manifest error or tampering) or, if that function is not enabled, upon acknowledgment of receipt by the other Party (by return e-mail or otherwise),
 but where that time is after 5.00pm in the place of receipt or on a day that is not a Business Day, the notice will be deemed to have been given at 9.00am on the next Business Day.
- 16.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17 GENERAL**
- 17.1 **Rebate Disclosure.** IVE may be the recipient of rebates and commissions as a result of volume based incentives and preferred supplier arrangements negotiated with some of its suppliers.
- 17.2 **Relationship.** This Agreement constitutes a relationship between the Client and IVE of principal and independent contractor. Without prejudice to clause 6.3(b), nothing in the Agreement shall constitute any relationship of agency, partnership or joint venture. Neither party, unless expressly stated in the Agreement, shall enter into or have authority to enter into

- any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party.
- 17.3 **Insurance.** During the Term and at all times that IVE performs the Services for the Client, IVE must take out and maintain with a reputable insurer, sufficient insurances relevant to the provision of the Services, including:
- (a) public risk and liability insurance in an amount of not less than \$10 million;
  - (b) professional indemnity insurance in an amount of not less than \$5 million; and
  - (c) Workers Compensation insurance in compliance with each State's (or Territory's) legislative requirements.
- 17.4 **Variation.** This Agreement may only be varied, modified, amended or added to in writing executed by the parties in the manner that the Agreement is executed.
- 17.5 **No Waiver.** No delay by a party in exercising any right under this document will operate as a waiver of that right nor will any waiver by a party of any right under this document operate as a waiver of any other right of that party, nor will any single or partial exercise of any right preclude any further exercise of that or any other right under this document.
- 17.6 **Counterparts.** This Agreement may be executed in two counterparts which, when taken together, will constitute one single Agreement between the parties.
- 17.7 **Severability.** If any provision of the Agreement is unenforceable it will be read down so as to be enforceable or, if it cannot be so read down, the provision (or where possible, the offending part) will be severed from the Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of the Agreement which will continue in effect.
- 17.8 **Survival.** The provisions of the Agreement which are capable of having effect after termination of the Agreement will remain in full force and effect following the termination of the Agreement.
- 17.9 **Entire Agreement.** This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of the Agreement.
- 17.10 **Notices.** If either party gives or is required to give a notice to the other party under the Agreement, that notice must be in writing and hand delivered, sent by pre-paid post or emailed to the address specified in the SOW.
- 17.11 **Use of logos.** Unless the Client expressly specifies otherwise, in writing, IVE may use and publish the Client's logo for marketing purposes and otherwise disclose that the Client is a customer of IVE.
- 17.12 **Aggregated Data.** IVE shall be permitted to use Aggregated Data for any purpose or disclose Aggregated Data to any third party.
- 17.13 **Governing Law.** This Agreement is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of that State.

## SCHEDULE 1

# Lasoo Product Terms

Marketing services associated with the Lasoo Website are provided by **LASOO PTY LTD ABN 67 122 895 318** of 350 Parramatta Road, Homebush NSW 2140 pursuant to the General Terms and the Product Terms set out below.

### 1 DEFINITIONS

1.1 In addition to the definitions set out in clause 1 of the General Terms, the following definitions also apply to these Product Terms:

**Campaign Information** means catalogue product images and descriptions provided by or on behalf of the Client to IVE for the provision of the Services which become available in the public domain as a consequence of those Services or otherwise; **Interaction/s** are a set of engagements that the user makes with the retailer content that implies a direct intent from the user to do something from the content belonging to the retailer. These consist of the following set of event triggers:

- (a) Catalogue open;
- (b) Store locate;
- (c) Offer pop up;
- (d) Page zoom;
- (e) Enlarge image;
- (f) Share offer (Email, Tweet, Facebook, Pinterest);
- (g) Buy Now;
- (h) Offer Details Click; and
- (i) Offer Print

**Lasoo Website** means the website located at [www.lasoo.com.au](http://www.lasoo.com.au) providing (among other things) an aggregated retail promotions web portal featuring multiple products and services supplied by third party vendors;

**Minimum Amount** means the amount (if any) stipulated in the SOW.

### 2 SERVICES

2.1 IVE provides certain marketing services associated with the Lasoo Website.

2.2 IVE will provide to the Client:

- (a) a standard set of reports to the Client providing information as to Lasoo Website user access to the Client's product offers; and

- (b) a telephone support service for Client queries in relation to the Services operating from 8:30am to 5:30pm AEST on business days.

