

Diimex Buyer Agreement

Summary

	“Exclusive Scoop” Content	“Premium First Rights” Content	“First Rights” Content	“Stock” and “Red Carpet” Content
What is it?	Exclusive Scoop Content is generally (but not always) breaking editorial/news content which has been captured by a single photographer or videographer and is considered to be highly prized.	Premium First Rights Content is generally (but not always) breaking editorial/news content which has been captured by a small number of photographers or videographers and is considered to be rare or highly prized.	First Rights Content is generally (but not always) breaking news content which has been captured by many photographers or videographers.	Stock Content is content which is generally more than one month old, has no current news value. Red Carpet Content is content which has generally been captured at “red carpet” or promotional events.
How to licence Content				
What is the licensing process?	Rights to use the Content are sold by auction. Diimex will simultaneously auction the images and/or video comprising the Content: (a) as a set (Group Auction); and (b) individually (each auction being an Individual Auction).	Rights to use the Content are sold by auction and/or sale. Diimex will simultaneously: (a) auction the images and/or video comprising the Content as a set (Group Auction); and (b) invite offers to licence the images and/or video comprising the Content individually and non-exclusively at the price set out in the Pricing Guide (each a Purchase Request).	You can licence the Content by paying the price set out in the Pricing Guide for the relevant category of Content.	

	“Exclusive Scoop” Content	“Premium First Rights” Content	“First Rights” Content	“Stock” and “Red Carpet” Content
	<p>If at the end of the Auction Period:</p> <p>(c) the highest bid in the Group Auction exceeds the aggregate value of the highest bids placed in each of the Individual Auctions, the Content as a set will be licensed to the Winning Bidder in the Group Auction; or</p> <p>(d) otherwise, the rights to use each image or video comprising the Content will be licensed to the Winning Bidder in each Individual Auction.</p>	<p>If at the end of the Auction Period:</p> <p>(c) the highest bid in the Group Auction exceeds the aggregate value of all Purchase Requests received by Diimex, the Content, as a set, will be licensed to the Winning Bidder in the Group Auction; or</p> <p>(d) otherwise, the rights to use each individual image or video comprising the Content will be licensed in accordance with each Purchase Request.</p>		
What is the Auction Period?	The Group Auction and Individual Auctions will run for 6 hours (Auction Period), provided that Diimex can, in its sole discretion, shorten or extend the Auction Period by providing at least 1 hour notice to all bidders.	The Group Auction and Individual Sale will run for 2 hours (Auction Period), provided that Diimex can, in its sole discretion, shorten or extend the Auction Period by providing at least 20 minutes notice to all bidders.		Not Applicable
How to licence Content				
What rights do you get?	<p>Licensed Content acquired through a Group Auction</p> <p>You have the exclusive right to use the Licensed Content in the Licensed Territory:</p> <p>(a) once in a single edition of one or more magazines, newspapers, and other print publications you publish (including publications of Group</p>	<p>Licensed Content acquired through a Group Auction</p> <p>You have the exclusive right to use the Licensed Content in the Licensed Territory:</p> <p>(a) once in a single edition of one or more magazines, newspapers, and other print publications you publish (including publications of Group</p>	<p>You have the non-exclusive right to use the Licensed Content in the Licensed Territory according to the licence options purchased (as described in the Pricing Guide). You also receive Web Rights and Full App Rights for Editorial Use only without paying any Loading Fees.</p>	

“Exclusive Scoop” Content	“Premium First Rights” Content	“First Rights” Content	“Stock” and “Red Carpet” Content
<p>Companies), including as part of the front cover of any such publication; or</p> <p>(b) on any television programs you produce,</p> <p>for Editorial Use only. You also receive Web Rights and Full App Rights for Editorial Use only without paying any Loading Fees.</p> <p><i>Licensed Content acquired through an Individual Auction</i></p> <p>You have the exclusive right to use the Licensed Content in the Licensed Territory:</p> <p>(a) once in a single edition of one or more magazines, newspapers, and other print publications you publish (including publications of Group Companies), including as part of the front cover of any such publication; or</p> <p>(b) on any television programs you produce,</p> <p>for Editorial Use only. You also receive Web Rights and Full App Rights for Editorial Use only without paying any Loading Fees.</p>	<p>Companies), including as part of the front cover of any such publication; or</p> <p>(b) on any television programs you produce,</p> <p>for Editorial Use only. You also receive Web Rights and Full App Rights for Editorial Use only without paying any Loading Fees.</p> <p><i>Licensed Content acquired through a Purchase Request</i></p> <p>You have the non-exclusive right to use the Licensed Content in the Licensed Territory:</p> <p>(a) once in a single edition of a single magazine, newspaper, or other print publication, provided that you must not use the content on the front cover of any such publication without paying the associated Loading Fee; or</p> <p>(b) on a single television program you produce,</p> <p>for Editorial Use only. You also receive Web Rights and Full App Rights for Editorial Use only without paying any Loading Fees.</p>		

