Management Agreement

[Insert name of JV entity] Pty Ltd

ACN [XX]

and

[Insert name of Manager] Pty Ltd

ACN [XX]

**Disclaimer:**

This template constitution is intended to provide you with suggested documentation to assist you in establishing a joint venture or other commercial arrangement.  It is intended to serve as a starting point only and should be carefully considered and tailored to meet your specific legal and commercial requirements and circumstances.

This document, and any guidance notes that accompany this document, is not legal advice and must not be relied on as legal advice or as a substitute for legal advice.  We recommend that you seek professional legal, financial, tax and commercial advice to ensure that this document is suitable for your specific situation and circumstances. The law and other relevant circumstances may change, and no representation is made that this template agreement is complete, accurate or up-to-date.

Table of contents

[1. Definitions and interpretation 1](#_Toc136513901)

[1.1 Definitions 1](#_Toc136513902)

[1.2 Interpretation 4](#_Toc136513903)

[2. Services 6](#_Toc136513904)

[3. Term 6](#_Toc136513905)

[4. Manager’s obligations 6](#_Toc136513906)

[4.1 Manager’s representations 6](#_Toc136513907)

[4.2 Manager Personnel 7](#_Toc136513908)

[4.3 Conflicts of interest 7](#_Toc136513909)

[4.4 Subcontracting 7](#_Toc136513910)

[4.5 Authority 8](#_Toc136513911)

[5. Payment 8](#_Toc136513912)

[5.1 Management Fee 8](#_Toc136513913)

[5.2 Deferral of Management Fee 9](#_Toc136513914)

[5.3 Accounting Standards 9](#_Toc136513915)

[5.4 Adjustment amount 10](#_Toc136513916)

[5.5 Method of payment 10](#_Toc136513917)

[5.6 Invoices 10](#_Toc136513918)

[5.7 Payment of Invoices 11](#_Toc136513919)

[5.8 Disputed Invoices 11](#_Toc136513920)

[5.9 Errors or exceptions in invoicing 11](#_Toc136513921)

[5.10 Use of funds 11](#_Toc136513922)

[5.11 Dispute resolution 11](#_Toc136513923)

[6. Intellectual Property 12](#_Toc136513924)

[7. Access and record keeping 13](#_Toc136513925)

[7.1 Maintain records 13](#_Toc136513926)

[7.2 Access 13](#_Toc136513927)

[7.3 Records relating to the Services 13](#_Toc136513928)

[8. Privacy Laws 13](#_Toc136513929)

[9. Confidentiality 13](#_Toc136513930)

[10. Insurance 14](#_Toc136513931)

[11. Indemnity 15](#_Toc136513932)

[12. Dispute resolution 15](#_Toc136513933)

[13. Default and termination 15](#_Toc136513934)

[13.1 Termination by notice 15](#_Toc136513935)

[13.2 Termination for default 15](#_Toc136513936)

[13.3 Consequences of termination 16](#_Toc136513937)

[14. GST 17](#_Toc136513938)

[14.1 GST 17](#_Toc136513939)

[14.2 Reimbursements 17](#_Toc136513940)

[15. Notices 17](#_Toc136513941)

[15.1 Form of Notice 17](#_Toc136513942)

[15.2 How Notice is given and received 18](#_Toc136513943)

[16. General 18](#_Toc136513944)

[16.1 Variation 18](#_Toc136513945)

[16.2 No waiver 18](#_Toc136513946)

[16.3 Assignment, novation and other dealings 19](#_Toc136513947)

[16.4 Counterparts 19](#_Toc136513948)

[16.5 Severability 19](#_Toc136513949)

[16.6 No merger 19](#_Toc136513950)

[16.7 Further action 19](#_Toc136513951)

[16.8 Set-off 19](#_Toc136513952)

[16.9 Governing law and jurisdiction 20](#_Toc136513953)

[Schedule 1 21](#_Toc136513954)

Management Agreement

Date 2023

Parties

|  |  |
| --- | --- |
| Company | The party as described in Item 1 of Schedule 1 |
| Manager | The party as described in Item 2 of Schedule 1 |

Recitals

1. The Company requires the Manager to provide the Services.
2. The Manager has represented to the Company it has the necessary skills, Personnel and equipment to successfully provide the Services.
3. The Company agrees to appoint the Manager to, and the Manager agrees to, provide the Services in accordance with the terms and conditions of this agreement.