### 3 FEES

3.1 The Fees for the Service may include the following:

- (a) **Implementation Fee** - the Client may be charged a one off implementation fee in order to configure portions of the Service, including adapting to non-standard data feeds;
- (b) **Interaction Fee** - the Client is charged a fee when the Lasoo Website user conducts an Interaction;
- (c) **Per Page Fee** - the Client is charged a fee when using the Universal Catalogue service which is implemented into the Client website; and
- (d) **Modification Fee** - the Client may be charged this additional fee if modifications are required outside of IVE's daily website update routine.

3.2 Minimum Amount:

- (a) IVE may invoice the Client and the Client will pay IVE for Fees in advance, so that the Client's account with IVE is at all times in credit by an amount not less than the Minimum Amount; and
- (b) Each IVE invoice will indicate to the Client:
  - (i) the amount of the credit applied towards the Fees in the invoice; and
  - (ii) the amount the Client must pay to maintain the Minimum Amount.
- (c) Subject to the Terms, any unused part of the Minimum Amount is refundable on termination and no interest is payable on any amount to the credit of the Client's account with IVE.

3.3 An amendment to the Fees may be made by IVE giving at least 30 days' written notice to the Client. If the Client does not accept the Fees, the Client may terminate the Services

by giving IVE 30 days' notice of termination. The Client will be liable for any amounts owing to IVE for Services provided up to and including the date of termination.

#### **4 ADVERTISEMENTS**

4.1 Advertising material, which includes ad content, information and URLs ("Creative") must be received at least 5 working days prior to the start date of any scheduled advertising campaign. The content of Creative is solely the responsibility of the Client.

4.2 If Creative is received by IVE after this due date and a campaign is delayed as a result, the publication of the advertisement will be deemed to have commenced on the scheduled commencement date.

4.3 Any Creative must comply with IVE's reasonable specifications set out in a SOW.

4.4 The Client may at its own expense track delivery and or serve ads through a third party ad server that has been authorised by IVE. To be authorised, the Client must provide name of the ad server and any replacement ad server to IVE, which is subject to IVE's approval. The Client is responsible for any deviations caused by its or its third party's ad server's inability to serve ads.

4.5 It is the Client's responsibility to arrange and manage redirects with third party ad servers and provide such third party with the Creative and lead time requirements. IVE will not compensate the Client where campaigns are affected or delayed in any way by third party ad server redirect problems. IVE may, in its absolute discretion, remove any redirects from its network which are delayed in serving advertisements.

4.6 All click-through URL's must enable the browser's 'back' feature to allow users to return to the Lasoo Website.

4.7 The Client must promptly, without delay:

- (a) check any proofs of Creative provided by IVE for errors or omissions and confirm accuracy and content; and
- (b) notify IVE of any errors in the proofs or in any Creative that is published for it by IVE.

4.8 IVE reserves the right to:

- (a) modify the positioning, placement or format of any advertisement;
- (b) refuse to publish any advertisement;
- (c) withdraw any advertisement from publication at any time; or
- (d) amend any advertisement particularly if it believes that the publication would be offensive, in breach of any law, in breach of any pre-existing agreement with a third party or in breach of a third party's rights. If IVE amends an advertisement, it will not reduce the price agreed for publication of the advertisement.

4.9 The Client must not, and must not authorise any party to:

- (a) generate automated, fraudulent or otherwise invalid impressions, inquiries, conversions, clicks or other actions; or
- (b) use any automated means or form of scraping or data extraction to access, query or otherwise collect advertising related information from the Lasoo Website.

#### **5 PERMITTED USE OF DATA AND IMAGES**

5.1 IVE shall be permitted to use Campaign Information for any purpose or disclose Campaign Information to any third party. The foregoing shall not limit in any way IVE's confidentiality or privacy obligations under the Agreement.

