

Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context indicates a contrary intention:

“Board” means the Management of the Company;

“Business” has the meaning given in recital A;

“Business Day” means a day on which banks are open for business in the State;

“Client” means [insert client]

“Confidential Information” has the meaning given in clause 8;

“Consultant” means Purple Giraffe Pty Ltd (ABN 37 639 412 776)

“Documents” includes software (including source code and object code versions), manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, documents, accounts, plans, formulae, designs, methods, techniques, processes, supplier lists, price lists, customer lists, market research information, correspondence, letters and papers of every description including all copies of and extracts from the same;

“Engagement” means the engagement of the Consultant under this Agreement;

“Executives” means the persons employed or otherwise engaged by the Consultant to provide the specialist services described in clause 4.1;

“Related Body Corporate” has the meaning given in section 9 of the Corporations Act 2001;

“Services” means the services set out in Schedule 1;

“State” means South Australia.

“Works” means all works, plans, concepts, designs and other materials developed or prepared by the Consultant pursuant to the Engagement.

1.2 Interpretation

In this Agreement:

(a) clause headings are inserted for convenience of reference only and will be ignored in the interpretation of this Agreement; and unless the context otherwise requires:

(b) references to a clause will be construed as references to a clause of this Agreement;

(c) references to this Agreement or to any specified provisions of this Agreement or to any other agreement or document will be construed as references to this Agreement or the specified provision of this Agreement or that other agreement or document as amended or substituted with the agreement of the relevant parties and in force at any relevant time;

(d) references to any statute, ordinance or other law include all regulations and other enactments thereunder and all consolidations, amendments, re-enactments or replacements thereof;

(e) words importing the singular include the plural and vice versa, words importing a gender include the other genders and references to a person will be construed as including an individual, the estate of an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency.

2. ENGAGEMENT

2.1 Engagement

The Client engages the Consultant on the terms of this Agreement and the Consultant accepts that engagement.

2.2 Non-exclusivity

Subject to the provisions of this Agreement, the Consultant and the Executives may provide their respective services to any other person during the Engagement.

3. TERM

The Engagement commences from the date of this agreement and ends when either party advised the other in writing unless terminated earlier by the Company or the Consultant in accordance with clause 12 (“Term”).

4. SERVICES AND CONSULTANT'S DUTIES

4.1 Services

The Consultant agrees to provide the Services to the Client as and when the Client requires from time to time.

4.2 General Duties

In providing the Services the Consultant will:

(a) act with professional skill as consultant to the Client with a view to promoting, advancing and improving the Client's business;

(b) comply with all policies, directions and resolutions of the Client as notified to the Consultant in writing by the CEO of the Client or any nominee of the CEO of the Client;

(c) subject only to the policies, directions and resolutions of the Client and the Client's CEO, act on the Consultant's own responsibility and initiative and exercise such powers as may be granted to Consultant by the Client, the CEO of the Client or any nominee of the CEO from time to time;

(d) make regular reports at such intervals or on such occasions as required by the Client, the CEO or any nominee of the CEO and on such matters as the Client, the CEO of the Client or any nominee of the CEO reasonably requires.

5. CLIENT'S OBLIGATIONS

During the Engagement Client will provide such information as the Consultant requires in relation to the Client's business and all such facilities as the Consultant may reasonably require to enable the Consultant to carry out the Consultant's duties under this Agreement.

6. FEES

6.1 Consultant's Retainer

During the Engagement, the Client will pay to the Consultant the Consultant's fees at the rate advised by the Client within this proposal (or such other rate as may from time to time be agreed between the parties). Hours under or over worked within the agreed time will be accrued and detailed on each monthly invoice.

7. EXPENSES

7.1 No Reimbursement of Unauthorised Expenses

The Consultant will perform its obligations under this Agreement at its own cost with the exception of:

- (a) any third-party expenses approved in writing by the Client; and
- (b) expenses which the Client, the CEO of the Client or the Nominee of the CEO authorise in writing.

7.2 Consultant Responsible for Payment of Executives etc

The Consultant will be solely responsible for and solely bear:

- (a) the payment of remuneration of its Executives and all its other servants, agents and contractors, including salaries and wages, annual leave, sick leave, long service leave and all other benefits to which any of them may be entitled under any contract of service with the Consultant or under any award, statute or common law;
- (b) the payment of all taxes and duties in respect of such remuneration and benefits;
- (c) maintenance of, and the costs in respect of such remuneration and benefits;
- (d) maintenance of, and the costs in respect of the maintenance of, adequate insurance in respect of workers' compensation and all other risks appropriate to the duties of the Executives and such servants, agents and contractors;
- (e) compliance with, and all costs of compliance with, all statutory, award or other legal or contractual requirements with respect to the Executives and such servants, agents and contractors;
- (f) and the cost of the provision of a computer for the Executives.

