



## Terms of Service

The Website and Services are owned and operated by ACN 140 763 462 Effective Measure International Pty. Ltd. (“Effective Measure”). Your access to and use of the Services is subject to these Terms of Service. Use of the Services indicates your acceptance of these Terms of Service. We may update these Terms of Service from time to time by publishing an updated version on our Website and emailing them to the email address nominated by you, and your continued use of the Services constitutes acceptance by you of any updates. Please read these Terms of Service carefully before using the Services and regularly review the Website to see whether any updates have occurred.

### The parties agree:

## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

In these Terms of Service, unless inconsistent with the context or subject matter:

- (a) **Client** means any person or entity who uses the Services;
- (b) **Client’s Account** means an account created by Effective Measure (on a platform controlled by Effective Measure) for the Client which enables to the Client to monitor the results of the Services;
- (c) **Commencement Date** means the date Effective Measure first provides the Services to the Client;
- (d) **Confidential Information** means any information provided by one party to the other, whether recorded in writing or otherwise, in respect of or relating to the Intellectual Property, these Terms of Service or the Services;
- (e) **Data Co-operative** is the Effective Measure program that combines data collected from a subset of Effective Measure Client’s to create audience segments made available for purchase via programmatic media channels;
- (f) **Downtime** means any time when the data collection or reporting functions of the Services are inoperable, however excluding any inoperable time caused by:
  - (i) the Client exceeding any volume limits or any other limits specified by Effective Measure from time to time;
  - (ii) outages to any public Internet, networks, or servers;
  - (iii) any failures of Client’s equipment, systems, or local access services;
  - (iv) scheduled maintenance; or
  - (v) otherwise relating to events beyond Effective Measure’s control, such as strikes, riots, insurrection, fires, floods, explosions, war, Governmental action, earthquakes, natural disasters, or interruptions in internet services to an area where Effective Measure or the Client are located or co-located;
- (g) **Effective Measure** means ACN 140 763 462;
- (h) **emPower** is the name of the services containing audience segments created by Effective Measure from data within the Data Co-operative;
- (i) **Fee** means the fee for a particular Service specified on the Website at [www.effectivemeasure.com](http://www.effectivemeasure.com) from time to time;



- (j) **Intellectual Property** means all intellectual property rights, including without limitation inventions, patents, copyright, rights in circuit layouts, designs, trade marks, know-how, processes, concepts, the system or operations developed by Effective Measure (whether or not used on any website owned by the Client) and other like rights whether recorded in writing or otherwise and includes any of the following:
  - (i) the Services;
  - (ii) information or data, source codes and other information technology relating to or connected with the Services;
  - (iii) books and records relating to or connected with the Services;
  - (iv) advices (including without limitation verbal advices) relating to or connected with the Services;
  - (v) marketing information relating to or connected with the Services;
  - (vi) technical information, including trade secrets, drawings, plans, encryptions, codes and product descriptions and information relating to or connected with the Services;
  - (vii) licences, certificates and authorisations relating to or connected with the Services;
  - (viii) agreements relating to or connected with the Services;
  - (ix) ideas or models relating to or connected with the Services, even if not reduced to material form;
  - (x) all present and future copyright, trade marks, patents, processes, know-how, designs and other like rights which are developed by Effective Measure or acquired by the Effective Measure whether before, during or after the end of the parties mutual dealings;
- (k) **Loss** means any loss, liability, cost, charge, expense, tax or damage of any nature whatsoever, including lost profits, loss of goodwill, loss of business, loss of production and any other special, incidental, exemplary, compensatory or consequential damages, losses, expenses, or lost or stolen programs or other data (howsoever arising or caused, including, without limitation, negligence);
- (l) **Order Form** means an order form for Services, submitted by the Client to the Effective Measure through the Website or submitted to an Effective Measure sales representative by the Client;
- (m) **Personnel** means those persons employed or used by the Client including, without limitation, the directors, agents, employees, contractors and sub-contractors of the Client;
- (n) **Publisher** means a Client who is a “publisher” as represented by the Website;
- (o) **Services** means the services to be provided by Effective Measure pursuant to an Order Form including the provision of any software, services or any other product provided by Effective Measure. The services that Effective Measure offers can be found on the Website at [www.effectivemeasure.com](http://www.effectivemeasure.com);
- (p) **Tag** means any Effective Measure code that contacts Effective Measure servers (\*.effectivemeasure.net) implemented on your website, apps, video players, network channels, advertising campaigns or any other digital assets;
- (q) **Term** means the period commencing on the Commencement Date and expiring on the date the Services are completed/terminated in accordance with these Terms of Service;
- (r) **Terms of Service** means these Terms of Service including all Schedules;



- (s) **Website** means [www.effectivemeasure.com](http://www.effectivemeasure.com).

