

YOUR LOGO
HERE

**BUSINESS SERVICE & MANAGEMENT
AGREEMENT**

Company Pty Ltd

ACN 111 222 333

BUSINESS SERVICE & MANAGEMENT AGREEMENT

THIS AGREEMENT MADE THE _____ DAY OF _____ 20____

BETWEEN: Company Pty Ltd ACN 111 222 333 a company incorporated in New South Wales and having its registered office at 1 Sydney Street Sydney 2000 (the “**Company**”);

AND: Other Company Pty Ltd ACN 333 222 111 a company incorporated in New South Wales and having its registered office at 1 Perth Street Perth 5000 (the “**Manager**”).

BACKGROUND:

- A** The Company carries on the Business at the Premises and has requested the Manager to enter into this Agreement for the purposes of providing the Services to the Company.
- B** The Manager carries on business as a provider of management services and has agreed to provide the Services to the Company on the terms set out in this Agreement.
- C** The Company has agreed to pay the Manager the Management Fees for the provision of the Services during the Term of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. Except where the context otherwise requires, these words and phrases have the following meanings:

“**Agreement**” means this Agreement and includes all schedules, attachments, amendments, modifications and variations made to this Agreement in accordance with its terms.

“**Business**” means the business which is presently, or is to be, conducted by the Company at the Premises which is described in Part A of Schedule One. The term Business includes any other business or activity in any way related to the Business and any other activities which the parties agree in writing form part of the Business of the Company.

“**Charge**” means any Charge over any of the assets of the Company.

“**Chattels**” means and includes all of the following located at the Premises: furniture, office equipment of every description, computers, software, photocopiers, word processing equipment, compactuses, desks, telephone systems, facsimile machines, scanners, printers,

Initial: _____

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filing systems, and all other equipment of any description used at the Premises for the purposes of conducting the Business.

“Claim” means any claim, cause of action, suit, proceeding or demand of whatsoever kind or nature and howsoever arising which is made by any person against a party to this Agreement and which in any way relates to the subject matter of this Agreement or to the provision of any of the Services.

“Commencement Date” means the date upon which the Manager commences to provide the Services to the Company which shall be the later of the following dates:

- (a) the date of this Agreement; or
- (b) the date the Manager takes over the management of the day to day operations of the Company;
- (c) such other date as the parties may in writing agree to be the Commencement Date.

“Confidential Information” means all information in whatsoever form that is:

- (a) marked or identified as “Confidential”, “Secret”, “Not to be Disclosed” or “Private”;
- (b) is designated, described or referred to by the discloser in any document or correspondence as confidential, secret or private or not to be disclosed;
- (c) confidential by its nature or relevance to, or about or concerning any aspect of the Business or the assets of the Business;
- (d) confidential by its nature as concerning the affairs, management, employees, customers, suppliers, strategies, procedures, policies or objectives of the discloser or the Business;

but does not include any information which prior to the date of this Agreement was lawfully in the public domain or which the discloser has published, circulated or announced publicly.

“Consent” means any consent, approval, authority or permit required to be given by any party, third party or other person or authority for any of the purposes of this Agreement or to facilitate or allow the doing of anything under the terms of this Agreement or in respect of the provision of the Services.

“Consultants” means all Persons that are not Employees but which are at any time engaged by the Manager to provide any of the Services to the Business.

“Consumer Laws” means all Legislation, Regulations and Codes of Practice which at any time provide for or regulate the rights of consumers when dealing any of the parties in the conduct of the Business or which impose obligations upon either of the parties in respect of the conduct of the Business. Without limitation these include where applicable the following:

- (a) the *Trade Practices Act 1974* (Cth);
- (b) the *Fair Trading Act* of any State/Territory; and
- (c) any other Act or law of State or Territory that applies to transactions with consumers.

“**Contracts**” means all contracts, agreements and understandings of whatsoever kind or nature that in any way relate to the conduct of the Business.

“**Corporations Act**” means the *Corporations Act 2001* (Cth).

“**Day**” means any day in which banks are open for business and does not include weekends or public holidays.

“**Employees**” means the employees of the Manager from time to time that are involved in providing the Services.

