

Standard Terms of Engagement

1. Application and Duration of Agreement

- 1.1. These Standard Terms and Conditions of Engagement (**Terms**) and the accompanying Engagement Letter must be read together as they form the agreement (**Agreement**) between you and Gerald and Rose Pty Ltd trading as Gerald and Rose (**Gerald and Rose**). A reference to “us”, “our” or “we” is a reference to Gerald and Rose.
- 1.2. The Terms will apply to all Services that we perform for you, as the Client, in relation to the Engagement Letter. A reference to “Client” or “you” or “your”, refers to the entity described in the Engagement Letter and is a Party to the Agreement.
- 1.3. The Agreement constitutes the entire agreement between us and you. To the extent permitted by law, other terms or conditions are not to be implied into the Agreement, other than those mandatory terms and conditions implied by statute.
- 1.4. If there is any conflict or inconsistency between the Engagement Letter and the Terms, the Engagement Letter prevails to the extent of the inconsistency.
- 1.5. To the extent possible under the *Competition and Consumer Act 2010* (Cth) (**Competition and Consumer Act**) or applicable Fair-Trading Laws, these Terms supersede and prevail over all and any prior terms, discussions, negotiations, verbal or written representations (contractual or otherwise) quotes or other documentation exchanged between Parties.
- 1.6. On your acceptance of the Engagement Letter, you must also be bound by these Terms. The methods of acceptance are established in the Engagement Letter.
- 1.7. If the Engagement Letter is not adequately and authoritatively signed, continuing to engage us to provide the Services will be evidence of acceptance to the Agreement.
- 1.8. The Agreement commences from the earlier of the date that the Engagement Letter is signed by you or when the Services commence (**Commencement Date**).
- 1.9. The Agreement continues until we determine that the Services are completed, or the Agreement is terminated.

2. Services

2.1. Provision of Services

- a. We will provide for you the Services described in the Engagement Letter.
- b. We will exercise reasonable skill, diligence, and due care to provide Services, in accordance with any legal or regulatory requirements applicable to us, and otherwise in accordance with reasonable and appropriate professional standards.
- c. You may request to vary the scope of the Services as set out in the Engagement Letter, provided that such request is made in writing to us.
- d. Additional services and/or changes to the scope of Services must be agreed to in writing by both Parties.
- e. We will make reasonable efforts to ensure any specific Gerald and Rose' Personnel named in the Engagement Letter are available to provide the Services. However, you acknowledge that Personnel are allocated based on our assessment of the experience, skills and responsibility required to perform the tasks in the Engagement Letter, as well as our general resourcing requirements. You do not have right to determine or request Personnel for particular tasks.

2.2. Basis and use of advice

- a. Our advice or opinion relating to the Services is provided solely for you. It is not a promise nor a guarantee to you about the outcome or consequences of any issues considered in the advice or opinion.
- b. Our advice or opinion does not constitute legal advice and should not be considered as such.
- c. Unless expressly provided for in the Engagement Letter, our advice or opinion must not be:
 - i. relied upon to disclose, investigate, or enforce illegal acts, errors or irregularities that may occur; nor
 - ii. included, whether wholly or in part, or referred to in any prospectus (or similar disclosure document), product disclosure statement, investor presentation, information memorandum or other similar document to be used in relation to fundraising activities or the offer of securities.
- d. Our advice or opinion relates to, and is based on, the circumstances, information and effective law, regulatory frameworks, and their interpretation, as at the date of the advice or opinion. We are not obligated to update the advice or opinion after issuing it in final form.

- e. Except as required by law or whether we have expressly agreed in the Engagement Letter to do so, you must not disclose all or part of our advice or opinion to a Third Party, without written consent from us. This includes any publication or reference to the advice or opinion on electronic or social media.
- f. We are not liable for any actions or consequences of advice provided to Third Parties with or without written consent. If you provide any of our advice or opinion to a Third Party without our consent, you agree to indemnify us from and against all claims made by such Third Party or any other Third Party in relation to the same and for the costs of defending any such claims.
- g. Our written advice will take precedence over any oral, draft, or interim advice, reports or presentations to you. If you wish to rely on any oral advice that we provide, you must request documentary confirmation from us.

2.3. Timing and delays

- a. We will endeavour to provide the Services in a timely manner. However, we will not be responsible nor liable to you or any Third Party for any failure or delay in performing the Services if that failure of delay arises due to events or circumstances beyond our reasonable control, due to unforeseen circumstances, or due delays caused by you.
- b. In the case of untimely performance by you of your obligations, we reserve the right to review our fees and if the delay is substantial, to terminate this Agreement.
- c. Unless expressly agreed in writing:
 - i. all dates in the Engagement Letter are indicative dates for planning and estimating purposes;
 - ii. dates in the Engagement Letter are not contractually binding; and
 - iii. estimated completion dates are provided on the assumption that full cooperation is provided at all times by you and your Personnel.

