

1. Parties

This agreement is between AV1 Pty Limited ACN 115 225 048 of PO Box 1571 Strawberry Hills NSW 2012 (**us, we or our**) and the entity specified in the Proposal (**you or your**).

2. Formation

- 2.1 When you ask us to perform the Services, we will send you a Proposal setting out the scope of work, Fees and other relevant details.
- 2.2 The Proposal is valid for 30 days and you can accept it by returning a signed copy to us or emailing us to accept it.
- 2.3 When you accept the Proposal, a legally binding contract is formed between you and us, consisting of the Proposal and these terms (**Contract**).
- 2.4 If there is any conflict between the Proposal and these terms, these terms will prevail over the Proposal to the extent of the inconsistency.
- 2.5 If you request any variation to these terms, this may be subject to an additional fee, charged in our discretion.

3. Services

- 3.1 We will perform the Services on the terms of this Contract.
- 3.2 You may request a variation to the Contract (including a change to the scope) by submitting a change request to us and we may propose a variation order in such form as we determine.
- 3.3 You, or Your Representative, may approve the variation order in writing or by email. Any approval by Your Representative will be binding on you.

4. Fees and payment

- 4.1 You understand that the amount quoted in the Proposal is an estimate of probable fees and charges based on your brief, the agreed scope of work and assumptions. Regardless of the amount quoted, you must pay the actual Fees incurred, which may vary due to changes and/or circumstances beyond our control.
- 4.2 Time is of the essence in respect of this clause 4.2. Unless agreed otherwise, you must pay:
 - (a) the Deposit to us prior to the Start Date; and
 - (b) the remainder of the Fees are payable in accordance with the payment terms specified on our invoice to you.
- 4.3 If you fail to pay an undisputed amount by the due date, we may, without limiting any other rights available to us:

- (a) charge interest on the amount due at the rate of 10% from the due date until it is paid in full; and/or
- (b) terminate or suspend the performance of the Services under the Contract.

- 4.4 On 30 days' notice to you, we may increase the Fees for any reason during the Term (acting reasonably), including as a result of an increase in Fees charged by third party suppliers.
- 4.5 All amounts payable under this Contract are exclusive of GST. If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in this Contract plus GST. All capitalised terms in this clause are defined in *A New Tax System (Goods and Services Tax) Act 1999*.

5. Your obligations

- 5.1 You must:
 - (a) obtain all rights, consents and licences for us to access the site to supply the Services and deliver the equipment to the venue;
 - (b) obtain all relevant consents from attendees, including a consent to share their personal information with us in connection with our performance of the Services;
 - (c) procure for us safe and proper access to the site (including to operate, inspect, repair or maintain the equipment);
 - (d) comply with all applicable laws and regulations;
 - (e) comply with all third party terms and requirements applicable to your use of the Services under this Contract as notified to you, or requested by you, from time to time; and
 - (f) perform any additional obligations for you as set out in the Proposal.

5.2 If you do not perform, or are delayed in performing, any of your obligations:

- (a) we will not be liable for any failure or delay in performing the Services; and
- (b) if the delay is extensive, we may elect to terminate the Contract without liability, on notice to you.

6. Equipment

- 6.1 We will make the equipment available to you for the event as set out in the Proposal. You must:
 - (a) satisfy yourself that the equipment is in good condition, and suitable for your purposes;

- (b) use the equipment only for, and at, the event for which the equipment was supplied;
- (c) use the equipment strictly in accordance with our directions and requirements, and the manufacturer's instructions and specifications (if any);
- (d) take care of the equipment, keep it clean, safe and secure and return it to us in the same condition (fair wear and tear excepted) on time;
- (e) notify us immediately if you have reason to believe that the equipment malfunctions. If we agree that it is malfunctioning, we will replace the equipment at no cost to you but with no liability to us.

6.2 While the equipment is in your possession, you must not:

- (f) remove any serial number or identification markings on the equipment;
- (g) permit anyone else to use, or take control or possession of, the equipment; or
- (h) use, or allow the equipment to be used, for unlawful purposes (including displaying or communicating obscene, offensive, defamatory or infringing material).

7. Risk, title and security

- 7.1 We own the equipment. Nothing in this Contract transfers title to you.
- 7.2 We lease the equipment to you on the basis that you have obtained all necessary permits, licenses and authority to use the equipment for the purpose contemplated in the Contract.
- 7.3 Where the equipment is in your sole possession, risk in the equipment passes to you immediately upon your acceptance of delivery of the equipment. You bear all risk and liability for loss or damage to property, personal injury or death, and third party claims, arising directly or indirectly in connection with the use, installation, possession or control of the equipment by you, your directors, officers, employees, contractors, agents and contractors.
- 7.4 You acknowledge and agree that this clause creates a security interest (as defined in the PPSA) in our favour and that you must:
 - (a) promptly do all things and sign all documents required by us to enable the security interest over the equipment to be registered on the PPSA register; and
 - (b) you waive any right to receive notices under sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), 134(1) and 135 of the PPSA and your

rights under sections 96, 117, 142 and 143 of the PPSA.

