

SCHEDULE 2



ABN 90 408 357 571

ONLINE ADVERTISING CONTRACT (TERMS & CONDITIONS)

This Agreement is dated *[DAY] [MONTH] [YEAR]*

BETWEEN:

Geelan Media, (ABN 90 408 357 571) the 'publisher' of 12 Robertson Rd, Kinglake, Victoria, Australia 3763;

AND

[CLIENT], *[ABN xx xxx xxx xxx]* the 'advertiser(s)' of *[address]*.

The following terms ('Terms') apply to all advertising services provided by **Geelan Media**, ABN 90 408 357 571, the ('Publisher') to **The Advertiser(s)**.

All Advertising is accepted subject to the conditions set out in the **Publishers Online Advertising Contract** (this document), the '**Advertising Rate Card**', the '**Website Advertising Request**' and **invoices and/or statements raised**.

RECITALS:

Geelan Media owns and operates the website *Kinglake Ranges News*;

The Advertiser wishes to purchase advertising space 'advertising content' on *Kinglake Ranges News*, operated by the publisher, **Geelan Media**.

1. OPERATIVE PROVISIONS:

Definitions and Interpretation

In this Agreement, unless the context indicates the contrary:

Advertising Content means the content of advertisements submitted by (or on behalf of) the Advertiser to Geelan Media in an Advertising Request including but not limited to all text, graphics, icons, photographs and URLs;

Confidential Information means all information provided by one party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding:

- (a) Information that enters the public domain or is disclosed to a party by a third party, other than through a breach of this Agreement; and
- (b) Information developed independently by a party

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Fees means the advertising fees detailed in Schedule 1, '**Advertising Rate Card**'.

Force Majeure Event means any event beyond the control of the relevant party.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or any other similar tax;

Intellectual Property (IP) Rights means all intellectual property rights, including all copyright, patents, trade marks, design rights, moral rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

Retrievable Media means a hard drive, portable hard drive, removable media or other offline digital data storage device.

Website means '**Kinglake Ranges News**' (<http://www.kinglakerangesnews.com>) operated by **Geelan Media**, ABN 90 408 357 571 located at 12 Robertson Road, Kinglake, Victoria, Australia, 3763.

Unless the context requires otherwise:

(a) a reference to a person includes a corporation or any other legal entity;

(b) the singular includes the plural and vice versa;

(c) headings are for convenience and do not form part of this Agreement or otherwise affect the interpretation of this Agreement;

(d) the term "includes" (or any similar term) means "includes without limitation"; and

(e) a reference to any statute includes references to any subsequently amended, consolidated or re-enacted version of that statute and all delegated legislation or other statutory instruments made under it.

2. ADVERTISING REQUESTS

(a) The Advertiser must complete and submit an **Advertising Request** for advertising space on **Kinglake Ranges News**;

(b) All information in the **Advertising Request** must be complete and accurate and must comply with all laws, regulations and relevant industry codes of the Commonwealth of Australia, the State of Victoria, Australia and subordinate authorities.

(c) Advertising requests **must not request publication or linking to content which is illegal** or may bring **Geelan Media** into disrepute. This includes, but is not limited to, content of a racist, sexist, class – based, sexuality, sexually explicit or contain, or link to, discriminatory material.

(d) **Geelan Media** may reject or cancel any advertising request at any time at its sole discretion.

(e) By submitting advertising requests, the **Advertiser** authorises **Geelan Media** to publish the **Advertising Content** on **Kinglake Ranges News** and social media (Facebook, Google, Twitter et. al.) used by **Kinglake Ranges News**.

3. ADVERTISING POSITIONING, SIZE AND STYLE

The Advertiser acknowledges and agrees that **Geelan Media** retains complete editorial control over the **Kinglake Ranges News**. **Geelan Media** may at its sole discretion:

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- (a) refuse to include any **Advertising Content** at any time;
- (b) remove any **Advertising Content** at any time;
- (c) position **Advertising Content** as it sees fit; and
- (d) label any **Advertising Content** as an "**advertisement**" or "**advertorial**" for clarification and stipulate any other conditions to ensure that it is clear that the **Advertising Content** is an advertisement independent of editorial content.