8. CONSULTANT'S ACKNOWLEDGMENTS

8.1 Confidential Information

The Consultant acknowledges that:

- (a) the property of the Client and its Related Bodies Corporate includes and will include all trade and business secrets and other confidential information and Documents relating to the affairs or business of the Client and its Related Bodies Corporate with whom the Consultant or any of the Executives comes into contact as a result of this Agreement, and by reason of the Engagement, whether or not the same were originally supplied by the Client or its Related Bodies Corporate ("Confidential Information");
- (b) the Confidential Information has been and will be acquired by the Client or its Related Bodies Corporate at the Client's or the Related Body Corporate's initiative and expense; and
- (c) the Client and its Related Bodies Corporate have expended and will expend effort and money in establishing and maintaining its customer base, employee skills and the Confidential Information.

Accordingly, it is reasonable that the Consultant should enter into the representations and warranties contained in the Agreement and, if the Engagement is terminated, the Consultant should continue to be subject to the restrictions set out in clauses 9, 10 and 11.

8.2 Undertakings

If so requested by the Client, the Consultant will cause the Executives and any other servant, agent or contractor of the Consultant to execute confidentiality and non-competition undertakings in favour of the Client in such form as may be reasonably required by the Client relating to the matters in this clause 8 and in clauses 9, 10 and 11.

9. CONFIDENTIALITY

The Consultant represents and warrants that the Consultant will not, and the Consultant will use its best endeavours to ensure that the Executives will not, either during the Engagement or at any time thereafter except in the proper course of the Consultant's duties under this Agreement or as required by law or by the Client, use or disclose Confidential Information.

10. DISCOVERIES

10.1 Information

The Consultant represents and warrants that:

- (a) it will immediately inform the Client of any matter which may come to its notice or to the notice of any of the Executives during the Engagement which may be of financial benefit to the Client or its Related Bodies Corporate; and
- (b) it will immediately communicate to the Client any proposals occurring to the Consultant or any of the Executives during the Engagement which may be of service for the furtherance of the business of the Client.

10.2 Inventions

The Consultant represents and warrants that:

- (a) it will make available to the Client any and all ideas, plans, creations, processes, inventions, improvements, innovations, modifications and discoveries which the Consultant or any of the Executives make, either alone or in conjunction with others, in connection with or

arising out of the Engagement and connected with the matters in which the Business ("Inventions"), whether or not the Inventions are capable of being protected by copyright, letters patent, registered design or other protection ("Protection"), and the Inventions will thereafter be the sole and exclusive property of the Client; and

(b) it will deliver to the Client full particulars of the Inventions, and at the expense of the Client, execute all documents and do and execute all such acts, matters and things as may be necessary or reasonable to obtain Protection for the Inventions, and to assign to the Client all rights which may be acquired by it or any of the Executives in relation thereto and to vest title thereto in the Client absolutely.

11. NON-COMPETITION

11.1 During the Engagement

The Consultant represents and warrants that it will not, and that it will make its best endeavours to ensure that the Executives will not, during the Engagement be engaged, in the carrying on of any business or activity which is in competition with the business carried on by the Client.

11.2 After the Engagement

The Consultant represents and warrants that it will not, and that it will use its best endeavours to ensure that the Executives will not, during the period of 6 months after termination of the Engagement, however that termination occurs anywhere within the State of South Australia where the Client has operations be directly engaged in the carrying on of any business which is in competition with the Client.

12. TERMINATION

12.1 Termination by Notice by Company or Consultant

Either the Client or the Consultant may terminate the Engagement at any time by giving to the other not less than one month's notice of termination in writing.

12.2 Immediate Termination by the Company

The Client may at its discretion terminate the Engagement by giving notice effective immediately if at any time:

(a) the Consultant or any of the Executives is or becomes charged with any criminal offence which in the reasonable opinion of the Client, or the CEO of the Client brings the Consultant or any of the Executives or the Client into disrepute; or

(b) the Consultant or any of the Executives is or become bankrupt, or goes into liquidation, or makes a composition or arrangement with creditors generally, or takes advantage of any statute for the relief of insolvent debtors; or

(c) any of the Executives is or becomes of unsound mind or a person whose person or estate is liable to be dealt with under any law relating to mental health; or

(d) the Consultant is or becomes continually or significantly absent or neglectful of its duties under this Agreement; or

(e) the Consultant is unable to provide the services or duties specified in clause 4 for any period in twelve months totalling three weeks.