2.4. Independence and conflicts of interest

- a. In performing certain Services, we may be subject to certain professional and ethical standards as well as legal requirements in relation to our independence.
- b. We are not aware of any conflict of interest that may exist in us providing the Services unless we have expressly noted such in the Engagement Letter.
- c. However, it is possible that a conflict of interest may arise in the future. If it does, we will notify you and discuss the issue.
- d. We seek to ensure that the Services are objective, and our provision of the Services is independent and is free from conflicts of interest, except where we notify you otherwise. In some cases, this may mean we must cease to provide Services to you.

2.5. Other clients

- a. We will provide services to other clients through the duration of our engagement by you. Some of these other clients may be competitors of yours or otherwise have interests which conflict with your own.
- b. We will not disclose to any of our other clients the confidential, proprietary, business or commercially sensitive information that you provide to us under the Agreement.
- c. Notwithstanding any other provision of these Terms, to the extent permitted by law, neither our engagement by you nor our provision of the Services will prevent or restrict us from providing services to our other clients.

3. Your Responsibilities

3.1. Provision of information

- a. We require the timely provision by you of all information, documentation and materials and timely responses to our questions and requests so that we may provide the Services in a timely manner, as set out in the Engagement Letter.
- b. This may include getting access to Personnel, Third Parties, records, premises, technology, and information technology systems; and/or providing data, accounts, financial information, records, archives, and files.

3.2. Accuracy of information

- a. You are responsible for the completeness and accuracy of the information that you supply to us. We will not independently verify or assess the accuracy or veracity of

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information and will not be liable for any Loss resulting from inaccurate, incomplete or defective documents or information.

- b. You must promptly notify us in writing if, after providing us with any information, you determine that any part of that information is inaccurate, defective, misleading, deceptive, or untrue in any material respect.
- c. To the extent permitted by law, we disclaim all responsibility for your failure to inform us of any changes to any information which impact, or may impact, upon the Services.

3.3. Commercial decisions

You acknowledge and agree that it is not our responsibility to make, nor will we make, any commercial or business decisions for you. Our advice or opinion should not be the sole basis for any such decisions that you make. Before making any such decisions where our advice or opinion will be considered, you should consider:

- a. the limitations on and scope of that advice or opinion; and
- b. all commercial or other relevant factors that you and your professional advisers (other than us) are, or ought reasonably to be aware of, from sources other than us.

3.4. Opportunity to remedy

You must provide us with the opportunity to rectify our advice or opinion if you become aware that it does not confirm to the scope of the Services in any material respect. If you fail to notify us in writing of any such non-conformity, we disclaim all responsibility for our advice or opinion failing to conform with the scope of the Services.

4. Fees and Invoicing

4.1. Calculation

Our fees will be those set out in the Engagement Letter and will otherwise be calculated in accordance with these Terms.

4.2. Obligation to pay

You agree to pay our fees for the Services in accordance with the Engagement Letter or otherwise in accordance with these Terms.

4.3. Time-based fees

- a. This clause 4.3 applies unless and to the extent that we agree to provide an alternative fee arrangement (e.g., a fixed fee) in the Engagement Letter
- b. Our fees to provide the Services are based on time required by Personnel, plus disbursements and out-of-pocket Expenses.
- c. Any estimate of our fee on a time-based billing matters that we provide to you is an indicative estimate only and is subject to change. It is not a quote nor a cap on the amount of fees that we may charge you. Our fees may be more than, or less than, the amount estimated.
- d. Fee estimates are based on preliminary information. We reserve the right to issue Tax Invoices for actual time spent on providing the Services.
- e. Any fee estimate that we provide you assumes that you carry out your responsibilities under the Agreement in a timely manner.
- f. We reserve the right to charge above our fee estimate if we are required to perform more work or reschedule commitments due to actions or delays beyond our control or that are caused by you.

4.4. Review of hourly rates

We may review and increase our hourly charge rates for Personnel on a six-monthly basis. If we do so, we will provide you with notice of such review and the amended rates.

4.5. Money on account

- a. We may request that you pay an amount in advance to cover anticipated Expenses or fees. Each such payment in advance is payable in accordance with the Engagement Letter.
- b. If you do not pay us any amounts in advance that we may request, we may elect not to commence or continue to provide Services to you.