“**Encumber**” means to create any Encumbrance.

“**Encumbrance**” means any mortgage, charge (whether fixed or floating) pledge, lien, lease, hypothecation, title retention or conditional sale agreement (which is conditional or is subject to any title retention provision), covenant, bill of sale, estate, claim, demand, hire or hire purchase agreement, option, restriction as to transfer, use or possession, subordination to any right of any other person and any other encumbrance, security, restriction or interest whatsoever.

“**Environmental Authority**” means every Commonwealth, State, Territory or Local Authority that regulates, licenses or permits any authority of the Business pursuant to any Environmental Laws.

“**Environmental Laws**” means all laws passed by any government regulating the environment which in any way apply to the Business.

“**Essential Term**” means a term of this Agreement which the parties agree is a fundamental condition, the breach of which by a party entitles the other party to terminate this Agreement.

“**Event of Default**” means any default or breach of the terms of this Agreement by either party of any of its covenants, obligations or undertakings as set out in this Agreement including the Events of Default set out in Clause 5.

“**Government Authority**” includes all local, State or Federal government authorities, all Ministers or government departments of each of those governments, all stationary corporations, all local authorities and any agents or employees of any of them.

“**GST**” means any goods and services tax or other form of value added or consumption tax and includes GST as defined in Section 195-1 of the *New Tax System (Goods and Services Tax) Act 1999* (Cth).

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

“Holding Over” means the holding over after the expiry of the Term whereby the Manager continues to provide the Services to the Company.

“Insurance” means all insurance policies of whatsoever kind or nature that in any way relate to the provision of the Services by the Manager to the Company.

“Intellectual Property” means all intellectual property of whatsoever kind or nature used or which may be used in the conduct of the Business as at the Commencement Date and during the Term including all intellectual property created by the Manager during the Term and which specifically relates to and is used by it in providing the Services to the Company. Without limiting the generality of the foregoing this includes Confidential Information, copyright in all documents of whatsoever kind or nature, copyright in any other property in which the Law recognises copyright ownership, trade marks (registered or unregistered), logos (registered or unregistered), trade names, patents (pending or granted) and designs (registered or unregistered).

“Leased Equipment” means any plant, equipment or machinery leased or hired by the company and which immediately prior to the Commencement Date was used in the conduct of the Business and includes all equipment the subject of terms sales agreements, hire purchase agreements or any other financing arrangements for the acquisition or use of such plant, equipment or machinery where it has been and is being:

- (a) used by the Company in the conduct of the Business and which plant, equipment or machinery is to continue to be used from the Commencement Date in the conduct of the Business during the Term; and/or
- (b) any plant, equipment or machinery which after the date hereof is acquired or leased by the Company and is to be used in the conduct of the Business during the Term or any part thereof.

“Leased Equipment Owner” means the owner of any item of Leased Equipment.

“Legislation” means all Acts and statutes passed by any applicable government legislature, State or Federal.

“Local Authority” means the Municipal Council or Shire Council or any other local government authority and any regional State authority that has power to impose or regulate any activity of the Business during the Term.

“Month” means each calendar month during the Term.

“Monthly Payment Date” means the 14th day of each and every Month during the Term.

“Notice” means any form of written communication given by one party to the other and includes facsimiles and emails.

“Obligation” means every form of legal, equitable, contractual, statutory or other obligation or liability howsoever arising and includes without limitation all covenants, commitments, undertakings, and promises.

“OH&S” means all Occupational Health and Safety Legislation and Regulations.

“OH&S Authority” means in the applicable State or Territory the government authority or agency that is responsible for administering and enforcing OH&S Legislation in that State or Territory.

“Person” means, as the case may be, any natural person, any company, any trust, any Government Authority or other entity whatsoever.

“Pollution” has the meaning given to it in any Environmental Laws.

“Premises” means the property described in Part B of Schedule One where the Company has immediately prior to entering into this Agreement carried on the Business and at which place the Chattels and Leased Equipment are normally kept or stored when not in use and all such Premises or land as may be used at any time in the future during the Term to conduct this Business.

