

Terms and Conditions

This Agreement applies to the Engagement of the Consultant by the Client and any Service that will be provided to the Client by the Consultant.

1. Interpretation

For the purposes of this Agreement unless the contrary intention is apparent:-

- 1.1 “**Agreement**” shall mean these Terms and Conditions together with the Schedule, Annexure and the Fee Proposal and/or any paperwork supplied by the Consultant to the Client, from time to time, in relation to the Services.
- 1.2 “**Annexure**” contains an extract of the Initial Written Fee Proposal.
- 1.3 “**Approval Item**” means the approval item as set out in clause 7.4 of this Agreement.
- 1.4 “**Australian Consumer Law**” means the Australian Consumer Law set out in Schedule 2 of the *Competition & Consumer Act 2010* (Cth) as amended from time to time.
- 1.5 “**Background Intellectual Property**” means Intellectual Property in existence at the date that this Agreement is entered into, or that is subsequently brought into existence other than as a result of the performance of this Agreement and is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services.
- 1.6 “**Client**” means any person and/or business entity named in the Schedule and/or the Fee Proposal, in the absence of any entity named, the entity that receives the Services provided by Consultant.
- 1.7 “**Confidential Information**” means all information passing between the parties relating to either party and/or their personnel from the date of this Agreement including but not limited to trade secrets, drawings, know-how, techniques, source and object code, business and marketing plans, and projections, profit and loss statements, management reports, arrangements and agreements with third parties, customer information and customer information proprietary to customers, formulae, customer and client lists, concepts not reduced to material form, designs, plans, models.
- 1.8 “**Consultant**” means Purple Giraffe Pty Ltd (ABN 37 639 412 776).
- 1.9 “**Engagement**” means the engagement of the Consultant by the Client to provide the Services under the terms of this Agreement.
- 1.10 “**Fee Proposal**” means any written fee estimate for the Services which is provided to the Client by the Consultant from time to time and includes the Initial Written Fee Proposal.
- 1.11 “**GST**” means Goods and Services Tax payable under the GST Act.
- 1.12 “**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.13 “**Hourly Rate**” means the Consultant’s hourly rate as outlined the Initial Written Fee Proposal and/or in the absence of a rate set out in the Initial Written Fee Proposal the rate set out in clause 4.2 of this Agreement or as otherwise agreed between the Consultant and the Client, with such Hourly Rate being subject to change, as advised in writing by the Consultant in accordance with Clause 4.6 of this Agreement from time to time.
- 1.14 “**Initial Written Fee Proposal**” means the initial fee proposal provided to the Client prior to this Agreement being entered into by the Consultant and the Client an extract of which is contained in the Annexure.
- 1.15 “**Intellectual Property**” means software (including source code and object code versions), know-how, systems, algorithms, digital marketing strategies, data, social media marketing strategies, text, images, other artwork, videos, trade secrets, copyright, trademarks, patents, 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 and any other hard or soft copy document.
- 1.16 “**Invoice**” means the invoice for payment provided by the Consultant to the Client for any of the Services provided.

- 1.17 "Loss" means all liabilities, damages, remedies, penalties, fines, costs, expenses (including reasonable legal fees and expenses), excesses, demands, claims, proceedings of any nature, consequential and non-consequential loss. "Liabilities" has the corresponding meaning.
- 1.18 "Personal Information" has the meaning defined by the *Privacy Act 1988* (Cth).
- 1.19 "Personnel" means any employee, agent or client of a party to this Agreement.
- 1.20 "Schedule" means the schedule to this Agreement.
- 1.21 "Services" means the services as described in the Schedule and any variation made in accordance with clause 4.3 of this Agreement and in the absence of any description of services in the Schedule, then any marketing or similar services which are supplied to the Client by the Consultant including but not limited one or more of the following: advertising management, copywriting, digital marketing, event management, graphic design, marketing plans, public relations and communications, sponsorship development and evaluation, survey development and execution, social media management and all other marketing support as may be required by the Client.
- 1.22 "Third Party Intellectual Property" means Intellectual Property which is owned by a party other than a party to this Agreement and is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services.
- 1.23 Headings are for ease of reference only and do not affect the meaning of this Agreement.
- 1.24 The singular includes the plural and vice versa.
- 1.25 Other grammatical forms of defined words or expressions have corresponding meanings.
- 1.26 A reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures.
- 1.27 A reference to a statute, ordinance or by-law includes regulations and other instructions under it and consolidations, amendments, re-enactments or replacements of any of them.
- 1.28 A reference to a right or obligation of the Hirer confers that right or imposes that obligation, as the case may be, jointly and severally.
- 1.29 A reference to a person includes executors, administrators, permitted assigns and successors of that person.
- 1.30 "includes" means "including without limitation."
- 1.31 A reference to dollars (\$) means Australian Dollars (AUD) unless specified otherwise.