	“Exclusive Scoop” Content	“Premium First Rights” Content	“First Rights” Content	“Stock” and “Red Carpet” Content
		<p>Additional rights</p> <p>You may licence additional rights in the Licensed Territory as described in the Pricing Guide by paying a Loading Fee in addition to the Licence Fees. You must nominate, prior to use, the Additional Rights (if any) you wish to licence.</p>		
<p>How long do you have to use the content, and for how long can you use it?</p>	<p>You must use the Licensed Content within 30 days from the date on which your licence comes into effect (being the date on which the auction concludes, or the date on which you agree to licence Content that is not licensed by way of auction). If you do not do so, your licence expires.</p> <p>You must notify Diimex when the Licensed Content has been used, and in which publications and/or programs.</p> <p>If you use the Licensed Content in a publication you produce, you may only use the Licensed Content for a single publication cycle of the associated publication (Publication Cycle) in which the Licensed Content was first published. The Publication Cycles of the associated publication are as follows:</p> <ul style="list-style-type: none"> (a) for newspapers, from 6am on the date the Licensed Content is first published until 6am the following day; (b) for magazines circulated weekly, 7 days from the date the Licensed Content is first published; and (c) for magazines circulated monthly, one month from the date the Licensed Content is first published. <p>If you use the Licensed Content on a television program you produce, you may only use the Licensed Content for a single broadcast cycle of the associated program (Broadcast Cycle) in which the Licensed Content was first broadcast. The Broadcast Cycles of the associated television program are as follows:</p> <ul style="list-style-type: none"> (d) for daily programs (including programs shown on weeknights only), 24 hours from when the Licensed Content is first broadcast; and (e) for weekly programs, 7 days from the date the Licensed Content is first broadcast. 			
<p>What attribution must you include?</p>	<p>For Licensed Content used in print media, you must include an attribution for the image on the same page as the image in the following form: “© Contributor’s Name/Diimex”. If the contributor’s name is withheld then it should be “© Diimex”.</p> <p>For Licensed Content used in broadcast or online media, you must include the same attribution as for print media, and such attribution must be sized and placed in a manner consistent with industry standards (and in any event in a manner consistent with any other attribution provided for video licensed by you from third parties).</p>			

Diimex Buyer Agreement

This Diimex Buyer Agreement applies to persons who apply for or who are registered as buyers for the purpose of this website (the **Diimex Site**). Together with the Pricing Guide, Diimex Site Terms and Diimex Privacy Policy, this Diimex Buyer Agreement governs the use of the Diimex Site by registered buyers. Please carefully read this Diimex Buyer Agreement as well as the Pricing Guide, Diimex Site Terms and Diimex Privacy Policy, before using the Diimex Site.

1 Structure and operation of Agreement

- (a) This Agreement consists of the following parts:
 - (i) the summary table set out above; and
 - (ii) clauses 1 to 17 of this Agreement.
 - (b) If there is any inconsistency between the parts of this Agreement, clauses 1 to 17 of this Agreement will prevail over the summary table to the extent of the inconsistency.
 - (c) If there is any inconsistency between this Agreement and the Pricing Guide, Diimex Site Terms or Diimex Privacy Policy, this Agreement will prevail to the extent of the inconsistency.
-

2 Registering to use the Diimex Site

2.1 Registering to use the Diimex Site

- (a) In order to licence Content from the Diimex Site you must register as a buyer with Diimex by completing the application form on the Diimex Site. Diimex is under no obligation to accept an application for registration as a buyer.
- (b) You may register for the Diimex Site only for business or commercial purposes, and not for your own private or personal use. By completing the registration application form you warrant that you are registering for the Diimex Site only for business or commercial purposes.
- (c) You must promptly notify Diimex of any changes to your registered details. Diimex is not responsible for any loss or damage (including misdirected emails) which may arise from your failure to provide current, accurate and complete registration details.
- (d) You are responsible for the security of your user name and password for the Diimex Site. Diimex may assume that anyone using your user name and password is authorised by you to do so. Unauthorised use of your user name and password will, under no circumstances, reduce your liability in connection with using the Diimex Site, including your obligation to pay for Content licensed using your user name and password. You must notify Diimex immediately on becoming aware of any unauthorised use of your user name or password or of any other security breach in connection with the Diimex Site.

2.2 Suspension from use of the Diimex Site

- (a) Diimex may suspend or cancel your registration as a buyer if you breach this Agreement, or for any other reason in its sole discretion.
- (b) If Diimex suspends or cancels your registration as a buyer, you may not register as a buyer again without Diimex's prior written consent.

3 Categorisation of Content

- (a) Diimex will categorise images and videos into the categories of Content in its sole discretion.
- (b) Subject to any exclusive licence rights granted by Diimex, Diimex may move Content between Categories in its sole discretion.

4 Purchasing by auction

The provisions of this clause 4 apply in addition to the provisions of the summary table set out above in relation to the process of conducting simultaneous Group Auctions and Individual Auctions.

4.1 Your obligations as a bidder

- (a) When you place a bid on an auction on the Diimex Site, you are making a binding offer to licence the rights to use the Content at your bid price. If your bid price is the Winning Bid, you will be the Winning Bidder and you must licence the Content you have bid for and pay for the Licensed Content in accordance with clause 8.1.
- (b) Once your bid is placed, it cannot be withdrawn.
- (c) You must not engage in any manipulation of the auction process.

4.2 Auction process

- (a) An auction will start at the specified time and at the nominated minimum starting price for the relevant category of Content, as set out in the Pricing Guide, provided that contributors who have licensed auctioned Content to Diimex may be permitted to set a different minimum starting price where Diimex permits them to do so.
- (b) Diimex will conduct separate auctions for each Licensed Territory. The currency in which the auction is conducted is specified in the Pricing Guide.
- (c) Bid amounts may only be increased in multiples of the specified bid increment as set out in the Pricing Guide.
- (d) Contributors who have licensed auctioned Content to Diimex may be allowed to place a vendor bid in an auction. If a higher bid is not received than a vendor bid, the vendor bid will be considered withdrawn and of no effect.
- (e) The auction closes at the end of the Auction Period.

