

1. APPLICATION AND DURATION OF AGREEMENT

- 1.1 These Standard Terms of Engagement (**Terms**) and the accompanying Engagement Correspondence must be read together as they form the agreement (**Agreement**) between you and DEWICK & ASSOC PTY LTD (ACN 602 969 979) (**D&A**). A reference to "us", "our" or "we" is a reference to D&A.
- 1.2 These Terms will apply to all Services that we perform for you, as the Client, in relation to the Engagement Correspondence. A reference to "Client" or "you" or "your", refers to the entity described in the Engagement Correspondence and is a Party to the Agreement.
- 1.3 The Agreement constitutes the entire agreement between us and you. To the extent permitted by law, other terms or conditions are not to be implied into the Agreement, other than those mandatory terms and conditions implied by statute.
- 1.4 Other than as set out in the Engagement Correspondence and any Agreed Variation(s), these Terms supersede and prevail over all and any prior terms, discussions, negotiations, verbal or written representations (contractual or otherwise) quotes or other documentation exchanged between Parties.
- 1.5 If there is any conflict or inconsistency between the Engagement Correspondence, any Agreed Variation(s) and the Terms, the following precedence is to be given:
 - (a) first, the terms set out in any Agreed Variation(s);
 - (b) second, the Engagement Correspondence; and
 - (c) third, these Terms.
- 1.6 On your acceptance of the Engagement Correspondence, you will also be bound by the Agreement (including these Terms). Your Acceptance of the Agreement (including the Engagement Correspondence and the Terms) will be constituted by any one of the following:
 - (a) you providing written acceptance of the Engagement Correspondence;
 - (b) you giving us instructions after receiving the Engagement Correspondence, or you continue to engage us to provide the Services thereafter;
 - (c) if you pay Tax Invoices rendered by us for Fees that have been contemplated in the Engagement Correspondence and/or under these Terms.
- 1.7 The Agreement commences from the earlier of the date that the Engagement Correspondence is accepted by you in accordance with clause 1.6, or when the Services commence (**Commencement Date**). The Agreement continues until we determine that the Services are completed, or the Agreement is terminated.

2. SERVICES

2.1 Provision of Services

- (a) We will provide you the Services described in the Engagement Correspondence.
- (b) We will exercise reasonable skill, diligence and care to provide Services in accordance with any legal or regulatory requirements applicable to us, and otherwise in accordance with reasonable and appropriate professional standards.
- (c) You or we may request to vary the scope of the Services, provided that such request is made in writing to the other Party (**Variation**).
- (d) Any additional services and/or changes to the scope of Services, and any changes to the Fees, in connection with a Variation must be agreed to by both Parties before becoming effective and binding on the Parties. A Variation (including any change to the Fees arising from the Variation) will be accepted by:
 - i. you, in circumstances where you provide us with written acceptance of the Variation, or you continue to engage us to provide the Services as amended by a Variation; and
 - ii. D&A, in circumstances where the Variation is accepted by D&A in writing to the Client,
 (herein, an **Agreed Variation**).
- (e) Each Agreed Variation shall be incorporated into, and form part of, the Agreement upon being agreed by the Parties under clause 2.1(d).

2.2 Basis and use of advice

- (a) Any advice or opinion we provide relating to the Services is provided solely for you. It is not a promise nor a guarantee to you about the outcome or consequences of any issues or matters considered in the advice or opinion.

- (b) Our advice or opinion relates to, and is based on, the circumstances and information that we have knowledge of, and the information you have provided to us in writing and for which we have expressly acknowledged receipt of, as at the date of the advice or opinion. We are not obligated to update the advice or opinion after issuing it to you.
- (c) Except as required by law or where we have expressly agreed in the Engagement Correspondence to do so, you must not disclose all or part of our advice or opinion to a Third Party without prior written consent from us.
- (d) We are not liable for any actions or consequences of advice provided to Third Parties with or without our prior written consent. If you provide any of our advice or opinion to a Third Party without our prior written consent, you agree to indemnify us from and against all Claims made by such Third Party or any other Third Party in relation to the same and for the costs of defending any such Claims.
- (e) Our written advice will take precedence over any oral, draft or interim advice, reports or presentations to you. If you wish to rely on any oral advice that we provide, you must request documentary confirmation from us.
- (f) You must provide us with the opportunity to rectify our advice or opinion if you become aware that it does not conform to the scope of the Services in any material respect. If you fail to notify us in writing of any such non-conformity promptly upon its discovery by you, we disclaim all responsibility for our advice or opinion failing to conform with the scope of the Services.

