

## Schedule of Amendments

On and from the Amendment Date, the Program Agreement is amended by:

1. amending the Background clause to read:

### **Background**

The Agency has engaged CampaignAgent to manage its styling, property presentation products and services and vendor paid advertising (VPA) on behalf of the Agency's clients (**Services**) in accordance with this agreement. In exchange for the Agency exclusively offering the Services to its Vendors, CampaignAgent will fund Vendors' Approved Advertising Schedules for their marketing campaign on the terms and conditions set out in this agreement.

2. including or amending (as applicable) the following defined terms in clause 1.1:

**Agency Vendor Staging Agreement** means the agreement between a Vendor and the Agency with respect of the Staging Total substantially in the form of Schedule 3.

**Approved Staging Schedule** means a Staging Schedule that has been approved by the Vendor and that has been submitted to CampaignAgent together with all required documentation.

**Campaign Start Date** means the expected date of the staging works or photography booking for a Property Listing set out in a VPAPay Agreement.

**CampaignAgent Pay Later/Marketing Payment Date** means the date that CampaignAgent will pay the Agency the Advertising Total for each Approved Advertising Schedule in respect of a Pay Later Option marketing campaign for which a Vendor has executed a VPAPay Agreement being the 25<sup>th</sup> day of the month following the Pay Now Date/Campaign Start Date. If the Campaign Start Date is not a Business Day, payment will be made on the Business Day immediately following to that day.

**CampaignAgent Staging Payment Date** means the date that CampaignAgent will pay the Agency the Staging Total for each Approved Staging Schedule in respect of a Pay Later Option marketing campaign for which a Vendor has executed a VPAPay Agreement and Agency Vendor Staging Agreement being the Business Day immediately following the Campaign Start Date.

**Pay Now Total** means the amount specified as the "Pay Now Total" in the VPAPay Portal, being an amount equal to the Advertising Total and Staging Total (if applicable).

**Services** means the services provided by CampaignAgent to a Vendor in connection with the Advertising Schedule and Staging Schedule (if applicable) in accordance with a VPAPay Agreement, including the payment to the Agency of the Advertising Total and Staging Total (if applicable), management of changes to the Advertising Schedule or Staging Schedule in accordance with a VPA Change Authorisation and the deferral of the repayment of the Total Authorised Amount to the Pay Later Date.

**Staging Schedule** means a list of styling and property presentation products and services to be given to a Vendor by the Agency or a third party supplier (as the case may be) including pricing to assist with the sale of a Vendor's property.

**Staging Total** means the total dollar value of the styling and property presentation products and services as set out in a Staging Schedule excluding the VPAPay Fees and Charges and any credit card surcharge fees (where incurred).

**Total Authorised Amount** means the total dollar value of an Approved the Advertising Schedule Total and the Staging Total (if applicable) that the Vendor, the Agency and CampaignAgent have agreed to spend on styling, property presentation and marketing for a specific Property Listing (as varied by any VPA Change Authorisation) and includes the VPAPay Fees and Charges and credit card surcharge fees (where incurred).

**Unspent Funds** means in relation to Property Listing, any funds that have not been spent by the Agency in respect of an Approved Advertising Schedule or Approved Staging Schedule.

**VPAPay Interest Charge** means the amount of interest set out in Schedule 2 of this agreement charged by CampaignAgent to a Vendor for the payment deferral of the Total Authorised Amount from the CampaignAgent Marketing Payment Date to the Pay Later Date.

3. amending clause 3.11 to read:

In the event of a change to the Approved Advertising Schedule or Approved Staging Schedule, the Agency will provide and submit a VPA Change Authorisation using the VPAPay Portal.

4. amending clause 3.15 to read:

The Agency acknowledges and agrees that it is solely responsible for arranging and providing, or procuring the provision of, a Vendor's advertising campaign and styling campaign as set out in an Advertising Schedule and Staging Schedule. The Agency agrees to indemnify CampaignAgent and keep CampaignAgent indemnified against any Liability or Claim that CampaignAgent may pay, suffer or incur in respect of the advertising and styling services or products provided to a Vendor in connection with an advertising campaign.

5. amending clause 4 to read:



### **CampaignAgent's payment obligations**

4.1 For Pay Now Option marketing campaigns, the Agency agrees and acknowledges that a Vendor is required to pay CampaignAgent the:

(a) Advertising Total for each Approved Advertising Schedule; and

(b) Staging Total for each Approved Staging Schedule.

in each case, on or before the Pay Now Date.