4. PAYMENT

- (a) The Licensee "**the advertiser**" must pay the Licensor '**the publisher**' the Fees as set in Schedule 1, '**Advertising Rates Card**' or rates as agreed to as per the Licensee's 'Advertising Request' or other arrangement agreed to by both parties to the 'advertising contract'.
- (b) The Licensor may invoice the Licensee for the Fees on a monthly (28 day(s)) basis in arrears.
- (c) Invoices are **payable within 28 days of the date of the invoice**. If the Licensee has not paid an invoice in full by that date, the Licensee must **pay interest on any unpaid amount from that date until the date of payment, to be calculated on a daily basis at a rate of 1.5 percentage points (1.5%) over the current cash rate set by the Reserve Bank of Australia** (or, if that rate ceases to exist, a comparable rate nominated by the Licensor).
- (d) The **Advertiser(s)** must pay for advertising by either pre-payment or by account (where an account has been established and approved).
- (e) **Advertiser(s)** may pre-pay by providing current credit card account, security numbers (CVC) and expiry details. The Customer(s) agrees that Geelan Media will keep these details on file.
- (f) **Advertiser(s)** may alternatively pay by cheque, which the Advertiser(s) warrants will be cleared immediately. The Advertiser(s) warrants to also immediately pay Geelan Media's additional bank, taxes, courier and administration charges for any dishonoured and/or declined cheque(s).
- (g) **Advertiser(s)** can pay by direct deposit, credit card or cheque.
- (h) **Advertiser(s)** account details will not be disclosed by Geelan Media to any third-party unless required by law or court order.
- (i) **Advertiser(s)** account details will be stored on **retrievable media** available only to Geelan Media's employees and agents.
- (j) **Advertiser(s)** must pay:
 - (i) for Advertising in accordance with the size of the Advertising material lodged by the **Advertiser(s)**, or the Advertising space ordered by the **Advertiser(s)**, whichever is the greater;
 - (ii) the full price for Advertising notwithstanding:
 - (iii) regardless of the fact that **Geelan Media** has exercised its right to vary the format or placement of the Advertising; and
 - (ii) any error or omission in the Advertising.

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5. GOODS AND SERVICES TAX (GST)

(a) All amounts payable under this Agreement are expressed exclusive of GST.

(b) In respect of any taxable supply, the Advertiser must pay to **Geelan Media** an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Fees, subject to the receipt by the **Advertiser** of a valid tax invoice.

6. CONFIDENTIALITY

(a) A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.

(b) A party may:

(i) use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and

(ii) disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.

(c) Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information while it is in the receiving party's possession or control.

(d) Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of Geelan Media's request or on termination of this Agreement for any reason.

7. WARRANTIES

The **Advertiser** represents and warrants that:

(a) it is fully authorised to publish, and to authorise **Geelan Media** to publish all **Advertising Content**;

(b) the **Advertising Content** and the publication of the **Advertising Content** on *Kinglake Ranges News* does not and will not, at any time, infringe any Intellectual Property (IP) Right, trade mark or copyright nor any right of confidence or other right of any person;

(c) all **Advertising Content** will comply with all applicable laws, regulations and relevant industry codes;

(d) all advertised products and services will match the advertised description and be available in the manner, at the price and for the time period advertised; and

(e) each website located at any URL shown or embedded in any Advertising Content:

(i) is controlled and operated by or on behalf of the Advertiser;

(ii) is functional and accessible; and

(iii) at all times operates in compliance with all applicable laws, regulations and relevant industry codes.

8. LIABILITY

(a) To the full extent permitted by law, **Geelan Media** excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages.

(b) To the full extent permitted by law, **Geelan Media** excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.

(c) **Geelan Media** total aggregate liability for all claims relating to this Agreement is limited to the Fees payable under this Agreement.