7.5 In this clause **PPSA** means the *Personal Property Securities Act 2009* (Cth).

8. Warranties

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

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

9. Exclusion of liability

9.1 Notwithstanding any other provision of this Contract and to the fullest extent permitted by law whether in contract, tort (including negligence), statute or otherwise:

- (a) our aggregate liability in connection with this Contract will not exceed an amount equal to the Fees paid by you to us in the last 12 months under the Contract; and
- (b) we are not liable for any Consequential Loss, indirect, incidental, punitive or special Losses of any kind (including loss of profit or business interruption).

9.2 Subject to any express warranties in this Contract but otherwise to the fullest extent permitted by law, we expressly exclude all warranties, conditions and representations in whatever form, relating to the Services, including any warranties or representations relating to performance, quality, fitness for use or the security and operation of the Services.

9.3 Where a mandatory term or consumer guarantee is implied by law, our liability for breach of such a term or consumer guarantee is limited, at our option, to:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing or repairing the goods; or
- (b) if the breach relates to services:
 - (i) the supplying of the services again; or

- (ii) the payment of the cost of having the services supplied again.

10. Indemnity

You indemnify us from and against all claims, liability, loss, damage, expenses and costs (including legal costs on a full indemnity basis) arising directly or indirectly from or in connection with:

- (a) any breach of this Contract, negligence, fraud or wilful misconduct by you, your directors, officers, employees, contractors, agents and contractors;
- (b) personal injury or death, or property loss or damage caused by any act or omission by you, your directors, officers, employees, contractors, agents and contractors;
- (c) any claim that Your Content is unlawful or infringes the intellectual property or other rights of any person; and
- (d) your use, possession or control of the equipment (including the cost of repair or replacement of equipment as determined by us).

11. Privacy and Confidential Information

- 11.1 Each party must comply with the *Privacy Act 1988* (Cth).
- 11.2 Each party must keep all Confidential Information confidential and use such information for the sole purpose of performing its obligations under this Contract.
- 11.3 You warrant that if you provide us with any personal data, you have obtained the individual's consent (as that term is considered under the General Data Protection Regulation) to do so.

12. Intellectual Property

- 12.1 Nothing in this Contract transfers ownership of any Pre-Existing IP to the other party or any other person. We own all Intellectual Property Rights in the Software and all copies, modifications, enhancements, updates or new release thereof.
- 12.2 We grant you a non-exclusive, non-transferable licence to use the Software for the event set out in the Proposal on the terms of this Contract. You acknowledge you have no interest in the Software and you will follow all reasonable instruction given to you by us from time to time with regard to your usage.
- 12.3 You must not:
 - (a) decompile, disassemble, remove, release, disclose, reveal, copy, extract, modify or otherwise reverse engineer all or any part of the Software in any way;
 - (b) distribute, rent, lease, sell, charge, sub-licence, assign or transfer the Software;

- (c) use, match or combine the Software with any database;
- (d) use the Software in a manner that could cause us to violate any laws or which could give rise to us incurring liability of any kind; or
- (e) in a manner which may compromise the security or safety of, or which may damage, interrupt or interfere with the operation of the Software.

- 12.4 You own all Intellectual Property Rights in Your Content. You grant us a royalty-free, non-exclusive, revocable licence to use Your Content to the extent necessary to perform our obligations under this Contract.
- 12.5 You consent to us using your company name and reproducing your logo for our promotional and publicity purposes.

13. Term and termination

- 13.1 Unless stated otherwise, this Contract will commence on the Start Date and continue for the Term, unless terminated earlier in accordance with this Contract.
- 13.2 Either party may terminate this Contract on notice if the other party:
 - (a) fails to remedy a breach within 21 days' notice from the other party requesting the breach be remedied;
 - (b) breaches this Contract and that breach is not capable of remedy; or
 - (c) becomes insolvent or enters into liquidation.
- 13.3 If you cancel or postpone the Services, you must pay us:
 - (a) all costs incurred by us; and
 - (b) the following Fees:
 - (i) if you cancel after delivery of equipment to the site, you must pay 100% of the Fees;
 - (ii) if you cancel within 24 hours of the event date, you must pay 75% of the Fees;
 - (iii) if you cancel more than 24 hours before but less than 8 days before the event date, you must pay 30% of the Fees;
 - (iv) in all other cases, you must pay 10% of the Fees.

14. Force Majeure

- 14.1 If a Force Majeure Event occurs, the affected party must notify the other party and the obligations of the party will be suspended to the extent that they are affected by the relevant Force Majeure Event until that Force Majeure Event has ceased.
- 14.2 If a Force Majeure Event continues for more than 30 days, either party may terminate this Contract.