4.2 CampaignAgent will process payment of the Advertising Total and Staging Total (if applicable) for each Approved Advertising Schedule and Approved Staging Schedule into the Agency's Bank Account within 24 hours of receipt of the Advertising Total and Staging Total from a Vendor. In no circumstances, is CampaignAgent required to pay the Agency the Advertising Total or Staging Total for a Pay Now Option marketing campaign if CampaignAgent has not received the Advertising Total ~~in full~~ and Staging Total (if applicable) from a Vendor.

4.3 For Pay Later Option marketing campaigns, CampaignAgent will pay the Agency the:

(a) Advertising Total into the Agency Bank Account for each Approved Advertising Schedule for which a Vendor has executed a VPAPay Agreement on the CampaignAgent ~~Pay Later~~ Marketing Payment Date. ~~If; and~~

(b) Staging Total into the Agency Bank Account for each Approved Staging Schedule for which a Vendor has executed a VPAPay Agreement and Agency Vendor Staging Agreement on the CampaignAgent Pay Later ~~Staging Payment Date is not a Business Day then payment will be made on the Business Day immediately preceding that day.~~

6. amending clause 5.3 to read:

~~The~~ Subject to clause 25, the Agency must transfer the Total Authorised Amount from the Agency Trust Account to the CampaignAgent Bank Account on the earlier of the day of:

(a) Successful Settlement; or

(b) Early Deposit Release.

7. amending clause 6.1 to read:

The parties agree that the Agency will be solely responsible for processing, providing payment, and being subsequently liable to a Vendor for all refunds and/or credits that relate to an Approved Advertising Schedule, an Approved Staging Schedule and the Total Authorised Amount. In no circumstances will CampaignAgent be liable to the Agency or Vendor for any such refunds and/or credits relating to an Approved Advertising Schedule ~~or an Approved Staging Schedule.~~

8. amending clause 7.1 to read:

If a Vendor elects the Pay Now Option for their marketing campaign, the Pay Now Total is required to be paid by the Vendor to CampaignAgent in full by the Pay Now Date. In no circumstances, is CampaignAgent required to pay the Agency the Advertising Total or Staging Total (if applicable) for a Pay Now Option marketing campaign unless it has received the Advertising Total and Staging Total (if applicable) in full from a Vendor.

9. amending clause 8.1 to read:

(a) Where a Vendor has elected the Pay Later Option for their marketing campaign relating to the relevant Property Listing, the Agency must within 48 hours of the Pay Later Due Date:

(i) provide CampaignAgent with a statement detailing the final amount owing by the Vendor for advertising, marketing and styling services provided in relation to the relevant Property Listing; and

(ii) make any outstanding payment owed by the Agency to CampaignAgent including any Unspent Funds in relation to the advertising, marketing and styling services provided in relation to the relevant Property Listing.

(b) Where a Vendor has elected the Pay Now Option for their marketing campaign relating to the relevant Property Listing, the Agency must make any outstanding payment owed by the Agency to the Vendor including any Unspent Funds in relation to the advertising, marketing and styling services provided in relation to the relevant Property Listing.

10. amending sub-clause (e) and including a new sub-clause (f) in clause 12.1:

(e) each Vendor has provided their signature on or otherwise approved the VPAPay Agreement; and

(f) the Staging Total represents the true cost of the styling and/or property presentation products and services.

11. amending clause 12.2 to read:

With respect to each Pay Now Option marketing campaign entered into between the Agency and a Vendor, the Agency warrants and represents that CampaignAgent has no liability to the Agency in respect of a Pay Now Option



marketing campaign unless and until it has received the Advertising Total and Staging Total (if applicable) in full from a Vendor.

12. including a new clause 25 to read:

**25. Agency payment obligations – Withdrawal or sale prior to CampaignAgent Marketing Payment Date**

- 25.1 The Agency acknowledges and agrees that the Staging Total is a loan by CampaignAgent to the Agency on and from the CampaignAgent Staging Payment Date until the CampaignAgent Marketing Payment Date.
- 25.2 The Agency acknowledges and agrees that the loan between the Agency and a Vendor will be governed by the terms of the Agency Vendor Staging Agreement substantially in the form set out in the Schedule 3. You agree and authorise us to present the Agency Vendor Staging Agreement in the VPAPay Portal to Vendors who have entered a Staging Total in their VPAPay Application and agree to comply with the terms of each Agency Vendor Staging Agreement.
- 25.3 Despite any other clause of this agreement, in the event that a Vendor Withdraws their Property, enters into an unconditional contract of sale to sell the Property or terminates their Agency Vendor Staging Agreement prior to the CampaignAgent Marketing Payment Date, then the Agency:
- (a) is liable for and must repay CampaignAgent the Staging Total in respect of each Approved Staging Schedule within 2 Business Days; or
- (b) must take all steps reasonably required to assign its rights under an Agency Vendor Staging Agreement including signing a deed of assignment and providing a Vendor with a notice of assignment in a form agreed by CampaignAgent acting reasonably. Subject to the Agency assigning its rights under an Agency Vendor Staging Agreement in accordance with the clause, the Agency will not be liable for repaying the Staging Total to CampaignAgent.

13. amending Schedule 2 to read:

<b>Fee / Charge</b>	<b>Amount</b>
VPAPay Service Fee	4.9% of the <u>combined</u> Advertising Total <u>and Staging Total</u>
VPAPay Late Payment Fee	\$5.00 per 30 days if the Total Authorised Amount is not paid by the Pay Later Due Date (capped at 0.1% of the <u>combined</u> Advertising Total <u>and Staging Total</u> )
VPAPay Interest Charge	1.0% of the <u>combined</u> Advertising <u>Total and Staging</u> Total for deferment until the Pay Later Date. Where payment is made before the Pay Later Date the interest charge will be reduced in proportion to the number of days that payment deferral was provided

**Note:** the VPAPay Service Fee and any VPAPay Late Payment Fee will not, together, exceed 5.0% of the Advertising Total.

14. including a new Schedule 3 to read:

**Schedule 3 – Agency Vendor Staging Agreement**

Between [insert] ACN [insert] of [insert] (we/us/our) and the person(s) listed in this contract below (you/your). By signing this contract you agree to the terms and conditions contained within it.

Property Address: \_\_\_\_\_

Agreement Date: \_\_\_\_\_

Full Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Signature: \_\_\_\_\_

Advertising Total: \_\_\_\_\_

Campaign Start Date: \_\_\_\_\_

Expiry Date\*: \_\_\_\_\_

\*If this date falls on a day that is not a Business Day, then the Expiry Date is the Business Day immediately before.



## **TERMS AND CONDITIONS**

### **1. SCOPE OF THIS CONTRACT**

#### **1.1 About this contract**

- (a) You, and/or an entity you represent, have agreed, to incur staging and property presentation, marketing and advertising expenses (**Advertising Total**) in connection with the sale of the Property. The Advertising Total is set out in the Application.
- (b) By signing the Application (which forms part of this contract), you acknowledge that:
  - (i) you agree to be bound by these terms and conditions and, if there is more than one of you, you agree to be bound both separately on your own and jointly with each of you;
  - (ii) if there is more than one of you, we may elect to enter into this contract with only one, some or all of you; and
  - (iii) subject to us accepting this contract by giving you written notice it will form a binding agreement between you and us in relation to how we will pay the Advertising Total to your suppliers on your behalf.

#### **1.2 Services**

- (a) Subject to you providing us with all necessary documentation and anything else we reasonably require, we will arrange to pay the Advertising Total set out in your Application to your suppliers on your behalf on the Campaign Start Date.
- (b) In return, you agree to pay us the Advertising Total set out in your Application, by the Due Date under clause 3 and to comply with your obligations under this contract.

#### **1.3 What is not covered by this contract**

This contract does not cover the costs of our commission or other costs associated with the sale of the Property. You authorize us to book and deliver the advertising products and all other services with suppliers (including providing information about you to) relating to the sale of the Property.

### **2. GENERAL TERMS AND CONDITIONS**

#### **2.1 Our obligations and liabilities**

- (a) To the extent permitted by law, we give no condition, warranty or undertaking, and we make no representation to you, about the condition or suitability of other suppliers' products and services.
- (b) We are not liable for any actions, omission, negligence or breach of any contract or law of any external company or any loss that you may suffer, or any claim that you may have or bring against an external company, in respect of products or services provided by that company or otherwise.
- (c) You acknowledge that the third-party provider is solely liable in the event of a staging or advertising error or any other failure or defect in relation to the staging products and services relating to the sale of the Property. Any amounts owed to us under this contract are not impacted by any staging or advertising error, or any other claims you may have in connection with any actions, omissions, negligence or breach of any contract or law by any external entity.

