



Services Agreement

for services provided by

Amy Rosso
trading as "Ignite Your Sexy"
(ABN 56 595 605 718)

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Operative provisions

1. Definitions and interpretation

Definitions

1.1 The following definitions apply in this agreement unless the context requires otherwise:

Authorised Third Party Disclosee means any Representative of a Disclosee to whom that Disclosee discloses Confidential Information in accordance with clause 7.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Brisbane, Queensland are open for business.

Claim means any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise).

Client means the party that will receive the Services as named in the Proposal.

Confidential Information means all information relating to a party, any customer, clients, suppliers, distributors or joint venture partners, of the party and/or any of the business or financial affairs of any of them, including:

- (a) any information that is specifically designated by any of them as confidential;
- (b) any information which, by its nature, may reasonably be regarded as confidential;
- (c) any information relating to any:
 - (i) agreements, arrangements or terms of trade with any existing or prospective customers, clients, suppliers, distributors or joint venture partners or other contractual counterparties;
 - (ii) customers, clients, suppliers, distributors, joint venture partners, employees, technologies, products, services, proposals, market opportunities, business or product development plans, pricing, financial position or performance, capabilities, capacities, operations or processes; or
 - (iii) Intellectual Property Rights,of any of them; and
- (d) any note, calculation, conclusion, summary or other material derived or produced partly or wholly from any such information.

Copyright Act means the *Copyright Act 1968* (Cth).

Corporations Act means the *Corporations Act 2001* (Cth).

Default Rate means a rate of interest of 10.00% per annum.

Deposit has the meaning given in Clause 4.1.

Disclosee means, in respect of any particular Confidential Information, any party that has received that Confidential Information (whether directly or indirectly) from another party.

Discloser means, in respect of any particular Confidential Information, any party that has disclosed or discloses that Confidential Information (whether directly or indirectly) to another party.

Engagement has the meaning given in clause 3.1, being each individual engagement for the Consultant to provide specific Services to the Client pursuant to a Proposal.

Event of Default means any of the following on the part of the Client:

- (a) committing any material or persistent breach of this agreement;
- (b) repudiating or, or, in the reasonable opinion of the Consultant, evincing an intention to repudiate, this agreement;
- (c) if the Client is a company, undergoing a Change of Control without the prior written consent of the Consultant;
- (d) misleading the Consultant in any material way; and/or
- (e) an Insolvency Event occurring in respect of the Client.

Fees has the meaning given in clause 4.1.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Guarantor means the person/s listed as such within the Proposal.

Guarantee and Indemnity means the guarantee and indemnity detailed in clause 15.

Insolvency Event means, in respect of a party:

- (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;
- (b) where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law;
- (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or
- (d) the party is otherwise unable to pay its debts as and when they fall due.

Input Tax Credit has the meaning given in the GST Law.

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in

computer software, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including legal and other professional fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all:

- (a) liabilities on account of Tax;
- (b) interest and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and
- (d) all amounts paid in settlement of any Claim.

Moral Rights has the same meaning as that term has in Part IX of the Copyright Act.

Non-Solicitation Period means the 12-month period commencing after the finalisation of the Services.

Personal Information has the meaning given in the Privacy Act.

Privacy Act means the *Privacy Act 1998* (Cth).

Proposal means, in respect of a particular Engagement, the document headed "Proposal" or similar setting out the scope of the Services for that Engagement as provided by the Consultant to the Client and accepted by the parties in accordance with this agreement.

Relevant IP means all Intellectual Property Rights that the Consultant makes, develops or conceives (whether alone or in conjunction with someone else, and whether during or outside normal working hours) in the course of, or arising out of, the provision of the Services and/or Consultant's engagement with the Client, including any Intellectual Property Rights so made, developed or conceived:

- (a) using the premises, resources or facilities of the Client or any of its customers, clients or suppliers;
- (b) in the course of, as a consequence of, or in relation to, the provision of the Services by the Consultant and/or the performance (whether proper or improper) of the Consultant's duties and responsibilities to the Client under this agreement or otherwise;
- (c) as a direct or indirect result of any person's access to any Confidential Information or Intellectual Property Rights of the Client or any of its customers, clients or suppliers; or
- (d) in respect of any of the products or services of the Client or any of its customers, clients or suppliers, or any alterations, additions or methods of making, using, marketing, selling or providing such products or services.