2. Services

- 2.1 The Consultant has agreed to provide the Services to the Client in exchange for the amounts set out in the Schedule or such other amount as may be agreed between the Consultant and the Client in writing from time to time.
- 2.2 The Consultant need not supply the Services to the Client until the Client accepts this Agreement.
- 2.3 This Agreement will continue until such time as either the Consultant or the Client elect to terminate this Agreement in accordance with the terms of this Agreement.
- 2.4 The parties acknowledge that the Consultant shall provide the Services for the hours per month specified in the Schedule. In the event the Client does not request Services in a month for the full number of hours in the Schedule, any unused hours shall rollover into the following month and shall continue to rollover into future months until used, or the Agreement is terminated.

3. Acceptance

- 3.1 The Client will be deemed to have accepted this Agreement upon either following:-
 - 3.1.1 Written acceptance, whether by post, email correspondence, facsimile, or other means, stating that the Client accepts the Services and the Fee Proposal and any other document which forms part of this Agreement including but without limitation executing this Agreement.
 - 3.1.2 Verbal acceptance by instructing the Consultant to commence the Services after receiving the Fee Proposal.
 - 3.1.3 The Client accepting the Services and the Fee Proposal electronically in the same method as the Consultant issued it to the Client.

- 3.1.4 The Client makes payment of any deposit for the Services which may be requested by the Consultant from time to time.
- 3.1.5 The Client makes payment of any invoice for the Services which may be issued by the Consultant from time to time.
- 3.2 As part of the Client's Acceptance, the Client authorises the Consultant to use the Client's business name, logo, and examples of the Services provided to the Client for the Consultant's promotional and portfolio purposes as may be determined by the Consultant from time to time.

4. Price & Variations

- 4.1 The Client agrees to pay to the Consultant the price specified in the Schedule, which can be varied in accordance with this Agreement.
- 4.2 If the Consultant's fees have not been set out in the Fee Proposal, the Consultant will charge the Client the equivalent Hourly Rate based on the package specified in the Schedule, which may change from time to time in accordance with this Agreement, for any and all Services undertaken by the Consultant for the Client.
- 4.3 If the Consultant accrues additional hours over and above the time allocation as specified in the Initial Written Fee Proposal and as confirmed in the Schedule, then the Client agrees and understands that these additional hours will be charged in addition to the price specified in the Initial Fee Proposal at the Hourly Rate outlined at clause 4.2 above or as otherwise agreed in writing between the Consultant and the Client.
- 4.4 Any oral and/or written variations sought by the Client which are outside the scope of Services outlined in the Schedule of this Agreement and/or variations which relate to the Services in progress and/or to be undertaken by the Consultant at any time, are subject to approval by the Consultant in writing.
- 4.5 The Consultant reserves the right to charge the Client additional fees, which the Client agrees to pay, in addition to the price outlined in the Fee Proposal if:-
 - 4.5.1 A variation is requested orally or in writing by the Client that is accepted by the Consultant in writing or verbally;
 - 4.5.2 The Client provides incomplete or inaccurate instructions and/or information to the Consultant to undertake the Services that then requires changes, additions and/or amendments to be made by the Consultant as a result of the incomplete or inaccurate instructions and/or information;
 - 4.5.3 The Client provides additional, new or altered instructions and/or information required to complete and/or undertake the Services;
 - 4.5.4 There are interruptions to the Consultant in completing the Services that are as a result of the Client's action or inaction;
 - 4.5.5 There are mistakes made in the provision of the Services caused by any inaccuracies and/or misrepresentations on the part of the Client;
 - 4.5.6 There are changes to the hardware and software environment as a result of data words information and/or instructions provided to the Consultant by the Client;
 - 4.5.7 There are delays caused by faults or defects in any service provided by a third party; an
 - 4.5.8 Third party fees and/or charges associated with the Services increase whilst the Consultant is undertaking or performing the Services.
- 4.6 All variations and/or additional fees which the Client will be required to pay will be charged at:-
 - 4.6.1 A fixed price, which the Client will be informed of by the Consultant; or
 - 4.6.2 The Hourly Rate specified at clause 4.2 of this Agreement, and are payable in accordance with clause 5.2 of this Agreement.
- 4.7 The Consultant reserves the right to increase the Consultant's fees specified in the Fee Proposal or as otherwise agreed from time to time with the Client and/or the Hourly Rate by providing the Client with not less than thirty (30) days' notice of the increase.
 - 4.7.1 In the event that the Client does not accept or agree to the increase, then in such case the Client may exercise their right to terminate this Agreement in accordance with clause 12 of this Agreement.