**This agreement provides**

# Definitions and interpretation

## Definitions

1. **Accounting Standards** means the Australian equivalent to the International Financial Reporting Standards as approved by the Australian Accounting Standards Board and other authoritative pronouncements of the Australian Accounting Standards Board.
2. **Accrued Management Fees** has the meaning given in clause 5.4(a)(ii)(B).
3. **Adjustment Amount** has the meaning given in clause 5.4(c).
4. **Annual Net Revenue** has the meaning given in clause 5.4(a)(ii)(A).
5. **Board** means the board of directors of the Company as constituted from time to time.
6. **Business** has the meaning given in the Shareholders Deed.
7. **Business Day** means a day on which banks are open for business in the capital city of the State in which the Company’s registered office is located, other than a Saturday, Sunday or public holiday in that city.
8. **Business Plan** has the meaning given in the Shareholders Deed.
9. **Change of Control** occurs if a person who Controls any entity ceases to do so, or if another person acquires Control of it, at any time, and includes in the case of a trust:
	1. any change of the trustee or appointor of the trust (or equivalent position having the power to remove or appoint a trustee of the trust); and
	2. the death of the trustee or appointor of the trust (or equivalent position having the power to remove or appoint a trustee of the trust).
10. **Commencement Date** is the date set out in Item 3 of Schedule 1.
11. **Confidential Information** has the meaning given in the Shareholders Deed.
12. **Contract Materials** means all things, materials and information, created, conceived, developed or generated by the Manager or the Manager's Personnel (whether alone or with the Company, its employees, agents or contractors) in supplying the Services under this agreement.
13. **Control** means in relation to an entity, the power to directly or indirectly:
	1. control the membership of the board or other governing body of the entity;
	2. control the entity within the meaning of section 50AA of the Corporations Act;
	3. where the entity is trustee of a trust, appoint, remove or replace the trustee or direct the trustee as to decisions to be made in relation to the trust; or
	4. direct the management and policies of that entity, whether by means of trusts, deeds, agreements, arrangements, undertakings, practices, the ownership of any interest in shares or in any other way.
14. **Corporations Act** means the *Corporations Act 2001* (Cth).
15. **Dispute** has the meaning given in clause 5.5(a).
16. **Dispute Period** has the meaning given in clause 5.5(b).
17. **Duty** means any stamp, transaction or registration duty or similar charge imposed by any Government Agency including any interest, fine, penalty, charge or other amount imposed in respect of any of them.
18. **End Date** has the meaning set out in Item 4 of Schedule 1.
19. **Financial Year** means the financial year of the Company, each of which is a period of 12 months commencing on 1 July and ending on 30 June, except that the first of which will be the period commencing on the Effective Date and ending on the following 30 June.
20. **Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
21. **GST** has the meaning given in the GST Law.
22. **GST Law** has the same meaning as GST Law in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).
23. **Indemnified Party** has the meaning given in clause 11(a).
24. **Independent Expert** means a partner, director or senior employee of a reputable firm of chartered accountants that is independent of the parties as agreed between the parties, or failing agreement within 5 Business Days after a party gives notice to another party of the need to refer a matter to an Independent Expert, as may be appointed by the President of the Resolution Institute.
25. **Intellectual Property Rights** means all industrial and intellectual property rights whether protectable by statute, at common law or in equity including all patents, copyright, rights in circuit layouts, registered designs, trademarks and the right to have any information which is capable of being protected by way of an action for breach of confidence kept confidential and any application or right to apply for registration of any of those rights.
26. **Insolvency Event** has the meaning given in the Shareholders Deed.
27. **Invoice** means an invoice in the form set out in clause 5.7(c).
28. **Loss** means all damages, losses, costs, expenses and charges including Taxes and Duties.
29. **[Option]Management Accounts** means the Company's management accounts relating to a particular period, prepared and maintained with all applicable accounting standards and practices and on a consistent basis.
30. **Management Fee** means the fee payable to the Manager by the Company, as set out in Item 7 of Schedule 1.
31. **Management Fee Notice** has the meaning given in clause 5.1(d)(ii).
32. **[Option]Net Revenue** means the Company's net revenue for a period, as specified in the Company's Management Accounts for that period (or each month in that period), after applying the accounting principles specified in clause 5.3.
33. **Notice** has the meaning given to it in clause 14.1.
34. **Payment Period** has the meaning set out in Item 5 of Schedule 1.
35. **Personnel** means:
	1. in relation to the Manager, any of its employees, contractors, sub-contractors (including sub-contractor's personnel), agents and representatives involved either directly or indirectly in the provision of the Services; and
	2. in relation to the Company, all employees, representatives, directors, officers, agents, labour hire works and sub-contractors of the Company, any of their respective past or present officers, employees, agents or representatives, but does not include the Manager or its personnel.
36. **Privacy Laws** means the *Privacy Act* *1988* (Cth), each party's privacy policy and any other laws concerning privacy or data protection.
37. **Profit Period** has the meaning given in clause 5.2(a)(ii)(A).
38. **Recipient** has the meaning given in clause 9(b).
39. **Related Body Corporate** has the meaning given in section 9 of the Corporations Act.
40. **Relevant Period** has the meaning given in clause 5.1(d).
41. **Resolution Institute** means the Resolution Institute (ACN 008 651 232).
42. **Services** means the services identified in Item 5 of Schedule 1 and which are to be performed by the Manager in accordance with the terms of this agreement.
43. **Shareholders Deed** means the shareholder deed between the Company and the shareholders of the Company.
44. **Tax** means any tax, levy, charge, impost, duty, fee, deduction, goods and services tax, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency including any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above but excludes Duty.
45. **Term** has the meaning given to it in clause 3.