- (f) In addition to Diimex's right to shorten or extend the Auction Period as described in the summary table set out above, Diimex may, in its sole discretion at any time during the auction, adjust the minimum starting price of the auction to the extent necessary to correct any incorrect pricing resulting from administrative or technology-related errors.

4.3 Availability of the Diimex Site

- (a) While Diimex will use all reasonable endeavours to ensure that the Diimex Site is accessible at all times during auctions, Diimex cannot guarantee that the Diimex Site will be accessible at all times
- (b) Diimex is not responsible for any problems associated with the use of the public internet, including any errors in processing, downtime or any other errors or delays affecting any auction. Diimex does not warrant or represent that the information contained in the Diimex Site is accurate, complete, correctly sequenced, reliable or timely, or that the Diimex Site will be uninterrupted or secure or free of errors and/or viruses.
- (c) If the Diimex Site is inaccessible for any reason, Diimex may choose in its sole discretion to accept bids via email or phone.

5 Purchasing from the Diimex content library

- (a) When you choose to make a Purchase Request for Premium First Rights Content or you licence First Rights Content, Stock Content or Red Carpet Content on the Diimex Site, you are making an offer to licence that Content.
- (b) Diimex is not bound to accept your offer, and may decline any offer by you for any reason. An offer will only be binding on Diimex when Diimex accepts an offer by notifying you accordingly.
- (c) Once Diimex has accepted an offer, you cannot cancel it without Diimex's prior written approval.
- (d) While Diimex endeavours to avoid pricing and other errors, inadvertent errors do occur from time to time and Diimex may also cancel an offer that it has accepted in such circumstances, by notifying you accordingly.

6 Delivery of Licensed Content

- (a) Subject to clause 8.2(b), Diimex will supply you with a link from which the Licensed Content can be downloaded. Alternatively, you can logon to the Diimex Site and download the Licensed Content from your account.
- (b) Diimex will be taken to have fulfilled its delivery obligations to you in relation to any Licensed Content by making that Licensed Content available for download as described in paragraph (a). The Licence Fees for any Licensed Content remain fully payable even if you do not proceed to download the Licensed Content.
- (c) You must retain the unique identifier number of, and all other metadata Diimex may include as part of the electronic file containing, the Licensed Content.
- (d) You must take all reasonable measures to prevent third parties from gaining unauthorised access to the Licensed Content.

- (e) You may make a single high-resolution copy of the Licensed Content solely for backup purposes.
- (f) On expiry or termination of your license to use the Licensed Content, you must promptly delete the Licensed Content from your computer and other electronic storage systems.

7 Licence to use Content

The summary table set out above describes the rights granted to you by Diimex in respect of the Licensed Content, and in addition:

- (a) the Licensed Content is licensed and not sold. Diimex reserves all rights not expressly granted under this Agreement in relation to the Licensed Content;
- (b) without limiting paragraph (a), you may not:
 - (i) under any circumstances modify (including by editing, altering or manipulating) the Licensed Content, or combine the Licensed Content with any other images or video, without Diimex's prior written consent. You may, however, crop the Licensed Content to the extent required for placement of the Licensed Content in the publication or production, provided that the cropping of the Licensed Content does not modify (including by altering or manipulating) the impression conveyed by the Licensed Content;
 - (ii) sublicense any of your rights under this Agreement, except to Group Companies, in which case:
 - (A) you must ensure that the Group Companies to whom you grant a sublicense comply with all of the terms of this Agreement; and
 - (B) you remain liable for the acts or omissions of the Group Companies to whom you grant a sublicense and their personnel as if they were your acts or omissions;
 - (iii) grant or provide to any person any Security Interest over any right or interest under this Agreement;
 - (iv) incorporate the Licensed Content in any logo, trade mark or service mark;
 - (v) make the Licensed Content available to third parties in a manner that allows such third parties to download, extract or access the Licensed Content as a separate file (this does not apply to third parties using native browser functions to view or save an image in a webpage, for the 'web use only' version of the Licensed Content when used on a website in accordance with your Web rights); or
 - (vi) use the Licensed Content in any way that is misleading or deceptive, for any purpose that causes or potentially causes damage to Diimex's brand, or which is detrimental to Diimex's business and/or of the business of any of Diimex's licensors;
- (c) you may use the Licensed Content for business or commercial purposes only. You must not use the Licensed Content for your own private or personal purposes;
- (d) you must comply with all applicable laws, regulations and industry standards in your use of the Content and not publish or broadcast the Licensed Content together with or in connection with any material that is in the reasonable opinion of Diimex defamatory, obscene or pornographic, contravenes the rights of any third party or is otherwise unlawful;
- (e) Diimex grants no rights in respect of and makes no representations or warranties regarding the use of names, people, trade marks, service marks, designs, property, landmarks, buildings or other architectural structures featured in any Licensed Content or on which the Licensed

Content was taken. The information accompanying Licensed Content will indicate if Diimex's licensors have obtained a model and/or property release in relation to the Licensed Content, and Diimex will provide you with a copy of any such release(s) upon request. You acknowledge that:

- (i) you are solely responsible for determining whether you require any releases in connection with any proposed use of the Licensed Content, and whether any releases obtained are sufficient for your purposes; and
 - (ii) in some jurisdictions, it is a legal requirement to have a person's consent in order to use their image, likeness or property for commercial purposes; and
- (f) you must not use the Licensed Content in any manner that would be considered offensive to any person shown in the Licensed Content. Offensive uses include but are not limited to the use of Licensed Content that involves or implies illegal activities, adverse medical conditions or procedures, other adverse health or mental health issues, substance abuse, welfare or economic aid, dating agencies, sexual preference, teen pregnancy, abortion and adoption, political or religious affiliation, smoking or alcohol usage, feminine hygiene, incontinence or impotence. If any Licensed Content featuring a person shown in the Licensed Content is used:
- (i) in a manner that would lead a reasonable person to believe that the model personally uses or endorses a good or service; or
 - (ii) in connection with a subject that would be unflattering or controversial to a reasonable person,

you must accompany each such use with a conspicuous statement that indicates that the person so shown is a model and the Licensed Content is used for illustrative purposes only.