Representatives means, in respect of a person, the employees, officers, consultants, agents and professional advisers of that person.

Services means the services provided by the Consultant to the Client under this agreement in respect of each Engagement, as set out in the relevant Proposal.

Stamp Duty means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above, but excludes any GST.

Start Date means the date of acceptance of the Proposal and this agreement or such other date as the parties may agree in writing.

Tax Acts means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Tax or Taxation means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, Stamp Duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Works means all programs and programming and literary, dramatic, musical and artistic works within the meaning of the Copyright Act.

Interpretation

1.2 The following rules of interpretation apply in this agreement unless the context requires otherwise:

- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;
- (f) in each schedule to this agreement, a reference to a paragraph is a reference to a paragraph in that schedule;

- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (i) a reference to writing includes any communication sent by post, facsimile or email;
- (j) a reference to time refers to time in Brisbane, Queensland and time is of the essence;
- (k) all monetary amounts are in Australian currency;
- (l) a reference to a "**liability**" includes a present, prospective, future or contingent liability;
- (m) the word "**month**" means calendar month and the word "**year**" means 12 calendar months;
- (n) the meaning of general words is not limited by specific examples introduced by "**include**", "**includes**", "**including**", "**for example**", "**in particular**", "**such as**" or similar expressions;
- (o) a reference to a "**party**" is a reference to a party to this agreement and a reference to a "**third party**" is a reference to a person that is not a party to this agreement;
- (p) a reference to any thing is a reference to the whole and each part of it;
- (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (r) words in the singular include the plural and vice versa; and
- (s) a reference to one gender includes a reference to the other genders.

2. Engagement as Consultant

- 2.1 The Client hereby engages the Consultant on a non-exclusive basis to provide the Services to the Client, and the Consultant hereby accepts that engagement and agrees to provide the Services to the Client, in accordance with the terms of this agreement and the Proposal.

Commencement and duration

- 2.2 The Consultant's engagement with the Client will:
- (a) commence on the Start Date; and
 - (b) where specific Services are agreed to, finish once all of the agreed to Services are provided; and / or
 - (c) where services are agreed to be provided on an ongoing basis, continue indefinitely unless and until it is terminated in accordance with clause 11.

Nature of relationship

- 2.3 The Consultant is an independent contractor of the Client and nothing in this agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties.

3. Provision of the Services

Proposal

- 3.1 In respect of each individual engagement for the Consultant to provide Services to the Client under this agreement (each an **Engagement**), the parties must first agree on a Proposal. The Consultant's obligation to provide the Services that are the subject of each Engagement does not arise unless and until the Client has notified the Consultant of the Client's acceptance of the relevant Proposal.

Standards and duties

- 3.2 The Consultant must, in providing the Services, comply with the following standards and duties:
- (a) at all times maintain reasonable ethical, professional and technical standards;
 - (b) not unlawfully discriminate against, sexually harass or otherwise physically or verbally abuse any person; and
 - (c) in relation to any Personal Information of any client, supplier or Representative of the Client, any user or prospective user or any other person, comply with:
 - (i) the Privacy Act and any relevant material issued by the relevant authority from time to time; and
 - (ii) any approved privacy policy and procedures adopted from time to time by the Client and issued and agreed upon by the Consultant.
- 3.3 Where applicable, the Consultant must promptly notify the Client of the appointment and/or termination of any of the Consultant's staff who are or who are likely to be involved in work related to the Services.