- (d) If you are a consumer as defined under the Competition and Consumer Act 2010, and for the purposes of Australian Consumer Law, we are required to make certain guarantees regarding the supply of the services (including guarantees as to the acceptable quality, fitness for purpose, due care and skill) and we make those guarantees to the extent we are required by law to do so. If these guarantees are not required to be made, we do not make them. Where the services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability for failure to comply with a consumer guarantee is hereby limited, at our option, to the supply of the services again or the payment of the cost of having the services supplied again.
- (e) You indemnify us against any loss or claim we may suffer due to your material breach of this contract, your negligence in relation to this contract, or otherwise due to your acts or omissions, with our recourse to such indemnity to be limited to the amount which we would otherwise be able to recover at general law for your breach of contract or negligence in respect of this contract.
- (f) Without limiting clause 2.1(g), in the event you are in breach of your payment obligations under this contract, you agree to indemnify us, and pay on demand, all costs we incur in respect of any action taken against you to recover monies owing under this contract.
- (g) You agree that we may deduct or set-off any amount owed by us under this contract against any amount owed to us under this contract or any other contract between you and us, and that our liability to make payment will be reduced by the extent of any such deduction or set-off.
- (h) You must pay any amount due under this contract without deduction or set-off (and irrespective of any counterclaim) whatsoever. If you believe that we owe you an amount, you may raise that claim with us separately.

#### **2.2 Natural person and verification of identity**

- (a) You represent and warrant that you are:
  - (i) a natural person and not a company, corporate trustee, trust or superannuation fund; and
  - (ii) a permanent resident of Australia.
- (b) By signing this contract, you acknowledge that you are personally liable for performing the obligations set out in this contract and for paying all monies due under this contract, whether or not you are the owner of the Property (and including where the Property is owned by a company, corporate trustee, trust, superannuation fund or any other entity).

#### **2.3 Billing**

- (a) We will provide a statement to you when payment is due. We will send the statement(s) to:
  - (i) the email address and/or mobile phone number nominated by you; or
  - (ii) a person authorised in writing by you to act on your behalf at the address specified by you.
- (b) We may send you a further statement if you do not pay any amount due for payment on time.



## **2.4 Communications and billing**

- (a) Notices and statements under this contract must be sent in writing including in electronic form via email or SMS, unless stated otherwise. A notice or statement sent under this contract is taken to have been received by you or by us (as relevant):
  - (i) on the date it is handed to the party, left at the party's premises (in your case) or one of our offices (in our case) or notice is successfully emailed to the party (which occurs when the sender receives confirmation of delivery); or
  - (ii) on the date two Business Days after it is posted.
- (b) Our contact details for you to contact us or send us a notice are as set out in communications to you, or as notified to you from time to time.

## **2.5 Applicable law**

The laws of the state or territory of Australia, in which the Property is located, govern this contract and you agree to submit to the jurisdiction of the courts and tribunals of that state or territory and the laws in force for the time being in that state or territory.

## **2.6 Entire agreement**

Unless otherwise stated, and to the maximum extent permitted by law, these terms constitute the entire agreement of the parties about their subject matter and supersede all other representations, arrangements or agreements. Other than as expressly set out in these terms, you agree that you have not relied on any representation made by or on our behalf.

## **2.7 Liability**

If there is more than one of you, you are liable for all your obligations under this contract both separately on your own and jointly with each of you.

## **2.8 Termination**

Either party may terminate this contract at any time upon providing reasonable written notice to the other party. If this contract is terminated under this clause 2.8, you are required to pay all amounts owing under this contract within two Business Days of termination and each party retains its rights it has against the other party in respect of any obligation arising or breach of this contract occurring before termination.

## **2.9 Assignment and other dealings**

### **2.9.1 Our assignment rights**

- (a) We may assign, novate, or otherwise deal with our rights under this contract in any way we consider appropriate. You must execute all documents which in our opinion are necessary for these purposes.
- (b) Without limiting the generality of clause 2.9.1(a), you agree that we may choose to assign all or some of the rights and benefits under this contract to the assignee, including but not limited to:
  - (i) the right to recover payment from you under this contract;
  - (ii) the right to terminate this contract;
  - (iii) the rights under clause 3 of this contract; and

- (iv) the rights under clause 4 of this contract.