2.3 Timing and delays

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

3. YOUR RESPONSIBILITIES

3.1 Provision of information

- (a) We require the timely provision by you of all information, documentation and materials, and timely responses to our questions and requests, so that we may provide the Services in a timely manner.
- (b) In requesting the Services, you agree to:
 - i. provide D&A all necessary and accurate information, documentation, materials and directions in respect of the Services;
 - ii. provide D&A with access to Personnel, Third Parties, records, premises, technology and information technology systems as requested by D&A;
 - iii. promptly respond to all of D&A's requests for information, documentation, materials and/or directions; and
 - iv. keep confidential any information disclosed by D&A or of which you become aware in respect of the Services, unless such disclosure is approved or agreed to by D&A in writing.

3.2 Accuracy of information

- (a) You are responsible for the completeness and accuracy of the information that you supply to us. We will not independently verify or assess the accuracy or veracity of information and will not be liable for any Loss resulting from inaccurate, incomplete or defective documents, materials or information.
- (b) You must promptly notify us in writing if, after providing us with any information, you determine that any part of that information is inaccurate, defective, misleading, deceptive or untrue in any material respect.
- (c) To the extent permitted by law, we disclaim all responsibility for your failure to inform us of any changes to any information which impact, or may impact, upon the Services.

- (d) You acknowledge and agree that all materials and information you provide to D&A is accurate and complete and that D&A will, without independent verification, rely on it for the purpose of providing the Services. D&A shall not assume any responsibility or have any liability for such materials or information. You represent that you have the right to supply such information to D&A and that the supply of such information by you and its use by D&A for the purposes of the provision of the Services will not infringe any rights held by any Third Party, involve the unauthorised use of confidential information belonging to a Third Party or result in the breach by you or D&A of any law, regulation, fiduciary duty, Intellectual Property Right or agreement.

4. FEES AND INVOICING

4.1 Calculation and Obligation to pay

- (a) Our Fees will be those set out in the Engagement Correspondence and any Agreed Variation, and will otherwise be calculated in accordance with these Terms.
- (b) You agree to pay such Fees for the Services in accordance with the Engagement Correspondence and Agreed Variation, or otherwise in accordance with these Terms.
- (c) We reserve the right to amend our Fees or charge additional Fees if we are required to perform more work or reschedule commitments due to actions or delays beyond our control or that are caused by you. You agree that you will be liable for all such amended and/or changed Fees.
- (d) If you direct us to issue a Tax Invoice to a Third Party our engagement remains with you and you will remain responsible and liable for payment until our Tax Invoice is paid in full.

4.2 Disbursements

- (a) All of our Fees exclude Expenses and disbursements. We may charge you for such Expenses and disbursements.
- (a) You must pay the reasonable travel expenses (including transport, meals and accommodation) for our Personnel who are required to travel in connection with the Services, as well as our reasonable document production and handling costs. GST may be applicable to the same. Document production and handling costs include photocopying, scanning, printing and courier costs.

4.3 GST

- (a) Subject to context, a reference in this clause 4.3 to a term that is defined or used in the GST Act has, when used in this clause, the meaning given to that term in the GST Act.
- (b) Any amount referred to in the Agreement which is relevant in determining a payment to be made by you to us is exclusive of any GST, unless expressly stated otherwise.
- (c) If the whole or any part of any amounts payable by you to us under the Agreement is the consideration of a taxable supply, you must also pay to us an additional amount equal to the GST liability.
- (d) We will set out the GST liability payable by you in our Tax Invoices.
- (e) You must pay any GST liabilities at the same time as all other amounts due under each Tax Invoice.

4.4 Invoicing

- (a) Our Tax Invoices are issued monthly or as otherwise stated in the Engagement Correspondence or any Agreed Variation. However, we reserve the right to invoice more or less frequently.