5. Terms of Payment

5.1 Deposit

- 5.1.1 The Consultant may require the Client to pay a deposit for the Services at the time of entering this Agreement, with the amount of such a deposit to be decided at the Consultant's sole and absolute discretion and as advised in writing by the Consultant. If a deposit is required to be paid by the Client to the Consultant, then the Consultant will only commence the Services for the Client after the Consultant has received the deposit as cleared funds in the Consultant's nominated bank account.
- 5.1.2 Should the Client terminate this Agreement with the Consultant after paying the deposit, the Consultant, at its sole and absolute discretion, may keep the deposit and, if applicable, the Consultant may charge the Client additional fees in respect of the Services completed prior to the Client's termination of this Agreement.

5.2 Monthly Invoicing & Payment of Fees

- 5.2.1 Subject to clause 5.1.1 of this Agreement, the Consultant will issue monthly Invoices to the Client for payment of fees for the Services which the Consultant has provided to the Client and work completed for that given calendar month including any hours accrued under clause 4.3 of this Agreement.
- 5.2.2 The Client agrees to pay the Consultant the total amount specified in each Invoice within fourteen (14) days of the date of the Invoice, unless otherwise agreed between the Consultant and the Client in writing.
- 5.2.3 Payment of the Invoice is to be made by electronic transfer to the bank account nominated to the Client by the Consultant from time to time or such other method as may be agreed between the Consultant and the Client in writing.
- 5.2.4 The Client understands and agrees that the Client is liable for payment of any and all third-party fees which may be incurred by the Consultant for the purpose of providing the Services with such third party fees to be set out in any Invoice rendered by the Consultant to the Client and to be paid to the Consultant within the payment terms set out in this clause 5.

5.3 Default in Payment of Invoices

- 5.3.1 Should the Client fail to make payment of the Invoice within the terms outlined in this Agreement, then the Client agrees that the Consultant may at its discretion charge to the Client:-
- A. Interest at the rate of ten percent (10%) per annum which is to be calculated on a day-to-day basis on any monies owed to the Consultant by the Client. Payments received from the Client will be credited first against any account keeping fees and interest, and all such fees and shall be payable by the Client on demand by the Consultant. The Client agrees that this is not a penalty, but a true measure of damages incurred by the Consultant.
 - B. Any costs, expenses and/or Losses which the Consultant may incur in the Consultant's attempt to recover any monies that the Client owes to the Consultant, including but not limited to debt collection and reasonable legal fees on a solicitor and own client basis.
- 5.3.2 The Consultant reserves the right to:-
- A. Withhold delivery of the Services, in full or in part, to the Client until the Client has paid to the Consultant all monies owing to the Consultant; and/or
 - B. Stop the provision of the Services until such time as the Client makes payment for the Invoice/s in full. If the Consultant stops the provision of the Services as a result of the Client's failure to make payment to the Consultant, the Consultant will not be liable to the Client for any cost, expenses, Losses and/or damage incurred by the Client as a result of the Consultant stopping the provision of the Services.