4.6. Fixed fee arrangements

- a. We may also agree to a fixed fee for the provision of the Services or any part of the Services.
- b. The Engagement Letter will specify which Services (if any) are to be performed on a fixed fee basis. We may also specify conditions or limitations applicable to any fixed fee component of the Services.
- c. Any fixed fee arrangement is conditional upon you carrying out your responsibilities under the Agreement in a timely manner.
- d. We reserve the right to amend our fixed fee arrangement or change additional fees if we are required to perform more work or reschedule commitments due to actions or delays beyond our control or that are caused by you.
- e. To the extent that any Services are not performed on a fixed fee basis or work in addition to the Services is performed by us, we will charge you on a time basis in accordance with clause 5.3.

4.7. Third Party invoices

If you direct us to issue a Tax Invoice to a Third Party our engagement remains with you, and you will remain responsible and liable for payment until our Tax Invoice is paid in full.

4.8. Disbursements

- a. All of our professional fees exclude Expenses and disbursements. We may charge you for such Expenses and disbursements.
- b. You must pay the reasonable travel expenses (including meals and accommodation) our Personnel who are required to travel to provide the Services, as well as our reasonable document production and handling costs. GST may be applicable to the same.
- c. Document production and handling costs includes photocopying, scanning, imaging, printing, transmission and courier costs.

4.9. GST

- a. Subject to context, a reference in this clause 4.9 to a term that is defined or used in the GST Act has, when used in this clause,
- b. Any amount referred to in the Agreement which is relevant in determining a payment to be made by you to us is exclusive of any GST, unless expressly stated otherwise.
- c. If the whole or any part of any amounts payable by you to us under the Agreement is the consideration of a taxable supply, you must also pay to us an additional amount equal to the GST liability.
- d. We will set out the GST liability payable by you in our Tax Invoices.
- e. You must pay any GST liabilities at the same time as all other amounts due under each Tax Invoice.

4.10. Invoicing

Our Tax Invoices are issued monthly or as otherwise agreed in the Engagement Letter. However, we reserve the right to invoice more or less frequently.

4.11. Payment

- a. Tax Invoices are due and payable within 14 days of the date of issuance unless we agree otherwise in the Engagement Letter.
- b. The preferred means of payment is by electronic funds transfer or internet banking. We also may accept payment by cash, credit card or cheque drawn on an Australian trading bank.
- c. If you do not pay a Tax Invoice in full, we may:
 - i. elect to discontinue providing the Services to you;
 - ii. suspend work until further payment is made;
 - iii. charge interest as outlined in clause 4.11(d); and/or
 - iv. instigate legal proceedings without further notice.
- d. We reserve the right to charge you interest on any outstanding amount under a Tax Invoice not paid by the due date. Interest is to be calculated at a daily rate of 5% above the prevailing Reserve Bank of Australia official cash rate at the date the amount became overdue.
- e. Without prejudice to the above, we reserve the right to recover all default, recovery, enforcement costs and Expenses in the event that any and all amounts claimed in our Tax Invoices are not paid by the due date.

4.12. Lien

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You agree that we will hold a lien over all documentation relating to the Services and in our possession or control until all outstanding amounts owed by you are received by us. This includes unpaid Tax Invoices, accrued interest, default, recovery or enforcement costs and Expenses or disbursements. We will retain this lien until all amounts are received in full by us.

4.13. Disputed invoices

Except as required for consumers under the Competition and Consumer Act or applicable Fair-Trading Laws, any dispute in relation to Tax Invoices or time entries will not be recognised or acted upon unless notified in writing to us within 14 days of you receiving the break-down of time incurred and invoiced.

5. Our Liability

5.1. General limitations

- a. Limitations on liability may be set out in the Engagement Letter.
- b. Liability is limited in accordance with our professional standards obligations and monetary thresholds that we are insured for.
- c. Our Personnel will not be liable to you in relation to any Loss suffered by you as a result of the Services provided, nor for any Loss suffered by any Third Party.
- d. You must not bring any claim arising out of this Agreement against any of our Personnel personally.
- e. Other than to the extent required under mandatory laws which cannot lawfully be excluded, restricted or modified (including the Competition and Consumer Act and applicable Fair-Trading Laws):
 - i. all terms, conditions, warranties and consumer guarantees, whether statutory or otherwise, are excluded in relation to the Services; and
 - ii. subject to limitations of liability and to the greatest extent allowed by law, our liability to you in relation to all Claims relating to the Agreement and the Services is limited, in our complete discretion, to either:
 - A. re-supplying or paying the cost of re-supplying the Services;
 - B. a refund of the fees paid by you to us in relation to the Services; or
 - C. the proceeds of insurance received by us or payable by our insurers in relation to the relevant Claim (if any).
- f. Our liability to you in relation to the Agreement and the Services (if any) is limited to that proportion of the Loss (including interest and costs) suffered by you, which is agreed between us or ascribed to us by a court allocating proportionate responsibility to us having regard to the extent of our responsibility for the loss or damage and the contribution to the loss or damage in question by you and any Third Party.