8 Fees, invoicing and payment

8.1 Fees

You must pay to Diimex:

- (a) when you Winning Bidder of an auction, the amount of the Winning Bid for the Content; and
- (b) when you purchase the rights to use Premium First Rights Content, First Rights Content, Stock Content or Red Carpet Content, the price set out in the Pricing Guide for the relevant category of Content,

(Licence Fees), any applicable Loading Fees and any applicable Taxes.

8.2 Invoicing and Payment

- (a) Diimex will issue invoices to you for the Licence Fees, any applicable Loading Fees and any applicable Taxes at:
 - (i) the conclusion of the auction; or
 - (ii) the completion of your purchase of the First Rights Content, Stock Content or Red Carpet Content,(as applicable).

- (b) Except where paragraph (c) applies, you must pay Diimex the invoiced amount by credit card before Diimex will deliver the Licensed Content to you.
- (c) If you have a credit account established in advance with Diimex (an **Account**), Diimex will charge the invoiced amount to your Account, subject to paragraphs (e) to (h). Accounts are subject to approval, which approval may be given or withheld in Diimex's absolute discretion.
- (d) In determining whether to approve an application for a credit account, Diimex may perform credit checks with credit agencies on you. You:
 - (i) consent to Diimex collecting, providing and receiving any personal, credit or other information for the purpose of assessing this application and for any other purpose set out in Diimex's privacy policy; and
 - (ii) acknowledge that if you do not disclose all the information requested by Diimex, Diimex may not be able to provide you with credit.
- (e) Where you have an Account, Diimex will send you a monthly statement within 5 Business Days of the end of calendar month for all Licence Fees, Loading Fees and any applicable Taxes charged to your Account during that calendar month (**Monthly Statement**).
- (f) You must pay the total amount set out in the Monthly Statement within 30 days of the date of the **Monthly Statement**.
- (g) Further purchases or auction bids may not be accepted by Diimex where any amounts payable are overdue, unless prior arrangements have been made.
- (h) Where the total outstanding amount specified in the Monthly Statement is not paid in accordance with paragraph (f), Diimex reserves the right to charge interest on overdue amounts, calculated from the date of the Monthly Statement up to the date cleared payment is received by Diimex, calculated daily and compounded monthly. The applicable annual interest rate for calculating daily interest will be the Overnight LIBOR Rate for the relevant currency on the relevant day plus 4%.

8.3 Credit Card Fees

If a credit card is used for payment a credit card fee, as specified in the Pricing Guide, may be payable, if permitted by law, for the recovery of costs associated with such payment types.

9 Taxes

- (a) All prices and payments in this Agreement are exclusive of applicable sales, use and other taxes, and all applicable export or import fees, VAT, GST, custom duties and similar charges (the **Taxes**). The Taxes will be shown separately and paid in full by you in accordance with paragraphs (b) to (d) and clause 8.
- (b) The following provisions apply in the event that any Australian GST is payable in relation to this Agreement:
 - (i) In this paragraph (b), a term or expression starting with a capital letter which is defined in the GST Law but not defined in this Agreement has the same meaning as in the GST Law.
 - (ii) Each consideration or payment obligation in this Agreement is exclusive of GST.

- (iii) If GST is or becomes payable on a Supply made under or in connection with this Agreement, an additional amount is payable by the party providing consideration for the Supply equal to the amount of GST payable on that Supply as calculated by the party making the Supply in accordance with the GST Law.
 - (iv) The additional amount payable under paragraph (iii) is payable at the same time and in the same manner as the Consideration for the Supply.
 - (v) Each invoice delivered by us under this Agreement will comply with the requirements for a Tax Invoice under the GST Law.
 - (vi) If a party is entitled under this Agreement to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any Taxes or GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed.
 - (vii) If an Adjustment Event occurs, the parties must do all things necessary to make sure that the Adjustment Event may be appropriately recognised, including the issue of an Adjustment Note.
- (c) The following provisions apply in relation to any taxes payable in the U.S.:
- (i) You agree that you will be responsible for the payment of all U.S. state and local transaction taxes (including all customs, import or export, sales, use, excise, goods and services, gross receipts, business and occupation, license, value added and similar taxes) related to the goods and services provided pursuant to this Agreement. You agree that if any such U.S. state and local transaction tax or similar tax is due on the goods and services provided under this Agreement, you will self-assess and remit such taxes to the appropriate taxing authority. If Diimex is notified, assessed or audited by any U.S. taxing authority and assessed U.S. state and local transaction tax or any similar tax for the goods and services provided to you under this Agreement, you agree to promptly pay to us, upon demand, the amount of U.S. state and local transaction tax or similar tax assessed on such goods and services, together with any additional amounts assessed, including, but not limited to, interest and penalty. In no event shall any amount of U.S. state and local transaction tax or similar tax be deducted or withheld from the amounts payable under or in relation to this Agreement.
- (d) The following provisions apply to any other taxes payable in relation to this Agreement:
- (i) In addition to the Licence Fees and Additional Fees, you are responsible for, and must pay to us upon demand, all customs, import or export, sales, use, excise, goods and services, VAT, value added and similar taxes, except income taxes, which Diimex is required to collect in relation to this Agreement.
 - (ii) If you are required by any applicable law to make any deduction or withholding from any amount payable to us under or in relation to this Agreement, then the amount paid by you must be increased so that Diimex receives the full amount specified under this Agreement net of any such deduction or withholding.

