



NOW IT'S AGREED

1. DEFINITIONS

In this Agreement, unless the context requires otherwise or the contrary intention appears:

“Business Day” means a day on which banks are open for business in Melbourne, excluding Saturdays, Sundays and public holidays.

“Effective Date” means the date of this Agreement

“Expiry Date” means the date set out in the Project Brief.

“Intellectual Property Rights” includes all worldwide registered and unregistered copyrights, trade marks, designs, patents, inventions, brands, logos, circuit layout rights, concepts, catch phrases and other similar industrial property rights and rights to registration of such rights whether created before or after the date of this Agreement or as developed in accordance with this Agreement.

“Materials” has the meaning set out in clause 11.2.

“Related Body Corporate” has the meaning given to that term in the Corporations Act 2001 (Cth).

“Representative” means a party’s representative nominated in accordance with clause 8.

“Services” means the assistance that The Salmon Project shall provide to the Client as set out in the Project Brief.

2. INTERPRETATION

2.1 In this Agreement, unless the context otherwise requires:

2.1.1 words importing the singular shall include the plural and vice-versa;

2.1.2 words importing any gender shall be deemed to include the other genders;

2.1.3 words importing a person shall include an individual, a partnership, body corporate, joint-venture, incorporated or unincorporated association and a government or statutory body or authority;

2.1.4 if a word or phrase is defined, cognate words and phrases shall have corresponding meanings;

2.1.5 “includes” means “includes without limitation”;

2.1.6 a reference to any statute shall mean any statute as amended, extended, consolidated or replaced from time to time and includes orders, ordinances, regulations, rules, by-laws made under or pursuant to statute;

2.1.7 a reference to a party includes that party’s legal personal representatives, successors and permitted assigns in accordance with this Agreement;

2.1.8 a reference to “\$” or “dollars” is a reference to Australian dollars;

2.1.9 no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and

2.1.10 an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

2.2 Headings are included for convenience only and shall not affect the interpretation of the Agreement.

3. PURPOSE OF THE AGREEMENT

3.1 In consideration of The Salmon Project agreeing to perform the Services set out in this Agreement, the Client will pay The Salmon Project the sum set out in the Schedule.

3.2 The Services shall be performed either at the Client’s premises or at The Salmon Project’s place of business, or such other place as agreed by the parties.

3.3 The parties may agree in writing to vary the Services from time to time and such variation shall, as at the date of such written agreement, be deemed to be incorporated into the Agreement.



4. TERM

4.1 This Agreement shall commence on the Effective Date and expire on the Expiry Date.

4.2 The parties shall meet at least one month before the Expiry Date to determine any extension of the term of this Agreement.

5. OPERATION OF AGREEMENT

5.1 This Agreement is to be read in conjunction with the attached Project Brief.

5.2 Where there is any inconsistency in terms between the Agreement and the Project Brief, the parties agree that the ranking of relevance is firstly the Project Brief and secondly the Agreement.

6. EXPENSES

Unless otherwise agreed, the Client will bear all ancillary costs associated with the provision of the Services.

7. CO-OPERATION WITH OTHER

7.1 The Client may require The Salmon Project to schedule and co-ordinate its performance of any Services with the work of others and the requirements of any other work being carried out by the Client within the scope of this Agreement.

7.2 The Salmon Project shall use all reasonable efforts to comply with such scheduling and co-ordination so as to cause minimum delays and interference between the various parties.

8. REPRESENTATIVES

The Client and The Salmon Project shall each nominate a Representative to act on their behalf in the operation of this Agreement. Where a Representative of a party changes then that party shall, as soon as reasonably practicable, notify the other party of the change and supply the name and telephone numbers of the new Representative.

9. REVIEWS OF THE AGREEMENT

9.1 The Representatives shall meet at a frequency to be agreed in the Project Brief, but not less than once a quarter ("Reporting Period"), to review performance under the Agreement, discuss any changes to the

Agreement, review current and future requirements and review any other issues relevant to the Agreement.

9.2 A record of the meetings shall be kept by the Client, and a copy of the record sent to the The Salmon Project as soon as practicable after the meeting.