5.2. Excluded Loss

To the extent permitted by law, we will not be liable to you nor any Third Party for any Excluded Loss.

5.3. Third Party claims

- a. You agree to indemnify us against Loss or Expenses incurred by us in relation to any Claim by a Third Party which relates to this Agreement, including a prosecution, inquiry or investigation by a governmental body or agency.
- b. The indemnity in clause 5.3(a) does not apply to the extent the any Claim in relation to matters which are finally determined by a court or by agreement to have resulted solely and directly from our negligent or wilful acts or omissions.

5.4. General indemnity

You indemnify us and our Personnel on a full indemnity basis, in relation to any Claim which relates to this Agreement where you or persons for whom you are vicariously liable cause any of the Loss relating to such Claim.

6. Confidentiality

6.1. Information that we obtain from you in the course of providing the Services will be treated as confidential and dealt with as follows:

- a. we will hold all such information in strict confidence;

- b. we will not disclose, nor permit or cause the disclosure, of such confidential information to any person other than any of our Personnel who require that confidential information for the purposes of performing the Services, unless you instruct us to do so; and
- c. we will only use or reproduce such confidential information to the extent required to provide the Services.

6.2. Our obligations of confidentiality in clause 7.1 to not apply to the extent that:

- a. you instruct or permit us to disclose, use or reproduce any confidential information;
- b. disclosure of confidential information is required by law or court order, including an order by any governmental agency that may lawfully require and compel the disclosure of information;
- c. the information is, or becomes, publicly available or otherwise in the public domain, other than through breach of confidentiality obligations by us; or
- d. we disclose the information to our legal, insurance or other professional advisers on a confidential basis for the purposes of us obtaining professional advice.

6.3. We may disclose your confidential information to the appropriate authority if this is required by law, or is required in order for us to comply with our professional duties and obligations, or as required by professional or regulatory bodies. For example, such disclosure may occur if we identify or suspect non-compliance with laws or regulations that deal with:

- a. fraud, corruption and bribery;
- b. money laundering, terrorist financing and proceeds of crime;
- c. securities markets and trading;
- d. banking and other financial products and services;
- e. data protection;
- f. tax and pension liabilities and payments;
- g. environmental protection; and
- h. public health and safety.

You consent to the disclosure of your confidential information to the appropriate authority pursuant to this clause.

7. Documents

- 7.1. All documents or other materials (including working papers, reports, written advice, drafts and software) developed, modified, designed, or created by us in the course of performing the Services, in electronic or any other format, belong to us unless the Engagement Letter expressly states otherwise.
- 7.2. All original documents or other materials that you provide to us for the purposes of our engagement, whether electronic or any other format, belong to you unless the Engagement Letter expressly states otherwise. We will return to you all physical copies of such documents or other materials that we have in our possession or control upon your request or otherwise on completion of our engagement to provide the Services.
- 7.3. We will store our files upon completion of the Services and our engagement, for a period of 7 years from the date of our final Tax Invoice. Files may be maintained electronically.
- 7.4. We may charge you for special storage requirements or retrieval of your files from storage.
- 7.5. You authorise us to destroy our files relating to you after the expiration of the 7-year storage period.
- 7.6. We do not accept any liability for any Loss that you may suffer if your files are damaged or destroyed for any reason.

8. Security Interests

- 8.1. Subject to context, a reference in this clause to a term that is defined or used in the *Personal Property Securities Act 2009* (Cth) (PPSA) has, when used in this clause, the meaning given to that term in the PPSA.
- 8.2. If we determine that the Agreement or any transaction in relation to it gives rise to a security interest for the purposes of the PPSA in our favour:
 - a. you must promptly do anything that we reasonably require to ensure that any security interest is a perfected security interest;
 - b. you undertake not to register a financing change statement or make an amendment demand pursuant to section 178 of the PPSA in respect of such registration;
 - c. You agree that the following provisions of the PPSA will not apply, and you will not have any rights under them: section 95 (to the extent that it requires the secured party to give