“Property Lease” means, if applicable, the current lease of the Premises.

“Regulations” means all regulations, by-laws and other rules made by any Government Authority pursuant to any applicable Legislation.

“Related Body Corporate” has the meaning given to it in Section 50 of the Corporations Act.

“Related Entity” has the meaning given to it in the Corporations Act.

“Right” includes all legal or equitable rights of whatsoever kind or nature and howsoever arising.

“Service” or **“Services”** means the services set out in Schedule Two.

“Service Fee” means the Monthly amount which the Manager invoices to the Company for the provision of the Services which shall be equal to all expenses and costs in providing those Services including all Employees, consultants and personnel engaged by the Manager or retained to assist it in providing the Services to the Company plus thirty percent (30%). In addition to these expenses the Manager may charge as part of the Monthly invoice for the Services an amount equal to five percent (5%) to cover all other incidental and associated costs. The Monthly amount must be in the form of a tax invoice and in addition to the

Service Fee the Manager will add the GST thereon. The Monthly amount may be changed at any time by written agreement between the parties.

“**Supply**” has the meaning given to that term in the GST Act.

“**Tax**” includes all relevant Federal, State or Territory taxes, duties, rates and levies of whatsoever kind of nature.

“**Term**” means the period from the Commencement Date until the termination of this Agreement by either of the parties in the manner set out in this Agreement.

- 1.2. Any reference to a party in this Agreement is a reference to that party, its assignees and lawful successors in title.
- 1.3. Headings are included in this Agreement for convenience only and do not affect the interpretation or construction of any clause.
- 1.4. A reference to any Legislation, Regulation, Ordinance, By-Law, Rule or Code of Practice includes all amendments and all replacing or substituting provisions.

2. AGREEMENT TO PROVIDE SERVICES AND MANAGEMENT OBLIGATIONS

- 2.1. **(Appointment and Provision of Services):** The Company hereby appoints the Manager to manage on the Company’s behalf the Business during the Term. The Manager agrees with the Company that as from the Commencement Date and during the Term of this Agreement and subject to the payment by the Company in accordance with this Agreement of the Service Fees plus the GST thereon when the same become due, the Manager will provide the Services to the Company as set out in the Schedule so as to enable the Company to properly and efficiently conduct the Business.
- 2.2. **(Pay-roll Tax):** Where the Manager is obligated to be registered for pay-roll tax, the Manager will take all steps necessary to be registered for pay-roll tax under the applicable Legislation. The Manager will ensure that it promptly pays all pay-roll tax in accordance with the requirements of that Act. The Manager will indemnify the Company and keep the Company indemnified in respect of the payment of pay-roll tax relating to any Employees or Consultants of the Manager who are used in any way to provide the Services.
- 2.3. **(Employees):** The Manager will employ all the Employees and properly supervise them in their employment in carrying out the Services and in this respect will be responsible for all salary, wages, workers compensation premiums, holiday pay, long

service leave, sick pay, compulsory superannuation contributions and for the payment of all other sums of whatsoever kind or nature that the Manager as an employer is obligated from time to time to pay to or in respect of its Employees.

2.4. **(Consents):** Where any Consent is required in order to carry on the Business or to do any act or thing or omit to do any act or thing the Manager:

2.4.1. will, where it can apply for such Consent in its own name, apply for and obtain such Consent and ensure that such Consent is applied for in a timely manner so as to facilitate the on going conduct of the Business;

2.4.2. where it can only be applied for by the Company, is hereby authorised on behalf of the Company to apply for and obtain such Consent where such Consent is required.

2.5. **(Outgoings):** The Manager is responsible for the payment of all outgoings and expenses that in any way relate to the employment of the Employees.

2.6. **(Insurances):** In the course of the provision of the Services, the Manager will ensure that all Insurances (including public liability) are maintained and that all risks that can reasonably be foreseen as being risks arising out of or from conducting the Business are fully insured against, where such Insurance is reasonably available. Where applicable, all such policies must be in the name of the Company as the owner of the Business and the Manager as the Company's agent in conducting the Business.