## 1.2 Interpretation

In these Terms of Service, unless inconsistent with the context or subject matter:

- (a) a reference to a person includes any other legal entity;
- (b) a reference to a legal entity includes a person;
- (c) words importing the singular number include the plural number;
- (d) words importing the plural number include the singular number;
- (e) the masculine gender must be read as also importing the feminine or neuter gender;
- (f) a reference to a party includes the party's heirs, executors, successors and permitted assigns;
- (g) headings are for reference purposes only and must not be used in interpretation;
- (h) where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- (i) a reference to a statute includes all regulations and subordinate legislation and amendments;
- (j) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and fax;
- (k) a reference to a monetary amount is a reference to a local currency amount;
- (l) an obligation of two or more parties binds them jointly and each of them severally;
- (m) an obligation incurred in favour of two or more parties is enforceable by them severally;
- (n) references to time are to local time in Melbourne;
- (o) where time is to be reckoned from a day or event, the day or the day of the event must be excluded;
- (p) a reference to a business day means a day that is not a Saturday, Sunday or public holiday in Melbourne;
- (q) if any time period specified in these Terms of Service expires on a day which is not a business day, the period shall expire at the end of the next business day; and
- (r) a reference to a month means a calendar month.

## 2. TERM

- 2.1 These Terms of Service shall commence on the Commencement Date and continue for the Term.

## 3. OBLIGATIONS

- 3.1 The Client must use the Services in accordance with these Terms of Service and all other terms and policies published by Effective Measure on the Website from time to time.
- 3.2 The Client's use of the Services, and the information the Client provides to Effective Measure, must not:
  - (a) be false, inaccurate or misleading;



- (b) be fraudulent or deceptive;
- (c) infringe any third party's copyright, patent, trademark, trade secret, intellectual property or other proprietary rights or rights of publicity or privacy;
- (d) violate any applicable law;
- (e) be defamatory, trade libellous, unlawfully discriminatory, threatening or harassing;
- (f) contain any viruses, Trojan horses, worms, time bombs, trap doors, back doors, Easter eggs, spiders, robots, screen scrapers, data aggregation tools or other devices or other computer programming routines that may or are intended to damage, modify, delete, interfere with, surreptitious intercept, access without authority or expropriate any system, data or personal information or otherwise affect the integrity, operation or security of the Services;
- (g) create liability for Effective Measure or cause it to lose (in whole or in part) the services of its internet service provider or other Clients or suppliers;
- (h) damage the credibility or integrity of Effective Measure; and
- (i) link directly or indirectly to or include anything that:
  - (i) the Client does not have a right to link to or include;
  - (ii) could cause Effective Measure to violate any applicable law, statute, ordinance or regulation.

3.3 Effective Measure acknowledges and agrees with the Client that:

- (a) in providing the Services to the Client it is doing so as an independent contractor and that neither these Terms of Service nor the provision of the Services shall create any relationship of employer and employee, agency, joint venture or partnership between Effective Measure and the Client; and
- (b) these Terms of Service do not give Effective Measure or the Client any authority to bind or represent each other in any way or for any purpose. Effective Measure and Client must not misrepresent themselves as being employer or employee, partner or agent, or as otherwise able to bind or represent each other.

**4. PERFORMANCE OF THE SERVICES**

- 4.1 Upon Effective Measure receiving an Order Form from a Client, Effective Measure will confirm with the Client whether it is agreeable to providing the Services. Effective Measure will confirm this by commencing the provision of the Services. If Effective Measure does not wish to provide the Services, it will attempt to notify the Client of this.
- 4.2 Effective Measure reserves the right to modify and revise the Services, release subsequent versions thereof and alter features, specifications, capabilities, functions and other characteristics of the Services at any time without notice to the Client.
- 4.3 The Client authorises Effective Measure to provide the Services through its employees, agents or subcontractors.