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- notices to the grantor); section 121(4); section 125; sections 129(2) and (3); section 132; section 142; and section 143; you agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and will not authorise the disclosure of such information except in accordance with section 275(7) of the PPSA;
- d. you waive your right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement;
- e. you agree that we are required to give a notice under the PPSA only if the notice is obligatory and the giving of the notice cannot be excluded under the PPSA, and you waive any rights to receive any notices unless they are required to be given and cannot be excluded; and
- f. you agree to notify us in writing of any change to your details within 5 days from the date of such change.
- g. The Agreement constitutes a security agreement for the purposes of the PPSA.
- 8.3. The Agreement constitutes a security agreement for the purposes of the PPSA.
- 9. Privacy**
- 9.1. Subject to context, a reference in this clause 9 to a term that is defined or used in the *Privacy Act 1988* (Cth) (**Privacy Act**) has, when used in this clause, the meaning given to that term in that Act.
- 9.2. We comply with the Privacy Act and set out how we collect, use, disclose, store and secure personal information with the Gerald and Rose Privacy Policy. A copy of the policy is available on request or on our website at the following address:
<https://www.geraldandrose.com/privacy>
- 9.3. We collect, use and disclose your personal information for the purposes of providing you with the Services and any associated professional services that we may perform for you, or other lawful and reasonable business uses.
- 9.4. By engaging us to provide the Services, you consent to the following:
- a. Us disclosing your personal information to Third Parties when and to the extent required for us to provide the Services. It is your responsibility to ensure adequate consents are in place in relation to individuals' privacy in relation to personal information that we may use in providing Services.
- b. Your personal information being used for marketing, training or business development initiatives. You expressly consent to your personal information, at times, being transferred overseas and/or to overseas contractors.
- c. Us referencing your name, your business name and/or your logo in proposals, submissions, tenders and marketing materials for the purpose of indicating our experience.
- d. You have a right to access or correct personal information we hold about you.
- e. We may be required under the Privacy Act to disclose to you and the Office of the Australian Information Commissioner (OAIC) if a data breach occurs.
- 10. Notices and Communications**
- 10.1. Each communication or notice (including each consent, approval, request and demand) given by a Party to another Party in relation to the Agreement (**Notice**) must be in writing, in the English language and sent in accordance with this clause 12.
- 10.2. A Notice must be addressed to the recipient Party using the contact details of the recipient Party specified in the Agreement or as otherwise notified by the recipient Party to each other Party from time to time.
- 10.3. A Notice must be signed by the Party making it or by that Party's lawyer, attorney, director, secretary or authorised agent.
- 10.4. A Notice must be delivered by hand, sent by prepaid post, sent by facsimile or sent by email to the recipient Party using the details referred to in clause 12.2.
- 10.5. A Notice is taken to be received by the recipient Party:
- a. in the case of delivery by hand, upon delivery;
- b. in the case of prepaid post sent to a recipient Party in the same country as the sending Party, on the 5th day after the date of posting;
- c. in the case of prepaid post sent to a recipient Party in another country to the sending Party, on the 10th day after the date of posting;
- d. in the case of email, at the time it is delivered to the recipient Party's host server.
- 10.6. Notwithstanding clause 10.5, if a Notice given under clause 10.5 is taken to be received on a day that is not a Business Day or after 5.00pm in the place where the Notice is received, it will be taken to be received at 9.00am on the next Business Day.
- 10.7. You must take all reasonable steps to ensure you have suitable systems in place to prevent corruption of data, or transmission of viruses in your electronic documents or other communications to us.
- 10.8. You acknowledge and accept the risks that email communications may not always be secure, irrespective of the security we have in place.
- 10.9. You must contact us immediately if you have any concerns about the authenticity of any documents or communications purportedly sent by us.
- 11. Intellectual Property Rights**
- 11.1. Background IP**
- a. All Intellectual Property Rights in a Party's Background IP remain vested in that Party, and all Intellectual Property Rights derived or developed from a Party's Background IP vest upon creation in that Party.
- b. You grant us a non-exclusive, royalty-free, non-transferable licence to use your Background IP solely, and only to the extent necessary, for us to provide the Services. This licence will operate for the term of our engagement under the Agreement.
- 11.2. Contract IP**
- a. All Intellectual Property Rights in the Contract IP vest in us upon their creation unless we agree otherwise in the Engagement Letter.
- b. We will grant to you a non-exclusive, royalty-free, irrevocable, non-transferable licence to use the Contract IP solely, and only to the extent necessary, for you obtain the benefit of and enjoy the Services in the ordinary course. We may terminate or suspend this licence if you do not pay when due our fees and other amounts under the Agreement.
- c. The licence in clause 11.2(b) does not include any right to use our name, our business names, our logos or our trademarks on any of your products, websites, social media, documents or services without our prior written consent.
- 11.3. Use**
- A References to "use" of Intellectual Property Rights under this clause 11 includes the right to load, execute, store, transmit, display copy (for the purposes of loading, execution, storage, transmission, or display), modify, adapt, enhance, reverse compile, decode, translate, and otherwise utilise.
- 11.4. Third Party infringement**
- 11.5. Any intellectual property provided to us must not infringe the Intellectual Property Rights of any other Third Party. You must take reasonable precautions to ensure that no such infringement occurs. You are liable for any breach of another Third Party's Intellectual Property Rights if you provide them to us.
- 11.6. Survival**
- This clause 11 survives the termination of the Agreement.
- 12. Non-Solicitation**
- 12.1. For the term of the Agreement and for 12 months after it terminates, you must not, directly or indirectly, solicit for employment or contractual consultancy purposes, whether on a part time, full time or casual basis, or to independently contract the services of any our Personnel, without our prior, written consent. This prohibition applies to both officers, employees and contractors.
- 12.2. If consent is obtained, then you agree to pay a recruitment fee to us of 20% of the relevant individual's gross annual salary package (including superannuation) and the Expenses required to replace the relevant person (plus GST).
- 13. Complaints and Dispute Resolution**
- 13.1. If you are dissatisfied with the Services, we have provided to you, you are invited to contact the person in charge of managing your matter, as specified in your Engagement Letter, and we will attempt to resolve any complaints.
- 13.2. If there is any dispute in relation to the Agreement, both Parties must meet and negotiate in good faith with a view to resolving the dispute in a timely manner.