2.7. **(Agency):** In order to facilitate the provision of the Services, the Company hereby appoints the Manager as its agent and representative with full power to do all things on behalf of the Company which the Company could do in order to properly and effectively carry on the Business. These powers include but are not limited to the following:

2.7.1. to enter into Contracts on the Company's behalf;

2.7.2. to accept and commit to Obligations on the Company's behalf;

2.7.3. to enter into consultancy arrangements with any Consultant;

2.7.4. to enter into any hiring or leasing arrangement with any Person;

2.7.5. to pay any liability on behalf of the Company;

2.7.6. to accept payment from any Person on behalf of the Company;

2.7.7. to make any application to any Government Authority on behalf of the Company;

2.7.8. to tender for any Contract on behalf of the Company.

- 2.8. **(Repairs):** The Manager will ensure that throughout the Term and whilst it is providing the Services it will maintain, service and keep in good repair all the Chattels and Leased Equipment so that they are always in good working order and condition and safe for use for their intended purpose. The Manager will be entitled in addition to the Service Fee to invoice the Company for all costs involved in such maintenance, service and repair of the Chattels and the Leased Equipment. The Company will promptly pay all such costs so invoiced. The Manager will be entitled to be reimbursed fully by the Company for all spare parts, consumables and other items which it acquires and pays for and which are in any way used or are for use in the conduct of the Business or in the repair of the Chattels or the Leased Equipment or any of them.
- 2.9. **(Premises):** Unless otherwise agreed the Manager will conduct and manage the Business at the Premises. The Manager and the Company may from time to time agree to alternative or additional locations for the conduct and/or management of the Business.
- 2.10. **(Supervision):** The Manager is responsible on a day to day basis for the supervision of all activities involved in the conduct of the Business and in particular is responsible for supervising all Employees, contractors and other Persons from time to time engaged in the conduct of the Business.
- 2.11. **(OH&S and Environmental Laws):** The Manager will ensure that in the provision of the Services it does not by any act or omission itself breach or cause the Company to breach any Obligation under all applicable Environmental Laws or under OH&S and that at all times it complies with all directions, or other requirements of any OH&S Authority in respect of the conduct of the Business, the safety of the Employees and other Persons. The Manager must ensure that the Company, the Manager and all relevant Employees hold all necessary licences, permits and certificates from all Local Authorities required to carry on the Business.
- 2.12. **(Consultation):** The Manager must consult with the Company on all matters, events or circumstances that may have a major detrimental effect upon the Business or upon the value of the Business or any part thereof or which may involve any change in the nature of the Business and will in that respect follow all reasonable directions given by the Company in respect thereto.

- 2.13. **(Not Misleading):** The Manager must ensure that in conducting the Business it does not breach the *Trade Practices Act 1974* (Cth) or otherwise engage in any conduct which is misleading or deceptive or likely to mislead or deceive any Person or which is a breach of any Legislation. If the Manager becomes aware of any conduct on its part or on the part of any of its Employees that could or might constitute a breach of any Legislation or be misleading or deceptive then it must immediately notify the Company.
- 2.14. **(Well Managed):** The Manager must ensure that at all times in providing the Services that the Business is well managed in accordance with good business practice, that all Legislation is complied with, and that proper and complete records are kept in respect of all matters relating to compliance.
- 2.15. **(Consumer Laws):** In conducting the Business the Manager must ensure that all Consumer Laws are complied with.
- 2.16. **(Consultants):** In respect of OH&S, the Manager may retain an Occupational Health & Safety consultant to advise generally and make recommendations from time to time as required on all OH&S requirements and procedures and will ensure that all such advices and recommendations are implemented and maintained in the course of providing the Services.
- 2.17. **(Training):** The Manager will ensure that at all times the Employees are suitably trained, equipped and have the appropriate experience to carry out all duties that are required of them in performing the Services. The Manager will ensure that at all times the Employees carry out the Services within a safe environment and that all risks and hazards are appropriately safeguarded against.
- 2.18. **(Proper Use):** The Manager will ensure that all the Chattels and Leased Equipment are properly used in accordance with their specifications and are not placed at risk. When not being used it will be the Manager's responsibility to ensure that the Chattels and Leased Equipment are properly and safely stored.
- 2.19. **(Unacceptability of Employee):** Where any Employee is for whatever reason unacceptable to the Company and the Company notifies the Manager to that effect then the Manager will give consideration to the termination of that Employee or cease to use that Employee in the provision of the Services to the Company.
- 2.20. **(Procedures):** The Manager will maintain a proper and suitable employment induction procedure, training procedure and will have suitable policies concerning

discrimination, harassment, confidentiality, solicitation and competition. Where appropriate, the Manager will ensure that all Employees are required to execute such agreements as may be reasonably required in order to protect the interests of the Manager and/or the Company.