10 Warranties

- (a) EACH PARTY REPRESENTS, WARRANTS AND UNDERTAKES THAT THE EXECUTION OF THIS AGREEMENT HAS BEEN DULY AUTHORISED BY ALL NECESSARY CORPORATE ACTION, AND THAT THIS AGREEMENT CONSTITUTES A VALID AND BINDING OBLIGATION ENFORCEABLE AGAINST IT IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.
- (b) SUBJECT TO PARAGRAPH (C), THE CONTENT IS PROVIDED “AS IS, AS AVAILABLE” AND DIIMEX EXCLUDES AND DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY LAW ALL GUARANTEES, CONDITIONS, WARRANTIES OR TERMS OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR IMPOSED BY ANY APPLICABLE LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE AND FITNESS FOR A PARTICULAR PURPOSE.
- (c) SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF GUARANTEES, CONDITIONS, WARRANTIES OR TERMS IMPLIED OR IMPOSED BY ANY APPLICABLE LAW, OR DO NOT ALLOW LIMITATIONS ON HOW LONG ANY SUCH GUARANTEE, CONDITION, WARRANTY OR TERM MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. NOTHING IN THIS AGREEMENT EXCLUDES, RESTRICTS OR MODIFIES ANY GUARANTEE, WARRANTY, TERM OR CONDITION, RIGHT OR REMEDY IMPLIED OR IMPOSED BY ANY APPLICABLE LAW WHICH CANNOT LAWFULLY BE EXCLUDED, RESTRICTED OR MODIFIED.
- (d) IF ANY GUARANTEE, CONDITION, WARRANTY OR TERM IS IMPLIED OR IMPOSED BY ANY APPLICABLE LAW AND CANNOT BE EXCLUDED (A **NON-EXCLUDABLE PROVISION**), AND DIIMEX IS ABLE TO LIMIT YOUR REMEDY FOR A BREACH OF THE NON-EXCLUDABLE PROVISION, THEN DIIMEX’S LIABILITY FOR BREACH OF THE NON-EXCLUDABLE PROVISION IS LIMITED EXCLUSIVELY (SO FAR AS APPLICABLE LAWS DO NOT PROHIBIT) TO ONE OR MORE OF THE FOLLOWING AT DIIMEX’S OPTION:
 - (i) IN THE CASE OF GOODS, THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS, THE REPAIR OF THE GOODS, THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS, OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED;
 - (ii) IN THE CASE OF SERVICES, THE SUPPLYING OF THE SERVICES AGAIN, OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN; OR
 - (iii) A REFUND OF THE AMOUNT PAID BY YOU FOR THE GOODS OR SERVICES TO WHICH THE BREACH RELATES.

11 Liability

11.1 Intellectual property indemnity

- (a) Subject to the remainder of this clause 11, Diimex will defend you against any claim brought by a third party alleging that your use of the Licensed Content in accordance with this Agreement infringes any copyright of a third party in the Licensed Territory (a **Claim**), and pay any resulting court or arbitration-awarded damages or settlement to which Diimex consents in writing.

- (b) If any Claim is brought against you, you must:
- (i) notify Diimex in writing as soon as practicable of the Claim;
 - (ii) give Diimex the option to conduct the defence of the Claim, including negotiations for settlement;
 - (iii) provide Diimex with reasonable assistance in conducting the defence of the Claim;
 - (iv) not make any admissions in relation to the Claim without Diimex's prior written consent;
 - (v) permit Diimex to replace the Licensed Content to make it non-infringing;
 - (vi) permit Diimex to obtain for you the right to continue using the Licensed Content; and
 - (vii) use your best endeavours to mitigate any damages you suffer as a result of the Claim.

Diimex is not liable to you under paragraph (a) to the extent that any failure by you to comply with this clause 11.2 prejudices Diimex's ability to defend any Claim or causes you to suffer any additional damages.

- (c) Diimex is not liable to you under paragraph (a) to the extent that the infringement arises from:
- (i) modifications to the Licensed Content made by anyone other than Diimex; or
 - (ii) use of the Licensed Content for a purpose other than that for which it was supplied.
- (d) If any Claim is brought against you, and Diimex is unable to:
- (i) modify or replace the Licensed Content to make it non infringing; or
 - (ii) obtain for you the right to continue using the Licensed Content,
- on terms that Diimex believes to be commercially reasonable, Diimex may terminate your licence for the Licensed Content with immediate effect by giving you written notice of such termination, in which case Diimex will refund to you the associated Licence Fees (pro-rated to reflect the proportion of the period for which you may use the Licensed Content that has elapsed).
- (e) TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS CLAUSE 11 SETS OUT DIIMEX'S SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, IN RELATION TO ANY INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

11.2 Limitations on liability and remedies

- (a) SUBJECT TO CLAUSE 10(C), AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, DIIMEX'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS UNDER OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER IN ANY CALENDAR MONTH IS LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID BY YOU UNDER THIS AGREEMENT IN THAT CALENDAR MONTH. IN CALCULATING DIIMEX'S AGGREGATE LIABILITY UNDER THIS PARAGRAPH (A), THE PARTIES MUST INCLUDE ANY AMOUNTS PAID OR REFUNDED, OR THE VALUE OF ANY GOODS OR SERVICES REPLACED, REPAIRED OR SUPPLIED, BY DIIMEX FOR A BREACH OF ANY NON-EXCLUDABLE PROVISIONS.