## Interpretation

In this agreement the following rules of interpretation apply, unless the contrary intention appears or the context otherwise requires:

### This agreement includes all schedules, annexures, appendices, attachments and exhibits to it.

### Headings and subheadings are for convenience only and do not affect the interpretation of this agreement.

### References to clauses and schedules are references to the clauses and schedules of this agreement, and references to paragraphs are to paragraphs of the relevant schedule.

### References to parties are references to the parties to this agreement.

### References to a party include that party’s permitted assignees and successors.

### Words denoting the singular include the plural and words denoting the plural include the singular.

### Words denoting any gender include all genders.

### The word “person” includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency.

### A reference to a body (other than a party to this agreement), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions.

### A reference to any deed or document (including this agreement) includes any amendments, supplements and replacements of that document.

### A reference to a law includes:

#### legislation, regulations and other legislative instruments;

#### any judgment made by a Court;

#### a constitutional provision or treaty or decree; and

#### any principle or rule of the common law or in equity,

#### and is a reference to that law as amended, consolidated, replaced or re-enacted or applied to new or different facts.

### Any covenant, promise, deed, representation or warranty given or entered into on the part of two or more persons:

#### binds each of them severally and not jointly; and

#### is for the benefit of each of them severally and not jointly.

### No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this agreement.

### A reference to time is a reference to the time in the capital city of the State in which the Company’s registered office is located unless otherwise specified.

### A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

### If any act is required to be performed under this agreement by a party on or by a specified day and the act is performed after 5.00pm on that day, the act is deemed to be performed on the next day.

### If any act is required to be performed under this agreement on or by a specified day and that day is not a Business Day, the act must be performed on or by the next Business Day.

### A reference to an amount of dollars, Australian dollars, $ or A$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.

### Specifying anything in this agreement after the terms “include”, “including”, “includes”, “for example”, “such as” or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.

### A reference to writing or written includes email but does not include fax or other electronic means of communication (unless otherwise expressly provided in this agreement).

### References to a document in agreed form are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.

### Where a word or phrase or expression is defined, other parts of speech and grammatical forms of that definition have corresponding meanings.

### An agreement, other than this agreement, includes an undertaking or legally enforceable deed or understanding whether in writing or not.

### If there is any conflict between the main body of this agreement and its schedules and attachments the terms of the main body of this agreement will prevail.

# Services

During the Term, the Manager will supply the Services to the Company on the terms and conditions set out in this agreement.

# Term

### This agreement will commence on the Commencement Date, and unless terminated earlier in accordance with its terms, will expire on the End Date (**Term**).

### If the Manager continues to provide the Services after the End Date with the consent of the Company, whether express or implied, this entire agreement (other than clause 3(a)) continues to apply and the Term is extended until:

#### a new agreement in writing regarding the terms and conditions to apply is signed by each party; or

#### this agreement is terminated by the Company issuing a notice of termination to the Manager.

# Manager’s obligations

## Manager’s representations

The Manager agrees and warrants to the Company that:

### it has and its Personnel have the necessary experience, skills and resources to provide the Services;

### it is and its Personnel are properly licenced, equipped, organised and financed to perform all of its obligations under this agreement;

### it will comply with all applicable laws relating to the employment or engagement of persons in relation to the Services;

### the Manager has and maintains all systems, policies, and procedures to ensure a safe working environment for its Personnel;

### all of its Personnel will remain at all times an employee, independent contractor or agent of the Manager and not of the Company;

### the Services will be performed:

#### with the standard of professional care, skill, expertise, judgment and diligence expected of a competent professional experienced in providing services which are similar to the Services;

#### in a timely, efficient, dependable and cooperative manner; and

#### using its own equipment, supplies and other materials (such items to be at the Manager’s own expense); and

### there are no contracts in existence that would affect the Manager’s ability to perform its obligations under this agreement in a timely and satisfactory manner.

## Manager Personnel

### The Manager is engaged by the Company as an independent contractor and nothing in this agreement creates or constitutes a relationship of employer and employee, principal and agent, trustee and beneficiary or of partnership or joint venture between the parties.

### The Company shall have no liability or responsibility for withholding or remitting any income, payroll, or other Taxes for the Manager and its Personnel and the Manager is responsible for and must comply with its withholding, remitting and registration obligations. The Manager indemnifies the Company from and against any liability, order, penalty, interest, Taxes or contributions that may be assessed against the Company due to the failure or delay of the Manager to make any such withholdings, remittances or registration, or to file any information required by any law.

### The Manager shall be fully responsible for the Manager’s Personnel and indemnifies the Company against any loss or liabilities arising in respect of or claims made by or on behalf of any of the Manager’s Personnel, including, without limitation, any claim for unpaid wages, overtime, accrued entitlement, or any other claim under any applicable employment law, notice of termination, or any other claim whether arising pursuant to contract, statute, common law or otherwise.