**5. FEES**

- 5.1 The Client must pay Effective Measure the Fee for the particular Services provided by Effective Measure as set out on the Website.
- 5.2 The Fee must be paid in advance at the times specified on the Website or notified by Effective Measure .



- 5.3 Effective Measure will provide the Client with a tax invoice for all Fees payable by the Client and unless otherwise specified in writing by Effective Measure, the Client agrees to pay all invoices within 30 days from the date of the invoice in the method/s nominated by Effective Measure without set-off or counterclaim. The Client is responsible for maintaining complete and accurate billing and contact information as well as for payment of any fees or charges associated with the Client's payment method.
- 5.4 Unless otherwise stated, any amount payable to Effective Measure does not include any taxes, levies, duties or other similar Governmental assessments of any nature, including without limitation value added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction. The Client solely is responsible for paying all taxes, levies, duties or similar assessments associated with the Services.
- 5.5 Effective Measure reserves the right to suspend or terminate the Services without notice if the Client fails to pay an amount to Effective Measure by the due date for payment. The Client agrees that the Fees will continue to be due and payable in respect of any suspended period. In addition, if any amounts invoiced are not received by their due date, then at Effective Measure's discretion:
- (a) such charges may accrue default interest at the rate of 1.5% of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid; and/or
  - (b) Effective Measure may condition future renewals and Order Forms on payment terms on other (including shorter) payment terms; and/or
  - (c) the Client will be deemed to have opted-in to Data Co-operative on the terms contained in these Terms of Service.
- 5.6 For the avoidance of doubt, this clause survives the termination of all Services.

## **6. CLIENT CONTENT**

- 6.1 The Client acknowledges and agrees that:
- (a) all survey questions, information, data, text, software, music, sound, photographs, images, video, survey responses, messages or other materials communicated, submitted or transmitted by the Client or respondents of the Client's surveys through the Services ("Client Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Client Content originated;
  - (b) the Client, and not Effective Measure, is responsible for all Client Content that the Client or respondents of the Client's surveys upload, post, email, distribute, communicate, transmit, or that is otherwise made available through the use of the Client's Account (if any), whether or not authorised by the Client;
  - (c) Effective Measure has recommended to the Client (in the event the Client is a Publisher or other partner) that it informs all relevant consumers that third parties are collecting data from their websites and applications for advertising purposes, and the Client acknowledges that Effective Measure has responsibility in this regard; and
  - (d) Effective Measure shall have the ability to serve surveys to internet enabled devices on which an Effective Measure cookie resides. Effective Measure agrees to use these surveys to collect information in an effort to further refine its market research, which is in turn utilised for audience profiling for sites / advertising campaigns, and informing the algorithms used for modelling data within the Data Co-operative for the emPower services as outlined in these Terms of Services.
  - (e) The aggregated responses to surveys are deemed to be owned by Effective Measure, for use across Effective Measure products.



- 6.2 The Client further acknowledges and agrees that Effective Measure does not control the Client Content originating from the Client, respondents to the Client's surveys or other users of the Services, and does not guarantee the accuracy, integrity or quality of such Client Content.
- 6.3 Effective Measure may, but is not obliged to, review all Client Content and block, modify, terminate access to, or remove any such Client Content that Effective Measure, in its sole discretion, considers to be non-compliant with any of the requirements of these Terms of Service.
- 6.4 Effective Measure reserves the right to purge the Client Content from its databases at any time and from time to time without notice. The Client acknowledges and agrees that the Client is solely responsible for backing up any Client Content uploaded to the Website or the Client's website by the user or received by the user in any other way through the use of the Services. Effective Measure shall not be liable for any Loss arising from the purging, deletion or failure to retain any such Client Content.