10. WARRANTIES

10.1 The Salmon Project warrants to the Client that it shall use its best endeavours to:

10.1.1 perform the Services in accordance with its obligations under this Agreement and in compliance with all relevant laws and standards; and

10.1.2 exercise the care, skill, competence and diligence which would be expected of a careful, skilful, competent and diligent The Salmon Project in performing services of a similar nature.

10.2 The Client warrants to the The Salmon Project that:

10.2.1 in respect of this Agreement it will act in accordance with its obligations and in compliance with all relevant laws and standards; and

10.2.2 exercise the care, skill, competence and diligence which would be expected of a careful, skilful, competent and diligent The Salmon Project in performing services of a similar nature; and

10.2.3 act in good faith.

11. PROPRIETARY INFORMATION AND PATENTS

11.1 Unless agreed otherwise in writing by the parties, nothing in this Agreement affects ownership of any Intellectual Property Rights which came into existence before the Effective Date.

11.2 Client shall have a perpetual, irrevocable, non transferable, paid-up right and license to use and copy materials provided by The Salmon Project to the Client as deliverables identified in the Project Brief (Materials) and prepare derivative works based on those materials for its internal use.

11.3 All other rights in the Material (including Intellectual Property Rights), remain in and/or are assigned to The Salmon Project.

11.3 The parties will cooperate with each other and execute such other documents as may be appropriate to achieve the objectives of this Section.



11.3 Client acknowledges that The Salmon Project may develop for itself, or for others, problem solving approaches, frameworks or other tools or information similar to the Materials and processes developed in performing the Services and any additional services, and nothing contained in this agreement precludes The Salmon Project from developing or disclosing such materials and information provided that the same do not contain or reflect Confidential Information.

11.4 The Salmon Project warrants that it is lawfully entitled and has full authority to grant the licences of Intellectual Property Rights set out thereof under this Agreement and that the Client's use under this Agreement will not infringe the rights (including, without limitation, the Intellectual Property Rights) of any third person.

11.5 The Client indemnifies The Salmon Project for any direct or indirect loss suffered by The Salmon Project by reason of use of The Salmon Project's Intellectual Property Rights in any manner other than as expressly allowed by this Agreement.

12. CONFIDENTIALITY

12.1.1 The Salmon Project and the Client will keep confidential and will procure that its employees, contractors and agents keep confidential the terms of this Agreement.

12.2 The obligations of confidentiality and non-disclosure contained in this clause 12 shall apply for a period of five (5) years from the effective Date to all the Information, PROVIDED THAT those obligations shall not in any event apply to:

12.2.1 Information disclosed to employees, servants or agents, but only to the extent that such employees, servants or agents require the Information to perform the Services under this Agreement and provided that they have executed a Confidentiality Deed;

12.2.2 Information or any part which is in the public domain (otherwise than through any breach of confidence by the The Salmon Project, its employees, contractors or agents);

12.2.3 Information that is required by law to be disclosed; and

12.2.4 Information in respect of which the Client in writing releases the The Salmon Project from its obligations under this Agreement.

13. DISPUTE RESOLUTION

13.1 In the event of any dispute arising under any provision of this Agreement, the dispute shall first be attempted to be resolved by the Representatives.

13.2 If a dispute cannot be resolved by the Representatives within 7 days of the dispute arising, the dispute may be referred by either party to the process of dispute mediation to the Chief Executive Officer of Australian Commercial Disputes Centre, Melbourne or any other body agreed between the parties. The mediation rules shall be nominated by the mediator.

13.3 Nothing in this clause affects a party's right to obtain interlocutory relief or to commence legal proceedings.

14. FORCE MAJEURE

14.1 In this clause, Force Majeure means:

14.1.1 an act of God(s);

14.1.2 flood, earthquake, hail, lightning, severe weather conditions or other natural calamity;

14.1.3 law, rule, regulation or order of any government or governmental authority not current on the date of this Agreement;

14.1.4 act of war, terrorism, rebellion or sabotage;

14.1.5 riot, strike or other labour disturbance; and

14.1.6 any cause whatsoever beyond the reasonable control of the party affected and not directly or indirectly caused or contributed to by the party affected.