5.4. Payment Order

- 5.4.1 The Client acknowledges and agrees that the Consultant may, in the Consultant's sole and absolute discretion, apply any amounts needed from the Client towards any amounts owed to the Consultant in any order that the Consultant determines from time to time.

6. Warranties

- 6.1 Each party warrants that:-
 - 6.1.1 The execution and delivery of this Agreement has been properly authorised;
 - 6.1.2 It has full corporate power to execute, deliver and perform its obligations under this Agreement;
 - 6.1.3 This Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy;
 - 6.1.4 This Agreement does not conflict with or result in the breach of or default under any provision of its constitution, or any material term or provision of any law or regulation to which it is a party or a subject or by which it is bound; and
 - 6.1.5 There are no actions, claims, proceedings or investigations pending or threatened against it or by it of which it is aware, and which may have a material effect on the subject matter of this Agreement.
- 6.2 The Consultant warrants that it will exercise reasonable skill, care and attention in providing the Services to the Client in accordance with this Agreement.

7. Instructions & Review

- 7.1 The Client agrees to aid the Consultant, by making available to the Consultant all information required in order for the Consultant to be able to carry out the Services. Should the Client fail to do so, it may either result in a delay or the Consultant's failure to provide the Services in whole or in part and the Client has no right to make a claim against the Consultant for any Losses and/or damage incurred by the Client as a result of that delay or failure to provide the Services.
- 7.2 Instructions received from any third party engaged by the Client and/or anyone employed by the Client will be taken to be instructions received from the Client and the Consultant will not be liable in any way for any Losses incurred by the Client in accepting instructions from a third party in respect of the Services.
- 7.3 The Client agrees to be responsible for the accuracy, completeness and propriety of information concerning the Client's products and services which the client furnishes to the Consultant verbally and/or in writing to carry out the Services.
- 7.4 In the event that the Consultant seeks the Client's approval before implementing any of the Services, the Client agrees to notify the Consultant in writing whether the Client accepts the Approval Item or if any amendments are required to correct any incorrect, inaccurate, inadequate or incomplete matters, that do not comply with the Services, within seven (7) days of the Consultant's request, failing which, the Client will be deemed to have accepted the Approval Item.
- 7.5 The Client must provide the Consultant with a reasonable opportunity to make any required amendments to the Approval Items as part of the Work after the Client's instructions under clause 7.4 are received.
- 7.6 It is the Client's responsibility to thoroughly check and gain independent expert advice on the suitability or correctness of the material to be published, printed or distributed before the Client accepts the Approval Item. The Consultant will not take responsibility for errors in copy (wording) or artwork once the Client has accepted the Approval Item.
- 7.7 The Consultant will not be liable to make any amendments that are the result of anything that is incorrect, inaccurate, inadequate, or incomplete in the material provided by the Client to the Consultant to carry out the Services. Subject to clauses 4.3. and 4.4 of this Agreement there may be additional charges if the Client requires these amendments to be made.

8. Extension of Time

- 8.1 The Consultant shall be entitled to an extension of time to carry out or complete the Services if delay of the provision of the Services is caused by:-
 - 8.1.1 Any variations under clause 4 of this Agreement;
 - 8.1.2 Any delay on the part of a third party to provide the Services;
 - 8.1.3 A breach of this Agreement by the Client;
 - 8.1.4 The Client failing to make payment in accordance with clause 5 of this Agreement; and/or
 - 8.1.5 Any other circumstances that are beyond the Consultant's reasonable control.

- 8.2 In the event an extension of time is required in accordance with clause 8.1 of this Agreement, the Client agrees that:-
- 8.2.1 The Consultant will not be liable in any way for any Losses incurred by the Client as a result of the extension of time required to provide the Services; and
 - 8.2.2 The Client may be liable for any and all reasonable costs, expenses, Losses and/or damage incurred by the Consultant as a result of the extension of time required to provide the Services.