- 2.21. **(No Goodwill):** Nothing in this Agreement confers upon the Manager any interest whether at law or in equity in the Business or the goodwill of the Business, all of which the Manager expressly acknowledges is exclusively owned and vested in the Company.
- 2.22. **(No Breach)** The Manager shall not by act or omission cause the Company to be in breach of any contracts or leases including without limitation the leases of the Leased Equipment and if applicable any Property lease.
- 2.23. **(Essential Terms):** Clauses 2.1 to 2.22 (inclusive) are expressly agreed to be Essential Terms.

3. COMPANY'S OBLIGATIONS

- 3.1. **(Co-operation):** The Company will not do any act or thing or omit to do any act or thing which prevents or hinders the Manager from providing the Services in an efficient and cost effective way and will co-operate with the Manager in respect of all aspects of providing the Services and conducting the Business.
- 3.2. **(Reasonable Requests):** The Company will carry out all reasonable requests made by the Manager in respect of the conduct of the Business.
- 3.3. **(Further Chattels):** Where there is a requirement for further Chattels or further Leased Equipment, the Company will arrange for the acquiring or leasing of the Chattels or Equipment so as to meet such requirements.
- 3.4. **(Suitable Locations):** The Company will continue to provide suitable sites, Premises, locations and buildings to the Manager to enable the Manager to carry out the Services. The Manager acknowledges that the current Premises are suitable for this purpose. The Company is responsible for ensuring that the Premises are safe for their intended use and that any other sites, premises, locations and buildings that may be used in the future in the provision of the Services are also safe for that purpose.
- 3.5. **(The Business):** The Company warrants and represents to the Manager that except for any written disclosure made before this Agreement is entered into, the Business has up to the Commencement Date been conducted properly and efficiently. All Consumer Laws have been complied with; all Contracts are in good standing; all

Legislation has been complied with; proper procedures are in place in respect of all OH&S Obligations and Obligations imposed under any Environmental Laws; there is no claim against the Company; the Company is not engaged in any litigation and is not aware of any existing facts or circumstances that could give rise to any Claim or litigation.

- 3.6. **(Tax Laws):** The Company warrants and represents to the Manager that it has complied with all applicable Tax Legislation whether State, Territory and Federal, it is not involved in any Tax avoidance schemes or arrangements and is not the recipient of any outstanding Tax or duty notice or demand or assessment from any relevant government Authority.
- 3.7. **(Provision of all Facilities):** The Company will provide all facilities and Chattels and Leased Equipment that might be required in order to allow the efficient provision of the Services by the Manager, its Employees and Consultants. It is expressly acknowledged by the Company that there is no obligation under this Agreement for the Manager to provide or make available any Chattels that might be reasonably required to efficiently provide the Services or conduct the Business.
- 3.8. **(No Encumbrance):** The Company will not grant any Encumbrance over the Business that prevents or hinders the Manager from carrying out and providing the Services during the Term.
- 3.9. **(Notices from Authorities):** Where the Company receives any Notice or communication from any Government Authority, Local Authority or Environmental Authority concerning the Business, it will promptly notify the Manager in respect thereof.
- 3.10. **(Essential Terms):** Clauses 3.1 to 3.9 (inclusive) are expressly agreed to be Essential Terms.

4. **PAYMENT OF SERVICE FEES**

- 4.1. **(Obligation to pay Service Fees)** Both the Company and the Manager are registered for GST. Subject to the receipt by the Company of a tax invoice for the Service Fees, the Company must pay the Manager each Month on or by the Monthly Payment Date the Service Fees for the preceding Month. The Manager must provide to the Company a tax invoice for the Service Fees no later than three (3) days prior to the Monthly Payment Date.