## SCHEDULE 2

# Letterbox Product Terms

Letterbox distribution services are provided by **IVE DISTRIBUTION PTY LTD ABN 13 091 456 567** of 350 Parramatta Road, Homebush NSW 2140 pursuant to the General Terms and the Product Terms set out below.

### 1 DEFINITIONS

1.1 In addition to the definitions set out in clause 1 of the General Terms, the following definitions also apply to these Product Terms:

**Campaign Information** means catalogue product images and descriptions provided by or on behalf of the Client to IVE for the provision of the Services which become available in the public domain as a consequence of those Services or otherwise.

### 2 ACCEPTANCE OF ORDERS AND QUOTATIONS

2.1 All quotations are valid only for a maximum period of thirty (30) days and IVE may, in its discretion, refuse any purported acceptance by the Client which occurs after that time.

### 3 PERFORMANCE OF SERVICES

3.1 The Client acknowledges and accepts that IVE may carry out Services for other customers at the same time as providing Services to the Client.

### 4 LETTERBOX DISTRIBUTION SERVICES

4.1 IVE does not guarantee full distribution of all Client Materials to all households within the agreed distribution areas. The Client acknowledges and agrees that:

- (a) factors beyond IVE's control such as health and safety issues, hazardous conditions, adverse weather conditions, accessibility of letterboxes, signs on letterboxes ("no junk mail" or similar notices), and the independent nature of IVE's distribution contractors, may adversely affect distribution;
- (b) at any given time, a particular agreed distribution area may not be fully covered or covered at all, by IVE's distribution network and therefore some Client Materials may not be delivered in that area;
- (c) where Client Materials are broken down or separated into smaller portions by IVE

for distribution, IVE does not guarantee that every household in the distribution area will be covered or that there will not be an undersupply or oversupply of Client Materials; and

- (d) IVE's dwelling counts by suburb or distribution area are also estimates only, may not be accurate, and may change from time to time.

4.2 Client Materials for distribution may be distributed together with and may be bundled with, materials of other customers of IVE.

4.3 IVE does not guarantee the outcome of any marketing campaign to which the distribution of Client Materials forms part.

4.4 Excess stock of Client Materials is not controlled within IVE's systems and therefore cannot be returned to the Client. IVE reserves the right to recycle any such Client Materials.

4.5 IVE does not guarantee when delivery and distribution shall take place. The specific days and times of the provision of Services during the period allocated for the Services shall be at the absolute discretion of IVE.

4.6 IVE's Fees are all inclusive, accepted and paid by the Client subject to the limitations set out in clauses 4.1, 4.2, 4.3, 4.4, and 4.5 above and non-refundable except as provided by clause 10 of the General Terms. The Client further acknowledges and agrees that these limitations have been factored into IVE's charges payable for the Services.

4.7 All Client Materials must be delivered to IVE within the timeframes specified by IVE, to the delivery address specified by IVE, and in any event not less than five (5) working days before distribution is to commence. Any additional costs incurred by IVE as a result of a failure to comply with this clause will be charged to and paid by the Client.

4.8 Where any Client Materials are pre-delivered and awaiting distribution, a storage fee may be charged and must be paid by the Client. Where any Client Materials are not removed from IVE's premises within three (3) months of initial delivery to IVE, IVE may, at the Client's cost, arrange for removal, destruction or disposal of such Client Materials as IVE sees fit.

4.9 IVE reserves the right to change the scope and size of distribution areas at any time or refuse, suspend or terminate the Services where the Client has failed to meet its obligations under the Agreement.

## 5 PRINT AND DESIGN SERVICES

5.1 This clause 5 applies to a design and/or print service forming the whole or part of the Services provided by IVE.

5.2 In designing materials for the Client, IVE will submit to the Client for approval prior to printing, publishing, distributing or issuing those materials, a draft of those materials ("Proof"). The Client must promptly review, check and verify the design and content of the Proof.

5.3 The Client releases IVE from and against all liabilities, loss, damage, demands, claims, costs and expenses caused by any inaccuracy or other defect in any Client Materials printed by IVE or which were present in any Proof reviewed by the Client.

5.4 The Client indemnifies IVE and its employees, agents and contractors against all liabilities, loss, damages, demands, claims, costs and expenses incurred by them as a result of the publication, distribution or issuing of the printed materials including any reliance placed by any person on their contents.