4. Pricing and invoicing

Pricing

- 4.1 Subject to clause 3.1, in respect of each Engagement, the parties have agreed that the total price for the relevant Services (inclusive of GST and including a Deposit) (the **Fees**) will be defined in the relevant Proposal, and payable in advance as fixed price items.
- 4.2 Liability for payment of the Deposit arises upon acceptance of the Proposal and this agreement by the Client and will be payable within 14 calendar days of Client's receipt of the invoice. The Consultant may provide the Deposit invoice at any time, but not less than 1 calendar day prior to commencement of the Services, and the Client must pay the Deposit amount prior to commencement of the Services.

- 4.3 The Consultant will invoice the Client for all relevant Fees prior to the commencement of each Item and the Client will attend to payment of the invoice amount no later than 7 calendar days after the invoice date.

Deposit (if any) non-refundable

- 4.4 In the absence of any material breach by the Consultant constituting a repudiation or deemed repudiation of this agreement, the Deposit is non-refundable.

5. Payment

Timing of payments

- 5.1 The Deposit is payable in accordance with the provisions of clause 4. The Client must pay to the Consultant all other Fees properly invoiced pursuant to clause 4 in full on or before the date that is 7 calendar days after the Client's receipt of the relevant invoice.

Method of payment

- 5.2 All amounts to be paid by a party to another party under or in connection with this agreement must be paid in cash or by way of electronic funds transfer into the account nominated by the other party, or in such other method of payment as accepted by the other party.

No set-off or deduction

- 5.3 All amounts payable under or in connection with this agreement must be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this agreement (unless otherwise required by law).
- 5.4 If a party is required by law to make a deduction or withholding in respect of any sum payable under or in connection with this agreement to another party, it must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the other party of such additional amount as is required to ensure that the net amount received by the other party will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.

Default interest

- 5.5 If a the Client fails to pay any sum payable by it under this agreement to the Consultant in the manner provided in this agreement, it must pay interest on that sum from the due date of payment until that sum is paid in full at the Default Rate, calculated daily and compounded monthly. Interest will accrue from day to day and will be payable on demand. The payment of interest by a party to another party in respect of any late payment under this clause 5.5 is in addition to any other remedies that the other party may have in respect of such late payment.

6. GST

Definitions regarding GST

- 6.1 In this clause 6:
- (a) expressions that are not defined, but which have a defined meaning in the GST Law, have the same meaning as in the GST Law;

- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 6; and
- (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 6.

Consideration is inclusive of GST

- 6.2 Unless expressly stated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this agreement and/or Proposal has been determined including GST.

Fines, penalties and interest

- 6.3 The amount recoverable on account of GST under this clause 6 by the Providing Party will include any fines, penalties, interest and other charges incurred as a consequence of any late payment or other default by the Receiving Party under this clause 6.

Reimbursement

- 6.4 If any party is required to pay, reimburse or indemnify another party for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this agreement, the amount must be reduced by the amount for which the other party can claim an Input Tax Credit, partial Input Tax Credit or other similar offset.

Adjustment events

- 6.5 If, at any time, an adjustment event arises in respect of any supply made by a party under this agreement, a corresponding adjustment must be made between the parties in respect of any amount paid to the Providing Party by the Receiving Party pursuant to clause **Error! Reference s** **ource not found.** and payments to give effect to the adjustment must be made and the Providing Party must issue an adjustment note.

7. Confidentiality

- 7.1 The parties agree to:
- (a) use all reasonable endeavours to protect and maintain the confidentiality of all Confidential Information;
 - (b) not use or exploit any Confidential Information, or disclose to any party not subject to this agreement without the prior written consent of the disclosing party, unless otherwise required to do so under law or court order; and
 - (c) ensure all Representatives, employees or agents who have access to the Confidential Information are equally bound to the terms set out in this agreement.

8. Non-disparagement

- 8.1 Subject to clause 8.2, on and from the date of this agreement, each party must not:
- (a) make, express, transmit, speak, write, verbalise or otherwise communicate in any way (directly or indirectly, in any capacity or manner) any remark, comment, message, information, declaration, communication or other statement of any kind (whether verbal,

in writing, electronically transferred or otherwise) that might reasonably be construed to be critical of, or derogatory or negative towards, any other party or any Representative of any other party; or

- (b) cause, further, assist, solicit, encourage or knowingly permit any other person to do so, or support or participate in any other person doing so,

and must take all reasonable steps to prevent its Representatives or assigns from doing so.