9. Access to your Accounts

- 9.1 The Consultant may be required to utilise the Consultant's professional account(s) and/or the Client's personal accounts to engage the appropriate third-party providers (e.g. Facebook, Google) to carry out the Services for the Client. The Client authorises the Consultant to access to the Client's social media accounts and/or to set up the required accounts on the Client's behalf, as required from time to time.
- 9.2 The Client agrees to provide to the Consultant with the Client's necessary details to access the Client's social media account(s), the Client's digital marketing account(s) and/or any other similar or related account and/or to set up an account on the Client's behalf, as required from time to time, to carry out the Services.
- 9.3 The Consultant will take all reasonable steps to collect, store and use the Client's details required to access the account(s) owned by the Client in order to carry out the Services in a secure manner having regard to cybersecurity risks and agreed best practices at the time.
- 9.4 Upon termination of this Agreement, the Client will have access to any account(s) created or managed by the Consultant that the Client owns or are licensed for, in accordance with this Agreement. Access does not include access to consultant project management tools or publishing platforms used in the day-to day work of the Consultant.
 - 9.4.1 The client expressly acknowledges and agrees that in order for the Client to have access to the account(s) specified in clause 9.4, the Client may be required to take positive steps as may be advised by the Consultant in order to gain access. To the extent permitted by law, the Consultant will not be liable for any Loss and/or damage suffered by the Client as a result of the Client not taking the steps required to gain access to their accounts.

10. Google Pay Per Clicks and Google Ads

- 10.1 The Consultant reserves the right to reallocate the Client's approved Google pay per click budget between different approved marketing platforms in order to maximise results for the Client.
- 10.2 The Client agrees to abide by Google's Ads terms and conditions where the Services include the creation and/or management of the Client's Google AdWords account, which are subject to change from time to time.
- 10.3 Upon termination of this Agreement, the Consultant will use their reasonable endeavours to ensure that the Client will obtain access to the Client's Google Ads account prior to the Consultant arranging to cease having access to the Client's Google Ads account.
 - 10.3.1 The client expressly acknowledges and agrees that in order for the Client to obtain access to their Google Ads account, the Client may be required to take positive steps as may be advised by the Consultant in order to gain access. To the extent permitted by law, the Consultant will not be liable for any Loss and/or damage suffered by the Client as a result of the Client not taking the steps required to gain access to their Google Ads account.

11. Intellectual Property and Copyright

- 11.1 The Client guarantees that all Intellectual Property including any elements of text, images, design, information, videos, logos, price lists, sales data or other artwork which the Client provides to the Consultant are either owned by the Client, or that the Client has permission to use them and that its use will not breach any rights (including Intellectual Property rights or moral rights) of any third party and/or compromise the security of the Consultant's computer systems through a virus, malicious software or otherwise.
- 11.2 Subject to clause 11.2.1 below, the Consultant shall use its best endeavours to obtain all necessary releases, licenses, permits or other authorisation to use testimonials, copyrighted materials, photographs, art work or any other property or rights belonging to third parties obtained by the Consultant for use in carrying out the Services.

- 11.2.1 The Consultant however, does not warrant that the same will not infringe any Third-Party Intellectual Property rights or any person's moral rights or any breach of license, but the Consultant will advise the Client if it becomes aware of any such infringement. The Client indemnifies, and agrees to keep the Consultant, indemnified, against any and all Loss arising out of any such infringement.
- 11.3 All Background Intellectual Property which is owned by, or is proprietary to, a party shall remain owned exclusively by that party.
- 11.4 All Intellectual Property which is created as a result of, or in connection with, the provision of the Services will be the absolute property of the Consultant and, subject to the terms of this Agreement, will at all times be owned and controlled by the Consultant and is protected by copyright, trademarks and intellectual property laws in Australia.
- 11.5 Notwithstanding clauses 11.3 and 11.4 of this Agreement, the Consultant grants to the Client a perpetual, irrevocable, worldwide, nonexclusive, royalty free licence in respect of:-
- 11.5.1 The Intellectual Property which is created as a result of, or in connect with, the provision of the Services; and
- 11.5.2 The Background Intellectual Property embodied in or attached to the Services or that is otherwise necessarily related to the functioning or operation of the Services, the Client and its associated entities' business purposes.
- 11.6 The Consultant will use its best endeavours to ensure that the Client is granted a licence under similar terms as clause 11.5, to exercise all Third Party Intellectual Property (if any) embodied in or attached to the Services, or is otherwise necessarily related to the functioning or operation of the Services, for the Client and its associated entities business purposes.
- 11.7 For the avoidance of doubt, the licences granted in clauses 11.5 and 11.6 will not include a licence for the Client to commercialise the Intellectual Property, Background Intellectual Property and Third Party Intellectual Property.
- 11.8 Unless otherwise agreed between the Consultant and the Client, upon termination of this Agreement, each party shall return to the other, any Intellectual Property which is exclusively owned by the other party and for which a licence has not been granted in accordance with clauses 11.5 and 11.6 of this Agreement.