## 7. SIGN UP PROCESS

- 7.1 To sign up to receive Effective Measure's Services, the Client must either:
  - (a) complete the form on the Website (or otherwise provided by Effective Measure) and provide any information requested by Effective Measure. Effective Measure will then send an email to the Client with further information on the sign up process; or
  - (b) set up an account in accordance with clause 7.2 (if Effective Measure makes this sign up process available to the Client).
- 7.2 To sign up electronically to receive Effective Measure's Services, the Client must:
  - (a) Set up an online account through the Website by providing all of the details requested during that process, which may include selecting an account name and a password, providing an email address, company name and all other details required by Effective Measure;
  - (b) Agree to these Terms of Service;
  - (c) Receive an account activation email from Effective Measure;
  - (d) Activate the account by following the instructions in the account activation email; and
  - (e) If required, receive a Tag that the Client must then embed in order to gain access to the Services.
- 7.3 Throughout the Term, the Client:
  - (a) Must ensure that all of the Client's account information is up to date (such as the Client's email address). Effective Measure is not responsible for any loss or damage that may occur due the Client not keeping the information up to date. For example, if Effective Measure updates its Terms of Service it will email these to the Client at the email address nominated in the Client's account. The Client will then be deemed to have agreed to the updated Terms of Service if it continues to use the Services, even if the Client has not seen the email; and
  - (b) Is responsible for the security of its account name and password, and must indemnify Effective Measure of any loss suffered as a result of a third party using the Client's account with Effective Measure without proper authorisation.
- 7.4 In the event that a Client uses any part of Effective Measure's Services (such as a Tag), without signing up to receive the Services/agreeing to these Terms of Service and/or paying any Fees, the Client must immediately cease the use of the Services. If the Client does not immediately cease the use of the Services, the Client is deemed to have agreed to these Terms of Service and opted into the Services determined by Effective Measure. Without limitation to this clause, in the event a Publisher uses an Effective Measure Tag in



contravention of this clause, the Publisher will be deemed to have opted-in to the Data Co-operative on the terms contained in these Terms of Service.

7.5 Publishers who use Effective Measure's Services on a trial period will be deemed to have opted-in to the Data Co-operative on completion of the trial period, if they have not entered into a contract for a Fee paying service.

## 8. DOWNTIME

8.1 Data collection Downtime will not exceed 2% (98% minimum uptime) and reporting function Downtime will not exceed 4% (96% minimum uptime) of the time in any calendar month.

8.2 If this undertaking is breached in any calendar month, the Client may request an additional month of Services be provided by Effective Measure at no additional charge. For this to be valid, Effective Measure must receive the request from the Client no later than 15 days after the end of the calendar month in which the undertaking has been breached and the request must set out the breach along with the rationale supporting the request for an additional month of Services at no charge.

8.3 Upon receipt of the request, Effective Measure will review the facts and solely make the determination as to whether an additional month of Services will be provided to the Client at no charge.

## 9. TERM AND TERMINATION

### 9.1 General:

(a) In the event of a Client's non-compliance with any provision of these Terms of Service, Effective Measure may suspend the Services or disable the Client's Account and the Client's access to use the Website and/or the Services, as well as recover from the Client any Losses, damages, costs or expenses incurred by Effective Measure resulting from or arising out of such non-compliance.

(b) Effective Measure may terminate these Terms of Service, an Order Form, or any Services at any time for any reason and without prejudice to any right or action or remedy which has accrued or which may accrue in favour of Effective Measure by giving the Client one month's written notice to that effect.

(c) Termination of an Order Form will not affect these Terms of Service or any other Order Forms that are in effect between the Client and Effective Measure at the time of termination and such other Order Forms will continue in accordance with their respective terms.

(d) The termination of these Terms of Service shall not affect the rights of the parties accrued before or upon or as a result of termination.

(e) Following termination of an Order Form for any reason, the Client must immediately:

(i) pay Effective Measure all outstanding Fees that will become immediately due and payable and the amount payable in respect of the Services completed but not invoiced before termination; and

(ii) cease using, and remove from any website, all Intellectual Property provided by Effective Measure to the Client as part of the provision of the Services, unless written permission is provided by Effective Measure.