8.2 Clause 8.1 shall not prohibit any party from making any statement or disclosure as required by law or court order, provided that such party must:

- (a) promptly notify the other party in writing in advance of any such statement or disclosure, if reasonably practicable; and
- (b) reasonably assist the other party in obtaining confidential treatment for, or avoiding or minimising the dissemination of, such statement or disclosure to the extent reasonably requested by any party.

9. Intellectual Property

9.1 The parties agree that all Relevant IP will be owned by, and vest in, the Consultant.

Assignment

9.2 The Client hereby assigns, transfers and conveys to the Consultant all current and future right, title and interest in all Relevant IP and acknowledges that all future Relevant IP will vest in the Consultant on and from creation.

Client's duty to assist the Consultant

9.3 The Client must do anything necessary, including executing any documents, for the purpose of effecting, perfecting and/or protecting the Consultant's title to any Relevant IP, in Australia or in such other countries as the Consultant may require at its discretion.

Permitted use

9.4 The Client may not use or reproduce any Relevant IP or any other Intellectual Property Rights of the Consultant or any of the Consultant's customers, clients or suppliers without the Consultant's prior written approval, except in the performance of its duties under this agreement.

9.5 Notwithstanding the rights otherwise permitted within this agreement, the Consultant has the right to use any Relevant IP for any purposes, including advertising and promotion of the Consultant's business and services.

Moral rights

9.6 The Client acknowledges and agrees that all Works in relation to the provision of the Services are works of the Consultant.

9.7 The Client consents to the doing of any acts, or making of any omissions, by the Consultant or any of the Consultant's employees, officers, contractors, agents, licensees or assigns that infringes its Moral Rights in any Works that constitute Relevant IP, including:

- (a) not naming the Client as the author of a Work; or

- (b) amending or modifying (whether by changing, adding to or deleting/removing) any part of a Work but only if the Client is not named as the author of the amended or modified Work,

whether those acts or omissions occur before, on or after the date of this agreement. The Client acknowledges that its consent pursuant to this clause 9.6 is genuinely given without duress of any kind and that it has been given the opportunity to seek legal advice on the effect of giving that consent.

10. Liability and remedies

Indemnity

- 10.1 The Client shall have personal liability for, and hereby irrevocably indemnifies and covenants to hold the Consultant harmless from and against, any and all Losses that may be suffered by the Consultant and which arise, directly or indirectly, in connection with any breach of this agreement by the Client and/or any negligent or other tortious conduct in the provision of the Services.

Indemnities continuing

- 10.2 Each indemnity contained in this agreement is an additional, separate, independent and continuing obligation that survives the termination of this agreement despite any settlement of account or other occurrence and remains in full force and effect until all money owing, contingently or otherwise, under the relevant indemnity has been paid in full and no one indemnity limits the generality of any other indemnity.

Limitation of liability

- 10.3 To the maximum extent permitted by law, the Consultant and its Representatives expressly:
 - (a) **(Disclaimer of warranties)** disclaim all conditions, representations and warranties (whether express or implied, statutory or otherwise) in relation to the Services, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement. Without limitation to the foregoing, the Consultant and its Representatives make no representation, and provide no warranty or guarantee, that:
 - (i) the Client will achieve any particular results from the provision of the Services;
 - (ii) any particular individuals will perform the Services on behalf of the Consultant; or
 - (iii) the Services will be:
 - (A) error-free or that errors or defects will be corrected; or
 - (B) meet the Client's requirements or expectations; and
 - (b) **(Limitation of liability)** limit their aggregate liability in respect of any and all Claims for any Losses that the Client and/or any of its Representatives may bring against the Consultant under this agreement or otherwise in respect of the Services to the following remedies (the choice of which is to be at the Consultant's sole discretion):
 - (i) re-supply of the Services;
 - (ii) payment of the costs of supply of the Services by a third party; or

- (iii) the refund of any amounts paid by the Client to the Consultant under this agreement in respect to the Services,

even if the Consultant has been advised of the possibility of such Losses,

and the Client acknowledges and agrees that the Consultant holds the benefit of this clause 10.3 for itself and as agent and trustee for and on behalf of each of its Representatives.