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- 13.3. If the Parties cannot resolve a dispute under clause 16.2 within 21 days of the dispute being raised, both Parties agree to submit to mediation to be conducted by an appropriately qualified independent mediator. The reasonable costs of the mediation are to be equally borne by both Parties.
- 13.4. Written notice of the dispute must be given by the claiming Party to the other Party before a mediator is chosen by the Parties under clause 16.3.
- 13.5. Where the Parties cannot agree on the identity or terms of a mediator, the Parties submit to the Australian Commercial Disputes Centre (ACDC) determining identity, terms and costs. Mediation will be conducted in accordance with ACDC Mediation Guidelines.
- 13.6. If the Parties cannot resolve a dispute within 21 days of mediation commencing under clause 16.3, either Party may instigate legal proceedings in a court or tribunal of competent jurisdiction.
- 13.7. Nothing in this clause 16 prevents a Party from seeking urgent interlocutory or injunctive relief in relation to a dispute.
- 14. Termination**
- 14.1. Unless otherwise provided in the Engagement Letter, to the extent permitted by law, we may terminate the Agreement and our engagement at any time by giving at least 14 days' written notice to that effect.
- 14.2. Either Party may terminate the Agreement immediately if the other Party commits a material or persistent breach of its obligations under the Agreement. A material breach includes but is not limited to, a breach capable of being remedied but has not been remedied within 14 days of receipt by the Party in breach of a notice identifying the breach and demanding its remedy.
- 14.3. A material breach also includes but is not limited to either Party suffering an Insolvency Event.
- 14.4. If, at any point in time from the commencement of our engagement to provide the Services, our engagement is terminated for any reason, you agree to pay us for any accrued work in progress as at the date of termination.
- 14.5. If amounts under the Agreement become due and payable upon termination.
- 15. Force Majeure**
- Neither Party will be liable to the other Party for any delay or failure to fulfil obligations to the extent that such delay or failure arises from significant and unforeseen causes beyond the first-mentioned Party's control, having taken reasonable precautions, including fire, floods, acts of God, terrorism, strikes, lock out, war, riot or any governmental act or regulation.
- 16. Miscellaneous Provisions**
- 16.1. Governing law and jurisdiction**
- a. The Agreement is governed by the laws of New South Wales, without giving effect to conflict of law considerations.
- b. The Parties submit to the exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia, and the Federal Circuit Court of Australia (as applicable), and any courts hearing appeals from the same.
- c. A dispute or legal proceedings in relation to the Agreement must be held in Sydney, New South Wales.
- 16.2. Variation**
- The Parties can vary the Agreement only if the variation is in writing and signed by each of the Parties.
- 16.3. Restriction on assignment**
- A Party must obtain the prior written consent of the other Party before it assigns, transfers, or otherwise disposes of a right or obligation under the Agreement.
- 16.4. Severance**
- If any provision of the Agreement is invalid, illegal or unenforceable, that provision must be severed from and ignored in the interpretation of the Agreement to the minimum extent necessary and to the intent that the remaining provisions of the Agreement remain in full force and effect.
- 16.5. Waiver**
- a. A Party may not claim that another Party's delay or failure to exercise a right relating to the Agreement constitutes a waiver of that right or is a defence to its own action or inaction.
- b. A Party's failure, partial failure, or delay in exercising a right relating to the Agreement is not a waiver of that right.
- 16.6. Survival**
- a. Each warranty expressly stated in the Agreement survives the termination of the Agreement.
- b. Each indemnity expressly stated in the Agreement survives the performance of obligations relating to the Agreement and the termination of the Agreement.
- c. To the extent that a Party has not satisfied an obligation under the Agreement or that obligation is a continuing obligation, that obligation survives the termination of the Agreement.
- 16.7. Further assurance**
- Each Party at its own expense must do everything necessary to give full effect to the Agreement.
- 16.8. No merger**
- A Party's rights and obligations do not merge on the execution or completion of the Agreement or the completion of a transaction under the Agreement.
- 16.9. No representations**
- Subject to the express provisions in the Agreement:
- a. neither a Party nor its representative has made any representation to another Party to induce that other Party to enter into the Agreement; and
- b. neither a Party nor a person acting on a Party's behalf was induced to enter into the Agreement by relying on a representation that another Party has made.
- 16.10. Nature of relationship**
- a. The Parties acknowledge and agree that the relationship between them is that of principal and independent contractor.
- b. Nothing in the Agreement constitutes, nor will it be deemed to constitute, a relationship of agency between the Parties, and neither Party has any authority to incur, and must not incur, any obligation on the part of the other Party, except as expressly stated under the Agreement or with, and to the extent of, the prior written authority of the other Party.
- c. The only entity that you may commence a claim against is us (i.e., the entity identified in your Engagement Letter as providing the Services).
- 16.11. Time of the essence**
- Time is of the essence in the Agreement and an extension or variation of time granted by any Party does not operate as a waiver of this clause 16.11.
- 16.12. Counterparts**
- a. The Agreement may be executed in any number of counterparts which taken together are one and the same document.
- b. The Agreement is binding on the Parties on the exchange of counterparts.
- c. A copy of an entire signed counterpart sent by email must be treated as an original counterpart.
- 16.13. Electronic Communication**
- You consent to us communicating with you electronically, as defined in the *Spam Act 2003* (Cth), from time to time. You may opt out at any time if you do not wish to receive communications. You may also opt out of marketing communications.
- 16.14. Health and Safety**
- We comply with relevant occupational health and safety legislation by taking all practical steps to ensure the health and safety of our Personnel. However, legislation places responsibility for safety on you when our Personnel visit your business or another site which is deemed to be under your control.
- 17. Interpretation**
- 17.1. Headings do not affect the construction or interpretation of the Agreement and, unless the context otherwise requires:

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- a. words importing the singular include the plural, and vice versa;
- b. words importing a gender include other genders;
- c. a reference to an inanimate thing include an animate thing, and vice versa;
- d. the words "include", "includes", "including" and "such as" are not to be construed as words of limitation;
- e. a reference to any document, instrument or agreement (including the Agreement) includes a reference to it as amended, novated, supplement, varied or replaced from time to time;
- f. a reference to any act, statute, code, regulation, order, ordinance, by-law or other legislation or subordinated or delegated legislation or provision thereof includes any modification, substitution or re-enactment thereof;
- g. a reference to person, includes a reference to:
 - i. an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity; and
 - ii. the person's personal representatives, permitted assigns or successors (as applicable);
- h. a term which is defined in the Engagement Letter has, when used in the Agreement, the same meaning as given to that term in the Engagement Letter;
- i. a reference to currency is to the Australian currency;
- j. a reference to time is to Australian Western Standard Time in Perth, Western Australia;
- k. if the date on which an act, matter or thing must be done or take place is not a Business Day, then that act, matter or thing must be done or take place on the next Business Day;
- l. if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event;
- m. a provision of the Agreement must not be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of the Agreement or that provision;
- n. a reference to "writing" or "written" includes any electronic transmission or communication by facsimile; and
- o. the phrase "in relation to" has the widest possible import and encompasses the phrases "in connection with", "in respect of", "arising out of" and "resulting from".

18. Definitions

In this Agreement, unless expressly stated otherwise:

Agreement has the meaning given to that term in clause 1.1.

Background IP means, in relation to a Party, any and all Intellectual Property Rights of that Party (or licensed to that Party by a third party) which:

- a. are in existence before the date of the Agreement or which come into existence after the date of the Contract, other than Contract IP; or
- b. that Party makes available, contributes, brings to or uses in relation to the Agreement Gerald and Rose has the meaning given to that term in clause 1.1.