## Conflicts of interest

The Manager agrees to notify the Company promptly of any actual, perceived or potential conflicts of interest which could materially affect its performance of this agreement and agrees to take action to resolve the conflict.

## Subcontracting

### The Manager must not subcontract to any third party any of its obligations under this agreement unless it has prior written consent from the Company.

### The Manager remains responsible and liable for the performance of all its obligations under this agreement, including in relation to any tasks undertaken by subcontractors.

## Authority

### The Manager has authority, as manager of the Company to implement the directions of the Board on behalf of the Company and in that regard:

#### to do all acts and incur expenditure in accordance with an approved Business Plan; and

#### to operate a bank account in connection with the Company for the purpose of providing the Services (including by processing payment on behalf of the Company),

#### in accordance with the requirements and processes determined by the Board from time to time.

### The Company will be responsible for and must pay all liabilities and expenses relating in any way to the Business, including the liabilities and expenses listed in Item 6 of Schedule 1.

### The Company agrees to reimburse all reasonable expenses properly and necessarily incurred by the Manager in the course of providing the Services provided that:

#### the expenses are specified in an approved Business Plan and do not exceed the amount specified; or

#### the Manager incurs the expense with the Company’s prior written approval.

### Notwithstanding any provision of this agreement, the Manager must not, without the prior consent of the Board:

#### enter into any contracts, agreements or deeds on behalf of the Company;

#### obtain any finance or enter into any debts on behalf of the Company; or

#### otherwise commit the Company to any liability or undertaking.

# Payment

## Management Fee

### In consideration for the provision of the Services, the Company must pay the Manager the Management Fee calculated and payable in accordance with this clause 5 and this agreement.

### Subject to clause 5.2, the Management Fee will be payable in arrears at the end of each Payment Period during the Term.

### The Management Fee will be adjusted at the end of each Financial Year on the basis set out in clause 5.4.

### No more than 10 Business Days after the end of each Payment Period (**Relevant Period**), the Company must give to the Manager:

#### the monthly Management Accounts for each month in the Relevant Period; and

#### a notice setting out the Company’s Net Revenue for the Relevant Period and the resulting Management Fee (if any) that has accrued in respect of that Relevant Period (**Management Fee Notice**).

### No later than 5 Business Days after the date of receipt of a Management Fee Notice specifying that a Management Fee is payable, the Manager may issue a tax invoice for the Management Fee.

## Deferral of Management Fee

### If the Company has suffered a loss in the Relevant Period (as set out in the relevant Management Accounts), then the accrued Management Fee for that Relevant Period will (unless otherwise agreed):

#### constitute a liability of the Company to the Manager; and

#### accrue (but not bear interest) and become due and payable by the Company to the Manager:

##### within 10 Business Days after the end of the first Payment Period in which the Company next makes a profit, as set out in the Company’s Management Accounts (**Profit Period**);

##### such other date that the Company and the Manager agree in writing.

### If the profit in a Profit Period is less than the sum of all accrued but unpaid Management Fees at the end of a Profit Period, then:

#### the then accrued but unpaid Management Fees must be paid by no later than 10 Business Days after the end of the relevant Payment Period, to the extent of the available profit at that time (as determined by the Company); and

#### the available profit will be applied first to the unpaid Management Fees that have been accrued for the longest period.

### [**Option**]A Management Fee that remains accrued but unpaid for more than 6 months after the application of this clause 5.2 will be deemed to have been forgiven by the Manager and the Company will have no liability to pay that portion of the Management Fee.

## Accounting Standards

### The Manager must prepare and maintain management accounts for the Company:

#### on a monthly basis;

#### in a manner that is consistent with accounting policies that comply with the applicable Accounting Standards; and

#### applying the specific principles, policies and procedures agreed between the Company and the Manager from time to time,

(**Management Accounts**).

### The Company must provide the Manager with access to and copies of the Company’s books and records to the extent required to calculate or verify the calculation of the Management Fee or its inputs.

## Adjustment amount

### No later than 20 Business Days after the end of each Financial Year during the Term, the Company must give to the Manager:

#### the Management Accounts for that Financial Year; and

#### a Notice setting out:

##### the Company’s Net Revenue for that Financial Year (**Annual Net Revenue**); and

##### the sum of all Management Fees paid or accrued in respect of that Financial Year (**Accrued Management Fee**).

### If:

#### the Accrued Management Fees for the Financial Year are greater than an amount equal to [##]% of the relevant Annual Net Revenue, then the difference between those amounts will be payable by the Manager to the Company as a reduction to the Management Fee for that Financial Year; and

#### the Accrued Management Fees for the Financial Year are less than an amount equal to [##]% of the relevant Annual Net Revenue, then the difference between those amounts will be payable by Company to the Company as an increase to the Management Fee for that Financial Year.