4.5 Payment

- (a) Tax Invoices are due and payable within 7 days of the date of issuance unless we agree otherwise in the Engagement Correspondence or any Agreed Variation.
- (b) Payment is to be made by credit card or electronic funds transfer into the account nominated by D&A from time to time.
- (c) If you do not pay a Tax Invoice in full, we may, without notice to you:
- elect to discontinue providing the Services to you;
 - suspend work until further payment is made;
 - charge interest as outlined in clause 4.5(d); and/or
 - instigate legal proceedings without further notice.
- (d) We reserve the right to charge you interest on any outstanding amount under a Tax Invoice not paid by the due date. Interest is to be calculated at a daily rate of 5% above the prevailing Reserve Bank of Australia official cash rate as at the date the amount became overdue.
- (e) Without prejudice to the above, we reserve the right to recover all default, recovery, enforcement costs and Expenses in the event that any and all amounts claimed in our Tax Invoices are not paid by the due date.

4.6 Disputed invoices

- (a) Any dispute in relation to a Tax Invoice will not be recognised or acted upon unless notified in writing to us within 7 days of you receiving the subject Tax Invoice.

5. SUSPENSION

- 5.1 If you suspend our performance of the Services or cancel the Agreement, you shall meet all loss, damage, costs and expenses, including loss of profits incurred by D&A, as a result of the suspension or cancellation.
- 5.2 D&A may suspend the performance of the Services or cancel the Agreement if you:
- have breached any of the terms and conditions of the Agreement and have not remedied such a breach within 7 days of the receipt of a written notice from us requiring you to remedy that breach;
 - evidence an intention not to be bound by the Agreement;
 - as provided under clause 4.5(c); or
 - become insolvent or appear unable to pay your debts.

6. OUR LIABILITY

6.1 Liability

- (a) You agree that D&A shall have no liability of any nature, whether in contract or tort or otherwise, for any Loss of any description incurred by you or any Third Party arising directly or indirectly as a result of or in connection with the Services, except to the extent that such Loss cannot lawfully be excluded or limited.
- (b) You shall indemnify D&A against any Loss which may be suffered or incurred by D&A in the performance of its obligations under the Agreement including, without limitation, arising from any misrepresentation, misconduct, negligence or dishonesty on the part of you or any Third Party.
- (c) D&A shall not be liable for any Claim whatsoever by a Third Party arising out of or in relation to the Agreement, and you agree to indemnify us against Loss or Expenses incurred by us in relation to any Claim by a Third Party which relates to this Agreement, including a prosecution, inquiry or investigation by a governmental body or agency.
- (d) D&A shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract, or tort or otherwise, at the expiration of one year from the completion of the Services, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or bring any Claim whatsoever against D&A (or any of our Personnel) in respect of the Services after that date.

6.2 General Limitations

- (a) To the fullest extent permitted by law:
- all terms, conditions, warranties and consumer guarantees, whether statutory or otherwise, are excluded in relation to the Services; and
 - subject to limitations of liability and to the greatest extent allowed by law, our liability to you in relation to all Claims relating to the Agreement and the Services is limited, in our complete discretion, to either:
 - re-supplying the Services;
 - a refund of the Fees paid by you to us in relation to the Services; or
 - the proceeds of insurance received by us or payable by our insurers in relation to the relevant Claim (if any).
- (b) Our liability to you in relation to the Agreement and the Services (if any) is limited to that proportion of the Loss (including interest and costs) suffered by you, which is agreed between us or ascribed to us by a court allocating proportionate responsibility to us having regard to the extent of our responsibility for the Loss or damage and the contribution to the Loss in question by you and any Third Party.

6.3 Excluded Loss

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

6.4 General indemnity

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

7. CONFIDENTIALITY

- 7.1 Information that we obtain from you in the course of providing the Services will be treated as confidential and dealt with as follows:
- we will hold all such information in strict confidence;
 - we will not disclose, nor permit or cause the disclosure of, such confidential information to any person other than any of our Personnel who require that confidential information for the purposes of performing the Services, unless you instruct us to do so or unless such disclosure is reasonably required in connection with the Services; and

- (c) we will only use or reproduce such confidential information to the extent required to provide the Services.
- 7.2 Our obligations of confidentiality in clause 7.1 do not apply to the extent that:
- (a) you instruct or permit us to disclose, use or reproduce any confidential information;
 - (b) disclosure of confidential information is required by law or court order, including an order by any governmental agency that may lawfully require and compel the disclosure of information;
 - (c) the information is, or becomes, publicly available or otherwise in the public domain, other than through breach of confidentiality obligations by us; or
 - (d) we disclose the information to our legal, insurance or other professional advisers on a confidential basis for the purposes of us obtaining professional advice.
- 7.3 We may disclose your confidential information to the appropriate authority if this is required by law, or is required in order for us to comply with our duties and obligations, or as required by regulatory bodies. You consent to the disclosure of your confidential information to the appropriate authority pursuant to this clause.