9.2 The following terms shall apply to any Services provided by Effective measure to the Client (excluding the Data Co-operative Services):

(a) The Services will commence on the Commencement Date specified in the Order Form and will continue:

(i) for the period specified in the Order Form; or



- (ii) until all of the Services specified in the Order Form have been provided to the Client, whichever is the earlier (unless the Services are terminated prior to those dates).
- (b) Unless otherwise specified in the Order Form, all Services shall automatically renew (“Auto-renewal”) for an additional 12 months unless the Client gives Effective Measure no less than 2 months written notice of the non-renewal before the end of the relevant term.
- (c) If a Client fails to give at least 2 months written notice prior to the end of the relevant term and purports to terminate the Services at another time, the Client agrees to pay a Late Termination Fee equivalent to 3 monthly payments for the Services set out under the relevant Order Form. This Late Termination Fee will be charged in addition to any Fees due and payable for Services provided up until the date of Termination. Effective Measure will issue the Late Termination Fee immediately on termination and the Client agrees to pay the Fee in accordance with clause 5.
- (d) The pricing of the Services under an Auto-renewal shall be either the same as that during the prior term or up to a maximum of 5% higher. Effective Measure will notify the Client of any price increase 2 months prior to the Auto-renewal. Any pricing increase shall be effective upon renewal and thereafter.
- (e) Should a Client wish to cancel the Services ordered under an Order Form before the expiry of the term specified in the Order Form, the Client must give Effective Measure a minimum of 3 months written notice of the cancellation. In addition, the Client agrees to pay to Effective Measure an Early Termination Fee equivalent to 3 monthly payments under the Order Form. This Early Termination Fee will be charged in addition to any Fees due and payable for the Services provided up until the date of termination. Effective Measure will issue the Client a tax invoice in respect of the Early Termination Fee immediately after notification by the Client of early termination and the Client agrees to pay the Fee in accordance with clause 5.

## **10. REPRESENTATIONS AND WARRANTIES**

- 10.1 Effective Measure will use reasonable endeavours to provide the Services with due care and skill in accordance with the terms of these Terms of Service.
- 10.2 Effective Measure provides the Services on an “as is” basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. To the extent permitted by law, Effective Measure specifically disclaims any implied warranties including in relation to the title, merchantability, fitness for a particular purpose and non-infringement. Furthermore Effective Measure does not guarantee continuous, uninterrupted or secure access to the Services or Client information, and the operation of the Client’s website or applications may be interfered with by numerous factors outside Effective Measure’s control. Effective Measure does not guarantee continuous, uninterrupted or secure access to the Client’s website or the Services. Whilst when Effective Measure provides the Services it will use its best endeavours to secure and protect the Client’s website and information, Effective Measure does not accept any liability whatsoever from any Loss suffered by the Client in the event the security of the Client’s website/information is compromised, such as if the website is hacked or a virus is uploaded to the website.
- 10.3 For the avoidance of doubt Effective Measure does not warrant or represent that the Services will result in increased sales, revenues, profits or customers, specific lead or traffic generation, sales, profitability or any other outcomes.
- 10.4 The Client warrants that it has not relied upon any representations, warranties or conditions offered or made by or on behalf of Effective Measure except to the extent expressly set out in these Terms of Service.
- 10.5 The Client acknowledges and agrees that it is solely responsible for making all enquiries to ensure any materials featured on its website (including without limitation any images), whether provided to Effective Measure by the Client or otherwise sourced by Effective Measure, does not infringe the rights of any third party and Effective Measure does not accept any liability for any Loss in this regard.





## **11. INDEMNITY**

- 11.1 The Client indemnifies Effective Measure for any and all Loss and damage (including interest, fines and legal fees) arising out of or in connection to:
- (a) a breach or non-performance of these Terms of Service by the Client or its Personnel;
  - (b) all and any claims whatsoever and howsoever arising made by any third party in connection with or arising out of the Client's use of the Services; and
  - (c) any failure by the Client to obtain any consent necessary for Effective Measure to provide the Services.

## **12. LIMITATION OF LIABILITY**

- 12.1 To the extent permitted by law, Effective Measure is not liable for any Loss or damage howsoever caused to any property or person of the Client or any third party as a result of any defect or interruption in the Services. For the avoidance of doubt, Effective Measure shall not be liable for any indirect, incidental, special, exemplary or consequential loss or damage, loss of profits or anticipated profits, loss of revenue, economic loss, loss of business opportunity, damage to goodwill, loss of data, deletion or corruption of electronically or digitally stored information or loss suffered by the Client or any third party in connection to the Services or these Terms of Service, irrespective of whether:
- (a) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise;
  - (b) the possibility of such loss or damage was foreseeable; or
  - (c) Effective Measure or any other person was previously notified of the possibility of the loss or damage.
- 12.2 Subject to clause 12.1, the maximum aggregate liability of Effective Measure for all proven losses, damages and claims arising out of these Terms of Service, including liability for breach, in negligence, or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Client to Effective Measure under these Terms of Service in the 12 month period immediately before the notice of the then current claim.