### An amount payable under clause 5.4(b) (**Adjustment Amount**) must be paid by the Company or the Manager (as the case may be), no later than 10 Business Days after receiving the Notice issued pursuant to clause 5.4(a).

## Method of payment

All payments made to the Manager by the Company in relation to the provision of the Services must be made by electronic funds transfer into the Manager’s nominated bank account.

## Invoices

### The Manager must, unless otherwise agreed to with the Company, within 10 Business Days of receipt of a Management Fee Notice, render an Invoice to the Company in accordance with clause 5.6(c) in relation to the portion of the Management Fee set out in the Management Fee Notice.

### Invoices must be submitted by the Manager by email to the relevant Company contact.

### Invoices must be in a form acceptable to the Company and must contain the following information:

#### the Manager’s name, ABN and address;

#### a brief description of all activities undertaken to provide the Services in the Payment Period;

#### detailed description of all charges incurred during the Payment Period;

#### any further verification or documentation in relation to the Invoice as is reasonably required by the Company;

#### any GST amount payable; and

#### details of the Manager’s nominated bank account.

## Payment of Invoices

Subject to clause 5.9, the Company must pay to the Manager the amount shown on an Invoice (including any GST payable) issued in accordance with clause 5.7(c) within 30 days of the end of the month in which the invoice was issued.

## Disputed Invoices

If the Company disputes any amount shown on an invoice, it must notify the Manager within 30 days of receipt of the Invoice and must pay any amounts not in dispute in accordance with clause 5.8, provided that any such payment by the Company is not to considered as an acceptance of the amount in dispute or of the Company’s liability to pay the amount in dispute.

## Errors or exceptions in invoicing

If the Manager discovers or is advised of any errors or exceptions relating to its invoicing for the Services, the Manager and the Company will jointly review the nature of the errors or exceptions, and the Manager must, if appropriate, take prompt corrective action and adjust the relevant Invoice or refund any overpayments.

## Use of funds

The Manager must only use any funds (other than the Management Fee or other payments paid to the Manager in return for the Services rendered) paid to the Manager under this agreement by the Company for the sole purpose of providing the Services.

## Dispute resolution

### If the Manager disputes any aspect of the:

#### the Management Accounts or the Management Fee Notice, it must give notice of the dispute to the Company within 5 Business Days of receipt of the Management Fee Notice; or

#### the Management Accounts for that Financial Year, the Annual Net Revenue, the Accrued Management Fees or the Adjustment Amount, it must give notice of the dispute to the Company within 10 Business Days of receipt of the Notice issued pursuant to clause 5.4(a),

#### (a **Dispute**), and in each case the Notice must outline the nature of Dispute.

### If the Manager issues a Notice pursuant to clause 5.5(a), the Manager and the Company must co-operate with each other and do all things reasonably necessary to resolve the Dispute within 10 Business Days after receipt of the Notice (**Dispute Period**).

### If the parties fail to resolve a Dispute within the Dispute Period, then either party may refer the Dispute for determination to an Independent Expert within 5 Business Days after the end of the Dispute Period. The party which refers the matter to the Independent Expert must notify the other party of the referral of that Dispute to the Independent Expert.

### The Independent Expert must act on the following basis:

#### the Company and the Manager must use best endeavours to provide the Independent Expert with all documents and information that they reasonably require in relation to the Dispute;

#### the Independent Expert must determine the matter the subject of the Dispute within 10 Business Days after referral or such other date as is reasonably determined by the Independent Expert;

#### the Independent Expert must act as an expert and not as an arbitrator;

#### the Independent Expert must base their opinion on the documents and information provided to them by the Manager and the Company;

#### the determination of the Independent Expert is (in the absence of manifest error) conclusive and binding on all parties; and

#### the costs of the Independent Expert must be borne by the Company and the Manager in accordance with the determination of the Independent Expert or, failing any determination, in equal one half shares.

# Intellectual Property

### The Manager agrees that:

#### as between the parties, the Company will own the Contract Materials, including all Intellectual Property Rights in the Contract Materials; and

#### other than as expressly stated in this agreement, neither the Manager or the Manager’s Personnel has any right, title or interest or Intellectual Property Rights whatsoever in the Contract Materials.

### The Manager absolutely assigns to the Company all its rights, title and interest in the Contract Materials from the date of creation, including all existing and future Intellectual Property Rights, to the greatest extent permitted by law.

# Access and record keeping

## Maintain records

The Manager must:

### maintain proper records of the Services, transactions, activities and financial affairs of the Company, including its assets and liabilities; and

### supply to the Company and its shareholders such copies of, extracts of, and information collated from, such records as may be reasonably required by them.

## Access

If requested by the Company or a shareholder of the Company, the Manager must provide the Company or its shareholder, as the case may be, with access to the Manager’s premises, Personnel, documents and other records and all assistance reasonably requested, as necessary to enable the Company or its shareholder to verify that the Manager is complying with this agreement.