15. Dispute resolution

- 15.1 Any party who claims to have a dispute against another party must issue a notice to the other party setting out details of the dispute (**Dispute Notice**).
- 15.2 Within 5 Business Days after receiving the Dispute Notice, the parties must meet to resolve the dispute. Each party will be represented by a person having authority to agree to such resolution or methods. All aspects of the meetings will be confidential and without prejudice to the parties' rights, obligations and liabilities.
- 15.3 If the parties do not resolve the dispute within 20 Business Days (or such longer period the parties may agree in writing) after the Dispute Notice, then either party may initiate court proceedings in relation to the dispute.
- 15.4 Despite the existence of a dispute, each party must continue to perform its obligations under the Contract unless those obligations are the subject of the dispute.

16. Notices

- 16.1 A notice, consent or other communication under this Contract is only effective if it is in writing at the addressee's address or email address.
- 16.2 A notice is deemed to have been received:
- (a) if posted, on the third Business Day after posting; or
 - (b) if delivered personally, upon delivery;
 - (c) if sent by email, the earlier of when the sender receives an automated message confirming delivery or within 24 hours after the message has been sent (as recorded on the device from which the sender sent the message).

17. General

- 17.1 Nothing in this Contract will be taken as giving rise to a relationship of employment, agency, partnership or joint venture. Except as otherwise provided in this Contract, the parties acknowledge and agree that neither party will have any authority to bind the other party or to enter into an agreement in the name of the other party.
- 17.2 We may sub-contract the performance of any part of the Services to any third party.
- 17.3 This Contract contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications.
- 17.4 The failure of either party to enforce any provisions under this Contract will not waive the right of such party thereafter to enforce any such provisions.
- 17.5 If any term or provision of this Contract is held by a court to be illegal, invalid or unenforceable under the applicable law,

that term or provision will be severed from this Contract and the remaining terms and conditions will be unaffected.

- 17.6 This Contract is governed by, and construed in accordance with the laws of New South Wales, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 17.7 This Contract may not be amended or varied unless the amendment or variation is in writing and signed by all parties.
- 17.8 You may not assign, transfer or otherwise deal with this Contract or any right under this Contract without our prior written consent, which must not be unreasonably withheld.
- 17.9 Any warranty, indemnity, or obligation of confidentiality in this Contract will survive termination. Any other term, which by its nature is intended to survive termination of this Contract, survives termination of this Contract.

In this Contract, unless the context otherwise requires:

- (a) **Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales.
- (b) **Confidential Information** means confidential, proprietary and commercially-sensitive information (irrespective of the form or the manner in which the information is disclosed, or the time of such disclosure) including information which:
 - (i) is identified as confidential or ought to have been known to be confidential; and
 - (ii) relates to the business affairs and practices, including financial information, business opportunities, business plans, business processes and methodologies,but does not include information which is in, or comes into, the public domain other than by a breach of this Agreement, or which is independently known to the other party as evidenced by its written record.
- (c) **Consequential Loss** means any Loss that does not arise naturally in the ordinary course of things from the event or circumstance giving rise to the Loss.
- (d) **Contract Materials** means works created or produced by us arising in connection with the provision of the Services as set out in a Proposal or approved variation order.
- (e) **Deposit** means the deposit set out in the Proposal.
- (f) **Fees** means the fees payable for the Services.
- (g) **Force Majeure Event** means any act, event or cause including earthquakes, cyclones, floods,

fires, lightening, storms or other acts of God, strikes or industrial disputes, riots, terrorist acts, civil disturbances, breakages of machinery, or industrial conditions, or arising out of any other unexpected and exceptional cause, delays in transportation and dispositions or orders of governmental authority, which:

- (i) directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under this Contract; and
 - (ii) is beyond the reasonable control of that party.
- (h) **Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, confidential information, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable.
- (i) **Losses** means any judgment, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, or otherwise.
- (j) **Pre-Existing IP** means any intellectual property in any materials existing at the Start Date, including trade marks, designs, design specifications, software, hardware or other documentation and materials used in each party's business.
- (k) **Proposal** means a proposal, quote, estimate, email or any other document we may issue you setting out the commercial details, including a detailed description of the Services (including any deliverables) and the Fees.
- (l) **Services** means the services supplied by us to you under the Contract, as specified in the Proposal or approved variation order.
- (m) **Software** means the application we make available to you as part of the Services.
- (n) **Start Date** means the date on which you accept this Contract in accordance with clause 2.2.
- (o) **Term** means the term set out in the Proposal and any extension term.
- (p) **Your Content** means all content provided by you to us, including words, images, logos, information, documents and materials and in the case of Digital

Media Services, includes data, text, files, images, photos, profiles, audio and video clips, sounds, musical works, works of authorship and other materials.

- (q) **Your Representative** means the representative you nominate in the Proposal, or as notified to us from time to time.

17.10 In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (d) references to statutes include all statutes amending, consolidating or replacing such statutes;
- (e) \$ means the lawful currency of Australia;
- (f) any reference to a party to this document includes its successors and permitted assigns; and the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it.