- 10.4 Nothing in this agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law, or the exercise of a right conferred by such a provision, or any liability of the Consultant in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law to a supply of services.

Force majeure

- 10.5 To the maximum extent permitted by law, the Consultant and its Representatives expressly exclude liability for any damage and/or delay in the performance of any obligation of the Consultant under this agreement where such damage or delay is caused by circumstances beyond the reasonable control of the Consultant and the Consultant shall be entitled to a reasonable extension of time for the performance of such obligations, and the Client acknowledges and agrees that the Consultant holds the benefit of this clause 10.5 for itself and as agent and trustee for and on behalf of each of its Representatives.

Remedies for breach

- 10.6 Each party acknowledges and agrees that, in the event of any breach by the other party of the provisions of clause 7 (Confidentiality), clause 8 (Non-disparagement) or clause 12 (Non-solicitation), damages may not be an adequate remedy and the first-mentioned party may, in addition to any other remedies, obtain an injunction restraining any further violation by the other party and other equitable relief, without the necessity of showing actual damage and without any security being required, together with recovery of costs. Any Claims asserted by such other party against the first-mentioned party shall not constitute a defence in any such injunction action, application or motion.

11. Termination

Termination for breach

- 11.1 The Consultant may terminate this agreement immediately by notice to the Client if an Event of Default occurs in respect of the Client.
- 11.2 If the Consultant commits any material or persistent breach of this agreement, the Client may provide the Consultant with a notice of breach in writing. If the Consultant fails to remedy the breach within 20 Business Days after the date of its receipt of such notice, the Client may terminate this agreement with immediate effect upon providing the Consultant with a further notice of termination in writing.

Termination with notice

- 11.3 The Client may, without limitation to its rights under clause 11.2, terminate this agreement at any time by giving at least 14 calendar days' notice to the Consultant. Where requested by the Client, the Consultant may waive all or part of such notice period at their sole discretion.

- 11.4 The Consultant may, without limitation to its rights under clause 11.1, terminate this agreement at any time by giving at least 14 calendar day's notice to the Client.

Effect of termination

- 11.5 In the event of any termination of this agreement in any circumstances and for any reason whatsoever:
- (a) the Client will remain liable to pay all Fees accrued up to and including the date of termination, whether or not invoiced prior to the date of termination; and
 - (b) the Consultant will send to the Client a final invoice for the balance of any unbilled Fees accrued up to and including the date of termination and clause 5 will apply in respect thereof.

Partially completed deliverables

- 11.6 Upon the cessation of the Consultant's engagement under this agreement, subject to payment of all outstanding Fees by the Client in accordance with the terms of this agreement, the Consultant will deliver to the Client any partially completed deliverables, where reasonably permissible, that are included within the scope of the Services.

Ipsso facto legislation

- 11.7 If any provision of this agreement is otherwise unenforceable by virtue of the operation of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of this agreement, to the maximum extent permitted by law:
- (a) time is of the essence in respect of all obligations of that party under this agreement (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and
 - (b) any breach of this agreement by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of this agreement,

and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

Accrued rights

- 11.8 Termination of this agreement will not affect any rights or liabilities that the parties have accrued under it prior to such termination.

Survival

- 11.9 The obligations of the parties under clause 7 (Confidentiality), clause 8 (Non-disparagement), clause 9 (Intellectual Property), clause 10 (Liability and remedies), clause 12 (Non-solicitation) and this clause 11 will survive the termination of this agreement.