- (b) SUBJECT TO CLAUSE 10(C), AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DIIMEX IS NOT LIABLE TO YOU FOR:
- (i) ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR PUNITIVE LOSS OR DAMAGE; OR
 - (ii) LOSS OF PROFITS, REVENUE, BUSINESS, GOODWILL, BARGAIN, ANTICIPATED SAVINGS OR MANAGEMENT TIME,
- WHETHER OR NOT DIIMEX WAS AWARE OF SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- (c) DIIMEX'S LIABILITY TO YOU UNDER OR IN RELATION TO THIS AGREEMENT OR ITS SUBJECT MATTER IS REDUCED TO THE EXTENT THAT YOUR ACTS OR OMISSIONS, OR THOSE OF A THIRD PARTY (OTHER THAN DIIMEX'S LICENSORS OR SUBCONTRACTORS), CONTRIBUTE TO OR CAUSE ANY SUCH LIABILITY.
- (d) THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS CLAUSE 11.2 APPLY REGARDLESS OF THE BASIS ON WHICH SUCH LIABILITY ARISES, WHETHER IN CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), IN EQUITY, UNDER STATUTE, OR UNDER AN INDEMNITY.

12 Confidentiality

- (a) You agree:
- (i) to only use the Confidential Information for the performance of your obligations or exercise of your rights under this Agreement;
 - (ii) to take all measures necessary to keep the Confidential Information confidential (including measures at least as stringent as those generally undertaken by you for your own confidential information); and
 - (iii) not to release, disclose or otherwise make available any of the Confidential Information to any person except:
 - (A) in accordance with your licence rights granted under this Agreement;
 - (B) to your employees who need to know such Confidential Information;
 - (C) to your contractors, representatives and legal and professional advisors who need to know such Confidential Information, provided that you have entered into an agreement with such contractors, representatives and advisors which requires them to keep the Confidential Information confidential on term no less protective than this clause 12;
 - (D) to the extent required by law, provided that you disclose no more than the minimum amount of Confidential Information required to satisfy such law and, before disclosing any Confidential Information, provide (if possible) a reasonable amount of notice to Diimex and exhaust all reasonable steps (whether required by Diimex or not) to maintain such Confidential Information in confidence; or
 - (E) with Diimex's prior written consent.
- (b) You must ensure that each of your employees, officers, agents, contractors and advisors who have obtained access to the Confidential Information comply with all of the restrictions which are contained in this clause 12.

- (c) You acknowledge that monetary damages may not be a sufficient remedy for a breach of your obligations under this clause 12, and that Diimex is entitled, without limiting any of Diimex's other rights or remedies, to specific performance or injunctive relief as a remedy for any such breach.
- (d) Upon receipt of a request to do so made at any time following expiry or termination of this Agreement, you must deliver all copies of the Confidential Information in your possession or control to Diimex. Where it is not convenient or practical to do so, you may destroy or delete that Confidential Information. You may for your own business purposes, such as archival purposes, retain a single copy of Diimex's Confidential Information.
- (e) Neither party will make any public or press announcement regarding this Agreement or its subject matter without the prior written agreement of the other party.
- (f) Nothing in this clause 12 limits your rights to publish the Licensed Content in accordance with this Agreement.

13 Dispute resolution

- (a) The parties agree to resolve any dispute, conflict or issue between them in relation to this Agreement, including a dispute or difference about the meaning or effect of this Agreement or any matter arising under or out of this Agreement, (a **Dispute**) in accordance with this clause 13.
- (b) A party may submit notice of a Dispute to the other party (the **Dispute Notice**), which notice must provide a reasonable description of the matters the party submitting the notice considers are in Dispute.
- (c) Following receipt of a Dispute Notice, the parties will attempt to resolve the Dispute by consultation between the parties.
- (d) If the parties have failed to resolve a Dispute within 21 days after submission of a Dispute Notice, either party may refer the Dispute to arbitration by submitting a notice to the other party specifying the Dispute to be decided (the **Referral Notice**).
- (e) Upon referring any such Dispute to arbitration:
 - (i) the arbitration must be conducted in accordance with the UNCITRAL Arbitration Rules (the **Rules**), and the arbitrator will have the optional powers set out in Division 3 of Part III of the *International Arbitration Act 1974* (Cth);
 - (ii) the arbitration will be conducted under the laws referred to in clause 16.6;
 - (iii) the number of arbitrators will be one, the place of arbitration will be Sydney, Australia, and the language of the arbitration will be English;
 - (iv) if the parties cannot agree on the choice of the arbitrator in accordance with the Rules, the arbitrator will be appointed by the current President of the Institute of Arbitrators and Mediators of Australia; and
 - (v) in the event of any conflict between this paragraph (e) and the Rules, this paragraph (e) will take precedence over the Rules to the extent of the conflict.