8. DOCUMENTS

- 8.1 All documents and other materials (including working papers, reports, written advice and drafts) developed, modified, designed or created by us in the course of performing the Services, in electronic or any other format, belong to us unless the Engagement Correspondence expressly states otherwise.
- 8.2 All original documents or other materials that you provide to us for the purposes of our engagement, whether electronic or any other format, belong to you unless the Engagement Correspondence expressly states otherwise. We will return to you all physical copies of such documents or other materials that we have in our possession or control upon your request or otherwise on completion of our engagement to provide the Services.
- 8.3 We do not accept any liability for any Loss that you may suffer if your files are damaged or destroyed for any reason.

9. SECURITY INTERESTS

- 9.1 Subject to context, a reference in this clause 9 to a term that is defined or used in the *Personal Property Securities Act 2009* (Cth) (PPSA) has, when used in this clause, the meaning given to that term in the PPSA.
- 9.2 If we determine that the Agreement or any transaction in relation to it gives rise to a security interest for the purposes of the PPSA in our favour:
- (a) you must promptly do anything that we reasonably require to ensure that any security interest is a perfected security interest;
 - (b) you undertake not to register a financing change statement or make an amendment demand pursuant to section 178 of the PPSA in respect of such registration;
 - (c) you agree that the following provisions of the PPSA will not apply and you will not have any rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 121(4); section 125; sections 129(2) and (3); section 132; section 142; and section 143;
 - (d) you agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and will not authorise the disclosure of such information except in accordance with section 275(7) of the PPSA;
 - (e) you waive your right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement;
 - (f) you agree that we are required to give a notice under the PPSA only if the notice is obligatory and the giving of the notice cannot be excluded under the PPSA, and you waive any rights to receive any notices unless they are required to be given and cannot be excluded; and
 - (g) you agree to notify us in writing of any change to your details within 5 days from the date of such change.
- 9.3 The Agreement constitutes a security agreement for the purposes of the PPSA.

10. NOTICES AND COMMUNICATIONS

- 10.1 Each communication or notice (including each consent, approval, request and demand) given by a Party to another Party in relation to the Agreement (**Notice**) must be in writing, in the English language and sent in accordance with this clause 10.
- 10.2 A Notice must be delivered by hand, sent by prepaid post, or sent by email, and must be addressed to the recipient Party using the contact details of the recipient Party specified in the Agreement or as otherwise notified by the recipient Party to each other Party from time to time.

- 10.3 A Notice is taken to be received by the recipient Party:
- (a) in the case of delivery by hand, upon delivery;
 - (b) in the case of prepaid post sent to a recipient Party in the same country as the sending Party, on the 5th day after the date of posting;
 - (c) in the case of prepaid post sent to a recipient Party in another country to the sending Party, on the 10th day after the date of posting; or
 - (d) in the case of email, when the email (including any attachments) is sent to the recipient Party at that email address, unless the sending Party receives notification of delivery failure within 24 hours of the email being sent.
- 10.4 Notwithstanding clause 10.3, if a Notice given under clause 10.3 is taken to be received on a day that is not a Business Day or after 5.00pm in the place where the Notice is received, it will be taken to be received at 9.00am on the next Business Day.
- 10.5 You must take all reasonable steps to ensure you have suitable systems in place to prevent corruption of data and transmission of viruses in your electronic documents or other communications to us.
- 10.6 You acknowledge and accept the risks that email communications may not always be secure, irrespective of the security we have in place.
- 10.7 You must contact us immediately if you have any concerns about the authenticity of any documents or communications purportedly sent by us.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 Background IP

- (a) All Intellectual Property Rights in a Party's Background IP remain vested in that Party, and all Intellectual Property Rights derived or developed from a Party's Background IP vest upon creation in that Party.
- (b) You grant us a non-exclusive, royalty-free, non-transferable licence to use your Background IP solely, and only to the extent necessary, for us to provide the Services. This licence will operate for the term of our engagement under the Agreement.