4.2. **(Reimbursement of Costs and Expenses):** The Company will promptly upon request pay by way of reimbursement any expense or cost borne by the Manager where such expense from the Manager or cost is a cost or expense relating to the provision of the Services. It is expressly acknowledged by the Manager that all costs and expenses reasonably and usually relating to the provision of the Services are covered by the Service Fee, and are not reimbursable under this Clause.

4.3. **(GST):** In addition to the Service Fee, the Manager will charge the GST and the amount of such GST must be included as part of the tax invoice for the Service Fee each Month.

4.4. **(Essential Terms):** The payment of Service Fees on the Monthly Payment Date is an Essential Term of this Agreement.

5. TERM

5.1. **(Commencement):** The Term of this Agreement commences on the Commencement Date and continues for a period of at least Ten (10) months. After ten (10) months either party may terminate this Agreement by giving to the other party not less than two (2) months prior written Notice to that effect. Such Notice shall be taken to have been given on the first day of the next succeeding Month and expiring on the last day of the second Month thereafter. For the purposes of this clause, the Term commences on the Commencement Date and expires upon the expiry of the aforesaid two (2) Months provided that the Term must be at least twelve (12) months.

5.2. **(Early Termination for Breach):** Notwithstanding 5.1 either party may terminate this Agreement by giving Notice to the other party to that effect upon the happening of an Event of Default, the occurrence of which is a consequence of any act or omission or circumstance or event attributable or related to the other party.

5.3. **(Event of Default by the Company):** An Event of Default by the Company occurs if:

5.3.1. the Company breaches any Essential Term; or

5.3.2. the Company breaches any other term of this Agreement and fails to remedy the same within fourteen (14) days of being requested by Notice so to do by the Manager; or

5.3.3. the Company is wound up, has an administrator appointed to it, a receiver appointed to any of its assets, enters into any arrangement, assignment or composition with any of its creditors or any of them or becomes insolvent; or

5.3.4. the Company ceases to carry on the Business; or

- 5.3.5. there is any material adverse change in the financial position of the Company;
or
- 5.3.6. there is any effective change in the control of or ownership in the Company; or
- 5.3.7. the Company has judgment entered against it in any court for an amount exceeding One Hundred thousand dollars (\$100 000,000.00) and such judgment is not satisfied within twenty eight (28) days of it being entered; or
- 5.3.8. the Company is fined by any Court for any offence under any Legislation or Regulations in respect of any act or omission on its part in the carrying on of any activity involving the Business or in the course of conducting the Business; or
- 5.3.9. the Company fails to perform any undertaking, Obligation or agreement relating to the Business and such failure is not capable of remedy within fourteen (14) days of being requested so to do by the Manager; or
- 5.3.10. any warranty or representation by the Company to the Manager is or becomes false, misleading or incorrect; and/or
- 5.3.11. any act or omission on the part of the Company in respect of any Leased Equipment which if done or not done by the Manager would constitute a breach or default of the lease or hire purchase agreement applicable to any Leased Equipment.
- 5.4. **(Default by the Manager):** An Event of Default by the Manager occurs if:
- 5.4.1. the Manager breaches any Essential Term; or
- 5.4.2. the Manager breaches any other Term of this Agreement and fails to remedy the same within fourteen (14) days of being requested so to do by the Company; or
- 5.4.3. the Manager is wound up, has an administrator appointed to it, a receiver appointed to any of its assets or becomes insolvent; or
- 5.4.4. the Manager has judgment entered against it for an amount exceeding One Hundred thousand dollars (\$100,000,000.00) and such judgment is not satisfied within twenty eight (28) days of it being entered; or
- 5.4.5. the Manager is fined by any Court for any offence under any Legislation or Regulations in respect of any act or omission on its part that in any way relates to the provision of the Services or to the conduct of the Business.