14.2 If either party is unable (wholly or in part) by reason of Force Majeure to carry out its obligations pursuant to the Agreement, the obligation shall be suspended, so long as the Force Majeure exists, provided that that period of suspension must not under any circumstances exceed 30 days.

14.3 The affected party must give the other party prompt notice of the Force Majeure with full particulars, and as far as known, the probable extent to which the affected party will be, or is, unable to perform, or be delayed in performance of its obligations, and the steps being taken to mitigate the Force Majeure.

14.4 If a delay caused by Force Majeure continues for more than 30 days, either party may terminate this



Agreement by giving 7 days' written notice to the other party.

15. TERMINATION

15.1 The rights of termination in this clause 15 are in addition to any other rights of termination that exist in this Agreement.

15.2 Either party may terminate this Agreement immediately:

15.2.1 In the event of a breach of the Agreement by the other party ("Defaulting Party") where the Defaulting Party has failed to remedy the breach (if capable of remedy) within 14 days of receiving a written notice from the non-defaulting party to do so; or

15.2.2 persistent breaches of this Agreement by the Defaulting Party.

15.3 Either party may terminate the Agreement immediately by written notice if:

15.3.1 the other party becomes insolvent;

15.3.2 a receiver and/or manager or an administrator is appointed in respect of the other party's assets;

15.3.3 a liquidator is appointed of the other party (other than for the purpose of a reconstruction or amalgamation);

15.3.4 the other party enters into an arrangement or composition with its creditors or any similar arrangement or composition is made under any applicable law; or

15.3.5 there is reason to believe the other party will enter into an arrangement or composition with its creditors.

15.4 Termination of this Agreement by a party shall be without prejudice to any rights or obligations accruing before the date of termination.

15.5 In the event that the Agreement is terminated, the Client must pay The Salmon Project for Services performed up to the date of termination of the Agreement provided that such Services have been performed in accordance with this Agreement. The parties must return all copies of any information provided by the other.

16. INDEMNITY

The Salmon Project indemnifies and keeps indemnified the Client, its officers, employees, agents and contractors against any loss, damage, claim, action or expense (including legal expense on a full indemnity basis) which the Client, or any of its officers, employees, agents or contractors may suffer as a result of any of the following:

16.1 any warranty given by the The Salmon Project under this Agreement being incorrect or misleading in any way;

16.2 any negligent act, error or omission on the part of The Salmon Project or its employees, subcontractors or agents in the provision of the Services under this Agreement.

17. ASSIGNMENT

Neither party may:

17.1.1 assign any of its obligations under this Agreement without obtaining the Client's prior written consent; or

17.1.2 subcontract any of its obligations under this Agreement to any person who has not first been approved by the Client in writing. Notwithstanding any such subcontract, the The Salmon Project shall remain primarily liable to the Client for the performance of all its obligations under this Agreement.

18. NOTICES

18.1. Any notice required or permitted to be given or served by a party shall be deemed to have been validly given or received:

18.1.1 when delivered by hand to the other party's current address for notices;

18.1.2 when the sender of an email receives a delivery report that states the email was successfully delivered to the receiver; or

18.1.3 on the fifth day after posting if posted by pre-paid letter, except that any notice received after 5 pm will be taken as having been given or served on the next Business Day.

18.2 The addresses for notices are: The Client



(Insert email address)

Attention: [insert title]

18.2 The addresses for notices are: The Salmon Project

David@thesalmonproject.com

Attention: David Wright.

19. MISCELLANEOUS

19.1 No failure or partial failure by a party to enforce any of its rights under this Agreement constitutes a waiver or partial waiver of that right and no waiver is effective unless it is in writing and signed by the Representatives of each party.

19.2 The Agreement contains the entire Agreement between the parties relating to the subject matter of the Agreement and no representations or warranties have been made other than as expressly contained in the Agreement.

19.3 The terms of this Agreement can only be varied or replaced by a document executed by the parties.

19.4 The Salmon Project is an independent contractor with respect to the provision of the Services. Neither The Salmon Project nor its employees are, or shall be deemed to be servants, employees or agents of the Client.

19.5 Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

19.6 This Agreement is governed by the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.

19.7 This clause and clauses 10 and 11 shall survive the termination or expiry of this Agreement.