12.3 Not to Prejudice Rights

Termination of the Engagement will not prejudice any rights or remedies already accrued to any party under, or in respect of any breach of, this Agreement.

13. INTELLECTUAL PROPERTY

13.1 All intellectual property in and relating to the Works are and will remain the property of the Client and the Consultant assigns to the Client absolutely all intellectual property rights, including copyright and all other rights of a similar nature, in relation to the Works. Upon termination of this Agreement for any reason, the Consultant must deliver all Works in its possession or control to the Client.

13.2 The assignment to the client pursuant to clause 13.1 of this Agreement includes the assignment of any and all common law rights and remedies in relation to the Works and all rights in respect to the Works that are subsisting or are conferred by the law in force in any part of the world, or that may arise or be created in the future.

14. RETURN OF MATERIALS

14.1 Consultant to Return Materials

The Consultant will return or cause the return of all Documents and other materials relating to or concerning any Confidential Information, supplied to the Consultant or the Executives or otherwise in their possession or within their control and containing or pertaining to any Confidential Information, including all copies of those Documents and materials then in existence:

(a) immediately on demand; or

(b) without demand as soon as such Documents and other materials or any of them are no longer required by the Consultant for the performance of its duties; or

(c) on the termination of the Engagement.

14.2 Materials to be Property of the Company

All notes and memoranda of information concerning any Confidential Information made or received by the Consultant or any of the Executives during the course of the Engagement will be surrendered by the Consultant at the same time as the Documents referred to in clause 13.1 are due to be returned to the Company.

15. RELATIONSHIP

15.1 Independent Contractor

The relationship of the Consultant to the Client shall be only that of independent contractor.

15.2 Other

Nothing contained in this Agreement shall be deemed or construed to constitute either party a partner, joint ventures, employer, employee, principal, agent, trustee (whether express or constructive), beneficiary, fiduciary or representative of the other party.

15.3 Authority to Bind

Neither the Client nor the Consultant has the authority to act or to incur any liability or obligation on behalf of the other except as expressly provided in this Agreement.

16. NOTICES

16.1 Form

Any notice or other communication by any party to another party shall be:

- (a) in writing and in the English language; and
- (b) addressed to the recipient at its address shown herein or to such other address as it may have notified the sender ("relevant address").

16.2 Method of Service

In addition to any means authorised by law any communications may be given by:

- (a) being personally served on a party;
- (b) being left at the party's address;
- (c) being sent to the party's address by prepaid ordinary mail; or
- (d) facsimile to the party's current number for service;
- (e) by email to the address provided in this agreement.

16.3 Personal Service

A communication shall be deemed duly given or made in the case of delivery in person, when delivered.

16.4 Other Service

Proof of posting by prepaid registered post or of dispatch of facsimile, telex, telegram or cable will be proof of receipt, in the case of a letter, on the third day after posting; in the case of facsimile, on the day immediately following dispatch, provided that the sender's facsimile machine produced a simultaneous satisfactory transmission report; in the case of a telex, on the day immediately following receipt by the sender of the answer-back of the addressee; in the case of a telegram or cable, on the day immediately following the date of dispatch.

17. ASSIGNMENT

17.1 By the Consultant

The Consultant may not assign this Agreement without the prior written consent of the Company.

18. NO WAIVER

Failure or omission by the Client or the Consultant at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision, or the right of the Company to avail itself of the remedies it may have in respect of any breach of any such provision, in any way.

19. SEVERABILITY

Any provision of this Agreement which is or become illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate the remaining provisions.

20. VARIATION

This Agreement may not be changed or modified in any way subsequent to its execution except in writing signed by or on behalf of all the parties.

21. GOVERNING LAW

This Agreement is governed by, takes effect and will be construed in accordance with the laws of South Australia, and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts of South Australia and Courts entitled to hear appeals therefrom.

22. DISPUTES

The parties agree that disputes arising under this Agreement shall be resolved by arbitration according to the rules for conduct of commercial arbitration established by the Institute of Arbitrators.

SCHEDULE 1 – SERVICES

- (a) [insert services]