5.5. **(Effect of Termination):** On or shortly prior to the termination the Manager will do all things reasonably required by the Company to facilitate the offering to all of the Employees employment with the Company or its nominee as and from termination. Nothing in this clause obliges the Company to offer employment to any Employee.

6. CO-OPERATION AND GOOD FAITH

6.1. Each party undertakes to the other at all times to act in good faith towards each other, to co-operate and provide all reasonable assistance to each other.

6.2. Except where a party is in breach, the other party may not exercise any right or entitlement in such a way as to deprive the other party of its contractual benefits under this Agreement.

7. COSTS AND STAMP DUTY

7.1. Each of the parties will bear its own legal costs and other expenses in respect of the preparation and execution of this Agreement. Each party is responsible to pay half the stamp duty (if any) on this Agreement. The Company will promptly have this Agreement lodged for assessment of duty.

8. ASSIGNMENT

8.1. Neither party is entitled to assign any of its rights or Obligations or entitlements under this Agreement without the prior Consent of the other party. Nothing obliges either party to give any reasons for refusing its Consent unless otherwise expressly agreed by the parties.

8.2. Any assignment does not affect any pre-existing Obligation or Right.

9. NOTICES

9.1. **(In writing)** All Notices given pursuant to this Agreement must be in writing, signed by an officer of the sender, addressed to the recipient at the address, facsimile number or email address set out below or to such other address, facsimile number or email address as a party may from time to time notify to the other:

(i) Company Pty Ltd
of: _____

Attention: _____

Facsimile N^o: _____

Email: _____

(ii) Other Company Pty Ltd
of: _____

Attention: _____

Facsimile N^o: _____

Email: _____

9.2. **(Proof and time of Service):** Without limiting any other means by which a Party may be able to prove that a Notice has been served on another Party, a Notice will be deemed to be duly served:

9.2.1. if served by hand on the date thereof when left at the address of the recipient;

9.2.2. if served by pre-paid post, it will be deemed served on the third day after the date of posting (whether received or not);

9.2.3. if served by facsimile, it will be deemed served on the date of serving the facsimile on the recipient. A transmission report generated by the facsimile machine of the sender will be conclusive evidence that the facsimile has been sent; or

9.2.4. if served by email to the recipient's email address on the date of sending.

10. WHOLE AGREEMENT

10.1. **(Whole Agreement):** The terms of this Agreement represent the entire terms of this Agreement and all understandings, prior representations, arrangements or commitments that are not contained in this Agreement have no effect whatsoever and do not bind the parties.

10.2. **(No implied Terms):** Any implied term under any Legislation that can be excluded is hereby expressly excluded. No other term is to be implied as being a term of this Agreement unless by Legislation it cannot be excluded.

11. NO WAIVER OR VARIATION

11.1. **(No Waiver):** No delay by either party and no failure by a party not in default to require the other party literally to perform and comply with any provision, condition or requirement herein shall be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement.

11.2. **(Limit of Waiver):** A waiver by either party of any of its Rights will not be a waiver of or release of any of its other Rights nor will it entitle the other party to avoid strict

compliance with any other provision, condition or requirement in the future, nor will any delay or omission of either party to exercise any Right under this Agreement give rise to a waiver or create any estoppel preventing the other party from requiring strict performance of any Obligation.

11.3. **(Waiver in Writing):** A waiver of any breach, Right or entitlement under this Agreement must be in writing signed by the party purporting to waive such Right or entitlement.

11.4. **(Variation):** Any variation of the terms of this Agreement must be in writing, clearly expressed to be a variation and must be signed by both parties.

12. APPLICABLE LAW AND MEDIATION

12.1. **(Applicable Law):** This Agreement shall be governed by and construed in accordance with the Laws of New South Wales; and

12.2. **(Jurisdiction):** All Claims made by any party against the other in anyway arising out of this Agreement will be heard in New South Wales and each of the parties hereby submits to the jurisdiction of those Courts.

12.3. **(Mediation):** In the event of a dispute arising between the parties in respect of any Right or Obligation under this Agreement or in respect of any other matter or thing relating to the Services, the payment of Service Fees, the Chattels or Leased Equipment then each party covenants with the other in good faith to take all steps necessary to attempt to mediate a resolution of the dispute.