12. Termination

- 12.1 This Agreement shall continue until terminated by either party, with no less than sixty (60) calendar days' notice in writing given by either party to the other in accordance with clause 20 of this Agreement.
- 12.2 The Consultant shall not be liable for any Loss and/or damage arising from the cancellation of this Agreement under this clause 12, including any of the Services which are not completed by the Consultant.
- 12.3 Either party, however, may immediately terminate this Agreement by giving written notice to the other party if either party is:-
- 12.3.1 Declared Bankrupt; or
- 12.3.2 Has a receiver, agent or manager appointed for all or substantially all of its property; or
- 12.3.3 Enters into an arrangement or composition with its creditors; or
- 12.3.4 Becomes insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth).
- 12.4 The Consultant may also terminate this Agreement immediately if the Client does not provide requested material in a timely manner and/or the Consultant considers that mutual confidence and trust no longer exists.
- 12.5 **Consequences of termination**
- 12.5.1 In the event that this Agreement is terminated by either party, then the Client expressly acknowledges and agrees that any unused hours under this Agreement at the date of termination, will be forfeited by the Client.
- 12.5.2 If the Consultant terminates this Agreement the Client will not be charged for the Services which the Consultant has not delivered at the date of termination (not inclusive of any disbursement(s) which is/ are to be paid to any third-party). All other fees collected by the Consultant, prior to the date of termination are not refundable.

12.5.3 If the Client cancels the Agreement outside of this clause 12, the Client must reimburse the Consultant for any and all reasonable costs, expenses or Losses incurred by the Consultant as a result of the Client's cancellation. The Client must make payment for such cancellation costs incurred within fifteen (15) days from receipt of an Invoice from the Consultant detailing such costs in accordance with clause 5.2.3 of this Agreement.

13. Warranty Disclaimer and Limitation of Liability

- 13.1 The Consultant makes no warranties regarding the likelihood of success of the Services including but not limited to marketing or promotional activity undertaken pursuant to this Agreement.
- 13.2 If it is agreed that the Consultant will provide to the Client, as part of the Services, a digital marketing campaign, and/or social media advertising, the Consultant will use its reasonable endeavours to optimise the performance of the Client's digital marketing campaign, and/or social media advertising, however, the Consultant gives no warranties and makes no guarantees in respect of its performance.
- 13.3 This Agreement does not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial law which cannot be excluded, restricted or modified.
- 13.4 To the extent permitted by law, all terms, conditions, warranties and representations, expressed or implied, by statute or otherwise, are hereby expressly excluded.
- 13.5 To the extent permitted by law, the Consultant shall not be liable to the Client for any injury, harm, Loss, damage, costs, expense or other claim including consequential loss, economic loss or loss of profits, however arising, and whether direct or indirect, from the Services and/or advice given as a result of the Services or arising from any breach, default, negligence or wilful misconduct of the Consultant in connection with the Services and/or advice given as a result of the Services.
- 13.6 Subject to the Australian Consumer Law, the Consultant will not accept the return of, or give credit for, any Services provided in accordance with the Agreement.
- 13.7 Subject to the Australian Consumer Law, the Consultant will not be liable for:-
 - 13.7.1 Loss of profit or other economic loss; or
 - 13.7.2 Any direct or indirect consequential, special, general or other damages or other expenses; or
 - 13.7.3 Costs arising out of a breach of contract or any common law duty (including negligence) by the Client, the Client's agents or the Client's employees.
 - 13.7.4 No Liability is assumed for any consequential damages resulting from the use of the Services by the Client.
- 13.8 To the full extent permitted by law, the Consultant excludes:-
 - 13.8.1 All Liability for the infringement of the Intellectual Property rights of any third party arising from any of the material or content published during the performance of the Services.
 - 13.8.2 All Liability in respect of loss of data, third party integration failure, breach of security, interruption of business or any consequential or incidental damages; all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.