11.2 Contract IP

- (a) All Intellectual Property Rights in the Contract IP vest in us upon their creation, unless we agree otherwise in the Engagement Correspondence.
- (b) We will grant to you a non-exclusive, royalty-free, non-transferable licence to use the Contract IP solely, and only to the extent necessary, for you to obtain the benefit of and enjoy the Services in the ordinary course. We may terminate or suspend this licence if you do not pay when due our Fees and other amounts payable by you under the Agreement.
- (c) The licence in clause 11.2(b) does not include any right to use our name, our business names, our logos or our trade marks on any of your products, websites, social media, documents or services without our prior written consent.

11.3 Use

A References to "use" of Intellectual Property Rights under this clause 11 includes the right to load, execute, store, transmit, display, copy, modify, adapt, enhance, reverse compile, decode, translate and otherwise utilise.

11.4 Third Party infringement

Any intellectual property provided to us must not infringe the Intellectual Property Rights of any other Third Party. You must take reasonable precautions to ensure that no such infringement occurs. You are liable for any breach of another Third Party's Intellectual Property Rights if you provide them to us.

11.5 Survival

This clause 11 survives the termination of the Agreement.

12. DISPUTE RESOLUTION

- 12.1 If there is any dispute in relation to the Agreement, both Parties must meet and negotiate in good faith with a view to resolving the dispute in a timely manner.
- 12.2 If the Parties cannot resolve a dispute under clause 12.1 within 21 days of the dispute being raised in writing, both Parties agree to submit the dispute to mediation to be conducted by an appropriately qualified independent mediator. The reasonable costs of the mediation are to be equally borne by both Parties.
- 12.3 Where the Parties cannot agree on the identity or terms of a mediator within 7 days of the expiry of the period in clause 12.2, the Parties submit to the Australian Commercial Disputes Centre (**ACDC**) determining identity, terms and costs. Mediation will be conducted in accordance with ACDC Mediation Guidelines.

- 12.4 If the Parties cannot resolve a dispute within 21 days of mediation commencing under clause 12.3, either Party may instigate legal proceedings in a court or tribunal of competent jurisdiction.
- 12.5 Nothing in this clause 12 prevents a Party from seeking urgent interlocutory or injunctive relief in relation to a dispute.

13. TERMINATION

- 13.1 Unless otherwise provided in the Engagement Correspondence, to the extent permitted by law, either Party may terminate the Agreement at any time by giving at least 7 days' written notice to that effect to the other Party.
- 13.2 Either Party may terminate the Agreement immediately if the other Party commits a material breach of its obligations under the Agreement. A material breach includes, but is not limited to, a breach capable of being remedied but has not been remedied within 14 days of receipt by the Party in breach of a notice identifying the breach and demanding its remedy.
- 13.3 A material breach also includes but is not limited to either Party suffering an Insolvency Event.
- 13.4 If, at any point in time from the commencement of our engagement to provide the Services, the Agreement is terminated for any reason whatsoever, you agree to pay us for any accrued Fees and work in progress as at the date of termination.
- 13.5 All Fees and amounts under the Agreement become due and payable upon termination.
- 13.6 Termination will not affect any accrued rights.

14. FORCE MAJEURE

Neither Party will be liable to the other Party for any delay or failure to fulfil obligations under the Agreement to the extent that such delay or failure arises from significant and unforeseen causes beyond the first-mentioned Party's reasonable control, having taken reasonable precautions, including fire, floods, acts of God, terrorism, strikes, lock out, war, riot or any governmental act or regulation.

15. GOVERNING LAW

This Agreement is governed by the laws of South Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

16. VARIATION

The Parties can vary the Agreement only if the variation is in writing and signed by each of the Parties.

17. RESTRICTION ON ASSIGNMENT

A Party must obtain the prior written consent of the other Party before it assigns, transfers or otherwise disposes of a right or obligation under the Agreement.

18. SEVERANCE

If any provision of the Agreement is invalid, illegal or unenforceable, that provision must be severed from and ignored in the interpretation of the Agreement to the minimum extent necessary and to the intent that the remaining provisions of the Agreement remain in full force and effect.

19. WAIVER

- (a) A Party's failure, partial failure or delay in exercising a right relating to the Agreement is not a waiver of that right.
- (b) Any waiver granted hereunder must be in writing and shall be valid only in the specific instance in which it is given.

20. SURVIVAL

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of transactions contemplated by it.

21. FURTHER ASSURANCE

Each Party at its own expense must do everything necessary to give full effect to the Agreement.

22. NO MERGER

A Party's rights and obligations do not merge on the execution or completion of the Agreement or the completion of a transaction under the Agreement.