## Records relating to the Services

The Manager agrees to:

### maintain records that identify the receipt and expenditure of all Service expenses separately within the Manager’s accounts and records;

### keep financial accounts and records relating to the Services so as to enable all receipts and payments related to the Services to be identified and reported; and

### maintain the records for seven years after the End Date and provide copies of the records to the Company if requested.

# Privacy Laws

The Manager must comply with all Privacy Laws and not to do anything which, if done by the Company, would be a breach of any Privacy Law.

# Confidentiality

### Each party will have access to the Confidential Information.

### Each party (**Recipient**) must keep secret and confidential and not disclose any Confidential Information relating to another party or its business (which is or has been disclosed to the Recipient by the other party, its representatives or advisers) or the terms of this agreement, except:

#### where the information is in the public domain as at the date of this agreement (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Recipient);

#### if the Recipient is required to disclose the information under any applicable law or the rules of any recognised securities exchange, provided that the Recipient has to the extent practicable having regard to those obligations and the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;

#### where the disclosure is expressly permitted under this agreement;

#### if disclosure is made to its officers, employees and professional advisers to the extent necessary to enable the Recipient to properly perform its obligations under this agreement or to conduct their business generally, in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;

#### where the disclosure is required for use in legal proceedings regarding this agreement; or

#### if the party to whom the information relates has consented in writing before the disclosure.

### The Recipient must notify the other party as soon as practicable if it becomes subject to an obligation to disclose Confidential Information.

### The Recipient must provide the other party any assistance reasonably required by the other party in relation to any proceedings commenced against a third party for the unauthorised use, copying or disclosure of Confidential Information.

### Each Recipient must reasonably ensure that its directors, officers, employees, agents, representatives and Related Bodies Corporate comply in all respects with the Recipient's obligations under this clause.

# Insurance

### The Manager acknowledges that neither it nor any of the Manager's Personnel are entitled to the benefit of any accident, third party, public liability or indemnity policies of insurance or any workers compensation policies which may be in force for the benefit or protection of the Company's employees.

### The Manager must obtain and maintain with a reputable insurer for the Term:

#### public liability insurance with a minimum indemnity limit of $20,000,000;

#### professional indemnity insurance with a minimum indemnity limit of $20,000,000; and

#### in relation to the Manager's Personnel (and any other employee of the Manager), workers compensation insurance in accordance with the relevant state and territory legislation in which the Services are to be provided.

### If requested by the Company, the Manager must provide to the Company a copy of the certificate of currency for the insurance policies required to be held by it under clause 10(b).

# Indemnity

### The Manager indemnifies and will keep indemnified the Company, the Company’s Related Bodies Corporate and their Personnel (**Indemnified Party**) from and against any claim, loss, expense, liability or damage suffered or incurred by any Indemnified Party, arising from any one or more of the following:

#### a breach by the Manager or the Manager’s Personnel of any of the Manager’s obligations (including any warranty) under this agreement;

#### any act or omission by the Manager or the Manager’s Personnel arising out of or in any way related to the performance of the Services; and

#### any claim made against an Indemnified Party arising out of third party property damage or third party personal injury arising in connection with the activities of the Manager or its Personnel when performing obligations under this agreement.

### The Manager’s obligation to indemnify the Indemnified Parties under this clause will reduce proportionally to the extent any act or omission of the Company or the Company’s Personnel contributed to the claim, loss or damage.

# Dispute resolution

Any dispute or difference arising between the parties in relation to:

### this agreement or its interpretation;

### any right or liability of any party under this agreement; or

### the performance of any action by any party under or arising out of this agreement, whether before or after its termination,

must be resolved in accordance with the dispute resolution process set out in clause [##] of the Shareholders Deed.

# Default and termination

## Termination by notice

The Company may terminate this agreement by giving the Manager not less than [30] days' notice.

## Termination for default

### The Company may terminate this agreement by Notice with immediate effect if it reasonably believes the Manager:

#### has breached any provision of this agreement and either:

##### the breach cannot be remedied; or

##### if the breach is remediable, it has not been remedied after 14 days’ Notice being provided to the Manager advising of the breach; or

#### has become the subject of an Insolvency Event.

### The rights available to a party under this clause 12.2 do not affect any other right or remedy otherwise available to it.

## Consequences of termination

### Upon receipt of a termination Notice, the Manager must immediately:

#### cease provision of the Services;

#### take all possible action at its cost to ensure the safety of all Personnel and the protection of all goods and services that formed part of the relevant Services to the Company;

#### return to the Company any items issued to the Manager by the Company;

#### take all possible action to mitigate any liability incurred by it as a result of such termination; and

#### any other action reasonably required by the Company in relation to the termination.

### Subject to this agreement, upon termination, the Company:

#### will not be liable for any Management Fees that are or have been deferred under clause 5.2, but are unpaid as at the date of termination;

#### must in accordance with clause 5 calculate the Management Fee (if any) for the Payment Period ending on the End Date or the date of termination (as applicable);

#### will be liable only to pay that part of an Invoice (including any invoice for the Management Fee to be calculated under clause 13.3(b)(ii)) which is due and owing to the Manager under this agreement as at the date of termination.