14. Indemnity and Release

14.1 Client's indemnities

- 14.1.1 The Client must indemnify and keep the Consultant indemnified from and against all Liabilities suffered or incurred by the Consultant in respect of any:-
 - A. Loss of or damage to any real or personal property; or
 - B. Personal injury or death, that arises out of or as a consequence of the performance or non performance of this Agreement by the Client or its Personnel,except to the extent that such Liability is attributable to the gross negligence or wilful misconduct of the Consultant (other than the Client).
- 14.1.2 The Client must indemnify and keep the Consultant indemnified from and against all Liabilities arising out of or in connection with:-
 - A. Any act or omission of the Client which gives rise to a Liability of the Consultant to a third party;

- B. Any act or omission of any Personnel of the Client which occurs while such a person is acting or purporting to act in such capacity, or otherwise in connection with such person's employment, agency, contract or subcontract with the Client, and which gives rise to a Liability of the Consultant to a third party; or
- C. Any Liability made or action brought by, or on behalf of, any of the Client's Personnel against the Consultant arising as a result of a matter as between the relevant person and the Client.

14.1.3 The Client expressly agrees to indemnify the Consultant and keep the Consultant indemnified against any claims by any person employed by the Client which may arise from or as a result of this Agreement.

14.1.4 The Client's obligations under this clause 14 will survive the expiry or termination of this Agreement.

14.2 Release

14.2.1 The Client acknowledges that (subject to the express terms of this Agreement) the Client undertakes to perform its obligations under this Agreement at its risk and releases, to the extent permitted by law but subject to the expressed terms of this clause 14, the Consultant from all claims and other Liabilities that the Client would have or would otherwise be entitled to bring against the Consultant (whether in contract, tort, pursuant to any statute or otherwise) in respect of any personal injury, death or loss of or damage to any real or personal property that arises out of or in connection with:-

- A. The Client's performance of its obligations under this Agreement; or
- B. Any act, matter or thing done or any omission of the Client or its Personnel in relation to the carrying out of the Services.

15. Confidential Information

- 15.1 The Consultant will collect, retain, record, use and deal with the Client's Personal Information (including name, address, telephone contact, credit card details or personal details) only in accordance with the *Privacy Act 1988 (Cth)*.
- 15.2 Subject to clause 15.3, the Client and the Consultant shall, except for legal and other professional advisers and as is required by law, keep strictly confidential all information shared under this Agreement, and will only use the Confidential Information for the purpose of providing the Services to the Client.
- 15.3 The Client's Personal Information will only be disclosed by the Consultant to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Consultant including but not limited to a debt collector, financial advisor, accountant, credit check organisation and/or any other individual or organisation which maintains credit reference and/or default listing.
- 15.4 The Client authorises the Consultant to make enquiries with respect to the Client's consumer and commercial credit worthiness, to exchange information with other credits providers in respect of the Client's previous consumer and commercial defaults and to notify other credit providers of a consumer default by the Client.
- 15.5 The Client agrees that the Consultant may disclose Personal Information including but not limited to the Client's account login details and payment details to organisations which provide services to or which assist the Consultant in providing the Services to the Client.
- 15.6 The party receiving the Confidential Information will ensure proper and secure storage for all Confidential Information received from the disclosing party.
- 15.7 Following the termination, expiration or other determination of this Agreement, all Confidential Information and/or Personal Information disclosed by the parties must be returned to the disclosing party by the receiving party promptly on the written request of the disclosing party that the confidential information be returned.
- 15.8 The receiving party acknowledges that the undertakings contained in this Agreement will continue after the expiry or termination of this Agreement but will not apply to:-
 - 15.8.1 Confidential Information which is in the public domain at the time of disclosure otherwise than as a result of a breach of the terms of this Agreement and any Confidential Information that becomes generally and publicly available after disclosure as aforesaid otherwise than as a result of a breach of the terms of this Agreement; or
 - 15.8.2 Confidential Information that the receiving party can prove was legitimately known to it at the time of disclosure by the disclosing party.