Business Day means a day other than a Saturday, a Sunday or a public holiday in Perth, Western Australia.

Claim means a claim, demand, action, suit or proceeding under statute, common law or equity, whether present, unascertained, immediate, future or contingent.

Client – the entity or individual described in the Engagement Letter.

Commencement Date has the meaning given to that term in clause 1.8.

Competition and Consumer Act has the meaning given to that term in clause 1.5.

Contract IP means any and all Intellectual Property Rights created, discovered, developed or that come into existence in relation to the performance of the Contract by one or more of the Parties.

Engagement Letter has the meaning given to that term in clause 1.1, being the letter and associated documentation under which we set out the objectives, scope, responsibilities, fees and limitation of liability of the Services that we offer to provide for you.

Excluded Loss means any of the following in relation to the Contract or its subject matter, whether arising at common law, in equity, under statute or otherwise, whether actual, direct, indirect, anticipated or otherwise:

- a. loss of profit, loss of sales, loss of revenue, loss of product, loss of expected savings, loss of income, rent or holding costs, loss of expected production, opportunity costs, loss of business (including loss or reduction of goodwill or opportunity), or damage to reputation, whether actual, direct, indirect, anticipated or otherwise; and
- b. any indirect loss or consequential loss which is not otherwise covered in this definition.

Expenses means the costs and expenses, after tax, incurred by our Personnel performing the Services, including travel expenses (including means and accommodation) incurred by Personnel; mileage incurred during provision of the Services or on instruction from you; and any other costs which the Parties agree will be expenses under this definition, either before or after such costs are incurred.

Fair Trading Laws means the Fair Trading Act 2010 (WA) and the equivalent legislation in each other State and Territory of Australia. GST means goods and services tax levied under the GST Act.

GST Act means A New System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means, in relation to a person or entity:

- a. an administrator, a bankruptcy trustee, a liquidator, a provisional liquidator or a similar officer is appointed in relation to that person or entity;
- b. a 'controller' within the meaning given to that term in the Corporations Act 2001 (Cth) or a similar officer is appointed in relation to that person or any of the assets or undertakings of the person or entity;
- c. an application is made to a court for an order to make an appointment described in paragraph (a) or (b) of this definition and that application is not permanently stayed, withdrawn or dismissed within 30 days;
- d. the person or entity enters into, or resolves to enter into, a deed of company arrangement, a scheme of arrangement, or a compromise or composition with any class of creditors, other than for a solvent reconstruction;
- e. a resolution is passed, an application to a court is taken, or an order is made for the winding up, dissolution or bankruptcy of the person or entity;
- f. the person or entity ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course, or announces its intention not to pay its creditors;
- g. the person or entity is (or states that they are) insolvent or is deemed to be insolvent under relevant insolvency or bankruptcy law;
- h. an enforcement process (as that term is defined under the Corporations Act 2001 (Cth)) is taken against or in relation to a substantial portion of the assets of the person or entity and is not satisfied or withdrawn within 21 days;
- i. the person or entity is declared bankrupt under relevant insolvency or bankruptcy law; or
- j. anything having a substantially similar effect to any of the events specified in paragraphs (a) to (h) of this definition happens under the law of any applicable jurisdiction.

Intellectual Property Rights means all rights and interests throughout the world vesting or otherwise in relation to industrial or intellectual property protectable under law or otherwise, whether registered, unregistered or registrable, and whether now existing or that come into existence in the future, including the following and anything derived, developed or prepared from the following:

- a. (any patent, trade mark, copyright (including future copyright), moral right, design, plant breeder's rights, circuit layout rights or any other corresponding property or right under the laws of any jurisdiction;
- b. rights in respect of an invention, discovery, trade secret, know-how, concept, idea, methodology, information, data, algorithm or formula;
- c. any right to apply for grant or registration of intellectual property or intellectual property rights; and

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- d. all renewals and extensions and all similar or equivalent rights or forms of protection in relation to intellectual property or intellectual property rights.

Loss means any loss, liability, damage, cost, expense (including legal costs on a solicitor-client basis, whether direct or indirect, and whether present or future.

Party means a party to the Agreement, being us or you, as the context requires.

Personnel means officers, employees, contractors, sub-contractors, other workers, agents and consultants.

Services means the services that we are to provide you, as specified in the Engagement Letter.

Tax Invoice means a tax invoice issued by us to you in relation to the Agreement for amounts which are to be paid by you to us.

Terms has the meaning given to that term in clause 1.1.

Third Party means a person who is not a Party.

Issued: 01 July 2021