- (c) In assigning our rights under this contract, however, you acknowledge that we will retain responsibility and liability for the performance of our obligations under this contract and the advertising products and services relating to the sale of the property.
- (d) The assignee will not be liable for any loss that you may suffer, or any claim that you may have or bring against an external company (including us), in respect of products or services provided by that company.
- (e) We will remain responsible for remitting to you any credits or discounts provided by external companies for advertising related to the sale of the property including refunds for advertising that is cancelled by you or us. You will be liable to pay the assignee the Advertising Total plus any additional amounts incurred under this contract, irrespective of whether you receive, or are entitled to receive, any credits or discounts from us.
- (f) We will remain solely liable in the event of an advertising error or any other failure or defect in relation to the advertising products and services relating to the sale of the property. Any amounts owed to the assignee under this contract are not impacted by any advertising error, or any claims you may have in connection with any actions or omissions by us.

### **2.9.2 Your assignment rights**

You must not assign, novate, transfer, or deal with your rights or obligations under this contract.

## **3. SPECIFIC TERMS AND CONDITIONS**

### **3.1 Paying your bill**

- (a) By signing this contract, you agree to pay the Advertising Total set out in your Application by the Due Date.
- (b) The Due Date is the earlier of:
  - (i) Withdrawal (as defined in clause 3.1(c) below);
  - (ii) the date that you enter into an unconditional contract of sale to sell the Property; or
  - (iii) the date that this contract is terminated under clause 2.8.
- (c) Withdrawal means the date that the Property is withdrawn from sale or the date, that the Property is not being actively marketed for sale or the date of termination or expiry of our initial authority to sell the Property.
- (d) Where payment of the Advertising Total is due on the Withdrawal of the Property, payment of the total amount owing to us under this contract will be due no earlier than 2 Business Days from the date on which we issue your statement.
- (e) Where payment of the Advertising Total is due on termination of this contract under clause 2.8, payment of the total amount owing to us under this contract will be due no earlier than 2 Business Days from the date on which we issue your statement.

### **3.2 Expiry**



- (a) If the Expiry Date passes and prior to that date you have not:
  - (i) Withdrawn your Property;
  - (ii) entered into an unconditional contract of sale to sell the Property; or
  - (iii) terminated this contract under clause 2.8, then you are not required to repay the Advertising Total or any other amount owing to us under this contract.
- (b) Note that this clause only relates to this contract and that you may owe still have payment obligations under other contracts that you have entered into.

### **3.3 Difficulties in paying**

If you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about payment options (however notwithstanding any payment plan agreed to by us all amounts must be paid by the Due Date).

## **4. SECURING PAYMENT**

- (a) In consideration of us providing the services to you under this contract, you (on your own behalf or, if you are not the owner of the Property, on behalf of the owner of the Property in your capacity as its duly authorised representative):
  - (i) agree to grant us an equitable right to charge the Property;
  - (ii) agree to charge the Property to us; and
  - (iii) consent to us lodging a caveat over the Property to secure our equitable rights and to protect our interests.

as security for payment of any bill or statement and the performance of your obligations under this contract.

- (b) We may require you and/or the owner of the Property to execute and deliver certain documents to us to enable us to record, register or protect our security interest and you agree to provide any such documents to us, or procure that the owner provides such documents to us, upon request. You irrevocably appoint us as your attorney to execute any such documents if you and/or the owner fail to execute

and provide them to us within 7 Business Days of our request. You also authorise third parties to act on a declaration or oath of the attorney as to any facts supporting the exercise of this power and to accept it as evidence of the same.

- (c) You warrant and agree on your own behalf, or on behalf of the owner of the Property as its duly authorised representative, that we are entitled to rely upon your consent to our lodging a caveat over the Property in accordance with this clause. You agree that, in the event you are in default of the payment terms in clause 3.1, and we exercise our right to lodge a caveat under this clause, you will be liable to pay all costs incurred by us for the lodgement and withdrawal of the caveat, on an indemnity basis. You agree that we have no obligation to withdraw any caveat lodged until such time as all amounts outstanding under this contract and all costs incurred have been paid in full.

## **5. DEFINED TERMS**

These meanings apply unless the contract intention appears:

**Application** means the digital application submitted by you (or us on your behalf) details of which are set out on page 1 of this contract.

**Business Day** means a day other than a Saturday, a Sunday or a public holiday in the state or territory of Australia in which the Property is located.

**Campaign Start Date** means the date set out in your Application, being the date that you request us to pay the Advertising Total to your suppliers on your behalf.

**Expiry Date** means the date set out in your Application. If this date falls on a day that is not a Business Day, then the Expiry Date is the Business Day immediately before.

**Property** means the property located at the "Property Address" set out in your Application.

**Real Estate Agent** means the person or entity that you have appointed to market and sell the Property.