16. Relationship

- 16.1 The relationship of the Consultant to the Client shall be only that of independent contractor.
- 16.2 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.
- 16.3 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.

17. Dispute Resolution

- 17.1 Any disputes between the Client and the Consultant arising from the performance of the Services or any other provisions of this Agreement must first be attempted to be settled in a meeting of authorised representative(s) of both the Client and the Consultant with such meeting to occur within fourteen (14) days of notice of the dispute being provided in writing to the other party to this Agreement. Such a meeting is to take place within the state of South Australia at a place nominated by the Consultant.
- 17.2 If the meeting referred to at clause 17.1 above does not result in settlement of the dispute between the Client and the Consultant within seven (7) days of the meeting, then the dispute may then be referred to mediation, if agreed by both parties. The mediator is to be appointed by agreement between the Client and the Consultant and in the event that the parties agree to mediate but cannot agree to the mediator to be appointed then the mediator is to be appointed by the then current President of the Law Society of South Australia. The costs of any mediation are to be borne equally between the Client and the Consultant.
- 17.3 If the dispute cannot be settled through mediation, or the parties do not both consent to a mediation, then either party is at liberty to commence legal proceedings.
- 17.4 During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of the Agreement which are not under dispute.

18. Assignment

- 18.1 This Agreement shall not be assigned by the Client without prior written consent of the Consultant. Such consent is not to be unreasonably withheld.
- 18.2 The Consultant may assign the Consultant's obligations, rights and interest to any third party whatsoever without the Client's consent.

19. Guarantee

- 19.1 The person signing this Agreement on behalf of the Client hereby personally guarantees the payment of all monies that become due and payable under this Agreement. This guarantee will continue following the termination of this Agreement until all monies owing to the Consultant are paid in full.

20. Notices

- 20.1 Any notice or other communication by any party to another party shall be:-
 - 20.1.1 In writing and in the English language; and
 - 20.1.2 Addressed to the recipient at its postal or email address as provided in this Agreement or to such other address as it may have notified by either party to the other from time to time.
- 20.2 In addition to any means authorised by law any communications may be given by:-
 - 20.2.1 Being personally served on a party;
 - 20.2.2 Being left at the party's street address;
 - 20.2.3 Being sent to the party's address by prepaid ordinary mail;

20.2.4 In the case the party is a Company, then via ordinary prepaid mail to the office address which is registered with the Australian Securities Investment Commission as the party's registered office address; or

20.2.5 By email to the address provided in this Agreement.

20.3 Proof of posting by prepaid registered or ordinary post or will be proof of receipt, in the case of a letter, on the third day after posting; in the case of an email, on the day of which the email is sent.

21. GST and other Taxes

21.1 The Client must pay to the Consultant GST for the Services as is required by the Australian Taxation Office as well as any other taxes, duties, fees and levies for the Services provided that may be applicable at law. The amount the Client owes the Consultant for the GST will be stated in the Invoice issued to the Client.

22. No Waiver

22.1 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 Consultant to avail itself of the remedies it may have in respect of any breach of any such provision, in any way.

23. General Matters

23.1 This Agreement contains the entire agreement between the Consultant and the Client and it is agreed that any negotiations that led to the Agreement have been accurately incorporated in the Agreement and that this Agreement supersedes all prior agreements, understanding, arrangements between the Consultant and the Client.

23.2 In entering into the Agreement, the Client and the Consultant hereby acknowledge that warranties or representations have not been made to each other except as incorporated in this Agreement.

23.3 This Agreement is governed by the laws of South Australia and the parties submit to the exclusive jurisdiction of the Courts of South Australia.

23.4 If any part of this Agreement is found to be void, voidable or not enforceable, that part shall be struck out without affecting or eroding the enforceability or validity of the remaining parts and such severance shall not detract from the obligations each party has under this Agreement.

23.5 No variation to this Agreement will be of any force or effect unless reduced to writing and signed or acknowledged in writing by both the Consultant and the Client.

23.6 Performance of this Agreement is contingent upon the ability of the Consultant to complete the same and the Consultant will not be liable to the Client for any failure to provide the Services herein due to causes which are beyond the reasonable control of the Consultant.