12. Non-solicitation

- 12.1 During the Consultant's engagement with the Client under this agreement and for each Non-Solicitation Period thereafter, the Client must not, without the Consultant's prior written consent (which the Consultant may withhold or delay in its absolute discretion), directly or indirectly:
- (a) **(non-solicitation suppliers)** interfere with or disrupt, or attempt to interfere with or disrupt, any relationship, whether contractual or otherwise, between the Consultant and any of the Consultant's suppliers, distributors or joint venture partners, or identified prospective suppliers, distributors or joint venture partners; or
 - (b) **(non-solicitation of staff)** induce, encourage or solicit any of the Consultant's officers, employees, contractors or agents to cease their employment, engagement or agency with the Consultant.
- 12.2 The Client acknowledges and agrees that:
- (a) the restraints in clause 12.1 constitute several separate covenants and restraints consisting of each of clauses 12.1(a) and (b) combined with the Non-Solicitation Period;
 - (b) each of those separate covenants and restraints is a fair and reasonable restraint of trade that goes no further than is reasonably necessary to protect the Consultant's goodwill and business;
 - (c) the Client has received substantial and valuable consideration for each of those separate covenants and restraints, including its receipt of the Services; and
 - (d) breach by the Client of any of those separate covenants and restraints would be unfair and calculated to damage the Consultant's goodwill and business and would lead to substantial loss to the Consultant.
- 12.3 The parties intend the covenants and restraints under clauses 12.1 to operate to the maximum extent. If any of those separate covenants and restraints would, in the absence of this clause 12.3, be void as unreasonable for the protection of the interests of the Consultant but would not be so void if any part of the wording in this clause 12 was deleted or amended, the separate covenants and restraints will apply with the minimum modifications necessary to make them effective.

13. Notices

- 13.1 A notice given to a party under this agreement must be:
- (a) in writing in English;
 - (b) sent to the address or email address of the relevant party as the relevant party may notify to the other party from time to time; and
- 13.2 delivered/sent either, personally, by commercial courier, by pre-paid post, by airmail (where appropriate), or by e-mail. A notice is deemed to have been received:
- (a) if delivered personally, at the time of delivery;
 - (b) if delivered by commercial courier, at the time of signature of the courier's receipt;
 - (c) if sent by pre-paid post, 48 hours from the date of posting;

- (d) if sent by airmail, five days after the date of posting; or
- (e) if sent by e-mail, 1 hour after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the party's email server or internet service provider that the message has not been delivered to the party,

except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:00 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.

13.3 To prove service, it is sufficient to prove that:

- (a) in the case of post – that the envelope containing the notice was properly addressed and posted; or
- (b) in the case of email – the email was transmitted to the party's email server or internet service provider.

14. General

Further assurances

14.1 Each party must (at its own expense, unless otherwise provided in this agreement) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

Third parties

14.2 This agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

Costs

14.3 All costs and expenses in connection with the negotiation, preparation and execution of this agreement, and any other agreements or documents entered into or signed pursuant to this agreement, will be borne by the party that incurred the costs.

Entire agreement

14.4 This agreement contains the entire understanding between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement relating to its subject matter. There are no express or implied conditions, warranties, promises, representations or obligations, written or oral, in relation to this agreement other than those expressly stated in it or necessarily implied by statute.

Severability

14.5 If a provision of this agreement is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

No waiver

- 14.6 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this agreement will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this agreement.

Amendment

- 14.7 All variations to this agreement must be agreed to in writing between the parties.

Assignment

- 14.8 A party must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with, any of its rights under this agreement without the prior written consent of the other party.

Counterparts

- 14.9 This agreement may be executed in any number of counterparts, each of which is an original and which together will have the same effect as if each party had signed the same document.

Electronic exchange

- 14.10 Delivery of an executed counterpart of this agreement by email in PDF or other image format, will be equally effective as delivery of an original signed hard copy of that counterpart.

Governing law and jurisdiction

- 14.11 The parties irrevocably agree that this agreement and any disputes or claims arising out of or in connection with its subject matter, formation (including non-contractual disputes or claims), or otherwise, are governed by and shall be construed in accordance with the laws of Queensland, Australia and are exclusively subject to the jurisdiction of the courts of Queensland Australia.