## **13. CONFIDENTIALITY**

- 13.1 Neither party will disclose the other party's Confidential Information except as needed to perform its obligations under these Terms of Service or if required by law, regulation or court order. Each party will limit access to the Confidential Information of the other party only to officers, employees, agents or subcontractors who need to have access to it.
- 13.2 If a disclosure of the other party's Confidential Information is required by law, the party being compelled to disclose the Confidential Information will give the other party as much notice as is reasonably practicable prior to disclosing the Confidential Information.
- 13.3 Upon termination of these Terms of Service, the parties will promptly either return or destroy all Confidential Information belonging to the other party.
- 13.4 The Client is responsible for safeguarding the confidentiality of passwords and user names issued to the Client by Effective Measure and for any use of the Client's Account resulting from any third party using a password or user name issued to the Client or otherwise caused by the Client in any way. The Client will promptly notify Effective Measure of any unauthorised use of the Client's Account or any other breach of security known to the Client.

## **14. INTELLECTUAL PROPERTY**



- 14.1 The Client acknowledges that:
- (a) Effective Measure owns the Intellectual Property and no right, title or interest in any of the Intellectual Property is transferred or granted to the Client; and
  - (b) it will not copy, reproduce, alter, modify, create derivative works, or publicly display (other than on the website designed or developed by us) any of Effective Measure's Intellectual Property without Effective Measure's prior written consent.
- 14.2 The Client maintains ownership of any intellectual property rights it owned prior to the Commencement Date.
- 14.3 All Intellectual Property arising out of the provision of the Services will be owned by Effective Measure, including without limitation all rights to use data collected through the Services, through any cookies that are placed pursuant to the Services, and through any surveys issued pursuant to the Services.
- 14.4 Effective Measure grants Publishers a limited, revocable, non-transferable, non-assignable license to use the parts of Effective Measure's Intellectual Property provided by Effective Measure for the sole purpose of insertion in the Publisher's website pages in connection with the Services. Effective Measure does not grant any other rights to any Client in respect of its Intellectual Property.
- 14.5 The Client acknowledges and agrees that Effective Measure will suffer significant Loss in the event the Client uses Effective Measure's Intellectual Property in breach of this clause 14, and Effective Measure will estimate the extent of the Loss suffered by it which shall be recoverable by Effective Measure immediately on demand as a liquidated debt due and owing, despite any pending litigation.

## 15. NOTICES

### 15.1 Procedure

All notices authorised or required under these Terms of Service to be given by a party to another shall be in writing sent by delivered personally or sent by prepaid post and in each case addressed to the other party at the address notified by them to the other party from time to time.

### 15.2 Proof of receipt of notice

- (a) Any notice or other communication to or by a party under these Terms of Service may be given by personal service, post, facsimile or sent electronically by email.
- (b) Receipt of a notice given under these Terms of Service will be deemed to occur:
  - (i) in the case of hand delivery on the date of delivery;
  - (ii) in the case of a communication sent by prepaid post on the sixth business day after posting;
  - (iii) in the case of a facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent; or
  - (iv) in the case of an email, on the day confirmation is received from the relevant internet service provider that the email was successfully delivered.

## 16. GENERAL PROVISIONS

### 16.1 Governing law

- (a) Each party agrees to the applicable governing law below without regard to choice or conflicts of law rules and to the exclusive jurisdiction of the applicable courts below:



- (i) If the Client is domiciled in the United States of America, Canada, Mexico or a country in Central or South America or the Caribbean, Australia or New Zealand – Victoria, Australia;
- (ii) If the Client is domiciled in the Middle East or Europe – Dubai, UAE;
- (iii) If the Client is domiciled in a country in Asia or the Pacific region, other than Australia–Singapore.