- (f) Any judgment or award rendered by the arbitrator may be entered in any court having jurisdiction to do so including the enforcement of any arbitration award in accordance with the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, June 10 1958.
 - (g) A party may only commence legal proceedings or take similar action in relation to a Dispute:
 - (i) to apply for urgent interim relief; or
 - (ii) if a Referral Notice has not been submitted within 28 days of a party becoming entitled to do so under paragraph (d).
-

14 Termination

14.1 Termination by either party

Either party may terminate this Agreement with immediate effect, by giving the other party notice of such termination, if the other party:

- (a) breaches any of its obligations under this Agreement; or
- (b) suffers an Insolvency Event or anything similar occurs under the laws of any jurisdiction.

14.2 Termination by Diimex

- (a) Diimex may terminate this Agreement, in whole or in part, with immediate effect, by giving you notice of such termination, if an agreement under which Diimex obtains the right to use the Content is terminated or ends, in whole or in part.
- (b) Diimex may cease providing the Diimex Site at any time, in which case it may terminate this Agreement with immediate effect by giving you notice of such termination.

14.3 Effect of termination

- (a) Where this Agreement is terminated, the licence granted under clause 7 ceases immediately and you must immediately cease using the Licensed Content (except where Diimex ceases providing the Diimex Site in accordance with clause 14.2(b), in which case you may continue to use the Licensed Content for the remainder of the period for which such licence was granted).
- (b) Where Diimex terminates this Agreement, in whole or in part, in accordance with clause 14.2(a), Diimex will provide to you a pro rata refund of the Licence Fees for the affected Licensed Content for the remainder of the period for which such licence was granted.
- (c) Termination of this Agreement does not affect any accrued rights or remedies of either party.

15 Force Majeure

Notwithstanding any other provision of this Agreement, Diimex is not liable for any failure to perform any of its obligations under this Agreement where that performance is delayed, prevented, restricted or interfered with for any of the following reasons: acts of God, acts of government, war or war-like situations, strikes, lock-outs, industrial action, riots, fires, floods, earthquakes, droughts, tempests, malicious attacks on the Diimex website, or any other event beyond Diimex's reasonable control.

16 General

16.1 Changing this Agreement

- (a) Diimex may amend this Agreement at any time by giving you at least 14 days notice before the date on which those amendments come into effect (the **Amendment Effective Date**) and posting the amended Agreement on the Diimex Site.
- (b) If you do not agree to such amendments, you must notify Diimex accordingly prior to the Amendment Effective Date in which case:
 - (i) the unamended agreement will continue to apply to any Licensed Content which has been licensed to you prior to the effective date of such amendments; and
 - (ii) you may not licence further Content from Diimex.
- (c) Your continued use of the Diimex Site after the Amendment Effective Date constitutes your acceptance of, and agreement to, such amendments.

16.2 Assignment, novation and other dealings

- (a) You must not assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of Diimex.
- (b) Diimex may:
 - (i) assign or novate part or all of this Agreement to any person as part of any restructure or sale of any or all of Diimex's business; and
 - (ii) assign any of its rights under this Agreement in connection with the recovery of outstanding amounts owed to Diimex by you.

16.3 Cumulative rights

Except as expressly provided in this Agreement, the rights of a party under this Agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.

16.4 Entire agreement

- (a) This Agreement is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.
- (b) Each party represents and warrants that it has not relied on any representations or warranties about the subject matter of this Agreement except as expressly provided in this Agreement.

16.5 Further action

Each party must, at its own expense, do all things reasonably necessary to give full effect to this Agreement and the matters contemplated by it.

16.6 Governing law

This Agreement is governed by the laws of New South Wales, Australia.

16.7 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

16.8 Notices

- (a) Notices under this Agreement must be in writing and may be delivered by mail or email.
- (b) Without limiting any other means by which a party may be able to prove that a notice or other communication has been received, a notice or communication is regarded as having been received:
 - (i) in the case of mail, on the date of delivery according to the registered mail receipt; and
 - (ii) in the case of email, at the time and on the day it was sent, provided that, except in the case of a notice sent by email by Diimex in relation to an auction, if a notice or other communication is delivered by hand or email on a day which is not a Business Day or after 5 pm on any Business Day (local time at the place of the recipient), the notice or communication will be deemed to have been received by the recipient at 9 am on the next Business Day.
- (c) All notices and communications must be sent to the recipient at the address or email address specified in this Agreement or to such other address or email address as a party may from time to time notify to the other party in writing.
- (d) For the purposes of this clause 16.8:
 - (i) Diimex's address and email address are those set out below, unless Diimex has notified a changed address or email address, in which case the notice, consent, approval or other communication must be to that address, number or email address:

Address	PO Box 542 WOOLLAHRA NSW 1350 AUSTRALIA
Email	admin@diimex.com
Attention	Administration Team
 - (ii) your address and email address are those you provided when registering to use the Diimex Site, unless you have notified a changed address or email address, in which case the notice, consent, approval or other communication must be to that address or number.

- (e) Diimex accepts no liability for any loss or damage incurred if, for whatever reason, you do not receive any notices sent by Diimex by email, including notices relating to auctions.

16.9 Relationship of the parties

Except as expressly provided in this Agreement:

- (a) nothing in this Agreement is intended to constitute a fiduciary relationship or an agency, partnership or trust; and
- (b) no party has authority to bind any other party.

16.10 Survival

Clauses 10, 11, 12, 13, 14.3 and 15 survive termination or expiry of this Agreement together with any other term which by its nature is intended to do so.