Dispute Resolution

- 14.12 Prior to commencing proceedings for a dispute arising out of or in connection with this agreement, including with regard to its existence, validity or termination (the **Dispute**), the parties must meet to attempt to resolve the Dispute through good faith negotiation for at least 30 days.
- 14.13 If the parties are for any reason unable to resolve a dispute within 30 days of it being referred to them, the parties will attempt to settle it in good faith by mediation administered by the Australian Dispute Centre (the **ADC**) before having recourse to arbitration or litigation. The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the Dispute is referred to ADC (the **Guidelines**). The terms of the Guidelines are hereby deemed incorporated into this agreement.
- 14.14 If the parties are unable to resolve the Dispute under clause 14.13, any party may, after giving written notice to the other party, commence arbitration.
- 14.15 Any Dispute not resolved by mediation under clause 14.13 shall be referred to and finally resolved by arbitration administered by the ADC. The arbitration shall be conducted in Brisbane Queensland in accordance with the ADC Rules for Domestic Arbitration operating at the time the Dispute is referred to ADC (the **Rules**). The terms of the Rules are hereby deemed incorporated into this agreement.

- 14.16 Clauses 14.13 and 14.15 do not apply if either party commences legal proceedings for urgent interlocutory relief.
- 14.17 The above dispute resolution clauses survive termination of this agreement.

15. Guarantee & Indemnity

- 15.1 Each Guarantor unconditionally guarantees to the Consultant:
- (a) The punctual payment of any amounts payable under this agreement; and
 - (b) The punctual performance and observance by the Client of all the obligations of the Client under this agreement.
- 15.2 Each Guarantor indemnifies the Consultant against any Claims, losses, or otherwise arising as a result of:
- (a) the Client's breach of any terms of this agreement;
 - (b) the Client's failure to make payment of all amounts payable under this agreement, including any interest incurred under this agreement; and
 - (c) the guarantee given by a Guarantor for any reason being or becoming void, voidable or unenforceable either in whole or in part.
- 15.3 Each Guarantor must pay:
- (a) on demand all money due and payable to the Consultant under the Guarantee and Indemnity; and
 - (b) any amounts calculated in accordance with clause 5.5.
- 15.4 The obligations of each Guarantor under this clause 15:
- (a) are principal obligations and not ancillary or collateral to any other obligation;
 - (b) may be enforced by the Consultant against any Guarantor even if the Consultant does not enforce:
 - (i) any other security it holds in respect of this agreement; or
 - (ii) any right against any other Guarantor/s (where there are multiple);
 - (c) are separate and independent obligations; and
 - (d) are continuing obligations which remain in full force and effect after the termination of this agreement, not to be impacted by the:
 - (i) termination of this agreement;
 - (ii) waiver or concession of any other parties' rights or obligations under this agreement;
 - (iii) assignment, transfer, variation or release of the Client's interest in this agreement;
 - (iv) incapacity, including death, bankruptcy, liquidation, winding-up or otherwise of the Client, Guarantor/s or Consultant;

- (v) judgment made against the Client or any other Guarantor (where multiple);
 - (vi) deduction, being any actual or alleged set off, defence, counter-claim or other deductions on the part of the Client or any Guarantor; and/or
 - (vii) any other thing which under the law relating to sureties would or might but for this provision release a Guarantor in whole or in part from its obligations under this clause 15.
- (e) Each Guarantor waives its rights as sureties or indemnifiers (legal, equitable, statutory or otherwise) as may at any time be inconsistent with any of the provisions of this Guarantee and Indemnity to the extent permitted by law.
 - (f) Where extension of the terms of this agreement is agreed between the Client and Consultant, the Guarantor's obligations as outlined in the clause 15 are also extended.
 - (g) If any part or provision of this Guarantee and Indemnity is invalid or unenforceable, that invalidity will not affect the validity or the enforceability of any other part or provision of this Guarantee and Indemnity.
 - (h) Where more than one person is named as a Guarantor, each Guarantor is liable under this Guarantee and Indemnity even though another person named as Guarantor fails to sign this or any other guarantee and/or indemnity.

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