12.4. **(Costs of Mediation):** Each party agrees that it will bear half the costs of the mediator and half the costs of the venue for the mediation. Otherwise each party will bear its own costs including legal costs of preparing for and attending the mediation.

12.5. **(Appointment of Mediator):** Any party alleging a dispute is entitled to nominate and appoint a mediator who is a retired judge of the New South Wales Supreme Court or the Federal Court of Australia or a barrister who has been admitted to practise in the State/Territory of New South Wales for a period of not less than ten years.

12.6. **(Notice of Nomination and Appointment):** The Notice of nomination and appointment of mediator must be served on the other party and must set out:

12.6.1. the nature of the dispute;

12.6.2. the appointed mediator, his/her address, telephone number, facsimile number and email details (if any);

12.6.3. the proposal for conducting the mediation setting out the date, time, place or venue.

13. NO MERGER

13.1. **(No Merger):** None of the covenants, warranties, representations and undertakings herein contained may be deemed in any way to merge in or be modified or discharged by the payment of any moneys, or Service Fees or by the giving of any Consent or any other act or thing done pursuant hereto with the intent that the parties will continue to be bound to the fullest extent contemplated by this Agreement to all covenants, warranties, representations, undertakings and commitments herein all of which will continue to be and be always binding upon the parties hereto except where there is a contrary intention limiting those covenants, warranties, representations or undertakings clearly expressed and set out herein.

14. SEVERABILITY

14.1. **(Survival of provisions):** If any of the provisions of this Agreement are prohibited or unenforceable in New South Wales then to that extent only they will have no force or effect whatsoever and will be deemed excised from this Agreement without affecting or modifying any of the other rights and obligations of the parties.

15. RELATIONSHIP BETWEEN THE PARTIES

15.1. Nothing in this Agreement will constitute or be deemed to constitute a partnership or joint venture between the parties. The Company and the Manager acknowledge that the Manager is the agent of the Company solely for the purposes of dealing with third parties as part of providing the Services in respect of the conduct of the Business and not otherwise.

15.2. The Manager is not a Consultant to the Company except to the extent its role as a manager of the Business involves counselling and/or contracting.

15.3. Nothing in this Agreement gives the Manager any interest in the Company, in the Business or in any of the Chattels or Leased Equipment.

16. INDEMNITY

16.1. In addition to any rights that either party may have against the other to Claim damages or other compensation arising out of any Event of Default, each party is entitled to be indemnified by the other against any loss or liability sustained as a consequence of an Event of Default by the other party.

17. SIGNING BY THE PARTIES

17.1. An officer of any party will, if he or she signs any document pursuant to this Agreement purportedly to be signed by the party, be deemed to have full and complete authority so to sign and the other party will not be obliged to require any evidence of such authority.

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU
PROVIDE THROUGH THE BUILDING PROCESS

EXECUTED as an Agreement by the parties on the day and year first mentioned.

SIGNED BY)
Company Pty Ltd)
ACN 111 222 333 pursuant to)
Section 127 of the *Corporations Act* 2001)
in the presence of:

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

SIGNED BY)
Other Company Pty Ltd)
ACN 333 222 111 pursuant to)
Section 127 of the *Corporations Act* 2001)
in the presence of:

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU PROVIDE THROUGH THE BUILDING PROCESS

SCHEDULE ONE

Part A - The Business

Installation of air-conditioning unites

Part B - The Premises

1 Sydney Street Sydney 2000

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU
PROVIDE THROUGH THE BUILDING PROCESS

SCHEDULE TWO

SERVICES:

1. To provide all Employees during the Term whether full or part time as is reasonably required in order to properly and efficiently conduct the Business.
2. To engage Consultants and independent contractors from time to time to provide Services for the conduct of the Business.
3. To administer and manage all aspects of the Business during the Term.
4. To provide advice to the Company on all matters relating to the day to day conduct of the Business during the Term.
5. To maintain and keep in good repair all the Chattels and Leased Equipment during the Term and employ such Persons as may be required to carry on such work.
6. To make recommendations to the Company concerning acquiring further Chattels or Leased Equipment.