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(d) Either party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.

(e) This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, **Geelan Media** limits its liability in respect of any claim to, at **Geelan Media's** option to:

(i) in the case of goods:

- (a)** the replacement of the goods or the supply of equivalent goods;
- (b)** the repair of the goods;
- (c)** the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d)** the payment of having the goods repaired; and

(ii) in the case of services:

- (a)** the supply of the services again; or
- (b)** the payment of the cost of having the services supplied again.

9. INDEMNITY

The **Advertiser** indemnifies and holds **Geelan Media** its agents, affiliates, subsidiaries, directors, officers, employees, consultants and contractors (collectively Indemnified Persons) harmless from and against any and all costs, claims, losses, damages, liability and expense (including all reasonable legal fees) which may be made or brought against or suffered or incurred, directly or indirectly by the Indemnified Persons in connection with:

- (a)** any breach of this Agreement by the **Advertiser**;
- (b)** any act of fraud or wilful misconduct by or on behalf of the **Advertiser**; or
- (c)** the publication of, or any act or omission in relation to, the **Advertising Content** or any website represented by a URL included or embedded in the Advertising Content.

10. TERMINATION

A party may terminate this Agreement by written notice to the other if any of the following events has occurred in respect of the other party:

- (a)** a material breach of this Agreement which:
 - (i)** is not remediable; or
 - (ii)** if capable of remedy, is not remedied by the other party within 14 days of written notice;
- (b)** an insolvency event occurs, other than an internal reconstruction with notice to the other party.

11. CONSEQUENCES OF TERMINATION

If this Agreement is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available:

- (a)** the parties are immediately released from their obligations under the Agreement except those obligations in clauses 6 to 9 and any other obligations that, by their nature, survive termination;
- (b)** each party retains the rights and claims it has against the other; and
- (c)** the **Advertiser must immediately pay all outstanding Fees to the publisher within 28 days of termination of this agreement, the 'contract'.**

12. NOTICES

(a) The parties' contact details for notices under this Agreement are as follows, or as otherwise notified by one party to the other from time to time:

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Geelan Media, 12 Robertson Road, Kinglake, Victoria, Australia 3763, Phone (mobile) 0402 521 562, the 'publisher'

AND

[Company Name] [Address] [Phone]

(b) All notices must be in writing and can be given by:

- (i) hand delivery during normal business hours;
- (ii) registered post; or
- (iii) email to ashley_geelan@bigpond.com within 2 business days by one of the means listed above.

(c) A notice is deemed to be given and received:

- (i) if delivered in accordance with paragraph (b)(i), on the next business day after the day of delivery;
- (ii) if sent in accordance with paragraph (b)(ii), 5 clear business days after the day of posting;
- (iii) if sent in accordance with paragraph (b)(iii), on the next business day after transmission.

13. GENERAL

(a) The **Advertiser** must not assign or otherwise deal in any other way with any of its rights under this Agreement without the prior written consent of Geelan Media.

(b) Nothing contained in this Agreement creates any relationship of partnership or agency between the parties.

(c) If a provision of this Agreement is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.

(d) Each party must at its own expense do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.

(e) This Agreement (and any documents executed in connection with it) is the entire agreement of the parties about its subject matter and supersedes all other representations, arrangements or agreements. Other than as expressly set out in this Agreement, no party has relied on any representation made by or on behalf of the other.

(f) This Agreement may be amended only by a document signed by all parties.

(g) A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.

(h) This Agreement may be executed in counterparts which will be taken together to constitute one document.

(i) A party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.

(j) Without limiting any other right to terminate under this Agreement, if a Force Majeure Event affects a party's performance under this Agreement for more than thirty (30) consecutive days, the other party may immediately terminate this Agreement by written notice.

(k) All stamp duties and other government charges in relation to this Agreement must be paid by the Advertiser.

(l) This Agreement is governed by the laws of Victoria, Australia and each party submits to the jurisdiction of the courts of Victoria.