#### 16.2 **Binding on successors**

These Terms of Service shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

#### 16.3 **Assignment**

Effective Measure may assign its interest under these Terms of Service without notice to the Client. The Client may assign its interest under these Terms of Service on giving written notice to Effective Measure provided that it obtains Effective Measure's prior written consent to the assignment (which must not be unreasonably withheld).

#### 16.4 **Attorneys**

Where these Terms of Service is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.

#### 16.5 **Waiver**

No waiver by a party of a provision of these Terms of Service is binding unless made in writing.

#### 16.6 **Severance**

If a provision of these Terms of Service is void or unenforceable it must be severed from these Terms of Service and the provisions that are not void or unenforceable are unaffected by the severance.

#### 16.7 **Time of the essence**

Time is in all cases and in every respect of the essence of these Terms of Service.

#### 16.8 **Further assurances**

The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under these Terms of Service.

#### 16.9 **Entire understanding**

- (a) These Terms of Service contains the entire understanding and agreement between the parties as to the subject matter of these Terms of Service.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of these Terms of Service are merged in these Terms of Service and are of no further effect.
- (c) No oral explanation or information provided by a party to another affects the meaning or interpretation of these Terms of Service or constitutes any collateral agreement, warranty or understanding.



#### 16.10 **No adverse construction**

You agree that these Terms of Service may not be construed adversely against Effective Measure solely because Effective Measure prepared them.

#### 16.11 **Cumulative rights**

The rights and remedies of a party to these Terms of Service are in addition to the rights or remedies conferred on the party at law or in equity.

#### 16.12 **Dispute resolution**

- (a) Upon the written request of a party, any dispute that arises between parties shall be referred to a joint committee consisting of the Client's Account manager and Effective Measure's manager for the Client's Account. The representatives shall discuss the problem and attempt to resolve the dispute without the necessity of any formal proceedings. Should the parties be unable to resolve the dispute within 7 days of the date it is first referred to the representatives, then the dispute shall be referred to the respective General Managers (GM's) of the parties, or their representatives within five business days after the initial representatives failed to resolve the dispute.
- (b) If despite the parties' best efforts a dispute is not resolved within 7 days after the GMs attempt to resolve the dispute, a party may by notice to the other party or parties to the dispute refer the dispute for mediation in accordance with the Mediation Rules of The Institute of Arbitrators and Mediators Australia. The mediation will be conducted by a mediator to be appointed by agreement of the parties or in default of agreement to be appointed by the President of the Law Society of Victoria or their nominee at the request of a party.
- (c) If the dispute is not resolved within 21 days after the appointment of the mediator any party may take legal proceedings to resolve the dispute.
- (d) The provisions of this clause do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.



## **SCHEDULE 1 – emPower Services**

The following terms shall apply to the emPower Services provided by Effective Measure to a Publisher. In the event of inconsistency between the terms in this Schedule 1 and the terms set out above in these Terms of Service, the terms set out in this Schedule 1 shall prevail to the extent of the inconsistency.

Effective Measure has established a co-operative arrangement, under which it will use data collected through the Publisher's sites under these Terms of Service for the purpose of modelling into targetable audience segments. Effective Measure will share modelled audience segments with other businesses involved in online data collection to facilitate the sale of the modelled audience segments. None of the data collected will be personally identifiable information and the data shared will be anonymous.

### **1. PROVISION OF SERVICES**

1.1 The Publisher hereby agrees to the following:

- (a) To place Tags on websites or mobile applications in accordance with Effective Measure's tagging specification requirements, as provided to the Client by Effective Measure, including the ongoing responsibility to add Tags to new pages and content as they are created;
- (b) To allow Effective Measure to create or update its cookies, device specific persistent identifiers or browser specific persistent identifiers in response to the tagging call, with the understanding that the Effective Measure cookie shall only be allowed to collect anonymous traffic data; and
- (c) To include a statement on one or more of its website pages that it is using Effective Measure's Services and it will include a link to the Effective Measure's Privacy Policy in place from time to time.

### **2. REVENUE SHARE**

2.1 Effective Measure anticipates being entitled to a share of the income earned from the use of the combined data ("Revenue").

2.2 In consideration for the Publisher's entry into these Terms of Service, Effective Measure has agreed to share that Revenue with the Publisher based on the Publishers percentage contribution to the "Revenue share model". Notwithstanding this clause, the Publisher will only be entitled to share that Revenue where the Publisher has earned for the purposes of clause 2.1 of this Schedule 1 a minimum of USD\$100 in the quarter to which the Revenue sharing relates.