23. NO REPRESENTATIONS

Subject to the express provisions in the Agreement:

- (a) neither a Party nor its representative has made any representation to another Party to induce that other Party to enter into the Agreement; and
- (b) neither a Party nor a person acting on a Party's behalf was induced to enter into the Agreement by relying on a representation that another Party has made.

24. NATURE OF RELATIONSHIP

- (a) The Parties acknowledge and agree that the relationship between them is that of principal and independent contractor.
- (b) Nothing in the Agreement constitutes, nor will it be deemed to constitute, a relationship of agency between the Parties.
- (c) Neither Party has any authority to incur, and must not incur, any obligation on the part of the other Party, except as expressly stated under the Agreement or with, and to the extent of, the prior written authority of the other Party.

25. TIME OF THE ESSENCE

Time is of the essence in the Agreement and an extension or variation of time granted by any Party does not operate as a waiver of this clause 25.

26. INTERPRETATION

Headings do not affect the construction or interpretation of the Agreement and, unless the context otherwise requires:

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

27. DEFINITIONS

In this Agreement, unless expressly stated otherwise:

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

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

- (a) are in existence before the date of the Agreement or which come into existence after the date of the Agreement, other than Contract IP; or
- (b) that Party makes available, contributes, brings to or uses in relation to the Agreement.

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

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

Client means the entity or individual described in the Engagement Correspondence.

Commencement Date has the meaning given to that term in clause 1.7.

Contract IP means any and all Intellectual Property Rights created, discovered, developed or that come into existence in relation to the performance of the Agreement by one or more of the Parties, including all documents and materials produced or otherwise created in connection with the Services.

Engagement Correspondence has the meaning given to that term in clause 1.1, being the written correspondence (whether in hard copy and/or electronic form) and associated documentation under which we set out the nature, objectives, scope, responsibilities, timeline(s) and Fees for and of the Services that we offer to provide for you.

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

- (a) loss of profit, loss of sales, loss of revenue, loss of product, loss of expected savings, loss of income, rent or holding costs, loss of expected

production, opportunity costs, loss of business (including loss or reduction of goodwill or opportunity), or damage to reputation, whether actual, direct, indirect, anticipated or otherwise; and

(b) any indirect loss or consequential loss which is not otherwise covered in this definition.

Expenses means the costs and expenses incurred by D&A and our Personnel in performing the Services, including, without limitation, travel expenses (including transport, meals and accommodation) incurred by Personnel; mileage incurred during provision of the Services or on instruction from you; document preparation, copying and printing costs; and courier charges.

Fees means the fees and charges for the Services as described in clause 4.1.

GST means goods and services tax levied under the GST Act.

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

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

(a) an administrator, a bankruptcy trustee, a liquidator, a provisional liquidator or a similar officer is appointed in relation to that person or entity;

(b) a 'controller' within the meaning given to that term in the *Corporations Act 2001* (Cth) or a similar officer is appointed in relation to that person or any of the assets or undertakings of the person or entity;

(c) an application is made to a court for an order to make an appointment described in paragraph (a) or (b) of this definition and that application is not permanently stayed, withdrawn or dismissed within 30 days;

(d) the person or entity enters into, or resolves to enter into, a deed of company arrangement, a scheme of arrangement, or a compromise or composition with any class of creditors, other than for a solvent reconstruction;

(e) a resolution is passed, an application to a court is taken, or an order is made for the winding up, dissolution or bankruptcy of the person or entity;

(f) the person or entity ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course, or announces its intention not to pay its creditors;

(g) the person or entity is (or states that they are) insolvent or is deemed to be insolvent under relevant insolvency or bankruptcy law;

(h) an enforcement process (as that term is defined under the *Corporations Act 2001* (Cth)) is taken against or in relation to a substantial portion of the assets of the person or entity and is not satisfied or withdrawn within 21 days;

(i) the person or entity is declared bankrupt under relevant insolvency or bankruptcy law; or

(j) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (h) of this definition happens under the law of any applicable jurisdiction.

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

(a) any patent, trade mark, copyright (including future copyright), moral right, design, plant breeder's rights, circuit layout rights or any other corresponding property or right under the laws of any jurisdiction;

(b) rights in respect of an invention, discovery, trade secret, know-how, concept, idea, methodology, information, data, algorithm or formula;

(c) any right to apply for grant or registration of intellectual property or intellectual property rights; and

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

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

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

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

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

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

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

Third Party means a person who is not a Party to the Agreement.