## 6 UNADDRESSED MAIL/AUSTRALIA POST

6.1 Where the Services ordered include addressed and unaddressed mail services using Australia Post, the Client is responsible for any errors in data provided to IVE (and all consequences arising there from) and acknowledges that IVE has no control or responsibility for the Client Materials after providing to Australia Post for delivery.

## 7 CANCELLATION OR VARIATION OF SERVICES

7.1 An order for the provision of Services may not be cancelled, varied or postponed, except

where the prior written consent of IVE is obtained.

7.2 Where this consent is granted, and an order is cancelled, varied or postponed more than ten (10) days prior to the commencement of the provision of Services (or where relevant, part thereof) the Client shall be liable for costs incurred by IVE in connection with any Services provided prior to the cancellation, variation or postponement (including but not limited to stock handling and storage, print or freight).

7.3 Where this consent is granted and an order is cancelled, varied or postponed less than ten (10) days prior to the commencement of the provision of Services (or where relevant, part thereof) a minimum fee of 25% of the agreed or quoted price in respect of the Services shall be payable by the Client, in addition to fees due and owing for Services provided prior to or as a result of the relevant cancellation, variation or postponement. This fee is not a penalty but is a genuine pre-estimate of damages incurred by IVE.

## 8 RISK IN CLIENT MATERIALS

8.1 Notwithstanding delivery of Client Materials by the Client to IVE all risk in the Client Materials shall remain with the Client and the Client shall maintain adequate insurances. Without limiting the generality of the foregoing, IVE is not responsible for any loss of or damage to Client Materials which are delivered outside of the timeframes specified by IVE, and/ or, to a IVE delivery address which is not the address specified by IVE.

## 9 RECEIPT OF MATERIALS

9.1 IVE reserves the right to refuse to provide the Services in respect of defective or otherwise unsuitable Client Materials, including without limitation Client Materials which in IVE's opinion breach any Laws or have unacceptable risks or hazards associated with distribution, without liability to the Client. Where Client Materials are rejected by IVE, and without limiting any other remedies available to IVE, any additional costs incurred by IVE as a result will be charged to and paid by the Client, including delivery, storage and disposal costs.

9.2 The Client must ensure that:

- (a) All Client Materials are counted and bundled in such a manner to ensure safe and efficient handling for distribution by IVE and otherwise in accordance with IVE's specifications. IVE will not verify material counting and relies on the Client's representations as to counting. Where there is an error some targeted households may not receive the relevant Client Materials.
- (b) The contents and quantity of each container or package of Client Materials are accurately and legibly described on the outside of each such container, and clearly identify any differences between contents, including without limitation, identifying where there are different versions of similar Client Materials. IVE will not inspect and verify package contents.
- (c) All Client Materials delivered to IVE are accompanied by a delivery docket showing the Client's name, weight, description (including an adequate description if there are differing versions of similar Client Materials delivered) and quantity of material and contract number.

9.3 Where the Client does not comply with clause 9.2, and without limiting any other remedies available to IVE, any additional costs and liability incurred by IVE as a result will be charged to and paid by the Client.

## 10 PAYMENT TERMS AND FEES

10.1 Payment of the Fees is required in the time specified in IVE's quotation or if the time for payment is not so specified, then notwithstanding clause 4.2 of the General Terms, the Client will make payment within seven (7) days from the date of IVE's invoice. All accounts are to be settled in full.

10.2 As long as any monies on any account whatsoever remain outstanding to IVE, IVE shall be entitled to claim a possessory lien over any materials belonging to the Client that are in the possession of or come into the possession of IVE.

## 11 CLAIMS

11.1 If the Client is dissatisfied with any aspect of the Services then it should provide a substantiated written claim to IVE within 14 days of completion of the Services. The

nature and frequency of letterbox distribution services makes it impractical to conduct a meaningful investigation of any claim which is made after this time.

## 12 PERMITTED USE OF DATA AND IMAGES

12.1 IVE shall be permitted to use Campaign Information for any purpose or disclose Campaign Information to any third party. The foregoing shall not limit in any way IVE's confidentiality or privacy obligations under the Agreement.