2.3 For information on the "Revenue share model", please email [mena@effectivemeasure.com](mailto:mena@effectivemeasure.com).

2.4 Effective Measure will pay to the Publisher the Percentage notified by Effective Measure to the Publisher at the Commencement Date ("Percentage"), with the Percentage being 25% for a non-dashboard Client or 50% for a dashboard Client of that fraction of the total net Revenue attributable to the Publisher's contribution. Effective Measure reserves the right to adjust the Percentage after a period of six months.

2.5 Effective Measure will calculate the amount payable to the Publisher in respect of each month in accordance with the payment calculation set out above and will notify the Publisher of this and will remit payment to the Publisher into its nominated bank account via electronic transfer or another means nominated by Effective Measure, on the later of:

- (a) 60 days after the end of the relevant quarter (as notified by Effective Measure);
- (b) 30 days after Effective Measure receives payment from the end user (i.e. Data Service Provider or Data Management Platform) in respect of the relevant quarter; or
- (c) 30 days following receipt of a valid invoice from the Publisher.

2.6 The Publisher acknowledges that the Revenue obtained from this model will vary month to month based on a number of factors, including the number of days in the month, the number of agencies using the data in any



month, the number of Publishers participating in the data cooperative each month and the relative value placed on the inventory by the market. Effective Measure makes no warranties about the amount that will be payable to the Publisher under these Terms of Service.

- 2.7 If any value added tax, sales tax or other similar tax is or becomes applicable to any amount payable by Effective Measure under these Terms of Service, Effective Measure and the Publisher acknowledge and agree that the Publisher will be entitled to payment of that tax in addition to the amount payable, provided that:
- (a) the Publisher has provided to Effective Measure a valid tax invoice for the relevant amount; and
  - (b) if, and to the extent that, Effective Measure is not able to obtain an equivalent tax credit in respect of the tax paid by Effective Measure to the Publisher, Effective Measure may adjust the amount payable to the Publisher so that the net payment made by Effective Measure to the Publisher remains the same as it would have been had Effective Measure been able to obtain a tax credit in respect of the whole amount of the tax paid.
- 2.8 The Publisher acknowledges and agrees that it must invoice Effective Measure for any amount payable by Effective Measure to the Publisher within 12 months of the Publisher being notified of the amount payable under clause 2.5 of this Schedule 1. In the event the Publisher does not invoice Effective Measure by this date, the Publisher's share of the Revenue is deemed to be reduced to nil and the Publisher must not make any objection.

### **3. TERM AND TERMINATION**

- 3.1 A Publisher who pays Fees to Effective Measure to use the Services (and has no Fees outstanding) may opt-out of the Data Co-operative Services at anytime by giving one month's written notice to Effective Measure by emailing your account manager.
- 3.2 Upon termination of these Terms of Service, Effective Measure will cease providing the Services to the Publisher and the Publisher must remove all copies of Effective Measure's Intellectual Property from any website or other source where it was featured by the Publisher.

### **4. TRAFFIC MANIPULATION**

- 4.1 The Publisher acknowledges and agrees that the practice of artificially inflating Tag requests is strictly prohibited under these Terms of Service. Inflating shall include, but is not limited to, the machine generation of Tag requests via robots, spiders, computer scripts, or human generated requests performed for the sole purpose of increasing Tag request or persistent identifier web site visitation counts. This determination is made at the sole discretion of Effective Measure, and Effective Measure retains the right to revert to panel numbers or discount inflated traffic in the event Effective Measure determines manipulation has occurred.

### **5. SURVEYS**

- 5.1 The Publisher acknowledges and agrees that Effective Measure, as part of these Terms of Service, shall have the ability to serve short surveys to internet enabled devices on which an Effective Measure cookie resides.
- 5.2 Effective Measure agrees to use these surveys to collect only non-personal information in an effort to further refine its market research. Effective Measure further agrees to provide users visiting these sites with the ability to opt-out of these surveys.
- 5.3 The aggregated responses to surveys are deemed to be owned by Effective Measure, for use across Effective Measure products.