### Clause 1 (Definitions and interpretation), clause 9 (Confidentiality), clause 6 (Intellectual property), clause 11 (Indemnities), this clause 12.3 (Consequences of termination), clause 14 (GST) and clause 15.9 (Governing law and jurisdiction) survive termination or expiry of this agreement together with any other term which by its nature is intended to do so.

### Termination of this agreement does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

# GST

## GST

### Words used in this clause 13 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.

### Unless expressly stated otherwise, the consideration for any supply under or in connection with this agreement is exclusive of GST.

### To the extent that any supply made under or in connection with this agreement is a taxable supply (other than a supply made under another agreement that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under this agreement for that supply (unless it expressly includes GST) plus an amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

### The recipient must pay the additional amount at the same time as the consideration to which it is referable, and upon the issue of an invoice related to the supply.

### Whenever an adjustment event occurs in relation to any taxable supply to which clause 14.1(c) applies:

#### the supplier must determine the amount of the GST component of the consideration payable; and

#### if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

## Reimbursements

If either party is entitled under this agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

# Notices

## Form of Notice

### A notice or other communication to a party under this agreement (**Notice**) must be:

#### in writing;

#### signed by the sender or a person authorised to sign on behalf of the sender; and

#### subject to clause 14.1(b), addressed to that party in accordance with the details set out in Schedule 1.

### A party may vary its address by sending a Notice to the other party.

### A party must use the new address from the time that it receives the Notice.

### To deliver a Notice, a party must hand deliver, post, or email it to the other party’s address.

## How Notice is given and received

### A Notice must be given by one of the methods set out in the table below.

### A Notice is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00 am and 5.00 pm (addressee's time) on a Business Day (“Business Hours Period”), then the Notice will instead be regarded as given and received at the start of the following Business Hours Period.

|  |  |
| --- | --- |
| **Notice delivery method** | **When Notice is regarded as given and received** |
| By hand to the nominated address | When delivered to the nominated address. |
| By pre-paid post to the nominated address | At 9.00 am (addressee's time) on the second Business Day after the date of posting. |
| By email to the nominated email address | 5 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered |

# General

## Variation

### An amendment or variation of any term of this agreement must be in writing and signed by each party.

### The Company is under no obligation to agree to any amendment or variation requested by the Manager.

## No waiver

No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

## Assignment, novation and other dealings

### Any rights of a party that arise out of or under this agreement are not assignable by the party without the prior written consent of the other parties whose consent must not be unreasonably withheld.

### Any Change of Control in respect of the Manager shall be deemed to be an assignment for the purposes of clause 15.3.

## Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute this agreement by signing any counterpart. The date on which the last counterpart is executed is the date of this agreement.

## Severability

### If the whole or any part of a provision of this agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

### Clause 15.5(a) does not apply if the severance of a provision of this agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this agreement.

## No merger

On completion or termination of this agreement, the rights and obligations of the parties set out in this agreement will not merge and any provision that has not been fulfilled remains in force.

## Further action

Each party must at its own expense do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to:

### bind the party and any other person intended to be bound by this agreement;

### show that it is complying with this agreement; and

### give full effect to this agreement and the transactions contemplated by this agreement,

and use reasonable endeavours to procure that any third parties do the same.

## Set-off

### Each party to this agreement is authorised to deduct any amount due and payable by another party from amounts otherwise due and payable to that other party under or in connection with this agreement.

### Any exercise by a party of its rights under clause 15.8(a) does not limit or affect any other rights or remedies available to it under this agreement or otherwise.

## Governing law and jurisdiction

### This agreement is governed by the law in force in the State in which the Company’s registered office is located.

### Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State in which the Company’s registered office is located and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.

1.