16.11 Severability

Any provision of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.

16.12 No third party rights

Except as expressly provided in this Agreement:

- (a) each person who executes this Agreement does so solely in its own legal capacity and not as agent or trustee for or a partner of any other person; and
- (b) only those persons who execute this Agreement have a right or benefit under it.

16.13 Amendment

Subject to clause 16.1, no amendment of this Agreement is effective unless made in writing and signed by each party.

16.14 Waiver

- (a) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy.
- (c) Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

17 Definitions and Interpretation

17.1 Definitions

In this Agreement:

Account has the meaning given in 8.2(c).

Agreement means this agreement, including any amendment made in accordance with clause 16.1, and any amendment executed by the parties in accordance with clause 16.13.

Application means an software program (excluding, for clarification, a website) that can be downloaded and installed by users on mobile devices (such as smartphones, ipads and other tablet and mobile computing devices), and through which users can access content.

Auction Period has the meaning given in the summary table set out at the front of this Agreement.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney, New South Wales, Australia.

Claim has the meaning given in clause 11.1(a).

Confidential Information means any information of whatever kind (whether or not in material form and whether or not disclosed before or after the date of this Agreement) disclosed by Diimex to you under or in relation this agreement that:

- (a) by its nature is confidential;
- (b) is designated by Diimex as confidential; or
- (c) you know or reasonably ought to know is confidential,

including the terms of this Agreement, all Content and all information regarding Content, but excluding any information that:

- (d) becomes generally available to the public other than as a result of a breach of this Agreement by you;
- (e) was known to you on a non-confidential basis before entering into this Agreement;
- (f) is obtained from a third party who has no obligation of confidentiality to Diimex; or
- (g) is independently developed without breach of this Agreement.

Content means:

- (a) Exclusive Scoop Content;
- (b) Premium First Rights Content;
- (c) First Rights Content;
- (d) Red Carpet Content;
- (e) Stock Content; and
- (f) Handouts

individually or collectively as the context requires.

Diimex means Diimex Pty Limited (ABN 22 157 964 040) of PO Box 542, Woollahra NSW 1350, Australia.

Dispute has the meaning given in clause 13(a).

Dispute Notice has the meaning given in clause 13(b).

Editorial Use means to publish the Licensed Content for a newsworthy purpose that is of interest to the public.

Exclusive Scoop Content means images and/or video categorised as such by Diimex.

First Rights Content means images and/or video categorised as such by Diimex.

Group Companies means you and each of your Related Bodies Corporate.

GST Law has the same meaning as in the Australian *A New Tax System (Goods and Services) Act 1999* (Cth).

Handouts are content which has been provided to Diimex for promotional purposes and is distributed by Diimex free of charge for editorial purposes.

Insolvency Event means the occurrence of any one or more of the following events in relation to a party:

- (a) an order is made or an effective resolution is passed for winding up, liquidation or dissolution (other than for the purposes of solvent reconstruction or amalgamation);
- (b) a receiver, manager, controller, administrator, liquidator or similar official is appointed over the whole or any part of its assets or business;
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of that party;
- (d) a writ of execution is levied against it or its property;
- (e) that party is unable or ceases to pay its debts as they fall due in the ordinary course of business;
- (f) it enters into any moratorium or suspension of payments and proceedings;
- (g) that party makes any composition, arrangement or general assignment with any or all of its creditors;
- (h) that party becomes or is deemed bankrupt or insolvent;
- (i) that party enters into liquidation whether compulsorily or voluntarily;
- (j) that party ceases to carry on business or threatens to do so; or
- (k) anything occurs under the law of the jurisdiction in which that party is incorporated which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

Intellectual Property Rights means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including all copyrights, patent rights, trade mark rights, design rights and trade secrets.

Licensed Content means Content licensed to you by Diimex in accordance with this Agreement.

Licensed Territory means the territory in which the licence to the Licensed Content applies, as described on the Diimex Site.

Licence Fees has the meaning given in clause 8.1.

Loading Fee means the fee payable for any additional rights in relation to Content licensed by auction, as set out in the Pricing Guide.

Non-Excludable Provision has the meaning given in clause 10(d).

Overnight LIBOR Rate means the London Interbank Offered Rate which is a daily reference rate based on the interest rates at which banks borrow unsecured funds from other banks in the London wholesale money market (or interbank market) (or another applicable interest rate nominated by Diimex at its sole and absolute discretion should the the London Interbank Offered Rate no longer be available).

Premium First Rights Content means images and/or video categorised as such by Diimex.

Pricing Guide means the document titled 'Pricing Guide' available at <http://www.diimex.com/Content/Legal>, as varied by Diimex from time to time.

Red Carpet Content means images and/or video categorised as such by Diimex.

Referral Notice has the meaning given in clause 13(d).

Related Body Corporate has the meaning given to that term in the *Australian Corporations Act 2001* (Cth).

Security Interest includes any interest in relation to any personal property provided for by a transaction that secures payment or performance of an obligation.

Stock Content means images and/or video categorised as such by Diimex.

Taxes has the meaning given in clause 9(a).

Winning Bid means:

- (a) the highest bid; or
- (b) where there are two or more bids for the amount of the highest bid, the first-placed bid for the amount of the highest bid.

Winning Bidder means that bidder who has the Winning Bid at the conclusion of the auction.

17.2 Interpretation

In this Agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this *Agreement*;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation;
- (f) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement; and
- (g) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term or party is a reference to a clause or term of, or party to this Agreement; and
 - (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced.