Contract Particulars

| **Item No.** | **Item** | **Details** |
| --- | --- | --- |
| * 1.
 | The Company | [insert entity] Pty Ltd ACN [insert entity ACN]Address: [insert]Contact Person: [insert]Phone: [insert]Email: [insert] |
| * 1.
 | Manager | [insert entity] Pty Ltd ACN [insert entity ACN]Address: [insert]Contact Person: [insert]Phone: [insert]Email: [insert] |
| * 1.
 | Commencement Date | The date of execution of this agreement by each party.  |
| * 1.
 | End Date | Subject to termination in accordance with this agreement, the earlier of: 1. [##] months after the Commencement Date; or
2. date that the Manager ceases to hold any shares in the Company.
 |
| * 1.
 | Payment Period  | The Payment Period is each of the following: 1. the period from the Commencement Date until the end of the first [Month] / [Quarter] after the Commencement Date;
2. each full [Month] / [Quarter] during the Term; and
3. the period from the end of last occurring [Month]/[Quarter] until the End Date or the date of termination of this agreement.
 |
| * 1.
 | Services | The Manager is responsible for undertaking the following operating duties, on behalf of the Company, in accordance with the Business Plan:1. financial controller and bookkeeping services, including:
	1. operation management and administration of all financial matters of the Company, including bookkeeping and accounting functions of annual and monthly reporting, including all profit and loss, end of financial year, budget and cashflow forecasting;
	2. calculate, organise and process the general business insurance in accordance with the funding arrangement, as identifiable to the Business;
	3. record and process payments for all expenses as identifiable to the Business;
	4. calculate and process all payroll tax (as grouped across the entities) and identifiable to the Business;
	5. organise and process all uniform and personal protective equipment expenses as identifiable to the Business;
	6. calculate and process all (provisioned) workers compensation insurance (if applicable) as identifiable to the Business; and
	7. carry out any other service as agreed between the parties from time to time.
2. Human resources, including:
3. engagement, onboarding and termination of employees or agents;
4. employee relations including the provision of general advice, HR support and employee management matters;
5. development, review and implementation of policies, procedures and systems;
6. provision of activity and performance reports;
7. monitoring trends and identifying and implementing relevant improvements;
8. provision of change management support;
9. provision of an employee assistance program, subject to annual review; and
10. HR system membership cost per employee, subject to annual review.
11. HSEQ (Health, Safety, Environment, Quality), including:
	1. safety planning and risk assessments relating to the Business;
	2. provision of general HSEQ advice and support to Company;
	3. development, review and implementation of policies, procedures and systems;
	4. provision of activity and performance reports;
	5. monitoring trends and identifying and implementing relevant improvements; and
	6. workers compensation and injury management advice and support. HSEQ system membership cost per employee, subject to annual review.
12. Procurement, including:
	1. supplier onboarding;
	2. tender preparation and submission;
	3. contract preparation;
	4. vendor management;
	5. development, review and implementation of policies, procedures and systems; and
	6. provision of activity and performance reports.
13. Information technology management, including:
	1. provision of necessary hardware, software and licenses to perform business functions;
	2. development, review and implementation of policies, procedures and systems;
	3. provision of activity and performance reports;
	4. provide general IT support services, security and procurement; and
	5. develop and/or source programs and systems to meet business needs/requirements.
14. General operational support, including:
	1. supervision of administrative, commercial and financial business activities, including debt collection;
	2. development, review and implementation of policies, procedures and systems;
	3. provision of activity and performance reports;
	4. performance of operational management;
	5. performance of any action necessary to undertake business activities;
	6. management of administrative support services, including providing office space, office equipment and related services as may be required by the Company for purposes of the Business; and
	7. provision of access to software (including systems software and the systems management) required to operate the Business.
15. Executive support, including:
	1. reporting to the Board on a regular basis to keep the Board informed on the various operational matters.
16. Shared services, including:
	1. any other services to be agreed, including the processing of payments by the Manager on behalf of the Company; and
	2. exercise and performance of any powers and functions which at any time are vested in or delegated or assigned to the Manager, by the Board.
17. Business plan:
	1. including any other activities that are reasonably required to progress the implementation of the Business Plan; and
	2. the Manager must not enter into, vary or terminate any contract or arrangement (whether or not legally binding) that departs from the Business Plan of the Company.
 |
| * 1.
 | Company Expenses | The Manager will not be responsible for, and the Company must pay, any costs or liabilities associated with:1. wages, PAYG, superannuation or any other entitlements payable by the Company as the employer of each of its employees;
2. pre-employment medicals and any special requirements needed for employment qualification;
3. legal services required by the Company from time to time, including in respect of managing formal complaints, including workplace and safety matters;
4. insurance premiums reasonably required for the Business including workers’ compensation premium, general insurances including business, vehicle, public liability and professional indemnity;
5. flights and accommodation reasonably required to provide the Services;
6. meals allowances as reasonably required when travelling for the purpose of providing the Services; and
7. personal protection equipment as reasonably required for the Business.
 |
| * 1.
 | Management Fee | An amount equal to [##]% of the Company’s Net Revenue for any given Financial Year, plus GST. |

Signed as an agreement

|  |  |  |
| --- | --- | --- |
| **Signed by** **[insert entity]** **ACN [insert entity ACN]** as an agreement under s 127 of the Corporations Act: | ))) |  |
|  |  |  |
| Signature of Director |  | Signature of Director/Company Secretary(Delete title which does not apply) |
|  |  |  |
| Print name in full |  | Print name in full |

|  |  |  |
| --- | --- | --- |
| **Signed by [insert manager] ACN [insert manager ACN]** as an agreement under s 127 of the Corporations Act: | ))) |  |
|  |  |  |
| Signature of Director |  | Signature of Director/Company Secretary(Delete title which does not apply) |
|  |  |  |
| Print name in full |  | Print name in full |